THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLSTON COUNTY

MASTER-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

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SC Court of Appeals

Case No. 2016-001201

Allen Livingston ..... Respondent

Harold Simmons Jr ..... Appellant

RECORD ON APPEAL

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Harold Simmons — Appellant
Allen Livingston — Respondent

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STATEMENT OF ISSUES ON APPEAL

1. DID THE COURT BELOW ERRED IN RULING ON THE DENIED JURY TRIAL, CHANGE OF VENUE, AND COUNTERCLAIM?

2. DID THE COURT BELOW ERRED IN RULING ON THE ORDER OF THE MASTER'S SALE ON THE FORCLOSURE OF THE INSTALLMENT SALES CONTRACT?

3. DID THE COURT BELOW ERRED IN THE IGNORING AND NON ACCEPTANCE OF THE PRIOR JUDGE ORDER OF THE AMORTIZATION REPORT AND PROCEEDING ACCORDING TO THE REPORT ORDERED BY JUDGE NICHOLSON?

4. DID THE COURT BELOW ERRED IN THE IGNORING AND NON ACCEPTANCE OF THE PRIOR JUDGE ORDER OF THE BACK TAXES BEING PAID OUT OF THE EXCESS OVERAGE PAYMENTS THAT WAS RECEIVED?

5. DID THE COURT BELOW ERRED ON THE RULING BASED ON AN ORDER SIGNED BY A JUDGE WHERE THERE WAS NO HEARING AND NO NOTICE OF HEARING GIVEN TO APPELLANT?

6. DID THE COURT ERRED IN IGNORING THE PERJURY THE RESPONDENT LEGAL COUNSEL CONCERNING A HEARING THAT WAS NOT HELD WITH THE APPELLANT PRESENCE OR BEING PROPERLY NOTIFIED?

7. DID THE COURT ERRED IN IGNORING THE FALSIFICATION OF DOCUMENTS AND REWRITING OF CONTRACT BY OF THE RESPONDENT THAT WAS STATED IN THE ORDER FROM NICHOLSON?

STATEMENT OF THE CASE

Appellant Harold Simmons is a disabled business man of Charleston County. Respondent, Allen Livingston, is a business man of Charleston County. On March 11, 2014 the Respondent filed a Lis Pendens concerning a property that was in contract between the respondent and the Appellant. On April 23, 2014 the Appellant filed an answer and requested a jury trial at that time. The respondent filed on April 28, 2014 an affidavit of default, on May 22, 2014 a motion to refer to master in equity. The hearing was scheduled and set forth to take place on November 3, 2014 at 10am. From the first hearing date on or around November 2014 through December 7, 2014 Judge Mikell Scarborough has denied the Appellant any and all due process along with ignoring and not accepting prior orders by Judge Nicholson and the fact that the respondent legal counsel false testified about a hearing and presented documents based on the false hearing and further refuse to take in consideration the Respondent perjury and falsification of documents in prior court proceedings under Judge Nicholson. Judge Mikell Scarborough has constantly denied the Appellant a jury trial, change of venue, and counter claim during the entire process and refuse to Dismiss the Respondent claim and Grant Appellant the counterclaim. This Appeal followed.

ARGUMENT

I. THE COURT BELOW ERRED IN RULING ON THE DENIED JURY TRIAL, CHANGE OF VENUE, AND COUNTERCLAIM.

Black's Law Dictionary, Sixth Edition, page 500

Due process of law:

Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution- that is. by the law of its creation-to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of t he defendant, he must be brought with in its jurisdiction by service of process within the state, or his voluntary appearance. Pennoyer v. Neff 95 U.S. 733, 24 L.Ed. 565.

Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.

An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. Kazubowski v. Kazubowski, 45 DJ.2d 405, 259 N.E.2d 282. 290.

Phrase means that no person shall be deprived of life. liberty, property or of any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing. Pettit v. Penn, La.App., 180 So.2d 66, 69.

The concept of "due process of law" as it is embodied in Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall

have a reasonable and substantial relation to the object being sought. U. S. v. Smith, D.C.Iowa, 249 F.Supp. 515, 516.

Fundamental requisite of "due process" is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. Trinity Episcopal Corp. v. Romney, D.C.N.Y., 387 F.Supp. 1044, 1084.

The Fifth Ammendment is every US citizens right and the Appellant is no different in this case.

The Fifth Ammendment states the following:

The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. Former Section 22-3-230 was entitled "Right to jury trial" and was derived from 1962 Code Section 43-93; 1952 Code Section 43-93; 1942 Code Section 3710; 1932 Code Section 3710; Civ. C. '22 Section 2244; Civ. C. '12 Section 1394; Civ. C. '02 Section 986; G.S. 841; R.S. 884; 1868 (14) 100.

RULE 38
JURY TRIAL OF RIGHT

(a) Right Preserved. The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

(c) Same: Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties, except where an opposing party is in default under Rule 55(a).

Note:

This Rule 38 is substantially the Federal Rule. The last sentence is added to Paragraph 38(a) to preserve the language of Code § 15-23-60. Paragraph 38(e) of the Federal Rule, referring to admiralty and maritime claims, is inapplicable to State practice.

No consideration was provided for "Due Process" or "Jury Trial of Right." Appellant believe that the Below court and Judge of the said court intended to violate the due process and jury trial of right according to the sections quoted above. Had it not been intended to violate the due process and jury trial of right, it would have been necessary for the inclusion of specific evidences and prior Judge court order to be reviewed and considered in the dismissal of the Lis Pendens and counterclaim granted.

II. THE COURT BELOW ERRED IN RULING ON THE ORDER OF THE MASTER'S SALE ON THE FORCLOSURE OF THE INSTALLMENT SALES CONTRACT.

The Appellant was never in a legal position to warrant a foreclosure on any property that was in an installment contract and therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order.

RULE 53
MASTERS AND SPECIAL REFEREES.

(a) Master and Special Referee Defined. The term "master" means the master-in-equity for the county. The term "special referee" means a member of the South Carolina Bar to whom a matter has been referred under S.C. Code Ann. § 14-11-60.

(b) References. In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case. Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court. A case shall not be referred to a master or special referee for the purpose of making a report to the circuit court. The

clerk shall promptly provide the master or special referee with a copy of the order of reference.

(c) Powers. Once referred, the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.

(d) Compensation of Special Referees. The compensation of the special referee shall be paid by the parties in such amount as shall be set by the special referee, subject to review by the circuit court upon objection by any party within ten (10) days of receipt of the order.

(e) Appeals. When a matter has been referred, any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Note:

This Rule 53 follows the Federal Rule as to form but is considerably modified to conform to State practice and needs. References in Federal Courts are rare, but absolutely necessary in State Courts, particularly to handle a large volume of State litigation such as foreclosures, partitions, and other equity matters. The State practice allowing judgment to be entered on the master's report in appropriate cases is preserved, as is the allowance of 10 days to file exceptions to the report. Other post-trial motions, such as a motion to amend judgment under Rule 52(b), would apply when the order of reference directs that judgment be entered on the master's report, just as they apply in actions tried by the court.

Note to 1986 Amendment:

Rule 53(c) is amended to make clear that the master has the same powers as a court sitting without a jury unless the order of reference limits his authority. Changes in that paragraph as well as Rule 53(d) leave the scheduling of the time and place of the hearings to the master. Rule 53(e)(1) is amended to remove the need for filing the transcript of proceedings if one has not been prepared, but Rule 53(e)(2) allows any party to obtain the transcript of proceedings before any hearing on exceptions to the master's report. Rule 53(e)(5) now authorizes the master to request briefs or proposed orders from counsel.

Note to 1994 Amendment:

This Rule 53(b) amendment clarifies the authority of the clerk of court to issue orders of reference in default cases and where all the parties consent.

Note to 1999 Amendment:

This amendment substantially revises this rule. It eliminates the practice of referring a matter for the purpose of making a report to the circuit court. Under the revised rule, the master or special referee will enter final judgment on any matter which is referred and any appeal from a decision of the master or special referee is to the Court of Appeals or the Supreme Court as provided by the South Carolina Appellate Court Rules. The detailed discussion of the powers of masters and special referees, and the procedure to be followed in matters pending before them, has been eliminated as unnecessary since the master or special referee has all the powers that a circuit court judge sitting without a jury would have in the matter and the procedure is that provided by the South Carolina Rules of Civil Procedure.

Note to 2001 Amendment:

Rule 53(d) is amended to provide that fees for special referees are set by the special referee subject to review by the circuit court if a party timely objects.

Note to 2002 Amendment

The 2002 amendment permits referral of foreclosure cases to the master-in-equity by order of the clerk of court. If there are counterclaims requiring a jury trial, any party may file a demand for a jury under Rule 38 and the case will be returned to the circuit court.

Last Amended by Order effective September 1, 2002.

RULE 103
RULINGS ON EVIDENCE

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context.

(b) Record of Offer and Ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

Note:

This rule is identical to the federal rule with the exception of the omission of subsection (d) relating to plain error. The rule of plain error contained in the federal rule is inconsistent with the law in South Carolina. Cf. State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (abolishing in favorem vitae review in capital cases and holding that error must be preserved by contemporaneous objection in the trial court). It should be noted that the Supreme Court has recognized a very few limited circumstances in which it will review issues raised for the first time on appeal. Cf. Toyota of Florence, Inc. v. Lynch, 314 S.C. 257, 442 S.E.2d 611 (1994) (challenge to abhorrent and outrageous argument raised for first time on appeal); State v. Pace, 316 S.C. 71, 447 S.E.2d 186 (1994) (failure to make contemporaneous objection to judge's comments excused where judge's tone and tenor made it clear that any objection would have been futile). Further, the failure to adopt a rule of plain error in no way limits the authority of trial judges to raise evidentiary issues on their own motion.

Subsection (a) means that reversal on appeal is only required where a substantial right of a party has been affected; error which is harmless does not affect a substantial right. Graham, Handbook of Federal Evidence, § 103.1 (3rd ed. 1981). This is equivalent to South Carolina law holding that reversal is not required unless an error is prejudicial and not harmless. State v. Sosebee, 284 S.C. 411, 326 S.E.2d 654 (1985) (probable prejudice must be shown); State v. Gaskins, 284 S.C. 105, 326 S.E.2d 132 (1985) (a new trial is not required for harmless error), cert. denied, 471 U.S. 1120, 105 S.Ct. 2368, 86 L.Ed.2d 266 (1985), overruled on other grounds, State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); Watts v. Bell Oil Co., 266 S.C. 61, 221 S.E.2d 529 (1976) (prejudice must be shown).

Subsection (a)(1) is generally in accord with prior South Carolina law which required a contemporaneous objection with specific grounds to preserve an error for review. State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994) (contemporaneous objection); White v. Wilbanks, 298 S.C. 225, 379 S.E.2d 298 (Ct. App.1989) (contemporaneous objection), rev'd on other grounds, 301 S.C. 560, 393 S.E.2d 182 (1990); State v. Bailey, 253 S.C. 304, 170 S.E.2d 376 (1969) (specific grounds required; general objection preserves nothing). It does somewhat relax the requirement of stating specific grounds where the grounds are apparent from the context. The better practice, however, is for counsel to always give, and the court always to require, specific grounds for an objection;

this will avoid later disputes regarding what was apparent from the context. It should be noted that Rule 43(i), SCRCP, Rule 18, SCRCrimP, and Rule 9(b), SCRFC; do not prevent counsel from stating the grounds for an objection, but merely control argument on the grounds for the objection. This rule does not alter the prior practice regarding motions in limine, which allowed the motion to exclude evidence to be made at the pretrial stage, State v. Glenn, 285 S.C. 384, 330 S.E.2d 285 (1985), but required a contemporaneous objection when the evidence is actually offered into evidence at the trial to preserve the issue for review. State v. Schumpert, S.C. ; 435 S.E.2d 859 (1993); Parr v. Gaines, 309 S.C. 477, 424 S.E.2d 515 (Ct. App.1992).

Subsection (a)(2) is the federal rule modified to require the grounds for admission to be stated. As modified, this rule is consistent with South Carolina law which requires a proffer of the excluded evidence and the grounds for admission to be stated to preserve the trial court's ruling for review. State v. Cabbagestalk, 281 S.C. 35, 314 S.E.2d 10 (1984); State v. Cox, 258 S.C. 114, 187 S.E.2d 525 (1972); Legrande v. Legrande, 178 S.C. 230, 182 S.E. 432 (1935); Gold Kist, Inc. v. Citizens & Southern Nat'l Bank, 286 S.C. 272, 333 S.E.2d 67 (Ct. App.1985). The rule does change South Carolina law by dispensing with the requirement of a proffer and a statement of the grounds for admissibility where the substance of the evidence and the grounds are apparent from the context. The prior law only dispensed with the requirement of a proffer where the judge refused to allow a proffer. State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986). To avoid later disputes over what was apparent from the context, however, the better practice is for a proffer and a statement of the grounds to always be made.

The first sentence of subsection (b) is similar to language contained in former Rule 43(c), SCRCP. Although no specific South Carolina case can be found to support the second sentence, requiring an offer to be made in question and answer form is within the discretion of the judge.

Subsection (c) is in accord with prior South Carolina law. Chandler v. People's Nat'l Bank, 140 S.C. 433, 138 S.E. 888 (1927); Rule 43(c), SCRCP.

III. THE COURT BELOW ERRED IN THE IGNORING AND NON ACCEPTANCE OF THE PRIOR JUDGE ORDER OF THE AMORTIZATION REPORT AND PROCEEDING ACCORDING TO THE REPORT ORDERED BY JUDGE NICHOLSON.

The court never look or considered addressing the amortization report therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order.

See the above notation of Rule 53 and 103

IV. THE COURT BELOW ERRED IN THE IGNORING AND NON ACCEPTANCE OF THE PRIOR JUDGE ORDER OF THE BACK TAXES BEING PAID OUT OF THE EXCESS OVERAGE PAYMENTS THAT WAS RECEIVED.

The court never look or considered addressing the Prior court order of the back taxes and payments which would have clearly shown the Appellant was not in jeopardy of foreclosure laws, therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order.

See the above notation of Rule 53 and 103

V. THE COURT BELOW ERRED ON THE RULING BASED ON AN ORDER SIGNED BY A JUDGE WHERE THERE WAS NO HEARING AND NO NOTICE OF HEARING GIVEN TO APPELLANT.

The court never look or considered addressing the if the prior court order signed by Judge Dennis was valid or the hearing scheduling of such proceeding was verified to be a valid hearing and proper notice was given to Appellant, therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order. This is in direct violation according to case Cook v. Taylor, 272 S.C. 536, 538, 252 S.E.2d. Which brings up questions such as the following:

(1) "Whether One Circuit Court Judge Can Vacate An Order Of Reference Made By Another Circuit Court Judge?" and

(2) "Whether The Pleadings Herein Stated An Equitable Cause Of Action And Requested Equitable Relief, Thereby Requiring The Reference To The Master In Equity?"

See the above notation of Rule 53 and 103

RULE 10
TRIAL DATE; NOTICE; FAILURE TO ANSWER

(a) Upon the filing of an answer by the defendant, the magistrate shall set the date of trial and deliver notice of the trial date to both parties in a manner provided for in Rule 8.

(b) If the defendant has failed to answer within the time period specified by these rules, the magistrate shall set a hearing date and shall deliver notice of the hearing date to both parties in a manner provided for in Rule 8 when the hearing is necessary for the entering

of a default judgment in a manner consistent with Rule 11. At the default hearing, the defendant may participate only by cross-examining witnesses and objecting to evidence.

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RULE 5
SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a)Service: When Required. Unless otherwise ordered by the court because of numerous defendants or other reasons, all (1) written orders; (2) pleadings subsequent to the original summons and complaint, which includes answers, counterclaims, cross claims, replies and amended complaints; (3) written motions, other than ones which may be heard ex parte; (4) written notices; (5) discovery requests and responses; (6) appearances; (7) demands; (8) offers of judgment; (9) designations of record or case; (10) grounds or exceptions on appeal; and (11) other similar papers shall be served upon each of the parties of record. No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of summons in Rule 4, and notice of any trial or hearing on unliquidated damages shall also be given to parties in default.

Note:

This Rule 5(a) is substantially the same as Federal Rule, and restates Code §§ 15-9-910 and 15-9-970 with no change in practice.

Note to 2005 Amendment:

This amendment to subsection (a) makes explicit that all major documents and papers, including, but not limited to, pleadings and amended pleadings, discovery requests and responses, motions and similar papers are to be served on every party of record. The amendment also adds the word "grounds" in subsection (a)(10).

(b)(1) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. Service by

mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.

(b)(2) Service on Sunday. Civil process may be served on Sundays, provided that no person may be served going to or from or attending a regularly or specially scheduled church or religious service on Sunday.

Note:

This Rule 5(b)(1) is the same as Federal Rule 5(b) and substantially restates Code §§ 15-9-920, 15-9-930, 15-9-980 and 15-9-990; with no resulting change in State practice. Rule 5(b)(2) is the same as Code § 15-9-1010, except permitting subpoenas to be served on Sunday.

Note to 2001 Amendment:

Rule 5(b)(2) is rewritten to reflect the enactment of S.C. Code Ann. § 15-9-17, 2000 S.C. Acts No. 360; which allows for the service of process on Sundays with the stated exceptions.

(b)(3) Service of Proposed Orders and Other Papers. Any party providing a proposed order, proposed findings of fact or conclusions of law, or proposed judgment or other paper to the court for its consideration in any pending matter shall serve the same on all counsel of record at the same time and by the same means.

Note to 1994 Amendment:

Rule 5(b)(3) clarifies the intent of Rule 5(a) and requires that proposed orders, findings of fact and conclusions of law and other materials provided to the court are to be served on all counsel of record. The material is to be provided to all other counsel at the same time and by the same means as they are provided to the court. Thus opposing counsel will have the opportunity to review and comment on the proposed order before it is signed. The rule does not require the court to delay entering any proposed order.

(c) Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleadings and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

Note:

This Rule 5(c) is the same as the Federal Rule. It has no parallel in State practice, but is a needed addition.

(d) Filing. All papers required to be served upon a party except as provided in Rule 26(g)(1), shall be filed with the court within five (5) days after service thereof. The summons and complaint shall be filed before service. Proof of service shall be filed within ten (10) days after service of the summons and complaint. Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party. Upon failure of a party to file other pleadings, motions, or papers, the court may permit filing or proceed as though the same had not been served.

Note:

This Rule 5(d) encompasses present Circuit Rule 68 and former Rule 75, as well as Code § 15-9-1000. It is a more concise statement, and provides more specific sanctions in the court's discretion.

Note to 1993 Amendment:

Rule 5(d) was amended to add language permitting the court to dismiss an action on its own initiative if it has been filed but not served upon the defendant. The prior rule required a motion by a party.

(e) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk. Upon any trial or hearing, the clerk shall furnish the original record in the action to the judge, who shall return same to the clerk immediately upon completion of such trial or hearing. Copies of the record may be furnished instead of the original by permission of the judge. Upon change of venue the original record shall be transferred to the clerk of court to which the action is transferred.

Note:

This Rule 5(e) is the same as the Federal Rule. It restates and clarifies present Circuit Rules 32 and 67.

Last amended by order dated April 27, 2005

VI. THE COURT ERRED IN IGNORING THE PERJURY THE RESPONDENT LEGAL COUNSEL CONCERNING A HEARING THAT WAS NOT HELD WITH THE APPELLANT PRESENCE OR BEING PROPERLY NOTIFIED.

The court never look or considered addressing the Prior court order documenting the falsification and rewriting of the contract by the Respondent which would have clearly shown the Lis Pendens should be dismissed and the counter claim granted, therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order.

See the above notation of Rule 53 and 103

SECTION 16-9-10. Perjury and subornation of perjury.

(A)(1) It is unlawful for a person to wilfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.

(2) It is unlawful for a person to wilfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

(B)(1) A person who violates the provisions of subsection (A)(1) is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

(2) A person who violates the provisions of subsection (A)(2) is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not less than one hundred dollars, or both.

(C) A person may be convicted under this section if he induces, procures, or persuades another person to commit perjury or if he commits perjury by his own act, consent, or agreement.

HISTORY: 1962 Code Section 16-201; 1952 Code Section 16-201; 1942 Code Section 1397; 1932 Code Section 1397; Cr. C. '22 Section 332; Cr. C. '12 Section 340; Cr. C. '02 Section 253; G. S. 2531; R. S. 217; 1712 (2) 487; 1993 Act No. 184, Section 89.

SECTION 16-9-20. Subornation of perjury in civil actions.

(A) It is unlawful for a person to:

(1) wilfully induce, procure, or persuade another person by any means to commit perjury in initiating a civil action or proceeding; or

(2) wilfully induce, procure, or persuade another person to give false, misleading, or incomplete testimony while under oath in a civil action or proceeding.

(B) A person who violates the provision of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months and fined not less than two hundred dollars.

HISTORY: 1962 Code Section 16-202; 1952 Code Section 16-202; 1942 Code Section 1398; 1932 Code Section 1398; Cr. C. '22 Section 333; Cr. C. '12 Section 341; Cr. C. '02 Section 254; G. S. 2532; R. S. 218; 1712 (2) 487; 1993 Act No. 184, Section 90.

SECTION 16-9-30. False swearing before persons authorized to administer oaths.

It is unlawful for a person to wilfully and knowingly swear falsely in taking any oath required by law that is administered by a person directed or permitted by law to administer such oath.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

HISTORY: 1962 Code Section 16-203; 1952 Code Section 16-203; 1942 Code Section 1400; 1932 Code Section 1400; Cr. C. '22 Section 335; Cr. C. '12 Section 343; Cr. C. '02 Section 256; G. S. 2534; R. S. 220; 1833 (2) 485; 1993 Act No. 184, Section 166.

VII.. THE COURT ERRED IN IGNORING THE FALSIFICATION OF DOCUMENTS AND REWRITENG OF CONTRACT BY THE RESPONDENT THAT WAS STATED IN THE ORDER FROM NICHOLSON.

The court never look or considered addressing the Prior court order documenting the falsification and rewriting of the contract by the Respondent which would have clearly shown the Lis Pendens should be dismissed and the counter claim granted, therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order.

See the above notation of Rule 53 and 103

CONCLUSION

The court below erred in ruling that the denial of defendant's motion to alter and amend order, the master's sale on the forclosure of the installment sales contract should take place, and in and all pursuant terms and conditions of the May 18, 2016 order as well. Grant of Order on May 18, 2016 was in error. This court should conduct its on review of the procedures and prior Judge Nicholson orders and all documents requested by Appellant. Reverse all of the rulings of the court below and remand the case for reconsideration of appellants' motion for counterclaim and dismiss of respondent Lis Pendens case filing in light of the violation of due process and denial of jury trial amongst all the other arguments presented in this appeal.

Respectfully submitted,

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Columbia, South Carolina

January 12, 2017

THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

MASTER-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity Law Judge

Case No. 2016-001201

Harold Simmons Jr.,.....Appellant,

v.

Allen Livingston,.....Respondent.

APPELLANTS' DESIGNATION OF MATTER TO BE INCLUDED

IN THE RECORD ON APPEAL

Appellants purpose the following to be included in the Record on Appeal:

1. Judge Nicholson Order
2. Lis Pendens
3. Amend Answer Request Jury Trial
4. Amortization Report
5. All other Orders from common pleas and Master-In-Equity Courts

Harold Simmons Jr.,Pro Se
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(843) 480-8694 Attorney for Appellant

Bruce A. Berlinsky, P.A.
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Charleston, SC 29407
(843) 852-2202 Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

MIKELL R. SCARBOROUGH, MASTER IN EQUITY

Case No.: 2016-001201

Harold Simmons, Jr. ..... Appellant,

v.

Allen Livingston ..... Respondent.

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STATEMENT OF ISSUES ON APPEAL

1. THE MASTER IN EQUITY HEARD THE TESTIMONY AND EVIDENCE OF THE CASE, AND AS THE TRIER OF FACT, PROPERLY RULED IN FAVOR OF PLAINTIFF.

2. THE MASTER IN EQUITY DID NOT ERR IN NOT HOLDING A JURY TRIAL.

3. THE MASTER IN EQUITY DID NOT ERR IN UPHOLDING THE ORDER OF JUDGE NICHOLSON.

STATEMENT OF THE CASE

This Case is the foreclosure of an installment sales contract on property located in Charleston County, South Carolina.

For background purposes, Honorable J.C. Nicholson, Jr. entered an Order in a case involving the same parties (2010-CP-10-8027) in which he ruled that the Lease to Buy Agreement between Respondent and Appellant was to be considered an installment sales contract setting payments to be $500.00 and establishing the balance due, giving credit for all payments made, at $37,460.00. That Order was appealed to the South Carolina Court of Appeals and that appeal was dismissed making Judge Nicholson's Order the final order in that case.

The Respondent failed to make the monthly payments required under Judge Nicholson's Order and the Respondent brought an action to foreclose the Installment Sales Contract on March 11, 2014.

The Respondent did file an answer requesting a jury trial but the claims of Respondent entitling him to a jury trial were stricken and no appeal of that Order was filed. With all claims stricken, the only issue remaining was foreclosure, which is a matter in equity, not entitling Appellant to a jury trial.

The trial took place on December 17, 2014, and Judge Scarborough, Charleston County Master in Equity, issued an Order dated December 2, 2015, Nun Pro Tunc to December 31, 2014, and thereafter, a second hearing on April 25, 2016, issued on Order of Foreclosure and Sale dated May 6, 2016.

The Respondent participated, with counsel, in all hearings before Judge Scarborough.

ARGUMENTS

I. THE MASTER IN EQUITY HEARD THE TESTIMONY AND EVIDENCE OF THE CASE, AND AS THE TRIER OF FACT, PROPERLY RULED IN FAVOR OF PLAINTIFF/RESPONDENT.

This case is an action in equity seeking foreclosure of an installment sales contract.

On appeal from an equitable action, an Appellate Court may find facts in accordance with its own view of the evidence. Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (SC 1976). While this standard permits a broad scope of review, an Appellate Court will not disregard the findings of the trial court, which saw and heard the witnesses and was in a better position to evaluate their credibility.

Tiger Inc. v Fisher Agro Inc. 301 S.C. 229, 391 S.E.2d 538 (1989); Buffington v TOE Enterprises 383 S.C. 388, 680 S.E.2d 289 (SC 2009).

In the case at bar, the court found that the Appellant/Defendant through his own testimony and admission made no payments on the installment sales contract since the dismissal of the appeal in the first case filed December 3, 1016. The Court further found that no reimbursement for taxes were made either. Further, the Master in Equity gave the Appellant the opportunity to reinstate the contract in his August 2, 1015 Order but Appellant failed to reinstate resulting in the May 6, 2016 Order of Foreclosure and Sale.

II. DID THE MASTER IN EQUITY ERR IN NOT HOLDING A JURY TRIAL?

Appellant initially appeared pro se. His legal claims were dismissed by Order filed August 11, 2014, leaving only the equitable action of foreclosure, which is a non-jury claim.

The Appellant, with counsel, appeared at both hearings on December 17, 2014, and April 25, 2016, and participated having never requested a jury trial.

It is well settled that issues not raised in the lower court cannot be raised for the first time at the appellate level.

III. DID THE MASTER IN EQUITY ERR IN UPHOLDING THE ORDER OF JUDGE NICHOLSON?

In the case at bar, Appellant contends that the Master in Equity did not take all payments into account. However, the Master had to adhere to the Final Order in the previous case (2010-CP-10-8027) by Judge Nicholson establishing the balance of the outstanding debt and the future monthly payments.

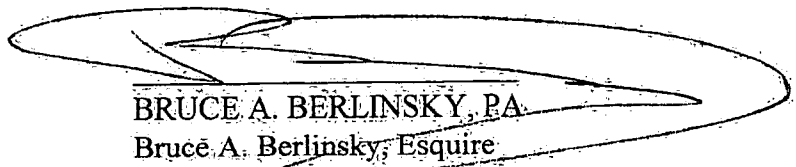
Once the Order of Judge Nicholson became the final order, the Master in Equity in the current case is not free to go behind Judge Nicholson's Order.

CONCLUSION

In an action in equity, an appellate court may find facts in accordance with its own view of the evidence Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976). By Appellant's own testimony, he has not made any payments on the installment sales contract since Judge Nicholson's appeal was dismissed by Order filed December 3, 2013. Further, Appellant participated in two hearings before the Master in Equity effectively waiving his request for jury trial by not raising the issue at the trial level and by fact that equitable matters are non-jury. Finally, all of Appellant's arguments at the lower level were seeking to go behind the final order of Judge Nicholson. For the

aforementioned reasons stated, the Court should affirm the judgment and orders of the lower court and allow for such further relief deemed appropriate.

Respectfully submitted,



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July 30th, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

MIKELL R. SCARBOROUGH, MASTER IN EQUITY

Case no. 2016-001201

Harold Simmons, Jr. ..... Appellant,

v.

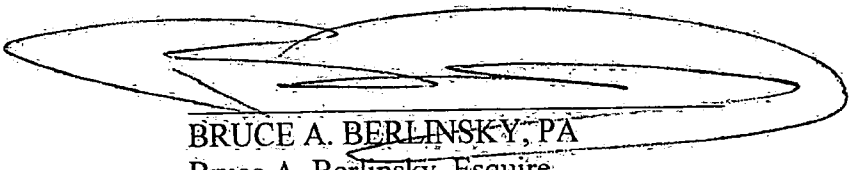
Allen Livingston ..... Respondent.

DESIGNATION OF MATTERS TO BE
INCLUDED IN THE RECORD ON APPEAL

Respondent proposes the following be included in the Record on Appeal:

1. Order of Foreclosure and Sale filed May 18, 2016
2. Order filed April 8, 2015.
3. Order filed August 12, 2014.
4. Letter from South Carolina Court of Appeal dated December 2, 2013.
5. Order of Judge Nicholson filed February 27, 2013.

I certify that this designation contains no matter which is irrelevant to this appeal.



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July 30th, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

MIKELL R. SCARBOROUGH, MASTER IN EQUITY

Case No.: 2016-001201

Harold Simmons, Jr.....Appellant,

v.

Allen Livingston.....Respondent.

CERTIFICATION

The undersigned certifies that this Designation contains no matters which are irrelevant to the Appeal.

Respectfully submitted,

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July 30th, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

MIKELL R. SCARBOROUGH, MASTER IN EQUITY

Case No.: 2016-001201

Harold Simmons, Jr.....Appellant,

v.

Allen Livingston.....Respondent.

PROOF OF SERVICE

I, Betsy Scott, legal assistant to Bruce A. Berlinsky, Esquire, do hereby certify that I have this date mailed a true and correct copy of the foregoing and **INITIAL BRIEF OF RESPONDENT and DESIGNATION OF MATTERS TO BE INCLUDED IN THE RECORD ON APPEAL**, postage prepaid, and deposited with the United States Postal Service as follows:

Harold Simmons, Jr.
3042 North Carolina Ave.
North Charleston, SC 29405
PRO SE

Dated this 30th day of July, 2018.

Betsy Scott

Filing Date
August 10, 2018

THE STATE OF SOUTH CAROLINA

in the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

MASTER-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity Law Judge

Case No. 2016-001201

Allen Livingston,.....Respondent,

v.

Harold Simmons Jr.,.....Appellant.

Appellant

Motion For Amend
BRIEF of Appellant Reply to Respondent

To the Court and to the Respondent(s):

Jan 27, 2019

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Filing Date
August 10, 2018

THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

MASTER-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity Law Judge

Case No. 2016-001201

Allen Livingston,.....Respondent.

v.

Harold Simmons Jr.,.....Appellant,

BRIEF OF APPELLANT REPLY TO RESPONDENT

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Jan 27, 2019

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II. THE MASTER IN EQUITY DID ERR IN NOT ALLOWING A JURY TRIAL AND UP INSTEAD HAD A UNSCHEDULED DEFAULT HEARING WHERE THE APPELANT WAS NOT SERVED NOR INFORMED. Jury Trial Requests Exhibit U Unscheduled Default Hearing Exhibit R, S

III. THE MASTER IN EQUITY DID ERR BY NOT UPHOLDING THE ORDER OF JUDGE NICHOLSON AND ADDED AN ORDER AS TO REWRITE JUDGE NICHOLSON ORDER.

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STATEMENT OF ISSUES ON APPEAL REPLY

1. THE MASTER IN EQUITY DID NOT HEAR THE TESTIMONY AND EVIDENCE OF THE CASE, AND IS NOT IN COMPLIANCE WITH THE TRIER OF FACTS, AND DID WRONGLY RULE IN FAVOR OF PLAINTIFF.

2. THE MASTER IN EQUITY DID ERR IN NOT ALLOWING A JURY TRIAL AND INSTEAD HAD A UNSCHEDULED DEFAULT HEARING WHERE THE APPELANT WAS NOT SERVED NOR INFORMED. Jury Trial Request Exhibit U Unscheduled Default Hearing Exhibit R+S

3. THE MASTER IN EQUITY DID ERR BY NOT UPHOLDING THE ORDER OF JUDGE NICHOLSON AND ADDED AN ORDER AS TO REWRITE JUDGE NICHOLSON ORDER.

STATEMENT OF THE CASE

Appellant Harold Simmons is a disabled business man of Charleston County. Respondent, Allen Livingston, is a business man of Charleston County. On March 11, 2014 the Respondent filed a Lis Pendens concerning a property that was in contract between the respondent and the Appellant. On April 23, 2014 the Appellant filed an answer and requested a jury trial at that time. The respondent filed on April 28, 2014 an affidavit of default, on May 22, 2014 a motion to refer to master in equity. The hearing was scheduled and set forth to take place on November 3, 2014 at 10am. From the first hearing date on or around November 2014 through December 7, 2014 Judge Mikell Scarborough has denied the Appellant any and all due process along with ignoring and not accepting prior orders by Judge Nicholson and the fact that the respondent legal counsel false testified about a hearing and presented documents based on the false hearing and further refuse to take in consideration the Respondent perjury and falsification of documents in prior court proceedings under Judge Nicholson. Judge Mikell Scarborough has constantly denied the Appellant a jury trial, change of venue, and counter claim during the entire process and refuse to Dismiss the Respondent claim and Grant Appellant the counterclaim. This Appeal followed.

No court has the lawful right to strike a jury trial according to Rule 53 the Appellant is entitled to a Jury trial and no Rule exist that states a jury trial can be strike. The original Judge Nicholson Order was not upheld based on the denial of the relief set by Judge Nicholson for the Appellant so the original agreement of the parties be in effect and the advance monthly payments be honored. This was not upheld long with the frivolous and mock default hearing held without notifying and serving the appellant. This default hearing in April 2014 by Judge Dennis was unscheduled and is not on the court record. But yet the Master in Equity courts decided to utilize it against the appellant.

Note: Case Filed March 11, 2014
Note: Appellant Service Complaint April 4, 2014 5 Appellant Answer April 24, 2014
Default Hearing Held April 28, 2014

ARGUMENT

I. THE MASTER IN EQUITY DID NOT HEAR THE TESTIMONY AND EVIDENCE OF THE CASE, AND IS NOT IN COMPLIANCE WITH THE TRIER OF FACTS, AND DID WRONGLY RULE IN FAVOR OF PLAINTIFF.

Black's Law Dictionary, Sixth Edition, page 500

Due process of law.

Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution- that is, by the law of its creation-to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of t he defendant, he must be brought with in its jurisdiction by service of process within the state, or his voluntary appearance. Pennoyer v. Neff 95 U.S. 733, 24 L.Ed. 565.

Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.

An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. Kazubowski v. Kazubowski, 45 DJ.2d 405, 259 N.E.2d 282. 290.

Phrase means that no person shall be deprived of life. liberty, property or of any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing. Pettit v. Penn, La.App., 180 So.2d 66, 69.

The concept of "due process of law" as it is embodied in Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. U. S. v. Smith, D.C.Iowa, 249 F.Supp. 515, 516.

Fundamental requisite of "due process" is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. Trinity Episcopal Corp. v. Romney, D.C.N.Y., 387 F.Supp. 1044, 1084.

The Fifth Ammendment is every US citizens right and the Appellant is no different in this case.

The Fifth Ammendment states the following:

The Fifth Amendment says to the **federal** government that no one shall be "deprived of life, liberty or property without **due process** of **law**." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the **Due Process** Clause, to describe a **legal** obligation of all states. Former Section 22-3-230 was entitled "Right to jury trial" and was derived from 1962 Code Section 43-93; 1952 Code Section 43-93; 1942 Code Section 3710; 1932 Code Section 3710; Civ. C. '22 Section 2244; Civ. C. '12 Section 1394; Civ. C. '02 Section 986; G.S. 841; R.S. 884; 1868 (14) 100.

RULE 38
JURY TRIAL OF RIGHT

(a) Right Preserved. The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

(c) Same: Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may

order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties, except where an opposing party is in default under Rule 55(a).

Note:

This Rule 38 is substantially the Federal Rule. The last sentence is added to Paragraph 38(a) to preserve the language of Code § 15-23-60. Paragraph 38(e) of the Federal Rule, referring to admiralty and maritime claims, is inapplicable to State practice.

No consideration was provided for "Due Process" or "Jury Trial of Right." Appellant believe that the Below court and Judge of the said court intended to violate the due process and jury trial of right according to the sections quoted above. Had it not been intended to violate the due process and jury trial of right, it would have been necessary for the inclusion of specific evidences and prior Judge court order to be reviewed and considered in the dismissal of the Lis Pendens and counterclaim granted.

NOTE:

II. THE MASTER IN EQUITY DID ERR IN NOT ALLOWING A JURY TRIAL AND INSTEAD HAD A UNSCHEDULED DEFAULT HEARING WHERE THE APPELANT WAS NOT SERVED NOR INFORMED.

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(c) Same: Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties, except where an opposing party is in default under Rule 55(a).

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No consideration was provided for "Due Process" or "Jury Trial of Right." Appellant believe that the Below court and Judge of the said court intended to violate the due process and jury trial of right according to the sections quoted above. Had it not been intended to violate the due process and jury trial of right, it would have been necessary for the inclusion of specific evidences and prior Judge court order to be reviewed and considered in the dismissal of the Lis Pendens and counterclaim granted.

The Appellant was never in a legal position to warrant a foreclosure on any property that was in an installment contract and therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order.

RULE 53
MASTERS AND SPECIAL REFEREES

(a) Master and Special Referee Defined. The term "master" means the master-in-equity for the county. The term "special referee" means a member of the South Carolina Bar to whom a matter has been referred under S.C. Code Ann. § 14-11-60.

(b) References. In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case. Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court. A case shall not be referred to a master or special referee for the purpose of making a report to the circuit court. The clerk shall promptly provide the master or special referee with a copy of the order of reference.

(c) Powers. Once referred, the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.

(d) Compensation of Special Referees. The compensation of the special referee shall be paid by the parties in such amount as shall be set by the special referee, subject to review by the circuit court upon objection by any party within ten (10) days of receipt of the order.

(e) Appeals. When a matter has been referred, any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Note:

This Rule 53 follows the Federal Rule as to form but is considerably modified to conform to State practice and needs. References in Federal Courts are rare, but absolutely necessary in State Courts, particularly to handle a large volume of State litigation such as foreclosures, partitions, and other equity matters. The State practice allowing judgment to be entered on the master's report in appropriate cases is preserved, as is the allowance of 10 days to file exceptions to the report. Other post-trial motions, such as a motion to amend judgment under Rule 52(b), would apply when the order of reference directs that judgment be entered on the master's report, just as they apply in actions tried by the court.

Note to 1986 Amendment:

Rule 53(c) is amended to make clear that the master has the same powers as a court sitting without a jury unless the order of reference limits his authority. Changes in that

paragraph as well as Rule 53(d) leave the scheduling of the time and place of the hearings to the master. Rule 53(e)(1) is amended to remove the need for filing the transcript of proceedings if one has not been prepared, but Rule 53(e)(2) allows any party to obtain the transcript of proceedings before any hearing on exceptions to the master's report. Rule 53(e)(5) now authorizes the master to request briefs or proposed orders from counsel.

Note to 1994 Amendment:

This Rule 53(b) amendment clarifies the authority of the clerk of court to issue orders of reference in default cases and where all the parties consent.

Note to 1999 Amendment:

This amendment substantially revises this rule. It eliminates the practice of referring a matter for the purpose of making a report to the circuit court. Under the revised rule, the master or special referee will enter final judgment on any matter which is referred and any appeal from a decision of the master or special referee is to the Court of Appeals or the Supreme Court as provided by the South Carolina Appellate Court Rules. The detailed discussion of the powers of masters and special referees, and the procedure to be followed in matters pending before them, has been eliminated as unnecessary since the master or special referee has all the powers that a circuit court judge sitting without a jury would have in the matter and the procedure is that provided by the South Carolina Rules of Civil Procedure.

Note to 2001 Amendment:

Rule 53(d) is amended to provide that fees for special referees are set by the special referee subject to review by the circuit court if a party timely objects.

Note to 2002 Amendment

The 2002 amendment permits referral of foreclosure cases to the master-in-equity by order of the clerk of court. If there are counterclaims requiring a jury trial, any party may file a demand for a jury under Rule 38 and the case will be returned to the circuit court.

Last Amended by Order effective September 1, 2002.

RULE 103
RULINGS ON EVIDENCE

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) **Objection.** In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) **Offer of Proof.** In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context.

(b) Record of Offer and Ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

Note:

This rule is identical to the federal rule with the exception of the omission of subsection (d) relating to plain error. The rule of plain error contained in the federal rule is inconsistent with the law in South Carolina. Cf. State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (abolishing in favorem vitae review in capital cases and holding that error must be preserved by contemporaneous objection in the trial court). It should be noted that the Supreme Court has recognized a very few limited circumstances in which it will review issues raised for the first time on appeal. Cf. Toyota of Florence, Inc. v. Lynch, 314 S.C. 257, 442 S.E.2d 611 (1994) (challenge to abhorrent and outrageous argument raised for first time on appeal); State v. Pace, 316 S.C. 71, 447 S.E.2d 186 (1994) (failure to make contemporaneous objection to judge's comments excused where judge's tone and tenor made it clear that any objection would have been futile). Further, the failure to adopt a rule of plain error in no way limits the authority of trial judges to raise evidentiary issues on their own motion.

Subsection (a) means that reversal on appeal is only required where a substantial right of a party has been affected; error which is harmless does not affect a substantial right. Graham, Handbook of Federal Evidence, § 103.1 (3rd ed. 1981). This is equivalent to South Carolina law holding that reversal is not required unless an error is prejudicial and not harmless. State v. Sosebee, 284 S.C. 411, 326 S.E.2d 654 (1985) (probable prejudice must be shown); State v. Gaskins, 284 S.C. 105, 326 S.E.2d 132 (1985) (a new trial is not required for harmless error), cert. denied, 471 U.S. 1120, 105 S.Ct. 2368, 86 L.Ed.2d 266 (1985), overruled on other grounds, State v. Torrence, 305 S.C. 45, 406 S.E.2d 315

(1991); Watts v. Bell Oil Co., 266 S.C. 61, 221 S.E.2d 529 (1976) (prejudice must be shown).

Subsection (a)(1) is generally in accord with prior South Carolina law which required a contemporaneous objection with specific grounds to preserve an error for review. State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994) (contemporaneous objection); White v. Wilbanks, 298 S.C. 225, 379 S.E.2d 298 (Ct. App.1989) (contemporaneous objection), rev'd on other grounds, 301 S.C. 560, 393 S.E.2d 182 (1990); State v. Bailey, 253 S.C. 304, 170 S.E.2d 376 (1969) (specific grounds required; general objection preserves nothing). It does somewhat relax the requirement of stating specific grounds where the grounds are apparent from the context. The better practice, however, is for counsel to always give, and the court always to require, specific grounds for an objection; this will avoid later disputes regarding what was apparent from the context. It should be noted that Rule 43(i), SCRCP, Rule 18, SCRCrimP, and Rule 9(b), SCRFC, do not prevent counsel from stating the grounds for an objection, but merely control argument on the grounds for the objection. This rule does not alter the prior practice regarding motions in limine, which allowed the motion to exclude evidence to be made at the pretrial stage, State v. Glenn, 285 S.C. 384, 330 S.E.2d 285 (1985), but required a contemporaneous objection when the evidence is actually offered into evidence at the trial to preserve the issue for review. State v. Schumpert, ____ S.C. ____, 435 S.E.2d 859 (1993); Parr v. Gaines, 309 S.C. 477, 424 S.E.2d 515 (Ct. App.1992).

Subsection (a)(2) is the federal rule modified to require the grounds for admission to be stated. As modified, this rule is consistent with South Carolina law which requires a proffer of the excluded evidence and the grounds for admission to be stated to preserve the trial court's ruling for review. State v. Cabbagestalk, 281 S.C. 35, 314 S.E.2d 10 (1984); State v. Cox, 258 S.C. 114, 187 S.E.2d 525 (1972); Legrande v. Legrande, 178 S.C. 230, 182 S.E. 432 (1935); Gold Kist, Inc. v. Citizens & Southern Nat'l Bank, 286 S.C. 272, 333 S.E.2d 67 (Ct. App.1985). The rule does change South Carolina law by dispensing with the requirement of a proffer and a statement of the grounds for admissibility where the substance of the evidence and the grounds are apparent from the context. The prior law only dispensed with the requirement of a proffer where the judge refused to allow a proffer. State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986). To avoid later disputes over what was apparent from the context, however, the better practice is for a proffer and a statement of the grounds to always be made.

The first sentence of subsection (b) is similar to language contained in former Rule 43(c), SCRCP. Although no specific South Carolina case can be found to support the second sentence, requiring an offer to be made in question and answer form is within the discretion of the judge.

Subsection (c) is in accord with prior South Carolina law. Chandler v. People's Nat'l Bank, 140 S.C. 433, 138 S.E. 888 (1927); Rule 43(c), SCRCP.

NOTE:

III. T THE MASTER IN EQUITY DID ERR BY NOT UPHOLDING THE ORDER OF JUDGE NICHOLSON AND ADDED AN ORDER AS TO REWRITE JUDGE NICHOLSON ORDER. THE COURT ERRED IN IGNORING THE FALSIFICATION OF DOCUMENTS AND REWRITING OF CONTRACT BY THE RESPONDENT THAT WAS STATED IN THE ORDER FROM NICHOLSON.

The court never look or considered addressing the Prior court order of the back taxes and payments which would have clearly shown the Appellant was not in jeopardy of foreclosure laws, therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order. Along with acting as the respondent attorney and not a judge showing favoritism and denied the advance monthly payments and original agreement as stated by Judge Nicholson in order of the relief.

See the above notation of Rule 53 and 103

The court never look or considered addressing the if the prior court order signed by Judge Dennis was valid or the hearing scheduling of such proceeding was verified to be a valid hearing and proper notice was given to Appellant, therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order. This is in direct violation according to case Cook v. Taylor, 272 S.C. 536, 538, 252 S.E.2d. Which brings up questions such as the following:

(1) "Whether One Circuit Court Judge Can Vacate An Order Of Reference Made By Another Circuit Court Judge?" and

(2) "Whether The Pleadings Herein Stated An Equitable Cause Of Action And Requested Equitable Relief, Thereby Requiring The Reference To The Master In Equity?"

See the above notation of Rule 53 and 103

RULE 10
TRIAL DATE; NOTICE; FAILURE TO ANSWER

(a) Upon the filing of an answer by the defendant, the magistrate shall set the date of trial and deliver notice of the trial date to both parties in a manner provided for in Rule 8.

(b) If the defendant has failed to answer within the time period specified by these rules, the magistrate shall set a hearing date and shall deliver notice of the hearing date to both parties in a manner provided for in Rule 8 when the hearing is necessary for the entering of a default judgment in a manner consistent with Rule 11. At the default hearing, the defendant may participate only by cross-examining witnesses and objecting to evidence.

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RULE 5
SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a)Service: When Required. Unless otherwise ordered by the court because of numerous defendants or other reasons, all (1) written orders; (2) pleadings subsequent to the original summons and complaint, which includes answers, counterclaims, cross claims, replies and amended complaints; (3) written motions, other than ones which may be heard ex parte; (4) written notices; (5) discovery requests and responses; (6) appearances; (7) demands; (8) offers of judgment; (9) designations of record or case; (10) grounds or exceptions on appeal; and (11) other similar papers shall be served upon each of the parties of record. No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of summons in Rule 4, and notice of any trial or hearing on unliquidated damages shall also be given to parties in default.

Note:

This Rule 5(a) is substantially the same as Federal Rule, and restates Code §§ 15-9-910 and 15-9-970 with no change in practice.

Note to 2005 Amendment:

This amendment to subsection (a) makes explicit that all major documents and papers, including, but not limited to, pleadings and amended pleadings, discovery requests and responses, motions and similar papers are to be served on every party of record. The amendment also adds the word "grounds" in subsection (a)(10).

(b)(1) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the

attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.

(b)(2) Service on Sunday. Civil process may be served on Sundays, provided that no person may be served going to or from or attending a regularly or specially scheduled church or religious service on Sunday.

Note:

This Rule 5(b)(1) is the same as Federal Rule 5(b) and substantially restates Code §§ 15-9-920, 15-9-930, 15-9-980 and 15-9-990; with no resulting change in State practice. Rule 5(b)(2) is the same as Code § 15-9-1010, except permitting subpoenas to be served on Sunday.

Note to 2001 Amendment:

Rule 5(b)(2) is rewritten to reflect the enactment of S.C. Code Ann. § 15-9-17, 2000 S.C. Acts No. 360, which allows for the service of process on Sundays with the stated exceptions.

(b)(3) Service of Proposed Orders and Other Papers. Any party providing a proposed order, proposed findings of fact or conclusions of law, or proposed judgment or other paper to the court for its consideration in any pending matter shall serve the same on all counsel of record at the same time and by the same means.

Note to 1994 Amendment:

Rule 5(b)(3) clarifies the intent of Rule 5(a) and requires that proposed orders, findings of fact and conclusions of law and other materials provided to the court are to be served on all counsel of record. The material is to be provided to all other counsel at the same time and by the same means as they are provided to the court. Thus opposing counsel will have the opportunity to review and comment on the proposed order before it is signed. The rule does not require the court to delay entering any proposed order.

(c) Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as

between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleadings and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

Note:

This Rule 5(c) is the same as the Federal Rule. It has no parallel in State practice, but is a needed addition.

(d) Filing. All papers required to be served upon a party except as provided in Rule 26(g)(1), shall be filed with the court within five (5) days after service thereof. The summons and complaint shall be filed before service. Proof of service shall be filed within ten (10) days after service of the summons and complaint. Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party. Upon failure of a party to file other pleadings, motions, or papers, the court may permit filing or proceed as though the same had not been served.

Note:

This Rule 5(d) encompasses present Circuit Rule 68 and former Rule 75, as well as Code § 15-9-1000. It is a more concise statement, and provides more specific sanctions in the court's discretion.

Note to 1993 Amendment:

Rule 5(d) was amended to add language permitting the court to dismiss an action on its own initiative if it has been filed but not served upon the defendant. The prior rule required a motion by a party.

(e) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk. Upon any trial or hearing, the clerk shall furnish the original record in the action to the judge, who shall return same to the clerk immediately upon completion of such trial or hearing. Copies of the record may be furnished instead of the original by permission of the judge. Upon change of venue the original record shall be transferred to the clerk of court to which the action is transferred.

Note:

This Rule 5(e) is the same as the Federal Rule. It restates and clarifies present Circuit Rules 32 and 67.

Last amended by order dated April 27, 2005

The court never look or considered addressing the Prior court order documenting the falsification and rewriting of the contract by the Respondent which would have clearly shown the Lis Pendens should be dismissed and the counter claim granted, therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order.

See the above notation of Rule 53 and 103

SECTION 16-9-10. Perjury and subornation of perjury.

(A)(1) It is unlawful for a person to wilfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.

(2) It is unlawful for a person to wilfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

(B)(1) A person who violates the provisions of subsection (A)(1) is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

(2) A person who violates the provisions of subsection (A)(2) is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not less than one hundred dollars, or both.

(C) A person may be convicted under this section if he induces, procures, or persuades another person to commit perjury or if he commits perjury by his own act, consent, or agreement.

HISTORY: 1962 Code Section 16-201; 1952 Code Section 16-201; 1942 Code Section 1397; 1932 Code Section 1397; Cr. C. '22 Section 332; Cr. C. '12 Section 340; Cr. C. '02 Section 253; G. S. 2531; R. S. 217; 1712 (2) 487; 1993 Act No. 184, Section 89.

SECTION 16-9-20. Subornation of perjury in civil actions.

(A) It is unlawful for a person to:

(1) wilfully induce, procure, or persuade another person by any means to commit perjury in initiating a civil action or proceeding; or

(2) wilfully induce, procure, or persuade another person to give false, misleading, or incomplete testimony while under oath in a civil action or proceeding.

(B) A person who violates the provision of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months and fined not less than two hundred dollars.

HISTORY: 1962 Code Section 16-202; 1952 Code Section 16-202; 1942 Code Section 1398; 1932 Code Section 1398; Cr. C. '22 Section 333; Cr. C. '12 Section 341; Cr. C. '02 Section 254; G. S. 2532; R. S. 218; 1712 (2) 487; 1993 Act No. 184, Section 90.

SECTION 16-9-30. False swearing before persons authorized to administer oaths.

It is unlawful for a person to wilfully and knowingly swear falsely in taking any oath required by law that is administered by a person directed or permitted by law to administer such oath.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

HISTORY: 1962 Code Section 16-203; 1952 Code Section 16-203; 1942 Code Section 1400; 1932 Code Section 1400; Cr. C. '22 Section 335; Cr. C. '12 Section 343; Cr. C. '02 Section 256; G. S. 2534; R. S. 220; 1833 (2) 485; 1993 Act No. 184, Section 166.

The court never look or considered addressing the Prior court order documenting the falsification and rewriting of the contract by the Respondent which would have clearly shown the Lis Pendens should be dismissed and the counter claim granted, therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order.

See the above notation of Rule 53 and 103

NOTE:

CONCLUSION

The court below erred in ruling that the denial of defendant's motion to alter and amend order, the master's sale on the forclosure of the installment sales contract should take place, and in and all pursuant terms and conditions of the May 18, 2016 order as well. Grant of Order on May 18, 2016 was in error. This court should conduct its on review of the procedures and prior Judge Nicholson orders and all documents requested by Appellant. Reverse all of the rulings of the court below and remand the case for reconsideration of appellants' motion for counterclaim and dismiss of respondent Lis Pendens case filing in light of the violation of due process and denial of jury trial amongst all the other arguments presented in this appeal.

The court erred in denying a jury trial by striking it and the Judge acted as the attorney and judge at same time. The court erred in holding a frivolous unscheduled and off the court record default hearing without serving the Appellant. The court further erred in not considering the advance payments and original agreement and relief order by Judge Nicholson along with the fact that perjury and document falsification had occurred and was ruled and ordered on by Judge Nicholson. The Appellant due process has been denied.

Respectfully submitted,

Harold Simmons Jr.

Harold Simmons Jr., Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694
Attorney for Appellant

Filing Date
August 10, 2018

Columbia, South Carolina

January 27, 2019

THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

MASTER-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity Law Judge

Case No. 2016-001201

Allen Livingston,.....Respondent,

v.

Harold Simmons Jr.,.....Appellant,

CERTIFICATE OF SERVICE

I, Harold Simmons Jr, Pro Se, hereby certify that I have, on date indicated below, served counsel below with a Appellants' brief and designation of matter to be included in Record on Appeal by mailing a copy of same via Certified US Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Harold Simmons Jr.

Filing Date August 10, 2018
January 27, 2019

THE STATE OF SOUTH CAROLINA

in the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

MASTER-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity Law Judge

Case No. 2016-001201

Allen Livingston,.....Respondent,

v.

Harold Simmons Jr.,.....Appellant.

CERTIFICATE OF SERVICE

I, Harold Simmons Jr, Pro Se, hereby certify that I have, on date indicated below, served counsel below with a Appellants' Motion for Amend to be included in Record on Appeal by mailing a copy of same via Certified US Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Harold Simmons Jr

Harold Simmons Jr.

JAN 27, 2019

Jan 17, 2019

THE STATE OF SOUTH CAROLINA

in the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

MASTER-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity Law Judge

Case No: 2016-001201

Allen Livingston,.....Respondent,

v.

Harold Simmons Jr.,.....Appellant.

