

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Daniel D. Hall, Circuit Court Judge

Case No. 2018-CP-46-01592

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SC Court of Appeals

Karen K. Baber, ... Appellant,

v.

Summit Funding, Inc., Appraisal Innovations, LLC, Brian L. Blue, The Gillen Law Firm, P.A.,
Michael F. Gillen, Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert Ouzts, Connie
Delaney, and Gloria Long-Robinson,

Of Which Summit Funding Inc., Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert
Ouzts, Connie Delany, and Gloria Long-Robinson are the Respondents.

RECORD ON APPEAL - VOLUME 3 of 3

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II. ORIGINATION THROUGH POST-CLOSING/ENDORSEMENT

A. Title II Insured Housing Programs Forward Mortgages

3. Underwriting the Property

3. Underwriting the Property

The Mortgagee must underwrite the completed appraisal report to determine if the Property provides sufficient collateral for the FHA-insured Mortgage. The appraisal and Property must comply with the requirements in Appraiser and Property Requirements for Title II Forward and Reverse Mortgages. The appraisal must be reported in accordance with Acceptable Appraisal Reporting Forms and Protocols.

a. Property Acceptability Criteria

The Mortgagee must evaluate the appraisal and any supporting documentation to determine if the Property complies with HUD's Property Acceptability Criteria. Existing and New Construction Properties must comply with Application of Minimum Property Requirements and Minimum Property Standards by Construction Status.

i. Defective Conditions

The Mortgagee must evaluate the appraisal in accordance with Defective Conditions to determine if the Property is eligible for an FHA-insured Mortgage. If defective conditions exist and correction is not feasible, the Mortgagee must reject the Property.

ii. Minimum Property Requirements and Minimum Property Standards

As the on-site representative for the Mortgagee, the Appraiser provides preliminary verification that a Property meets the Property Acceptability Criteria, which includes HUD's Minimum Property Requirements (MPR) and Minimum Property Standards (MPS).

Minimum Property Requirements refer to general requirements that all homes insured by FHA be safe, sound, and secure.

Minimum Property Standards refer to regulatory requirements relating to the safety, soundness and security of New Construction.

When examination of a Property reveals noncompliance with the Property Acceptability Criteria, the Appraiser must note all repairs necessary to make the Property comply with HUD's Property Acceptability Criteria, together with the estimated cost to cure. If the Appraiser cannot determine that a Property meets HUD's MPR or MPS, the Mortgagee may obtain an inspection from a qualified Entity to make the determination. Mortgagees must use professional judgment in determining when inspections are necessary to determine that a property meets MPR or MPS. Mortgagees must also use professional judgment in determining when a Property condition poses a threat to the health and safety of the occupant and/or jeopardizes the soundness and structural integrity of the Property, such that additional inspections and/or repairs are necessary.

The Mortgagee must confirm that the Property complies with the following eligibility criteria. If the Mortgage is to be insured under the 203(k) program, the Mortgagee must

II. ORIGINATION THROUGH POST-CLOSING/ENDORSEMENT
A. Title II Insured Housing Programs Forward Mortgages
3. Underwriting the Property

confirm that the Property will comply with the following eligibility criteria upon completion of repairs and improvements.

(A) Encroachment

The Mortgagee must ensure the subject's dwelling, garage, or other improvements do not encroach onto an adjacent Property, right-of-way, utility Easement, or building restriction line. The Mortgagee must also ensure a neighboring dwelling, garage, or other improvements do not encroach onto the subject Property. Encroachment by the subject or adjacent Property fences is acceptable provided such Encroachment does not affect the marketability of the subject Property.

(B) Overhead Electric Power

The Mortgagee must confirm that any Overhead Electric Power Transmission Lines do not pass directly over any dwelling, Structure or related property improvement, including pools. The power line must be relocated for a Property to be eligible for FHA-insured financing.

The residential service drop line may not pass directly over any pool, spa or water feature.

If the dwelling or related property improvements are located within the Easement area, the Mortgagee must obtain a certification from the appropriate utility company or local regulatory agency stating that the relationship between the improvements and Local Distribution Lines conforms to local standards and is safe.

(C) Access to Property

The Mortgagee must confirm that the Property is provided with a safe pedestrian access and Adequate Vehicular Access from a public or private street. Streets must either be dedicated to public use and maintenance, or retained as private streets protected by permanent recorded Easements.

Private streets, including shared driveways, must be protected by permanent recorded Easements, ownership interest, or be owned and maintained by an HOA. Shared driveways do not require a joint maintenance agreement.

(D) Onsite Hazards and Nuisances

The Mortgagee must require corrective work to mitigate potential adverse effects from any onsite hazards or nuisances reported by the Appraiser.

II. ORIGATION THROUGH POST-CLOSING/ENDORSEMENT

A. Title II Insured Housing Programs Forward Mortgages

3. Underwriting the Property

(E) Abandoned Gas and Oil Well

If the Property contains any abandoned gas or oil wells, the Mortgagee must obtain a letter from the local jurisdiction or appropriate state agency stating that the subject well was permanently abandoned in a safe manner.

If the Property contains any abandoned petroleum product wells, the Mortgagee must ensure that a qualified petroleum engineer has inspected the Property and assessed the risk, and that the appropriate state authorities have concurred on clearance recommendations.

(F) Requirements for Living Unit

The Mortgagee must confirm that each living unit contains:

- a continuing and sufficient supply of safe and potable water under adequate pressure and of appropriate quality for all household uses;
- sanitary facilities and a safe method of sewage disposal. Every living unit must have at least one bathroom, which must include, at a minimum, a water closet, lavatory, and a bathtub or shower;
- adequate space for healthful and comfortable living conditions;
- heating adequate for healthful and comfortable living conditions;
- domestic hot water; and
- electricity adequate for lighting, cooking and for mechanical equipment used in the living unit.

The Mortgagee must ensure that appliances that are to remain and that contribute to the market value opinion are operational.

FHA does not have a minimum size requirement for one- to four-family dwellings and condominium units. For Manufactured Housing requirements, see the Manufactured Housing section.

(G)Swimming Pools

The Mortgagee must confirm that any swimming pools comply with all local ordinances.

(H)Structural Conditions

The Mortgagee must confirm that the Structure of the Property will be serviceable for the life of the Mortgage.

The Mortgagee must confirm that all foundations will be serviceable for the life of the Mortgage and adequate to withstand all normal loads imposed.

II. ORIGINATION THROUGH POST-CLOSING/ENDORSEMENT

A. Title II Insured Housing Programs Forward Mortgages

3. Underwriting the Property

(I) Economic Life/Section 223(e)

The Mortgagee must confirm that the term of the Mortgage is less than or equal to the remaining economic life of the Property.

If the Property is located in an older, declining urban area and the remaining economic life produces an unreasonably short mortgage term by reason of its location, the Property may be acceptable under Section 223(e), provided:

- the area is reasonably able to support adequate housing and living conditions for families of lower income levels;
- the location features adversely affecting the desirability and usefulness of the Property do not endanger the health and safety of its occupants;
- the Property is marketable to the typical occupant of the area;
- the physical life of the Property is greater than or equal to the term of the Mortgage; and
- the Mortgage represents an overall acceptable risk as determined by the Jurisdictional HOC.

All Mortgages to be insured under Section 223(e) must be submitted to the Jurisdictional HOC for prior approval.

(J) Environmental

The Mortgagee must confirm that the Property is free of all known environmental and safety hazards and adverse conditions that may affect the health and safety of the occupants, the Property's ability to serve as collateral, and the structural soundness of the improvements.

(K) Lead-Based Paint

The Mortgagee must confirm that the Property is free of lead paint hazards.

(L) Methamphetamine Contamination

If the Mortgagee or the Appraiser identifies a Property as contaminated by the presence of methamphetamine (meth), either by its manufacture or by consumption, the Property is ineligible due to this environmental hazard until the Property is certified safe for habitation.

(M) Repair Requirements

The Mortgagee must determine which repairs must be made for an existing Property to be eligible for FHA-insured financing.