Appellant

motion For Amend
BRIEF Counter Claim

To the Court and to the Respondent(s):

File Fee $0.00
FileFee
Jan 27, 2019

EXHIBIT 1

Filing Date
Jan 17, 2017

Statement of the Counter Claim Case
Amend

On 6-15-2000 Appellant Harold Simmons And Respondent Allen Livingston Enter in agreement Contract For Property located at 3042 North Carolina Ave North Charleston, S.C. 29405, At A Purchaser Price of #125.000.00 with NO Interest At #500.00 Monthly. For Seven 7 years Appllant Harold Simmons Made Timely And AVance pAyments As Agreed Upon this Made Appellant Harold Simmons Allways #9000.00 or more paid up in AVance Exhibit A

As of 10-9-2007 Case Filed is A Frivolous, Deception, Malicious Fraud, Perjury, and Forgery - Case Filed NO:07-1769 Respondent Allen Livingsston And His Attroney Jeffrey Barnwell File With Magistrats Court Application For Ejectment #7000.00 Back Rent, with A Forgery and Alter Contract All the way up the Court of Common Pleas, Charleston County Sheriff ossice order for ejectment, Back to Court of Common Pleas to the South Carolina Court of Appeals, to Charleston Court of Common Pleas For A Fraud Default order, to Master-in-Equity. Evidence will Be giving to support Claim.

Harold Simmons Jr.

Jan 27, 2019 (2)

5A pgs 3 ①

Exhibit T Court Received Mail Certified 6-4-2014

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	Cause No: 2014 CP 10 1635
ALLEN LIVINGSTON	)	
Plaintiff,	)	
-versus-	)	**COUNTERCLAIM**
HAROLD SIMMONS JR.	)	(Jury Trial Requested)
Defendant.	)	

FILED
2014 JUN 12 AM 10:2
JULIE ARMSTRONG
CLERK OF COURT
BY

Defendant, Harold Simmons Jr. states he has a claim against the plaintiff in the amount of $600,000.00

The counterclaim arose out of the same transaction or occurrence as the plaintiff's claim as a result of the following events:

FACTUAL AND PROCEDURAL BACKGROUND

This instant motion arises from a foreclosure case. The Defendant, Harold Simmons Jr. came into a Lease to Buy Agreement with Plaintiff for property located at 3042 N. Carolina Ave, North Charleston, SC 29405, as evidenced by a copy of said Agreement attached hereto as Exhibit "A" and incorporated by reference. The Plaintiff, Allen Livingston has consistently filed and pursued the defendant on several frivolous claims, not showing good faith, no legitimate justification for any actions, constant violation of the statute of frauds, slander, and for no other purpose but to embarrass, delay, or burden the Defendant. The actions filed by the Plaintiff are malicious and have indicated that the actions are being brought merely as a means of harassment.

JAN 27, 2019
Court Received
Mail Certified
6-4-2014

June 12 2014
Received Call From Clerk
of Court Miss Trusee states
Defendant Need to come in
And Sign Cover Sheet.

(3) (3)

THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

MASTER-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity Law Judge

Case No. 2016-001201

Harold Simmons Jr.,.....Appellant,

v.

Allen Livingston,.....Respondent.

APPELLANTS' DESIGNATION OF MATTER TO BE INCLUDED

IN THE RECORD ON APPEAL

Appellants purpose the following to be included in the Record on Appeal:

1. Judge Nicholson Order
2. Lis Pendens
3. Amend Answer Request Jury Trial
4. Amortization Report
5. All other Orders from common pleas and Master-In-Equity Courts
6. All Evidence on the Counterclaim

Harold Simmons Jr.,Pro Se
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North Charleston, SC 29405
(843) 480-8694 Attorney for Appellant

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F
Charleston, SC 29407
(843) 852-2202 Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No: 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT A

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(843) 480-8694

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Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

MASTER-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity Law Judge

Case No.: 2016-001201

Harold Simmons Jr., ... Appellant,

v.

Allen Livingston, ... Respondent.

BRIEF OF APPELLANT

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THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

MASTER-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity Law Judge

Case No. 2016-001201

Harold Simmons Jr., ... Appellant,

v.

Allen Livingston, ... Respondent.

CERTIFICATE OF SERVICE

I, Harold Simmons Jr, Pro Se, hereby certify that I have, on date indicated below, served counsel below with a Appellants' brief and designation of matter to be included in Record on Appeal by mailing a copy of same via Certified US Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

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Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Harold Simmons Jr.

May 22, 2019

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STATEMENT OF THE CASE

Appellant Harold Simmons Jr. is a disabled businessman of Charleston County. Respondent, Allen Livingston, is a businessman of Charleston County. On March 11, 2014 the Respondent filed a Lis Pendens concerning a property that was in contract between the Respondent and the Appellant, on April 4, 2014 was served (Exhibit S). On April 24, 2014 the Appellant filed an answer and requested a Jury Trial at the time (Exhibit Q). The Respondent, his Attorney, and Judge Dennis held an unscheduled Hearing on April 28, 2014 (Exhibit S). And on June 4, 2014 filed affidavit of default (Exhibit R). On June 12, 2014 Appellant filed counterclaim for years of harassment (Exhibit T). On July 16, 2014 a Hearing was scheduled to go before Judge Nicholson (Exhibit V). On July 2, 2014 Appellant Harold Simmons Jr. received a letter from Respondent, Attorney Bruce Berlinsky stating A Motion Hearing scheduled for July 16, 2014 is no longer necessary at this time (Exhibit V1). From the first date on or around November 2014 through December 17, 2014 Judge Mikell Scarborough has denied the Appellant any and all due process along with ignoring and not accepting prior orders by Judge Nicholson and the fact that the Respondent legal counsel falsely testified (Exhibit R) about a hearing and presented documents based on the false hearing and further refused to take in consideration the Respondents' perjury (Transcript pg. 10 line 9-11 and pg. 31 line 6-16) and falsification of documents (Exhibit C) in prior court proceedings under Judge Nicholson. Judge Mikell Scarborough has constantly denied the Appellant a jury trial, change of venue, and counterclaim during the entire process and refuse to dismiss the Respondent claim and grant Appellant the counterclaim. This Appeal followed. No court has the lawful right to strike a jury trial according to Rule 53 the Appellant is entitled to a jury trial and no Rule exist that states a jury trial can be strike. The original Judge Nicholson Order was not upheld based on the denial of the relief set by Judge Nicholson for the Appellant, so the original agreement of the parties be in effect and the advance monthly payments and months be honored. This was not upheld along with the frivolous and mock default hearing held without notifying and serving the Appellant (Exhibit A). This default hearing in April 2014 by Judge Dennis was unscheduled and is not on the court record (Exhibit S), but yet the Master-in-Equity Courts decided to utilize it against the Appellant.

Harold Simmons Jr.

Dear Judge of Appeal Court

This Request for Compensation for Harass and Harassment and Pain and Suffering come from years of suffering, mental and emotional stress. For starters, back on July 15, 2000, I signed a contract with the Respondent (Allen Livingston) for property located at 3042 North Carolina Avenue North Charleston South Carolina 29405. For 7 years everything was good. The agreement was for Appellant Harold Simmons Jr. to buy the property for $125,000.00 at the rate of $500.00 a month (Exhibit A). So all through those years I have been making good payments, many of times I doubled or tripled my monthly payment (Exhibit D). This I did so if something went wrong or if I had gotten sick I would not fall behind in my payments. So, in the year 2007 the Respondent (Allen Livingston) decided he wanted out of the contract; he then went as far as filing a lawsuit at the Magistrate level trying to use the court to help him break the contract. The first thing the Respondent did was try to get the court to say that the contract was a rental agreement (Exhibit B) and the contract that the Respondent gave to the Court was the real contract (Exhibit C), and that the contract Appellant (Harold Simmons Jr.) presented was a forged and altered contract; but the Court ruled that Appellant contract is Authentic (Exhibit A).

1) This lawsuit was filed on 10/2007 at the Magistrate level the presiding Judge, Stephanie Ganaway (Case No. 09-1769) Exhibit B. Due to the value of the case, the case was moved to the higher courts.
2) The Court of Common Pleas Ninth Judicial Circuit presiding Judge Thomas L. Hughston Jr. in year 6/2008 Case No. 2007-C1-67-1769 at this point and level the Respondent and his Attorney Jeffrey Barnwell was able to cohorts Judge Thomas Hughston to do an Ejectment Order.
3) (Charleston County Sheriff's Office Ejectment (Exhibit E) Case No. 2007-C1-67-1769) This action took place before the case was heard, this was done in July 2008, but the Appellant and his Attorney Seth S. Whipper was able to have the Ejectment overturned.
4) Now here we are back before The Court of Common Pleas (Case No. 08-CP-10-0270) for a Pretrial (Exhibit F) before Judge Thomas L. Hughston Jr.
5) In August 2008 Appellant Harold Simmons Jr. had to get an Affidavit from the Clerk of Court to show that Appellant was doing what was ordered by the Court (Exhibit H).During that time the Respondent claimed that the Appellant was behind in his purchase money or Rent $7,000.00. From the start Appellant Harold

Simmons Jr. have been paid up in advance. At this time the Respondent presented and gave the Court as Respondent evidence show the address was 3049 North Carolina Avenue, the whole front page was rewritten and the third page had certain things removed from it.

6) Now the moment of truth, back to the Court of Common Pleas Ninth Judicial Circuit Judge J.C. Nicholson Jr. Case No. 2010-CP-8027 in year 9/2012. At this time the Court ruled that Appellant contract is the Authentic and Appellant contract is a Buy Contract and that Appellant is and always had his purchase money paid up and not only paid up but had over pay; paid $16,040.00 beyond what was required under the contract (Exhibit K pg 2 line 12).
7) Right before this Hearing, Respondent Attorney Jeffrey A. Barnwell had a discussion with Appellant Harold Simmons Jr. Attorney Seth Whipper stating Respondent would drop his lawsuit for a settlement of $80,000.00 (Exhibit I) but at the time of this request for settlement, Appellant only owed a balance of $37,000.00 (Exhibit X).
8) Respondent file appeal Case No. 2013-00-1306, May 9, 2013.
9) Right before the filing of the Respondent Appeal, Appellant Harold Simmons Jr. paid Respondent Allen Livingston's Attorney Barnwell $4,500.00 toward the contract but he never did apply the funds.
10) Three months after Appeal was dismissed, Respondent filed a Foreclosure on Appellant stating Appellant did not make any payments at all the same $4,500.00 Foreclosure filed Allen Livingston, Attorney Bruce Berlinsky Foreclosure filed March 2014 Case No. 2014-CP-10-01635 Presiding Judge J.C. Nicholson Court of Common Pleas.
11) Attorney Bruce Berlinsky did whatever it took to get Appellant in front of Master-in-Equity, Attorney Berlinsky lie stating Appellant did not answer Exhibits R, S, and U.

Appellant has requested a Jury Trial 5 times and was denied all requests: Requested Jury Trial on April 24, 2014, June 12, 2014, June 16, 2014, July 18, 2014, and June 9, 2016 (Exhibit U) Hearing before Master-in-Equity Judge Mikell Scarborough in year 12/2014 Case No. 2014-CP-10-01635. I have always been paid up in advance, always $9,000.00 or more in advance (Exhibit D). Every time a case was filed I was ahead in my payments (Exhibit D), but still in some kind of way this time the Court showed bias and favoritism and prejudice for Respondent (Allen Livingston) side, even though my payments were ahead (Exhibit D) and the Respondent filed forged and altered documents (Exhibit C) with the court as his proof and lied under oath in Court

every time. These forged documents (Exhibit C) was filed in Magistrate Court and in the Court of Common Pleas Ninth Judicial Circuit. The Court still showed bias and favoritism and prejudice for Plaintiff (Allen Livingston). This time the reason the Court gave is that even though I have paid more money on top of the advance money, which made it 21 advanced payments (Exhibit D) towards the month of ~~January~~ December 2014. And because I did not make advance payment number 22 for the month of ~~January~~ December 2014 the Master-in-Equity Judge Mikell Scarborough found me the Defendant Harold Simmons Jr. in default for not making advance payment number 22 for the month ~~January~~ December 2014 (Exhibit D). Judge M. Scarborough is changing Judge Nicholas language in the order even though the third judge, Judge J.C. Nicholson Circuit Judge ruled in favor for Appellant (Exhibit K) Harold Simmons Jr. because of the advance payment and court order Judge Nicholson stated, "I am ordering that the transaction be carried out as agreed upon (pg. 4 lines 14-15, Exhibit K)". J.C. Nicholson February 27, 2013 order, but the forth Judge in Magistrate-in-Equity Judge M. Scarborough is ruling to overturn Circuit Court Judge Nicholson. Judge Scarborough is the Judge who denied my requests for Jury Trials, which are my Rights by Rules 39 and 53 of South Carolina Rules of the Court.

The property in question is where I operate my Auto Repair Business. This frivolous lawsuit is interfering with my lively hood and future.

I am asking the Judge of the Appeals Supreme Court for a Ruling in favor of Appellant Harold Simmons Jr. because he was never behind in payments and at this time: out of the $125,000.000 purchase price, only a balance of $25,720.78 is owed only 4 more years of payment at $500.00 a month and the last 2 payments were made on 4/2/2018 for $824.36 and 6/1/2018 for $105.00.

Supporting Case: Opinion No. 25510, citing the Court's opinion is Lewis V. Premium Investment Corporation, the majority noted that typically in this type of contract, the seller retains legal title until the purchase price has been fully paid, and the purchaser is entitled to immediate possession. "Id.At419, 635S.E.2dAt560; see Lewis V. Premium Investment Corporation, 351S.C.167,170-73,568S.E.2d361,363-64(2002) (Stating that in an installment and contract, the seller retains legal title until the purchase price is fully paid and that the vendee in possession of the land is the owner of an equitable interest in the property.)

Harold Simmons

May 27, 2019

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____	Lease to Buy Agreement Contract	Exhibit A
____	Magistrate Court Application for Ejectment	Exhibit B
____	Respondent altered and forged Lease to Buy Contract	Exhibit C
____	Appellant Amortization Schedules	Exhibit D
____	Respondent Court Order for the Sheriff Office to Ejectment By Judge Thomas Hughston	Exhibit E
____	Appellant Court Order for Reconsider for Ejectment	Exhibit F
____	Appellant Clerk of Court Affidavit	Exhibit H
____	Attorney Seth Whipper response letter to Respondent Settlement Offer	Exhibit I
____	The unreported 2012 Money Orders paid to Respondent $4,500.00	Exhibit J
____	Judge J.C. Nicholson Jr. Order February 27, 2013	Exhibit K
____	Respondent Filing for Appeal and Respondent Appeal Dismiss Order	Exhibit L+L1
____	Respondent Attorney Bruce A. Berlinsky letter about payment	Exhibit N
____	Respondent filing of lawsuit March 11, 2014, Serve April 4, 2014	Exhibit O
____	Appellant filing answer with Requested Jury Trial April 24, 2014	Exhibit Q
____	Default Hearing April 28, 2014 and letter to Judge Dennis	Exhibit R
____	Charleston County Clerk of Court Roster, Event, Parties, Associated Cases	Exhibit S
____	Appellant Counterclaim Filing with Jury Trial Requested	Exhibit T
____	Jury Trial Requests (5) Total	Exhibit U
____	Notice of Motion Scheduling	Exhibit V+V1+V2
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____	Transcripts for August 6, 2018 and August 7, 2018	Exhibit Y
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ARGUMENT

I. THE MASTER IN EQUITY DID NOT HEAR THE TESTIMONY AND EVIDENCE OF THE CASE, AND IS NOT IN COMPLIANCE WITH THE TRIER OF FACTS, AND DID WRONGLY RULE IN FAVOR OF PLAINTIFF.

Black's Law Dictionary, Sixth Edition, page 500

Due process of law.

Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution- that is: by the law of its creation-to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of t he defendant, he must be brought with in its jurisdiction by service of process within the state, or his voluntary appearance. Pennoyer v. Neff 95 U.S. 733, 24 L.Ed. 565.

Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.

An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. Kazubowski v. Kazubowski, 45 DJ.2d 405, 259 N.E.2d 282. 290.

Phrase means that no person shall be deprived of life. liberty, property or of any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing. Pettit v. Penn, La.App., 180 So.2d 66, 69.

The concept of "due process of law" as it is embodied in Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. U. S. v. Smith, D.C.Iowa, 249 F.Supp. 515, 516.

Fundamental requisite of "due process" is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. Trinity Episcopal Corp. v. Romney, D.C.N.Y., 387 F.Supp. 1044, 1084.

The Fifth Ammendment is every US citizens right and the Appellant is no different in this case.

The Fifth Ammendment states the following:

The Fifth Amendment says to the **federal** government that no one shall be "deprived of life, liberty or property without **due process of law.**" The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the **Due Process** Clause, to describe a **legal** obligation of all states. Former Section 22-3-230 was entitled "Right to jury trial" and was derived from 1962 Code Section 43-93; 1952 Code Section 43-93; 1942 Code Section 3710; 1932 Code Section 3710; Civ. C. '22 Section 2244; Civ. C. '12 Section 1394; Civ. C. '02 Section 986; G.S. 841; R.S. 884; 1868 (14) 100.

RULE **38**
JURY TRIAL OF RIGHT

(a) Right Preserved. The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

(c) Same: Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may

order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties, except where an opposing party is in default under Rule 55(a).

Note:

This Rule 38 is substantially the Federal Rule. The last sentence is added to Paragraph 38(a) to preserve the language of Code § 15-23-60. Paragraph 38(e) of the Federal Rule, referring to admiralty and maritime claims, is inapplicable to State practice.

No consideration was provided for "Due Process" or "Jury Trial of Right." Appellant believe that the Below court and Judge of the said court intended to violate the due process and jury trial of right according to the sections quoted above. Had it not been intended to violate the due process and jury trial of right, it would have been necessary for the inclusion of specific evidences and prior Judge court order to be reviewed and considered in the dismissal of the Lis Pendens and counterclaim granted.

NOTE:

II. THE MASTER IN EQUITY DID ERR IN NOT ALLOWING A JURY TRIAL AND INSTEAD HAD A UNSCHEDULED DEFAULT HEARING WHERE THE APPELANT WAS NOT SERVED NOR INFORMED.

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The Appellant was never in a legal position to warrant a foreclosure on any property that was in an installment contract and therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order.

RULE 53
MASTERS AND SPECIAL REFEREES

(a) Master and Special Referee Defined. The term "master" means the master-in-equity for the county. The term "special referee" means a member of the South Carolina Bar to whom a matter has been referred under S.C. Code Ann. § 14-11-60.

(b) References. In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case. Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court. A case shall not be referred to a master or special referee for the purpose of making a report to the circuit court. The clerk shall promptly provide the master or special referee with a copy of the order of reference.

(c) Powers. Once referred, the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.

(d) Compensation of Special Referees. The compensation of the special referee shall be paid by the parties in such amount as shall be set by the special referee, subject to review by the circuit court upon objection by any party within ten (10) days of receipt of the order.

(e) Appeals. When a matter has been referred, any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Note:

This Rule 53 follows the Federal Rule as to form but is considerably modified to conform to State practice and needs. References in Federal Courts are rare, but absolutely necessary in State Courts, particularly to handle a large volume of State litigation such as foreclosures, partitions, and other equity matters. The State practice allowing judgment to be entered on the master's report in appropriate cases is preserved, as is the allowance of 10 days to file exceptions to the report. Other post-trial motions, such as a motion to amend judgment under Rule 52(b), would apply when the order of reference directs that judgment be entered on the master's report, just as they apply in actions tried by the court.

Note to 1986 Amendment:

Rule 53(c) is amended to make clear that the master has the same powers as a court sitting without a jury unless the order of reference limits his authority. Changes in that

paragraph as well as Rule 53(d) leave the scheduling of the time and place of the hearings to the master. Rule 53(e)(1) is amended to remove the need for filing the transcript of proceedings if one has not been prepared, but Rule 53(e)(2) allows any party to obtain the transcript of proceedings before any hearing on exceptions to the master's report. Rule 53(e)(5) now authorizes the master to request briefs or proposed orders from counsel.

Note to 1994 Amendment:

This Rule 53(b) amendment clarifies the authority of the clerk of court to issue orders of reference in default cases and where all the parties consent.

Note to 1999 Amendment:

This amendment substantially revises this rule. It eliminates the practice of referring a matter for the purpose of making a report to the circuit court. Under the revised rule, the master or special referee will enter final judgment on any matter which is referred and any appeal from a decision of the master or special referee is to the Court of Appeals or the Supreme Court as provided by the South Carolina Appellate Court Rules. The detailed discussion of the powers of masters and special referees, and the procedure to be followed in matters pending before them, has been eliminated as unnecessary since the master or special referee has all the powers that a circuit court judge sitting without a jury would have in the matter and the procedure is that provided by the South Carolina Rules of Civil Procedure.

Note to 2001 Amendment:

Rule 53(d) is amended to provide that fees for special referees are set by the special referee subject to review by the circuit court if a party timely objects.

Note to 2002 Amendment

The 2002 amendment permits referral of foreclosure cases to the master-in-equity by order of the clerk of court. If there are counterclaims requiring a jury trial, any party may file a demand for a jury under Rule 38 and the case will be returned to the circuit court.

Last Amended by Order effective September 1, 2002.

RULE 103
RULINGS ON EVIDENCE

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) **Objection.** In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) **Offer of Proof.** In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context.

(b) **Record of Offer and Ruling.** The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) **Hearing of Jury.** In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

Note:

This rule is identical to the federal rule with the exception of the omission of subsection (d) relating to plain error. The rule of plain error contained in the federal rule is inconsistent with the law in South Carolina. Cf. State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (abolishing in favorem vitae review in capital cases and holding that error must be preserved by contemporaneous objection in the trial court). It should be noted that the Supreme Court has recognized a very few limited circumstances in which it will review issues raised for the first time on appeal. Cf. Toyota of Florence, Inc. v. Lynch, 314 S.C. 257, 442 S.E.2d 611 (1994) (challenge to abhorrent and outrageous argument raised for first time on appeal); State v. Pace, 316 S.C. 71, 447 S.E.2d 186 (1994) (failure to make contemporaneous objection to judge's comments excused where judge's tone and tenor made it clear that any objection would have been futile). Further, the failure to adopt a rule of plain error in no way limits the authority of trial judges to raise evidentiary issues on their own motion.

Subsection (a) means that reversal on appeal is only required where a substantial right of a party has been affected; error which is harmless does not affect a substantial right. Graham, Handbook of Federal Evidence, § 103.1 (3rd ed. 1981). This is equivalent to South Carolina law holding that reversal is not required unless an error is prejudicial and not harmless. State v. Sosebee, 284 S.C. 411, 326 S.E.2d 654 (1985) (probable prejudice must be shown); State v. Gaskins, 284 S.C. 105, 326 S.E.2d 132 (1985) (a new trial is not required for harmless error), cert. denied, 471 U.S. 1120, 105 S.Ct. 2368, 86 L.Ed.2d 266 (1985), overruled on other grounds, State v. Torrence, 305 S.C. 45, 406 S.E.2d 315

(1991); Watts v. Bell Oil Co., 266 S.C. 61, 221 S.E.2d 529 (1976) (prejudice must be shown).

Subsection (a)(1) is generally in accord with prior South Carolina law which required a contemporaneous objection with specific grounds to preserve an error for review. State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994) (contemporaneous objection); White v. Wilbanks, 298 S.C. 225, 379 S.E.2d 298 (Ct. App.1989) (contemporaneous objection), rev'd on other grounds, 301 S.C. 560, 393 S.E.2d 182 (1990); State v. Bailey, 253 S.C. 304, 170 S.E.2d 376 (1969) (specific grounds required; general objection preserves nothing). It does somewhat relax the requirement of stating specific grounds where the grounds are apparent from the context. The better practice, however, is for counsel to always give, and the court always to require, specific grounds for an objection; this will avoid later disputes regarding what was apparent from the context. It should be noted that Rule 43(i), SCRCP, Rule 18, SCRCrimP, and Rule 9(b), SCRFC, do not prevent counsel from stating the grounds for an objection, but merely control argument on the grounds for the objection. This rule does not alter the prior practice regarding motions in limine, which allowed the motion to exclude evidence to be made at the pretrial stage, State v. Glenn, 285 S.C. 384, 330 S.E.2d 285 (1985), but required a contemporaneous objection when the evidence is actually offered into evidence at the trial to preserve the issue for review. State v. Schumpert, ____ S.C. ____, 435 S.E.2d 859 (1993); Parr v. Gaines, 309 S.C. 477, 424 S.E.2d 515 (Ct. App.1992).

Subsection (a)(2) is the federal rule modified to require the grounds for admission to be stated. As modified, this rule is consistent with South Carolina law which requires a proffer of the excluded evidence and the grounds for admission to be stated to preserve the trial court's ruling for review. State v. Cabbagestalk, 281 S.C. 35, 314 S.E.2d 10 (1984); State v. Cox, 258 S.C. 114, 187 S.E.2d 525 (1972); Legrande v. Legrande, 178 S.C. 230, 182 S.E. 432 (1935); Gold Kist, Inc. v. Citizens & Southern Nat'l Bank, 286 S.C. 272, 333 S.E.2d 67 (Ct. App.1985). The rule does change South Carolina law by dispensing with the requirement of a proffer and a statement of the grounds for admissibility where the substance of the evidence and the grounds are apparent from the context. The prior law only dispensed with the requirement of a proffer where the judge refused to allow a proffer. State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986). To avoid later disputes over what was apparent from the context, however, the better practice is for a proffer and a statement of the grounds to always be made.

The first sentence of subsection (b) is similar to language contained in former Rule 43(c), SCRCP. Although no specific South Carolina case can be found to support the second sentence, requiring an offer to be made in question and answer form is within the discretion of the judge.

Subsection (c) is in accord with prior South Carolina law. Chandler v. People's Nat'l Bank, 140 S.C. 433, 138 S.E. 888 (1927); Rule 43(c), SCRCP.

NOTE:

III. T THE MASTER IN EQUITY DID ERR BY NOT UPHOLDING THE ORDER OF JUDGE NICHOLSON AND ADDED AN ORDER AS TO REWRITE JUDGE NICHOLSON ORDER. THE COURT ERRED IN IGNORING THE FALSIFICATION OF DOCUMENTS AND REWRITING OF CONTRACT BY THE RESPONDENT THAT WAS STATED IN THE ORDER FROM NICHOLSON.

The court never look or considered addressing the Prior court order of the back taxes and payments which would have clearly shown the Appellant was not in jeopardy of foreclosure laws, therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order. Along with acting as the respondent attorney and not a judge showing favoritism and denied the advance monthly payments and original agreement as stated by Judge Nicholson in order of the relief.

See the above notation of Rule 53 and 103

The court never look or considered addressing the if the prior court order signed by Judge Dennis was valid or the hearing scheduling of such proceeding was verified to be a valid hearing and proper notice was given to Appellant, therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order. This is in direct violation according to case Cook v. Taylor, 272 S.C. 536, 538, 252 S.E.2d. Which brings up questions such as the following:

(1) "Whether One Circuit Court Judge Can Vacate An Order Of Reference Made By Another Circuit Court Judge?" and

(2) "Whether The Pleadings Herein Stated An Equitable Cause Of Action And Requested Equitable Relief, Thereby Requiring The Reference To The Master In Equity?"

See the above notation of Rule 53 and 103

RULE 10
TRIAL DATE; NOTICE; FAILURE TO ANSWER

(a) Upon the filing of an answer by the defendant, the magistrate shall set the date of trial and deliver notice of the trial date to both parties in a manner provided for in Rule 8.

(b) If the defendant has failed to answer within the time period specified by these rules, the magistrate shall set a hearing date and shall deliver notice of the hearing date to both parties in a manner provided for in Rule 8 when the hearing is necessary for the entering of a default judgment in a manner consistent with Rule 11. At the default hearing, the defendant may participate only by cross-examining witnesses and objecting to evidence.

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RULE 5
SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a)Service: When Required. Unless otherwise ordered by the court because of numerous defendants or other reasons, all (1) written orders; (2) pleadings subsequent to the original summons and complaint, which includes answers, counterclaims, cross claims, replies and amended complaints; (3) written motions, other than ones which may be heard ex parte; (4) written notices; (5) discovery requests and responses; (6) appearances; (7) demands; (8) offers of judgment; (9) designations of record or case; (10) grounds or exceptions on appeal; and (11) other similar papers shall be served upon each of the parties of record. No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of summons in Rule 4, and notice of any trial or hearing on unliquidated damages shall also be given to parties in default.

Note:

This Rule 5(a) is substantially the same as Federal Rule, and restates Code §§ 15-9-910 and 15-9-970 with no change in practice.

Note to 2005 Amendment:

This amendment to subsection (a) makes explicit that all major documents and papers, including, but not limited to, pleadings and amended pleadings, discovery requests and responses, motions and similar papers are to be served on every party of record. The amendment also adds the word "grounds" in subsection (a)(10).

(b)(1) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the

attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.

(b)(2) Service on Sunday. Civil process may be served on Sundays, provided that no person may be served going to or from or attending a regularly or specially scheduled church or religious service on Sunday.

Note:

This Rule 5(b)(1) is the same as Federal Rule 5(b) and substantially restates Code §§ 15-9-920, 15-9-930, 15-9-980 and 15-9-990; with no resulting change in State practice. Rule 5(b)(2) is the same as Code § 15-9-1010, except permitting subpoenas to be served on Sunday.

Note to 2001 Amendment:

Rule 5(b)(2) is rewritten to reflect the enactment of S.C. Code Ann. § 15-9-17, 2000 S.C. Acts No. 360, which allows for the service of process on Sundays with the stated exceptions.

(b)(3) Service of Proposed Orders and Other Papers. Any party providing a proposed order, proposed findings of fact or conclusions of law, or proposed judgment or other paper to the court for its consideration in any pending matter shall serve the same on all counsel of record at the same time and by the same means.

Note to 1994 Amendment:

Rule 5(b)(3) clarifies the intent of Rule 5(a) and requires that proposed orders, findings of fact and conclusions of law and other materials provided to the court are to be served on all counsel of record. The material is to be provided to all other counsel at the same time and by the same means as they are provided to the court. Thus opposing counsel will have the opportunity to review and comment on the proposed order before it is signed. The rule does not require the court to delay entering any proposed order.

(c) Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as

between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleadings and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

Note:

This Rule 5(c) is the same as the Federal Rule. It has no parallel in State practice, but is a needed addition.

(d) Filing. All papers required to be served upon a party except as provided in Rule 26(g)(1), shall be filed with the court within five (5) days after service thereof. The summons and complaint shall be filed before service. Proof of service shall be filed within ten (10) days after service of the summons and complaint. Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party. Upon failure of a party to file other pleadings, motions, or papers, the court may permit filing or proceed as though the same had not been served.

Note:

This Rule 5(d) encompasses present Circuit Rule 68 and former Rule 75, as well as Code § 15-9-1000. It is a more concise statement, and provides more specific sanctions in the court's discretion.

Note to 1993 Amendment:

Rule 5(d) was amended to add language permitting the court to dismiss an action on its own initiative if it has been filed but not served upon the defendant. The prior rule required a motion by a party.

(e) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk. Upon any trial or hearing, the clerk shall furnish the original record in the action to the judge, who shall return same to the clerk immediately upon completion of such trial or hearing. Copies of the record may be furnished instead of the original by permission of the judge. Upon change of venue the original record shall be transferred to the clerk of court to which the action is transferred.

Note:

This Rule 5(e) is the same as the Federal Rule. It restates and clarifies present Circuit Rules 32 and 67.

Last amended by order dated April 27, 2005

The court never look or considered addressing the Prior court order documenting the falsification and rewriting of the contract by the Respondent which would have clearly shown the Lis Pendens should be dismissed and the counter claim granted, therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order.

See the above notation of Rule 53 and 103

SECTION 16-9-10. Perjury and subornation of perjury.

(A)(1) It is unlawful for a person to wilfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.

(2) It is unlawful for a person to wilfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

(B)(1) A person who violates the provisions of subsection (A)(1) is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

(2) A person who violates the provisions of subsection (A)(2) is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not less than one hundred dollars, or both.

(C) A person may be convicted under this section if he induces, procures, or persuades another person to commit perjury or if he commits perjury by his own act, consent, or agreement.

HISTORY: 1962 Code Section 16-201; 1952 Code Section 16-201; 1942 Code Section 1397; 1932 Code Section 1397; Cr. C. '22 Section 332; Cr. C. '12 Section 340; Cr. C. '02 Section 253; G. S. 2531; R. S. 217; 1712 (2) 487; 1993 Act No. 184, Section 89.

SECTION 16-9-20. Subornation of perjury in civil actions.

(A) It is unlawful for a person to:

(1) wilfully induce, procure, or persuade another person by any means to commit perjury in initiating a civil action or proceeding; or

(2) wilfully induce, procure, or persuade another person to give false, misleading, or incomplete testimony while under oath in a civil action or proceeding.

(B) A person who violates the provision of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months and fined not less than two hundred dollars.

HISTORY: 1962 Code Section 16-202; 1952 Code Section 16-202; 1942 Code Section 1398; 1932 Code Section 1398; Cr. C. '22 Section 333; Cr. C. '12 Section 341; Cr. C. '02 Section 254; G. S. 2532; R. S. 218; 1712 (2) 487; 1993 Act No. 184, Section 90.

SECTION 16-9-30. False swearing before persons authorized to administer oaths.

It is unlawful for a person to wilfully and knowingly swear falsely in taking any oath required by law that is administered by a person directed or permitted by law to administer such oath.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

HISTORY: 1962 Code Section 16-203; 1952 Code Section 16-203; 1942 Code Section 1400; 1932 Code Section 1400; Cr. C. '22 Section 335; Cr. C. '12 Section 343; Cr. C. '02 Section 256; G. S. 2534; R. S. 220; 1833 (2) 485; 1993 Act No. 184, Section 166.

The court never look or considered addressing the Prior court order documenting the falsification and rewriting of the contract by the Respondent which would have clearly shown the Lis Pendens should be dismissed and the counter claim granted, therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order.

See the above notation of Rule 53 and 103

NOTE:

CONCLUSION

The court below erred in ruling that the denial of defendant's motion to alter and amend order, the master's sale on the forclosure of the installment sales contract should take place, and in and all pursuant terms and conditions of the May 18, 2016 order as well. Grant of Order on May 18, 2016 was in error. This court should conduct its on review of the procedures and prior Judge Nicholson orders and all documents requested by Appellant. Reverse all of the rulings of the court below and remand the case for reconsideration of appellants' motion for counterclaim and dismiss of respondent Lis Pendens case filing in light of the violation of due process and denial of jury trial amongst all the other arguments presented in this appeal.

The court erred in denying a jury trial by striking it and the Judge acted as the attorney and judge at same time. The court erred in holding a frivolous unscheduled and off the court record default hearing without serving the Appellant. The court further erred in not considering the advance payments and original agreement and relief order by Judge Nicholson along with the fact that perjury and document falsification had occurred and was ruled and ordered on by Judge Nicholson. The Appellant due process has been denied.

Respectfully submitted,

Harold Simmons Jr. Jr.

Harold Simmons Jr., Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694
Attorney for Appellant

Columbia, South Carolina

May 22, 2019

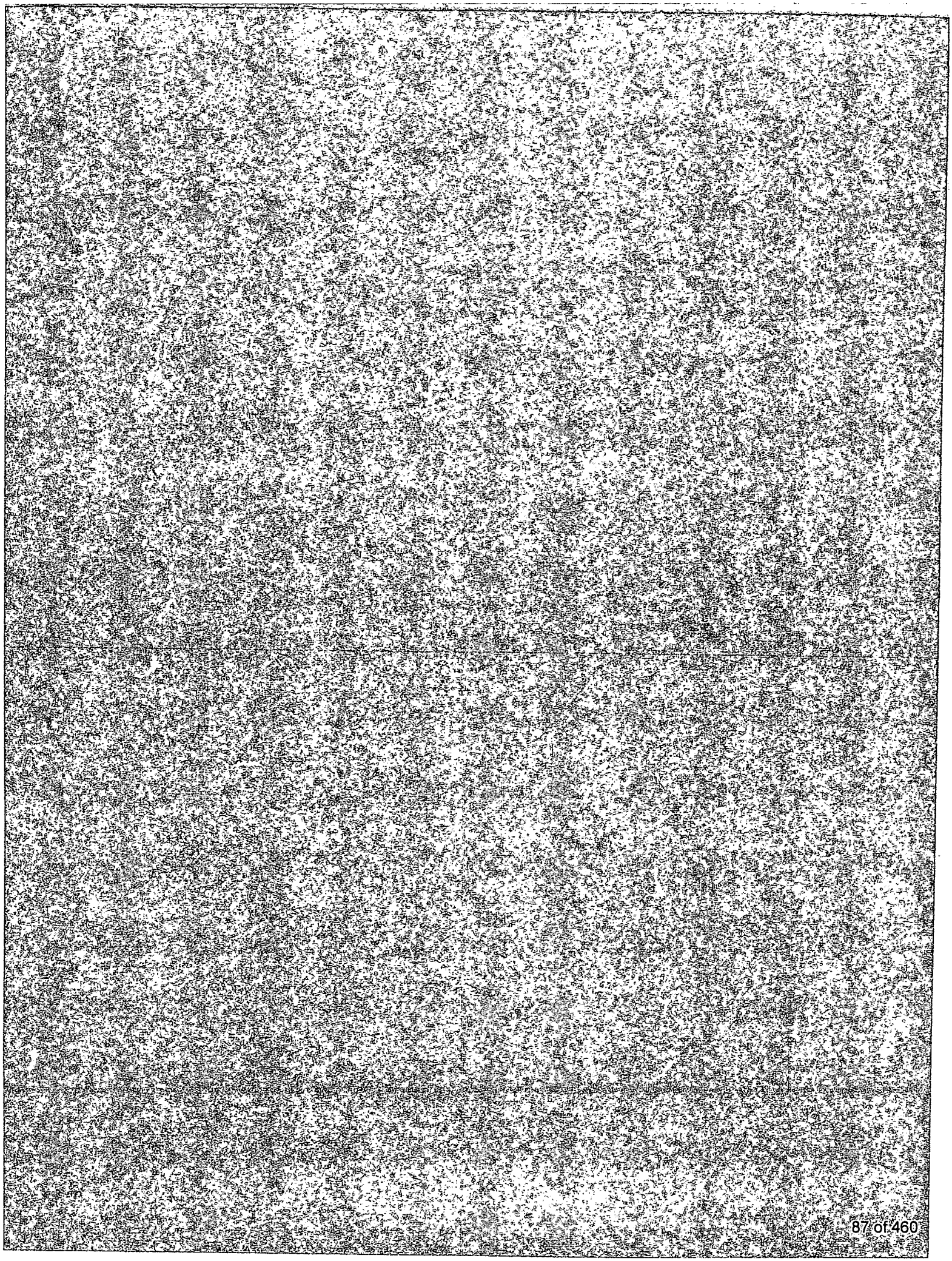


Exhibit A

Lease to Buy:

This lease, morgage agreement enter in the day of 6 - 15 - 2000 is a legal
month/ day/ year
and binding contract between ALLEN Livingston and Harold Simmons Jr
Hereby agree to these terms and provisions here in after set forth, as follow:
That whereas, I Harold Simmons Jr agree to lease with option to buy said
buyer
property located at 3042 N Carolina Ave North Charleston SC 29405. At a purchase price, rate
location/address
of $ One Hundred + Twenty Five Thousand $(125,000.00) Dollars.
price written price in numbers

The monthly Payment is payable in advance and shall be due on or before the
Fifteen - - 15 - Day of each month.
written number

If for some reason Harold Simmons Jr fails to meet the monthly payment
name of buyer
ALLEN Livingston agree to give Harold Simmons — 30 day
name of seller name of buyer number
Thirty days to pay any Delinquient payments before he or she is
write number
found in default.

In the Event ALLEN Livingston select to terminate the agreement early
seller
Harold Simmons Jr have the right, option to purchase, buy the property,
buyer
located at 3042 N. Carolina Ave. North Charleston 29405. If this agreement is not terminated
address
by either party during the term's set forth Harold Simmons Jr. have the
buyer
right and option to purchase, buy the end of these terms.

EXHIBIT
88 of 460

15.(2) 1 Harold Simmons Jr. agree to lease said property for the duration of
buyer
2 1 years, one .
print # write number
3 For some reason Harold Simmons becomes unable to honor lease
4 agreement, ill, lost wages, business foreclosure, Harold Simmons have
5 the right to brake lease agreement Harold Smmons Jr. have to give
6 30 days notice.
7 1 years after entering this agreement Harold Simmons have
8 the right to move from lease to buyer.
9 Beginning: 6 - 15 - 2000 Ending: 5 - - 31. 2001
month day year month day year
10 Entering in these agreement from lease to buy the money that is paid in these
11 contract will go toward it as a downpayment.
12 During the Duration of the Lease Term ALLEN LIVINGSTON has to notify
landlord
13 Harold Simmons in writing 1 days in advance prior to entering the
lessee number
14 build during reasonable hours without being liable for tresspassing, for the
15 purpose of inspections, repairs.
16 Buying these property Harold Simmons is responsible for all taxes
buyer
17 beginning from 6 - 15 - 2000
month day year
18 Terms of Payment
19 Harold Simmons agree to pay: First year $ 500.00. —. Beginning
buyer

25(3)

1 6 - 15 - 2000 Ending 6 - 15 - 2001
month day year month day year

2 Second year $ 500.00 Beginning 6 - 15 - 2001 Ending
month day year

3 4 - 15 - 2021
month day year

4 Purchase Price to Buy $ 125,000.00

5 Monthly Payment: $ 501.03

6 ALLEN LIVINGSTON
([redacted]'s print)

7 [signature]
([redacted]'s signature)

8 Harold Simmons Jr.
([redacted]'s print)
RENTER

9 Harold Simmons Jr.
([redacted]'s signature)
RENTER

10 [signature]
(witness)

11 _____
(witness)

(3)

29.(4)

Lessee shall not, without first obtaining the written consent of the lessor, make any alterations, additions or improvements in, to or about the premises.

Lessee shall not do or suffer anything to be done on the premises which will cause an increase in the rate of fire insurance on the building.

Lessee shall not permit the accumulation of waste or refuse matter on the leased premises or anywhere in or near the building.

Lessee shall not, without first obtaining the written consent of the lessor, abandon the premises, or allow the premises to become vacant or deserted.

Lessee shall not, without obtaining the written consent of the lessor, assign, mortgage, pledge, or encumber this lease, in whole or in part, or sublet the premises or any part of the premises.

Lessee shall observe and comply with such reasonable rules and regulations as may be established from time to time by lessor.

If the building is damaged by fire or any other cause to such extent that the cost of restoration, as reasonably estimated by lessor, will equal or exceed 60% of the replacement value of the building, just prior to the occurrence of the damage, then lessor may, no later than the seventh day following the damage, give lessee a notice of election to terminate the lease. In the event of such election this lease shall be deemed to terminate as of the date of the damage or destruction, and lessee shall surrender the premises within a reasonable time thereafter, and any pre- paid rent shall be refunded proportionally.
If the premises or any part of the premises, or any part of the building materially affecting lessee's use of the premises, be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent shall be apportioned as of the termination date and any rent paid for any period beyond such date shall be repaid to lessee.

This lease shall be subject and subordinate to all underlying leases and to mortgages which may now or hereafter affect such leases or the real property of which the premises form a part, and also all renewals, modifications, consolidations, and replacements of the underlying leases and mortgages. Lessee agrees to execute such estoppel letters or other documents required to confirm the same.

Lessor may enter the premises at any reasonable time, upon adequate notice to lessee (except that no notice need be given in case of an emergency) for the purpose of inspection or the making of such repairs, replacements, or additions in, to , on and about the premises or the building, as lessor deems necessary or desirable.

Lessee shall during the term of this lease make all necessary and needful repairs required to maintain the premises in good repair. The Lessee shall at all times maintain public liability insurance with a minimum $ 300,000 bodily injury liability. Lessee shall provide proof of this coverage to the lessor.
This document represents the entire agreement of the parties and there are no representations not stated herein, and this agreement may only be modified by a writing executed by both parties hereto.

Dated: 6-15-2000

Harold Lewis Jr.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT B

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit B

JUDGE STEPHANIE L.W. GANAWAY
County of Charleston Summary Court
2145 Melbourne Avenue, Suite 100
Post Office Box 71316
North Charleston, SC 29415
Phone (843) 745-2215
Fax (843) 745-2334

January 7, 2008

Jeffrey A. Barnwell, Esquire
Post Office Box 59
Charleston, SC 29402

J. Seth Whipper, Esquire
Post Office Box 70070
North Charleston, SC 29415

RE: **ALLEN LIVINGSTON -VS- HAROLD SIMMONS**
CASE NO: 2007-CI-67-1769
MOTION HEARING

Notice to all parties:

A Motion Hearing has been scheduled for the case referenced above in regards to the Return filed by the Defendant's Attorney. This hearing is scheduled for:

MONDAY, JANUARY 14, 2008 AT 2:30 PM

All parties are required to appear unless the court is advised that you would prefer this hearing by conference call.

If I can be of any further assistance, feel free to contact this office.

Sincerely,

Tamara S. Conner
Summary Court Specialists

cc: file

Exhibit B

CASE NO. 07 1769 RECEIPT NO. A15290 COURT DATE 10/2/07 TIME 11:30 AM

2010-CP-10-8027

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE MAGISTRATE'S COURT

ALLEN R Livingston
604 Hyde Park Rd
Ravenel SC 29470
PLAINTIFF

Phone: 556-1322

vs

Harold Simmons
3042 N Carolina Ave
N Charleston
DEFENDANT

Phone: 554 1414

10/3/10 appeal dismissed per SC

DEFENDANT'S EXHIBIT 2

AFFIDAVIT AND APPLICATION FOR EJECTMENT AND RULE TO VACATE OR SHOW CAUSE

FILED
2010 JAN 15 PM 12:03
JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

Dated: 10/1/07

I, the Plaintiff in this action, being sworn, state that I am the landlord – lessor of the premises herein described. I further state that the premises are within the magisterial jurisdiction of Charleston County located at:

3042 N. Charleston, SC

and that a landlord – tenant relationship exist between the parties described as evidenced by the following facts:

owes over $7000.00 in Back Rent from 05-08-07 to 10-07

Grounds for this ejectment are one or more of the following:

(X) The tenant fails or refuses to pay the rent when due or demanded; or

( ) The term of tenancy or occupancy has ended; or

(X) A term or condition of the lease has been violated, to-wit Suppose to Take out Buildi

SWORN BEFORE ME THIS

10 DAY OF October 20 07

Allen Livingston
PLAINTIFF

Amara Simmons
JUDGE STEPHANIE L. W. GANAWAY or NOTARY PUBLIC

My commission expires: 9/23/13

TO THE DEFENDANT NAMED ABOVE:

Upon application for ejectment, above, filed by the Plaintiff, you the Defendant and lessee of the premises noted above, are ordered to vacate the said premises immediately or to show cause before me at this court located at 2145 Melbourne Ave., Ste. 100, North Charleston, SC 29405 within ten (10) days from the date of service of this affidavit and rule why you should not be ejected from the said premises. FAILURE TO VACATE THE PREMISES OR TO RESPOND TO THIS COURT WITHIN THE TIME PERIOD SET ABOVE, MAY RESULT IN THE ISSUANCE OF A WARRANT OF EJECTMENT.

10-11-07
DATE

JUDGE STEPHANIE L. W. GANAWAY
(843) 745-2215

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT C

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent



Exhibit C

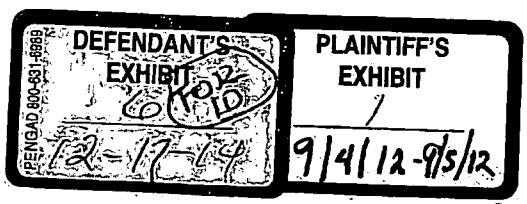
Lease to Buy:

This lease, morgage agreement enter in the day of 6 - 15 - 2000 is a legal
month/ day/ year
and binding contract between ALLEN LIVINGSTON and Harold Simmons Jr.
Hereby agree to these terms and provisions here in after set forth, as follow:
That whereas, I Harold Simmons Jr. agree to lease with option to buy said
buyer
property located at 3049 N CAROLINA AVE. At a purchase price, rate
location/address N CHARLOTTE
of $ One Hundred & Twenty Five Thousand. $(125,000,00) Dollars.
price written price in numbers

The monthly Payment is payable in advance and shall be due on or before the
Fifteen 15, Day of each month.
written number

If for some reason Harold Simmons Jr. fails to meet the monthly payment
name of buyer
ALLEN LIVINGSTON agree to give Harold Simmons Jr. 30 days
name of seller name of buyer number
Thirty days to pay any Delinquient payments before he or she is
write number
found in default.

In the Event ALLEN LIVINGSTON select to terminate the agreement early
seller
Harold Simmons Jr. have the right, option to purchase, buy the property,
buyer
located at N CAROLINA AVE. If this agreement is not terminated
address
by either party during the term's set forth Harold Simmons Jr. have the
buyer
right and option to purchase, buy the end of these terms.



Harold Simmons Jr. agree to lease said property for the duration of
buyer

1 years, one .
print # write number

For some reason Harold Simmons becomes unable to honor lease agreement, ill, lost wages, business foreclosure, Harold Simmons have the right to brake lease agreement Harold Simmons Jr. have to give 30 days notice.

1 years after entering this agreement Harold Simmons have the right to move from lease to buyer.

Beginning: 6 - 15 - 2000 Ending: 5 - - 31 2001
month day year month day year

Entering in these agreement from lease to buy the money that is paid in these contract will go toward it as a downpayment.

During the Duration of the Lease Term ALLEN LIVINGSTON has to notify
landlord

Harold Simmons in writing 1 days in advance prior to entering the
lessee number

build during reasonable hours without being liable for tresspassing, for the purpose of inspections, repairs.

Buying these property Harold Simmons is responsible for all taxes
buyer

beginning from 6 - 15 - 2000
month day year

Terms of Payment

Harold Simmons agree to pay: First year $ 500.00. —— Beginning
buyer

6 - 15 - 2000 Ending 6 - 15 - 2001
month day year month day year

Second year $_____, Beginning _____ - _____ - _____, Ending
month day year

_____ - _____ - _____.
month day year

Purchase Price to Buy $ 125,000,00.

Monthly Payment: $ 501.00 .

ALLEN Livingston
([redacted]'s print)

([redacted]'s signature)

Harold Simmons Jr.
([redacted]'s print)
Renton

Harold Simmons Jr.
([redacted]'s signature)
Renton

_____
(witness)

_____
(witness)

Lessee shall not, without first obtaining the written consent of the lessor, make any alterations, additions or improvements in, to or about the premises.

Lessee shall not do or suffer anything to be done on the premises which will cause an increase in the rate of fire insurance on the building.

Lessee shall not permit the accumulation of waste or refuse matter on the leased premises or anywhere in or near the building.

Lessee shall not, without first obtaining the written consent of the lessor, abandon the premises, or allow the premises to become vacant or deserted.

Lessee shall not, without obtaining the written consent of the lessor, assign, mortgage, pledge, or encumber this lease, in whole or in part, or sublet the premises or any part of the premises.

Lessee shall observe and comply with such reasonable rules and regulations as may be established from time to time by lessor.

If the building is damaged by fire or any other cause to such extent that the cost of restoration, as reasonably estimated by lessor, will equal or exceed 50% of the replacement value of the building, just prior to the occurrence of the damage, then lessor may, no later than the seventh day following the damage, give lessee a notice of election to terminate the lease. In the event of such election this lease shall be deemed to terminate as of the date of the damage or destruction, and lessee shall surrender the premises within a reasonable time thereafter, and any pre- paid rent shall be refunded proportionally.
If the premises or any part of the premises, or any part of the building materially affecting lessee's use of the premises, be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent shall be apportioned as of the termination date and any rent paid for any period beyond such date shall be repaid to lessee.

This lease shall be subject and subordinate to all underlying leases and to mortgages which may now or hereafter affect such leases or the real property of which the premises form a part, and also all renewals, modifications, consolidations, and replacements of the underlying leases and mortgages. Lessee agrees to execute such estoppel letters or other documents required to confirm the same.

Lessor may enter the premises at any reasonable time, upon adequate notice to lessee (except that no notice need be given in case of an emergency) for the purpose of inspection or the making of such repairs, replacements, or additions in, to , on and about the premises or the building, as lessor deems necessary or desirable.

Lessee shall during the term of this lease make all necessary and needful repairs required to maintain the premises in good repair. The Lessee shall at all times maintain public liability insurance with a minimum $ 300,000 bodily injury liability. Lessee shall provide proof of this coverage to the lessor.
This document represents the entire agreement of the parties and there are no representations not stated herein, and this agreement may only be modified by a writing executed by both parties hereto.

Dated: 6-15-2000

Harold Simms Jr.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT D

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

14-1635
Exhibit D

CASE NUMBER: 2014CP1001635

Amortization Schedule

3042 North Carolina Avenue North Charleston, SC 29405

Months/Years	Payments	Comments
1) July 2000	$3,500.00	
2) 2001	$6000.00	
3) 2002	$6000.00	
4) 2003	$6000.00	
5) 2004	$6000.00	
6) 2005	$6000.00	
7) 2006	$6000.00	
October 10, 2007	$5000.00 Paid: $44,500.00	1. Plaintiff filed Ejectment in Magistrate Court. 2. The Contract Agreement the Plaintiff gave the court as evidence was a fake, forgery and altered contract. 3. Defendant had evidence and proof that the Plaintiff contract was faked. 4. Defendant has paid about $57,500.00. $12,000.00 over what was due.
8) 2007	$6000.00 Paid: $45,500.00	4. Defendant has paid about $57,500.00. $12,000.00 over what was due.
9) 2008	$6000.00	
July 2008		5. The Plaintiff Attorney, Barnwell convince the court to doing a 24-hour Ejectment for money the court refused to accept. 6. Plaintiff and his Attorney (Barnwell) told the Defendant and his Attorney the case would be dropped if the Defendant paid $80,000.00. The Defendant only owe a balance of

EFILED
2015 NOV -3 PM 1:30
JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

Exhibit D

		$37,000.00
10) 2009	$6000.00	
11) 2010	$6000.00	
12) 2011	$6000.00	
September 4, 2012 September 11, 2012	$4,000.00 Total Paid: $73,500.00 (Initial payment that would have been due if were not over paid)	7. Trial, Hearing Livingston Vs Simmons on Trial Day, Defendant have paid $87,540.00 8. From September 11, 2012 to May 5, 2013 Defendant have paid additional $4500.00 Total Paid $92,040.00
13) 2012	$6000.00	
February 23, 2013		9. Court order sign by J.C. Nicholson Jr. order Defendant have paid $87,540.00 10. Balance that would have been due up to February 23, 2013 $76,500.00 11. Plaintiff filed Appeal
14) 2013	$6000.00	
March 2014	$78,500.00	12. Plaintiff filed Foreclose
June 4, 2014		13. Defendant filed counterclaim for harassment.
15) 2014	$6000.00 $87,540.00 + 4500.00	
16) September 2015	$4500.00 Paid $92,040.00 Balance owe: $32,960.00	
October 2015		
November 2015		
December 2015		

x Harold Simmons Jr.

Exhibit 01

Trial Day September 4, 2012 at 2:00 PM (2 days) Case 2010-CP-10-8027

On September 11, 2012 Defendant Harold Simmons, Jr. met with Attorney Jeff Barnwell and made a payment of $1,500.00 in the form of three $500.00 money orders. Attorney Jeff Barnwell agreed that once he received the order he would add payments to the order as needed.

- On February 20, 2013 the Court Ruled in favor of the Defendant
- On February 20, 2013 It is so ordered, ruled, and signed Balance $37,460.00
- On February 27, 2013 It is so ordered, ruled, and filed Balance $37,460.00
- (Plaintiff) Motion filed between February and May 2013
- (Plaintiff) Motion denied, judgment entered on May 9, 2013
- (Plaintiff) Motion denied, filed, filed on May 16, 2013

Appeal time ran 30 days End June 16, 2013

If Appeal is not filed

Payments Started **Old** **New**

July 2013 Balance $37,460.00 - $500.00 = $36,960.00 Money Order 20206481714

August 2013 Balance $36,960.00 - $500.00 = $36,460.00 Money Order 20206481703

September 2013 Balance $36,460.00 - $500.00 = $35,960.00 Money Order 20206481692

October 2013 Balance $35,960.00 - $500.00 = $35,460.00 Money Order 20216408534

November 2013 Balance $35,460.00 - $500.00 = $34,960.00 Money Order 20216408545

December 2013 Balance $34,960.00 - $500.00 = $34,460.00 Money Order 20216408556

January 2014 Balance $34,460.00 - $500.00 = $33,960.00 Money Order 21080419470

February 2014 Balance $33,960.00 - $500.00 = $33,460.00 Money Order 21080419457

March 2014 Balance $33,460.00 - $500.00 = $32,960.00 Money Order 21080419468

March 10, 2014 Foreclosure was filed for non-payment Case No. 2014-CP-101635

But on June 13, 2013 an Appeal was filed Case No. 2013-00-1306

Appellate Appeal ran June 13, 2013 until dismissed December 3, 2013

Continued...