II. ORIGINATION THROUGH POST-CLOSING/ENDORSEMENT
A. Title II Insured Housing Programs Forward Mortgages
3. Underwriting the Property

(Q) Sewage System

The Mortgagee must confirm that a connection is made to a public or community sewage disposal system whenever feasible and available at a reasonable cost. If connection costs to the public or community system are not reasonable, the existing Onsite Sewage Disposal Systems are acceptable provided they are functioning properly and meet the requirements of the local health department

When the Onsite Sewage Disposal System is not sufficient and an off-site system is available, the Mortgagee must confirm connection to an off-site sewage system. When the Onsite Sewage Disposal System is not sufficient and an off-site system is not available, the Mortgagee must reject the Property unless the Onsite Sewage Disposal System is repaired or replaced and complies with local health department standards.

(R) Termites

For existing Properties, the Mortgagee must confirm that the Property is free of wood destroying insects and organisms. If the appraisal is made subject to inspection by a qualified pest control specialist, the Mortgagee must obtain such inspection and evidence of any required treatment to confirm the Property is free of wood destroying insects and organisms.

iii. Minimum Required Repairs

When the appraisal report or inspection from a qualified Entity indicates that repairs are required to make the Property meet HUD's MPR or MPS, the Mortgagee must comply with Repair Requirements.

If repairs for Existing Construction cannot be completed prior to closing, the Mortgagee may establish an escrow account in accordance with Repair Completion Escrow Requirements.

iv. Leased Equipment

The Mortgagee must ensure that the Property Value does not include the value of any equipment, including an energy system, that is not fully owned by the Borrower. The Mortgagee must review the terms of the lease on any equipment to ensure they do not contain any Legal Restrictions on Conveyance (Free Assumability).

Appraisal Review

The Mortgagee must review the appraisal and ensure that it is complete, accurate, and provides a credible analysis of the marketability and value of the Property.

II. ORIGINATION THROUGH POST-CLOSING/ENDORSEMENT

A. Title II Insured Housing Programs Forward Mortgages

7. Post-Closing and Endorsement

7. Post-Closing and Endorsement

a. Pre-Endorsement Review

The Mortgagee must complete a pre-endorsement review of the mortgage file to ensure all applicable documents as described in the Uniform Case Binder Stacking Order are included in the endorsement submission. The Mortgagee must exercise due diligence in performing its pre-endorsement responsibilities. This review must be conducted by staff not involved in the originating, processing, or underwriting of the Mortgage. The case binder must contain all documentation relied upon by the Mortgagee to justify its decision to approve the Mortgage.

b. Mortgagee Pre-Endorsement Review Requirements

When conducting the pre-endorsement review, the Mortgagee must review and verify the following items, as applicable. All documents must be legible.

i. Late Submission Letter

ii. Form HUD-92900-LT, FHA Loan Underwriting and Transmittal Summary

Confirm that the form is completed. The form must be signed and dated by the underwriter, as applicable.

iii. Note (Including Any Secondary Mortgage)

Confirm that the Note is the Authoritative Copy, the Borrower name on the Note matches form HUD-92900-LT, and the required language from the Model Note is present. The Mortgagee must also confirm that:

- the Note has been executed;
- the mortgage amount is not higher than approved by the underwriter on form HUD-92900-LT or form HUD-92900-A;
- the term of the Mortgage is the same as on the *Uniform Residential Loan Application (URLA, Fannie Mae Form 1003/Freddie Mac Form 65)*, and reflects the correct FHA case number and Automated Data Processing (ADP) Code; and
- all applicable allonges, agreements, and riders are properly executed.

For Test Cases and HUD employee Mortgages, the Mortgagee must ensure that the Borrower's name on the Note matches form HUD-92900.4, Firm Commitment.

iv. Security Instrument

Confirm that the security instrument:

- is the Authoritative Copy;
- has been executed (along with all riders indicated on the last page of the security instrument);
- includes the principal balance that is not higher than, and maturity date that is not different than, that approved by the underwriter; and

II. ORIGINATION THROUGH POST-CLOSING/ENDORSEMENT
A. Title II Insured Housing Programs Forward Mortgages
7. Post-Closing and Endorsement

xii. Secondary Financing Documentation

The Mortgagee must confirm that the mortgage file contains a copy of the subordinate loan agreement (Note), if applicable.

xiii. Income Verification

Confirm that the mortgage file contains verification of the Borrower's income.

xiv. Evidence of the Social Security Number

Confirm that the mortgage file contains evidence of the Borrower's Social Security Number (SSN).

xv. Form HUD-92300, Mortgagee's Assurance of Completion

Confirm that form HUD-92300, Mortgagee's Assurance of Completion, is completed and signed, if applicable.

xvi. Form HUD-92051, Compliance Inspection Report or Fannie Mae Form 1004D, Appraisal Update and/or Completion Report

Confirm that form HUD-92051, Compliance Inspection Report, or Fannie Mae Form 1004D/Freddie Mac Form 442, Appraisal Update and/or Completion Report, Part B, is completed, signed and dated by an approved inspector. Local government inspection with the underwriter certification may be accepted.

xvii. Form NPMA-33, Wood Destroying Insect Inspection Report

Confirm that the file contains the National Pest Management Association (NPMA) form NPMA-33, Wood Destroying Insect Inspection Report, or the state mandated infestation report, as applicable.

xviii. Local Health Authority's Approval for Individual Water and Sewer Systems

Confirm that the file contains the Local Health Authority's approval for Individual Water Supply Systems and sewer systems, if applicable.

xix. New Construction Exhibits

For New Construction, confirm that the documentation requirements found in the New Construction Product Sheet are in the mortgage file.

II. ORIGINATION THROUGH POST-CLOSING/ENDORSEMENT
A. Title II Insured Housing Programs Forward Mortgages
7. Post-Closing and Endorsement

interest rate is the U.S. Department of the Treasury's Current Value of Funds Rate in effect when the UFMIP payment is received. The Mortgagee must pay both charges before FHA will endorse the Mortgage for insurance.

ii. Assembly of Case Binder

The Mortgagee must prepare and submit a uniform case binder to the Jurisdictional HOC.

(A) Uniform Case Binder Requirements

The Mortgagee must ensure that all case binders are complete, meet FHA specifications, and contain all required documents arranged in the correct stacking order.

(B) Uniform Case Binder Format

The uniform case binder must be yellow for Mortgagees with Lender Insurance authority, manila for Mortgagees without Lender Insurance authority and green for Test Cases.

The Mortgagee must complete the front of the binder, and write the case number on the side and bottom tabs of the binder.

(C) Uniform Case Binder Stacking Order

The Mortgagee must ensure that all required documents, as applicable, are arranged in the stacking order chart below.

All appraisals must be submitted through FHA's EAD portal prior to endorsement. Complete instructions and data delivery format requirements for each appraisal form are found in the [Appraisal Report and Data Delivery Guide](#).

Left Side	
Appraisal and Related Documents	
Conditional Commitment Direct Endorsement Statement of Appraised Value	HUD-92800.B
Compliance Inspection Report	HUD-92051
Mortgagee Assurance of Completion	HUD-92300
Appraisal Update and/or Completion Report (Not required for appraisals submitted through the Electronic Appraisal Delivery Portal (EAD))	Fannie Mae Form 1004D

II. ORIGINATION THROUGH POST-CLOSING/ENDORSEMENT

A. Title II Insured Housing Programs Forward Mortgages

7. Post-Closing and Endorsement

Appraisal Report, including all attachments and endorsements (<i>Uniform Residential Appraisal Report, Individual Condominium Unit Appraisal Report, Manufactured Homes Appraisal Report, or Small Residential Income Property Appraisal Report</i>) (Not required for appraisals submitted through the <i>Electronic Appraisal Delivery Portal (EAD)</i>)	Fannie Mae Form 1004 Fannie Mae Form 1073 Fannie Mae Form 1004C Fannie Mae Form 1025
Life of Loan Flood Certification	
Evidence of Flood Insurance (required if Property is in flood zone A or V.)	
Evidence of hazard insurance	
Wood Destroying Insect Infestation Report or state mandated report:	NPMA-33
Waivers – Property specific issued by HOC	
Borrower's Contract with Respect to Hotel and Transient Use of Property	HUD-92561
New Construction Exhibits (for all Properties built or proposed in the last 12 months)	
Builder's Certification	HUD-92541
Warranty of Completion of Construction	HUD-92544
Certificate of Occupancy and Building Permit	
10 Year Warranty Plan Coverage and Final Inspection	
Early Start Letter & 3 FHA Inspections	
Local Health Authority Approval for Individual Water and Sewer Systems	
Subterranean Termite Protection Builder's Guarantee	NPMA-99A
New Construction Subterranean Termite Service Record	NPMA-99B
LOMR, LOMA, Elevation Certificate	
Manufactured Housing	
Engineer's Certification for Manufactured Housing Foundation	
LOMR, LOMA, Elevation Certificate (if not included with New Construction Docs)	
Condominiums	
Certification for Individual Unit Financing	
Specialized Eligibility Documents	
Hawaiian Home Land	
Presidentially-Declared Disaster Area	
Energy Efficient Documents & Home Energy Rating System (HERS) Report	
203(k) Documents	
Borrower's Acknowledgement	HUD-92700-A
Borrower Identity of Interest Certification	
Rehabilitation Self-help Agreement	