Payments Started **Old** **New**

January 2014 Balance $37,460.00 - $500.00 = $36,960.00 Money Order 20206481714

February 2014 Balance $36,960.00 - $500.00 = $36,460.00 Money Order 20206481703

March 2014 Balance $36,460.00 - $500.00 = $35,960.00 Money Order 20206481692

(March 2014 Foreclosure filed)

April 2014 Balance $35,960.00 - $500.00 = $35,460.00 Money Order 20216408534

May 2014 Balance $35,460.00 - $500.00 = $34,960.00 Money Order 20216408545

June 2014 Balance $34,960.00 - $500.00 = $34,460.00 Money Order 20216408556

July 2014 Balance $34,460.00 - $500.00 = $33,960.00 Money Order 21080419470

August 2014 Balance $33,960.00 - $500.00 = $33,460.00 Money Order 21080419457

September 2014 Balance $33,460.00 - $500.00 = $32,960.00 Money Order 21080419468

Harold Simmons, Jr.

Signature Harold Simmons Jr.



Exhibit #2 14-1635

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

RECEIVED
JAN 28 2016
Clk. of Court

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

November 10, 2015

U. S. MAIL ONLY

Honorable Mikell R. Scarborough
S.C. Master-In-Equity
100 Broad Street, Suite 266
Charleston, South Carolina 29401-2258

RE: ***Allen Livingston v. Harold Simmons***
Case No.: 2014-CP-10-1635
Original Amortization Schedule- For Review

Dear Judge Scarborough:

Per my email earlier, attached is the hard copy of the above-referenced for your review. Should you have any further questions or concerns, please contact me at the above.

Thank you for your anticipated assistance and cooperation.

Sincerely,
WHIPPER LAW FIRM

J. Seth Whipper, Esq.

JSW/lds

Enclosures

xc: Harold Simmons (w/o enclosures)

RECEIVED
NOV 12 2015
By ACSS

Livingston vs Simmons
Original Amortization Schedule
$125,000.00 at $500.00 per month at 0.00% interest

	Payment Date	Payment Amount	Cumulative Principal	Ending Balance
1	6/15/2000	$500.00	$500.00	$124,500.00
2	7/15/2000	$500.00	$1,000.00	$124,000.00
3	8/15/2000	$500.00	$1,500.00	$123,500.00
4	9/15/2000	$500.00	$2,000.00	$123,000.00
5	10/15/2000	$500.00	$2,500.00	$122,500.00
6	11/15/2000	$500.00	$3,000.00	$122,000.00
7	12/15/2000	$500.00	$3,500.00	$121,500.00
8	1/15/2001	$500.00	$4,000.00	$121,000.00
9	2/15/2001	$500.00	$4,500.00	$120,500.00
10	3/15/2001	$500.00	$5,000.00	$120,000.00
11	4/15/2001	$500.00	$5,500.00	$119,500.00
12	5/15/2001	$500.00	$6,000.00	$119,000.00
13	6/15/2001	$500.00	$6,500.00	$118,500.00
14	7/15/2001	$500.00	$7,000.00	$118,000.00
15	8/15/2001	$500.00	$7,500.00	$117,500.00
16	9/15/2001	$500.00	$8,000.00	$117,000.00
17	10/15/2001	$500.00	$8,500.00	$116,500.00
18	11/15/2001	$500.00	$9,000.00	$116,000.00
19	12/15/2001	$500.00	$9,500.00	$115,500.00
20	1/15/2002	$500.00	$10,000.00	$115,000.00
21	2/15/2002	$500.00	$10,500.00	$114,500.00
22	3/15/2002	$500.00	$11,000.00	$114,000.00
23	4/15/2002	$500.00	$11,500.00	$113,500.00
24	5/15/2002	$500.00	$12,000.00	$113,000.00
25	6/15/2002	$500.00	$12,500.00	$112,500.00
26	7/15/2002	$500.00	$13,000.00	$112,000.00
27	8/15/2002	$500.00	$13,500.00	$111,500.00

	Payment Date	Payment Amount	Cumulative Principal	Ending Balance
28	9/15/2002	$500.00	$14,000.00	$111,000.00
29	10/15/2002	$500.00	$14,500.00	$110,500.00
30	11/15/2002	$500.00	$15,000.00	$110,000.00
31	12/15/2002	$500.00	$15,500.00	$109,500.00
32	1/15/2003	$500.00	$16,000.00	$109,000.00
33	2/15/2003	$500.00	$16,500.00	$108,500.00
34	3/15/2003	$500.00	$17,000.00	$108,000.00
35	4/15/2003	$500.00	$17,500.00	$107,500.00
36	5/15/2003	$500.00	$18,000.00	$107,000.00
37	6/15/2003	$500.00	$18,500.00	$106,500.00
38	7/15/2003	$500.00	$19,000.00	$106,000.00
39	8/15/2003	$500.00	$19,500.00	$105,500.00
40	9/15/2003	$500.00	$20,000.00	$105,000.00
41	10/15/2003	$500.00	$20,500.00	$104,500.00
42	11/15/2003	$500.00	$21,000.00	$104,000.00
43	12/15/2003	$500.00	$21,500.00	$103,500.00
44	1/15/2004	$500.00	$22,000.00	$103,000.00
45	2/15/2004	$500.00	$22,500.00	$102,500.00
46	3/15/2004	$500.00	$23,000.00	$102,000.00
47	4/15/2004	$500.00	$23,500.00	$101,500.00
48	5/15/2004	$500.00	$24,000.00	$101,000.00
49	6/15/2004	$500.00	$24,500.00	$100,500.00
50	7/15/2004	$500.00	$25,000.00	$100,000.00
51	8/15/2004	$500.00	$25,500.00	$99,500.00
52	9/15/2004	$500.00	$26,000.00	$99,000.00
53	10/15/2004	$500.00	$26,500.00	$98,500.00
54	11/15/2004	$500.00	$27,000.00	$98,000.00
55	12/15/2004	$500.00	$27,500.00	$97,500.00
56	1/15/2005	$500.00	$28,000.00	$97,000.00
57	2/15/2005	$500.00	$28,500.00	$96,500.00
58	3/15/2005	$500.00	$29,000.00	$96,000.00
59	4/15/2005	$500.00	$29,500.00	$95,500.00

	Payment Date	Payment Amount	Cumulative Principal	Ending Balance
60	5/15/2005	$500.00	$30,000.00	$95,000.00
61	6/15/2005	$500.00	$30,500.00	$94,500.00
62	7/15/2005	$500.00	$31,000.00	$94,000.00
63	8/15/2005	$500.00	$31,500.00	$93,500.00
64	9/15/2005	$500.00	$32,000.00	$93,000.00
65	10/15/2005	$500.00	$32,500.00	$92,500.00
66	11/15/2005	$500.00	$33,000.00	$92,000.00
67	12/15/2005	$500.00	$33,500.00	$91,500.00
68	1/15/2006	$500.00	$34,000.00	$91,000.00
69	2/15/2006	$500.00	$34,500.00	$90,500.00
70	3/15/2006	$500.00	$35,000.00	$90,000.00
71	4/15/2006	$500.00	$35,500.00	$89,500.00
72	5/15/2006	$500.00	$36,000.00	$89,000.00
73	6/15/2006	$500.00	$36,500.00	$88,500.00
74	7/15/2006	$500.00	$37,000.00	$88,000.00
75	8/15/2006	$500.00	$37,500.00	$87,500.00
76	9/15/2006	$500.00	$38,000.00	$87,000.00
77	10/15/2006	$500.00	$38,500.00	$86,500.00
78	11/15/2006	$500.00	$39,000.00	$86,000.00
79	12/15/2006	$500.00	$39,500.00	$85,500.00
80	1/15/2007	$500.00	$40,000.00	$85,000.00
81	2/15/2007	$500.00	$40,500.00	$84,500.00
82	3/15/2007	$500.00	$41,000.00	$84,000.00
83	4/15/2007	$500.00	$41,500.00	$83,500.00
84	5/15/2007	$500.00	$42,000.00	$83,000.00
85	6/15/2007	$500.00	$42,500.00	$82,500.00
86	7/15/2007	$500.00	$43,000.00	$82,000.00
87	8/15/2007	$500.00	$43,500.00	$81,500.00
88	9/15/2007	$500.00	$44,000.00	$81,000.00
89	10/15/2007	$500.00	$44,500.00	$80,500.00
90	11/15/2007	$500.00	$45,000.00	$80,000.00
91	12/15/2007	$500.00	$45,500.00	$79,500.00

	Payment Date	Payment Amount	Cumulative Principal	Ending Balance
92	1/15/2008	$500.00	$46,000.00	$79,000.00
93	2/15/2008	$500.00	$46,500.00	$78,500.00
94	3/15/2008	$500.00	$47,000.00	$78,000.00
95	4/15/2008	$500.00	$47,500.00	$77,500.00
96	5/15/2008	$500.00	$48,000.00	$77,000.00
97	6/15/2008	$500.00	$48,500.00	$76,500.00
98	7/15/2008	$500.00	$49,000.00	$76,000.00
99	8/15/2008	$500.00	$49,500.00	$75,500.00
100	9/15/2008	$500.00	$50,000.00	$75,000.00
101	10/15/2008	$500.00	$50,500.00	$74,500.00
102	11/15/2008	$500.00	$51,000.00	$74,000.00
103	12/15/2008	$500.00	$51,500.00	$73,500.00
104	1/15/2009	$500.00	$52,000.00	$73,000.00
105	2/15/2009	$500.00	$52,500.00	$72,500.00
106	3/15/2009	$500.00	$53,000.00	$72,000.00
107	4/15/2009	$500.00	$53,500.00	$71,500.00
108	5/15/2009	$500.00	$54,000.00	$71,000.00
109	6/15/2009	$500.00	$54,500.00	$70,500.00
110	7/15/2009	$500.00	$55,000.00	$70,000.00
111	8/15/2009	$500.00	$55,500.00	$69,500.00
112	9/15/2009	$500.00	$56,000.00	$69,000.00
113	10/15/2009	$500.00	$56,500.00	$68,500.00
114	11/15/2009	$500.00	$57,000.00	$68,000.00
115	12/15/2009	$500.00	$57,500.00	$67,500.00
116	1/15/2010	$500.00	$58,000.00	$67,000.00
117	2/15/2010	$500.00	$58,500.00	$66,500.00
118	3/15/2010	$500.00	$59,000.00	$66,000.00
119	4/15/2010	$500.00	$59,500.00	$65,500.00
120	5/15/2010	$500.00	$60,000.00	$65,000.00
121	6/15/2010	$500.00	$60,500.00	$64,500.00
122	7/15/2010	$500.00	$61,000.00	$64,000.00
123	8/15/2010	$500.00	$61,500.00	$63,500.00

	Payment Date	Payment Amount	Cumulative Principal	Ending Balance
124	9/15/2010	$500.00	$62,000.00	$63,000.00
125	10/15/2010	$500.00	$62,500.00	$62,500.00
126	11/15/2010	$500.00	$63,000.00	$62,000.00
127	12/15/2010	$500.00	$63,500.00	$61,500.00
128	1/15/2011	$500.00	$64,000.00	$61,000.00
129	2/15/2011	$500.00	$64,500.00	$60,500.00
130	3/15/2011	$500.00	$65,000.00	$60,000.00
131	4/15/2011	$500.00	$65,500.00	$59,500.00
132	5/15/2011	$500.00	$66,000.00	$59,000.00
133	6/15/2011	$500.00	$66,500.00	$58,500.00
134	7/15/2011	$500.00	$67,000.00	$58,000.00
135	8/15/2011	$500.00	$67,500.00	$57,500.00
136	9/15/2011	$500.00	$68,000.00	$57,000.00
137	10/15/2011	$500.00	$68,500.00	$56,500.00
138	11/15/2011	$500.00	$69,000.00	$56,000.00
139	12/15/2011	$500.00	$69,500.00	$55,500.00
140	1/15/2012	$500.00	$70,000.00	$55,000.00
141	2/15/2012	$500.00	$70,500.00	$54,500.00
142	3/15/2012	$500.00	$71,000.00	$54,000.00
143	4/15/2012	$500.00	$71,500.00	$53,500.00
144	5/15/2012	$500.00	$72,000.00	$53,000.00
145	6/15/2012	$500.00	$72,500.00	$52,500.00
146	7/15/2012	$500.00	$73,000.00	$52,000.00
147	8/15/2012	$500.00	$73,500.00	$51,500.00
148	9/15/2012	$500.00	$74,000.00	$51,000.00
149	10/15/2012	$500.00	$74,500.00	$50,500.00
150	11/15/2012	$500.00	$75,000.00	$50,000.00
151	12/15/2012	$500.00	$75,500.00	$49,500.00
152	1/15/2013	$500.00	$76,000.00	$49,000.00
153	2/15/2013	$500.00	$76,500.00	$48,500.00
154	3/15/2013	①$500.00	$77,000.00	$48,000.00
155	4/15/2013	②$500.00	$77,500.00	$47,500.00

	Payment Date	Payment Amount	Cumulative Principal	Ending Balance
156	5/15/2013	$500.00	$78,000.00	$47,000.00
157	6/15/2013	$500.00	$78,500.00	$46,500.00
158	7/15/2013	$500.00	$79,000.00	$46,000.00
159	8/15/2013	$500.00	$79,500.00	$45,500.00
160	9/15/2013	$500.00	$80,000.00	$45,000.00
161	10/15/2013	$500.00	$80,500.00	$44,500.00
162	11/15/2013	$500.00	$81,000.00	$44,000.00
163	12/15/2013	$500.00	$81,500.00	$43,500.00
164	1/15/2014	$500.00	$82,000.00	$43,000.00
165	2/15/2014	$500.00	$82,500.00	$42,500.00
166	3/15/2014	$500.00	$83,000.00	$42,000.00
167	4/15/2014	$500.00	$83,500.00	$41,500.00
168	5/15/2014	$500.00	$84,000.00	$41,000.00
169	6/15/2014	$500.00	$84,500.00	$40,500.00
170	7/15/2014	$500.00	$85,000.00	$40,000.00
171	8/15/2014	$500.00	$85,500.00	$39,500.00
172	9/15/2014	$500.00	$86,000.00	$39,000.00
173	10/15/2014	$500.00	$86,500.00	$38,500.00
174	11/15/2014	$500.00	$87,000.00	$38,000.00
175	12/15/2014	$500.00	$87,500.00	$37,500.00
176	1/15/2015	$500.00	$88,000.00	$37,000.00
177	2/15/2015	$500.00	$88,500.00	$36,500.00
178	3/15/2015	$500.00	$89,000.00	$36,000.00
179	4/15/2015	$500.00	$89,500.00	$35,500.00
180	5/15/2015	$500.00	$90,000.00	$35,000.00
181	6/15/2015	$500.00	$90,500.00	$34,500.00
182	7/15/2015	$500.00	$91,000.00	$34,000.00
183	8/15/2015	$500.00	$91,500.00	$33,500.00
184	9/15/2015	$500.00	$92,000.00	$33,000.00
185	10/15/2015	$500.00	$92,500.00	$32,500.00
186	11/15/2015	$500.00	$93,000.00	$32,000.00
187	12/15/2015	$500.00	$93,500.00	$31,500.00

	Payment Date	Payment Amount	Cumulative Principal	Ending Balance
188	1/15/2016	$500.00	$94,000.00	$31,000.00
189	2/15/2016	$500.00	$94,500.00	$30,500.00
190	3/15/2016	$500.00	$95,000.00	$30,000.00
91	4/15/2016	$500.00	$95,500.00	$29,500.00
192	5/15/2016	$500.00	$96,000.00	$29,000.00
193	6/15/2016	$500.00	$96,500.00	$28,500.00
194	7/15/2016	$500.00	$97,000.00	$28,000.00
195	8/15/2016	$500.00	$97,500.00	$27,500.00
196	9/15/2016	$500.00	$98,000.00	$27,000.00
197	10/15/2016	$500.00	$98,500.00	$26,500.00
198	11/15/2016	$500.00	$99,000.00	$26,000.00
199	12/15/2016	$500.00	$99,500.00	$25,500.00
200	1/15/2017	$500.00	$100,000.00	$25,000.00
201	2/15/2017	$500.00	$100,500.00	$24,500.00
202	3/15/2017	$500.00	$101,000.00	$24,000.00
203	4/15/2017	$500.00	$101,500.00	$23,500.00
204	5/15/2017	$500.00	$102,000.00	$23,000.00
205	6/15/2017	$500.00	$102,500.00	$22,500.00
206	7/15/2017	$500.00	$103,000.00	$22,000.00
207	8/15/2017	$500.00	$103,500.00	$21,500.00
208	9/15/2017	$500.00	$104,000.00	$21,000.00
209	10/15/2017	$500.00	$104,500.00	$20,500.00
210	11/15/2017	$500.00	$105,000.00	$20,000.00
211	12/15/2017	$500.00	$105,500.00	$19,500.00
212	1/15/2018	$500.00	$106,000.00	$19,000.00
213	2/15/2018	$500.00	$106,500.00	$18,500.00
214	3/15/2018	$500.00	$107,000.00	$18,000.00
215	4/15/2018	$500.00	$107,500.00	$17,500.00
216	5/15/2018	$500.00	$108,000.00	$17,000.00
217	6/15/2018	$500.00	$108,500.00	$16,500.00
218	7/15/2018	$500.00	$109,000.00	$16,000.00
219	8/15/2018	$500.00	$109,500.00	$15,500.00

	Payment Date	Payment Amount	Cumulative Principal	Ending Balance
220	9/15/2018	$500.00	$110,000.00	$15,000.00
221	10/15/2018	$500.00	$110,500.00	$14,500.00
222	11/15/2018	$500.00	$111,000.00	$14,000.00
223	12/15/2018	$500.00	$111,500.00	$13,500.00
224	1/15/2019	$500.00	$112,000.00	$13,000.00
225	2/15/2019	$500.00	$112,500.00	$12,500.00
226	3/15/2019	$500.00	$113,000.00	$12,000.00
227	4/15/2019	$500.00	$113,500.00	$11,500.00
228	5/15/2019	$500.00	$114,000.00	$11,000.00
229	6/15/2019	$500.00	$114,500.00	$10,500.00
230	7/15/2019	$500.00	$115,000.00	$10,000.00
231	8/15/2019	$500.00	$115,500.00	$9,500.00
232	9/15/2019	$500.00	$116,000.00	$9,000.00
233	10/15/2019	$500.00	$116,500.00	$8,500.00
234	11/15/2019	$500.00	$117,000.00	$8,000.00
235	12/15/2019	$500.00	$117,500.00	$7,500.00
236	1/15/2020	$500.00	$118,000.00	$7,000.00
237	2/15/2020	$500.00	$118,500.00	$6,500.00
238	3/15/2020	$500.00	$119,000.00	$6,000.00
239	4/15/2020	$500.00	$119,500.00	$5,500.00
240	5/15/2020	$500.00	$120,000.00	$5,000.00
241	6/15/2020	$500.00	$120,500.00	$4,500.00
242	7/15/2020	$500.00	$121,000.00	$4,000.00
243	8/15/2020	$500.00	$121,500.00	$3,500.00
244	9/15/2020	$500.00	$122,000.00	$3,000.00
245	10/15/2020	$500.00	$122,500.00	$2,500.00
246	11/15/2020	$500.00	$123,000.00	$2,000.00
247	12/15/2020	$500.00	$123,500.00	$1,500.00
248	1/15/2021	$500.00	$124,000.00	$1,000.00
249	2/15/2021	$500.00	$124,500.00	$500.00
250	3/15/2021	$500.00	$125,000.00	$0.00

Harold Lee

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT E

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit E

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
ALLEN LIVINGSTON,	)	CASE NO.: 2008-CP-10-270
	)	
Plaintiff,	)	
	)	
vs.	)	[redacted] ORDER
	)	
HAROLD SIMMONS,	)	
	)	
Defendant.	)	
	)	

FILED
2008 JUL -2 AM 10:52
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER CAME ON for the Court's consideration on May 5, 2008 upon Plaintiff Allen Livingston's amended motion for writ of ejectment and rule to vacate or show cause, pursuant to S.C. Code Ann. § 27-37-10, *et seq.*, in the above-captioned suit.

IT APPEARS, and I so find, that on or about June 15, 2000 Plaintiff and Defendant entered into a commercial property lease agreement, with a one (1) year option to purchase, Plaintiff's property located at 3042 North Carolina Avenue, in North Charleston, South Carolina.

IT FURTHER APPEARS, and I so find, that Defendant did not exercise the option to purchase the said property during the one (1) year, that it expired on June 15, 2001, and that subsequently the parties' commercial lease arrangement became a month to month rental agreement and continued in this manner for the past seven years.

#1 T.L.H.

IT FURTHER APPEARS, and I so find, that on October 9, 2007 Plaintiff originally filed an affidavit and application for ejectment and rule to vacate or show cause in the Magistrate Court for Charleston County, moving that the Court eject Defendant from the

E

premises for his continued failure to pay rent, for his failure to maintain the premises in good condition, and because the lease tenancy period had expired.[1]

IT FURTHER APPEARS, and I so find, that before this matter was removed to the Circuit Court (based upon Defendant's Return of January 4, 2008),[2] the Magistrate held a hearing and on December 31, 2007 issued an Order finding that Defendant owes Plaintiff monthly rent and that Defendant was to begin depositing monthly rent with the Court on or before January 4, 2008 and again on or before January 15, 2008.

IT FURTHER APPEARS, and I so find, that on January 15, 2008 the Magistrate removed the case to the Circuit Court, pursuant to Rule 13 (j), SCRCP, and that at the hearing on May 5, 2008 this Court also found that Defendant was obligated to continue to pay and deposit rent with the Court.

IT FURTHER APPEARS, and I so find, that Defendant appeared at the May 5, 2008 hearing, in response to Plaintiff's Amended Motion for Writ of Ejectment and Rule to Vacate or Show Cause, and that the Court determined, contrary to Defendant's allegations, that rent continues to be owed and due the Plaintiff.

IT FURTHER APPEARS, and I so find, that since the May 5, 2008 hearing Defendant has continued in his failure to pay rent for the use and occupation of Plaintiff's commercial property and that Defendant continues to occupy and not pay rent for the use

#2 T.L.F.

[1] Plaintiff also averred in his amended motion, pursuant to the terms and conditions of the lease, (on file with the Court), that Defendant has failed to maintain public liability insurance on Plaintiff's property (or has failed to provide proof thereof) in a minimum amount of Three Hundred Thousand and No/100 Dollars ($300,000.00), putting an undue risk, burden, and liability upon Plaintiff, that Defendant has never paid any property taxes on Plaintiff's property, that the accumulation of waste and refuse on Plaintiff's property is causing probable health and safety liabilities upon Plaintiff, and that Defendant admitted that he fabricated receipts of rent that he dated in the future and that he put Plaintiff's signature on. Copies of the receipts are on file with the Court.

[2] Defendant denied that he owed rent in his Return; however, the Magistrate Court found that Defendant did in fact owe rent and ordered Defendant to begin making monthly deposits of Five Hundred Dollars and No/100 ($500.00) to the Clerk of Court.

E

and occupation of Plaintiff's commercial property, as it becomes due, as it is and has been demanded by Plaintiff, and as the Court has ordered.

IT FURTHER APPEARS, and I so find, that, pursuant to S.C. Code Ann. § 27-37-155 (B) (3) (Supp. 2007), a warrant of ejectment will be issued, Defendant will be considered ejected from the premises upon the signing of this Order, and that Plaintiff will be placed in full and immediate possession of the premises within 24 hours of presenting a copy of the signed Order to either the sheriff, deputy or constable for Charleston County.

IT FURTHER APPEARS, and I so find, that Plaintiff is entitled to all past and currently due rent, plus prejudgment and postjudgment interest, any and all additional monies that Defendant owes Plaintiff, including but not necessarily limited to, those required for reasonable repair of any existing property damage, and for the amount of reasonable costs and expenses that Plaintiff has incurred because of having to commence this litigation.

IT IS, THEREFORE, ORDERED:

1. That Defendant Harold Simmons, pursuant to S.C. Code Ann. § 27-37-155 (B) (3) (Supp. 2007), is hereby and immediately ejected from the Plaintiff Allen Livingston's commercial property located at 3042 North Carolina Avenue, in North Charleston, South Carolina and that, with a copy of this Order provided, the sheriff, deputy or constable for Charleston County shall eject Defendant Simmons from Plaintiff's property and place Plaintiff in full possession of his property within 24 hours of being provided with the copy of the signed Order;

#3 T.L.H.

E D

2. That Plaintiff Allen Livingston is awarded all past and currently due rent, plus prejudgment and postjudgment interest, any and all additional monies that are determined to be owed Plaintiff, including but not necessarily limited to, those required for the reasonable repair of any existing property damage on Plaintiff's property, and in an amount to compensate Plaintiff for his reasonable costs and expenses incurred because of having to commence and participate in this litigation; and

3. That Plaintiff Livingston and Defendant Simmons are both permitted to institute any and all post-judgment remedies to the full extent provided by the applicable law of the State of South Carolina.

AND IT IS SO ORDERED.

#4

T. L. Hughston

Thomas L. Hughston, Jr.
Judge of the Court of Common Pleas
For the Ninth Judicial Circuit

Charleston, South Carolina
Date: June 30, 2008

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By Becky Spanner
DEPUTY CLERK

Exhibit E

LEATH, BOUCH & CRAWFORD LLP
PRACTICE LIMITED TO COMMERCIAL LITIGATION & CREDITORS RIGHTS
WITH EMPHASIS ON CONSTRUCTION & ENVIRONMENTAL LAW

July 11, 2008

VIA HAND-DELIVERY
Ms. Dianna Brown
Charleston County Sheriff's Office
100 Broad Street, Suite 381
Charleston, South Carolina 29401

RE: Allen Livingston v. Harold Simmons
Case No.: 2007-CI-67-1769

Dear Brown:

Enclosed you will please find a true and accurate copy of an ORDER for ejectment in connection with the above-captioned matter.

As we discussed, and in accordance with the Sheriff's office ejectment policy, please serve Defendant Harold Simmons with the ORDER and make certain that Defendant Harold Simmons is ejected from the said premises at 3042 North Carolina Avenue, North Charleston, SC as soon as possible and without delay.

Enclosed you also will please find a check in the amount of $25.00 made payable to the Charleston County Sheriff to cover the service of process fee in this matter.

By copy of this letter, I am serving counsel of record with a copy of the same.

Thank you very much for all of your attention and assistance in this matter.

With kind personal regards, I remain,

Sincerely yours,
LEATH BOUCH CRAWFORD
& von KELLER, LLP

Jeffrey A. Barnwell

Enclosures: (stated)
Cc w/encl. Allen Livingston
J. Seth Whipper, Esq.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT F

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit F+G E

IN THE STATE OF SOUTH CAROLINA,	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY	CASE NUMBER 08-CP-10-0270
ALLEN LIVINGSTON,	
Plaintiff,	
vs.	**ORDER**
HAROLD SIMMONS,	
Defendant.	

FILED
2008 AUG 14 PM 26
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This case is before me on Motion of the Defendant for me to Reconsider my Order of June 30, 2008. I grant the Motion and that Order is of no further force. The following is now the Order in this case.

This is an ejectment action brought in Magistrate's Court on or about October 9, 2007. Plaintiff alleges Defendant owes over $7,000.00 in rent and has violated other terms of the rental contract. Defendant denies that, says he has paid all he owes Plaintiff, and claims he is purchasing the property, not renting. Plaintiff denies Defendant's claims.

This case was transferred to this Court by the Magistrate on January 16, 2008, because the Magistrate thought the issue of rent vs. sale was not in the jurisdiction of the Magistrate's Court.

This case then came before me on Plaintiff's Motion to Amend the Application for Ejectment--actually two Motions--one of December 4, 2007, and another of April 4, 2008.

I should have simply granted those Motions and I do so now. Plaintiff's Motions to Amend his Affidavit and Application for Ejectment is granted.

This case is to be scheduled for a trial by the Clerk of Court at the earliest possible time. In the meantime, the Clerk of Court is Ordered to pay the $1,000.00 transferred as Trust Bond by

the Magistrate on January 16, 2008, to Plaintiff. He is entitled to this whether it is rent or purchase money. Also, Defendant must pay Plaintiff $3,500.00 by August 31, 2008, representing either rent or purchase money due Plaintiff for February through August, 2008. Thereafter, until this case is ended, Defendant shall pay Plaintiff $500.00 each month by the 15th day of the month as per their agreement.

In looking through the file, I note that the Magistrate put this on his schedule for a jury trial though I can find no request from either party for a jury trial. Unless a jury trial has been requested in writing and this fact is established before me within 30 days from today, the Clerk shall transfer this case to the non-jury roster for trial.

For the reasons stated above, the Order of June 30, 2008, is withdrawn and this Order shall direct the parties and trial of this case.

IT IS SO ORDERED.

August 14, 2008
Charleston, South Carolina

T. L. Hughston, Jr.
Thomas L. Hughston, Jr., Presiding Judge

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT G

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT H

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit H

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ALLEN LIVINGSTON, Plaintiff, versus HAROLD SIMMONS, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2008-CP-10-270 AFFIDAVIT

PERSONALLY appeared before me **SANDRA M. CLIFFORD**, who, after being duly sworn, deposes and says as follows:

1. I am employed with the Clerk of Court for Charleston County, South Carolina, and my position is Accounting Division Supervisor;

2. On occasion, I am required to assist the counter personnel with problems, issues, or unusual situations;

3. This year I was asked to clarify a policy to a gentleman who I now know to be Harold Simmons;

4. Our policy relative to receiving monies directed to be paid to or through the Clerk's office is that an Order must be filed in that particular case and state what amount should be paid, when it should be paid, who should receive it, and who should be credited with making the payment;

5. Mr. Simmons came to the Clerk's office twice to make a payment pursuant to a ruling announced in Court; both times we had to refuse the payment because we did not have an Order in the record.

6. Of the two times Mr. Simmons came to the Clerk's office regarding the payments, I spoke with him directly on only one of those occasions.

FURTHER AFFIANT SAYETH NOT.

Sandra M. Clifford
SANDRA M. CLIFFORD, AFFIANT

SWORN to before me this 2nd day of September, 2008.

Notary Public for South Carolina
My Commission Expires: 9-16-2014

WHIPPER LAW FIRM

Attorneys and Counselors at Law
4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

September 4, 2008

Clerk of Court
Charleston County Court of Common Pleas
100 Broad Street, Suite 106
Charleston, South Carolina 29401

Re: *Allen Livingston v. Harold Simmons*
Case Number: 2008-CP-10-270
Affidavit – ***For Filing***

Dear Madam or Sir:

Find enclosed one original and two copies each of the above-referenced for filing and conforming. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

Thank you for your anticipated assistance and cooperation.

Sincerely,

WHIPPER LAW FIRM

J. Seth Whipper, Esquire

JSW/lnc

Enclosures

xc: Harold Simmons (w/enclosure)

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT 1

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit F

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

October 9, 2008

Jeffrey A. Barnwell, Esq.
BARNWELL LAW FIRM, PC
171 Church Street, Suite 160
Charleston, South Carolina 29401

Re: *Livingston v. Simmons*
Case No.: 2008-CP-10-270

Dear Mr. Barnwell:

In our discussions regarding settlement, what I attempted to convey was that my guy did not have a lump sum totaling $80,000.00. He is fully prepared to execute the agreement as negotiated and on the terms set out in the contract.

Please govern your actions accordingly.

Sincerely,

WHIPPER LAW FIRM

J. Seth Whipper, Esquire

JSW/lnc

xc: Harold Simmons

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT J

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit J

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day, 2014	Post Office	Amount	Clerk
20206481714	2012-09-10	294051	$500.00	0012

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day 2014	Post Office	Amount	Clerk
20206481703	2012-09-10	294051	$500.00	0012

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day 2014	Post Office	Amount	Clerk
20206481692	2012-09-10	294051	$500.00	0012

Add'ds

E 2

RECEIPT DATE 9/1/12 No. 887401

RECEIVED FROM HAROLD SIMMONS $500.00

FIVE HUNDRED DOLLARS AND —00/100 DOLLARS

○ FOR RENT
○ FOR 20206481714

ACCOUNT		
PAYMENT		
BAL. DUE		

◎ CASH
◎ CHECK
◎ MONEY ORDER
◎ CREDIT CARD

FROM _____ TO _____

BY [signature]

RECEIPT DATE 9/1/12 No. 887402

RECEIVED FROM HAROLD SIMMONS $500.00

FIVE HUNDRED DOLLARS AND —00/100 DOLLARS

○ FOR RENT
○ FOR 20206481703

ACCOUNT		
PAYMENT		
BAL. DUE		

◎ CASH
◎ CHECK
◎ MONEY ORDER
◎ CREDIT CARD

FROM _____ TO _____

BY [signature]

RECEIPT DATE 9/1/12 No. 887403

RECEIVED FROM HAROLD SIMMONS $500.00

FIVE HUNDRED DOLLARS AND —00/100 DOLLARS

○ FOR RENT
○ FOR 20206481692

ACCOUNT		
PAYMENT		
BAL. DUE		

◎ CASH
◎ CHECK
◎ MONEY ORDER
◎ CREDIT CARD

FROM _____ TO _____

BY [signature]

Add ads

E 5

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20216408534	2014 2012-10-22	294051	$500.00	0010

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20216408545	2014 2012-10-22	294051	$500.00	0010

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20216408556	2014 2012-10-22	294051	$500.00	0010

RECEIPT DATE 10/22/2012 No. 887414

RECEIVED FROM Harold Simmons $ 500.00

Five hundred and no/100 DOLLARS

○ FOR RENT
○ FOR Jeff Barnwell

ACCOUNT		
PAYMENT	500	00
BAL. DUE		

● CASH ● CHECK ● MONEY ORDER ● CREDIT CARD

USPS # 2021640853 4

FROM TO

BY A Jurn

RECEIPT DATE 10/22/2012 No. 887415

RECEIVED FROM Harold Simmons $ 500.00

Five hundred and no/100 DOLLARS

○ FOR RENT
○ FOR Jeff Barnwell

ACCOUNT		
PAYMENT	500	00
BAL. DUE		

● CASH ● CHECK ● MONEY ORDER ● CREDIT CARD

USPS # 2021640854 5

FROM TO

BY A Jurn

RECEIPT DATE 10/22/2012 No. 887416

RECEIVED FROM Harold Simmons $ 500.00

Five hundred and no/100 DOLLARS

○ FOR RENT
○ FOR Jeff Barnewell

ACCOUNT		
PAYMENT	500	00
BAL. DUE		

● CASH ● CHECK ● MONEY ORDER ● CREDIT CARD

USPS # 2021640855 6

FROM TO

BY A Jurn

E 5

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
2108041947O	2013-05-04	294051	$500.00	0012

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
2108041945 7	2013-05-04	294051	$500.00	0012

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
2108041946 8	2013-05-04	294051	$500.00	0012

BARNWELL LAW FIRM PC
147 WAPPOO CREEK DRIVE
SUITE 104
CHARLESTON SC 29412

PHONE CALL

FOR Harold Simmons DATE 5-9-13 TIME 11:2 A.M. P.M.
M money order
OF $500 #2108041947O
PHONE/ MOBILE
MESSAGE mortgage payment
check. (Jeffry)
Allen Lingston & Barnwell
SIGNED Law Roxane Kirby 1154

- TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

ARNWELL LAW FIRM PC
47 WAPPOO CREEK DRIVE
UITE 104
HARLESTON SC 29412

PHONE CALL

FOR Harold Simmons DATE 5-9-13 TIME 11:2 A.M. P.M.
M money order
OF $500 #2108041945 7
PHONE/ MOBILE
MESSAGE (Jeffry)
Mortgage payment
Allen Lingston &
Barnwell Law Firm
(Jeffry Barnwell)
SIGNED Roxane Kirby 1154

- TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

ARNWELL LAW FIRM PC
47 WAPPOO CREEK DRIVE
UITE 104
HARLESTON SC 29412

PHONE CALL

FOR Harold Simmons DATE 5-9-13 TIME 11:21 A.M. P.M.
M mony order
OF $500 # 210.8041446 8
PHONE/ MOBILE
MESSAGE (Jeffry)
Mortgage Payment
Allen Lingston &
Barnwell Law Firm
(Jeffry Barnwell)
SIGNED Roxane Kirby 1154

- TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT K

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit K

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2010-CP-10-8027

Allen Livingston
PLAINTIFF(S)

Harold Simmons
DEFENDANT(S)

Submitted by: _____

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

FILED
2013 FEB 21 AM 11:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **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 LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer *to the official court order for judgment details.***

J. Michelle _____ 2117 2/20/13
Circuit Court Judge — Judge Code — Date

SCRCP Form 4C (12/2011)

Exhibit K

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ALLEN LIVINGSTON, Plaintiff, versus HAROLD SIMMONS, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2010-CP-10-8027 PROPOSED ORDER

FILED
2013 FEB 27 AM 11:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THE WITHIN MATTER came before this Court after restoration to the trial docket on a Motion to Restore filed on September 14, 2010 pursuant to a Rule 40(j) dismissal on January 13, 2010. The Court has heard testimony and argument for nearly two (2) days and has received numerous exhibits. This case presented major issues regarding the credibility of the parties and the conflicting recollections of the litigants and the witnesses.

Plaintiff appeared represented by counsel and presented witnesses (2) to support the waste allegations in his claim. Defendant appeared represented by counsel, calling one witness in support of his counterclaim and defense.

This case centers on the issue of whether the Defendant has substantially performed his agreement under the contract negotiated by the parties on June 15, 2000. This matter began as an ejectment action in the Summary Court. Plaintiff alleged that Defendant failed to pay rent when due and demanded for the period beginning 2005 through October 2007. Defendant denied fault and counterclaimed for damages and specific performance on the bases that the agreement executed by the parties was an installment land contract.

To determine the nature of their relationship, this Court considered documents submitted by each party that were alleged to set out the terms of their agreement. After careful consideration of those documents, which were two versions of the contract signed by the parties, this Court determined that the document offered by Mr. Simmons was the original agreement and the best evidence of their expectations since it contained original signatures from both parties and the original signatures of a witness. Real property is often sold under contracts that provide for the payment of the purchases in a series of installments. "These contracts, usually termed installment land contracts, are drafted in many ways. Typically, the vendor retains legal title to the property until all of the purchase price has been paid.". . . Lewis v. Premium Investment Corporation, 351 S.C. 167, 568 S. E. 2d 361 (2002). Basic contact law provides that when a contract is clear and unambiguous, the language alone determines the

contracts' force and effect. C.A.N Enterprises, Inc. v. South Carolina Health & Human Services Fin. Commissions, 296 S.C. 373, 373 S.E. 2d 584 (1988).

The Defendant contends that, in fact, he has paid against the principle in advance by making payments at a higher and faster rate than required under the contact. Mr. Simmons' primary proof for his position is the example where Plaintiff alleges a default in payments during the year of 2007 yet the evidence (Defendant's Ex.) indicates that Mr. Simmons paid $500.00 beyond what was required for the period alleged. Mr. Simmons testified that during the length of the contract he would pay at a higher or faster rate in order to protect himself from defaulting on the payments. Defendant tendered his entire collection of receipts for the contested period of payment. This record of payment totaled $87,540.00. A comparison of the chronological pay period utilizing the contract rate against Defendant's record of payment reveals that Mr. Simmons at the time of trial had paid $16,040.00 beyond what was required under the contract. Our Court of Appeals has specifically held that in an installment land contract, the vendee in possession of the land is considered the owner of an equitable interest in the property. Southern Pole Buildings, Inc. v. Williams, 289 S.C. 521, 347 S. E. 2d 121 (Ct. App. 1986), See also, Lewis v. Premium Investment Corporation, supra, footnote 4.

Actions to foreclose or cancel and instrument are actions in equity. Wilder Corporation v. Wilke, 324 S.C. 570, 576, 479 S.E. 2d 510, 513 (1996). The courts of South Carolina have long held that forfeitures or penalties are not favored in either law or equity. Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E. 2d 697 (Ct. App. 2006) reh. den. (May 2006), citing Lewis v. Premium Investment Corporation, supra.

The theory of equitable conversion provides that under an executory contract for the sale of real estate, the equitable estate passes to the purchaser and the bare legal title for security purposes remains in the vendor. Brooks v. Council of Co-Owners of Stones Throw Horizontal Property Regime 1. 315 S.C. 474, 476, 445 S. E. 2d 630, 632 (1994) citing 8A George W. Thompson, Commentaries on the Modern Law of Real Property § 4447 (1963). Despite Mr. Simmons' struggles, his efforts to successfully satisfy his obligations are impressive, fundamentally, and significant, legally. Earlier during argument of counsel, defense counsel objected to the treatment of the list of conditions on page four of the contract as applicable to the Defendant buyer. Counsel argues that once Defendant became a buyer, those conditions no longer applied to the Defendant. In light of the doctrine of equitable conversion and review of the content of those conditions, this Court is convinced that those conditions are inapplicable to an equitable owner and possessor of the property, excepting the requirement for insuring the property.

Defendant contends that plaintiff was aware of the Defendant's change from tenant to purchaser because practically every receipt and payment instrument is designated for 'mortgage'. Mr. Simmons has been very fastidious in recording the matter of payment and, but for his records, there would be no recollection. Plaintiff admitted that he kept no records of their transactions. Mr. Simmons demonstrates an approach that reflects the essence of this agreement: a substantial amount of money would be spent for a major property but the transaction involved a diminis scale, i.e. no major lender and $500.00 per month payments.

Plaintiff offered no evidence or testimony of making demand for payment. The 'mortgage' can be clearly seen on the money orders Mr. Simmons used for payment. The "mortgagee" notation can be seen on the Defendant's exhibit showing deposits into Plaintiff's Wells Fargo/Wachovia account as early as 2005 and Mr. Simmons' receipts show this notation as early as 2002. Plaintiff's behavior in accepting these payments under the circumstances evidenced convinced Mr. Simmons that the building at North Carolina Avenue would one day be his. "The principal that the vendee becomes the equitable owner of real property while the contract is still executory was established for the purpose of enabling him to resort to a court of equity for the protection of his rights, on the ground that a mere action for damages arising from a breach of the contract by the vendor would not afford him equitable relief." Good v. Jarrard, 93 S.C. 229, 236, 76 S.E. 2d 698, 701 (1912). In this instance the vendor's breach is the ejectment action taken without due cause.

Plaintiff initiated this action alleging default in payment and some opinion regarding the building; subsequently, he amended his complaint to include alleged other failure. After reviewing the exhibits, this Court is not convinced that Mr. Simmons has done anything to depreciate the value of the property. According to the County Tax Assessor, the property's value has increased appreciably. All testimony describes the building as a once vacant structure with very sparse amenities. Mr. Simmons added a room for an office so there was some improvement. There has been no claim for insurance payment so that item is not material to this action, nor the contractual relationship. Plaintiff claims a loss in relation to his payment of property taxes. At no time did he complain to Mr. Simmons about the property taxes or seek clarification as to who was responsible for these tax payments. In light of Mr. Simmons' constant use of the "mortgage" term, it would seem that a discussion regarding taxes and insurance would have occurred. Plaintiff is an experienced and well-established business man who knows the relative value of "allowed business deductions" and probably appreciated the availalibility of these expenses. So the behavior of seeking an ejectment appears like "eating your cake and having it too."

Therefore, credibility remains a big issue in this case; from the considerations involving which version of the contract to the Plaintiff's selective memory on many issues of fact. This Court has been troubled with his version of the facts. His original allegations regarding non-payment between both 2005 and 2007 being revealed to be substantially incorrect and as to the year of 2007 as being entirely inaccurate, and then a crucial factor in looking at the version of the contract is how the front page of Plaintiff's contract contains the wrong address for the subject property and on subsequent pages involving the term for Mr. Simmons' period to make payments being left completely out of the version put forward by the Plaintiff. This tells this Court that there is a proper place for equity in its considerations.

Mr. Simmons has requested relief under the theory of specific performance and that is proper in a matter of equity. He has also requested relief under the theory of unjust enrichment and that is also proper in an equitable action. Under the facts shown the most appropriate relief is specific performance. It is my confirmed opinion that the Defendant should be allowed the relief that he has requested. Hence I am ordering that the transaction be carried out as agreed upon to include Mr. Simmons assuming all of the responsibilities of the purchaser under their agreement as stated in Defendant's contract (Ex.) including the payment of property taxes and the arrangements for insurance. Further, I order that any property taxes paid by the Plaintiff be compensated from Mr. Simmons' overpayment of the purchase price. He will have sixty (60) days to arrange for insuring the building in a commercially reasonable manner.

I further find that the defendant is given credit for $87, 540.00 towards the purchase price of $125,000 with a balance of $37,460.00 to be paid on the installment contract at the rate of $500 a month until the balance is paid. The defendant will obtain an amortization schedule and supply a copy to the plaintiff. The defendant will either pay by money order or check with a notion of payment and marked from the amortization schedule by both parties.

AND IT IS SO ORDERED.

2/20/13, 2013
Charleston, S.C.

J. C. NICHOLSON. JR.
Presiding

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT L

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit L
(036)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2010-CP-10-8027

ALLEN LIVINGSTON.....Appellant,

v.

HAROLD SIMMONS .....Respondent.

NOTICE OF APPEAL

FILED
2013 JUN 13 AM 11:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Jeffrey A. Barnwell, Esq.
BARNWELL LAW FIRM, PC
147 Wappoo Creek Drive, Suite 104
Charleston, SC 29412
Telephone: (843)722-0178

Andrew J. Savage, III, Esq.
SAVAGE & SAVAGE, PA
P.O. BOX 1002
Charleston, SC 29402
Telephone: (843)720-7470

Attorneys for Appellant

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

COMES NOW Appellant, Allen Livingston, and pursuant to Rule 203, SCACR, he hereby files his Notice of Appeal from the Order of the Honorable J.C. Nicholson, Jr., Presiding Circuit Court Judge for County of Charleston, filed May 9, 2013, and mailed May 13, 2013. Written notice of entry of the Order was received by Appellant's counsel on May 16, 2013; a copy of the said Order is attached.

Respectfully submitted,

BARNWELL LAW FIRM, PC

By: _____
Jeffrey A. Barnwell
BARNWELL LAW FIRM, PC
Wappoo Centre
147 Wappoo Creek Drive, Suite 104
Charleston, South Carolina 29412
Telephone: (843) 722-0178

Charleston, South Carolina
June 11, 2013

Attorney for Appellant

OTHER COUNSEL OF RECORD:

J. Seth Whipper, Esq.
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2010-CP-10-8027

ALLEN LIVINGSTON.....Appellant,

v.

HAROLD SIMMONS .....Respondent.

PROOF OF SERVICE

FILED
2013 JUN 13 AM 11:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Jeffrey A. Barnwell, Esq.
BARNWELL LAW FIRM, PC
147 Wappoo Creek Drive, Suite 104
Charleston, SC 29412
Telephone: (843)722-0178

Andrew J. Savage, III, Esq.
SAVAGE & SAVAGE, PA
P.O. BOX 1002
Charleston, SC 29402
Telephone: (843)720-7470

Attorneys for Appellant

This hereby certifies that on June 12, 2013 a copy of the Notice of Appeal (and attached Order) were served, pursuant to Rule 262, SCACR, upon (a) J. Seth Whipper, Attorney for the Respondent, via Electronic Mail; and upon (b) the Clerk of Court for the Lower Court via First Class, U.S. Mail, postage prepaid, respectively, addressed as follows:

J. Seth Whipper, Esq.
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415
jsw@whipperlaw.com

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401

Jeffrey A. Barnwell

Charleston, South Carolina
June 12, 2013

BARNWELL LAW FIRM, PC Jeffrey A. Barnwell

June 12, 2013

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

RE: Allen Livingston, Appellant v. Harold Simmons, Respondent
Case No.: 2010-CP-10-8027

Dear Ms. Kitchings:

Please find enclosed for filing the original and one (1) copy of the **Notice of Appeal** which is being submitted on behalf of Appellant, Allen Livingston, in regard to the above-referenced case.

Also, please find enclosed for filing the original and one (1) copy of the **Proof of Service**, which confirms that service of the Notice of Appeal was made both upon the Attorney for the Respondent, and upon the Clerk of Court for the Charleston County Court of Common Pleas.

Please also find enclosed a check made payable to the S.C. Court of Appeals in the amount of One Hundred and No/100 Dollars ($100.00) to cover the filing fee.

In advance, thank you for your assistance with filing the said enclosures with the Court, and also for returning the one extra copy of each, clock-stamped, to my attention by way of the enclosed self-addressed stamped envelope.

Please feel free to contact me with any questions or concerns.

Thank you and with kind regards and best wishes, I remain

Very truly yours,
BARNWELL LAW FIRM, PC

Jeffrey A. Barnwell
Attorney for Appellant

Enclosures: (stated)
Cc w/encls. J. Seth Whipper, Esq.
Andrew J. Savage, III, Esq.
The Honorable Julie J. Armstrong

Wappoo Centre
147 Wappoo Creek Drive, Suite 104
Charleston, South Carolina 29412
Tel: (843) 722-0178
Fax: (843) 737-4714
barnwell@barnwelllawfirm.com

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED

CHARLESTON COUNTY
SOUTH CAROLINA

www3.charlestoncounty.org

47

JEFFREY ALLEN BARNWELL
WAPPOO CENTRE
147 WAPPOO DR SUITE 104
CHARLESTON SC 29412

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

Order/Mot to alter/amend/relieve plntff fr order is denied

CASE NO: 2010CP1008027
Allen R Livingston VS Harold Simmons

This judgment was entered on the 09th day of May, 2013, and a copy mailed first class on Friday, May 10, 2013, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

May 16, 2013

1820102.2013050599401.00047

EXHIBIT ??

2010-8027

The South Carolina Court of Appeals

Allen Livingston, Appellant

v.

Harold Simmons, Respondent.

Appellate Case No. 2013-001306

The Honorable J. C. Nicholson, Jr.
Charleston County
Trial Court Case No. 2010CP1008027

FILED
2013 DEC -3 PM 2:27
JULIE J. ARMSTRONG
CLERK OF COURT

ORDER

It appears that the Appellant, with agreement of Respondent and of counsel, wishes to withdraw and dismiss this matter. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:
Jackson Seth Whipper
Andrew John Savage, III

FILED
DEC 2013

L1

2010-CP-10-8027

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 02, 2013

FILED
2013 DEC -3 PM 2:27
JULIE J. ARMSTRONG
CLERK OF COURT

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: Allen Livingston v. Harold Simmons
Lower Court Case No. 2010CP1008027
Appellate Case No. 2013-001306

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Jackson Seth Whipper, Esquire
Andrew John Savage, III, Esquire

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT M

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT N

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit A

BRUCE A. BERLINSKY, P.A.
Attorney at Law

Mailing Address:
PO Box 206
Charleston, SC 29402

One Carriage Lane, Building F
Charleston, SC 29407

Office: (843) 852-2202
Fax: (843) 852-4844
Bruce@berlinskylawfirm.com

December 12, 2013

Payment made to Attorney Jeffrey Barnwell A total of $4,500.00 Attorney Barnwell agreed to apply the payment ones he receive the court order. ① payments not Reported By Jeffrey Barnwell or Allen Livingston. 1/10/2014

VIA US MAIL & CERTIFIED RETURN RECEIPT
Harold Simmons
c/o J. Seth Whipper, Esquire
P.O. Box 70070
North Charleston, SC 29415

RE: 3042 N Carolina Ave., North Charleston, SC
Lease to Buy

Dear Mr. Simmons:

I represent Allen Livingston with regard to the above referenced matter.

Pursuant to Order filed February 27, 2013, the balance due on the purchase price was established and you were ordered to pay the sum of $500.00/month.

Per the parties agreement, the payments were to be made through the Law Offices of Jeffrey A. Barnwell. The appropriate payments have not been made. In addition to nonpayment of the monthly purchase price, you have failed to provide evidence of insurance.

As a result of the foregoing, you are in default of your obligations and payments. Under the terms of the agreement, you have 30 days to cure the payment default and provide proof of insurance. Failure to do so will result in my client taking whatever action, including, but not limited to foreclosure, to protect his interests.

If you feel that these obligations have been made, please provide proof of the same to my office.

With kind regards, I am

Sincerely,

BAB

Bruce A. Berlinsky

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

N

BAB/jlr
cc: Allen Livingston
J. Seth Whipper, Esquire

CERTIFIED MAIL™

7010 1670 0000 1894 8451

Bruce A. Settin, P.A.
One Carriage Lane, Bldg F
Charleston, SC 29407

12/4
12/21

DEC 20 2013

BY

Harold Simmons
c/o J. Seth Whipper, Esquire
P.O. Box 70070
North Charleston, SC 29415

29415+0070

Received by Harold Simmons Jr.
Date: 12/27/13

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT O

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit 9

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)

ALLEN LIVINGSTON,)
Plaintiff(s))
) CIVIL ACTION COVERSHEET
vs.)
) ~~2010 - CP - 10 - 8027~~
) 2014 CP 10 1635
HAROLD SIMMONS,)
Defendant(s))

(Please Print)
Submitted By: Bruce A. Berlinsky SC Bar #: 671
Address: P.O. Box 206 Telephone #: (843) 852-2202
Charleston, SC 29402 Fax #: (843) 852-4844
Other:
E-mail: bablaw@bellsouth.net

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

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (*Check One Box Below*)

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

Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other (299)

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

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

Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799)

Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899)

Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)

Submitting Party Signature: _____ Date: 5/12/14

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

FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**

** Contact Respective County Clerk of Court for modified ADR Program Rules

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

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

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Case are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Cases which are appellate in nature such as appeals or writs of certiorari;

   c. Post Conviction relief matters;

   d. Contempt of Court proceedings;

   e. Forfeiture proceedings brought by the State;

   f. Cases involving mortgage foreclosures; and

   g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.

4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

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

STATE OF SOUTH CAROLINA,	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2010-CP-10-8027

ALLEN LIVINGSTON,

Plaintiff,

versus

HAROLD SIMMONS,

Defendant.

LIS PENDENS
1. Installment Sale Contract Foreclosure
2. Non-Jury

FILED
2014 MAR 11 PM 2:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY

NOTICE IS HEREBY GIVEN THAT an action has been commenced and is pending in the Court of Common Pleas for Charleston County, State of South Carolina, upon the Complaint of the Plaintiff above-named against the Defendant above-named for the purpose of seeking to enforce a contract for the sale of the below described property through specific performance and to obtain a declaration of the rights, status and other legal relations of the parties hereto with respect to the real estate hereinafter described. That the premises affected by the said Complaint in the action hereby commenced was, at the time of the commencement of this action and at the time of filing this Notice, described as follows: See Attached Exhibit "A".

Bruce A. Berlinsky, Esquire
843/852.2202
P.O. Box 206 (29402)
One Carriage Ln., Bldg. F
Charleston, SC 29407
ATTORNEY FOR PLAINTIFF

Charleston, South Carolina
~~February~~ March 10, 2014

Exhibit "A"

ALL that piece, parcel or lot of land, together with the buildings thereon, situate in Chicora Place. Measuring and containing 77' in front on Eighth Street, 84' on back line by 105' in depth, and known as #17 in Block I on a plat of Chicora Place recorded in the RMC Office for Charleston County in Plat Book D, Page 197. Butting and bounding as follows: West on Carolina Avenue, North on Eighth Street, East on Lot 15 and South on Lots 18 and 20 in said Block I.

TMS No.: 469-16-00-329

Appellate appeal court
1803-734-1890

FILED
2014 MAR 11 PM 2:06
CHARLESTON COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO: 2010-CP-10-8027

ALLEN LIVINGSTON,

Plaintiff,

versus

HAROLD SIMMONS,

Defendant.

SUMMONS
1. Installment Sale Contract Foreclosure
2. Non-Jury

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer to said Plaintiff on the subscriber at his office at One Carriage Lane, Building F, Charleston, South Carolina 29407, within thirty (30) days after service thereof, exclusive of the day of such service; and if you fail to answer, appear or otherwise plead within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in this Complaint and will further apply to the Court to have you placed in default.

Bruce A. Berlinsky, Esquire
843/852.2202
P.O. Box 206 (29402)
One Carriage Ln., Bldg. F
Charleston, SC 29407
ATTORNEY FOR PLAINTIFF

Charleston, South Carolina
~~February~~ March 10, 2014

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2010-CP-10-8027

ALLEN LIVINGSTON,

Plaintiff,

versus

HAROLD SIMMONS,

Defendant.

COMPLAINT
1. Installment Sale Contract Foreclosure
2. Non-Jury

FILED
2014 MAR 11 PM 2:06
CHARLESTON COUNTY
CLERK OF COURT

The Plaintiff above named, complaining of the Defendant above named, alleges and says as follows:

1. This is an action for the foreclosure of a mortgage of real estate on property located in Charleston County, South Carolina, which is more fully described on the attached exhibit, hereinafter referred to as Exhibit "A" and is within the jurisdiction of this Honorable Court.