II. ORIGINATION THROUGH POST-CLOSING/ENDORSEMENT

D. Appraiser and Property Requirements for Title II Forward and Reverse Mortgages

3. Acceptable Appraisal Reporting Forms and Protocols

iii. Wood Destroying Insects/Organisms/Termites

The Appraiser must observe the foundation and perimeter of the buildings for evidence of wood destroying pests. The Appraiser's observation is not required to be at the same level as a qualified pest control specialist.

If there is evidence or notification of infestation, including a prior treatment, the Appraiser must mark the evidence of infestation box in the "Improvements" section of the appraisal and make the appraisal subject to inspection by a qualified pest control specialist.

o. Repair Requirements

When examination of New or Existing Construction reveals non-compliance with MPR and MPS, the Appraiser must report the repairs necessary to make the Property comply, provide an estimated cost to cure, provide descriptive photographs, and condition the appraisal for the required repairs.

If compliance can only be effected by major repairs or alterations, the Appraiser must report all readily observable property deficiencies, as well as any adverse conditions discovered performing the research involved in completion of the appraisal, within the reporting form.

Regardless of the Appraiser's suggested repairs, the Mortgagee will determine which repairs are required.

i. Limited Required Repairs

The Appraiser must limit required repairs to those repairs necessary to:

- maintain the safety, security and soundness of the Property;
- preserve the continued marketability of the Property; and
- protect the health and safety of the occupants.

ii. As-Is Condition and Cosmetic Repairs

The Appraiser may complete an as-is appraisal for existing Properties when minor property deficiencies, which generally result from deferred maintenance and normal wear and tear, do not affect the health and safety of the occupants or the security and soundness of the Property. Cosmetic or minor repairs are not required, but the Appraiser must report and consider them in the overall condition when rating and valuing the Property. Cosmetic repairs include missing handrails that do not pose a threat to safety, holes in window screens, cracked window glass, defective interior paint surfaces in housing constructed after 1978, minor plumbing leaks that do not cause damage (such as a dripping faucet), and other inoperable or damaged components that in the Appraiser's professional judgment do not pose a health and safety issue to the occupants of the house.

If an element is functioning well but has not reached the end of its useful life, the Appraiser should not recommend replacement because of age.

EXHIBIT 20

001008

Borrower's Certificate:

The undersigned certifies that:

- (a) I will not have outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the said property except obligations which are secured by property or collateral owned by me independently of the said mortgaged property, or obligations approved by the Commissioner;
- (b) One of the undersigned intends to occupy the subject property, (note: this item does not apply if owner-occupancy is not required by the commitment);
- (c) All charges and fees collected from me as shown in the settlement statement have been paid by my own funds, and no other charges have been or will be paid by me in respect to this transaction;
- (d) Neither I, nor anyone authorized to act for me, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, sex, handicap, familial status or national origin. I recognize that any restrictive covenant on this property relating to race, color, religion, sex, handicap, familial status or national origin is illegal and void and any such covenant is hereby specifically disclaimed. I understand that civil action for preventative relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of this certificate.

Borrower(s) Signature(s) & Date

Karen K Baber 5-29-15
 KAREN K BABER DATE

Lender's Certificate:

The undersigned certifies that to the best of its knowledge:

- (a) The statements made in its application for insurance and in this Certificate are true and correct;
- (b) The conditions listed above or appearing in any outstanding commitment issued under the above case number have been fulfilled;
- (c) Complete disbursement of the loan has been made to the borrower, or to his/her creditors for his/her account and with his/her consent;
- (d) The security instrument has been recorded and is a good and valid first lien on the property described;
- (e) No charge has been made to or paid by the borrower except as permitted under HUD regulations;
- (f) The copies of the credit and security instruments which are submitted herewith are true and exact copies as executed and filed for record;
- (g) It has not paid any kickbacks, fee or consideration of any type, directly or indirectly, to any party in connection with this transaction except as permitted under HUD regulations and administrative instructions.