2. That on or about June 15, 2000, Plaintiff entered into a Lease to Buy Agreement with Defendant for property located at 3042 N Carolina Avenue, North Charleston, SC 29405, as evidenced by a copy of said Agreement attached hereto as Exhibit "B" and incorporated by reference.

3. That on or about February 27, 2013, the Honorable J C Nicholson, Jr. entered an Order in the case involving the same parties hereto (2010-CP-10-8027), in which he ruled that the lease to buy agreement between plaintiff and defendant referenced hereinabove was to be considered an installment sales contract and that the Defendant was to make payment of $500.00/month under the installment sales contract until the balance of Thirty Seven Thousand Four Hundred Sixty and 00/100 ($37,460.00) Dollars was paid in full.

4. That the Defendant has not made a payment on the Lease to Buy since the entry of the aforesaid Order and has therefore defaulted on the payments called for in the said lease

agreement and court order and the Plaintiff has elected to declare the entire balance, together with any accrued interest, due to institute this action.

5. That the Plaintiff gave the Defendant, through his attorney, notice of the default and right to cure and Defendant has failed and continues to fail to cure.

6. That there is now due and owing on the aforesaid agreement the principal sum of approximately Thirty Six Thousand Four Hundred Sixty and 00/100 ($36,460.00) Dollars.

7. The Plaintiff seeks no deficiency judgment and waives any right to the same.

WHEREFORE, the Plaintiff prays that this Honorable Court:

a) Ascertain the amount due and owing to the Plaintiff under the Lease to Buy described above;

b) Direct that the Plaintiff's mortgage be foreclosed and the mortgaged premises described therein be sold in accordance with the laws and practices of this Court, and that the Defendant, and any person claiming by, through, or under the Defendant, be barred and forever foreclosed of all right, title, interest and equity of redemption in and to the mortgaged premises, or any part thereof;

c) Direct that out of the proceeds of the sale of the mortgaged premises, after deducting the costs of such sale and a reasonable attorney's fee, the Plaintiff be paid the full amount due on its Lease to Buy;

d) Direct that any surplus monies be paid in accordance with the further Order of this Court; and

e) For such other and further relief as this Court may deem just and proper.

Bruce A. Berlinsky, Esquire
843/852.2202
P.O. Box 206 (29402)
One Carriage Ln., Bldg. F
Charleston, SC 29407
ATTORNEY FOR PLAINTIFF

Charleston, South Carolina
February 10, 2014

Exhibit "A"

ALL that piece, parcel or lot of land, together with the buildings thereon, situate in Chicora Place. Measuring and containing 77' in front on Eighth Street, 84' on back line by 105' in depth, and known as #17 in Block I on a plat of Chicora Place recorded in the RMC Office for Charleston County in Plat Book D, Page 197. Butting and bounding as follows: West on Carolina Avenue, North on Eighth Street, East on Lot 15 and South on Lots 18 and 20 in said Block I.

TMS No.: 469-16-00-329

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT P

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT Q

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit Q

THE STATE OF SOUTH CAROLINA)	
COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS Cause No. 2014 CP 10 1635
ALLEN LIVINGSTON)	
Plaintiff,)	
-versus-)	**ANSWER** (Jury Trial Requested)
HAROLD SIMMONS JR.)	
Defendant.)	

FILED
2014 APR 24 PM 2:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant, Harold Simmons Jr. answer the respective numbered paragraphs of the Plaintiff's Complaint dated March 10, 2014, thus:

FIRST DEFENSE: QUALIFIED GENERAL DENIAL

1. Defendant lack sufficient information regarding the reason(s) plaintiff has or has not received any form of payment and has valid legal grounds for foreclosure, and therefore must deny the same demanding strict proof thereof. (See Exhibit C: Defendant Valid Authentic Receipt of Payments)
2. Defendant admit, upon information and belief, the 2nd statement of plaintiff complaint, and crave reference to said valid authentic Lease to Buy Agreement only and demanding strict proof thereof valid authenticity. (See Exhibit A: Defendant Valid Authentic Lease to Buy Agreement)
3. Defendant admit, upon information and belief, the 3rd statement of plaintiff complaint, and crave reference to said order. (See Exhibit B: Defendant Valid Authentic Court Order)

4. Defendant deny the allegations of the 4th statement of plaintiff complaint. (See Exhibit C: Defendant Valid Authentic Receipt of Payments)

5. Defendant lack sufficient information regarding the reason(s) plaintiff has or has not given a notice of the (alleged) default and right to cure. (See Exhibit C: Defendant Valid Authentic Receipt of Payments)

6. Defendant deny the allegations of the 5th statement of plaintiff complaint. (See Exhibit C: Defendant Valid Authentic Receipt of Payments)

7. Defendant deny, the allegation of the 6th statement of plaintiff complaint. (See Exhibit C: Defendant Valid Authentic Receipt of Payments)

8. Defendant deny all statements and allegations of the Complaint not herein above specifically admitted, modified, or denied.

SECOND DEFENSE: FAILURE TO CONSTITUTE A CAUSE OF ACTION

9. That the Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

THIRD DEFENSE: GOOD FAITH AND REASONABLE BELIEF

10. The actions and conduct of defendant, were undertaken in the good-faith performance of business duties, based upon reasonable cause, pursuant to just cause, not contrary to any law or regulation as made and provided, and proper under the circumstances.

FOURTH DEFENSE: ADDITIONAL DEFENSE AND CLAIMS

Q

11. Defendant hereby give notice that he intend to rely upon affirmative defenses as may become available or apparent during the course of discovery and thus reserve the right to amend your answer to assert any such defenses and claims.

FIFTH DEFENSE: NEGLIGENT ACT OF OTHERS

12. Plaintiff's claims, if any, are the result of negligent acts and omissions of other entities or persons over whom the defendant has no control, barring plaintiff's claims against the defendant.

WHEREFORE, having fully answered the plaintiff Complaint, defendant pray that this matter be dismissed and that he recover all costs from the plaintiff.

Submitted this 23th day of April, 2014.

Respectfully submitted,

Harold Simmons Jr.

Harold Simmons Jr.; Pro Se
1182 King Street
Charleston, South Carolina 29403
(843) 554- 7414

CERTIFICATE OF SRVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 23 day of April, 2014
HAROLD SIMMONS JR.
BY: Harold Simmons Jr.

(3)

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	Cause No. 2014 CP 10 1635
ALLEN LIVINGSTON	)	
Plaintiff,	)	
-versus-	)	**CERTIFICATE OF SERVICE**
HAROLD SIMMONS JR.	)	
Defendant.	)	

I certify that on this date, I served a copy of Defendant's Answer to Plaintiff's Complaint in this action, dated 23 day of April, 2014 by mailing it to him, at his last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Allen Livingston
6046 Hyde Park Road
Ravenel, South Carolina 29470
PLAINTIFF

and/or

Bruce A. Berlinsky, Esquire
843/852.2202
P.O. Box 206 (29402)
One Carriage Ln., Bldg. F
Charleston, South Carolina 29407
ATTORNEY FOR PLAINTIFF

Apr. 23 2014
Date

Harold Simmons Jr.
Signature

THE STATE OF SOUTH CAROLINA	)	
	:	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	Cause No. 2014 CP 10 1635
ALLEN LIVINGSTON	)	
	:	
Plaintiff,	)	
	:	
-versus-	)	**EXHIBIT A**
	:	(Valid Authentic Lease To Buy Agreement)
HAROLD SIMMONS JR.	)	
	:	
Defendant.	)	
	:	

Lease to Buy:

This lease, morgage agreement enter in the day of 6 - 15 - 2005 is a legal
month/ day/ year
and binding contract between ALLEN Livingston and Harold Simmons Jr
Hereby agree to these terms and provisions here in after set forth, as follow:

That whereas, I Harold Simmons agree to lease with option to buy said
buyer
property located at 3042 N. Carolina Ave. North Charleston S.C. 29405. At a purchase price, rate
location/address
of $ One Hundred Twenty Five Thousand ($125,000.00) Dollars.
price written price in numbers

The monthly Payment is payable in advance and shall be due on or before the
Fifteen - 15 - Day of each month.
written number

If for some reason Harold Simmons fails to meet the monthly payment
name of buyer
ALLEN Livingston, agree to give Harold Simmons 30 day
name of seller name of buyer number
Thirty days to pay any Delinquient payments before he or she is
write number
found in default.

In the Event ALLEN Livingston select to terminate the agreement early
seller
Harold Simmons have the right, option to purchase, buy the property,
buyer
located at 3042 N. Carolina Ave. North Charleston 29405. If this agreement is not terminated
address
by either party during the term's set forth Harold Simmons Jr. have the
buyer
right and option to purchase, buy the end of these terms.

Pg. (2) Harold Simmons Jr. agree to lease said property for the duration of
buyer

1 years, one
print # write number

For some reason Harold Simmons becomes unable to honor lease agreement, ill, lost wages, business foreclosure, Harold Simmons have the right to brake lease agreement Harold Simmons Jr. have to give 30 days notice.

1 years after entering this agreement Harold Simmons have the right to move from lease to buyer.

Beginning: 6 - 15 - 2000 Ending: 5 - ___ - 31 - 2001
month day year month day year

Entering in these agreement from lease to buy the money that is paid in these contract will go toward it as a downpayment.

During the Duration of the Lease Term ALLEN Livingston has to notify
landlord
Harold Simmons in writing 1 days in advance prior to entering the
lessee number
build during reasonable hours without being liable for tresspassing, for the purpose of inspections, repairs.

Buying these property Harold Simmons is responsible for all taxes
buyer
beginning from 6 - 15 - 2000
month day year

Terms of Payment
Harold Simmons agree to pay: First year $500.00. ——. Beginning
buyer

P.5(3)

6 - 15 - 2000. Ending 6 - 15 - 2001
month day year month day year

Second year $ 500.00. Beginning 6 - 15 - 2001. Ending
month day year

4 - 15 - 2021
month day year

Purchase Price to Buy $ 125,000.00

Monthly Payment: $ 506.00

ALLEN Lewis III
(Buyer's print)

(Buyer's signature)

Harold Simmons Jr.
(Buyer's print)
Renter

Harold Simmons Jr.
(Buyer's signature)
Renter

(witness)

(witness)

Q

THE STATE OF SOUTH CAROLINA	)	
	:	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	Cause No. 2014 CP 10 1635
ALLEN LIVINGSTON	)	
	:	
Plaintiff,	)	
	:	
-versus-	)	**EXHIBIT B**
	:	(Valid Authentic Court Order)
HAROLD SIMMONS JR.	)	
	:	
Defendant.	)	
	:	

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ALLEN LIVINGSTON, Plaintiff, versus HAROLD SIMMONS, Defendant.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2010-CP-10-8027 PROPOSED ORDER

FILED
2011 FEB 27 AM 11:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THE WITHIN MATTER came before this Court after restoration to the trial docket on a Motion to Restore filed on September 14, 2010 pursuant to a Rule 40(j) dismissal on January 13, 2010. The Court has heard testimony and argument for nearly two (2) days and has received numerous exhibits. This case presented major issues regarding the credibility of the parties and the conflicting recollections of the litigants and the witnesses.

Plaintiff appeared represented by counsel and presented witnesses (2) to support the waste allegations in his claim. Defendant appeared represented by counsel, calling one witness in support of his counterclaim and defense.

This case centers on the issue of whether the Defendant has substantially performed his agreement under the contract negotiated by the parties on June 15, 2000. This matter began as an ejectment action in the Summary Court. Plaintiff alleged that Defendant failed to pay rent when due and demanded for the period beginning 2005 through October 2007. Defendant denied fault and counterclaimed for damages and specific performance on the bases that the agreement executed by the parties was an installment land contract.

To determine the nature of their relationship, this Court considered documents submitted by each party that were alleged to set out the terms of their agreement. After careful consideration of those documents, which were two versions of the contract signed by the parties, this Court determined that the document offered by Mr. Simmons was the original agreement and the best evidence of their expectations since it contained original signatures from both parties and the original signatures of a witness. Real property is often sold under contracts that provide for the payment of the purchases in a series of installments. "These contracts, usually termed installment land contracts, are drafted in many ways. Typically, the vendor retains legal title to the property until all of the purchase price has been paid.". . . Lewis v. Premium Investment Corporation, 351 S.C. 167, 568 S. E. 2d 361 (2002). Basic contact law provides that when a contract is clear and unambiguous, the language alone determines the

contracts' force and effect. C.A.N Enterprises, Inc. v. South Carolina Health & Human Services Fin. Commissions, 296 S.C. 373, 373 S.E. 2d 584 (1988).

The Defendant contends that, in fact, he has paid against the principle in advance by making payments at a higher and faster rate than required under the contact. Mr. Simmons' primary proof for his position is the example where Plaintiff alleges a default in payments during the year of 2007 yet the evidence (Defendant's Ex.) indicates that Mr. Simmons paid $500.00 beyond what was required for the period alleged. Mr. Simmons testified that during the length of the contract he would pay at a higher or faster rate in order to protect himself from defaulting on the payments. Defendant tendered his entire collection of receipts for the contested period of payment. This record of payment totaled $87,540.00. A comparison of the chronological pay period utilizing the contract rate against Defendant's record of payment reveals that Mr. Simmons at the time of trial had paid $16,040.00 beyond what was required under the contract. Our Court of Appeals has specifically held that in an installment land contract, the vendee in possession of the land is considered the owner of an equitable interest in the property. Southern Pole Buildings, Inc. v. Williams, 289 S.C. 521, 347 S. E. 2d 121 (Ct. App. 1986), See also, Lewis v. Premium Investment Corporation, supra, footnote 4.

Actions to foreclose or cancel and instrument are actions in equity. Wilder Corporation v. Wilke, 324 S.C. 570, 576, 479 S.E. 2d 510, 513 (1996). The courts of South Carolina have long held that forfeitures or penalties are not favored in either law or equity. Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E. 2d 697 (Ct. App. 2006) reh. den. (May 2006), citing Lewis v. Premium Investment Corporation, supra.

The theory of equitable conversion provides that under an executory contract for the sale of real estate, the equitable estate passes to the purchaser and the bare legal title for security purposes remains in the vendor. Brooks v. Council of Co-Owners of Stones Throw Horizontal Property Regime 1. 315 .S.C. 474, 476, 445 S. E. 2d 630, 632 (1994) citing 8A George W. Thompson, Commentaries on the Modern Law of Real Property § 4447 (1963). Despite Mr. Simmons' struggles, his efforts to successfully satisfy his obligations are impressive, fundamentally, and significant, legally. Earlier during argument of counsel, defense counsel objected to the treatment of the list of conditions on page four of the contract as applicable to the Defendant buyer. Counsel argues that once Defendant became a buyer, those conditions no longer applied to the Defendant. In light of the doctrine of equitable conversion and review of the content of those conditions, this Court is convinced that those conditions are inapplicable to an equitable owner and possessor of the property, excepting the requirement for insuring the property.

Q

Defendant contends that plaintiff was aware of the Defendant's change from tenant to purchaser because practically every receipt and payment instrument is designated for 'mortgage'. Mr. Simmons has been very fastidious in recording the matter of payment and, but for his records, there would be no recollection. Plaintiff admitted that he kept no records of their transactions. Mr. Simmons demonstrates an approach that reflects the essence of this agreement; a substantial amount of money would be spent for a major property but the transaction involved a diminis scale, i.e. no major lender and $500.00 per month payments.

Plaintiff offered no evidence or testimony of making demand for payment. The 'mortgage' can be clearly seen on the money orders Mr. Simmons used for payment. The "mortgagee" notation can be seen on the Defendant's exhibit showing deposits into Plaintiff's Wells Fargo/Wachovia account as early as 2005 and Mr. Simmons' receipts show this notation as early as 2002. Plaintiff's behavior in accepting these payments under the circumstances evidenced convinced Mr. Simmons that the building at North Carolina Avenue would one day be his. "The principal that the vendee becomes the equitable owner of real property while the contract is still executory was established for the purpose of enabling him to resort to a court of equity for the protection of his rights, on the ground that a mere action for damages arising from a breach of the contract by the vendor would not afford him equitable relief." Good v. Jarrard, 93 S.C. 229, 236, 76 S.E. 2d 698, 701 (1912). In this instance the vendor's breach is the ejectment action taken without due cause.

Plaintiff initiated this action alleging default in payment and some opinion regarding the building; subsequently, he amended his complaint to include alleged other failure. After reviewing the exhibits, this Court is not convinced that Mr. Simmons has done anything to depreciate the value of the property. According to the County Tax Assessor, the property's value has increased appreciably. All testimony describes the building as a once vacant structure with very sparse amenities. Mr. Simmons added a room for an office so there was some improvement. There has been no claim for insurance payment so that item is not material to this action, nor the contractual relationship. Plaintiff claims a loss in relation to his payment of property taxes. At no time did he complain to Mr. Simmons about the property taxes or seek clarification as to who was responsible for these tax payments. In light of Mr. Simmons' constant use of the "mortgage" term, it would seem that a discussion regarding taxes and insurance would have occurred. Plaintiff is an experienced and well-established business man who knows the relative value of "allowed business deductions" and probably appreciated the availalibility of these expenses. So the behavior of seeking an ejectment appears like "eating your cake and having it too."

Therefore, credibility remains a big issue in this case; from the considerations involving which version of the contract to the Plaintiff's selective memory on many issues of fact. This Court has been troubled with his version of the facts. His original allegations regarding non-payment between both 2005 and 2007 being revealed to be substantially incorrect and as to the year of 2007 as being entirely inaccurate, and then a crucial factor in looking at the version of the contract is how the front page of Plaintiff's contract contains the wrong address for the subject property and on subsequent pages involving the term for Mr. Simmons' period to make payments being left completely out of the version put forward by the Plaintiff. This tells this Court that there is a proper place for equity in its considerations.

Mr. Simmons has requested relief under the theory of specific performance and that is proper in a matter of equity. He has also requested relief under the theory of unjust enrichment and that is also proper in an equitable action. Under the facts shown the most appropriate relief is specific performance. It is my confirmed opinion that the Defendant should be allowed the relief that he has requested. Hence I am ordering that the transaction be carried out as agreed upon to include Mr. Simmons assuming all of the responsibilities of the purchaser under their agreement as stated in Defendant's contract (Ex.) including the payment of property taxes and the arrangements for insurance. Further, I order that any property taxes paid by the Plaintiff be compensated from Mr. Simmons' overpayment of the purchase price. He will have sixty (60) days to arrange for insuring the building in a commercially reasonable manner.

I further find that the defendant is given credit for $87, 540.00 towards the purchase price of $125,000 with a balance of $37,460.00 to be paid on the installment contract at the rate of $500 a month until the balance is paid. The defendant will obtain an amortization schedule and supply a copy to the plaintiff. The defendant will either pay by money order or check with a notion of payment and marked from the amortization schedule by both parties.

AND IT IS SO ORDERED.

2/20/13, 2013
Charleston, S.C.

J. C. NICHOLSON. JR.
Presiding

Q

THE STATE OF SOUTH CAROLINA	)	
	:	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	Cause No. 2014 CP 10 1635
ALLEN LIVINGSTON	)	
	:	
Plaintiff,	)	
	:	
-versus-	)	**EXHIBIT C**
	:	(Valid Authentic of Payments)
HAROLD SIMMONS JR.	)	
	:	
Defendant.	)	
	:	

Any and all said such receipt of payments that have not been allotted for in any such court proceeding known unto this day are listed below and should be taken into account as a valid authentic receipt of payment are as follows:

COURT ORDERED CREDIT: $87,540.00 (See Exhibit B)
COURT ORDRED BALANCE: $37,460.00 (See Exhibit B)
DEFENDANT ORIGINAL VALID AUTHENTIC RECEIPT OF PAYMENTS (Not accounted for in any other court proceeding but due proper credit): $8,400.00 (See Exhibit C pg.2)
DEFENDANT CHRONOLOGICAL LIST OF ORIGINAL VALID AUTHENTIC RECEIPTS

1)	09/15/2009	$500
2)	12/15/2009	$500
3)	01/15/2010	$500
4)	02/15/2010	$500
5)	06/15/2010	$500
6)	07/15/2010	$500
7)	No date	$500
8)	No date	$400
9)	10/09/2012	$500
10)	10/09/2012	$500
11)	10/09/2012	$500
12)	10/22/2012	$500
13)	10/22/2012	$500
14)	10/22/2012	$500
15)	05/04/2013	$500
16)	05/04/2013	$500
17)	05/04/2013	$500
18)	Total	$8400

19) **Difference: $37460 - $8400 = $29060**

February 20, 2013 Court order Find Total Paid #3,540,00

Beganing Payment of June 15, 2000 At #500.00 a month

Month	year	End year payment
June	2000	#3,500.00
January	2001	6000.00
	2002	6000.00
	2003	6000.00
	2004	6000.00
	2005	6000.00
	2006	6000.00
	2007	6000.00
	2008	6000.00
	2009	6000.00
	2010	6000.00
10½ years		#63.500.00
	2011	6000.00
	2012	6000.00
	2013	6000.00
	2014	6000.00
4 years		24,000.00

Not Accounted for cash Receipts Before court order

Total #3900.00

Not Accounted for money order Before and after

Court order Total 4,500,00 Total of #8,400.00

Q

month	year	End year payment
	2015	$6,000.00
	2016	April 2,000.00 and may 15, 2016 $440.00

Total Paid $95,940.00

Donald Simon Jr.

Q

No. _____ 1-15 20 10

Received from Harold Simmons Jr.

Five Hundred 00/100 Dollars

Amt of Account	68,860	00
Amt Paid	500	00
	CASH	
Balance Due	68,360	00

mortgage for 469-16-00-329

$ 500.00

No. _____ 9-15- 20 09

Received from Harold Simmons Jr.

Five Hundred Dollars 00/100 Dollars

Amt of Account	70,860	00
CASH Amt Paid	500	00
Balance Due	70,360	00

Mortgage for 469-16-00-329

$ 500.00

No. _____ 12-15 20 09

Received from Harold Simmons Jr.

Five Hundred 00/100 Dollars

Amt of Account	69,360	00
Amt Paid	500	00
	CASH	
Balance Due	68,860	00

mortgage for 469-16-00-329

$ 500.00

Q

No. _____ 2-15-20 10

Received from Harold Simmons Jr

Five Hundred 00/100 Dollars

Amt of Account	$68,360	00
Amt Paid	$500	00
	CASH	
Balance Due	$67860	00

Mortgage 469-16-329

$ 500.00

No. _____ 6-15 20 10

Received from Harold Simmons Jr

_____ Dollars 100

Amt of Account	$66360	00
Amt Paid	$500	00
	CASH	
Balance Due	$65860	00

Mortgage 469-16-00-329

$ 500.00

No. _____ 7-15 20 10

Received from Harold Simmons Jr.

Five Hundred 00/100 Dollars

Amt of Account	$65860	00
Amt Paid	$500	00
	CASH	
Balance Due	$65360	00

For Mortgage 469-16-00 329

$ 500.00

Q

RECEIPT

DATE _____ No. 127610

RECEIVED FROM Harold Simmons Jr. $ 500.00

Five Hundred 00/00 DOLLARS

○ FOR ~~RENT~~
○ FOR M.

ACCOUNT	500	00
PAYMENT	500	00
BAL. DUE	000	00

✓ CASH
○ CHECK
○ MONEY ORDER

FROM _____ TO _____

BY _____

adams 2701

RECEIPT

DATE _____ No. 127628

RECEIVED FROM Harold Simmons Jr. $ 400.00

DOLLARS

○ FOR RENT
○ FOR _____

ACCOUNT		
PAYMENT		
BAL. DUE		

✓ CASH
○ CHECK
○ MONEY ORDER

FROM _____ TO _____

BY _____

adams 2701

Q

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20206481714	2014 2012-09-10	294051	$500.00	0012

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Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20206481703	2014 2012-09-10	294051	$500.00	0012

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Address

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Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20206481692	2014 2012-09-10	294051	$500.00	0012

Add'ed's

Q

RECEIPT DATE 9/11/12 No. 887401

RECEIVED FROM HAROLD SIMMONS $500.00

FIVE HUNDRED DOLLARS AND 00/100 DOLLARS

○ FOR RENT
○ FOR 20206481714

ACCOUNT	
PAYMENT	
BAL. DUE	

◎ CASH
◎ CHECK
◎ MONEY ORDER
◎ CREDIT CARD

FROM TO

BY

RECEIPT DATE 9/11/12 No. 887402

RECEIVED FROM HAROLD SIMMONS $500.00

FIVE HUNDRED DOLLARS AND 00/100 DOLLARS

○ FOR RENT
○ FOR 20206481703

ACCOUNT	
PAYMENT	
BAL. DUE	

◎ CASH
◎ CHECK
◎ MONEY ORDER
◎ CREDIT CARD

FROM TO

BY

RECEIPT DATE 9/11/12 No. 887403

RECEIVED FROM HAROLD SIMMONS $500.00

FIVE HUNDRED DOLLARS AND 00/100 DOLLARS

○ FOR RENT
○ FOR 20206481692

ACCOUNT	
PAYMENT	
BAL. DUE	

◎ CASH
◎ CHECK
◎ MONEY ORDER
◎ CREDIT CARD

FROM TO

BY

Addeds

Q

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

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Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20216408534	2014 2012-10-22	294051	$500.00	0010

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

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NOT NEGOTIABLE

Pay to Allen Livingston

Address

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Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20216408545	2014 2012-10-22	294051	$500.00	0010

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20216408556	2014 2012-10-22	294051	$500.00	0010

Q

RECEIPT DATE 10/22/2012 No. 887414

RECEIVED FROM Harold Simmons $ 500.00

Five hundred and No/100 DOLLARS

○ FOR RENT
○ FOR Jeff Barnwell

ACCOUNT		
PAYMENT	500	00
BAL. DUE		

(○) CASH (○) CHECK (●) MONEY ORDER (○) CREDIT CARD

USPS # 2021640853 4

FROM _____ TO _____

BY N Snow

RECEIPT DATE 10/22/2012 No. 887415

RECEIVED FROM Harold Simmons $ 500.00

Five hundred and 00/100 DOLLARS

○ FOR RENT
○ FOR Jeff Barnwell

ACCOUNT		
PAYMENT	500	00
BAL. DUE		

(○) CASH (○) CHECK (●) MONEY ORDER (○) CREDIT CARD

USPS # 2021640854 5

FROM _____ TO _____

BY N Snow

RECEIPT DATE 10/22/2012 No. 887416

RECEIVED FROM Harold Simmons $ 500.00

Five hundred and No/100 DOLLARS

○ FOR RENT
○ FOR Jeff Barnewell

ACCOUNT		
PAYMENT	500	00
BAL. DUE		

(○) CASH (○) CHECK (●) MONEY ORDER (○) CREDIT CARD

USPS # 2021640855 6

FROM _____ TO _____

BY N Snow

Q

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to: Allen Livingston

Address:

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
2108041947O	2013-05-04	294051	$500.00	0012

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to: Allen Livingston

Address:

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
21080419457	2013-05-04	294051	$500.00	0012

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

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NOT NEGOTIABLE

Pay to: Allen Livingston

Address:

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
21080419468	2013-05-04	294051	$500.00	0012

Q

BARNWELL LAW FIRM PC
147 WAPPOO CREEK DRIVE
SUITE 104
CHARLESTON SC 29412

PHONE CALL

FOR Harold Simmons DATE 5-9-13 TIME 11:21 A.M. P.M.
M money order
OF $500 #2108041947 0
PHONE/ MOBILE FAX
MESSAGE mortgage payment
check (verbal)
Allen Lingston & Barnwell Law
SIGNED Roxane Kirby 1154

- TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

ARNWELL LAW FIRM PC
47 WAPPOO CREEK DRIVE
UITE 104
HARLESTON SC 29412

PHONE CALL

FOR Harold Simmons DATE 5-9-13 TIME 11:21 A.M. P.M.
M money order
OF $500 #2108041945 7
PHONE/ MOBILE FAX
MESSAGE (check)
Mortgage payment
Allen Lingston &
Barnwell Law Firm
(Jeffry Barnwell)
SIGNED Roxane Kirby 1154

- TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

BARNWELL LAW FIRM PC
147 WAPPOO CREEK DRIVE
SUITE 104
CHARLESTON SC 29412

PHONE CALL

FOR Harold Simmons DATE 5-9-13 TIME 11:21 A.M. P.M.
M mony order
OF $500 # 2108041946 8
PHONE/ MOBILE FAX
MESSAGE (check)
Mortgage Payment
Allen Lingston &
Barnwell Law Firm
(Jeffry Barnwell)
SIGNED Roxane Kirby 1154

- TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT R

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit R

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO: 2014-CP-10-1635

ALLEN LIVINGSTON,

Plaintiff,

versus

HAROLD SIMMONS,

Defendant.

ORDER OF DEFAULT AND REFERENCE

FILED
2014 JUN -4 PM 11:14
JULIE J. ARMSTRONG
CLERK OF COURT
BY

UPON CONSIDERATION of the Affidavit of Bruce A. Berlinsky, dated April 28, 2014, I find that the Defendant, Harold Simmons, was personally served as evidenced by the Affidavit of Service filed with this Court; that more than thirty (30) days have elapsed since the acceptance of the Civil Action Coversheet, Lis Pendens, Summons and Complaint, pursuant to the Affidavit of Bruce A. Berlinsky, and that no Answer, Notice of Appearance, or Demurrer has been filed pursuant to the said Civil Action Coversheet, Lis Pendens, Summons and Complaint by Defendant, Harold Simmons.

IT FURTHER APPEARS that this is an action to foreclose upon a piece of property lying and being in Charleston County, South Carolina.

NOW, THEREFORE, it is

ORDERED, that the Defendant, Harold Simmons, be and is hereby declared to be in default; and, it is further

ORDERED, that the within action be referred to the Honorable Mikell R. Scarborough, Master in Equity for Charleston County, for the purpose of taking testimony and making findings of facts and conclusions of law, and to render a final decree directly appealable to the Supreme Court of South Carolina.

PRESIDING JUDGE, Charleston County

Charleston, South Carolina

6/2, 2014.

RECEIVED
MAY 20 2014
SPM

PAID
Date 4-30-2014
Amount $125.00
MIKELL R. SCARBOROUGH
MASTER IN EQUITY
By:

Defendant never served

FILED
2018 AUG -1 PM 3:47
JULIE ARMSTRONG
CLERK OF COURT

Case: 2014-CP-100-1 July 31, 2015
Case, 2014-CP-100-1635 Exhibit R1

The Honorable Judge Dennis
Back in April 2014 I was service with and Complaint and had 30 days to Answer which I did with in 28 days doing this Time I had and Hearing Before Master + Equity Before Judge Searoborough At this Time I had Filed For a Jury Trial 4 to 5 Times and had Been Ignored, Never Know Why? Case NO. 2014-CP-10-1635 This Case went on For about 2 years or more. On Aug 11, 2016 I had my Lawyler make Another Jury Trial Demand, These is when I Found out I was Find in Default, By Judge Dennis it was said Mr Simmons Have NO Right to a Jury Trial, this Reason Mr Simmons should Be Denial. My Lawyler Seth Whipper stated to Judge Scarcborough Mr Simmons Been Requesting Jury Trial, Judge Scarcborough Stated these day was the first Time He Heard Anything About a Jury Trial. And Attorney Bruce Berlinsky stated Judge Dennis find Mr Simmons in default. I didn't Know what Attroney Berlinsky was Telling you Judge Dennis on that day you sign that order But this have had A very Serious impack on my case this make it Impossible to get a fair Trial. I had Requested Jury Trial on Apr 24, 2014, June 12, 2014 June 16 2014, July 15 2014 and June 8 2016. At this Time this case in under Appeal But Everythrown it under Appeal My Right for Jury Trial was and still Violated. Attroney Bruce Berlinky Stated: We all was present At the Default Hearing I donot Remember A Hearing Are was Service to take Place in one I Need this to be corrented, This is a Violation of my Right the Seventh Amendment, Bill of Right Jury Trail, I don't Know if this a Mistake on the Staff Are Attorney Bruce Berlinsky lie to you About the Filing of My answer. By my Calendar I was service in April and Answer in April. Because of thes I was Denial All my Right to a Fair Trail And Because of these My proprety is Being sold on Aug 7 2018 I'm Jury I have Been In Jury. This Case is built Base on lies But ANYWAY I Asking you the Court Before any more damages is created For a Stay motion order A Judge Scarcborough order of Foreclosure and Sale that taking Place on Aug 7, 2018 I ask so Justice can be found

Though the Appeal Court. (Pleasant) As I Look at the paper work I have I was never service with any order to Appear Before you, even when I Check with the Clerk of Court it show I was never service. So I'm ask in the Name of Justice, Fairness and the haw. (Please)

Thank you
Harold Simmons Jr.
Harold Simmons Jr.
CASE: 2014-CP-10-01635

Exhibit

State of South Carolina
The Circuit Court of the Ninth Judicial Circuit

R. Markley Dennis, Jr.
Judge

Post Office Box 1800
300-B California Avenue
Moncks Corner, SC 29461-1800
Phone: (843) 719-4435
Fax: (843) 719-4599
mdennisj@sccourts.org

September 4, 2018

Harold Simmons, Jr.
3042 North Carolina Ave.
North Charleston, SC 29405

Dear Mr. Simmons,

Judge Dennis is in receipt of your most recent correspondence. I must respectfully advise you that our office is not able to render any assistance to you. As a Circuit Court Judge, Judge Dennis and members of his office are ethically prohibited from practicing law or providing you any type of legal advice. I must also ask that you not communicate with our office relative to your situation, as it constitutes an ex-parte communication, which is also prohibited under our Rules. Any questions regarding your case or any other matters should be addressed to an attorney.

Cordially,

Nicholas B. Uricchio
Law Clerk to the Honorable R. Markley Dennis, Jr.

9/25/2018
Call Jugde Dennis office 2:00 p.m
L.M. (About court Reporter)

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT S

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

04/03/2014
SERVICE/AFFIDAVIT OF SERVICE

03/11/2014
SUMMONS & COMPLAINT

03/11/2014
LIS PENDENS FILED

EVENTS

PARTIES

ASSOCIATED CASES

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07/31/2014
AMENDED/AMENDED NOTICE OF HEARING & CERT/MAIL

07/18/2014
REQUEST FOR CONTINAUNCE

07/07/2014
NOTICE/NOTICE OF HEARING & CERT/MAIL

06/26/2014
MOTION/STRIKE BY PLAINTIFF, CRT/MAIL

06/16/2014
MOTION TO DENIAL TO MOT TO MASTER IN EQUITY & CERT/MAIL

06/12/2014
ORDER/GRANTED TO PROCEED IN FORMA PAUPERIS W/OUT PAYMENT

06/12/2014
C/CLAIM & CERT/SERV

06/12/2014
NOTICE/NOTICE OF HEARING & CERT/MAIL

06/04/2014
MOTION & AFFIDAVIT TO PROCEED IN FORMA PAUPERIS

06/04/2014
ORDER OF DEFAULT & REFERRED TO MASTER

05/22/2014
MOTION/REFER TO MASTER BY PLAINTIFF, CRT/MAIL

04/29/2014
AFFIDAVIT/DEFAULT

04/29/2014
AFFIDAVIT OF NON-MILITARY SERVICE

04/24/2014
ANSWER TO COMPLAINT, JURY TRIAL REQUESTED & CRT/SRV

11/03/2015
AMORTIZATION SCHEDULE

07/31/2015
NOTICE/RESCHEDULED NOTICE OF HEARING & CRT/MAIL

07/10/2015
NOTICE/NOTICE OF HEARING & CRT/MAIL

05/29/2015
MOTION/ALTER OR AMEND ORDER BY DEFENDANT, CRT/MAIL

04/08/2015
MASTER/MASTER'S FINAL ORDER

12/03/2014
AMENDED NOTICE OF HEARING & CRT/MAIL

12/02/2014
NOTICE OF APPEARANCE OF ATTY J SETH WHIPPER

12/01/2014
NOTICE/NOTICE OF HEARING & CRT/MAIL

10/30/2014
MOTION/CONTINUANCE BY DEFENDANT

09/04/2014
NOTICE/NOTICE OF FINAL HEARING & CRT/MAIL

08/12/2014
MASTER ORDER-PLNTFF'S OT TO STRIKE IS GRANTED ETC

08/12/2014
MASTER/MASTER'S SCHEDULING ORDER

08/12/2014
MASTER/MASTER'S ORDER FOR TERM OF CRT

08/04/2014
MOTION FOR EXTENSION BY DEFNT

S

JURY TRIAL DEMANDED, CRT/MAIL

06/06/2016
MOTION/ALTER OR AMEND BY DEFENDANT, CRT/MAIL

05/23/2016
SERVICE/CERTIFICATE OF MAILING

05/23/2016
AFFIDAVIT IN SUPPORT OF ATTORNEY FEES

05/23/2016
AFFIDAVIT/AFFIDAVIT

05/19/2016
SERVICE/CERTIFICATE OF MAILING

05/18/2016
MASTER'S ORDER OF FORECLOSURE & SALE

04/27/2016
ORDER-DEFNT'S MOT TO ALTER OR AMEND IS DENIED

03/10/2016
NOTICE/NOTICE OF RESCHEDULED HEARING & CRT/MAIL

02/03/2016
NOTICE/NOTICE OF HEARING & CRT/MAIL

01/28/2016
MISCELLANEOUS DOCUMENTS (LETTER BY J SETH WHIPPER)

01/28/2016
MASTER ORDER-SUMMONS & RULE TO SHOW CAUSE

01/28/2016
AFFIDAVIT IN SUPPORT OF RULE TO SHOW CAUSE

01/08/2016
SERVICE/CERTIFICATE OF MAILING

12/31/2015
SERVICE/CERTIFICATE OF MAILING

Charleston County Clerk Of Court

[Log In]

Home	Search	Court Info	GS Docketing

2014CP1001635

ALLEN LIVINGSTON

VS

HAROLD SIMMONS

FORECLOSURE 420

File Date: 03/11/2014

Case Status: ENDED

Disp Date: 04/08/2015

FILINGS

07/23/2018
AFFIDAVIT/PUBLICATION

07/23/2018
CERTIFICATE OF MAILING

05/11/2018
LETTER FROM ATTY BERLINSKY IN RE: BANKRUPTCY COURT

09/06/2016
AFFIDAVIT/PUBLICATION

09/01/2016
MASTER'S ORDER ON MOTION TO ALTER & AMEND

08/30/2016
MOTION/TO POST COLLATERAL WITH CLERK BY DEFENDANT, CRT/SRV

08/09/2016
NOTICE OF APPEARANCE OF ATTY WHIPPPER FOR HAROLD SIMMONS JR

07/28/2016
MISCELLANEOUS DOCUMENTS

06/10/2016

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT T

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit T

Court Received
Mail Certified
6-4-2014

THE STATE OF SOUTH CAROLINA	)	
	:	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	Cause No. 2014 CP 10 1635
ALLEN LIVINGSTON	)	
Plaintiff,	)	
-versus-	)	**COUNTERCLAIM**
		(Jury Trial Requested)
HAROLD SIMMONS JR.	)	
Defendant.	)	

FILED
2014 JUN 12 AM 10:2
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant, Harold Simmons Jr. states he has a claim against the plaintiff in the amount of $600,000.

The counterclaim arose out of the same transaction or occurrence as the plaintiff's claim as a result of the following events:

FACTUAL AND PROCEDURAL BACKGROUND

This instant motion arises from a foreclosure case. The Defendant, Harold Simmons Jr. came into a Lease to Buy Agreement with Plaintiff for property located at 3042 N. Carolina Ave, North Charleston, SC 29405, as evidenced by a copy of said Agreement attached hereto as Exhibit "A" and incorporated by reference. The Plaintiff, Allen Livingston has consistently filed and pursued the defendant on several frivolous claims, not showing good faith, no legitimate justification for any actions, constant violation of the statute of frauds, slander, and for no other purpose but to embarrass, delay, or burden the Defendant. The actions filed by the Plaintiff are malicious and have indicated that the actions are being brought merely as a means of harassment.

Court Received
Mail Certified
6-4-2014

June 12 2014
Received Call from Clerk
of Court Miss Trusee stating
Defendant Need to come in
And Sign Cover sheet.

1. Between 2007 until the present the Plaintiff has filed various claims and numerous exhibits. A motion was restored on September 14, 2010 pursuant to a Rule 40(j) dismissal on January 13, 2010. The Court heard the testimony and argument where there was a major issue regarding credibility of the parties and conflicting recollections of the litigants and the witnesses. The Plaintiff allegations against the Defendant of non-rental payments and some opinion regarding the building and its depreciation. The Defendant categorically denied all allegations. The Court ruled in favor of the Defendant which is as evidenced by a copy of said Agreement attached hereto as Exhibit "B" and incorporated by reference.

2. The Court decision confirms that validity of this counterclaim. It was ruled and order that the Plaintiff credibility remains a big issue in the case; from the considerations involving which version of the contract to the Plaintiff's selective memory on many issues of fact. The Court was troubled with the Plaintiff's version of facts. His original allegations regarding non-payment was revealed to be substantially incorrect and as to the year of 2007 as being entirely inaccurate. It is a crucial factor in looking at version of the contract is how the front page of the Plaintiff's contract contains the wrong address for the subject property and on subsequent pages involving the term for the Defendants period to make payments being left completely out of the version put forward by the Plaintiff. This to the Court that there is a proper place for equity in its considerations. The Defendant was granted all relief under the theory of unjust enrichment and that is also proper in an equitable action. It was ordered the most appropriate relief is specific performance. The Defendant was to assume all purchaser responsibilities and all the

credit adjustments were made leaving a balance of $37,460.00 to be paid on the installment contract at the rate of $500 month until balance is paid in full.

3. The Plaintiff continued further to file yet another claim of foreclosure. Which is why this counter claim is being filed. In short, Plaintiffs claims were so utterly baseless and lacking in any evidentiary support that no reasonable lawyer, judge, or jury could conceivably think his claims had any merit whatsoever. The Defendant has suffered from severe emotional distress and severe depression as a direct result of the Plaintiffs meritless civil actions. Plaintiff is known for filing meritless civil claims.

4. Sanctions are appropriate pursuant to the current § 15-36-10 which allows the court to impose sanctions for the initiation and prosecution of meritless civil actions.

(c) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and

(d) a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

(4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

(a) filing a frivolous pleading, motion, or document if:

(i) the person has not read the frivolous pleading, motion, or document;

(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

(B)(1) If a document is not signed or does not otherwise comply with this section, it must be stricken unless it is signed promptly or amended to comply with this section after the omission is called to the attention of the attorney or the party.

(2) If a document is signed in violation of this section, or an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances.

(C)(1) At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:

(a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or

(c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

(2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned.

(D) A person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of this section. A court or party proposing a sanction pursuant to this section shall notify the court and all parties of the conduct constituting a violation of the provisions of this section and explain the basis for the potential sanction imposed. Upon notification, the attorney, party, or pro se litigant who allegedly violated subsection (A)(4) has thirty days to respond to the allegations as that person considers appropriate including, but not limited to, by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation.

FAILURE TO CONSTITUTE A CAUSE OF ACTION

1. That the Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

STATUTE OF FRAUDS

2. The Plaintiff's claims are all barred by the Statute of Frauds.

GOOD FAITH AND REASONABLE BELIEF

3. The actions and conduct of defendant, were undertaken in the good-faith performance of business duties, based upon reasonable cause, pursuant to just cause, not contrary to any law or regulation as made and provided, and proper under the circumstances. Plaintiff failed to show good faith and reasonable belief.

ADDITIONAL CLAIMS

4. Defendant hereby give notice that he intend to rely upon affirmative defenses as may become available or apparent during the course of discovery and thus reserve the right to amend your answer/counterclaim to assert any such defenses and claims.

NEGLIGENT ACT OF OTHERS

5. Plaintiff's claims, if any, are the result of negligent acts and omissions of other entities or persons over whom the defendant has no control, barring plaintiff's claims against the defendant.

PAYMENT

6. The Defendant asserts the affirmative defense of payment.

The defendant states that the information contained in the counterclaim is true and correct to the best of his knowledge. Defendant understands that should he be successful in this action and obtain judgment, and if plaintiff does not appeal within thirty days, this judgment becomes final. The defendant cannot commence another action involving the same parties and issues.

I state under penalty of perjury that the above is correct and truthful.

Submitted this 2nd day of June, 2014.

Respectfully submitted,

Harold Simmons Jr.; Pro Se
1182 King Street
Charleston, South Carolina 29403
(843) 554- 7414

CERTIFICATE OF SRVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 2nd day of June, 2014
HAROLD SIMMONS JR.

T

BY: Harold S. —> T.

THE STATE OF SOUTH CAROLINA	)	
	:	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	Cause No. 2014 CP 10 1635
ALLEN LIVINGSTON	)	
	:	
Plaintiff,	)	
	:	
-versus-	)	**CERTIFICATE OF SERVICE**
	:	
HAROLD SIMMONS JR.	)	
	:	
Defendant.	)	
	:	

FILED
2014 JUN 12 AM 10:2
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I certify that on this date, I served a copy of Defendant's Answer to Plaintiff's Complaint in this action, dated 2nd day of June, 2014 by mailing it to him, at his last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Allen Livingston
6046 Hyde Park Road
Ravenel, South Carolina 29470
PLAINTIFF

and/or

Bruce A. Berlinsky, Esquire
843/852.2202
P.O. Box 206 (29402)
One Carriage Ln., Bldg. F
Charleston, South Carolina 29407
ATTORNEY FOR PLAINTIFF

June 2 2014
Date

Harold Simmons Jr.
Signature

T

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	Cause No. 2014 CP 10 1635
ALLEN LIVINGSTON	)	
Plaintiff,	)	**EXHIBIT A 2**
-versus-	)	(Valid Authentic Lease To Buy Agreement)
HAROLD SIMMONS JR.	)	Forgery, Fake, Altered
Defendant.	)	

Forgery, Fake, Altered T Exhibit C

Lease to Buy:

This lease, morgage agreement enter in the day of 6 - 15 - 2000 is a legal
month/ day/ year
and binding contract between ALLEN LIVINGSTON and Harold Simmons Jr.
Hereby agree to these terms and provisions here in after set forth, as follow:
That whereas, I Harold Simmons JR agree to lease with option to buy said
buyer
property located at 3049 N Carolina Ave. At a purchase price, rate
location/address N CHARLESTON
of $ One Hundred Twenty Five Thousand ($125,000.00) Dollars.
price written price in numbers

The monthly Payment is payable in advance and shall be due on or before the
Fifteen — 15, Day of each month.
written number

If for some reason Harold Simmons Jr. fails to meet the monthly payment
name of buyer
ALLEN LIVINGSTON agree to give Harold Simmons Jr. 30 day
name of seller name of buyer number
Thirty days to pay any Delinquient payments before he or she is
write number
found in default.

In the Event ALLEN LIVINGSTON select to terminate the agreement early
seller
Harold Simmons Jr. have the right, option to purchase, buy the property,
buyer
located at N CAROLINA AVE. If this agreement is not terminated
address
by either party during the term's set forth Harold Simmons Jr. have the
buyer
right and option to purchase, buy the end of these terms.

Mr Bardwell Mr Livingston

T C

Harold Simmons Jr. agree to lease said property for the duration of
buyer

1 years, one
print # write number

For some reason Harold Simmons becomes unable to honor lease agreement, ill, lost wages, business foreclosure, Harold Simmons have the right to brake lease agreement Harold Simmons Jr. have to give

30 days notice.

1 years after entering this agreement Harold Simmons have the right to move from lease to buyer.

Beginning: 6 - 15 - 2000 Ending: 5 - 31 - 2001
month day year month day year

Entering in these agreement from lease to buy the money that is paid in these contract will go toward it as a downpayment.

During the Duration of the Lease Term ALLEN Livingston has to notify
landlord

Harold Simmons in writing 1 days in advance prior to entering the
lessee number

build during reasonable hours without being liable for tresspassing, for the purpose of inspections, repairs.

Buying these property Harold Simmons is responsible for all taxes
buyer

beginning from 6 - 15 - 2000
month day year

Terms of Payment

Harold Simmons agree to pay: First year $500.00. ——. Beginning
buyer

6 - 15 - 2000. Ending 6 - 15 - 2001.
month day year month day year

Second year $_____. Beginning ____-____-____. Ending
month day year

____-____-____.
month day year

Purchase Price to Buy $ 125,000,00.

Monthly Payment: $ 501,00

ALLEN LIVINGSTON
(Buyer's print)

(Buyer's signature)

Harold Simmons Jr.
(Buyer's print)
Renter

Harold Simmons Jr.
(Buyer's signature)
Renter

(witness)

(witness)

T

THE STATE OF SOUTH CAROLINA	)	
	:	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	Cause No. 2014 CP 10 1635
ALLEN LIVINGSTON	)	
	:	
Plaintiff,	)	
	:	
-versus-	)	**EXHIBIT A**
	:	(Valid Authentic Lease To Buy Agreement)
HAROLD SIMMONS JR.	)	
	:	
Defendant.	)	
	:	

EXHIBIT A

Lease to Buy:

This lease, morgage agreement enter in the day of 6-15-2000 is a legal
month/ day/ year
and binding contract between ALLEN LIVINGSTON and Harold Simmons Jr.
Hereby agree to these terms and provisions here in after set forth, as follow:

That whereas, I Harold Simmons Jr. agree to lease with option to buy said
buyer
property located at 3042 N CAROLINA AVE North Charleston S.C. 29405. At a purchase price, rate
location/address
of $ one Hundred + Twenty Five Thousand ($125.000.00) Dollars.
price written price in numbers

The monthly Payment is payable in advance and shall be due on or before the
Fifteen - 15 - Day of each month.
written number

If for some reason Harold Simmons Jr fails to meet the monthly payment.
name of buyer
ALLEN LIVINGSTON agree to give Harold Simmons 30 day
name of seller name of buyer number
Thirty days to pay any Delinquient payments before he or she is
write number
found in default.

In the Event ALLEN LIVINGSTON select to terminate the agreement early
seller
Harold Simmons Jr have the right, option to purchase, buy the property,
buyer
located at 3042 N. CAROLINA AVE. North Charleston 29405. If this agreement is not terminated
address
by either party during the term's set forth Harold Simmons Jr. have the
buyer
right and option to purchase, buy the end of these terms.

depobook.com
EXHIBIT
Pft. 5

5.(2) Harold Simmons Jr. agree to lease said property for the duration of
buyer

1 years, one .
print # write number

For some reason Harold Simmons becomes unable to honor lease agreement, ill, lost wages, business foreclosure, Harold Simmons have the right to brake lease agreement Harold Simmons Jr. have to give

30 days notice.

1 years after entering this agreement Harold Simmons have the right to move from lease to buyer.

Beginning: 6 - 15 - 2000 Ending: 5 - - 31 2001
month day year month day year

Entering in these agreement from lease to buy the money that is paid in these contract will go toward it as a downpayment.

During the Duration of the Lease Term ALLEN Livingston has to notify
landlord

Harold Simmons in writing 1 days in advance prior to entering the
lessee number

build during reasonable hours without being liable for tresspassing, for the purpose of inspections, repairs.

Buying these property Harold Simmons is responsible for all taxes
buyer

beginning from 6 - 15 - 2000
month day year

Terms of Payment

Harold Simmons agree to pay: First year $ 500.00. —. Beginning
buyer

T A

5(3)

6 - 15 - 2000 Ending 6 - 15 - 2001
month day year month day year

Second year $ 500.00. Beginning 6 - 15 - 2001. Ending
month day year

4 - 15 - 2021
month day year

Purchase Price to Buy $ 125,000.00.

Monthly Payment: $ 501.03.

ALLEN LIVINGSTON
([redacted]'s print)

([redacted]'s signature)

Kendal Simmons Jr.
([redacted]'s print)
RENTER

Harold Simmons Jr
([redacted]'s signature)
RENTER

(witness)

(witness)

THE STATE OF SOUTH CAROLINA	)	
	:	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	Cause No. 2014 CP 10 1635
ALLEN LIVINGSTON	)	
Plaintiff,	)	
-versus-	)	**EXHIBIT B**
		(Valid Authentic Court Order)
HAROLD SIMMONS JR.	)	
Defendant.	)	

Exhibit K

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-8027

Allen Livingston
PLAINTIFF(S),

Harold Simmons
DEFENDANT(S)

Submitted by: _____

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

FILED
2013 FEB 27 AM 11:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **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 LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		$ -
		$
		$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

J. C. Nicholson
Circuit Court Judge

2117
Judge Code

2/20/13
Date

Exhibit K

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2010-CP-10-8027
)	
ALLEN LIVINGSTON,)	
)	
Plaintiff,)	
)	PROPOSED ORDER
versus)	
)	
HAROLD SIMMONS,)	
)	
Defendant.)	

FILED
2013 FEB 27 AM 11:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THE WITHIN MATTER came before this Court after restoration to the trial docket on a Motion to Restore filed on September 14, 2010 pursuant to a Rule 40(j) dismissal on January 13, 2010. The Court has heard testimony and argument for nearly two (2) days and has received numerous exhibits. This case presented major issues regarding the credibility of the parties and the conflicting recollections of the litigants and the witnesses.

Plaintiff appeared represented by counsel and presented witnesses (2) to support the waste allegations in his claim. Defendant appeared represented by counsel, calling one witness in support of his counterclaim and defense.

This case centers on the issue of whether the Defendant has substantially performed his agreement under the contract negotiated by the parties on June 15, 2000. This matter began as an ejectment action in the Summary Court. Plaintiff alleged that Defendant failed to pay rent when due and demanded for the period beginning 2005 through October 2007. Defendant denied fault and counterclaimed for damages and specific performance on the bases that the agreement executed by the parties was an installment land contract.

To determine the nature of their relationship, this Court considered documents submitted by each party that were alleged to set out the terms of their agreement. After careful consideration of those documents, which were two versions of the contract signed by the parties, this Court determined that the document offered by Mr. Simmons was the original agreement and the best evidence of their expectations since it contained original signatures from both parties and the original signatures of a witness. Real property is often sold under contracts that provide for the payment of the purchases in a series of installments. "These contracts, usually termed installment land contracts, are drafted in many ways. Typically, the vendor retains legal title to the property until all of the purchase price has been paid."... Lewis v. Premium Investment Corporation, 351 S.C. 167, 568 S. E. 2d 361 (2002). Basic contact law provides that when a contract is clear and unambiguous, the language alone determines the

contracts' force and effect. C.A.N Enterprises, Inc. v. South Carolina Health & Human Services Fin. Commissions, 296 S.C. 373, 373 S.E. 2d 584 (1988).

The Defendant contends that, in fact, he has paid against the principle in advance by making payments at a higher and faster rate than required under the contact. Mr. Simmons' primary proof for his position is the example where Plaintiff alleges a default in payments during the year of 2007 yet the evidence (Defendant's Ex.) indicates that Mr. Simmons paid $500.00 beyond what was required for the period alleged. Mr. Simmons testified that during the length of the contract he would pay at a higher or faster rate in order to protect himself from defaulting on the payments. Defendant tendered his entire collection of receipts for the contested period of payment. This record of payment totaled $87,540.00. A comparison of the chronological pay period utilizing the contract rate against Defendant's record of payment reveals that Mr. Simmons at the time of trial had paid $16,040.00 beyond what was required under the contract. Our Court of Appeals has specifically held that in an installment land contract, the vendee in possession of the land is considered the owner of an equitable interest in the property. Southern Pole Buildings, Inc. v. Williams, 289 S.C. 521, 347 S. E. 2d 121 (Ct. App. 1986), See also, Lewis v. Premium Investment Corporation, supra, footnote 4.

Actions to foreclose or cancel and instrument are actions in equity. Wilder Corporation v. Wilke, 324 S.C. 570, 576, 479 S.E. 2d 510, 513 (1996). The courts of South Carolina have long held that forfeitures or penalties are not favored in either law or equity. Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E. 2d 697 (Ct. App. 2006) reh. den. (May 2006), citing Lewis v. Premium Investment Corporation, supra.

The theory of equitable conversion provides that under an executory contract for the sale of real estate, the equitable estate passes to the purchaser and the bare legal title for security purposes remains in the vendor. Brooks v. Council of Co-Owners of Stones Throw Horizontal Property Regime 1. 315 .S.C. 474, 476, 445 S. E. 2d 630, 632 (1994) citing 8A George W. Thompson, Commentaries on the Modern Law of Real Property § 4447 (1963). Despite Mr. Simmons' struggles, his efforts to successfully satisfy his obligations are impressive, fundamentally, and significant, legally. Earlier during argument of counsel, defense counsel objected to the treatment of the list of conditions on page four of the contract as applicable to the Defendant buyer. Counsel argues that once Defendant became a buyer, those conditions no longer applied to the Defendant. In light of the doctrine of equitable conversion and review of the content of those conditions, this Court is convinced that those conditions are inapplicable to an equitable owner and possessor of the property, excepting the requirement for insuring the property.

Defendant contends that plaintiff was aware of the Defendant's change from tenant to purchaser because practically every receipt and payment instrument is designated for 'mortgage'. Mr. Simmons has been very fastidious in recording the matter of payment and, but for his records, there would be no recollection. Plaintiff admitted that he kept no records of their transactions. Mr. Simmons demonstrates an approach that reflects the essence of this agreement: a substantial amount of money would be spent for a major property but the transaction involved a diminis scale, i.e. no major lender and $500.00 per month payments.

Plaintiff offered no evidence or testimony of making demand for payment. The 'mortgage' can be clearly seen on the money orders Mr. Simmons used for payment. The "mortgagee" notation can be seen on the Defendant's exhibit showing deposits into Plaintiff's Wells Fargo/Wachovia account as early as 2005 and Mr. Simmons' receipts show this notation as early as 2002. Plaintiff's behavior in accepting these payments under the circumstances evidenced convinced Mr. Simmons that the building at North Carolina Avenue would one day be his. "The principal that the vendee becomes the equitable owner of real property while the contract is still executory was established for the purpose of enabling him to resort to a court of equity for the protection of his rights, on the ground that a mere action for damages arising from a breach of the contract by the vendor would not afford him equitable relief." Good v. Jarrard, 93 S.C. 229, 236, 76 S.E. 2d 698, 701 (1912). In this instance the vendor's breach is the ejectment action taken without due cause.

Plaintiff initiated this action alleging default in payment and some opinion regarding the building; subsequently, he amended his complaint to include alleged other failure. After reviewing the exhibits, this Court is not convinced that Mr. Simmons has done anything to depreciate the value of the property. According to the County Tax Assessor, the property's value has increased appreciably. All testimony describes the building as a once vacant structure with very sparse amenities. Mr. Simmons added a room for an office so there was some improvement. There has been no claim for insurance payment so that item is not material to this action, nor the contractual relationship. Plaintiff claims a loss in relation to his payment of property taxes. At no time did he complain to Mr. Simmons about the property taxes or seek clarification as to who was responsible for these tax payments. In light of Mr. Simmons' constant use of the "mortgage" term, it would seem that a discussion regarding taxes and insurance would have occurred. Plaintiff is an experienced and well-established business man who knows the relative value of "allowed business deductions" and probably appreciated the availalibility of these expenses. So the behavior of seeking an ejectment appears like "eating your cake and having it too."

Therefore, credibility remains a big issue in this case; from the considerations involving which version of the contract to the Plaintiff's selective memory on many issues of fact. This Court has been troubled with his version of the facts. His original allegations regarding non-payment between both 2005 and 2007 being revealed to be substantially incorrect and as to the year of 2007 as being entirely inaccurate; and then a crucial factor in looking at the version of the contract is how the front page of Plaintiff's contract contains the wrong address for the subject property and on subsequent pages involving the term for Mr. Simmons' period to make payments being left completely out of the version put forward by the Plaintiff. This tells this Court that there is a proper place for equity in its considerations.

Mr. Simmons has requested relief under the theory of specific performance and that is proper in a matter of equity. He has also requested relief under the theory of unjust enrichment and that is also proper in an equitable action. Under the facts shown the most appropriate relief is specific performance. It is my confirmed opinion that the Defendant should be allowed the relief that he has requested. Hence I am ordering that the transaction be carried out as agreed upon to include Mr. Simmons assuming all of the responsibilities of the purchaser under their agreement as stated in Defendant's contract (Ex.) including the payment of property taxes and the arrangements for insurance. Further, I order that any property taxes paid by the Plaintiff be compensated from Mr. Simmons' overpayment of the purchase price. He will have sixty (60) days to arrange for insuring the building in a commercially reasonable manner.

I further find that the defendant is given credit for $87, 540.00 towards the purchase price of $125,000 with a balance of $37,460.00 to be paid on the installment contract at the rate of $500 a month until the balance is paid. The defendant will obtain an amortization schedule and supply a copy to the plaintiff. The defendant will either pay by money order or check with a notion of payment and marked from the amortization schedule by both parties.

AND IT IS SO ORDERED.

2/20/13, 2013
Charleston, S.C.

J. C. NICHOLSON, JR.
Presiding

THE STATE OF SOUTH CAROLINA)	
:	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	Cause No. 2014 CP 10 1635
ALLEN LIVINGSTON)	
:	
Plaintiff,)	
:	
-versus-)	**EXHIBIT C**
:	(Valid Authentic of Payments)
HAROLD SIMMONS JR.)	
:	
Defendant.)	
:	

Any and all said such receipt of payments that have not been allotted for in any such court proceeding known unto this day are listed below and should be taken into account as a valid authentic receipt of payment are as follows:

COURT ORDERED CREDIT: $87,540.00 (See Exhibit B)
COURT ORDRED BALANCE: $37,460.00 (See Exhibit B)
DEFENDANT ORIGINAL VALID AUTHENTIC RECEIPT OF PAYMENTS (Not accounted for in any other court proceeding but due proper credit): $8,400.00 (See Exhibit C pg.2)
DEFENDANT CHRONOLOGICAL LIST OF ORIGINAL VALID AUTHENTIC RECEIPTS

1)	09/15/2009	$500
2)	12/15/2009	$500
3)	01/15/2010	$500
4)	02/15/2010	$500
5)	06/15/2010	$500
6)	07/15/2010	$500
7)	No date	$500
8)	No date	$400
9)	09/10/2012	$500
10)	09/10/2012	$500
11)	09/10/2012	$500
12)	10/22/2012	$500
13)	10/22/2012	$500
14)	10/22/2012	$500
15)	05/04/2013	$500
16)	05/04/2013	$500
17)	05/04/2013	$500
18)	Total	$8400

19) **Difference: $37460 - $8400 = $29060**

February 20, 2013 Court Order Find Total Paid $87,540 on beginning payment of June 15, 2000 at $500 a month.

Month	Year	End Year Payment
June	2000	$3,500.00
January	2001	6,000.00
January	2002	6,000.00
January	2003	6,000.00
January	2004	6,000.00
January	2005	6,000.00
January	2006	6,000.00
January	2007	6,000.00
January	2008	6,000.00
January	2009	6,000.00
January	2010	6,000.00
10 1/2 Years		**63,500.00**
January	2011	6,000.00
January	2012	6,000.00
January	2013	6,000.00
January	2014	6,000.00
4 Years		**24,000.00**

$63,500.00 + 24,000.00 = $87,500.00

Not Accounted for Money Orders before and after Court Order $4,500.00

$87,500.00 + 4,500.00 = $92,040.00

January 15, 2015 to September 15, 2015 $4,500.00

Not Accounted for Cash Receipts before Court Order $3,900.00

$92,040.00 + 3,900.00 = $95,940.00

October 15, 2015 to May 15, 2016 $3,900.00

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION.

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20206481714	2014 2012-09-10	294051	$500.00	0012

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20206481703	2014 2012-09-10	294051	$500.00	0012

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20206481692	2014 2012-09-10	294051	$500.00	0012

T

RECEIPT DATE 9/1/12 No. 887401

RECEIVED FROM HAROLD SIMMONS $500.00

FIVE HUNDRED DOLLARS AND 00/100 DOLLARS

○ FOR RENT
○ FOR 2020648 1714

ACCOUNT	
PAYMENT	
BAL. DUE	

◎ CASH
◎ CHECK
◎ MONEY ORDER
◎ CREDIT CARD

FROM _____ TO _____

BY _____

RECEIPT DATE 9/1/12 No. 887402

RECEIVED FROM HAROLD SIMMONS $500.00

FIVE HUNDRED DOLLARS AND 00/100 DOLLARS

○ FOR RENT
○ FOR 2020648 1703

ACCOUNT	
PAYMENT	
BAL. DUE	

◎ CASH
◎ CHECK
◎ MONEY ORDER
◎ CREDIT CARD

FROM _____ TO _____

BY _____

RECEIPT DATE 9/1/12 No. 887403

RECEIVED FROM HAROLD SIMMONS $500.00

FIVE HUNDRED DOLLARS AND 00/100 DOLLARS

○ FOR RENT
○ FOR 2020648 1692

ACCOUNT	
PAYMENT	
BAL. DUE	

◎ CASH
◎ CHECK
◎ MONEY ORDER
◎ CREDIT CARD

FROM _____ TO _____

BY _____

T

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20216408534	2012-10-22 (2014)	294051	$500.00	0010

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20216408545	2012-10-22 (2014)	294051	$500.00	0010

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20216408556	2012-10-22 (2014)	294051	$500.00	0010

T

RECEIPT DATE 10/22/2012 No. 887414

RECEIVED FROM Harold Simmons $ 500.00

Five hundred and no/100 DOLLARS

○ FOR RENT
○ FOR Jeff Barnwell

ACCOUNT		
PAYMENT	500	00
BAL. DUE		

(S) CASH (S) CHECK (S) MONEY ORDER (S) CREDIT CARD

USPS # 20216408534

FROM TO

BY N Snow

RECEIPT DATE 10/22/2012 No. 887415

RECEIVED FROM Harold Simmons $ 500.00

Five hundred and no/100 DOLLARS

○ FOR RENT
○ FOR Jeff Barnwell

ACCOUNT		
PAYMENT	500	00
BAL. DUE		

(S) CASH (S) CHECK (S) MONEY ORDER (S) CREDIT CARD

USPS # 20216408545

FROM TO

BY N Snow

RECEIPT DATE 10/22/2012 No. 887416

RECEIVED FROM Harold Simmons $ 500.00

Five hundred and no/100 DOLLARS

○ FOR RENT
○ FOR Jeff Barnewell

ACCOUNT		
PAYMENT	500	00
BAL. DUE		

(S) CASH (S) CHECK (S) MONEY ORDER (S) CREDIT CARD

USPS # 20216408556

FROM TO

BY N Snow

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION.

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
21080419470	2013-05-04	294051	$500.00	0012

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
21080419457	2013-05-04	294051	$500.00	0012

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to A. Allen Livingston

Address

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
21080419468	2013-05-04	294051	$500.00	0012

BARNWELL LAW FIRM PC
147 WAPPOO CREEK DRIVE
SUITE 104
CHARLESTON SC 29412

PHONE CALL

FOR Harold Simmons DATE 5-9-13 TIME 11:21 A.M. P.M.
M money order
OF $500 #2108041947 0
PHONE/ MOBILE FAX
MESSAGE mortgage payment
check. (Certified)
Allen Lingston & Barnwell Law Firm
SIGNED Roxane Kirby 1154

- TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

ARNWELL LAW FIRM PC
47 WAPPOO CREEK DRIVE
UITE 104
HARLESTON SC 29412

PHONE CALL

FOR Harold Simmons DATE 5-9-13 TIME 11:21 A.M. P.M.
M money order
OF $500 #2108041945 7
PHONE/ MOBILE FAX
MESSAGE (Certified)
Mortgage payment
Allen Lingston &
Barnwell Law Firm
(Teffry Barnwell)
SIGNED Roxane Kirby 1154

- TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

BARNWELL LAW FIRM PC
147 WAPPOO CREEK DRIVE
SUITE 104
CHARLESTON SC 29412

PHONE CALL

FOR Harold Simmons DATE 5-9-13 TIME 11:21 A.M. P.M.
M money order
OF $500 #2108041946 8
PHONE/ MOBILE FAX
MESSAGE (Certified)
Mortgage Payment
Allen Lingston &
Barnwell Law Firm
(Teffry Barnwell)
SIGNED Roxane Kirby 1154

- TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

T

No. _____ 1-15 20 10

Received from Harold Simmons Jr.

Five Hundred 00/100 Dollars

Amt of Account	68,860	00
Amt Paid	500	00
	CASH	
Balance Due	68,360	00

mortgage for 469-16-00-329

$ 500.00

No. _____ 9-15- 20 09

Received from Harold Simmons Jr

Five Hundred Dollars 00/100 Dollars

Amt of Account	70,860	00
CASH Amt Paid	500	00
Balance Due	70,360	00

mortgage for 469-16-00-329

$ 500.00

No. _____ 12-15 20 09

Received from Harold Simmons Jr.

Five Hundred 00/100 Dollars

Amt of Account	69,360	00
Amt Paid	500	00
	CASH	
Balance Due	68,860	00

mortgage for 469-16-00-329

$ 500.00

No. _____ 2-15-2010

Received from Harold Simmons Jr

Five Hundred 00/100 Dollars

Amt of Account	$68,360	00
Amt Paid	$500	00
	CASH	
Balance Due	$67,860	00

Mortgage 469-16-329

$ 500.00

No. _____ 6-15 2010

Received from Harold Simmons Jr

Dollars

Amt of Account	$66360	00
Amt Paid	$500	00
	CASH	
Balance Due	$65,860	00

Mortgage 469-16-00-329

$ 500.00

No. _____ 7-15 2010

Received from Harold Simmons Jr.

Five Hundred 00/100 Dollars

Amt of Account	$65860	00
Amt Paid	$500	00
	CASH	
Balance Due	$65360	00

For Mortgage 469-16-00 329

$ 500.00

T

RECEIPT

DATE _____ No. 127610

RECEIVED FROM Harold Simmons Jr. $ 500.00

Five Hundred 00/00 DOLLARS

○ FOR ~~RENT~~
○ FOR M

ACCOUNT	500	00
PAYMENT	500	00
BAL. DUE	000	00

✓ CASH
○ CHECK
○ MONEY ORDER

FROM _____ TO _____

BY _____

adams 2701

RECEIPT

DATE _____ No. 127628

RECEIVED FROM Harold Simmons Jr. $ 100.00

DOLLARS

○ FOR RENT
○ FOR _____

ACCOUNT		
PAYMENT		
BAL. DUE		

✓ CASH
○ CHECK
○ MONEY ORDER

FROM _____ TO _____

BY _____

adams 2701

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF _____) _____ JUDICIAL CIRCUIT
)
CASE NO.: 2014CP-10-1635
Allen Livingston)
Plaintiff,)
) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
Harold Simmons Jr.)
Defendant.)

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Harold Simmons _____, Bar No. Pro Se Address: 1182 Kings Street Chas S.C. 29403 Phone: _____ Fax _____ 843-554-7414 E-mail: _____ Other: _____

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

SECTION I: Hearing Information

Nature of Motion: ✓ motion for Denial
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order

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

Harold Simmons Jr. 6-16-2014
Signature of Attorney for ☐ Plaintiff / ☑ Defendant Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

T

case: 2014-CP-10-1635

Ahhen Livingston Plaintiff

vs

Harold Simmons Defendant

FILED
2014 JUN 16 AM 8:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

motion to Denial
motion to Master-in-County

Defendent Ask Court For Denial of motion
Defendent which to filing Counter claim at later Date.
Defendent which and Request Jury Trial.

Harold Simmons
Harold Simmons Jr
3042 North Carolina Ave
North Charleston S.C.
29405
Harold Simmons Jr.

May 30, 2014

Court Received
mail certified
6-4-2014

pg 1 of 2 Page (1)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-10-1635

ALLEN LIVINGSTON,

Plaintiff,

versus

HAROLD SIMMONS,

Defendant.

CERTIFICATE OF MAILING

FILED
2014 JUN 16 AM 8:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I Harold Simmons Jr do Here By cestify That I have this Date mailed A True and correct copy of the Foregoins motion to Denied prepaid and deposited with the United State Postal

Bruce A Berlinsky
one Carriage Lanes Bldg F
Charleston, S.C. 29407
(843) 852-2202

Date May 30, 2014

Harold Simmons Jr
3042 North Carolina Ave
North Charleston S.C.
29405
843 554-7414

En Closed

Motion to Denial
certificate of service

motion to Proceed in Forma Pauperis

motion to Counter Claim
certificate of Service

Harold Sun

Court Received
mail certified
6-4-2014

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT U

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Requests for Jury Trial

Exhibit U

THE STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS Cause No. 2014 CP 10 1635
ALLEN LIVINGSTON Plaintiff, -versus- HAROLD SIMMONS JR. Defendant.	)	**ANSWER** (Jury Trial Requested)

FILED
2014 APR 24 PM 2:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant, Harold Simmons Jr. answer the respective numbered paragraphs of the Plaintiff's Complaint dated March 10, 2014, thus:

FIRST DEFENSE: QUALIFIED GENERAL DENIAL

1. Defendant lack sufficient information regarding the reason(s) plaintiff has or has not received any form of payment and has valid legal grounds for foreclosure, and therefore must deny the same demanding strict proof thereof. (See Exhibit C: Defendant Valid Authentic Receipt of Payments)
2. Defendant admit, upon information and belief, the 2nd statement of plaintiff complaint, and crave reference to said valid authentic Lease to Buy Agreement only and demanding strict proof thereof valid authenticity. (See Exhibit A: Defendant Valid Authentic Lease to Buy Agreement)
3. Defendant admit, upon information and belief, the 3rd statement of plaintiff complaint, and crave reference to said order. (See Exhibit B: Defendant Valid Authentic Court Order)

U

Court Received
Mail Certified
6-4-2014

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	Cause No. 2014 CP 10 1635
ALLEN LIVINGSTON	)	
Plaintiff,	)	
-versus-	)	**COUNTERCLAIM**
HAROLD SIMMONS JR.	)	(Jury Trial Requested)
Defendant.	)	

FILED
2014 JUN 12 AM 10:2
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant, Harold Simmons Jr. states he has a claim against the plaintiff in the amount of $600,000.

The counterclaim arose out of the same transaction or occurrence as the plaintiff's claim as a result of the following events:

FACTUAL AND PROCEDURAL BACKGROUND

This instant motion arises from a foreclosure case. The Defendant, Harold Simmons Jr. came into a Lease to Buy Agreement with Plaintiff for property located at 3042 N. Carolina Ave, North Charleston, SC 29405, as evidenced by a copy of said Agreement attached hereto as Exhibit "A" and incorporated by reference. The Plaintiff, Allen Livingston has consistently filed and pursued the defendant on several frivolous claims, not showing good faith, no legitimate justification for any actions, constant violation of the statute of frauds, slander, and for no other purpose but to embarrass, delay, or burden the Defendant. The actions filed by the Plaintiff are malicious and have indicated that the actions are being brought merely as a means of harassment.

June 12 2014
Received Call From Clerk
of Court Miss Trasee Stokes
Defendant Need to come in
And Sign Cover Sheet.

Court Received
Mail Certified
6-4-2014

Exhibit U

Court Received
mail Certified
6-9-2014

CASE: 2014-CP-10-1635

Ahhen Livingston Plaintiff

vs

Harold Simmons Defendant

FILED
2014 JUN 16 AM 8:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY

motion to Denial
motion to Master-in-Equity

Defendent Ask Court For Denial of motion
Defendent which to filing Counter claim at later Date.
Defendent which and Request Jury Trial.

Harold Simmons
Harold Simmons Jr.
3042 North Carolina Ave
North Charleston S.C.
29405
Harold Simmons Jr.

May 30, 2014

Court Received

give to whipper ATT 8/23/2016 U

7/16 2014

The State of South Carolina
County of Charleston

In the Court of Common Pleas
Cause No. 2014 CP 10 1635

Allen Livingston
Plaintiff,

-versus-

Harold Simmons Jr.
Defendant,

Requests For Continuances

2014 JUL 18 PM 12:24
CLERK OF COURT
CHARLESTON

Motion Hearing scheduled For ~~July~~ August 4, 2014
Defendant Request For Continuances

At this Time My father was Hospitalist For leg problem which Turn in to Heart Attack with a Stock, Need time to gather. I ask Please For and Continuances at thes time.
Need Time to gather Exhibits For Trial.
Need Time and At this Time Talking with An Attorney.
Did Timly Requests Jury Trial.

Harold Simmons Jr
Harold Simmons Jr.
1182 King Street
Chas. S.C. 29403
843-554-7414

lower Court Continue
After Appeal File

U

WHIPPER LAW FIRM

Attorneys and Counselors at Law
4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

Rule 38 (B) Demand

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

Mailing Address
P. O. Box 70070
North Charleston, SC 29415

June 8, 2016

Clerk of Court for Charleston County
ATTN: Common Pleas Filing Clerk
100 Broad Street, Suite 106
Charleston, SC 29401

RE: Allen Livingston vs. Harold Simmons, Jr.
Case No.: 2014-CP-10-1635
Jury Trial Demand
Certificate of Mailing

Dear Clerk:

Find enclosed our demand for jury trial in the above-referenced matter, with copy.

I am also enclosing for filing the certificate of mailing related to the jury trial demand, with copy.

A self-addressed, stamped envelope for your use in returning the conformed copies is also enclosed.

Sincerely,

WHIPPER LAW FIRM

J. Seth Whipper, Esquire

Enclosures
xc: Honorable Mikell R. Scarborough
Bruce Berlinsky
Harold Simmons, Jr.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2014-CP-10-1635
	)	
ALLEN LIVINGSTON,	)	
	)	
Plaintiff,	)	
	)	
versus	)	JURY TRIAL DEMNDED
	)	
HAROLD SIMMONS JR.,	)	
	)	
Defendant.	)	

TO: PRESIDING JUDGE: CLERK: BRUCE BERLINSKY, ATTORNEY FOR PLAINTIFF:

PURSUANT TO SCRCP 38 AND 53, Defendant demands a trial by jury of all the issues in this matter.

FURTHER, Defendant restates this request from prior pleadings.

June 8, 2016

WHIPPER LAW FIRM
Attorney for Defendant

J. Seth Whipper, Esquire
4592 Durant Avenue (29405)
Post Office Box 70070
North Charleston, South Carolina 29415
843/ 740-7777
843/ 740-9108 FAX

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2014-CP-10-1635
	)	
ALLEN LIVINGSTON,	)	
	)	
Plaintiff,	)	
	)	CERTIFICATE OF MAILING
versus	)	
	)	
HAROLD SIMMONS,	)	
	)	
Defendant.	)	

THIS is to certify that the Defendant's "Jury Trial Demanded" in the above-captioned action was mailed to Plaintiff's attorney of record by sending to Bruce A. Berlinsky, 1 Carriage Lane, Bdg. F, Charleston, SC, 29407; the Honorable Mikell R. Scarborough, 100 Broad Street, Suite 266, Charleston, SC 29401; and the Charleston County Clerk of Court, 100 Broad Street, Suite 106, Charleston, SC, 29401; by depositing the same in the United States mail with sufficient postage affixed thereto, this 8th day of June, 2016.

Cheryl Whipper Hamilton

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT V

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit V

Common Pleas
Charleston County Judicial Center
100 Broad Street - Suite 106
Charleston, SC 29401-9401

STATE OF
SOUTH CAROLINA

Harold Simmons
1182 King Street

Charleston, SC 29403

NOTICE OF MOTION SCHEDULING

June 10, 2014

Motion "REFMIE - Motion/Refer to Master by plaintiff, crt/mail" for Case: 2014CP1001635 - Allen Livingston VS Harold Simmons has been added to the following Motions Roster:
115 - MOTIONS ROSTER - JUDGE NICHOLSON

This hearing of this motion has been scheduled for 7/16/2014 at 9:30 AM.

MOTIONS ARE SCHEDULED COURTROOM 3E WITH JUDGE NICHOLSON PRESIDING. THE DEADLINE FOR REQUESTS FOR CONTINUANCES WILL BE 5PM ON WEDNESDAY, JULY 9TH.

IF YOU HAVE QUESTIONS PLEASE CONTACT CAROLINE LEONARD AT:
ccleonard@charlestoncounty.org.

Mail Notice To:	Court Info:
Harold Simmons 1182 King Street Charleston, SC 29403	Common Pleas Charleston County Judicial Center 100 Broad Street - Suite 106 Charleston, SC 29401-9401

If you have any questions regarding the scheduling of this motion, please contact the courts at:

(843)958-5000

Respectfully,

Julie Armstrong
Clerk of Court

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ALLEN LIVINGSTON, PLAINTIFF, versus HAROLD SIMMONS, DEFENDANT.	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE NO.: 2014-CP-10-1635 **NOTICE OF HEARING**

TO THE DEFENDANT ABOVE NAMED:

PLEASE TAKE NOTICE that the Charleston County Court of Common Pleas has set a motion hearing in the above captioned matter before the Presiding Judge, Honorable J. C. Nicholson, on Wednesday, July 16, 2014, at 9:30 a.m., at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina, in Courtroom 3E.

PLEASE BE PRESENT IF SO MINDED.

BRUCE A. BERLINSKY
(843) 852-2202
P.O. Box 206 (29402)
One Carriage Lane, Bldg. F
Charleston, SC 29407
ATTORNEY FOR PLAINTIFF

Charleston, South Carolina
June 10, 2014

BRUCE A. BERLINSKY, P.A.
Attorney at Law

Mailing Address:
PO Box 206
Charleston, SC 29402

One Carriage Lane, Building F
Charleston, SC 29407

Office: (843) 852-2202
Fax: (843) 852-4844
Bruce@berlinskylawfirm.com

July 2, 2014

Harold Simmons
3042 N Carolina Avenue
North Charleston, SC 29405

Harold Simmons
1182 King Street
Charleston, SC 29403

Re: Allen Livingston vs. Harold Simmons
Case No.: 2014-CP-10-1635

Dear Mr. Simmons:

The motion hearing scheduled for July 16, 2014, is no longer necessary at this time.

Yours Truly,

Bruce A. Berlinsky

BAB/jlr

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ALLEN LIVINGSTON, PLAINTIFF, versus HAROLD SIMMONS, DEFENDANT.	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE NO.: 2014-CP-10-01635 **NOTICE OF HEARING**

TO THE DEFENDANT ABOVE NAMED:

PLEASE TAKE NOTICE that the Charleston County Master in Equity's Office has set a hearing on Plaintiff's Motion to Strike in the above captioned matter before the Charleston County Master in Equity, Honorable Mikell R. Scarborough, on Monday, August 4, 2014, at 11:30 a.m., at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina.

PLEASE BE PRESENT IF SO MINDED.

BRUCE A. BERLINSKY
(843) 852-2202
P.O. Box 206 (29402)
One Carriage Lane, Bldg. F
Charleston, SC 29407
ATTORNEY FOR PLAINTIFF

Charleston, South Carolina
July 22, 2014

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT W

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

ALLEN LIVINGSTON,

Plaintiff,

vs. CASE NO. 2014-CP-10-1635

HAROLD SIMMONS, JR.,

Defendant.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 2:52 p.m. on December 17, 2014 at 100 Broad Street, Charleston, South Carolina.

COPY

Christine A. Smith, Court Reporter
Master-in-Equity
P.O. Box 30276
Charleston, South Carolina, 29417
(843) 958-5071
casmith@charlestoncounty.org

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF:

Bruce Berlinsky, Esq.
Law Office of Bruce Berlinsky
1 Carriage Lane
Suite F
Charleston, SC 29407
(843) 852-2202

ATTORNEYS FOR THE DEFENDANT:

Seth Whipper, Esq.
Law Office of Seth Whipper
4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777

(INDEX AT REAR OF TRANSCRIPT)

(PLF. EXH. #1, Proposed Order, was marked for identification.)

(PLF. EXH. #2, Lease to Buy, was marked for identification.)

(PLF. EXH. #3, Tax Receipts, was marked for identification.)

P R O C E E D I N G S

THE COURT: This is the case of Allen Livingston as the Plaintiff versus Harold Simmons as the Defendant. The case is numbered 2014-CP-10-1635. Present today for the Plaintiff is Mr. Bruce Berlinsky of the Charleston County Bar, and for the Defendant, Mr. Seth Whipper also of the Charleston County Bar.

Gentlemen, I've had a chance to review the file, including the underlying order that is referenced in the Complaint by the Plaintiff, and I have been provided with a list of proposed exhibits for trial which includes, I assume, that order. Is that the order?

MR. BERLINSKY: Yes.

THE COURT: It looks like Judge Nicholson had previously issued this order 2/20/13. It was filed

2/27/13. There's been some disagreement since that time as to what's been paid or not paid. That's why we're here today. That's what I see. Does that sound correct from the Plaintiff and the Defense perspective?

MR. WHIPPER: That's correct, Your Honor.

THE COURT: Very good.

MR. WHIPPER: I think also, Your Honor, we may need to take up a matter. I think the jurisdiction of the Court -- there's some questions as to the jurisdiction of this Court. If I might be heard, Your Honor, I'll state my concerns.

THE COURT: All right.

MR. WHIPPER: This order is an order that controls an executory contract and an ongoing relationship. I think that because of the nature of the order, the nature of the remedies that have been proposed means that what we have here instead of a foreclosure is a matter of failure to comply with the order.

As such it would be properly heard as a Rule to Show Cause in the Court of Common Pleas before Judge Nicholson. It is an executory order, an executory contract. It is still under the supervision of the Court. So I think that this just

occurred as you were speaking, Your Honor, as well as I looked at the paperwork this morning that this is, in fact, a case that really should be before Judge Nicholson as a Rule to Show Cause, and I think that therefore this Court lacks jurisdiction to hear this Complaint is more in the nature of a Rule to Show Cause for failure to follow the order.

I think that this matter has to be dismissed as a foreclosure and remanded to the Court, to Judge Nicholson, as a Rule to Show Cause.

THE COURT: Let me hear from you, Mr. Berlinsky.

MR. BERLINSKY: I disagree, Your Honor. If you read Judge Nicholson's order it was determined that this lease to buy was to be treated and interpreted as an installment sales contract. The Supreme Court has ruled repeatedly that installment sales contracts would be treated like mortgages and must be foreclosed upon because there may be some equity as a result of a foreclosure sale and the Plaintiff may be entitled to it.

Judge Nicholson's order just said, It's an installment sales contract, and this is what he's got credit for, and this is what the future payments are supposed to be. I'm not seeking to put him in jail

for Contempt of Court. He's made no attempt to make any payments since this order other than the three payments that he has proof that my client acknowledges. He has memory of three payments.

Seth has shown me receipts of three payments. I don't think it's a Rule to Show case. Once he ruled it's an installment sales contract I'm entitled to foreclose.

THE COURT: This may help me. What has transpired since the order was issued? It looked like it might have bounced up on appeal and got --

MR. BERLINSKY: It went up on appeal, and the appeal was dismissed. What has transpired since then is starting after this February order, which it's been 18 months since. The order is February of 2013. It's been 18 months since then.

Judge Nicholson found in the last paragraph of the order that the Defendant was giving Mr. Simmons credit of 87,540 towards the purchase price of 125,000 with a balance of 37,460 to be paid on the installment contract at a rate of 500 a month until the balance is paid.

The Defendant was to obtain an amortization schedule supplied to the Plaintiff, and he was required to pay by money order or check with a

notation mark on the amortization schedule on behalf of the parties. Since that my client -- because the payments were being made to Mr. Barnwell's office, and if you recall he died in July of 2013.

Between this order and July of 2013, my client recalled that I received at least three payments. It could have been possibly four. I only really actually remember the three. Mr. Simmons has provided Postal money orders, or Seth has, for me to review. They're not in evidence yet, but there are three money orders dated after this order (indicating).

There has been no amortization schedule provided by the Plaintiff to the Defendant or to Mr. Barnwell to my knowledge. There's no notations on any payment of amortization schedule payments, but we certainly acknowledge receiving three payments, but in 18 months that's three leaving 15 months unpaid for and no explanation for it.

THE COURT: Okay. Mr. Whipper?

MR. WHIPPER: Again, Your Honor, it's our position that this order is still under the jurisdiction of Judge Nicholson. It is an executory order that tells what should be done, how it is supposed to be done, so the Court, in fact, has kept

jurisdiction of this case.

Once the appeal was completed it was dismissed, and it was sent back to the Circuit Court. Clearly --

THE COURT: Well, he didn't say that in his order, did he?

MR. WHIPPER: That he would keep jurisdiction?

MR. BERLINSKY: No. It is not anywhere in this order.

MR. WHIPPER: He did not say that in the order per se. The essence of the order is that it is a supervisory order with the ongoing conditions that have to be established and satisfied. So in fact, this is still within the purview of Judge Nicholson and this Court order. We're not saying there's not a forum. We're just saying that this is the wrong forum or the wrong proceeding.

MR. BERLINSKY: Your Honor, my client doesn't seek to rule him into Court to throw him into jail for a contempt order. We either want payment or we want the property back. It's simple.

THE COURT: All right.

MR. BERLINSKY: He's done nothing. This case has been floating around now for months, and he's made no attempt to even reinstate.

MR. WHIPPER: Our position again, Your Honor -- this again, should be argued before Judge Nicholson to decide from this point what happens next for any alleged failures in performance. That's who should make the final order. That's where it was to begin with.

THE COURT: I can acknowledge the argument. Why is it just now being presented to me, though?

MR. WHIPPER: Well, because Your Honor, in fact, as we read information over the weekend in preparing we realized -- wait a minute -- we're not -- I was wondering -- I generally don't do foreclosure cases. This isn't a foreclosure.

I'm here because I was a lawyer involved in obtaining this order. This order requires that he do certain things. He hasn't done any of these certain things as alleged by the Plaintiff, but this order is signed by Judge Nicholson. It's his order, and it's his prescription of what's going to be happening, so it should be before Judge Nicholson as a failure to follow the order. It's not in the nature of a straight foreclosure. Again, it has to be raised now because it's essentially a subject-matter jurisdiction. Does this Court have subject matter jurisdiction of this order? It doesn't.

THE COURT: Let me go back. So then what relief -- the Plaintiff gets to pursue the relief they want. What's the relieve that the Plaintiff seeks, Mr. Berlinsky?

MR. BERLINSKY: Judge Nicholson's order specifically defines this as an installment sales contract.

THE COURT: I see that.

MR. BERLINSKY: The relief we seek is foreclosure of the Installment Sales Contract for failure to make any payments.

THE COURT: All right. Then I think --

MR. BERLINSKY: Notwithstanding that -- even Seth's argument -- a Rule is not required to go back before the Judge who initially hears it. Any Judge can hear a Rule for not complying.

THE COURT: Let's restate the question. Are you here on a Rule?

MR. BERLINSKY: I'm not here on a rule.

THE COURT: You're here on a Complaint, right?

MR. BERLINSKY: I'm here on a Complaint.

THE COURT: Complainant seeks foreclosure of installment sales contract, nonjury.

Mr. Whipper, I acknowledge that your argument has some merit, but I don't find that the Plaintiffs

are seeking the remedy that would require them to go in front of Judge Nicholson. What they seek is to follow the law that Judge Nicholson has set forth in that order which gives your client equitable interest in the property meaning -- I think when it was in front of him the question was, What type of agreement do they have: Leasehold or installment sales contract?

He found, I believe as a matter of law, that it was an installment sales contract. So now the Plaintiff seeks to foreclose under that installment sales contract I assume having lost that argument in front of Judge Nicholson. I can't really tell, but that's what it seems to me to be. So it would appear to me that this is a matter of equity, and that's what the Plaintiff's are seeking today is equity, not some contemptuous powers under a Rule to Show Cause. The Plaintiff gets to choose how they wish to proceed in that fashion.

MR. WHIPPER: I don't think so, Judge, with all due respect. They have -- they're still in front of Judge Nicholson. They go back to Judge Nicholson and allege what they claim the problem is here, and then it's up to Judge Nicholson to turn them down.

THE COURT: I think if they were saying that

he's not complied with the Judge's order --

MR. WHIPPER: That's really what they're saying.

MR. BERLINSKY: That's not what we're saying, not even close to what we're saying.

THE COURT: I'm going to deny the motion. I don't think that's what they're seeking. I'm going to deny the motion, and I'm going to allow the Plaintiffs to proceed. Okay?

MR. WHIPPER: Thank you, Your Honor.

THE COURT: Any other matters to take up before we start?

MR. BERLINSKY: Nothing, Your Honor.

THE COURT: The Plaintiff may proceed.

MR. BERLINSKY: I call Allen Livingston to the stand.

MR. WHIPPER: Your Honor, one other thing. We will put up evidence that we feel might indicate that we have experienced any harm or damage. We want to put that up.

THE COURT: Very good. I'll let the Plaintiff go first, and the Defendant can go after that.

MR. WHIPPER: That's right.

THE COURT: Mr. Livingston, come on up.

ALLEN LIVINGSTON,

being first duly sworn, testified as follows:

THE COURT: If you would, please state your full name and address for the record.

THE WITNESS: Allen R. Livingston, 6046 Hyde Park Road, Ravenel, South Carolina, 29470.

THE COURT: Thank you, sir. You may proceed, Mr. Berlinsky.

EXAMINATION

BY MR. BERLINSKY:

Q. Mr. Livingston, are you familiar with the obligations of the Defendant, Mr. Simmons, also known as Harold Simmons, Junior in this matter?

A. Yes, sir.

Q. Did you and Mr. Simmons enter into a-- I'm going to show you a document entitled, Lease to Buy. Did you and Mr. Simmons enter into this document which has been premarked?

A. Yes, sir.

MR. BERLINSKY: I move to admit the Lease to Buy or now the Installment Sales Contract admitted as Plaintiff's No. 2.

THE COURT: Any objection to that order of Judge Nicholson?

MR. BERLINSKY: No. That's the lease document.

MR. WHIPPER: I think that's what you gave him. No objection.

THE COURT: That's No. 2?

MR. BERLINSKY: That's No. 2. I gave him that out of order.

THE COURT: I'm sorry.

MR. BERLINSKY: I'm sorry.

THE COURT: Exhibit 2 in evidence then.

Q. (BY MR. BERLINSKY) And thereafter did you and Mr. Simmons engage in litigation involving this document?

A. Excuse me?

Q. After you entered into that with Mr. Simmons did you and he enter into litigation about that document?

A. Yes, sir.

Q. And as a result of that litigation was a Court order issued?

A. Yes, sir.

Q. Is this document the order that was forwarded to you as a result of that hearing?

A. This (indicating)?

Q. Yes.

A. Yes, sir.

MR. BERLINSKY: I move to introduce Judge

Nicholson's order as Plaintiff's 1.

MR. WHIPPER: No objection, Your Honor.

THE COURT: Without objection. Very good. Thank you.

Q. (BY MR. BERLINSKY) And did that order set forth the total sums that were due and owing in the last paragraph of the order?

A. Yes, sir.

Q. Can you read that last paragraph?

A. "I further find that the Defendant is given credit for $87,540 towards the purchase price of $125,000 with a balance of $37,460 to be paid in an installment contract at the rate of $500 a month until the balance is paid. The Defendant will obtain an amortization schedule and supply a copy to the Plaintiff. The Defendant will either pay by money order or check with a notion of payment and marked from the amortization schedule by both parties."

Q. Okay. Pursuant to that Court Order did the Defendant ever provide an amortization schedule to you?

A. No, sir.

Q. Since that February order have you received any payments from Mr. Simmons, or has your lawyer received any payments from Mr. Simmons?

A. The payments were made through the lawyer, Barnwell. The money orders were made out to Barnwell Law Firm and me. Mr. Barnwell would get the payments, send the money order to me to sign, I would send them back to him, and he puts it in an escrow account.

Q. Do you recall how many payments you received in that manner?

A. The only ones I can remember are about three.

Q. Okay. Now, since Mr. Barnwell's death in July of 2013, has Mr. Simmons made any payments directly to you?

A. No, sir.

Q. Has he contacted you?

A. No, sir.

Q. Has he made any attempt to discuss this debt with you prior to your filing the lawsuit?

A. No, sir.

Q. Okay. Now, I'll call your attention to Plaintiff's No. 2, and on Page 2 what does the next to the last paragraph provide?

A. "Terms of payment, buyer, Harold Simmons agrees to pay first year $500 beginning"...

Q. No. The next to the last sentence, not the last.

A. "During the duration of the lease term Allen Livingston has to notify Harold Simmons"...

Q. That's two from the end. The second paragraph from the bottom.

A. "Buying the property, Harold Simmons is responsible for all taxes beginning 6/15/2000."

Q. Okay.

MR. WHIPPER: Objection, Your Honor. This is irrelevant. It's irrelevant, Your Honor.

MR. BERLINSKY: It's in the document.

MR. WHIPPER: It --

THE COURT: Go ahead.

MR. WHIPPER: Well, what is the relevancy of this particular line of questioning? It's not relevant. The allegation in the Complaint is that Mr. Simmons has not made his mortgage payment or his purchase payment. That's all we're doing. The allegations have been that he's made none at all since the order. That's all we're doing.

THE COURT: All right. Let me

question. Are you trying to get into

to Judge Nicholson's order, or are yo

since Judge Nicholson's order of Febr

MR. BERLINSKY: Judge Nichol

address any tax issues. If it goes

rules in my client's favor and it goes to a sale, my client may be entitled to reimbursement. I just want to introduce into evidence -- you can rule as to what is reimbursable or not. I want to establish that taxes pursuant to this document have not been paid.

MR. WHIPPER: Your Honor, I don't see this is relevant at all to what we're here for.

MR. BERLINSKY: An installment sales contract is just like a mortgage.

MR. WHIPPER: It's not a mortgage either.

THE COURT: It's a little bit different from a mortgage I agree, but as an installment sales contract, the terms, I think this is the document that Judge Nicholson determined was an installment sales contract.

MR. BERLINSKY: That's correct.

THE COURT: I'm going to allow it. I'm going to overrule the objection. I'll allow it.

Q. (BY MR. BERLINSKY) Since 2000 has Mr. Simmons paid the taxes for this property to your knowledge?

A. No, sir.

Q. Who has paid those taxes?

A. I did.

Q. Okay. Are those tax receipts from the treasurer's office?

A. Yes, sir.

Q. That's for the property in question?

A. Yes, sir.

MR. BERLINSKY: I move to introduce into evidence Plaintiff's 3, which is a printout from the tax office of all the taxes that have been paid on the property since the year 2003 because that's as far back as they could go. Excuse me, 2002. That's as far back as they could go. That's the third thing I gave you, Seth.

MR. WHIPPER: Am I looking at the right --

MR. BERLINSKY: See. There's '02 and the next one is '03.

MR. WHIPPER: Okay. Your Honor, same objection. It's not relevant.

THE COURT: Noted and overruled.

MR. WHIPPER: Your Honor, I'm insisting on that objection. Not waived.

THE COURT: Noted. Noted. Do you have a figure that totals that or not?

MR. BERLINSKY: The total on that is $16,540.54.

THE COURT: Very good.

Q. (BY MR. BERLINSKY) Are you declaring the entire indebtedness due and payable to you at this

time?

A. Excuse me?

Q. Are you declaring the entire indebtedness as set forward in Judge Nicholson's order of $37,460 minus the three $500 payments that you are aware of payable in full at this time?

A. All he paid was three payments.

Q. What now?

A. All he paid from three payments.

Q. What I'm asking you is, are you declaring the $37,460 minus the three $500 payments, the amount due and payable to you at this time?

A. Yes, sir.

Q. Have you incurred any costs in the institution of this action?

A. No, sir. Excuse me. Can I say something?

Q. No.

A. No? Okay.

MR. BERLINSKY: I don't have anything further at this time. If you'll answer anything that Mr. Whipper or the Court may have?

THE COURT: Mr. Whipper?

MR. WHIPPER: Just a few questions if it please the Court.

THE COURT: Yes, sir.

EXAMINATION

BY MR. WHIPPER:

Q. It's my understanding, Mr. Livingston, that you, according to your testimony, you paid property taxes on this property; is that -- am I understanding that correctly?

A. Yes.

Q. And then you also as a part of your business operations you claim the appropriate deductions on your tax return for these property taxes; is that correct?

A. I don't understand.

Q. You use these property taxes --

MR. BERLINSKY: I would object, Your Honor. The deduction is irrelevant. The document is who is responsible for paying it, not who is responsible for a deduction.

THE COURT: He's on Cross. I'm going to give him some latitude. Go ahead.

Q. (BY MR. WHIPPER) So you turned this information over to your bookkeeper, and you had your tax deductions registered, accordingly paying the property taxes. In other words, you would provide your normal deductions on the property taxes; is that correct?

A. Yes.

Q. And as a matter of fact, during the time that you were doing this, you have never written Mr. Simmons or anybody on his behalf and asked for any taxes to be paid, have you?

A. I have asked Mr. Simmons personally.

Q. Now, you've had two lawyers: Mr. Berlinsky and Mr. Barnwell?

A. Yes, I had two. I've got one now. One's dead.

Q. And so are you telling me that you had to talk to Mr. Simmons about taxes and not your lawyer?

A. Excuse me. Mr. Barnwell has requested the money from him through the Court.

Q. Until today Mr. Berlinsky has never raised the issues of taxes to anybody, has he?

A. Mr. Berlinsky just started as my attorney after Mr. Barnwell died.

Q. This lawsuit was filed on the 13th of March of this year; is that correct?

A. I don't know the exact date.

Q. And until today -- we've been in Court two or three times already. This is the first time you've heard about tax requests; is that correct?

A. No, you're wrong.

Q. Let me ask you this then. So you are asking for -- Mr. Barnwell began representing you sometime in 2007 or 2006; is that correct? That's when this matter started?

A. I'm not sure of the exact date.

MR. WHIPPER: I'm trying to move quickly, Your Honor. May I approach the witness, Your Honor?

THE COURT: Yes, sir.

Q. (BY MR. WHIPPER) Take a look at that document right there, Mr. Livingston. Do you recognize it?

A. I don't recognize the document. I recognize what'S in it.

Q. There's a signature on that document?

A. Excuse me?

Q. There's a signature on that document that's real important.

A. There's all kinds of signatures.

Q. How about that one right there? Do you see that one over the word, Plaintiff?

A. That's mine.

Q. Thank you, sir. Would you agree with me that there's some writing on the upper right-hand corner of this document? Mr. Livingston, do you need glasses?

A. Which one are you talking about?

Q. I just want to make sure now that if you need glasses that you have some.

A. I need glasses, right.

Q. Right here. This writing right here (indicating).

A. Rule to Vacate or Show Cause.

Q. And there's a date under there. What is that, October 9, 2007?

A. Yes.

Q. So on October 9, 2007 you started this action, and then somewhere in 2007 you hired Mr. Barnwell; isn't that correct?

A. Yes, Mr. Barnwell.

MR. WHIPPER: All right, sir. I would like to offer this as Defendant's Exhibit 1.

THE COURT: Any objection?

MR. BERLINSKY: No objection, but I don't know how it's relevant. It has nothing to do with what we are here for today. It predates Judge Nicholson's order. The fact that he applied for --

THE COURT: What is the relevance? Where are we going?

MR. WHIPPER: Well, Your Honor, we want to establish that this matter has been going on since 2007. This application of ejectment shows that he's

asking for back rent and not taxes.

THE COURT: Isn't that well established in Judge Nicholson's order? That's exactly what Judge Nicholson -- isn't that the whole case that Judge Nicholson ended up hearing, and that's how he ended up with his ruling?

MR. WHIPPER: Yes, sir. That's correct.

THE COURT: I'll acknowledge that.

MR. WHIPPER: This is relevant also to some issues that would come up regarding these tax payments.

THE COURT: All right. I'm going to keep it limited to tax payments. Let's do that. I don't have a problem. You can mark it as Defendant's 1. That's fine. We'll cross that bridge.

(DFT. EXH. #1, Affidavit and application for Ejectment and Rule to Vacate or Show Cause, was marked for identification.)

Q. (BY MR. WHIPPER) So you have continued to pay taxes as you say --

A. Excuse me?

Q. You have continued to pay taxes through this time; is that correct?

A. I pay the taxes?

Q. Yes, sir.

A. Yes. I already told you that.

Q. Now, you don't have -- Mr. Barnwell would send you these payments, and you would sign these money orders and send them back?

A. Excuse me?

Q. Mr. Barnwell would sign the money orders, send them to you, and you would send them back to him; is that right?

A. Yes.

Q. That is my understanding.

A. Yes.

Q. All right. And you had no arrangements with Mr. Barnwell of any kind to use these money orders to pay his attorney's fees?

A. Pay his attorney's fees?

MR. BERLINSKY: Your Honor, that's irrelevant. His contract with Mr. Barnwell is attorney/client privilege. He acknowledged that he got the payments and gave him full credit for them.

THE COURT: I'm going to sustain that one. Go ahead.

MR. WHIPPER: Your Honor -- Your Honor, if I might be heard on that?

THE COURT: You can. Go ahead.

MR. WHIPPER: We're talking about where this

money went and how this money was being used. It's my understanding that Mr. Livingston didn't always receive his money directly and didn't always know where it went.

THE COURT: I'll be glad to hear from you on that, Mr. Berlinsky. Let me tell you something as I'm going through the pleadings here. I see that in the answer that was submitted there were payments that were shown to have been made prior to Judge Nicholson's order that he seeks -- the Defendant seeks credit for. I cannot do that. I cannot give him credit for that. That case has been tried and is over. Judge Nicholson has given him credit, so I've got to start with the number that Judge Nicholson starts with in his order. That case -- that's the law of the case. That case is over.

This is a whole new case. I'm not -- I'm going to let you go into any payments made since February 20, 2013, but I can't let you go into the ones prior to that. I just don't see how I can do that.

MR. WHIPPER: Your Honor, you have to. Here's why. The case was heard in September. Judge Nicholson took the case under advisement.

THE COURT: September of '12?

MR. WHIPPER: September of '12. He took the case under advisement. There were payments that were made because that was the understanding. As long as this case was active he would have to make those payments so he made payments to Mr. Barnwell. Those payments that he made are not a part at all of Judge Nicholson's deliberations because that's not what they were for. They were to continue his payments as the case was being processed. His case is -- so these monies that were paid -- I understand what you're saying, but my point to you is that as a matter of fact and practicality these monies were paid, but they were not paid under the considerations of Judge Nicholson because he was already considering what was presented to him in September. So he was only rooting on what was presented to him in September and not anything else that was presented. So these payments have to be considered.

THE COURT: Do you want to be heard on that?

MR. BERLINSKY: Yes, sir, Your Honor. Again, this was taken up on appeal. They allowed this to be the final order. Mr. Whipper was Mr. Simmons' lawyer at the time. The debt was established. If there should have been -- I don't know what was presented or what was not presented at that point, but I've got

a final order that's unappealed from that's established what the debt is and what the payment is to be going forward, so I think from that February 12th order that's the debt.

Any payments since then, the three that we've acknowledged, we give him full credit for. We didn't say we're not taking it because it applies to Mr. Barnwell's attorneys' fee or whatever the arrangement was, or whether that was or wasn't the arrangement. The fact is that three payments have been made. We acknowledge those three payments have been made, and from the $34,767.40, $1,500 should be deducted. If he made other payments it should have been taken care of at that order, or there should have been a supplemental order or a supplemental done to give additional credits. That's never been asked for. It's never been done. As far as I'm concerned a full and complete accounting was done as of the date of that order.

THE COURT: Let me make sure I'm clear on this. You were not counsel of record at the time of trial, and Mr. Whipper you were?

MR. WHIPPER: (Nods head).

THE COURT: Does it show in the order that the trial was in September of '12?

MR. WHIPPER: I should have something.

THE COURT: It came before the Court in September.

MR. WHIPPER: Hold on.

MR. BERLINSKY: Unfortunately this order does not state what date the hearing took place.

THE COURT: It doesn't.

MR. BERLINSKY: It was a two-day trial. It does state that.

THE COURT: Do you have something showing a trial date in September?

MR. WHIPPER: This is my notes, Your Honor.

THE COURT: September 4, '12?

MR. WHIPPER: Yes.

THE COURT: Are you agreeable to let that be the date? I'm assuming it went on for two days, right?

MR. WHIPPER: It did, Your Honor.

THE COURT: So let's go back. I'll give you back to September 4th of '12. I'll allow that. I'm going to assume evidence was in and that was it.

MR. WHIPPER: I believe that was it.

THE COURT: I'll go back to September 4 of '12. Okay?

Q. (BY MR. WHIPPER) So now Mr. --

MR. WHIPPER: I think that's all the questions I have at this time. We do reserve the right to call this witness in our case in chief.

THE COURT: Anything in follow-up?

EXAMINATION

BY MR. BERLINSKY:

Q. From September forward of 2012 through Judge Nicholson's order, do you recall Mr. Barnwell forwarding you any money orders or checks to endorse over to him?

A. I'm sorry. I didn't understand that.

Q. From the date of the first trial, September 4, 2012, until Judge Nicholson's order in February of 2013, did Mr. Barnwell forward you any money orders or checks to endorse back over?

A. No, sir.

MR. BERLINSKY: Thank you. I don't have anything further at this time.

MR. WHIPPER: I do have some Recross.

Q. (BY MR. WHIPPER) Now, Mr. Livingston, you don't keep any records at all, do you, of payments being made?

A. Excuse me?

Q. You don't keep any records of Mr. Simmons' payments to you, do you?

A. Mr. Barnwell did.
Q. But you don't?
A. Mr. Barnwell was my attorney.
Q. But you don't know what Mr. Simmons may have paid, do you?
A. Yes.
Q. You only know what you may have gotten from Mr. Barnwell, but you don't know what he paid. Isn't it true that you keep no records at all?
A. I keep records sometimes.
Q. Sometimes.
A. I trust people, too.
Q. But between you and Mr. Simmons you kept no records; isn't that true? Do you remember when we talked in a deposition in this case back in December of '09; do you recall that when you were at Mr. Barnwell's office and we talked about that?
A. I don't remember that.
Q. You don't recall?
A. No.
Q. Do you recall at all that I asked you about this question, about this issue, about your recordkeeping? I asked you, did you keep any records at all? I asked you, Mr. Livingston, do you have in your possession any ledger or other kind of records

that list how Mr. Simmons made his payments to you? Your answer, No. Then I asked you, Do you have in your possession any documents or communications, letters from Charleston County Government or the State of South Carolina that indicate any problems with the building at North Carolina Avenue, any that are from the State or the County? I don't have them in my possession but yes, I've had numerous letters? And do you have those in your possession now? No. Do you have them in your office? No. Do you have them at your home? No. Are there any in your car or the trunk of your car? No. Do you drive a truck? Sometimes. Do you have them in your truck? No. You just don't have them? Right, I don't have them.

So you don't keep any records about anything, do you?

A. Yeah, I keep records about stuff.

Q. Isn't it true that you -- look at what we marked as Defendant's Exhibit 1, right here. When you sought to eject Mr. -- or do something, you said that over $7,000 was owed in back rent from '05 until October of '07?

A. Yes, sir.

Q. And then in Judge Nicholson's order, Mr. Simmons' primary proof of his position that he

has made payments is the example where Plaintiff alleges a default in payments between the year of 2000, yet the evidence indicates that Mr. Simmons paid $500 beyond what was required for the period alleged. So you, in this document here, you said he owed you $7,000, and in fact he had paid you $7,500?

A. No. No.

Q. The Judge was mistaken? The evidence was wrong?

A. (No verbal response.)

MR. WHIPPER: I have no further questions.

MR. BERLINSKY: I have nothing.

THE COURT: I don't have any questions. Thank you, Mr. Livingston. You may step down.

(Witness excused.)

THE COURT: Anything further, Mr. Berlinsky?

MR. BERLINSKY: Nothing further, Your Honor.

THE COURT: Plaintiff rests?

MR. BERLINSKY: Plaintiff rests.

THE COURT: Mr. Whipper?

MR. WHIPPER: Your Honor, we would ask for a directed verdict. They have shown nothing at all except that Mr. Livingston thinks that he hasn't received money. He doesn't even know what he may have received, and he's pulling figures out of the

air. That's number one. Number two, what we're doing here today -- it should be on a Rule to Show Cause before Judge Nicholson. Third, Your Honor, the total that they have expressed is just totally incorrect in terms of that. I think it was $1,500.

THE COURT: Okay. Mr. Berlinsky?

MR. BERLINSKY: Your Honor, I move for a directed verdict. The debt is established by Judge Nicholson's order.

THE COURT: Well, let me stop you. Let's respond first, and then you can make your motion. This is his motion. I think we're in at his point to make that, but go ahead.

MR. BERLINSKY: The debt was established by Judge Nicholson's order. He acknowledges receiving three payments. They provided no proof of any more than three payments to this date. Summary judgment is only allowable where there's no issue of fact. There is issue of fact as to what the debt is. There is an issue of fact as to what's been received and what hasn't been received. He testified as to what he received.

Again, I would move for a directed verdict on the debt as established by Judge Nicholson's order. There's no issue of fact as to what the debt is.

There's no issue of fact that it's to be considered an installment sales contract. There's no issue of fact as to how the Supreme Court has ruled installment sales contracts are to be treated.

THE COURT: All right. Thank you. Very good. I'm going to deny both Motions for Directed Verdict. There has been some proof at this point in time. It's in evidence in the record that there's been nonpayment of debt on the amount that was set by Judge Nicholson's order and then of course on the tax issue.

I've already ruled on the jurisdictional question. I think this is the proper Court for the issue of foreclosure of an installment sales contract because our law is such that it's treated as if it is a foreclosure of an equitable interest in property. I find there is some evidence.