I, the undersigned, as authorized representative of **Summit Funding, Inc.**

mortgagee at this time of closing of this mortgage loan, certify that I have personally reviewed the mortgage loan documents, closing statements, application for insurance endorsement, and all accompanying documents. I hereby make all certifications required for this mortgage as set forth in HUD Handbook 4000.4.

Lender's Name ~~Summit Funding, Inc.~~ <i>Paul Saechao</i>		Note: If the approval is executed by an agent in the name of lender, the agent must enter the lender's code number and type.	
Title of Lender's Officer ~~Loan Officer~~ <i>FC</i>		Code Number (5 digits)	Type
Signature of Lender's Officer <i>Paul Saechao</i>	Date <i>6/2/15</i>		



EXHIBIT 21

001010

Appraisal and Property Requirements ATL-HOC Tip Zone Information

A: Requiring reports and Treatment: Wood destroying insects and other organisms can cause serious problems in the wood structural components of a house and may go undetected for a long period of time. FHA requires inspection only if there is evidence of active infestation, if mandated by the state or local jurisdiction, if customary to the area, or at the lender's discretion. Please see: **Mortgage Letter 2005-48** for more information.

1. Termite infestation Probability Zones (TIP Zones) - Based on maps published in the IRC (International Residential Code), CABO One-and Two-Family Dwelling Code, Permanent Foundations Guide for Manufactured Housing, Appendix H-10 and/or the US Department of Agriculture's Bulletin 64, the Atlanta Homeownership Center (ATL-HOC) has identified the states in its jurisdiction where potential damages by termites is considered very significant. These states and the TIP zoning are identified as follows:

- a. Termite Infestation Probability Zone #1 (TIP Zone 1 - **"VERY HEAVY"**) consists of the States of Alabama, Florida, Georgia, Mississippi, South Carolina and Puerto Rico.
- b. Termite Infestation Probability Zone #2 (TIP Zone 2 - **"MODERATE to HEAVY"**) consists of the States of Illinois, Indiana, Kentucky, North Carolina and Tennessee

2. New Construction: New Construction = Proposed construction, under construction and existing less than 1 year old.

The Department's policy concerning the requirement for a builder's warranty against termite infestation in new homes is outlined in **Mortgage Letter(s) 1999-03, 2001-04 and 2003-11**. The Department has determined that if the property meets requirements in the International Residential Code (IRC) by the International Code Council (ICC) on protection against subterranean termites, (specifically Sections R323 and R324) they will satisfy the requirements of HUD's minimum property standards.

In all ATL-HOC jurisdictional states (TIP Zones 1 & 2) the acceptable treatment methods for protection include chemical soil treatment, pressure preservative treated wood (in accordance with AWPA standards), naturally termite-resistant wood, physical barriers (such as metal or plastic termite shields), bait systems, or any combination of these methods.

The builder must complete the HUD-NPMA-99-A form and indicate that one of the following accepted treatment methods was used:

- a. **HUD-NPMA-99-A** - (Subterranean Termite Builders Certification and Guarantee) Completed by the builder as indicated in **Mortgage Letter 1999-03** and **2001-04** providing a 1 year guarantee indicating one of the following treatments was used:

I. Bait system, OR

II. Wood (pressure preservative treated wood as outlined in **Mortgage Letter 2001-04**) - Under "type of Treatment", check the box titled "wood" and add statement "Complies with Mortgage Letter 2001-04 for use of preservative treated wood", OR

III. Soil (Chemical Soil treatment) - HUD-NPMA-99-B is to be used with form HUD-NPMA-99-A only if the property is treated with a soil termiticide. The licensed pest control company is responsible for completing form HUD-NPMA-99-B, as appropriate, and providing it to the builder.

☐ The builder is responsible for attaching the forms together and distributing the completed forms to the lender.