As to the Plaintiff's Motion for Directed Verdict, I don't think that's proper at this point in time. I will deny that one as well. All right? I will state that I think Judge Nicholson's order is the law in the case, in the 2010 case I think it was. So it set the amount of the debt. What I have done and what I'm willing to do would be to entertain any evidence from the time of the trial, which you-all

have established to my satisfaction as the date of September 4, 2012 forward. Okay? That I'm willing to entertain. All right. So denied, denied.

Defense case, Mr. Whipper?

MR. WHIPPER: Thank you, Your Honor. I call to the stand Mr. Harold Simmons.

THE COURT: Mr. Simmons, come on up to the stand.

HAROLD SIMMONS,

being first duly sworn, testified as follows:

THE COURT: If you would give me your full name and address, please, sir?

THE WITNESS: Harold Simmons, 1182 King Street, Charleston South Carolina.

THE COURT: What ZIP is that?

THE WITNESS: 29403.

THE COURT: Thank you, sir. Mr. Whipper?

MR. WHIPPER: May it please the Court?

THE COURT: Yes, sir.

EXAMINATION

BY MR. WHIPPER:

Q. Mr. Simmons, on the figure of payment that was determined by Judge Nicholson on that $87,000 payment figure, does that figure represent $500 per month from the time that this contract started until the

time you went to Court?

A. Yes.

Q. How is that?

A. Because the payment ~~was~~ is ~~supposed to be~~ $500 a month from the time the contract started, ~~but we were supposed to be paid~~ $500 a month until the $125,000 paid out in full. There were times when I made more than just the $500 a month payment to Mr. Livingston, which the reason I done that was in order for me to stay paid up in advance just in case something went wrong like I got hurt on my job, I take ill, I would still be in good standing with my payment.

Q. So when you look at the figure of -- if you look at the figure of $87,540 how far into your payment term does that go?

A. That would go from the beginning of the contract up until the end of 2014.

Q. You said the end of 2014?

A. Yes.

Q. So then you were surprised when you received this Complaint about foreclosure?

A. Yes.

Q. Because it was received when? When was it received?

A. ~~I know~~ Entered it was filed in March of -- it was

filed in March of 2014.

Q. And so the payments -- then again you felt like -- your understanding on what you paid you were covered through the end of 2014?

A. Yes.

Q. What did you think about this when you got this lawsuit?

A. I think was harassment. It was a frivolous lawsuit, a prematurely filed lawsuit. Other than the 87,000 I've already paid I also gave Mr. Barnwell $4,500 and a $500 money order.

Q. Tell me now, how did you do that?

A. What I did is in September I went to Barnwell's office and dropped off $1,500. At that same time I spoke with Mr. Barnwell, and we established the fact that he had not received the Court Order yet. From my understanding from my conversation with him is that the money I gave him, he would go ahead and apply it to the Court order once he received the Court order. In September of 2012 I think around to --

Q. Let me show you something. It might help with your recollection. Would that be something that you would need to happen if you saw some documents?

A. Yes. I try to keep everything in writing. I

do keep everything in writing.

MR. WHIPPER: I'm approaching, Your Honor.

Q. (BY MR. WHIPPER) Let's take a look at these items (indicating).

A. Okay.

Q. Tell me what they are, and give us the dates that are relevant on those documents?

A. There are three $500 money orders totaling $1,500.

Q. What dates are those?

A. I purchased this on the ninth month, tenth day, 2012. I delivered it to Barnwell on the ninth month, 11th day of 2012. That's for the 1,500.

Q. I need you to go through each one, Mr. Simmons.

A. Okay.

Q. Can you give us the money order numbers?

A. The money order number is 20206481714.

Q. What date was that purchased?

A. Ninth month, tenth day, 2012.

Q. Next one?

A. The next money order was numbered 2020 --

Q. Mr. Simmons, make sure you -- the Court Reporter is trying to get this.

A. The second money order is 20206481703, and

that money order was purchased on the ninth month, tenth day, 2012.

The third money order is 20206481692, and that was purchased on the ninth month, tenth day, 2012.

Q. When were those delivered to Mr. Barnwell?

A. The previous money order was delivered the ninth month, 11th day, 2012.

Q. And how do you know that? How do you know that? What is it that you're reading up there?

A. Excuse me?

Q. How do you know that they were delivered to Mr. Barnwell on that date?

A. I took it to him, on that same day I spoke with Mr. Barnwell. I gave him this first $1,500.

Q. Did Mr. Barnwell give you a receipt?

A. Yes.

Q. Do you have the receipt there?

A. Yes. The receipt number for the first money order is 8874081. The receipt number for the second money order is 887402. The receipt number for the third money order is 887403.

Q. Okay. Now, the other ones, you have a few more there, don't you?

A. Yes.

Q. Can you give us the date they were purchased

and the date they were delivered, please, sir?

A. Okay. On the fourth money order this money order I purchased on the tenth month, 22nd day, 2012. This money order is No. 20216408534. The second money order -- well, this would be the fifth money order -- the date purchased was tenth month, 22nd day, 2012. This money order is numbered 20216408545. The sixth money order, the day purchased is the tenth month, 22nd day, 2012. The money order number is 20216408556. I delivered these three money orders to Mr. Barnwell on the tenth month, 22nd day, 2012.

Q. Okay. Are there any more?

A. Yes. I have another set of money orders, three $1,500 in money orders that I purchased on the fifth month, fourth day of 2013.

Q. Let me make sure now. How much is each money order worth?

A. 500 apiece. The seventh money order purchase date is the fifth month, fourth day, 2013. Money Order No. 21080419470. The eighth money order purchased day, fifth month, fourth day, 2013, Money Order No. 21080419457. The ninth money order purchase date, fifth month, fourth day, 2013, Money Order No. 21080419468.

Q. So that totals how much?

A. $4,500.

MR. BERLINSKY: Let me look at them. I don't have any objection to the money order itself. As to the receipts I don't know who these people are who signed it, whether they're employees of Mr. Barnwell or not or whether they actually were received.

THE COURT: All right. Mr. Simmons, your testimony is you delivered those to his office; is that correct?

THE WITNESS: Yes, Your Honor.

THE COURT: And whoever that was that signed off on it was an employee of his?

THE WITNESS: Secretary.

THE COURT: I'll allow it.

MR. WHIPPER: Your Honor, this will be Defendant's Exhibit -- I'd like to do it all as one.

THE COURT: That's fine. Let's just do Defendant's 1.

MR. WHIPPER: That will be Defendant's 2.

(DFT. EXH. #2, Receipts for Money Orders, was marked for identification.)

Q. (BY MR. WHIPPER) Mr. Simmons, how much contact have you had with Mr. Livingston since Judge Nicholson's order?

A. Not much.

Q. Now, in trying to make sure about what -- what did you do in order to figure out what was paid and what was on record with Mr. Livingston and Mr. Barnwell? What steps did you take?

A. I purchased the Post Office copies of the money order, the cancelled money orders that had already been signed and delivered through the Post Office.

MR. BERLINSKY: No objection.

MR. WHIPPER: We would like to offer this, but I would like for Mr. Simmons to tell me --

Q. (BY MR. WHIPPER) What are these, Mr. Simmons?

A. They're -- copy of the post office money orders

Q. Count them and tell me what they are?

A. Six money orders.

Q. You just read off about nine. Why don't you have nine?

A. Well, the Post Office only goes back two years in being able to retrieve a copy of the signed, canceled money order. Three of the money orders I could not get a copy off of it. They sent me statements saying that those three money orders was cashed.

Q. How do those match up with what you read over here?

A. Well, the Post Office serial number matches up with the receipts.

Q. Okay. You have six of those; is that correct?

A. Yes.

MR. WHIPPER: Now, we are going to offer these as Defendant's Exhibit 3 without objection.

(DFT. EXH. #3, Receipts, were marked for identification.)

Q. (BY MR. WHIPPER) Now, I'm going to show you three other documents. What are those?

A. These are statements from the Post Office letting me know that they could not -- they were unable to get me -- more like a copy of the original money order, but they did state that the money order was cashed and they also gave me the serial numbers of the money order that was cashed.

Q. Which matches your receipts?

A. Yes. It matches my serial number on my receipts.

Q. Do you have those three documents?

A. Yes.

MR. WHIPPER: I would like to mark this as Defendant's Exhibit 4.

(DFT. EXH. #4, Letters, were marked for identification.)

Q. (BY MR. WHIPPER) So when you read the Complaint about the foreclosure what thoughts came to your mind?

A. I didn't think that was fair for them to file a foreclosure on me due to the fact that I've overpaid my payments since the year 2004. Even in Court in September they established at that time that I overpaid $16,040, more than what was required at the time. When I sat back and started calculating from the time my contract started up to the amount of money that the Court's stated that I had already paid, and I matched those figures up with the monthly payment, it showed from the time the contract started up to the end of 2014. I was paid all the way up to the end of 2014.

Then I turned around and looked at the date in September when the order came down in February, and it was filed February 27, I believe, of 2012.

Q. The order was filed in 2013.

A. Are you talking about --

Q. Judge Nicholson's order?

A. Yes.

Q. That was 2013 -- February of 2013. I'm only saying it could be more. That's fine.

A. It was for February of 2013. I had already

given $4,500. I was looking at it like -- okay. Let's say we do it based on 20 -- February of 2013, I already gave you $4,500. If you calculate that $4,500 I was paid up all the way up to the month they filed the foreclosure just on the $4,500. So that makes the foreclosure prematurely filed.

Q. What was your thinking -- you were representing yourself during this with the Board of Appeals. What were you working on on that appeal?

A. When they filed the appeal?

Q. That's right.

A. Okay. Well, the only -- when I found out about the appeal is when I got a letter from the Appeal Court stating that they were requesting Mr. Livingston's attorney to provide a transcript and that caused me to start looking to the Appeal Court. I didn't know that they had filed an appeal.

When I started looking into it, then I found that right after Judge Nicholson made his order -- in June Mr. Livingston filed an appeal. They allowed the appeal to run from June all the way up to December and then they turned around -- when the appeal was dismissed like two or three months after the appeal was dismissed they filed a foreclosure.

So I'm thinking that once a case goes into a

higher court that the order that is made by the lower court is not enforceable until it comes out of that higher court. So again, I'm thinking, okay. You've got $4,500 of my money. You applied that to the time that the case up on the Appeal Court, that would have you paid up until September of this year, which would be six months past the foreclosure filing. So once again, I'm thinking this is another premature filing.

Q. Do you recognize this document?

A. Yes, I do.

Q. What is it?

A. A Motion of Dismissal with the Appeal Court filed December 3rd, 2015. I remember -- the remitter went back to the lower court. It was also filed December 3rd, 2013.

Q. So December 3, 2013, that's the stamp from the Charleston County clerk's office?

A. Yes.

Q. And there's something here. This order was filed, the order dismissing the appeal was filed when?

A. November 8, 2013.

Q. Okay. And then the remittitur was dated when?

A. December 3, 2013.

Q. No. That's when it was --

A. It was filed December 2, 2013.

Q. That's when it was typed?

A. Typed up, right.

Q. And it filed on the 3rd.

MR. WHIPPER: We would like to enter these as Defendant's Exhibit No. 5.

(DFT. EXH. #5, Order and Letter, were marked for identification.)

Q. (BY MR. WHIPPER) What did Mr. Livingston do to make this situation look like you were not paying? What were some of the things he did?

A. Well, I noticed on the money order, after I got copies from the Post Office, that instead he would take the money order and cash it himself. He signed it over to his attorney, and his attorney used it, I guess, for whatever need he wanted to use it for.

It kind of made me think that that last case we had when we subpoenaed his bank account that -- my thought is when we subpoenaed his bank account it showed that the money appeared and was deposited in his account. And then when I saw that he signed it over to his attorney -- then I'm thinking like if he assigned it to his attorney he didn't want -- if we subpoenaed his bank account it wouldn't show that I

actually paid him his money because the money --

MR. BERLINSKY: Your Honor, objection. That's pure speculation on his part.

THE COURT: Sustained.

MR. WHIPPER: Your Honor, on that particular -- I think that was his response. My question didn't elicit speculation.

THE COURT: Do you want to restate the question then?

MR. WHIPPER: I'll be happy to do that.

Q. (BY MR. WHIPPER) What did you notice about the endorsements on the back?

A. They were endorsed by Mr. Livingston.

Q. And who else, or how else were they handled?

A. I saw the stamp, Barnwell Escrow Account.

Q. Was that on all of these?

A. All of the money orders.

Q. So then again, so what you're thinking was --

A. -- that he signed --

MR. BERLINSKY: Again, pure speculation. Objection. The document speaks for itself. It's irrelevant what he thinks it is.

MR. WHIPPER: I'll withdraw the question.

THE COURT: All right.

Q. (BY MR. WHIPPER) What other tactics, or what

other strategies did Mr. Livingston use to make it seem like you were not making the payments?

A. Well, if we go from the beginning he just made accusations that I didn't make any payments. He kept the records so if I paid him a sum or didn't pay him -- I kept records. There were times when I gave him receipts and he never even produced them in Court as evidence. As far as I know now, the only thing I see is that the money was transferred to his attorney.

MR. BERLINSKY: The lease, Plaintiff's 1, has been introduced into evidence. It's the same thing. I don't care.

Q. (BY MR. WHIPPER) Take a look at this document, Mr. Simmons. What is that?

A. This was supposed to have been a contract submitted by the Plaintiff but this contract --

Q. Hold on a second. Would you use the name?

A. The contract.

Q. Tell me who is who. Don't use Plaintiff and Defendant.

A. Mr. Livingston submitted this Lease to Buy contract agreement as his evidence and this evidence that he submitted was altered to make it look like --

Q. What is the problem with that?

A. The address to the property that I'm purchasing ~~from~~ Mr. Livingston changed the number, the street address which is 3042. He changed it to 3049 North Carolina Avenue. This was his evidence. On the third page, it shows where the second term of the contract was erased and the witness's name on the third page was erased off this contract (indicating).

Q. What do you think Mr. Livingston was doing?

A. Mr. Livingston was trying to convince the Court that the property that I'm purchasing from him -- what I'm thinking is that the property that I'm purchasing from him is not the property signed on the contract to make it look like we signed an agreement on some other property.

Q. Was that contract offered as the real thing?

A. Yes.

Q. Was it compared to what was put into evidence today? Was it compared? Can we let the Judge look at both of them and make a decision on them?

A. Yes. He found that my contract that I had, which was the authentic contract, was the real contract.

MR. WHIPPER: I'm going to offer this as Defendant's 6 without objection.

(DFT. EXH. #6, Lease to Buy, was marked for

identification only.)

MR. BERLINSKY: I object. We never claimed that's the contract. The contract he claims is the real contract is what we marked as Plaintiff's 2, and that's what we claim to be the real contract. He just testified that the one we marked is the real contract, so I don't know where this is relevant. So they made a typographical error, a Scribner's error. Nobody's trying to foreclose under that one.

THE COURT: I'm not sure I do understand the relevance of this one, Mr. Whipper.

MR. WHIPPER: Well, the relevance is again showing that Mr. Livingston has put Mr. Simmons through extreme measures just to maintain the status as a timely payer of this first agreement which has caused him -- he's gone to lengths to misrepresent the deal. He took off the terms of that contract initially. The Judge ruled against him on that, so this is just evidence and foundation for what we see happening here again. There's been no accurate accounting at all, and we're in this Court fighting on nonpayment when this gentleman has paid in advance. I'm here because of what Mr. Livingston has done. I wouldn't even be here if he had just counted what he should have counted and added it up.

THE COURT: Doesn't this predate Judge Nicholson's trial?

MR. WHIPPER: No, sir.

THE COURT: It does not?

MR. BERLINSKY: Yes, it does.

THE COURT: It does not?

MR. WHIPPER: No, it does not. It can't because it was offered at that particular trial.

THE COURT: It doesn't come into evidence. I'm going to sustain the objection. You can testify about it, but it doesn't come into evidence as hard evidence.

MR. WHIPPER: I understand.

THE COURT: If you want to proffer it and just mark it for ID purposes we can do that. It wouldn't be evidence I don't think. We can mark it as 7 for ID; is that what it is?

COURT REPORTER: No. 6.

THE COURT: 6 for ID.

MR. WHIPPER: That will be fine.

Q. (BY MR. WHIPPER) Mr. Simmons, how much have you indebted yourself on attorney's fees so far during this situation?

A. Within the neighborhood of 70,000 or 75,000.

Q. How long have I been representing you?

A. Since 2007.

Q. Was I representing you at the time of the Affidavit of Ejectment?

A. Yes.

Q. Through the Application of Ejectment all the way to the Court of Common Pleas?

A. Yes.

Q. And in preparation for that trial?

A. Yes.

Q. And then a two-day trial?

A. Yes.

Q. And motions?

A. Yes.

Q. Discovery?

A. Yes.

Q. Do you think that Mr. Livingston should have to pay those fees?

MR. BERLINSKY: Your Honor, I object. Any addressing of attorney's fees for this prior case should have been addressed in that order and wasn't. The document doesn't provide for the recovery of attorney's fees. That's why we didn't seek it.

MR. WHIPPER: Your Honor, we are seeking attorney's fees to the extent -- our position has been all along that he's had to put up with this and

he's had to put up a defense each time. We think he should be allowed attorney's fees at this time.

THE COURT: I usually deal with that in the form of an affidavit if you would like to submit it. He's given me an amount and he says he's paid it, but if you-all want to submit it in the form of an affidavit I'll consider it.

MR. WHIPPER: I understand.

THE COURT: Usually it's got to be either in the contract or in the statute, so I'll be looking for either one of those. Okay?

MR. WHIPPER: I understand.

Q. (BY MR. WHIPPER) Mr. Simmons, you filed some documents yourself, some motions?

A. Yes.

Q. And you have some costs outstanding on that?

A. Yes.

Q. Do you know the amount?

A. Not exactly. This went from me being accused of not paying the money. I overpaid. I went to the point of -- they're trying to do a 25(sic)-eviction on me for money I was trying to pay to the Court, and then I found out later on -- the only reason the Court didn't accept my money at that time is they didn't have an order that came down from the Court to

accept my money, my payments towards the property. We had to turn around and go to the Court and have the Clerk of Court write up a statement saying they do remember me coming and trying to make the payment and could not accept it. I feel as though Mr. Barnwell at that time, before trying to do a 25-eviction on me is he should have checked with the Court to see if there was an order in place. If I anticipated an order then I could see them trying to do a 25-eviction on me. He didn't even perform that duty. They just went out and tried to do a 25-eviction on me.

Q. You mean 24 hour?

A. A 24-hour eviction. We had to have that overturned. Then when we went to Court to find out about the forged documents and --

MR. BERLINSKY: Your Honor, we're not here for an eviction. I don't know how that's relevant.

MR. WHIPPER: It's costs.

MR. BERLINSKY: It all predates Judge Nicholson's order.

THE WITNESS: It causes me emotional distress, and it's keeping me from being able to live a normal life because I'm constantly being harassed for things I have done to try to comply to this order. It's

saying I haven't done it.

MR. WHIPPER: No other questions for the witness at this time, Your Honor.

EXAMINATION

BY MR. BERLINSKY:

Q. Mr. Simmons, what's been marked Plaintiff's (sic) 3, these money orders that you were able to get copies of, who are they made payable to?

A. Allen Livingston and Barnwell.

Q. Who?

A. Allen Livingston and Barnwell.

Q. So it's made payable to both of them?

A. To both of them, Allen and his attorney.

Q. And those copies match up to some of these receipts?

A. Yes.

Q. And so they're the same things?

A. Yes.

Q. So what we've got here is nine receipts?

A. Yes.

Q. The earliest is dated 9/12 and 10/12 and then the last group of three are all 5/9/13? That's correct?

A. (No verbal response).

Q. So since Mr. Barnwell died in July of 2013

where have you made your payments?
A. None.
Q. You haven't made any payments since Mr. Barnwell died?
A. No.
Q. Over a year ago? Okay. Do you have any receipts for any payment of any property taxes?
A. No. I never received a property tax bill anyway.
Q. Can you show me where in that order that any payment is a prepayment?
A. In other words, you want to know if any money was paid in advance?
Q. No. I want to know where in that order it says money was paid in advance?
A. You want to know if money was paid in advance from the first time Mr. --
Q. No. I want to where in that order does it say that the money that Judge Nicholson gave you credit for was for payments made in advance?
A. He doesn't say that.
Q. What does the last paragraph of his order say?
A. I further find that Defendant is given credit for 87,540 toward the purchase price of $125,000 with a balance of $37,460 to be paid in the installment

contract at the rate of $500 a month until the balance is paid.

Q. Those are the only receipts you have?

A. Those receipts cover me all the way up to the day you-all filed a foreclosure.

Q. I asked you, Do you have any other receipts since Judge Nicholson's order than those nine?

A. No, I don't.

Q. Okay. The order also provides that the Defendant -- you are the Defendant in this case -- will obtain an amortization schedule? Did you obtain an amortization schedule?

A. I don't even know what that is.

MR. BERLINSKY: Okay. I don't have anything further, Mr. Simmons.

MR. WHIPPER: Short.

EXAMINATION

BY MR. WHIPPER:

Q. Mr. Simmons, you asked about whether or not there is any issue about prepayment?

A. Yes.

Q. He asked you about did the order say anything about prepayment or credit for prepayments; do you recall that question?

A. Yes.

MR. BERLINSKY: I object to that.

Q. (BY MR. WHIPPER) If I showed you something would it help you remember and understand what a prepayment is? Something that was prepared?

A. Yes.

Q. Let's take a look at this (indicating). Now, is that something that you prepared?

A. Yes.

MR. BERLINSKY: Your Honor, I object to the document as well as him testifying from it. It's something that was done before this order. It predates this order. Whatever was done, it's already been adjudicated.

MR. WHIPPER: Your Honor, if he objects that it was done in a previous order -- in his question he never established about this document. He can't object to that basis.

THE COURT: I will allow -- I think you handed it to him for refreshing his memory, right?

MR. WHIPPER: To refresh his memory.

THE COURT: Go ahead. You can ask him a question.

Q. (BY MR. WHIPPER) Do you recollect that document there?

A. Yes.

Q. Why did you prepare that document?
A. So the Court can better understand how my payments were made.
Q. So now during the time of the appeal what payments were made?
A. None.
Q. And so what payments, according to your understanding, were due at the time of the appeal?
A. The 4,500.
Q. So while the appeal was going on, how often were you supposed to make payments?
A. My thinking is once the case goes to an appeal and is moved into a higher Court everything comes to a standstill until the Court makes their decision on whether they are going to honor the lower Court's decision or change it.
Q. And what document sets out what you did?
A. I don't understand what you're talking about.
Q. Which document --
A. This document right here (indicating) says that on the bottom -- actually, it states where -- can I read the whole thing?
Q. Well, let me see what you're trying to read.
A. It says, Trial date September 4, 2012 at 2:00 p.m. Two days. Case No. 2010-CP- --

THE COURT: Let me stop you right there, Mr. Simmons. The purpose of that document is to refresh your memory about something, and he asked a specific question. I don't need you to read the document to me. Tell me what -- this was something you did in preparation for the prior trial?

THE WITNESS: Yes. I --

MR. WHIPPER: Hold on one second, Your Honor. The prior words --

THE COURT: I'll let you ask the question, but if the document itself is not going to come in it's not admissible. The substance of it may come in, but would have to come in through him, but not by reading the document. Just tell me what it says.

Q. (BY MR. WHIPPER) What case did you prepare that document for?

A. I prepared it for this case.

Q. When did you prepare it?

A. Last week.

Q. And what is it supposed to help you tell the Court?

A. Tell the Court that when the order was filed, when there was a motion filed in between the time the order was filed and the time -- between when the order was filed and the foreclosure and appeal time

was -- the motion was filed in between the time of when the order was filed and the order was denied on May 16th, which led down to a 30-day appeal time. From that appeal time I established my payment plan which shows how the $4,500 applied to the order right after the appeal time had ran and the motion was denied.

Q. All right. Take a look at that, and see if that helps you.

A. Well, the second page establishes the fact that when the case went to the Appeal Court and was dismissed I applied the payment after it came out of the Appeal Court which listed the payment arrangement to how that $4,500 should apply to the case after it came out of the Appeal Court.

Q. All right.

A. And it came out of the Appeal Court in December, so I kind of figured -- okay. It came out of the Appeal Court in December. They could appeal it to the Supreme Court which would have a 30-days appeal time, which I would feel as though it would land right there in January of 2014, which that payment -- those payments would have taken me from January of '14 down to March of 2014. We have nine payments.

So those payments -- after they filed the foreclosure, they still had six more payments that were unused.

Q. So in other words, you had paid ahead of time?

A. Yes.

Q. Do you understand that when you pay ahead of time that means that you have prepaid?

A. Yes.

MR. WHIPPER: Thank you. No other questions.

MR. BERLINSKY: I don't have anything further.

EXAMINATION

BY THE COURT:

Q. Mr. Simmons, since the June appeal date, there have been no payments made; is that correct? Notwithstanding what you thought, I'm just trying to establish a date. Since the June of 2013 appeal date no payments have been made? That's my question.

A. I think my last payment -- can I look at the receipts?

Q. Yes. The last payment down there is May 9th. I can tell you that. I've been back through those a couple of times.

A. May 9, 2013?

Q. Yes, sir. You had three from September of '12, three from October of '12, and then three from

May of '13. So my question to you is --

A. Those are the last payments I've made right there.

Q. And those are the $4,500 we're talking about, correct?

A. Yes.

Q. Very good. And then as to the amount of taxes, have you been presented with a tax bill up until now?

A. No.

Q. So today is the first day you've seen the taxes?

A. Yes.

Q. Very good. Do you acknowledge if you're going to be the owner of property you have to pay the taxes?

A. Yes.

THE COURT: Okay. I've got it. That's all the questions I've got. Thank you. Any follow-up?

MR. BERLINSKY: No follow-up.

MR. WHIPPER: You may step down.

THE COURT: All right, Mr. Simmons. Thank you, sir.

(Witness excused.)

THE COURT: All right.

MR. WHIPPER: Your Honor, may I have a short recess?

THE COURT: Sure.

(A recess transpired.)

MR. WHIPPER: There's one document that was signed and prepared by Mr. Simmons for today, and we would like to offer that as Defendant's Exhibit --

COURT REPORTER: -- 7.

MR. BERLINSKY: I object. The money orders are in evidence. What he paid is what he paid since the date of the Court Order.

MR. WHIPPER: This is in addition to what was paid and how he looked at it on the appeal.

THE COURT: Is that the document you talked about marking for ID, or is that something different?

MR. BERLINSKY: That's a different one.

MR. WHIPPER: It's a different one, Your Honor. The one for ID was the lease.

THE COURT: All right. We'll just mark it for ID as No. 7 or 8?

COURT REPORTER: 7.

MR. WHIPPER: Your Honor, we would like to have it in evidence for the record. He prepared this one for today's case.

THE COURT: That makes it past recollection

recorded which makes it hearsay, and he's here to testify, and he has testified. So if he wants to testify materially different it might come in as impeachment material, but it isn't evidence in chief.

MR. WHIPPER: It's evidence in chief of our case.

THE COURT: It's evidence in chief of what he's testifying to, yes, sir. Agreed.

MR. WHIPPER: So it comes in as an Exhibit.

THE COURT: All right. It's number what?

COURT REPORTER: 7.

(DFT. EXH. #7, Ledger, was marked for identification.)

THE COURT: Anything further?

MR. WHIPPER: Nothing further from the Defendant, Your Honor, except for a summation.

THE COURT: Very good. Mr. Berlinsky, any reply?

MR. BERLINSKY: No reply just a quick closing argument if Your Honor will indulge us.

THE COURT: Do I have to? I'll take a look at this document. Hold on a second.

Yes, he's starting in January.

There are two things that are coloring my decision today. Okay? The case comes into Court

presenting as a foreclosure under the Installment Sales Contract. I understand that. Mr. Whipper, I still think I am correct that I have jurisdiction over that question. Okay?

I don't doubt that there may be an opportunity for this matter to go back in front of Judge Nicholson on the question of whether or not there's contempt for failure to do certain things under the order, but that's not really the question before me today. Okay?

So the question before me today is, I see it based on the testimony and the evidence in the record. It's significant, and the significant question for the Court is under Code Section 29-3-630. That is this: The debt secured must be established before the sale by the mortgagee. All right?

So the gist of Judge Nicholson's ruling was that Mr. Simmons has an equitable interest in the property, that it was not a simple lease agreement. It was more than a lease. It was an installment sales contract. As an installment sales contract Mr. Simmons received an equitable interest in the property by virtue of the payments which he made. Okay? That decision was made and the Judge set a

debt at that time. This Court is not free, I don't believe, to go behind that figure.

I think that case is over, and I think that case was evidently on appeal, but it came back by agreement. So the figures were set. So the Court starts with the balance sum that Judge Nicholson put in there. That was 37,460. All right.

MR. WHIPPER: Yes, sir.

THE COURT: So I have to figure out what the debt is. It would appear to me, based on the testimony of Mr. Simmons, I understand what he says, but he's incorrect. He is incorrect in his understanding of the law. He's not a lawyer, but he's still held to the standard of a lawyer. All right? He's still held to the standard of what the law is, is probably what would be proper to say.

So his statement to me under my question was, Have any payments been made since the appeal was filed? The answer was, No. The appeal was filed in June of 2013. Okay?

When I go back and I credit the payments that Mr. Simmons made that he provided proof of today, which I did open up the record for that purpose -- we went back to the date, and in fact, gentlemen, I found in the record in the 2010 record,

Mr. Barnwell's Motion to Reconsider stated that the trial date was September 4, 5, and 6 of 2012. So it's in conformity with what evidence you-all have presented to me today.

Clearly, he's entitled to go back, I think, and get credit for the payments that he would have made since then, which Mr. Simmons has, in fact, done. That's what Defendants Exhibit 2, the receipts, and Defendants Exhibit 3, which is the recognition of the receipts. Okay? So I have been able to match those up identical. So it does show that $4,500 of payments was made off of the balance that was then due. Okay?

So that figure, 37,460, minus 4,500 is 32,960 after crediting for the $4,500. Okay? 32,960. That may impact where we go with this thing. I'm going to propose a solution to you is what I'm going to do. I'm going to cite you to some additional law.

My calculation of math is this: Since June of 2013, which was when the appeal was filed and for which no credit can be given by the Court, is that the sum of $9,500 is now due. Okay? That is as of today. That's the figure of $500 a month from June of 2013, so there's seven months in '13 and now 12 months in '14, so that's 19 months at $500. My math

tells me that's $9,500. Okay?

MR. WHIPPER: That's through December of --

THE COURT: Of '14. That's the current amount due. Okay? So here is my solution. Here is my proposal to you. The Defendant would have the option to reinstate his mortgage, because that's what this is now is a mortgage, for the sum of $9,500. That figure is going to be good for 30 days, but in 30 days it's going to be the sum of $10,000. Okay? Because January is coming due.

So the debt can be reinstated for $10,000. Okay?

MR. BERLINSKY: Okay.

THE COURT: And then that would be a credit. That then gets treated as a credit, okay, on the balance due. Here's where we have an issue that we have to resolve between the two of you, and that is on the taxes.

The contract says that the buyer is responsible for taxes. The Judge's Order says that the buyer's responsible for the payment of taxes and the arrangements for insurance. We didn't have any evidence about insurance today. We did have evidence about taxes. I haven't run the math, but the figure that was given to me was $16,540.54. Okay?

MR. WHIPPER: Your Honor, that figure --

THE COURT: I'm not going to address it today. I'm going to suggest a solution to you. Okay? I'm going to suggest a solution to you. This is what that is. Under Code Section 29-3-30, the mortgagee -- and the mortgagee in this case is Mr. Livingston -- is entitled to pay the taxes and have a lien upon the property. It's considered to be a first lien even before the mortgage to be satisfied upon the sale of the property in the event the property is sold. Okay?

I'm telling you-all right now, I'm not setting you up for a sale. I'm setting Mr. Simmons up with an opportunity to redeem the property, but if it doesn't get redeemed, if this redemption is not done then I'm going to turn to the Plaintiff and say, we've set the debt figures, and you can send me a foreclosure decree. Okay?

So we have two orders coming out of this hearing today. One is going to be a recitation of what I'm ruling right now as to what the debt is and how to clean it up, and if that's not done then we can go forward with the foreclosure decrease.

Here what I propose to you, and you-all can talk about this as to what you want to do. I came up

with roughly, when I first did the math, roughly five more years of payments. Okay? Five years times 12 months is 60 months. That may or may not be correct. Okay?

When I took the past due tax payment and divided that by 60 I came up with the figure of 275 and some change. What I propose to do, if the Defendant can reinstate his debt come January of 2015, that you-all discuss the option of paying $500 a month as agreed under the agreement, and then rather than paying an additional lump sum -- you can pay an additional lump sum if you want, but rather than paying an additional lump sum you pay the figure of 275.68, let's say, a month is what I came up with for roughly 60 months. I haven't done the finite math on this. Okay? I have not verified the number. All I've done is taken round numbers and come up with something.

In other words, the payment would then adjust to 500 plus 275, which is towards the arrearage of taxes and the ongoing $500 a month until paid in full under an accounting situation. Then that takes care of the past due taxes, future taxes, and then insurance would become Mr. Simmons responsibility as any potential owner would be. Okay?

To further certify that, we're going to need to talk about how payments are going to get made and transpired so they get properly credited. Okay? They should be paid monthly. Mr. Simmons, I'm assuming your income adjusts, goes up and down like most peoples does because the payment receipts you've given me have been three months' payments in one lump sum payment. One was in September, one was in October, and one was in May. Okay? It's easier if it comes in monthly, but it needs to be credited properly. We still don't have the amortization schedule and we still don't have application of the debt.

What I'm trying to do here is to keep it so that you can retain this property because you've already spent 80,000 to $90,000 on it on a $125,000 purchase. I'm trying to recognize that fact. So that having been said, Mr. Berlinsky have you followed what I've said so far?

MR. BERLINSKY: Yes. I'll get an amortization schedule done giving credit for the $9,500, and then when I receive the 10,000 we'll give him credit for that, and then I'll do a new amortization schedule at $500 a month off of that.

THE COURT: Okay.

MR. WHIPPER: Your Honor, I'm still at -- I was hoping that you would mull this over. We still have --

THE COURT: Well, I haven't put pen to paper yet, but I'm telling you, the number one thing I've got to do is I've got to determine what the debt is. Okay? I didn't find any interest being payable, so any amortization schedule is not that significant to our cause.

MR. WHIPPER: Your Honor, here's what we also think. You've acknowledged it by saying that we recognize that Mr. Simmons has paid "X" amount of dollars toward this purchase price.

THE COURT: Correct.

MR. WHIPPER: That's significant. He's down to the last 20 something percent of getting this thing done.

THE COURT: Correct.

MR. WHIPPER: I also have to deal with the fact that to make a claim on these taxes you still have to do these things in a timely fashion. The further we can go back on these taxes is maybe 2011 at the most, maybe even just 2012. There's a statute of limitation on that.

THE COURT: Well, the contract calls for

payment from June of 2000. They've only given me information from actually, 2001, so they're probably entitled to a half year's payments on top of that. I hear what you're saying on a demand figure, but that's contractual. That's what we're looking at the contract on. So I'm trying to come up with a way that makes that affordable, because what I'm hearing you say is, we didn't get demand for it. That's what I hear.

MR. WHIPPER: Number one you need a demand for it; and then number two, this is the first time they've actually come into Court and claimed for a figure. At that point -- as a matter of fact we even made it an issue. So at that point we have to look at, what does timely mean?

THE COURT: I'm certainly willing to let you-all discuss that one. The only thing I'm doing right now that I see that I have to do is to set a debt figure. Okay? So what I'm saying is I'm taking Judge Nicholson's figure as being gospel. I'm giving your client credit for the $4,500 that he clearly has paid since that trial date, and I cannot give him credit or extension for the time period that he didn't think he owed because he still owed it. Okay? In his mind he may not have owed it because it was on

appeal, but significant to your analysis, Mr. Simmons, is in the event a foreclosure decree does get filed, in order to stop the operation of that decree you'll have to file a bond. Okay? You don't want to get that far. I'm not issuing that order. That's what I'm saying to you-all.

MR. BERLINSKY: I understand what you're saying.

THE COURT: I'm giving you-all a figure that is a reinstatement figure that allows him to get back into the driver's seat as the ongoing payor so provided he keeps making that payment, and then you-all need to come up with a solution as to how the taxes are going to get paid. You're either going to agree, or you're not going to agree. If you don't agree then I'm going to have to come and make another decision. Okay?

MR. WHIPPER: I understand. I understand, Your Honor. Here is what we need to have the Court say, because our position has been that he didn't understand the question I don't think clearly -- the question from Mr. Berlinsky was did he make prepayments. He prepaid.

THE COURT: I find he made no prepayments.

MR. WHIPPER: Your Honor --

THE COURT: Actually, let me restate that. He did make -- he got ahead at one time -- just one second. When he made the September of 2012 payments he paid September late, October and November early.

MR. WHIPPER: Are you sure, Judge? Because his payments under the contract are not made until the end of the month.

THE COURT: End of the month?

MR. WHIPPER: Yes, sir.

THE COURT: Okay.

MR. WHIPPER: That's by the contract.

THE COURT: So they're due at the end of the month like a mortgage payment would be. Okay. So then he paid September and he was 9, 10, and 11, paid. He paid in October, and that was for December of '12, January and February of '13. So he was ahead at that time. Then when he paid it in May he paid for March, April and May of '13. So he was current as of the time that the appeal was filed, but the filing of the appeal didn't stay his payments, not by operation of law, not by agreement, not by anything other than his own perception. I understand perception, but that's not the law, and that's why I've got to deal with that.

So I find him current, not as of the date of

the filing of the foreclosure, which was the contention, but as of the date of the filing of the appeal which he was the respondent anyway. He wasn't the appellant. The time period has run since then, and it's clear to this Court that there has been no payment since then. That's the question that I think is ultimately before me today.

What's the amount that's due today. So it's from June -- from what I can see -- it's fairly clear in my book, from June of 2013 until today's date, that's 19 months at $500 a month.

MR. WHIPPER: Your Honor, it's our contention, respectfully -- when you look at what he's paid it is prepaid, so when you take the $500 a month -- I don't think it's limited. I don't think Judge Nicholson's order says that he wasn't paid in advance. It just says how it has been paid, and our position is that --

MR. BERLINSKY: And how much to be paid going forward, Seth.

THE COURT: Let him finish. Let him finish. I'm trying to follow.

MR. WHIPPER: I'm going to tell your mama on you.

You know, in other words, he intentionally

paid in advance. We think this Court is in a position to recognize that.

THE COURT: I want to make sure we're talking on the same wavelength. What do you mean by paid in advance?

MR. WHIPPER: In other words, when you look at that figure of 87,500, if you apply it to the calendar chronologically, as of February of 2013 those actual -- that actual amount took his payments out to the end of 2013 or maybe even beyond. I did not bring in that actual ledger.

THE COURT: Well, therein lies one of I've never seen an amortization schedule. Judge Nicholson put the onus on your client to come up with one. I've never seen one.

MR. WHIPPER: That's a fact. This figure that was credibly established is there. Remember, we are -- Mr. Berlinsky and I did not draft this document.

THE WITNESS: The parties drafted the document. That's what we're dealing with. He testified to the fact that he knew there would be times when he might not be able to make monthly payments so he paid in advance. He dumped money in. That money came to $87,000 plus. If you look at that

and compare that to 2013 starting from when the contract started, you can find that that figure brings you way into 2013. All this is paid for, too, in terms of paying -- because of what we're dealing with, a contract drafted by two lay people, we're seeing that the parties really are in a position to get what they bargained for. He's not out any money. Mr. Livingston is not out any money according to what the payment amount should be. We're asking the Court to take that into consideration because that's a fact. That's where we are. That's why the Court does have some wrestling to do with how to deal with the situation.

THE COURT: I can't find the term of years in that contract either. That's a dilemma I've got. Go ahead, Mr. Berlinsky.

MR. BERLINSKY: Again, Your Honor, I disagree wholeheartedly. The debt is established, whether he prepaid or not, Judge Nicholson said that as of the date of my order, this is what it is, and he's to pay $500 a month from the date of my order.

MR. WHIPPER: On what was remaining. It didn't say --

MR. BERLINSKY: At $500 a month.

MR. WHIPPER: It's not what was paid. It was

what's remaining.

MR. BERLINSKY: That's what he did, though.

THE COURT: I further find -- this is the last paragraph -- the Defendant is given credit for $87,550 towards the purchase price of $125,000 with a balance of $37,460 to be paid on the installment contract at the rate of $500 a month until the balance is paid in full. That is whatever it is. So I give him credit. I'm not -- I understand what your argument is. If you would like to submit an order as to why that is what it is -- what it is, and whether or not taxes have been paid in that $87,540 figure -- all that's going to end up doing is increasing the amount of your balance due on the obligation. Are you with me?

MR. WHIPPER: I understand.

THE COURT: I don't see where taxes were addressed in here previously. I'm with you. He's taken -- I'm assuming what he's done is he's taken the payments that Mr. Simmons has made and he deducted them from the total purchase price of $125,000.

He had to make -- I can tell from the order that he had to make some decisions on credibility and payments and that type of thing. When he did that he

came up with this figure. All I'm doing -- what I'm telling you is I'm taking his figure -- I don't believe I'm at liberty to go behind that figure --

MR. WHIPPER: I would concur.

THE COURT: -- and I am applying those payments that were made to that figure that we acknowledge -- everybody has acknowledged has been received -- that's $4,500, or at least I find they've been received, and then working from that number forward. I don't know any other way to do that. I understand your client's understanding or perception that maybe he had prepaid, but I don't see a 20-year pay schedule in here. I don't see a 15-year pay schedule in here.

MR. WHIPPER: The only pay schedule -- of course, Judge. I understand your position on that. From this set I determine payment is set under this agreement. He has up until a certain year to pay.

MR. BERLINSKY: The order -- it was appealed. Everybody dropped the appeal. They let it become the final order of the Court.

THE COURT: It's roughly a 20-year period if you just do the math.

MR. WHIPPER: It's set out here anyway. It has here --

THE COURT: We must be pretty close because it's 2015, and I think it's about five years due. We must be about all right on that.

MR. WHIPPER: 4/15/2021 is the date we have of the term.

THE COURT: 4/15 what?

MR. WHIPPER: 2021.

THE COURT: Where are you finding that?

MR. WHIPPER: On Plaintiff's Exhibit 1 or 2.

MR. BERLINSKY: The contract itself, Your Honor.

THE COURT: I see it. I'm now looking at Plaintiff's 2 ending 4/15/2021. Okay. That's different from Defendant's 6 for ID, and therein lies -- one of things Judge Nicholson did was he decided one of these was valid and one of these was not.

MR. WHIPPER: That's correct.

THE COURT: I don't know which one he did, but anyway 4/15/21.

MR. WHIPPER: That's what he decided.

THE COURT: That's about right. We're about five and a half years out.

MR. BERLINSKY: We're pretty close.

THE COURT: I'm with you.

MR. WHIPPER: Judge, I'll be --

THE COURT: I'm going to ask Mr. Berlinsky to prepare me an order along the lines of what I just described and run that by you. You-all don't have to agree on anything I do. The number one thing I've got to do is figure out what the debt is. Okay? I've done that today. All right?

I'm going to give that time frame -- I'm going to get that time period that's in the nature of a -- you-all sat in here this afternoon. You see what I do. You give somebody a reinstatement period in which to bring the thing current so that they're no longer in default so they're no longer subject to a foreclosure. Okay? That's what I would like to do. I want to give Mr. Simmons that opportunity to bring himself current, and then what we really need to work for with these two parties is how we can get them to agree and come together so that he properly gets credit for the payments that he makes. Okay? I would like you-all to work on that. I think you-all can work together well on that, too. Okay?

MR. WHIPPER: Judge, we think that -- what Mr. Simmons has been through it --

THE COURT: It may be compensable. You're welcome to submit your order. All right? Very good.

All right, folks.

(The proceedings were concluded at 5:12 p.m.)

State of South Carolina)
)
County of Charleston) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 21st day of July, 2016 at Charleston, Charleston County, South Carolina.

Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No: 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT X

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit X Exhibit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2014-CP-10-01635
	)	
ALLEN LIVINGSTON,	)	
	)	
Plaintiff,	)	
	)	**ORDER**
versus	)	
	)	
HAROLD SIMMONS,	)	
	)	
Defendant.	)	
	)	

FILED
2015 APR -8 AM 11:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS SUIT was brought as a result of a breach of an installment Sales Contract and foreclosure of said Installment Sales Contract.

This action was commenced by the filing of a Lis Pendens, Summons and Complaint in the office of the Clerk of Court for Charleston County on March 11, 2014.

The Defendant was personally served as evidenced by the Affidavit of Service filed herein.

Thereafter, on June 2, 2014, by Order of the Honorable R. Markley Dennis, Jr., this matter was referred to me to take testimony, make findings of fact and conclusion on law, and enter a final order with all appeals to the Supreme Court of South Carolina.

On December 17, 2014, a hearing was held at which testimony was taken and evidence offered. Attending were Bruce A. Berlinsky, Esquire, attorney for the Plaintiff; the Plaintiff; the Defendant; and J. Seth Whipper, Esquire, attorney for the Defendant. All of the parties were give due notice of today's hearing.

After consideration of the testimony and the evidence, the Court makes the following Findings of Fact and Conclusions of Law:

1. This is an action for the foreclosure of an Installment Sales Contract on property located on Charleston County, South Carolina, which is more fully described as

Lot 17, Blk I; Chicora Place, Charleston County, SC, TMS No.: 469-16-00-329 and is within the jurisdiction of this Honorable Court.

2. That on or about June 15, 2000, Plaintiff entered into a Lease to Buy Agreement with Defendant for the aforesaid property.

3. That on or about February 7, 2013, the Honorable J.C. Nicholson, Jr. entered an Order in a case involving the same parties hereto (2010-CP-10-8027) in which he ruled that the Lease to Buy Agreement between Plaintiff and Defendant referenced hereinabove was to be considered an Installment Sales Contract and that the Defendant was to make payment of $500/month under the Installment Sales Contract until the balance of $37,460.00 was paid in full. Further, the aforesaid Order of Judge Nicholson was appealed and the appeal was dismissed thereby rendering the February 7, 2013, Order referenced hereinabove the Final Order in this case, as evidenced by Order of the Court of Appeals filed December 3, 2013. As such, Judge Nicholson's February 27, 2013, Order became the Final Order and this Court is not free to go behind Judge Nicholson's Order which found A Simmons entitled to a credit of $ 87,540.00 in payments on the contract.

4. That pursuant to Judge Nicholson's Order and South Carolina Code *Section 29-3-630 (1976, as amended) the debt secured by the aforesaid Installment* Sales Contract was established at $37,460.00.

5. That pursuant to Mr. Simmons testimony, he has made no payments since the appeal was dismissed on December 3, 2013. However, I do find that prior to the dismissal of the appeal; Mr. Simmons made nine (9) payments of $500.00 each for total payments of $4,500.00 leaving a balance of $32,960.00.

6. I find that notwithstanding the aforesaid payments, that Mr. Simmons is $9,500.00 in arrears for payments due and owing as of the date of today's hearing.

7. That the Installment Sales Contract further provides that Defendant, Harold Simmons, is responsible for all taxes on the property beginning June 15, 2000,

and that pursuant to Mr. Simmons's testimony, he has made no payment or reimbursement towards these taxes. I further find that the Plaintiff has paid all of these taxes on Mr. Simmons behalf.

8. South Carolina Code Section 29-3-30 (1976, as amended) provides the Mortgagee is entitled to pay property taxes and have a lien on the property for reimbursement of said taxes.

9. I find that Plaintiff has paid on behalf of Defendant, Charleston County Property Taxes, for the years 2001-2014 in the amount of $16,540.54.

10. I find that the appeal did not stay the Defendants obligation of making payments under the Installment Sales Contract and that there were no prepayments on the debt prior to Judge Nicholson's Order.

11. I find that the Lease Agreement does not provide for recovery of attorneys' fees. Therefore, each party shall be responsible for payment of their respective attorneys' fees.

12. I conclude that the Defendant is in default and the Plaintiff is entitled to foreclosure of the Installment Sales Contract. However, notwithstanding this conclusion, Defendant has the option to reinstate the Installment Sales Contract by payment to the Plaintiff of $9,500.00 by December 31, 2014, or payment of $10,000.00, which includes the January payment, so long as the said $10,000.00 payment is made within thirty (30) days of the date of this hearing. See Lewis v. Premium Investment 351 SC 169, 568 SE2d 361 (Ct App 2002)

13. I further conclude that the Defendant shall reimburse Plaintiff the total sum of $16,540.54 for 2001-2014 Charleston County property taxes paid and that said reimbursement shall be made at the rate of $275.00/month beginning January 1, 2015, for a period of sixty (60) months, with taxes for the year 2015 until the Installment Sales Contract is paid in full to be paid by the Defendant.

Y B

14. I conclude that should the Defendant not reinstate the Installment Sales Contract as morefully described hereinabove, the property will be sold at the first available sales date as established by this Court.

The Court being satisfied with its findings of fact and conclusions of law, it is the opinion that judgment should be entered thereon.

NOW, THEREFORE, IT IS HEREBY

ORDERED, ADJUDGED AND DECREED, that the Defendant is in breach of the Installment Sales Contract and that the Plaintiff is entitle to foreclosure of the Installment Sales Contract pursuant to South Carolina Law and the customs and practices of this Honorable Court with regard to sale of foreclosed properties; and it is further

ORDERED, ADJUDGED AND DECREED, Defendant has the option to reinstate the Installment Sales Contract by payment to the Plaintiff of $9,500.00 by December 31, 2014, or payment of $10,000.00, which includes the January payment; so long as the said $10,000.00 payment is made within thirty (30) days of the date of this hearing; and it is further

ORDERED, ADJUDGED AND DECREED, that Defendant shall reimburse Plaintiff the total sum of $16,540.54 for 2001-2014 Charleston County property taxes paid and that said reimbursement shall be made at the rate of $275.00/month beginning January 1, 2015, for a period of sixty (60) months, with taxes for the year 2015 until the Installment Sales Contract is paid in full to be paid by the Defendant; and it is further

ORDERED, ADJUDGED AND DECREED, that should the Defendant not reinstate the Installment Sales Contract as morefully described hereinabove, the property will be sold at the first available sales date as established by this Court; and it is further

60 days following entry of this Order.

ORDERED, ADJUDGED AND DECREED, that the Sherriff of Charleston County put the Plaintiff or the successful bidder in possession of the said premises and that the

Defendant, or anyone claiming by, through, or under him be forever barred and foreclosed of any equity of redemption of said property.

AND IT IS SO ORDERED

Charleston, South Carolina
4/2 2015.

Honorable Mikell R. Scarborough
Charleston County Master-in-Equity

Nunc pro tunc
to Dec 31, 2014

Exhibit 1

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ALLEN LIVINGSTON, PLAINTIFF, versus HAROLD SIMMONS, DEFENDANT.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2014-CP-10-01635 **ORDER ON MOTION TO ALTER AND AMEND**

FILED
2016 SEP -1 PM 12:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER was brought before me pursuant to Defendant's Motion to Alter and Amend Order; said Order being entered May 18, 2016.

On August 11, 2016, a hearing was held at which testimony was taken and evidence offered. Attending were Bruce A. Berlinsky, Esquire, Attorney for Plaintiff; the Defendant; and J. Seth Whipper, Esquire, Attorney for Defendant.

All of the parties were given due notice of today's hearing.

Prior to my taking up the issues presented by Defendant's Motion, all parties waived notice and desired to move forward on Defendant's Request for Jury Trial, which was filed with the court June 10, 2016. Defendant argued that he initially requested a jury trial in his Answer filed April 24, 2014. However, Plaintiff filed a Motion to Strike all of the jury trial issues presented in Defendant's Answer and Counterclaim. An Order striking all of Defendant's counterclaims was filed August 12, 2014 and based upon the Order granting Plaintiff's Motion to Strike, there were no counterclaims or defenses that were left entitling Defendant to a jury trial. In fact, after the August 12, 2014 Order was granted, the only cause of action remaining was foreclosure of the Installment Sales Contract, which is equitable in nature. In addition to the foregoing, the Defendant

appeared throughout the litigation, both pro se and with counsel, and participated in all trials and hearings before the court never raising the issue until June 10, 2016, which is after all Orders, including the Final Order, in the matter had been issued.

I find that Defendant's appearance and participation in all trials and hearing before this court, without raising the issue of jury trial during said trials and/or hearings, results in a waiver of the same.

Thereafter, I took up Defendant's Motion to Alter or Amend Order.

After consideration of the testimony and the evidence, this Court makes the following Findings of Fact and Conclusions of Law:

1. The Rule to Show Cause was properly before this court and concerned my Order. Defendant asserts that any Rule needed to be filed pursuant to Judge Nicholson's Order in the 2010 case. Judge Nicholson's Order dealt with the issue establishing that the Agreement between the parties amounted to an Installment Sales Contract, as opposed to a Lease with option to purchase. Judge Nicholson's Order also established the remaining debt and the monthly payments to be made. Judge Nicholson's Order was appealed but the appeal was dismissed and Judge Nicholson's Order became the final Order in the 2010 case. The Rule to Show Cause that came before me was based on noncompliance with the Order of this court filed April 8, 2015, and to establish the foreclosure of the Installment Sales Contract. Therefore, the Rule to Show Cause was properly filed with this Court.

2. I find that the amortization schedule submitted attempted to go behind Judge Nicholson's February 23, 2013, Order, which became the law of the case and this court is not free to go behind Judge Nicholson's Order. The amortization schedule

required by both Judge Nicholson's Order and by my Order was intended to illustrate the outstanding indebtedness established by Judge Nicholson's Order and reestablished by my April, 2015 Order. Based on the foregoing, Defendant failed to satisfy the requirements of providing a proper amortization schedule pursuant to the terms and conditions of both Judge Nicholson's Order and my Order.

3. I find that there is no justification to adjust the property tax claim as the obligation to pay property taxes remains was still due and Defendant did not go into default to make the claim "ripe" until he failed to pay pursuant to Judge Nicholson's Order resulting in the filing of this action.

4. This action was not filed prematurely and the court does have jurisdiction to issue any and all Orders herein. The 2010 case heard by Judge Nicholson which established the agreement between the parties as an Installment Sales Contract and established the balance due and the monthly payments to be made going forward from Judge Nicholson's February 27, 2013, Order became the final Order in the case upon the dismissal and Order issued by the Court of Appeals filed December 3, 2013. The Defendant, by his own admission and testimony, indicated that he had not made any payments on the Installment Sales Contract other than the Four Thousand Five Hundred and 00/100 ($4,500.00) Dollars for which he has been given due credit under my April 8, 2015 Order. Again, Defendant continues to argue that he has prepaid on the Installment Sales Contract. The fact that Defendant may have prepaid towards the total purchase price prior to Judge Nicholson's Order becoming final does not relieve Defendant from his monthly obligations. Mr. Simmons's own testimony was that he has not made any payments since the appeal was dismissed on December 3, 2013.

The Court being satisfied with its findings of fact and conclusions of law, it is the opinion that judgment should be entered thereon.

Therefore, it is hereby,

ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Alter and Amend Order is hereby denied; and, it is further

ORDERED, ADJUDGED AND DECREED that the Master's Sale on the foreclosure of the Installment Sales Contract shall take place as scheduled on September 6, 2016 at 11:00 a.m. pursuant to the terms and conditions of my May 18, 2016 Order; and, it is further

ORDERED, ADJUDGED AND DECREED that the Defendant has the option to avoid the foreclosure sale by payment to the Plaintiff of the sum of Fifty Two Thousand One Hundred Seventy Four and 32/100 ($52,174.32) Dollars prior to the sale; and it is further

ORDERED, ADJUDGED AND DECREED pursuant to *SC Code* § 18-9-170 (2014) and pursuant to Order of SC Court of Appeals filed July 29, 2016, the Defendant can post a bond to stop the Master's Sale of foreclosure, said bond being set in the amount of Fifty Thousand and 00/100 ($50,000.00) Dollars.

AND IT IS SO ORDERED!

Honorable Mikell R. Scarborough
Charleston County Master-in-Equity

Charleston, South Carolina

Aug. 31 2016.

Exhibit X2

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ALLEN LIVINGSTON, PLAINTIFF, versus HAROLD SIMMONS, DEFENDANT.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2014-CP-10-01635 **ORDER OF FORECLOSURE AND SALE**

FILED
2015 MAY 18 PM 3:20
JULIE J. ARMSTRONG
CLERK OF COURT

This matter was brought before me pursuant to a Rule to Show Cause pursuant to alleged noncompliance with the order of this court filed April 8, 2015.

While there was some question as to whether there was proper service, the Defendant, along with his attorney, appeared at the scheduled time and fully participated in the hearing before me, which essentially waived any deficiency in the service.