☐ Lenders must provide one copy to the buyer at closing and include a copy in the HUD endorsement binder. Please see: **Mortgage Letter 1999-03.**) OR

IV. Buildings using steel, masonry or concrete building components (with only minor interior wood trim and roof sheathing.) - Under "Type of Treatment" on form the Builder is to add in the space to the right of the box titled "Soil" the statement "Masonry (steel, or concrete) construction, no treatment needed. Complies with **Mortgage Letter 2001-04.**"

b. The use of post-construction soil treatment where a chemical termiticide is applied only around the perimeter of the foundation is NOT acceptable.

Note: All chemical soil treatments, bait systems, and chemical wood treatment must be approved by the Environmental Protection Agency (EPA) and applied in accordance with the EPA label instructions.

3. Existing (over 1 year old): (Please see: **Mortgage Letter 2005-48**) Appraisers are to indicate on the appraisal form if there was evidence of infestation of wood boring insects in the house and/or other structures within the legal boundaries of the property. ||

☐ Further inspection is required when any of the following apply:

◦ At Lender's discretion;

◦ When it is required by local and/or state laws - FHA does not require the lender to submit evidence or documentation in the case binder that the state or local jurisdiction does or does not require a test or inspection;

◦ When it is customary to the area; ||

◦ There is evidence of:

- Decay
 - Pest infestation
 - Suspicious damage.
- ||

□ When a clear inspection report is required on an existing property seeking FHA mortgage insurance: //

- The National Pest Management Association form NPMA-33, Wood Destroying Insect Inspection Report must be completed. Or if the property is located in a state having a mandated wood infestation form, then the State mandated form must be used. At this time the following States have their own mandated form for wood destroying insect infestation and the use of the NPMA-33 is NOT required: Alabama, Arizona, California, Florida, Georgia, Hawaii, Louisiana, Maryland, Mississippi, Nevada, North Carolina, Oklahoma, South Carolina and Texas. //
- When a clear report is required, all improvements within the property lines must be inspected and be free of active infestation. The validity period is 90 days from the initial date of inspection. (Please See Mortgage Letter 95-33. Form NPMA-33 replaced form NPCA-1 effective January 1, 2005).

(The use of a bait/monitoring system is acceptable when used in conjunction with an applied liquid chemical treatment.)

4. Condominiums: A condominium is subject to the same inspection requirements as stated in the section titled "Existing (over 1 year old)" The inspection is to include the unit, attached and/or detached garage, and other structures that are a part of the subject.

- If an inspection reveals problems with sections of the condo held in common with other owners a letter from the homeowners association listing the date of scheduled repairs, name of the contractor awarded the work, and acknowledgment that the funds necessary to pay for those repairs have already been budgeted and/or collected should be in the insuring binder.

B: Appraiser's Observations: Appraisers are to observe all areas of the house and other structures/areas within the legal boundaries of the property that have potential for infestation by termites and other wood destroying organisms. Appraisers are to record any condition that might be active infestation.

C: Sectioned Reports and Condition Clearance: The following are guidelines for clearance of termite report conditions in states where section termite reports are provided. On these reports each finding/recommendation will be noted in either Section I or Section II, or the equivalent.

a. Section I: contains items where there is evidence of active infestation, infection or conditions that have resulted in or from infestation or infection.

b. Section II: items are conditions deemed likely to lead to infestation or infection, but where no visible evidence of such was found. The Structural Pest Control Board has advised that Section II items will probably be major items that have not become infestations/infections, but possibly will become in the future.

Please see: HOC's Procedures for Clearing Sectioned Pest Reports

EXHIBIT 22

001014

Borrower/Client	Karen K Baber	File No.	461-6145927
Property Address	255 Rolling Ridge Rd		
City	Rock Hill	County	York
		State	SC
Lender	Summit Funding, Inc.	Zip Code	29730

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Uniform Residential Appraisal Report

BLB15022613
File # 461-6145927

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address 255 Rolling Ridge Rd City Rock Hill State SC Zip Code 29730
Borrower Karen K Baber Owner of Public Record Gloria A Long-Robinson County York

Legal Description Deed Book 6666-273/ Plat Book B53-3/ Lot 569
Assessor's Parcel # 604-05-02-017 **Tax Year** 2014 **R.E. Taxes \$** 1,654
Neighborhood Name Country Club Estates **Map Reference** 6040502017 **Census Tract** 0613.01