On April 25, 2016, a hearing was held at which testimony was taken and evidence offered. Attending were Bruce A. Berlinsky, Esquire, Attorney for Plaintiff; the Plaintiff; the Defendant; and J. Seth Whipper, Esquire, Attorney for Defendant.

All of the parties were given due notice of today's hearing.

After consideration of the testimony and the evidence, this Court makes the following Findings of Fact and Conclusions of Law:

1. This is an action for the foreclosure of an Installment Sales Contract on property located in Charleston County, SC, which is more fully described as Lot 17, Blk I, Chicora Place, Charleston County, SC, TMS No. 469-16-00-329 and is within the jurisdiction of this Honorable Court.

2. ~~That~~ That on or about February 27, 2014, the Honorable J.C. Nicholson, Jr. entered an Order in a case involving the same parties hereto (2010-CP-10-8027) in which he ruled that the Lease to Buy Agreement between Plaintiff and Defendant referenced hereinabove was to be considered an Installment Sales Contract and that the Defendant was to make payment of $500/month under the Installment Sales Contract until the balance of $37,460.00 was paid in full. Further, the aforesaid Order of Judge Nicholson was appealed and the appeal was dismissed thereby rendering the February 27, 2013, Order referenced hereinabove the Final Order in this case, as evidenced by Order of the Court of Appeals filed December 3, 2013. As such, Judge Nicholson's February 23, 2013, Order became the ~~Final Order~~ law of the case and this Court is not free to go behind Judge Nicholson's Order, which Order is res judicata and which found Defendant, Simmons was entitled to a credit of $87,540.00 in payments on the Installment Sales Contract.

3. I further find that my Order filed April 8, 2015, in this case reset the debt due under the Installment Sales Contract giving Defendant Simmons credit for nine payments of $500.00 each leaving a balance of $32,960.00 due on the Installment Sales Contract (see Order for details) and that the said Order was Nunc Pro Tunc to December 3, 2013.

4. I find that Simmons again argued that he has prepaid; the same argument put forth in the trial before Judge Nicholson and in the December 17, 2014 hearing before me. While he may have prepaid prior to Judge Nicholson's Order, the Installment Sales Contract, as well as Judge Nicholson's Order, require Simmons to make monthly payments. The fact that Simmons may have prepaid towards the total purchase price prior to Judge Nicholson's Order does not relieve Simmons from his monthly obligation.

5. That pursuant to Mr. Simmons testimony, not only has he made no payments since the appeal was dismissed on December 3, 2013, but he has made no payments since my April, 2015 Order. Further, Mr. Simmons testified that he has made no payments towards taxes either under the April, 2015 order or for tax year 2015 as required under the April, 2015 Order.

6. I find that the total outstanding debt due and owing to the Plaintiff is as follows:

Outstanding balance	$32,960.00
2001-2014 Charleston County Property Taxes	$16,540.54
2015 Charleston County Property Taxes	$1,448.78
TOTAL DEBT	$50,949.32

7. I find that the Defendant was required to provide an amortization schedule based on the outstanding indebtedness established by Judge Nicholson's Order and by my April, 2015 Order and failed to do so instead of providing an amortization schedule that went back prior to the establishment of the debt by Judge Nicholson's Order nor has Defendant made any monthly payments and, therefore, did not comply with either Judge Nicholson's Order nor my April, 2015 Order.

8. That Defendant's actions in failing to comply with either Judge Nicholson's Order or my April, 2015 Order is in direct violation of those aforesaid Orders resulting in Plaintiff having to bring this Rule to Show Cause and, as a result thereof, Plaintiff is entitled to recovery of his costs for this rule in the amount of $1,225.00. fees and

9. I conclude that since the Defendant did not reinstate the Installment Sales Contract pursuant to my April, 2015 Order nor has he made any payments on the Installment Sales Contract since December, 2013 the property will be sold at the July 5, 2016 sales date if he has not paid all indebtedness more fully set forth in paragraph 6 hereinabove and reimbursed Plaintiff's attorney the sum of $1,225.00 for Rule to Show Cause prior to the July 5, 2016, sale.

10. I order that Defendant's prior Motion to Alter or Amend my April, 2015 Order is denied.

11. I confirm that Plaintiff's Motion to Amend the pleadings to conform to the evidence was granted at the December 17, 2014, hearing entitling Plaintiff to recover taxes paid and evidence of the amount of taxes paid was presented and introduced into evidence at that hearing.

The Court being satisfied with its findings of fact and conclusions of law, it is the opinion that judgment should be entered thereon.

NOW, THEREFORE, IT IS HEREBY

ORDERED, ADJUDGED AND DECREED, there is due to the Plaintiff on the Installment Sales Contract the sum of $50,949.32; and, it is further

ORDERED, ADJUDGED AND DECREED, that the Defendant is in breach of the Installment Sales Contract and has failed to comply with the terms and conditions of Order filed in this case, April 8, 2015 and that the Plaintiff is entitled to foreclosure of the Installment Sales Contract pursuant to South Carolina Law and the customs and practices of this Honorable Court with regard to sales of foreclosed properties; and, it is further

X2

ORDERED, ADJUDGED AND DECREED, that on default of payment, the premises, described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity, or his agent under the direction of the Master in Equity, at public auction, at the Charleston County Courthouse, Charleston, South Carolina, on the July 5, 2011 sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

a. FOR CASH: The Master in Equity shall require a deposit of five (5%) percent on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days the deposit may be forfeited without further hearing and applied to the costs and Plaintiff's debt.

b. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

c. This Installment Sales Contract constitutes a first priority lien on the subject property.

d. Purchaser to pay for deed preparation and costs of recording the Deed, and transfer taxes; and, it is further

ORDERED, ADJUDGED AND DECREED, if Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, disbursements and expenses and the indebtedness of the Plaintiff in full, Plaintiff may pay to the Master In Equity only the amount of the costs, disbursements and expenses crediting the balance of the bid on Plaintiff's indebtedness; and, it is further

X2

ORDERED, ADJUDGED AND DECREED, that the Master in Equity will, by advertisement according to law, give notice of the time, date, place of sale, and the terms thereof, which Notice of Sale is incorporated herein by reference; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, then the Master in Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured; and, it is further

ORDERED, ADJUDGED AND DECREED, that the undersigned Master in Equity shall apply the proceeds of the sale as follows:

FIRST: To payment of the amount of the costs and expenses if this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment of Plaintiff, or Plaintiff's Attorneys, of the amount of the Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus funds will be held pending further order of this Court; and, it is further

ORDERED, ADJUDGED AND DECREED, that in the event the successful bidder is other than the Defendant(s) in possession herein and the occupant(s) have voluntarily vacated the premises or have been ejected from the premises leaving

furnishings, fixtures and items not subject to Plaintiff's Mortgage in said premises, upon full compliance with the bid, Purchaser is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of Plaintiff's mortgage, which personal property, being deemed abandoned, shall be removed by Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means; and, it is further

ORDERED, ADJUDGED AND DECREED, that the Master in Equity shall retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, issuing a Writ of Assistance and hearing any issues involving appraisal proceedings under Section 29-3-680 *et seq.*, South Carolina Code of Laws (1976), as amended; and, it is further

ORDERED, ADJUDGED AND DECREED, that Plaintiff does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject property; and, it is further

ORDERED, ADJUDGED AND DECREED, that out of the proceeds of the said sale, after payment of all Court costs involved in this action, that the net proceeds be disbursed to those persons whom this Honorable Court declares to have an interest in the subject property and that they be paid according to their interest and proportionate share in the subject property; and it is further

ORDERED, ADJUDGED AND DECREED, that Bruce A. Berlinsky is awarded an attorney=s fee in the amount of $1,225.00 which includes costs and expenses incurred in bringing the Rule to Show Cause; and it is further

X2

ORDERED, ADJUDGED AND DECREED, that the Defendant has the option to avoid the foreclosure sale by payment to the Plaintiff the sum of $52,174.32 prior to the sale; and it is further

ORDERED, ADJUDGED AND DECREED, that the Sheriff of Charleston County put the Plaintiff or the successful bidder in possession of the said premises and that the Defendant, or anyone claiming by, through, or under him be forever barred and foreclosed of any equity of redemption of said property

AND IT IS SO ORDERED

Charleston, South Carolina
May 6 2016.

Honorable Mikell R. Scarborough
Charleston County Master-in-Equity

Exhibit X3

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2014-CP-10-01635
)	
ALLEN LIVINGSTON,)	
)	
PLAINTIFF,)	
)	**ORDER ON MOTION TO**
versus)	**ALTER AND AMEND**
)	
HAROLD SIMMONS,)	
)	
DEFENDANT.)	

FILED
2016 SEP -1 PM 12:39
JULIE J. ARM STRONG
CLERK OF COURT

THIS MATTER was brought before me pursuant to Defendant's Motion to Alter and Amend Order; said Order being entered May 18, 2016.

On August 11, 2016, a hearing was held at which testimony was taken and evidence offered. Attending were Bruce A. Berlinsky, Esquire, Attorney for Plaintiff; the Defendant; and J. Seth Whipper, Esquire, Attorney for Defendant.

All of the parties were given due notice of today's hearing.

Prior to my taking up the issues presented by Defendant's Motion, all parties waived notice and desired to move forward on Defendant's Request for Jury Trial, which was filed with the court June 10, 2016. Defendant argued that he initially requested a jury trial in his Answer filed April 24, 2014. However, Plaintiff filed a Motion to Strike all of the jury trial issues presented in Defendant's Answer and Counterclaim. An Order striking all of Defendant's counterclaims was filed August 12, 2014 and based upon the Order granting Plaintiff's Motion to Strike, there were no counterclaims or defenses that were left entitling Defendant to a jury trial. In fact, after the August 12, 2014 Order was granted, the only cause of action remaining was foreclosure of the Installment Sales Contract, which is equitable in nature. In addition to the foregoing, the Defendant

appeared throughout the litigation, both pro se and with counsel, and participated in all trials and hearings before the court never raising the issue until June 10, 2016, which is after all Orders, including the Final Order, in the matter had been issued.

I find that Defendant's appearance and participation in all trials and hearing before this court, without raising the issue of jury trial during said trials and/or hearings, results in a waiver of the same.

Thereafter, I took up Defendant's Motion to Alter or Amend Order.

After consideration of the testimony and the evidence, this Court makes the following Findings of Fact and Conclusions of Law:

1. The Rule to Show Cause was properly before this court and concerned my Order. Defendant asserts that any Rule needed to be filed pursuant to Judge Nicholson's Order in the 2010 case. Judge Nicholson's Order dealt with the issue establishing that the Agreement between the parties amounted to an Installment Sales Contract, as opposed to a Lease with option to purchase. Judge Nicholson's Order also established the remaining debt and the monthly payments to be made. Judge Nicholson's Order was appealed but the appeal was dismissed and Judge Nicholson's Order became the final Order in the 2010 case. The Rule to Show Cause that came before me was based on noncompliance with the Order of this court filed April 8, 2015, and to establish the foreclosure of the Installment Sales Contract. Therefore, the Rule to Show Cause was properly filed with this Court.

2. I find that the amortization schedule submitted attempted to go behind Judge Nicholson's February 23, 2013, Order, which became the law of the case and this court is not free to go behind Judge Nicholson's Order. The amortization schedule

required by both Judge Nicholson's Order and by my Order was intended to illustrate the outstanding indebtedness established by Judge Nicholson's Order and reestablished by my April, 2015 Order. Based on the foregoing, Defendant failed to satisfy the requirements of providing a proper amortization schedule pursuant to the terms and conditions of both Judge Nicholson's Order and my Order.

3. I find that there is no justification to adjust the property tax claim as the obligation to pay property taxes remains due and Defendant did not go into default to make the claim "ripe" until he failed to pay pursuant to Judge Nicholson's Order resulting in the filing of this action.

4. This action was not filed prematurely and the court does have jurisdiction to issue any and all Orders herein. The 2010 case heard by Judge Nicholson which established the agreement between the parties as an Installment Sales Contract and established the balance due and the monthly payments to be made going forward from Judge Nicholson's February 27, 2013, Order became the final Order in the case upon the dismissal and Order issued by the Court of Appeals filed December 3, 2013. The Defendant, by his own admission and testimony, indicated that he had not made any payments on the Installment Sales Contract other than the Four Thousand Five Hundred and 00/100 ($4,500.00) Dollars for which he has been given due credit under my April 8, 2015 Order. Again, Defendant continues to argue that he has prepaid on the Installment Sales Contract. The fact that Defendant may have prepaid towards the total purchase price prior to Judge Nicholson's Order becoming final does not relieve Defendant from his monthly obligations. Mr. Simmons's own testimony was that he has not made any payments since the appeal was dismissed on December 3, 2013.

The Court being satisfied with its findings of fact and conclusions of law, it is the opinion that judgment should be entered thereon.

Therefore, it is hereby,

ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Alter and Amend Order is hereby denied; and, it is further

ORDERED, ADJUDGED AND DECREED that the Master's Sale on the foreclosure of the Installment Sales Contract shall take place as scheduled on September 6, 2016 at 11:00 a.m. pursuant to the terms and conditions of my May 18, 2016 Order; and, it is further

ORDERED, ADJUDGED AND DECREED that the Defendant has the option to avoid the foreclosure sale by payment to the Plaintiff of the sum of Fifty Two Thousand One Hundred Seventy Four and 32/100 ($52,174.32) Dollars prior to the sale; and it is further

ORDERED, ADJUDGED AND DECREED pursuant to *SC Code* § 18-9-170 (2014) and pursuant to Order of SC Court of Appeals filed July 29, 2016, the Defendant can post a bond to stop the Master's Sale of foreclosure, said bond being set in the amount of Fifty Thousand and 00/100 ($50,000.00) Dollars.

AND IT IS SO ORDERED!

Honorable Mikell R. Scarborough
Charleston County Master-in-Equity

Charleston, South Carolina

Aug. 31 2016.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No: 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT Y

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit Y

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Allen Livingston,

Plaintiff,

vs. CASE NO. 2014-CP-10-1635

Harold Simmons, Jr.,

Defendant.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 10:04 a.m. on August 6, 2018 at 100 Broad Street, Courtroom 2A, Charleston, South Carolina.

COPY

Christine A. Smith, Court Reporter
Master-in-Equity
P.O. Box 30276
Charleston, South Carolina, 29417
(843) 958-5071
casmith@charlestoncounty.org

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF:

Bruce A. Berlinsky, Esq.
Law Office of Bruce Berlinsky
1 Carriage Lane
Suite F
Charleston, SC 29407
(843) 852-2202
Bruce@berlinskylawfirm.com

ATTORNEYS FOR THE DEFENDANT:

Harold Simmons, Pro Se

PROCEEDINGS

THE COURT: This is 2014-CP-10-1635. Mr. Simmons is here today pro se. I know in this case that originally Mr. Whipper was representing him. He's here today, but he's not in a representative capacity. He's informed me of that.

Mr. Berlinsky is here on behalf of the Plaintiff, Allen Livingston, correct?

MR. BERLINSKY: Correct.

THE COURT: If I'm not mistaken -- is this case scheduled -- is this one of the ones that are set for sale as well?

MR. BERLINSKY: Tomorrow.

THE COURT: This is a Motion to Stay the Sale and set a bond is what I understand we're here for. Mr. Simmons, you may proceed. Thank you, sir.

MR. SIMMONS: Yes, Your Honor. Since this case has been filed -- this case had been filed under fraud.

THE COURT: Let me stop you right there. I'm not going to go back and retry the case. We're here today to determine whether or not a bond -- my understanding is whether or not a bond should be set to stay the sale. There's a sale pending tomorrow.

It's been advertised for sale for three consecutive weeks.

MR. BERLINSKY: That's correct, Your Honor.

MR. SIMMONS: But even with this sale, your actions have put me -- it's almost like your action is more like you hindering me from even being able to even establish a bond. The bond that you established the supersedeas bond --

THE COURT: Right.

MR. SIMMONS: -- you put -- I have to retrieve two bonds of $50,000 apiece --

THE COURT: No.

MR. SIMMONS: -- according to your order. From what they're telling me downstairs --

THE COURT: I don't think that's correct.

MR. SIMMONS: And on the other hand, in front of -- Judge, in the other part of your order it states for me to pay a cash bond and then turn around and give Attorney Berlinsky his client, $53,000 in cash. When I went downstairs -- I have someone who was going to pay the supersedeas bond, but when he called the Court -- first the Court told him that he wasn't able to establish that. Then when I came to the courthouse they told me that you ordered -- they told me that you ordered that there had to be two

supersedeas bonds.

THE COURT: That information is incorrect. The statute that's on point to stay a judgment on the sale or delivery of land is one bond with two sureties thereon. Okay?

MR. SIMMONS: They said they looked up the Court and the Court said he had to provide two surety bonds from two different banks.

THE COURT: Well, I don't think that's correct. Let's see if we can clear that up. Okay?

MR. SIMMONS: Another issue --

THE COURT: Let me ask this question right off the bat. I heard you say that somebody was willing to pay the $53,000 or whatever it was, just to pay the amount of the money into the Court?

MR. SIMMONS: Yes. They were willing to bring cash to the Court, but I don't know where I stand now with it.

THE COURT: All right. Let me stop and let me turn -- Mr. Berlinsky, is your client willing to take that in order to stay the sale? The case has now been filed for an appeal, so that's what's got us here as I understand it.

MR. BERLINSKY: Correct. He's filed an appeal, and the way I read the posting of the bond

statute, he just has to post a bond for one and a half times the amount of the judgment or pay us off and be done with the case.

THE COURT: Right.

MR. BERLINSKY: I think that's what the statute says, one and a half times.

THE COURT: No. The statute doesn't even say that. There's a statute that says that, but not the one that I rely on. I'm at 18-9-170, which in order to stay the sale you post a bond. The Court sets the bond. I think I previously set the bond in the order at 50,000. It requires two sureties. In other words, it requires two people to say if something happens to a property then they would step up and pay that amount of money. It's not two bonds. It's one bond, but it requires two sureties in order to sustain that.

MR. SIMMONS: Well, downstairs --

THE COURT: I understand you were meeting with the clerk's office down there.

MR. SIMMONS: I don't know if Berlinsky had notified you that they have received the money from the bankruptcy, almost -- a little over $7,000.

THE COURT: That wouldn't do it.

MR. SIMMONS: No. I'm not saying that's what

it is, but there needs to be a recounting, to recalculate what the correct amount should be because since I filed my appeal, sent it to bankruptcy, they haven't seen -- this client has received 7,000 and --

MR. BERLINSKY: Your Honor, I'm not sure what the amount is. We --

MR. SIMMONS: I have it right here.

MR. BERLINSKY: We are doing an accounting now. I didn't have time to do it because it was set so early in the morning. Certainly I'm going to give him credit for whatever he's paid.

THE COURT: Sure.

MR. BERLINSKY: But he's still got to post a bond.

MR. SIMMONS: This says, $7,346.

THE COURT: That came from the Bankruptcy Court?

MR. SIMMONS: Yes. I also put in a motion for a change of venue for this case to be heard before a different judge because I didn't feel as though I could get a fair trial in front of you.

THE COURT: Well, that's going to present you with a problem because I think the sale is set for tomorrow. If you're asking me to recuse myself because of whatever problem I'll do that, but you're

going to have a problem getting it -- at this point in time you need to be able to stop the sale, Mr. Simmons.

You can do that one of two ways. One, you can pay the judgment. They accept the amount of money and the case is over. You still get to pursue your appeal. Okay? Hear me out.

You can still pursue your appeal. If you win on the appeal then I suspect they would owe you the money back. Okay? That's one avenue. That's the question I asked Mr. Berlinsky. I don't know if he's got the ability or the authority to accept that. Okay?

The other one is: You may follow the statute, and you may post a bond with two sureties. Okay? That's what the statute says. Now, I know from practical experience it's difficult to find that. It's not two bonds. It's one bond with two sureties.

MR. SIMMONS: Well, I did find someone who was going to do the surety bond for me. My other associate came forward and contacted the bond people, who were going to do this supersedeas bond, and they sent me the paperwork.

THE COURT: Okay.

MR. SIMMONS: When he came to the Court --

first they said, Contact the Court. The Court is saying that they need some kind of form in order to do a surety bond from the Court. He came to the Court and then found -- they said that he can't do it and they don't know what form he's talking about.

Then I spoke with him. He came -- no, I came to the Court. He told me about it. I talked to the people downstairs. The guy told me that if he brings cash to the Court they'll put it in the safe downstairs and they'll hold it until the appeal runs. Then I told him -- he contacted the Court. He said, No. They said, That's incorrect.

I came back to the Court again. Then he told me that he contacted you and you told them that I had to have two surety bonds from two different banks which would come up to $100,000.

THE COURT: That information is not correct. Okay? That's all I can tell you.

MR. SIMMONS: Right now that's put me in a very awkward situation because now I don't know if this person is going to step forward again. He's thinking there's too much confusion going on.

THE COURT: Well, that's what got us here today.

MR. SIMMONS: The point -- what I'm getting

at -- okay -- since -- I'm not saying -- you said you don't want to retry this and all that kind of stuff, but I want to mention on the record that from day one since this case was filed Berlinsky went in front of Judge Dennis and told Judge Dennis that I never answered the Court.

Judge Dennis did a default order on me based on what Berlinsky told him. All right? I was served the paper in April, and I answered the claim in April. All right? The records of the Court shows -- the record came from downstairs and the Clerk of Court office showed that when I was served -- it says I was served on April 3rd, and it also showed that I answered on April 24th. So I don't know what went on between Berlinsky and Judge Dennis. Okay?

I don't know if Berlinsky sat there and he told Judge Dennis a lie in order to get this case in default which deprived me of all of my rights. Since we've been before you you have denied me everything. You denied all the motions. You denied me a jury trial. You denied everything.

As far as I know this is fraud because Judge Dennis -- even if Berlinsky even told him I never answered the Court he should have took it upon himself to check the record and see if I answered the

Court or not.

So that deprived me of all my rights. That deprived me of due process under the constitution of a jury trial.

THE COURT: All right.

MR. SIMMONS: So because of that I will -- those are one of the reasons why I requested a change of venue for today so it can go before a circuit judge so we can straighten out this matter.

THE COURT: My recollection is we had a hearing -- a full-blown hearing.

MR. BERLINSKY: We had two full-blown hearings, Your Honor. He had counsel at both hearings. There was no default.

MR. SIMMONS: No. He claimed that at the default hearing that we were supposed to have had in front of Judge Dennis -- I was there and he was there. I have never been to a hearing in front of Judge Dennis. So all of that is nothing but based on lies.

THE COURT: Okay.

MR. SIMMONS: I just want my fair shake in this Court. This is supposed to be a Court about justice. I'm being deprived of a jury trial based on lies.

THE COURT: Mr. Simmons, here's what I'm going to do. This order is now -- well, the foreclosure decree is over two years old, May of '16.

MR. SIMMONS: I don't think it's never too late to get justice.

THE COURT: The Order and the Motion to Amend was entered September 1 of '16. That's the order that set the bond. That was two years ago. So the Court gave at that time really two options. I don't know what happened. I guess -- I don't know whether there was a bankruptcy or there was an appeal filed at the time, but anyway -- this thing set the sale for September 6th of '16 and then gave you, as the Defendant, two options.

One was the payment at that time of $52,174.32 to halt the sale; or two, you could post a bond pursuant to the statute, which is 18-9-170 where you can post a bond to stop the sale. I just went ahead and set the bond at $50,000. Okay? So that's essentially the amount of the judgment.

MR. SIMMONS: See, the problem is --

THE COURT: And nothing has changed since then that I can see.

MR. SIMMONS: See, if I have my opportunity to have a jury trial, of which I was deprived, I would

have had a better chance of basically winning this case but for the fact that every time his client has brought a case against me, I've always been $9,000 paid up in advance. I even came before you showing I was paid up in advance. When we came before you his client had received 21 advance payments of $500 apiece money orders.

His client didn't pay the bills, did everything with my money, and because I didn't come and make advance payment No. 22 you faulted me. That isn't right. Our contract states that I can make payments in advance and not be found in default. You-all turn right around and you-all rewrite my contract. You-all turn right around and dissect Judge Nicholson's order: You-all pick out certain things in Judge Nicholson's order in order to find a reason for this case to go against me more than to go toward me.

So I think I deserve a jury trial even if this case has to be reheard by a circuit judge, a higher judge.

THE COURT: I assume that's the basis of your appeal; is that right?

MR. SIMMONS: That's part of it.

THE COURT: Okay.

MR. SIMMONS: This whole case is based on a fraud from day one. The contract between me and this guy, Livingston, made an agreement between two gentlemen. Mr. Livingston agreed to it. We've spent years doing things the way we did it. Judge Nicholson ordered for us to go back as we were even though he made this an installment sales contract.

THE COURT: Mr. Simmons, here's my Ruling. I have received your motion. I think it was filed on the 1st of August. We set it today because I think the property is set for sale tomorrow morning at 11:00 a.m.

All I'm going to do is I'm going to reiterate my prior orders, which is the order of foreclosure and sale entered May 18 of 2016, and then the order on the Motion to Alter or Amend which is entered September 1st of 2016, and under that in order to stay the sale you have two options.

One is to pay the amount of money set forth in the order. At that time it was $52,174.32. You have some type of credit for those payments that were paid through the Bankruptcy Court, the $7,000 figure. You can pay that amount of money. I'm sure that judgment has accrued interest. You will have to get with Mr. Berlinsky on what that is.

Two, the other option, the Court has already set the bond. I set the bond at $50,000. I have not required you to do anything other than the statute which is cited in the order, and that's 18-9-170. It sets forth the basis for the Court to set the bond. It set the appellants not to commit any waste on the property, pay a reasonable rental value for the use of the land during the time of the appeal, and the judgment amount should not exceed the amount of the deficiency. So that's why the bond is set for $50,000. It does not require two bonds. The statute only requires one bond, but it requires two sureties. Okay?

MR. SIMMONS: I don't understand. What is two sureties?

THE COURT: Two people willing to say that they would pay that amount of money in the event that there was a problem. So I would think that if you could post that amount of cash with the Court that that would suffice. Okay?

That's not what the statute says. You can either pay the money over and you will stop the sale, and you can continue with your appeal, or you satisfy the language of the statute.

MR. SIMMONS: Okay. I'm saying that even

though this Court has now put me in an awkward position with the person who is willing to help me, would it be a problem for you-all to put the sale off until a later date so I can have time to talk to this guy so we can get this thing resolved?

THE COURT: Mr. Simmons?

MR. SIMMONS: It wouldn't be no more than -- their case was under fraud anyway.

THE COURT: I set the sale for like September of 2016. I think two years is plenty of time. Okay?

MR. SIMMONS: No. This is totally different. This is a newcomer who has come forward. All right?

THE COURT: When you get your newcomer, that's not within my jurisdiction. Okay?

MR. SIMMONS: Yes. But the Court last week was giving all the wrong information downstairs. They said they called you and you advised them to say these things.

THE COURT: Well, I can tell you that the information that you're giving me is incorrect.

MR. SIMMONS: Well, they said that you said it. They said they called you on the phone and talked to you about it.

THE COURT: And we call that hearsay in the courtroom. Okay?

MR. SIMMONS: Oh, that's hearsay?

THE COURT: There's a statute out here. I'm looking right at it. It's a statute that --

MR. SIMMONS: They said they looked up your statute and your statute said that you have to have two bonds from two banks of $50,000, which would have been $100,000, which didn't make no sense to me.

Actually, really if you calculate my contract to what me and Mr. Livingston agreed on, the balance I owe is around $25,000 at this time.

THE COURT: Mr. Simmons, I understand you want to relitigate the case. I understand that.

MR. SIMMONS: I think it would be no more than fair for you -- even if you put it off for another month. It isn't hurting nobody. The building ain't going nowhere. If I could pick it up and leave I could run out of Charleston with it. It wouldn't hurt.

THE COURT: I understand. I'm not doing anything different today than I did on August 31, 2016. That order has not changed, and my position has not changed.

MR. SIMMONS: That's the reason I put in a request for a change in venue because I knew that you wasn't going to work with me. I mean, you told us of

your favoritism toward the Plaintiff.

THE COURT: I understand, Mr. Simmons. Mr. Simmons, if you would like to go to a circuit judge and see if they'll change or alter the bond, you're free to do that, but I just don't think you're going to get that done. Okay?

MR. SIMMONS: Under fraud?

THE COURT: If --

MR. SIMMONS: In order to get the upper hand on this case?

THE COURT: Mr. Simmons, thank you very much. I'm going to deny the motion. Thank you. Take a look at your numbers. You can get in touch with him if you-all are communicating straight if not that's fine.

MR. SIMMONS: I would like a transcript, please, of today's hearing.

THE COURT: I'm sorry?

MR. SIMMONS: I'm just telling your court reporter that I would love a copy of the transcript of today's hearing.

THE COURT: If you will get with her you-all can make arrangements. Thank you.

(The proceedings were concluded at 10:24 a.m.)

State of South Carolina)
)
County of Charleston) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 8th day of May, 2019 at Charleston, Charleston County, South Carolina.

Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

Exhibit Y1

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Allen Livingston,

Plaintiff,

vs. CASE NO. 2014-CP-10-1635

Harold Simmons, Jr.,

Defendant.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 10:49 a.m. on August 7, 2018 at 100 Broad Street, Courtroom 2A, Charleston, South Carolina.

COPY

Christine A. Smith, Court Reporter
Master-in-Equity
P.O. Box 30276
Charleston, South Carolina, 29417
(843) 958-5071
casmith@charlestoncounty.org

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF:

Bruce A. Berlinsky, Esq.
Law Office of Bruce Berlinsky
1 Carriage Lane
Suite F
Charleston, SC 29407
(843) 852-2202
Bruce@berlinskylawfirm.com

ATTORNEYS FOR THE DEFENDANT:

Harold Simmons, Pro Se

PROCEEDINGS

THE COURT: We're back on the record in the case captioned Allen Livingston as Plaintiff versus Harold Simmons, Defendant. The case number is 2014-CP-10-1635. We were on the record yesterday on Mr. Simmons' Motion to Stay the Sale.

I will tell you, gentlemen, that I entered a Form 4 order yesterday which basically said what I said, that the status quo would remain. The case is scheduled for sale at 11:00 a.m. I was informed this morning that Mr. Simmons was here and wanted to pay some money to stop -- significantly to stop the sale and/or settle the case.

Mr. Simmons, tell me where you are this morning and what you've got.

MR. SIMMONS: So I called Berlinsky's office yesterday, and they told me a total the first time. The total was -- after they did the deduction of the money already prepared through the bankruptcy --

THE COURT: Bankruptcy Court, right?

MR. SIMMONS: They quoted me a total of $47,640.40. That happened around 2:00 -- 2:19 yesterday.

THE COURT: Okay.

MR. SIMMONS: Then I got a call back from them again which was at 5:00, and they quoted me another price for $60,212.97, which that made it like practically -- once my people -- I was able to accumulate the 47,000, and then I had to turn around and try to find a way to find the additional money which I did find the additional money.

I called and spoke with Mr. Berlinsky earlier this morning. I called the office yesterday to let him know that I will have the 60,000 and some change today. His office called me back and -- well, they told me -- they called me back and I told them I have it and I would meet them at the courthouse.

THE COURT: All right. I have sales coming up in a few minutes. So then you have two checks; is that what you've got?

MR. SIMMONS: Yes, I have two checks.

THE COURT: And can you give me the amounts for each of them just so I have it clear?

MR. SIMMONS: One is $47,640.40 and the next one is $12,632.57.

THE COURT: Very good. Okay. And Mr. Berlinsky, you acknowledge that you've gotten two numbers? Can you tell me what that was?

MR. BERLINSKY: That's actually -- I think the

checks are -- are they made out to my trust account?

MR. SIMMONS: You and Mr. Livingston.

MR. BERLINSKY: Yes. They're made out to the trust account. I will have to mail Mr. Simmons a little refund because he's got an extra --

THE COURT: Is there $60 extra in there? I was just looking at the amount.

MR. BERLINSKY: Yes, it looks to be. Yes. Let's see. 28 and 32 -- it would be about 60, yes, sir. There is 60 extra so I will just mail him a check for the difference when I run this through my trust account.

THE COURT: All right. So you're going to convey those? You've got certified funds, I'm assuming?

MR. BERLINSKY: Yes. These are cashier's checks.

THE COURT: Cashier's checks made payable to Mr. Berlinsky's office and Mr. --

MR. SIMMONS: -- Livingston.

THE COURT: Livingston? And so are you-all going to accept that in payment, in satisfaction of -- does that satisfy the judgment?

MR. BERLINSKY: This satisfies the judgment and satisfies the terms of the installment sales

contract. I think what I'll do is I'll have the check for Mr. Simmons to pick up by Friday. I'll call him to come to my office, and I'll have his deed because by paying this off under the terms of the agreement, we now are obligated to give him a deed.

THE COURT: Okay. So in return for that you will be able to convey title to Mr. Simmons from Mr. Livingston as well as this $60 refund or whatever the difference is?

MR. BERLINSKY: Correct. We're not certifying title or anything. We're just going to provide the deed to him that is required under the contract.

THE COURT: All right. Mr. Simmons, do you understand that?

MR. SIMMONS: Yes.

THE COURT: That's acceptable to you, sir?

MR. SIMMONS: Yes.

THE COURT: Very good. Well, then based upon that I will pull this from the sale today. It sounds like you-all have an agreement as to resolving this case. It doesn't --

MR. BERLINSKY: Well, we have an agreement as to receiving payment --

THE COURT: Funds.

MR. BERLINSKY: -- and providing the deed, but

it doesn't resolve the issue of vacating the orders in this, cancelling the lis pendens, and cancelling the appeal.

THE COURT: All right. I just want to make sure. The appeal remains active? The appeal is on --

MR. SIMMONS: Yes.

THE COURT: -- in front of the Court of Appeals as we stand right now?

MR. SIMMONS: Yes.

THE COURT: So the case will continue. In the event -- Mr. Simmons, as I understand it, in the event you are successful with that, then there may be refunds or a way to get that back. You'd have an accounting to do at that point in time. Okay?

MR. SIMMONS: Yes.

THE COURT: Thank you-all. Thank you-all for working that out. Very good.

I'll pull it. I'm going to go on upstairs. Mr. Berlinsky, that will probably do it unless you have something else up there you need to deal with.

MR. BERLINSKY: No, that's all. I am on my way.

THE COURT: We'll do a second form order just noting that this is what we've done. I'll note that

the appeal is still active -- remains on appeal and we'll go from there. In return for the funds the Plaintiff is going to convey over the title (sic) and any refund that may be due. I will do the math in a Form 4. Thank you very much. Very good.

(The proceedings were concluded at 11:00 a.m.)

State of South Carolina)
)
County of Charleston) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 8th day of May, 2019 at Charleston, Charleston County, South Carolina.

Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT Z

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit 2

Gmail [redacted]

1606276 Simmons, Jr.

1 message

Melissa Milligan <milligan@charleston13.com> Mon, Jun 18, 2018 at 11:17 AM
To: "invictor59@gmail.com" <invictor59@gmail.com>

Please see the attached payment history to Allen Livingston as requested. I am also mailing a copy to your address of record. Please let me know if you need anything else.

Thanks,

Melissa Milligan

Assistant Manager

Office of the Chapter 13 Trustee

843-388-9844 Ext. 308

1606276-PRINTINQ-85927.pdf
54K

Chapter 13 Trustee

2

Case No. 16-06276-JW HAROLD SIMMONS JR 8:59 am
CLOSED User: melissa

DISBURSEMENT HISTORY

DATE	CODE	DESCRIPTION	CREDITOR #	CHECK NO.	AMOUNT
ALLEN LIVINGSTON		Claim Number 1			
Jul 03, 2017	CR	AMOUNT DISBURSED TO CREDITOR		0344868	3,227.39
Aug 01, 2017	CR	AMOUNT DISBURSED TO CREDITOR		0346612	704.54
Sep 01, 2017	CR	AMOUNT DISBURSED TO CREDITOR		0348337	637.37
Nov 01, 2017	CR	AMOUNT DISBURSED TO CREDITOR		0351769	617.41
Dec 01, 2017	CR	AMOUNT DISBURSED TO CREDITOR		0353478	615.66
Mar 01, 2018	CR	AMOUNT DISBURSED TO CREDITOR		0358569	614.05
Apr 02, 2018	CR	AMOUNT DISBURSED TO CREDITOR		0360169	824.36
Jun 01, 2018	CR	AMOUNT DISBURSED TO CREDITOR		0363603	105.80
TOTAL FOR ALLEN LIVINGSTON					7,346.58
			DISBURSEMENT TOTAL:		7,346.58

(7)(17)

308

Need to Mail to Appeal Court

Gmail

Livingston v. Simmons

Jessica@berlinskylawfirm.com <jessica@berlinskylawfirm.com> Mon, Aug 6, 2018 at 2:19 PM
To: "invictor59@gmail.com" <invictor59@gmail.com>

Mr. Simmons,

The total amount due is $47,640.40.

Thanks,

Jessica

Jessica Reynolds

Legal Assistant to Bruce A. Berlinsky

One Carriage Lane, Bldg. F

Charleston, SC 29407

P: 843.852.2202

F: 843.852.4844

Jessica@berlinskylawfirm.com

ALL FUNDS IN EXCESS OF $5,000.00 MUST BE WIRED - CALL FOR WIRING INSTRUCTIONS

Wired Funds Notice: BE ALERT! We do NOT change or alter our wiring instructions. Please call to verify that you have the correct instructions prior to wiring.

--- CONFIDENTIALITY NOTICE: This electronic mail transmission and any accompanying documents contain information belonging to the sender which may be confidential and legally privileged. This information is intended only for the use of the individual or entity to whom it is addressed. Any disclosure, copying, distribution, or action taken in reliance on the contents contained herein is strictly prohibited. If you received this transmission in error, please notify the sender and delete the message and its contents. IRS CIRCULAR 230 NOTICE: Any tax advice contained in this communication (or any attachments) is not intended or written to be used for the purpose of avoiding penalties under the

(1) (11)

Internal Revenue Code or for recommending to another party as to any matter addressed herein.



BEWARE! WIRE FRAUD IS ON THE RISE.
Accepting wire and disbursement instructions by email is dangerous, especially changes to those instructions. Verify by calling the originator of the email using previously known contact information prior to sending funds.

Jessica@berlinskylawfirm.com <jessica@berlinskylawfirm.com> Mon, Aug 6, 2018 at 4:11 PM
To: "invictor59@gmail.com" <invictor59@gmail.com>

Mr. Simmons,

We forgot to add the post judgment interest. The correct total is $60,212.97 (2)

Thanks,

Jessica

Jessica Reynolds

Legal Assistant to Bruce A. Berlinsky

One Carriage Lane, Bldg. F

Charleston, SC 29407

P: 843.852.2202

F: 843.852.4844

Jessica@berlinskylawfirm.com

ALL FUNDS IN EXCESS OF $5,000.00 MUST BE WIRED - CALL FOR WIRING INSTRUCTIONS

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From: Jessica@berlinskylawfirm.com
Sent: Monday, August 06, 2018 4:11 PM
To: 'invictor59@gmail.com'
Subject: Livingston v. Simmons

[Quoted text hidden]

---

scan0089.pdf
300K

information belonging to the sender which may be confidential and legally privileged. This information is intended only for the use of the individual or entity to whom it is addressed. Any disclosure, copying, distribution, or action taken in reliance on the contents contained herein is strictly prohibited. If you received this transmission in error, please notify the sender and delete the message and its contents. IRS CIRCULAR 230 NOTICE: Any tax advice contained in this communication (or any attachments) is not intended or written to be used for the purpose of avoiding penalties under the Internal Revenue Code or for recommending to another party as to any matter addressed herein.



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Jessica@berlinskylawfirm.com <jessica@berlinskylawfirm.com> Mon, Aug 6, 2018 at 5:03 PM
To: "invictor59@gmail.com" <invictor59@gmail.com>

Here you go.

Jessica Reynolds
Legal Assistant to Bruce A. Berlinsky
One Carriage Lane, Bldg. F
Charleston, SC 29407
P: 843.852.2202
F: 843.852.4844
Jessica@berlinskylawfirm.com

(3)

ALL FUNDS IN EXCESS OF $5,000.00 MUST BE WIRED - CALL FOR WIRING INSTRUCTIONS

Wired Funds Notice: BE ALERT! We do NOT change or alter our wiring instructions. Please call to verify that you have the correct instructions prior to wiring.

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(4)(14)

		$54,986.98
LESS:		
Payment on July 3, 2017	$3,227.39	
Payment on August 1, 2017	$704.54	
Payment on November 1, 2017	$617.41	
Payment on September 1, 2017	$637.37	
Payment on December 1, 2017	$615.66	
Payment on June 1, 2018	$105.80	
Payment on March 1, 2018	$614.05	
Payment on April 2, 2018	$824.36	
	$7,346.58	-$7,346.58
SUBTOTAL		$47,640.40
Post Judgment Interest 4/8/15 – 12/31/15	$2,624.61	
Post Judgment Interest 1/1/16 – 1/31/16	$3,712.54	
Post Judgment Interest 1/1/17 – 1/31/17	$3,712.54	
Post Judgment Interest 1/1/18 – 8/8/18	$2,522.88	
	$12,572.57	$12,572.57
TOTAL DUE		**$60,212.97**

(2) (K)

0068386 / Office AU # — 11-24 / 1210(8)

CASHIER'S CHECK

6838600485

Remitter: HAROLD SIMMONS
Operator I.D.: u432821

August 06, 2018

PAY TO THE ORDER OF ***ALLEN LIVINGSTON AND ***
BRUCE BERLINSKY, HIS ATTORNEY

Forty-seven thousand six hundred forty dollars and 40 cents **$47,640.40**

Payee Address:
Memo: NORTH CAROLINA AVENUE

WELLS FARGO BANK, N.A.
1074 E MONTAGUE AVE
NORTH CHARLESTON, SC 29405
FOR INQUIRIES CALL (480) 394-3122

VOID IF OVER US $ 47,640.40

Shonne C Walker
AUTHORIZED SIGNATURE

⑈6838600485⑈ ⑆121000248⑆4861 00908 2⑈

PRINTED ON LINEMARK PAPER - HOLD TO LIGHT TO VIEW - FOR ADDITIONAL SECURITY FEATURES SEE BACK

0068386 / Office AU # — 11-24 / 1210(8)

CASHIER'S CHECK

6838600486

Remitter: HAROLD SIMMONS
Operator I.D.: u432821

August 07, 2018

PAY TO THE ORDER OF ***ALLEN LIVINGSTON AND***
BRUCE BERLINSKY, HIS ATTORNEY

Twelve thousand six hundred thirty-two dollars and 57 cents **$12,632.57**

Payee Address:
Memo: NORTH CAROLINA AVENUE

WELLS FARGO BANK, N.A.
1074 E MONTAGUE AVE
NORTH CHARLESTON, SC 29405
FOR INQUIRIES CALL (480) 394-3122

VOID IF OVER US $ 12,632.57

Shonne C Walker
AUTHORIZED SIGNATURE

⑈6838600486⑈ ⑆121000248⑆4861 00908 2⑈

Harold Simmons Jr.
3042 North Carolina Ave
N.C. S.C. 29405
843-480 8694

(a)(18)

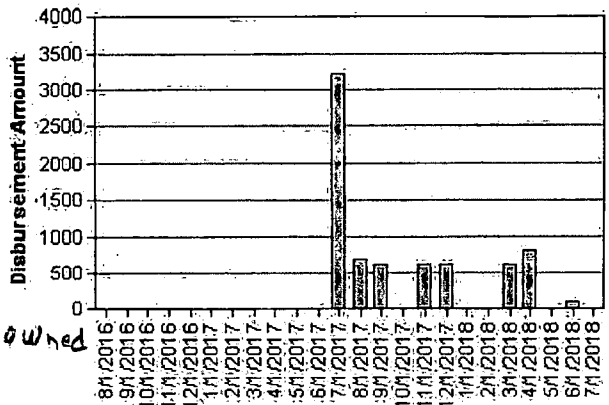
Chapter 13

(Use CTRL-P to Print this Page)
Close Window

Claim 1 ALLEN LIVINGSTON
c/o BRUCE A. BERLINSKY, PA
ONE CARRIAGE LANE, BUILDING F
CHARLESTON SC 29407

Next Disbursement Info

Disbursements to this Claim



CLAIM DETAIL

Case Number	1606276
Creditor	ALLEN LIVINGSTON
Trustee's Claim Number	1
Court's Claim Number	3
Claim Type	S - SECURED (S)
Claim Filed Date	Monday, February 06, 2017
Mortgage Due Date	

CLAIM AMOUNTS

Claimed Amount	$36,000.00
Scheduled Amount	$0.00
Amount Paid Outside	$0.00
Monthly Payment	$600.00
Principal Owed	$28,653.42
Principal Paid	$7,346.58
Principal Due	$3,453.42
Interest Rate	0.00
Interest Paid	$0.00
Interest Due	$0.00
Collateral Value	$0.00
Collateral Description	
Limit	$0.00
Plan Code	$0.00
Percent Allowed	100.00
Months to Calculate	0.00

Owned

Balance

Paid

CLAIM FLAGS

Payee Level	22
Comment	claim amt per Order 6/1/17
Account Number	5321
No Cost	
No Check	
Delete	
Reserve	
Stop Disbursement	
Continuing	
Special	

CREDITOR INFORMATION

Creditor Name	ALLEN LIVINGSTON
Address 1	c/o BRUCE A. BERLINSKY, PA
Address 2	ONE CARRIAGE LANE, BUILDING F
Address 3	CHARLESTON SC
Zip Code	29407-0000
Contact Name	
Creditor Number ShortCut	

Additional Names and Addresses		Date of Last Change
Payee:	ALLEN LIVINGSTON • 6046 HYDE PARK RD. • Ravenel • SC • 29470	12/14/2016
	ALLEN LIVINGSTON • c/o BRUCE A. BERLINSKY, PA •	2/7/2017

PAYMENT HISTORY FOR CLAIM 1 - ALLEN LIVINGSTON

(Latest Payments First) Insurance- Prev. Cred-

Disb Date	Check Number	Payee Name	Type	Amount
6/1/2018	363603	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	$105.80
4/2/2018	360169	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	$824.36
3/1/2018	358569	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	$614.05
12/1/2017	353478	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	$615.66
11/1/2017	351769	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	$617.41
9/1/2017	348337	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	$637.37
8/1/2017	346612	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	$704.54
7/3/2017	344868	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	$3,227.39

Information call
Moss Attorneys.com
Paul Pawson 843-744-3002

Chapter 13

PRINT INQUIRY

Close Window

16-06276-JW HAROLD SIMMONS JR (xxx-xx-5321)

3042 NORTH CAROLINA AVE.
NORTH CHARLESTON, SC
29405

$1,050.00 MO

Click Here to Print this Page

Bar Date(s):	4/3/2017 (has passed), 6/10/2017 (has passed)
Confirmed:	6/27/2017.

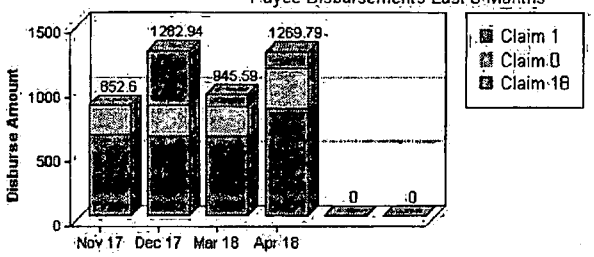
Trustee: James M. Wyman

Attorney: HEATHER S BAILEY

Payee Summary

Number of Claims	21
Total Amount Claimed	$55,838.49
Total Amount Scheduled	$72,369.67
Total Principal Paid	$10,307.23
Total Principal Owed	$45,531.26
Total Principal Due	$3,624.77
Total Interest Paid	$0.00
Total Interest Due	$0.00

Payee Disbursements Last 6 Months



Claim Breakdown

	Priority	Secured	Unsecured	Other
Claimed	$12,007.40	$41,479.92	$2,351.17	
Scheduled	$11,381.00	$6,489.92	$54,498.75	
Principal Paid	$2,415.61	$7,891.62	$0.00	
Principal Owed	$9,591.79	$33,588.30	$2,351.17	
Principal Due	$684.39	$2,940.38	$0.00	
Interest Paid	$0.00	$0.00	$0.00	
Interest Due	$0.00	$0.00	$0.00	
Monthly Payment	$233.00	$712.00	$0.00	
Collateral	$0.00	$0.00	$0.00	

13 Network

To Allen Livingston
346.58
$7,240.78
+ 1000.00 Paid by Harold Simmons
Total
$8240.98 Total Paid to June 2018

Claims Listing

Name (Acct)	Clm#	Filed	Desc	Ro Pymt	Prin Paid	Prin Owed	Clm Amt	Schd Amt	Int Paid	Int Due
ALLEN LIVINGSTON (5323)	1	✓	SECURED	$600.00	$7,240.78	$28,759.22	$36,000.00	$0.00	$0.00	$0.00
Chrysler First Loans (3921)	17		SECURED VEHICLE	$20.00	$0.00	$0.00	$0.00	$1,010.00	$0.00	$0.00
CHARLESTON CO FAMILY COURT (2993)	18	✓	DOMESTIC SUPPORT OBLIGATION	$92.00	$650.84	$4,829.08	$5,479.92	$5,479.92	$0.00	$0.00
Gwendolyn Brown	26		DOMESTIC SUPPORT OBLIGATION	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
INTERNAL REVENUE SERVICE (5321)	4	✓	PRIORITY	$0.00	$0.00	$8,138.74	$8,138.74	$8,281.00	$0.00	$0.00
Charleston County Revenue Collections	25	✓	PRIORITY	$0.00	$0.00	$367.09	$367.09	$0.00	$0.00	$0.00
SC DEPT OF REVENUE & TAXATION (5321)	27	✓	PRIORITY	$0.00	$0.00	$401.57	$401.57	$0.00	$0.00	$0.00
J. SETH WHIPPER	5		UNSECURED	$0.00	$0.00	$0.00	$0.00	$50,000.00	$0.00	$0.00
LIFE CENTER FAMILY MEDICINE	8		UNSECURED	$0.00	$0.00	$0.00	$0.00	$446.75	$0.00	$0.00
NPAS INC	10		UNSECURED	$0.00	$0.00	$0.00	$0.00	$35.00	$0.00	$0.00
Palmetto Digestive Disease PA	11		UNSECURED	$0.00	$0.00	$0.00	$0.00	$75.00	$0.00	$0.00
Roper St Francis Hospital	12		UNSECURED	$0.00	$0.00	$0.00	$0.00	$200.00	$0.00	$0.00
SC HIGHWAY DEPT	14		UNSECURED	$0.00	$0.00	$0.00	$0.00	$600.00	$0.00	$0.00
BANK OF AMERICA (8838)	19		UNSECURED	$0.00	$0.00	$0.00	$0.00	$700.00	$0.00	$0.00
LABCORP	20		UNSECURED	$0.00	$0.00	$0.00	$0.00	$673.00	$0.00	$0.00
LCA COLLECTIONS	21		UNSECURED	$0.00	$0.00	$0.00	$0.00	$72.00	$0.00	$0.00
SCEBG	22		UNSECURED	$0.00	$0.00	$0.00	$0.00	$1,662.00	$0.00	$0.00
TRIDENT MEDICAL CTR	23		UNSECURED	$0.00	$0.00	$0.00	$0.00	$35.00	$0.00	$0.00
INTERNAL REVENUE SERVICE (5321)	24	✓	UNSECURED	$0.00	$0.00	$2,229.27	$2,229.27	$0.00	$0.00	$0.00
SC DEPT OF REVENUE & TAXATION (5321)	28	✓	UNSECURED	$0.00	$0.00	$121.90	$121.90	$0.00	$0.00	$0.00

Attorney Listing

Name	Description	Level	Fee in Plan	Fee Paid Outside	Fee Paid to Date	Initial Amount	Monthly Payment	Fee Remaining
HEATHER S BAILEY	ATTORNEY FEE	22	$3,100.00	$400.00	$2,415.61	$684.39	$233.00	$684.39

Clerk Fees Listing

No Clerk Names have been established for to this case.

Debtor Refund

Name	Description	Level	Refund Amount	Amount Paid	Amount Owed
HAROLD SIMMONS JR	DEBTOR REFUND	0	$0.00	$0.00	$0.00

To check
NDC.org

Miss Miller
843 856 2408

Trustee
Phone 843-388-9844
Martha Feil
Call 6-14-2018 1:25 p.m. L.M.M.

BRUCE A. BERLINSKY, P.A.
Attorney at Law

Mailing Address:
PO Box 206
Charleston, SC 29402

One Carriage Lane, Building F
Charleston, SC 29407

Office: (843) 852-2202
Fax: (843) 852-4844
Bruce@berlinskylawfirm.com

November 6, 2018

V. Claire Allen
Deputy Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Allen Livingston v. Harold Simmons
Appellate Case No. 2016-001201

Dear Ms. Allen:

In connection with the above referenced matter, enclosed please find one (1) original and one (6) copies of Motion to Dismiss, Affidavit and Proof of Delivery, along with $50.00 filing fee.

Please return the filed copies to me in the enclosed, postage-paid envelope.

If you need anything further, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

Bruce A. Berlinsky

BAB/jlr
Enclosures
CC: Harold Simmons
1182 King Street
Charleston, SC 29403

Harold Simmons
3042 N Carolina Avenue
North Charleston, SC 29405

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

MIKELL R. SCARBOROUGH, MASTER IN EQUITY

Case No.: 2016-001201

Allen Livingston, Respondent,

v.

Harold Simmons, Appellant.

MOTION TO DISMISS

Bruce A. Berlinsky, Esquire
(843) 852-2202
One Carriage Lane, Bldg. F
Charleston, SC 29407
ATTORNEY FOR RESPONDENT

This motion is brought pursuant to Rule 240 to dismiss Appellant's appeal as moot.

The underlying action is a foreclosure of an Installment Sales Contract. Pursuant to Order of the Charleston County Master in Equity, and after numerous hearings, the Master in Equity ultimately concluded that Appellant could pay the total sum due and owing in the amount of $52,174.32 or post a bond in the amount of $50,000.00 to stop the foreclosure sale. On or about August 10, 2018, the Appellant paid all sums due and owing under the Installment Sales Contract and received a deed from Respondent. The Appellant refused to record the aforesaid deed in the Charleston County Register of Deeds Office. As a result of failure to record the deed, the Master in Equity issued an Order dated October 8, 2018, in which he ordered that Appellant record the deed or, alternatively, the Master would issue a deed. The Appellant failed to record the deed and the Master in Equity issued a deed that was recorded in the Charleston County Magistrate of Deeds Office in Book 0756, Page 020. Thereafter, Appellant recorded the deed he received on August 10, 2018, on the same day, said deed recorded in Book 0756, Page 049.

Based on the foregoing, the matter before this Honorable Court is moot. In general, the court may only consider cases where a justiciable controversy exists. A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination as distinguished from a contingent, hypothetical, or abstract dispute. Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case non-justiciable. This Court will not pass on moot and academic questions where there remains no actual controversy. A case becomes moot when judgment, if rendered, will have

no practical legal effort upon the existing controversy. Sloan v. Greenville County, 356 S.C. 531, 590 S.E.2d 338 (SC App 2003). See also Byrd v. Irma High School, 321 S.C. 426, 468 S.E.2d 861 (1996); Pee Dee Electric Coop Inc. v. Carolina Power Light Co., 279 S.C. 64, 301 S.E.2d 761 (1983); Wallace v. City of York 276 SC 693, 281 S.E.2d 482 (1981).

In the case at bar, the Appellant has paid all sums due and owing to Respondent and Respondent has issued a deed to Appellant which has been recorded. Based on the foregoing intervening events since the filing of the Master's various Orders and Appeal thereon (namely the payment of all sums due and owing under the Installment Sales Contract and the recording of the deeds), there is no real or substantial controversy which is ripe and appropriate for judicial determination and the appeal should be dismissed as moot.

Respectfully submitted,

BRUCE A. BERLINSKY, PA
Bruce A. Berlinsky, Esquire
One Carriage Lane, Bldg. F
Charleston, SC 29407
(843) 852-2202
ATTORNEY FOR RESPONDENT

November 6, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

MIKELL R. SCARBOROUGH, MASTER IN EQUITY

Case No.: 2016-001201

Allen Livingston, Respondent;

v.

Harold Simmons, Appellant.

AFFIDAVIT OF BRUCE A. BERLINSKY

Bruce A. Berlinsky, Esquire
(843) 852-2202
One Carriage Lane, Bldg. F
Charleston, SC 29407
ATTORNEY FOR RESPONDENT

1. Deponent is attorney for Respondent in the above styled matter.

2. The documents attached hereto have been issued/created after the Record on Appeal was filed and are relevant to the Motion to Dismiss.

3. The supplemental documents are as follows:

a) Order dated August 31, 2018

b) Order dated August 6, 2018

c) Order dated August 7, 2018

d) Order dated October 8, 2018

e) Master's Deed recorded in the Charleston County RMC Office in Book 0756, Page 020

f) Title to Real Estate recorded in the Charleston County RMC Office in Book 0756, Page 049

g) Receipt signed by Appellant dated August 10, 2018

Respectfully submitted,

BRUCE A. BERLINSKY, PA
Bruce A. Berlinsky, Esquire
One Carriage Lane, Bldg. F
Charleston, SC 29407
(843) 852-2202
ATTORNEY FOR RESPONDENT

SWORN to before me this 6th day of November, 2018.

Jessica Reynolds
Notary Public for South Carolina
My Commission Expires: 2-15-23

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2014-CP-10-01635
	)	
ALLEN LIVINGSTON,	)	
	)	
PLAINTIFF,	)	
	)	**ORDER ON MOTION TO**
versus	)	**ALTER AND AMEND**
	)	
HAROLD SIMMONS,	)	
	)	
DEFENDANT.	)	

FILED
2016 SEP -1 PM 1:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER was brought before me pursuant to Defendant's Motion to Alter and Amend Order; said Order being entered May 18, 2016.

On August 11, 2016, a hearing was held at which testimony was taken and evidence offered. Attending were Bruce A. Berlinsky, Esquire, Attorney for Plaintiff; the Defendant; and J. Seth Whipper, Esquire, Attorney for Defendant.

All of the parties were given due notice of today's hearing.

Prior to my taking up the issues presented by Defendant's Motion, all parties waived notice and desired to move forward on Defendant's Request for Jury Trial, which was filed with the court June 10, 2016. Defendant argued that he initially requested a jury trial in his Answer filed April 24, 2014. However, Plaintiff filed a Motion to Strike all of the jury trial issues presented in Defendant's Answer and Counterclaim. An Order striking all of Defendant's counterclaims was filed August 12, 2014 and based upon the Order granting Plaintiff's Motion to Strike, there were no counterclaims or defenses that were left entitling Defendant to a jury trial. In fact, after the August 12, 2014 Order was granted, the only cause of action remaining was foreclosure of the Installment Sales Contract, which is equitable in nature. In addition to the foregoing, the Defendant

appeared throughout the litigation, both pro se and with counsel, and participated in all trials and hearings before the court never raising the issue until June 10, 2016, which is after all Orders, including the Final Order, in the matter had been issued.

I find that Defendant's appearance and participation in all trials and hearing before this court, without raising the issue of jury trial during said trials and/or hearings, results in a waiver of the same.

Thereafter, I took up Defendant's Motion to Alter or Amend Order.

After consideration of the testimony and the evidence, this Court makes the following Findings of Fact and Conclusions of Law:

1. The Rule to Show Cause was properly before this court and concerned my Order. Defendant asserts that any Rule needed to be filed pursuant to Judge Nicholson's Order in the 2010 case. Judge Nicholson's Order dealt with the issue establishing that the Agreement between the parties amounted to an Installment Sales Contract, as opposed to a Lease with option to purchase. Judge Nicholson's Order also established the remaining debt and the monthly payments to be made. Judge Nicholson's Order was appealed but the appeal was dismissed and Judge Nicholson's Order became the final Order in the 2010 case. The Rule to Show Cause that came before me was based on noncompliance with the Order of this court filed April 8, 2015, and to establish the foreclosure of the Installment Sales Contract. Therefore, the Rule to Show Cause was properly filed with this Court.

2. I find that the amortization schedule submitted attempted to go behind Judge Nicholson's February 23, 2013, Order, which became the law of the case and this court is not free to go behind Judge Nicholson's Order. The amortization schedule

required by both Judge Nicholson's Order and by my Order was intended to illustrate the outstanding indebtedness established by Judge Nicholson's Order and reestablished by my April, 2015 Order. Based on the foregoing, Defendant failed to satisfy the requirements of providing a proper amortization schedule pursuant to the terms and conditions of both Judge Nicholson's Order and my Order.

3. I find that there is no justification to adjust the property tax claim as the obligation to pay property taxes was still due and Defendant did not go into default to make the claim "ripe" until he failed to pay pursuant to Judge Nicholson's Order resulting in the filing of this action.

4. This action was not filed prematurely and the court does have jurisdiction to issue any and all Orders herein. The 2010 case heard by Judge Nicholson which established the agreement between the parties as an Installment Sales Contract and established the balance due and the monthly payments to be made going forward from Judge Nicholson's February 27, 2013, Order became the final Order in the case upon the dismissal and Order issued by the Court of Appeals filed December 3, 2013. The Defendant, by his own admission and testimony, indicated that he had not made any payments on the Installment Sales Contract other than the Four Thousand Five Hundred and 00/100 ($4,500.00) Dollars for which he has been given due credit under my April 8, 2015 Order. Again, Defendant continues to argue that he has prepaid on the Installment Sales Contract. The fact that Defendant may have prepaid towards the total purchase price prior to Judge Nicholson's Order becoming final does not relieve Defendant from his monthly obligations. Mr. Simmons's own testimony was that he has not made any payments since the appeal was dismissed on December 3, 2013.

The Court being satisfied with its findings of fact and conclusions of law, it is the opinion that judgment should be entered thereon.

Therefore, it is hereby,

ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Alter and Amend Order is hereby denied; and, it is further

ORDERED, ADJUDGED AND DECREED that the Master's Sale on the foreclosure of the Installment Sales Contract shall take place as scheduled on September 6, 2016 at 11:00 a.m. pursuant to the terms and conditions of my May 18, 2016 Order; and, it is further

ORDERED, ADJUDGED AND DECREED that the Defendant has the option to avoid the foreclosure sale by payment to the Plaintiff of the sum of Fifty Two Thousand One Hundred Seventy Four and 32/100 ($52,174.32) Dollars prior to the sale; and it is further

ORDERED, ADJUDGED AND DECREED pursuant to *SC Code* § 18-9-170 (2014) and pursuant to Order of SC Court of Appeals filed July 29, 2016, the Defendant can post a bond to stop the Master's Sale of foreclosure, said bond being set in the amount of Fifty Thousand and 00/100 ($50,000.00) Dollars.

AND IT IS SO ORDERED!

Honorable Mikell R. Scarborough
Charleston County Master-in-Equity

Charleston, South Carolina

Aug. 31 2016.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2014 CP-10-01635

Allen Livingston — PLAINTIFF(S)

Harold Simmons — DEFENDANT(S)

Submitted by: Master in Equity	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **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 LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2018 AUG -7 PM 4:16
JULIE J. ARMSTRONG
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: The Court reaffirms its Order filed September 1, 2016 setting bond at $50,000.00 per statute or Defendant may pay the judgment pending the appeal filed July 31, 2018.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

3062
Judge Code

8/6/18
Date

SCRCP Form 4C (10/2011)

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-10-1635

Livingston
PLAINTIFF(S)

Simmons
DEFENDANT(S)

Submitted by: Master in Equity	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **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 LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2018 AUG -7 PM 4:13
CLERK OF COURT
CHARLESTON COUNTY

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant Simmons appeared pro se and paid off the judgment amount claimed due by Plaintiff Livingston. Plaintiff accepted the sum and in return will convey title to the property to Defendant and pay any overage which may be due. Defendant seeks to continue his appeal in this matter.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

3062
Judge Code

8/7/18
Date

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2014-CP-10-01635
	)	
ALLEN LIVINGSTON,	)	
	)	
PLAINTIFF,	)	
	)	**ORDER**
versus	)	
	)	
HAROLD SIMMONS,	)	
	)	
DEFENDANT.	)	
	)	

2018 OCT 12 AM 9:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter was brought before me pursuant to the filing by Plaintiff of a Notice of Motion and Motion to Enforce Judgment regarding recording of a deed from Plaintiff to Defendant.

This matter was originally scheduled for September 17, 2018, at 2:00 p.m. Notice of the hearing was duly given to Defendant. On September 17, 2018, Laura Dukes Beck of the Master in Equity's Office received a telephone call from someone identifying themselves as Mr. Simmons's secretary advising that Mr. Simmons was still evacuated for Hurricane Florence. Based on the foregoing, the matter was continued until October 4, 2018, and notice was given to Plaintiff's Attorney and Defendant, pro se, by a letter sent with Mr. Simmons's correspondence going to the address he put on file with the Master in Equity's office.

On October 4, 2018, a hearing was held at which testimony was taken and evidence offered. Attending were Bruce A. Berlinsky, Esquire, Attorney for Plaintiff and no other parties or witnesses.

All of the parties were given due notice of today's hearing.

After consideration of the testimony and the evidence, this Court makes the following Findings of Fact and Conclusions of Law:

1. Pursuant to all previous Orders of court in furtherance of this matter, the Defendant Harold Simmons paid all sums due and owing under the Installment Sales Contract between Defendant and Plaintiff to Plaintiff's attorney on or about August 10, 2018.

2. On or about August 10, 2018, Plaintiff delivered to Defendant, in furtherance of full compliance with the Installment Sales Contract which is the subject matter of this action, a deed conveying the subject property from Plaintiff to Defendant. Delivery of the aforesaid deed is evidence by a receipt whereby Defendant signed acknowledging receipt of the original deed for the subject property from Bruce A. Berlinsky, Esquire.

3. That since August 10, 2018, Defendant has refused and continues to refuse to record said deed.

4. I find that Plaintiff is entitled to the relief requested in this motion and hereby require the Defendant to record the original deed within 15 days of the date of today's hearing or, alternatively, the undersigned Master in Equity shall issue a Masters Deed conveying the property to Defendant.

The Court being satisfied with its findings of fact and conclusions of law, it is the opinion that judgment should be entered thereon.

NOW, THEREFORE, IT IS HEREBY

ORDERED, that Defendant, Harold Simmons, Jr., shall record the original deed to the property which is the subject matter of this action within fifteen (15) days of the date of this hearing; namely, October 19, 2018; and, it is further

ORDERED, that should Defendant, Harold Simmons, Jr., not record the deed in his possession for the property which is the subject matter of this action, the undersigned Master in Equity shall issue a Masters Deed conveying the same to the Defendant Harold Simmons for recording at the Charleston County ROD Office.

AND IT IS SO ORDERED!

Charleston, South Carolina
10/8 2018.

Honorable Mikell R. Scarborough
Charleston County Master-in-Equity

BP0756020

PGS: 4

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

MASTER'S DEED

To all whom these Presents shall concern:

I, MIKELL R. SCARBOROUGH, as Master in Equity for Charleston County, in the said State, send Greetings.

WHEREAS, in an action in the Court of Common Pleas in Charleston County between ALLEN LIVINGSTON, as Plaintiff, and HAROLD SIMMONS, as Defendant, by an Order dated May 6, 2016, and by Order dated October 8, 2018, Case No.: 2014-CP-10-01635,

It was decreed that the property hereinafter described should be sold by the Master in Equity for Charleston County on the terms and for the purposes mentioned in the Order(s) granted in the case, as by reference thereto will appear.

NOW THEREFORE KNOW ALL MEN, That I, the undersigned as Master in Equity for Charleston County, pursuant to the foregoing and in consideration of the sum of FIVE DOLLARS AND 00/100 ($5.00) and in furtherance of the above referenced Orders, as paid by the hereinafter named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant and release the following described property unto the grantee,

HAROLD SIMMONS a/k/a HAROLD SIMMONS, JR., 3042 North Carolina Avenue, North Charleston, South Carolina 29405

ALL that piece, parcel or lot of land, together with the buildings thereon, situate in Chicora Place. Measuring and containing 77' in front on Eighth Street, 84' on back line by 105' in depth, and known as #17 in Block I on a plat of Chicora Place recorded in the RMC Office for Charleston County in Plat Book D, Page 197. Butting and bounding as follows: West on Carolina Avenue, North on Eighth Street, East on Lot 15 and South on Lots 18 and 20 in said Block I.

BEING the same property conveyed to Allen R. Livingston by deed of Jerry Roberts, dated February 13, 1992, and recorded February 14, 1992, in the RMC Office for Charleston County in Book P210, at Page 751.

TMS No.: 469-16-00-329

TOGETHER with all and singular the hereditaments, rights, members, and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions and remainders, rents, issues, and profits thereof, and also any estate, right, title, interest, dower, possession, benefit, claim, or demand therein whatsoever of all parties to the said suit and of al other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

TO HAVE AND TO HOLD the said property, with its hereditaments, privileges, and appurtenances, unto the said grantee, its successors and assigns for their own use, benefit, and behoove, forever.

IN WITNESS WHEREOF, I the undersigned, as Master in Equity for Charleston County, under and by virtue of the said order(s), have hereunto set my Hand and Seal the 25th day of October, in the year of our Lord Two Thousand Eighteen, and in the Two Hundred and Forty Second year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED, AND DELIVERED
in the Presence of:

Mary N. Rawlins

Jenny O. Hearn

Honorable Mikell R. Scarborough
As Master in Equity for Charleston County

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PERSONALLY APPEARED the undersigned witness, and made oath that (s)he saw Mikell R. Scarborough, as Master in Equity for Charleston County, sign, seal, and deliver the within Deed; and that Deponent, together with the other subscribing witness, signed their names as witnesses thereto.

SWORN to before me this 25th
day of October, 2018.

Mary N. Rawlins

Jenny O. Hearn
Notary Public for South Carolina
My Commission Expires: 10-31-2021

STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON } AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

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

1. I have read the information on this affidavit and I understand such information.

2. The property was transferred by MIKELL R. SCARBOROUGH, MASTER IN EQUITY to HAROLD SIMMONS A/K/A HAROLD SIMMONS, JR. on OCTOBER 25, 2018.

3. Check one of the following: The deed is
   (A) [ ] subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (B) [ ] subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
   (C) [✓] exempt from the deed recording fee because (See Information section of affidavit): #1 LESS THAN $100.00 (Explanation required)
   (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes [ ] or No [ ]

4. Check one of the following if either item 3(a) or item 3(b) above has been checked. (See Information section of this affidavit):
   (A) [ ] The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.
   (B) [ ] The fee is computed on the fair market value of the realty which is _____.
   (C) [ ] The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check YES [ ] or NO [ ] to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is _____.

6. The deed recording fee is computed as follows:
   (A) Place the amount listed in item 4 above here: _____
   (B) Place the amount listed in item 5 above here: _____
   (If no amount is listed, place zero here.)
   (C) Subtract Line 6(b) from Line 6(a) and place the result here: _____

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: ATTORNEY.

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Responsible Person Connected with the Transaction

Print or Type Name Here

Sworn this 25TH day of OCTOBER 2018

Notary Public for SOUTH CAROLINA
My Commission Expires: JULY 8TH, 2024

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

BRUCE A BERLINSKY ESQUIRE

P.O. BOX 206
CHARLESTON SC 29402 (BOX)

RECORDED

Date:	October 25, 2018
Time:	2:48:50 PM

Book	Page	DocType
0756	020	Mas/Con

Elaine H. Bozman, Register
Charleston County, SC

MAKER:

LIVINGSTON ALLEN R

RECIPIENT:

SIMMONS HAROLD AL

Note:

# of Pages: 4

Recording Fee	$ 10.00
State Fee	<EXEMPT>
County Fee	<EXEMPT>
Extra Pages	$ -
Postage	$ -
Chattel	$ -
TOTAL	$ 10.00

DRAWER	Drawer 2
CLERK	JBA

Original Book:

Original Page:

AUDITOR STAMP HERE

RECEIVED From ROD
Oct 29, 2018
Peter J. Tecklenburg
Charleston County Auditor

PID VERIFIED BY ASSESSOR
REP MKD
DATE 10/30/2018
28

0756
Book

020
Page

10/26/2018
Recorded Date

4
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Original Book

Original Page

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Doc Type

14:48:50
Recorded Time

BP0756049 #PGS: 4

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, THAT I, **ALLEN R. LIVINGSTON** in the State aforesaid for/and in consideration of the sum of ONE HUNDRED TWENTY FIVE THOUSAND and 00/100 DOLLARS ($125,000.00), to me in hand paid at and before the sealing of these presents by **HAROLD SIMMONS, JR.**, in the State aforesaid the receipt of which is hereby acknowledged, has granted, bargained, sold and released, **HAROLD SIMMONS, JR.**, his heirs and assigns forever, all of my right, title, and interest, in the following described property:

ALL that piece, parcel or lot of land, together with the buildings thereon, situate in Chicora Place. Measuring and containing 77' in front on Eighth Street, 84' on back line by 105' in depth, and known as #17 in Block I on a plat of Chicora Place recorded in the RMC Office for Charleston County in Plat Book D, Page 197. Butting and bounding as follows: West on Carolina Avenue, North on Eighth Street, East on Lot 15 and South on Lots 18 and 20 in said Block I.

BEING the same property conveyed to the Grantor herein by deed of Jerry Roberts, dated February 13, 1992, and recorded February 14, 1992, in the RMC Office for Charleston County in Book P210, at Page 751.

TMS No.: 469-16-00-329

GRANTEE'S ADDRESS: 3042 North Carolina Ave
North Chas. S.C. 29405

TOGETHER with, all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises/Property belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises unto the said Grantee, his heirs and assigns forever.

AND the said Grantor does hereby bind himself and his heirs and assigns, executors and administrators, to warrant and forever defend all and singular, the said Premises unto the said Grantee, his heirs and assigns forever, against the said Grantor and his heirs and all persons whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS our hand and seal this 8th day of August, in the year of our Lord Two Thousand Eighteen (2018) and in the Two Hundred and Forty Second year of the sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

ALLEN R. LIVINGSTON

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

I, Susan L. Scott, Notary Public for the State of South Carolina, do hereby certify that ALLEN R. LIVINGSTON personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 8th day of August, 2018.

Notary Public for South Carolina
My commission expires: 4-18-24

SUSAN L. SCOTT NOTARY PUBLIC SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

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

1. I have read the information on this Affidavit and I understand such information.

2. The property being transferred is located at 3042 N. Carolina Ave., SC, bearing Charleston County Tax Map Number 469-16-00-329 by Allen R. Livingston to Harold Simmons, Jr. on August 8, 2018.

3. Check one of the following: ***The DEED is***
   (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b) _____ subject to the deed recording fee as a transfer between a partnership, or other entity and a stockholder, partner, or an owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
   (c) _____ EXEMPT from the deed recording fee because * (If exempt, please skip items 4-7 and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a) X The fee is computed on the consideration paid or to be paid money or money's worth in the amount of **$125,000.00**.
   (b) _____ The fee is computed on the fair market value of the realty, which is $_____.
   (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES _____ or NO ____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", then the amount of the outstanding balance of this lien or encumbrance is $ _____.

6. The DEED Recording Fee is computed as follows:
   (a) X the amount listed in item 4 above.
   (b) _____ *the amount listed in item 5 above (no amount place zero)*
   (c) _____ Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

8. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty to a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Allen R. Livingston
As: Grantor

SWORN to before me this 8th day of August, 2018.

Notary Public for South Carolina
My Commission Expires: 4-18-24

SUSAN L. SCOTT NOTARY PUBLIC SOUTH CAROLINA

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

COUNTER CUSTOMER
HAROLD SIMMONS JR
3042 NORTH CAROLINA AVE
NORTH CHARLESTON, SC 29405

RECORDED

Date:	October 25, 2018
Time:	4:05:59 PM

Book	Page	DocType
0756	049	Deed

Elaine H. Bozman, Register
Charleston County, SC

MAKER:
LIVINGSTON ALLEN R

RECIPIENT:
SIMMONS HAROLD JR

Original Book:

Original Page:

Note:

# of Pages: 4

Recording Fee	$	10.00
State Fee	$	325.00
County Fee	$	137.50
Extra Pages	$	-
Postage	$	0.50
Chattel	$	-
TOTAL	$	473.00

DRAWER: Drawer 2
CLERK: JBA

AUDITOR STAMP HERE

RECEIVED From ROD
Oct 30, 2018
Peter J. Tecklenburg
Charleston County Auditor

PID VERIFIED BY ASSESSOR
REP MKD
DATE 10/31/2018
4

0756
Book

049
Page

10/25/2018
Recorded Date

4
Pgs

Original Book

Original Page

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Doc Type

16:05:59
Recorded Time

The undersigned hereby acknowledges receipt of check in the amount of $60.00 and original deed for TMS No.: 469-16-00-329 from Bruce A. Berlinsky, Esquire.

Harold Simmons, Jr.

8/10/2018
Date

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

MIKELL R. SCARBOROUGH, MASTER IN EQUITY

Case No.: 2016-001201

Allen Livingston, Respondent,

v.

Harold Simmons, Appellant.

PROOF OF SERVICE

I, Jessica Reynolds, legal assistant to Bruce A. Berlinsky, Esquire, do hereby certify that I have this date mailed a true and correct copy of the foregoing and **MOTION TO DISMISS and AFFIDAVIT OF BRUCE A. BERLINSKY**, postage prepaid, and deposited with the United States Postal Service as follows:

Harold Simmons, Jr.
3042 North Carolina Ave.
North Charleston, SC 29405

Harold Simmons, Jr.
1182 King Street
Charleston, SC 29403

Dated this 6th day of November, 2018.

Jessica Reynolds

THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

MASTER-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity Law Judge

Case No. 2016-001201

Harold Simmons Jr.,.....Appellant,

v.

Allen Livingston,.....Respondent.

CERTIFICATE OF SERVICE

I, Harold Simmons Jr, Pro Se, hereby certify that I have, on date indicated below, served counsel below with a Appellants' Motion to Denied Dismiss by mailing a copy of same via Certified US Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Harold Simmons Jr.

Dec 6, 2018

The state of South Carolina
In the Court of Appeals

Dec. 6 2018

APPEAL From Charleston County
Court of Common Pleas

MIKELL R SCAROBOUGH, Master in EQUITY

Case NO: 2016-001201

Allen hivingston, Respondent

v

Harold Simmons, Appellant

Motion to Denied Dismiss

Harold Simmons Jr.
843-480-8694
3042 North Carolina Ave
North Charleston S.C. 29405
Pro/Sce

TABLE of Contents

ARGUment Pg 2 to 5
Court Records Pg 6 + 11
Judge Dennis order Pg 9
Attorney Bruce Berlinsky Balance Reports Pg 12 + 16
Chapter 13 Trustee Balance Reports Pg 17 to 20
mount Paid Pg 21
ANSwer and Jury Trial Requested Pg 22
Cunter Claim Jury Trial Requested Pg 23
Defendant Appellant Request For Judge Dennis Reverse order Pg 24 to 25

The State of South Carolina
In the Court of Appeals
Appeal From Charleston County
master-In-Equity Law Court
Mikell R Searborough, Master-In-Equity Law Judge
CASE NO: 2016-001201

Allen Livingston Respondent

V

Harold Simmons Appellent

Motion to Denied Dismiss

Defendant, Appellent Harold Simmons Demand Appeal to move Forward in the name of Justice And A Ruling in Favor off Defendant Appellant Harold Simmons. Plaintiff Respondent Allen Livingston and his Attroney Bruce A Berlinsky And Charleston County Court have in there Act Conduct Forgery Freud, Perjury and Favoritism in there Act Against Defendant Appentant Harold Simmons. Appentant Harold Simmons ASH For Appeal Case to move Forward this Request is Base on the Grounds that Respondent Allen Livingston And His Attroney Bruce Berlinsky And the Charleston County Court, Has In there way Twist the Law, Twist the order of Judge Nickalson And Twist the Contract between the two parties. Defendant Appentant Harold Simmons was wrongfully force to pay off A Debt Mount He Did Not owe, on A Frivilous Case, A Case Base on Freud And unexplainable Behavior of the Lower Court

And Denying Appellate Harold Simmons Requests For Jury Trials
And A Lower Court Hearing that Appentant
Harold Simmons never Receive Notice off and
A Hearing that was never schedule for Judge Dennis
to make or write An order, The Rewrite of Contact,
Rewrite Court order and Perjury In and of the Courts
In Reference and All Allegation All can and will Be
Proved.
Defendant Appentant Harold Simmons Balance only was
#25,720,78 But Because of perjury Defendant Appentant
Harold Simmons is wrongfully Force to pay #60,212,97

Defendant Appentant Harold Simmons will and Can
proved every time Plaintiff Respondent Allen Livingston
Filed A case against Defendant, Appentant Harold Simmons
was Allways #9,000.00 Dollars are more Paid in Advance.

And as of Nov 6, 2018 motion to Dismiss Attorney
Bruce A Berlinsky Alons with His Request For Dismiss
He submit the order dating Aug 6 2018 Thats the
Hearing where it was brought to the Court Attention
when this Case was File and the Court was waiting
on A Response or Answer From Defendant Appentant Harold

Simmons. A Default order sign By Judge Dennis Oaying 4, 28, 2014 these order shows Plaintiff Attorney Bruce A Berlinsky lie to Judge Dennis About Defendant Appellate Harold Simmons timins on Filing And Answer in order to get A Default Ruling And the Court Record will show a henring was Never schedule to be heard For these order. These is like These was done Behind Close Curtain. This can Be proved I have Court Copy. This is violence Being Denied Do process of the Rules of the Court. And Defendant Appellate Harold Simmons was Never service with a copy of the Default order.

Once these was Brought to the Attention of the Court on Aug 6, 2018 the Court Response to these said By Judge Mikell R Scarborough, (After the Court review the computer) Court: Mr Simmons What you went the Court to Do Retrial this Case? these Case went on For two years. Defendant Appellate Harold Simmons Responsed: For the sake of Justice (yes) Court Responsed: We not Retrialing these Case. Defendant Appellate Harold Simmons Response: For the sake of Justice you not Retrialing these case? (would like to get Transcript). With

These was and is A Malfeasance Trials and Hearings The entire legal Proceeding was Frivolous, Malicious, and unjust. It is a outRight shame and disgrace to the legal Community At large. And In Fact its adds and bring Dishonor to the Foundation of law of this Country over All and Pur All USA Citizens in Danger of Outlaw thieves that Poses As the legal Community such As in this Case.

These Few things I Ask the Court of Appeal to Denied these motion to Dismiss And Grant Defendant Appellant Harold Simmons Back the money He was wrongfully force to pay And For Harassment of the Plaintiff For the third Time Filing, Filing For money Plaintiff Respondent Allen Livingston Been And Had in his possession and For the Plaintiff Respondent Allen Livingston useing And Filing Forge Documents with the Courts. It is Sad the lower Court Entertain such Behavior, Because of Favoritism.

I Thank you in Advance
Sincerely
Harold Simmons Jr
3042 North Carolina Ave
North Chas. S.C. 29405
843-480-8694

Attroney Bruce Berlinsky
One Carriage Lane, Bldg F
Charleston S.C. 29407
843-852-2202

(4) (9) (5)

Case No. 2014-CP-10-1635

Appeals Court

04/03/2014
SERVICE/AFFIDAVIT OF SERVICE

03/11/2014
SUMMONS & COMPLAINT

03/11/2014
LIS PENDENS FILED

EVENTS

PARTIES

ASSOCIATED CASES

© 2012 - 2018 Charleston County Clerk of Court

07/31/2014
AMENDED/AMENDED NOTICE OF HEARING & CERT/MAIL

07/18/2014
REQUEST FOR CONTINAUNCE

07/07/2014
NOTICE/NOTICE OF HEARING & CERT/MAIL

06/26/2014
MOTION/STRIKE BY PLAINTIFF, CRT/MAIL

06/16/2014
MOTION TO DENIAL TO MOT TO MASTER IN EQUITY & CERT/MAIL

06/12/2014
ORDER/GRANTED TO PROCEED IN FORMA PAUPERIS W/OUT PAYMENT

06/12/2014
C/CLAIM & CERT/SERV

06/12/2014
NOTICE/NOTICE OF HEARING & CERT/MAIL

06/04/2014
MOTION & AFFIDAVIT TO PROCEED IN FORMA PAUPERIS

06/04/2014
ORDER OF DEFAULT & REFERRED TO MASTER

05/22/2014
MOTION/REFER TO MASTER BY PLAINTIFF, CRT/MAIL

04/29/2014
AFFIDAVIT/DEFAULT

04/29/2014
AFFIDAVIT OF NON-MILITARY SERVICE

04/24/2014
ANSWER TO COMPLAINT, JURY TRIAL REQUESTED & CRT/SRV

11/03/2015
AMORTIZATION SCHEDULE

07/31/2015
NOTICE/RESCHEDULED NOTICE OF HEARING & CRT/MAIL

07/10/2015
NOTICE/NOTICE OF HEARING & CRT/MAIL

05/29/2015
MOTION/ALTER OR AMEND ORDER BY DEFENDANT, CRT/MAIL

04/08/2015
MASTER/MASTER'S FINAL ORDER

12/03/2014
AMENDED NOTICE OF HEARING & CRT/MAIL

12/02/2014
NOTICE OF APPEARANCE OF ATTY J SETH WHIPPER

12/01/2014
NOTICE/NOTICE OF HEARING & CRT/MAIL

10/30/2014
MOTION/CONTINUANCE BY DEFENDANT

09/04/2014
NOTICE/NOTICE OF FINAL HEARING & CRT/MAIL

08/12/2014
MASTER ORDER-PLNTFF'S OT TO STRIKE IS GRANTED ETC

08/12/2014
MASTER/MASTER'S SCHEDULING ORDER

08/12/2014
MASTER/MASTER'S ORDER FOR TERM OF CRT

08/04/2014
MOTION FOR EXTENSION BY DEFNT

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO: 2014-CP-10-1635

ALLEN LIVINGSTON,

Plaintiff,

versus

HAROLD SIMMONS,

Defendant.

ORDER OF DEFAULT AND REFERENCE

FILED
2014 JUN -4 P 1:14
JULIE J. ARMSTRONG
CLERK OF COURT
BY

UPON CONSIDERATION of the Affidavit of Bruce A. Berlinsky, dated April 28, 2014, I find that the Defendant, Harold Simmons, was personally served as evidenced by the Affidavit of Service filed with this Court; that more than thirty (30) days have elapsed since the acceptance of the Civil Action Coversheet, Lis Pendens, Summons and Complaint, pursuant to the Affidavit of Bruce A. Berlinsky, and that no Answer, Notice of Appearance, or Demurrer has been filed pursuant to the said Civil Action Coversheet, Lis Pendens, Summons and Complaint by Defendant, Harold Simmons.

IT FURTHER APPEARS that this is an action to foreclose upon a piece of property lying and being in Charleston County, South Carolina.

NOW, THEREFORE, it is

ORDERED, that the Defendant, Harold Simmons, be and is hereby declared to be in default; and, it is further

ORDERED, that the within action be referred to the Honorable Mikell R. Scarborough, Master in Equity for Charleston County, for the purpose of taking testimony and making findings of facts and conclusions of law, and to render a final decree directly appealable to the Supreme Court of South Carolina.

PRESIDING JUDGE, Charleston County

Charleston, South Carolina

6/2, 2014

RECEIVED
MAY 20 2014
BY: SPM

PAID
Date 4/30/2014
Amount $125.00
MIKELL R. SCARBOROUGH
MASTER IN EQUITY
By:

Amount never received

JURY TRIAL DEMANDED, CRT/MAIL
06/06/2016 MOTION/ALTER OR AMEND BY DEFENDANT, CRT/MAIL
05/23/2016 SERVICE/CERTIFICATE OF MAILING
05/23/2016 AFFIDAVIT IN SUPPORT OF ATTORNEY FEES
05/23/2016 AFFIDAVIT/AFFIDAVIT
05/19/2016 SERVICE/CERTIFICATE OF MAILING
05/18/2016 MASTER'S ORDER OF FORECLOSURE & SALE
04/27/2016 ORDER-DEFNT'S MOT TO ALTER OR AMEND IS DENIED
03/10/2016 NOTICE/NOTICE OF RESCHEDULED HEARING & CRT/MAIL
02/03/2016 NOTICE/NOTICE OF HEARING & CRT/MAIL
01/28/2016 MISCELLANEOUS DOCUMENTS (LETTER BY J SETH WHIPPER)
01/28/2016 MASTER ORDER-SUMMONS & RULE TO SHOW CAUSE
01/28/2016 AFFIDAVIT IN SUPPORT OF RULE TO SHOW CAUSE
01/08/2016 SERVICE/CERTIFICATE OF MAILING
12/31/2015 SERVICE/CERTIFICATE OF MAILING

Charleston County Clerk Of Court

[Log In]

Home | Search | Court Info | GS Docketing

2014CP1001635

ALLEN LIVINGSTON

VS

HAROLD SIMMONS

FORECLOSURE 420

File Date: 03/11/2014

Case Status: ENDED

Disp Date: 04/08/2015

FILINGS

07/23/2018
AFFIDAVIT/PUBLICATION

07/23/2018
CERTIFICATE OF MAILING

05/11/2018
LETTER FROM ATTY BERLINSKY IN RE: BANKRUPTCY COURT

09/06/2016
AFFIDAVIT/PUBLICATION

09/01/2016
MASTER'S ORDER ON MOTION TO ALTER & AMEND

08/30/2016
MOTION/TO POST COLLATERAL WITH CLERK BY DEFENDANT, CRT/SRV

08/09/2016
NOTICE OF APPEARANCE OF ATTY WHIPPPER FOR HAROLD SIMMONS JR

07/28/2016
MISCELLANEOUS DOCUMENTS

06/10/2016

Need to Mail to Appeal Court

Gmail

Livingston v. Simmons

Jessica@berlinskylawfirm.com <jessica@berlinskylawfirm.com> Mon, Aug 6, 2018 at 2:19 PM
To: "invictor59@gmail.com" <invictor59@gmail.com>

Mr. Simmons,

The total amount due is $47,640.40.

Thanks,

Jessica

Jessica Reynolds

Legal Assistant to Bruce A. Berlinsky

One Carriage Lane, Bldg. F

Charleston, SC 29407

P: 843.852.2202

F: 843.852.4844

Jessica@berlinskylawfirm.com

ALL FUNDS IN EXCESS OF $5,000.00 MUST BE WIRED - CALL FOR WIRING INSTRUCTIONS

Wired Funds Notice: BE ALERT! We do NOT change or alter our wiring instructions. Please call to verify that you have the correct instructions prior to wiring.

--- CONFIDENTIALITY NOTICE: This electronic mail transmission and any accompanying documents contain information belonging to the sender which may be confidential and legally privileged. This information is intended only for the use of the individual or entity to whom it is addressed. Any disclosure, copying, distribution, or action taken in reliance on the contents contained herein is strictly prohibited. If you received this transmission in error, please notify the sender and delete the message and its contents. IRS CIRCULAR 230 NOTICE: Any tax advice contained in this communication (or any attachments) is not intended or written to be used for the purpose of avoiding penalties under the

(1) (12)

Internal Revenue Code or for recommending to another party as to any matter addressed herein.



BEWARE! WIRE FRAUD IS ON THE RISE.
Accepting wire and disbursement instructions by email is dangerous, especially changes to those instructions. Verify by calling the originator of the email using previously known contact information prior to sending funds.

Jessica@berlinskylawfirm.com <jessica@berlinskylawfirm.com> Mon, Aug 6, 2018 at 4:11 PM
To: "invictor59@gmail.com" <invictor59@gmail.com>

Mr. Simmons,

We forgot to add the post judgment interest. The correct total is $60,212.97 (2)

Thanks,

Jessica

Jessica Reynolds

Legal Assistant to Bruce A. Berlinsky

One Carriage Lane, Bldg. F

Charleston, SC 29407

P: 843.852.2202

F: 843.852.4844

Jessica@berlinskylawfirm.com

ALL FUNDS IN EXCESS OF $5,000.00 MUST BE WIRED - CALL FOR WIRING INSTRUCTIONS

Wired Funds Notice: BE ALERT! We do NOT change or alter our wiring instructions. Please call to verify that you have the correct instructions prior to wiring.

--- CONFIDENTIALITY NOTICE: This electronic mail transmission and any accompanying documents contain

(2) (13)

communication (or any attachments) is not intended or written to be used for the purpose of avoiding penalties under the Internal Revenue Code or for recommending to another party as to any matter addressed herein.

From: Jessica@berlinskylawfirm.com
Sent: Monday, August 06, 2018 4:11 PM
To: 'invictor59@gmail.com'
Subject: Livingston v. Simmons

[Quoted text hidden]

---

scan0089.pdf
300K

(3)

(14)

information belonging to the sender which may be confidential and legally privileged. This information is intended only for the use of the individual or entity to whom it is addressed. Any disclosure, copying, distribution, or action taken in reliance on the contents contained herein is strictly prohibited. If you received this transmission in error, please notify the sender and delete the message and its contents. IRS CIRCULAR 230 NOTICE: Any tax advice contained in this communication (or any attachments) is not intended or written to be used for the purpose of avoiding penalties under the Internal Revenue Code or for recommending to another party as to any matter addressed herein.



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Jessica@berlinskylawfirm.com <jessica@berlinskylawfirm.com> Mon, Aug 6, 2018 at 5:03 PM
To: "invictor59@gmail.com" <invictor59@gmail.com>

Here you go.

Jessica Reynolds

Legal Assistant to Bruce A. Berlinsky

One Carriage Lane, Bldg. F

Charleston, SC 29407

P: 843.852.2202

F: 843.852.4844

Jessica@berlinskylawfirm.com

(3)

ALL FUNDS IN EXCESS OF $5,000.00 MUST BE WIRED - CALL FOR WIRING INSTRUCTIONS

Wired Funds Notice: BE ALERT! We do NOT change or alter our wiring instructions. Please call to verify that you have the correct instructions prior to wiring.

---CONFIDENTIALITY NOTICE: This electronic mail transmission and any accompanying documents contain information belonging to the sender which may be confidential and legally privileged. This information is intended only for the use of the individual or entity to whom it is addressed. Any disclosure, copying, distribution, or action taken in reliance on the contents contained herein is strictly prohibited. If you received this transmission in error, please notify the sender and delete the message and its contents. IRS CIRCULAR 230 NOTICE: Any tax advice contained in this

(4) (15)

		$54,986.98
LESS:		
Payment on July 3, 2017	$3,227.39	
Payment on August 1, 2017	$704.54	
Payment on November 1, 2017	$617.41	
Payment on September 1, 2017	$637.37	
Payment on December 1, 2017	$615.66	
Payment on June 1, 2018	$105.80	
Payment on March 1, 2018	$614.05	
Payment on April 2, 2018	$824.36	
	$7,346.58	-$7,346.58
SUBTOTAL		$47,640.40
Post Judgment Interest 4/8/15 – 12/31/15	$2,624.61	
Post Judgment Interest 1/1/16 – 1/31/16	$3,712.54	
Post Judgment Interest 1/1/17 – 1/31/17	$3,712.54	
Post Judgment Interest 1/1/18 – 8/8/18	$2,522.88	
	$12,572.57	$12,572.57
TOTAL DUE		**$60,212.97**

(5) (16)

Gmail

1606276 Simmons, Jr.

1 message

Melissa Milligan <milligan@charleston13.com> Mon, Jun 18, 2018 at 11:17 AM
To: "invictor59@gmail.com" <invictor59@gmail.com>

Please see the attached payment history to Allen Livingston as requested. I am also mailing a copy to your address of record. Please let me know if you need anything else.

Thanks,

Melissa Milligan
Assistant Manager
Office of the Chapter 13 Trustee
843-388-9844 Ext. 308

1606276-PRINTINQ-85927.pdf
54K

(6) (12)

Chapter 13 Trustee

SBURSEMENT HISTORY

ATE	CODE	DESCRIPTION	CREDITOR #	CHECK NO.	AMOUNT
LEN LIVINGSTON		Claim Number 1			
l 03, 2017	CR	AMOUNT DISBURSED TO CREDITOR		0344868	3,227.39
g 01, 2017	CR	AMOUNT DISBURSED TO CREDITOR		0346612	704.54
p 01, 2017	CR	AMOUNT DISBURSED TO CREDITOR		0348337	637.37
v 01, 2017	CR	AMOUNT DISBURSED TO CREDITOR		0351769	617.41
c 01, 2017	CR	AMOUNT DISBURSED TO CREDITOR		0353478	615.66
ar 01, 2018	CR	AMOUNT DISBURSED TO CREDITOR		0358569	614.05
r 02, 2018	CR	AMOUNT DISBURSED TO CREDITOR		0360169	824.36
n 01, 2018	CR	AMOUNT DISBURSED TO CREDITOR		0363603	105.80
TAL FOR ALLEN LIVINGSTON					7,346.58
			DISBURSEMENT TOTAL		7,346.58

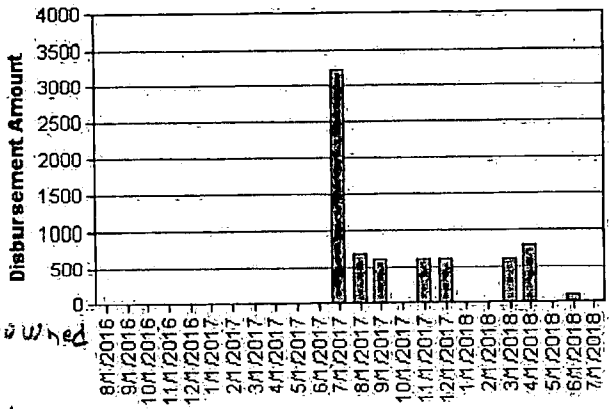
Chapter 13

(Use CTRL-P to Print this Page)
Close Window

Claim 1 ALLEN LIVINGSTON
c/o BRUCE A. BERLINSKY, PA
ONE CARRIAGE LANE, BUILDING F
CHARLESTON SC 29407

Next Disbursement Info

Disbursements to this Claim



CLAIM DETAIL

Case Number	1606276
Creditor	ALLEN LIVINGSTON
Trustee's Claim Number	1
Court's Claim Number	3
Claim Type	S - SECURED (S)
Claim Filed Date	Monday, February 06, 2017
Mortgage Due Date	

CLAIM AMOUNTS

Claimed Amount	$36,000.00
Scheduled Amount	$0.00
Amount Paid Outside	$0.00
Monthly Payment	$600.00
Principal Owed	$28,653.42
Principal Paid	$7,346.58
Principal Due	$3,453.42
Interest Rate	0.00
Interest Paid	$0.00
Interest Due	$0.00
Collateral Value	$0.00
Collateral Description	
Limit	$0.00
Plan Code	$0.00
Percent Allowed	100.00
Months to Calculate	0.00

owed

Balance

Paid

CLAIM FLAGS

Payee Level	22
Comment	claim amt per Order 6/1/17
Account Number	5321
No Cost	
No Check	
Delete	
Reserve	
Stop Disbursement	
Continuing	
Special	

CREDITOR INFORMATION

Creditor Name	ALLEN LIVINGSTON
Address 1	c/o BRUCE A. BERLINSKY, PA
Address 2	ONE CARRIAGE LANE, BUILDING F
Address 3	CHARLESTON SC
Zip Code	29407-0000
Contact Name	
Creditor Number ShortCut	

Additional Names and Addresses		Date of Last Change
Payee:	ALLEN LIVINGSTON • 6046 HYDE PARK RD. • Ravenel • SC • 29470	12/14/2016
	ALLEN LIVINGSTON • c/o BRUCE A. BERLINSKY, PA •	2/7/2017

PAYMENT HISTORY FOR CLAIM 1 - ALLEN LIVINGSTON

(Latest Payments First) Insurance- Prev. Cred-

Disb Date	Check Number	Payee Name	Type	Amount
6/1/2018	363603	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	$105.80
4/2/2018	360169	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	$824.36
3/1/2018	358569	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	$614.05
12/1/2017	353478	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	$615.66
11/1/2017	351769	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	$617.41
9/1/2017	348337	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	$637.37
8/1/2017	346612	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	$704.54
7/3/2017	344868	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	$3,227.39

Information CALL
MOSS, ATTORNEYS, COM
PAUL PAWSON 843-744-3002

Chapter 13

Close Window

Click Here to Print this Page

PRINT INQUIRY
16-06276-JW HAROLD SIMMONS JR (xxx-xx-5321)

3042 NORTH CAROLINA AVE.
NORTH CHARLESTON, SC
29405

$1,050.00 MO Bar Date(s): 4/3/2017 (has passed) 6/10/2017 (has passed)
Confirmed: 6/27/2017

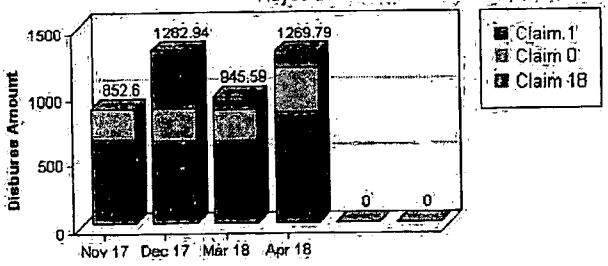
Trustee: James M. Wyman

Attorney: HEATHER S BAILEY

Payee Summary

Number of Claims	21
Total Amount Claimed	$55,838.49
Total Amount Scheduled	$72,369.67
Total Principal Paid	$10,307.23
Total Principal Owed	$45,531.26
Total Principal Due	$3,624.77
Total Interest Paid	$0.00
Total Interest Due	$0.00

Payee Disbursements Last 6 Months



Claim Breakdown

	Priority	Secured	Unsecured	Other
Claimed	$12,007.40	$41,479.92	$2,351.17	
Scheduled	$11,381.00	$6,489.92	$54,498.75	
Principal Paid	$2,415.61	$7,891.62	$0.00	
Principal Owed	$9,591.79	$33,588.30	$2,351.17	
Principal Due	$684.39	$2,940.38	$0.00	
Interest Paid	$0.00	$0.00	$0.00	
Interest Due	$0.00	$0.00	$0.00	
Monthly Payment	$233.00	$712.00	$0.00	
Collateral	$0.00	$0.00	$0.00	

13 Network

TO ALLEN LIVINGSTON
7,346.58
$7,240.78
+ 1000.00 PAID BY HAROLD SIMMONS
JUNE
@ $240.98 / Total paid in June 2018

Claims Listing

Name (Acct)	Clm#	Filed	Desc	Mo Pymt	Principal Paid	Prin Owed	Clm Amt	Scrd Amt	Int Paid	Int Due
ALLEN LIVINGSTON (5321)	1	✓	SECURED	$600.00	$7,240.78	$328,759.22	$36,000.00	$0.00	$0.00	$0.00
Chrysler First Loans (3321)	17		SECURED VEHICLE	$30.00	$0.00	$0.00	$0.00	$1,010.00	$0.00	$0.00
CHARLESTON CO FAMILY COURT (2955)	18	✓	DOMESTIC SUPPORT OBLIGATION	$92.00	$650.84	$4,829.08	$5,479.92	$5,479.92	$0.00	$0.00
Gwendolyn Brown	26		DOMESTIC SUPPORT OBLIGATION	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
INTERNAL REVENUE SERVICE (5321)	4	✓	PRIORITY	$0.00	$0.00	$8,138.74	$8,138.74	$8,281.00	$0.00	$0.00
Charleston County Revenue Collections	25	✓	PRIORITY	$0.00	$0.00	$367.09	$367.09	$0.00	$0.00	$0.00
SC DEPT OF REVENUE & TAXATION (5321)	27	✓	PRIORITY	$0.00	$0.00	$401.57	$401.57	$0.00	$0.00	$0.00
J. SETH WHIPPER	5		UNSECURED	$0.00	$0.00	$0.00	$0.00	$50,000.00	$0.00	$0.00
LIFE CENTER FAMILY MEDICINE	8		UNSECURED	$0.00	$0.00	$0.00	$0.00	$446.75	$0.00	$0.00
NPAS INC	10		UNSECURED	$0.00	$0.00	$0.00	$0.00	$35.00	$0.00	$0.00
Palmetto Digestive Disease PA	11		UNSECURED	$0.00	$0.00	$0.00	$0.00	$75.00	$0.00	$0.00
Roper St Francis Hospital	12		UNSECURED	$0.00	$0.00	$0.00	$0.00	$200.00	$0.00	$0.00
SC HIGHWAY DEPT	14		UNSECURED	$0.00	$0.00	$0.00	$0.00	$600.00	$0.00	$0.00
BANK OF AMERICA (8838)	19		UNSECURED	$0.00	$0.00	$0.00	$0.00	$700.00	$0.00	$0.00
LABCORP	20		UNSECURED	$0.00	$0.00	$0.00	$0.00	$673.00	$0.00	$0.00
LCA COLLECTIONS	21		UNSECURED	$0.00	$0.00	$0.00	$0.00	$72.00	$0.00	$0.00
SCEBG	22		UNSECURED	$0.00	$0.00	$0.00	$0.00	$1,662.00	$0.00	$0.00
TRIDENT MEDICAL CTR	23		UNSECURED	$0.00	$0.00	$0.00	$0.00	$35.00	$0.00	$0.00
INTERNAL REVENUE SERVICE (5321)	24	✓	UNSECURED	$0.00	$0.00	$2,229.27	$2,229.27	$0.00	$0.00	$0.00
SC DEPT OF REVENUE & TAXATION (5321)	28	✓	UNSECURED	$0.00	$0.00	$121.90	$121.90	$0.00	$0.00	$0.00

Attorney Listing

Name	Description	Level	Fee in Plan	Fee Paid Outside	Fee Paid to Date	Initial Amount	Monthly Payment	Fee Remaining
HEATHER S BAILEY	ATTORNEY FEE	22	$3,100.00	$400.00	$2,415.61	$684.39	$233.00	$684.39

Clerk Fees Listing

No Clerk Names have been established for to this case.

Debtor Refund

Name	Description	Level	Refund Amount	Amount Paid	Amount Owed
HAROLD SIMMONS JR	DEBTOR REFUND	0	$0.00	$0.00	$0.00

To check
NDC.109

Miss Miller
& 856 2408

Trustee
Phone 843-388-9844
Martha Feil
CALL 6-14-2018 1:25 p.m. L.M.M.

0068386 / Office AU # — 11-24 / 1210(8)

CASHIER'S CHECK

6838600485

Remitter: HAROLD SIMMONS
Operator I.D.: u432821

August 06, 2018

PAY TO THE ORDER OF ***ALLEN LIVINGSTON AND ***
BRUCE BERLINSKY, HIS ATTORNEY

Forty-seven thousand six hundred forty dollars and 40 cents **$47,640.40**

Payee Address:
Memo: NORTH CAROLINA AVENUE

WELLS FARGO BANK, N.A.
1074 E MONTAGUE AVE
NORTH CHARLESTON, SC 29405
FOR INQUIRIES CALL (480) 394-3122

VOID IF OVER US $ 47,640.40

Shane C Walker
AUTHORIZED SIGNATURE

⑈6838600485⑈ ⑆121000248⑆486161 009082⑈

PRINTED ON LINEMARK PAPER - HOLD TO LIGHT TO VIEW. FOR ADDITIONAL SECURITY FEATURES SEE BACK

0068386 / Office AU # — 11-24 / 1210(8)

CASHIER'S CHECK

6838600486

Remitter: HAROLD SIMMONS
Operator I.D.: u432821

August 07, 2018

PAY TO THE ORDER OF ***ALLEN LIVINGSTON AND***
BRUCE BERLINSKY, HIS ATTORNEY

Twelve thousand six hundred thirty-two dollars and 57 cents **$12,632.57**

Payee Address:
Memo: NORTH CAROLINA AVENUE

WELLS FARGO BANK, N.A.
1074 E MONTAGUE AVE
NORTH CHARLESTON, SC 29405
FOR INQUIRIES CALL (480) 394-3122

VOID IF OVER US $ 12,632.57

Shane C Walker
AUTHORIZED SIGNATURE

⑈6838600486⑈ ⑆121000248⑆486161 009082⑈

Harold Simmons Jr.
3042 North Carolina Ave
N.C. S.C. 29405
843-480 8694

(8) (21)

THE STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS Cause No. 2014 CP 10 1635
ALLEN LIVINGSTON Plaintiff, -versus- HAROLD SIMMONS JR. Defendant.	)	**ANSWER** (Jury Trial Requested)

FILED
2014 APR 24 PM 2:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant, Harold Simmons Jr. answer the respective numbered paragraphs of the Plaintiff's Complaint dated March 10, 2014, thus:

FIRST DEFENSE: QUALIFIED GENERAL DENIAL

1. Defendant lack sufficient information regarding the reason(s) plaintiff has or has not received any form of payment and has valid legal grounds for foreclosure, and therefore must deny the same demanding strict proof thereof. (See Exhibit C: Defendant Valid Authentic Receipt of Payments)
2. Defendant admit, upon information and belief, the 2nd statement of plaintiff complaint, and crave reference to said valid authentic Lease to Buy Agreement only and demanding strict proof thereof valid authenticity. (See Exhibit A: Defendant Valid Authentic Lease to Buy Agreement)
3. Defendant admit, upon information and belief, the 3rd statement of plaintiff complaint, and crave reference to said order. (See Exhibit B: Defendant Valid Authentic Court Order)

Court Received
Mail Certified
6-4-2014

THE STATE OF SOUTH CAROLINA	)	
	:	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	Cause No. 2014 CP 10 1635
ALLEN LIVINGSTON	)	
	:	
Plaintiff,	)	
	:	
-versus-	)	**COUNTERCLAIM**
	:	(Jury Trial Requested)
HAROLD SIMMONS JR.	)	
	:	
Defendant.	)	
	:	

FILED
2014 JUN 12 AM 10:2
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant, Harold Simmons Jr. states he has a claim against the plaintiff in the amount of $600,000.

The counterclaim arose out of the same transaction or occurrence as the plaintiff's claim as a result of the following events:

FACTUAL AND PROCEDURAL BACKGROUND

This instant motion arises from a foreclosure case. The Defendant, Harold Simmons Jr. came into a Lease to Buy Agreement with Plaintiff for property located at 3042 N. Carolina Ave, North Charleston, SC 29405, as evidenced by a copy of said Agreement attached hereto as Exhibit "A" and incorporated by reference. The Plaintiff, Allen Livingston has consistently filed and pursued the defendant on several frivolous claims, not showing good faith, no legitimate justification for any actions, constant violation of the statute of frauds, slander, and for no other purpose but to embarrass, delay, or burden the Defendant. The actions filed by the Plaintiff are malicious and have indicated that the actions are being brought merely as a means of harassment.

Court Received
Mail Certified
6-4-2014

June 12 2014
Received Call from Clerk
of Court Miss Trusee stating
Defendant Need to come in
And Sign Cover sheet.

FILED
2018 AUG -1 PM 3:47
JULIE ARMSTRONG
CLERK OF COURT

Case: 2014-CP-100-1 July 31, 2018
Case: 2014-CP-100-1635

The Honorable Judge Dennis

Back in April 2014 I was service with And Complaint And had 30 days to Answer which I did with in 28 days doing this Time I had And Hearing Before Master + Equity Before Judge Seasborough At this Time I had Filed For a Jury Trial 4 to 5 Times And had Been Ignored, Never Know Why! Case NO. 2014-CP-10-1635 This Case went on For about 2 years or more. On Aug 11, 2016 I had my Lawyler make Another Jury Trial Demond, Those is when I Found out I was Find in Default By Judge Dennis it was Said Mr Simmons Have NO Right to a Jury Trial, this Reason Mr Simmons should Be Denial. My Lawyler Seth Whipper stated to Judge Scarcborough Mr Simmons Been Requesting Jury Trial, Judge Scarcborough Stated these day was the first Time He Heard Anything About a Jury Trial. And Attorney Bruce Berlinsky stated Judge Dennis Find Mr Simmons in default. I didn't Know what Attroney Berlinsky was Telling you Judge Dennis on that day you sign that order But this have had a very Serious impack on my case this make it Impossible to get A Fair Trial, I had Requested Jury Trial on Apr 24, 2014, June 12, 2014 June 16 2014, July 18 2014 and June 8 2016. At this Time this case in under Appeal But Even throwin it under Appeal My Right to a Jury Trial was and still Violated, Attroney Bruce Berlinky Stated: we all was present At the Default Hearing I donot Remember A Hearing Are was Service to take Place in one I Need this to be corrented, This is a Violation of my Right the Seventh Amendment, Bill of Right Jury Trail, I don't Know if this a Mistake on the Staff Ave Attorney Bruce Berlinsky lie to you about the Filing of My answer, By my Calendar I was service in April and Answer in April, Because of thes I was Denial All my Right to a Fair Trail and Because of these My propreties is Being sold on Aug 7 2018 In Jury I have Been In Jury, This Case is built Base on lies But Anyway I Asking you the Court Before any more damages is created For a stay motion order A Judge Scarcborough order of foreclosure and Sale that taking Place on Aug 7, 2018 I ask so Justice can be found

Though the Appeal Court. (Pleasant) As I Look at the paper work I have I was never service with any order to apear Before you, even when I check with the Clerk of Court it show I was never service. So Im ask in the Name of Justice, Fairness and the hAW. (Please)

Thank you
Harold Simmons Jr.
Harold Simmons Jr.
CASE: 2014-CP-10-01635