Occupant: ☐ Owner ☐ Tenant ☒ Vacant **Special Assessments \$** 0 ☒ PUD **HOA \$** 25 ☒ per year ☐ per month

Property Rights Appraised: ☒ Fee Simple ☐ Leasehold ☐ Other (describe)
Assignment Type: ☒ Purchase Transaction ☐ Refinance Transaction ☐ Other (describe)

Lender/Client Summit Funding, Inc. **Address** 2241 Harvard St. #200, Sacramento, CA 95815
 Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? ☒ Yes ☐ No
 Report data source(s) used, offering price(s), and date(s). DOM 284;MLS/Paragon/CMLS. The subject property was listed on 4/21/2014 and is currently listed for 159900

CONTRACT
☒ I did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed. Arms length sale; The subject is currently under a contract dated 2/18/2015 for 145000
Contract Price \$ 145,000 **Date of Contract** 02/18/2015 **Is the property seller the owner of public record?** ☒ Yes ☐ No **Data Source(s)** Public records
 Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? ☐ Yes ☒ No
 If Yes, report the total dollar amount and describe the items to be paid. \$0;

NEIGHBORHOOD
Note: Race and the racial composition of the neighborhood are not appraisal factors.
Neighborhood Characteristics: Location ☐ Urban ☒ Suburban ☐ Rural **Property Values:** ☐ Increasing ☒ Stable ☐ Declining
One-Unit Housing Trends: PRICE AGE One-Unit 75 %
 Built-Up ☐ Over 75% ☒ 25-75% ☐ Under 25% Demand/Supply ☐ Shortage ☒ In Balance ☐ Over Supply \$ (000) (yrs) 2-4 Unit %
 Growth ☐ Rapid ☒ Stable ☐ Slow Marketing Time ☐ Under 3 mths ☒ 3-6 mths ☐ Over 6 mths 155 Low 20 Multi-Family %
Neighborhood Boundaries: The subject property is roughly bound to the north and east by hwy 901 and the south and west by oakdale rd. 285 High 108 Commercial %
 220 Pred. 48 Other 25 %
Neighborhood Description: The subject is located in a developing area of homes. Homes vary as to age, design, style, GLA and room count. Maintenance of properties and improvements are average. The subject property is located in close proximity to places of employment, local restaurants etc, and major traffic arteries. The subject area is approximately 75% built up with 25% undeveloped (Other).
Market Conditions (including support for the above conclusions): The subject market appears to have stabilized at current rates with some variables with REO and short sales being present. Property values have declined over past years. The immediate market and similar homes has been more stable as compared to the market as a whole. Supply is typical for market trends. Marketing/Exposure time 30 to 200 days with some variables.
Dimensions See Plat **Area** 1.00 ac **Shape** rectangular **View** N;Res;Glfww
Specific Zoning Classification R1 **Zoning Description** Residential
Zoning Compliance: ☒ Legal ☐ Legal Nonconforming (Grandfathered Use) ☐ No Zoning ☐ Illegal (describe)
 Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use? ☒ Yes ☐ No If No, describe

SITE
Utilities: Public Other (describe) **Public Other (describe)** **Off-site Improvements - Type** **Public Private**
Electricity: ☒ ☐ **Water:** ☒ ☐ **Street:** asphalt ☒ ☐
Gas: ☒ ☐ **Sanitary Sewer:** ☒ ☐ **Alley:** None ☐ ☐
FEMA Special Flood Hazard Area: ☐ Yes ☒ No **FEMA Flood Zone** X **FEMA Map #** 45091C0318E **FEMA Map Date** 09/26/2008
 Are the utilities and off-site improvements typical for the market area? ☒ Yes ☐ No If No, describe
 Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? ☐ Yes ☒ No If Yes, describe

IMPROVEMENTS
General Description: Units ☒ One ☐ One with Accessory Unit ☐ Concrete Slab ☒ Crawl Space **Foundation:** Foundation Walls masonry/average **Exterior Description:** materials/condition **Interior:** materials/condition
of Stories 2 **Full Basement** ☐ Partial Basement **Exterior Walls** siding/average **Floors** h.w./ca./t.v./avg.
Type: ☒ Det. ☐ Att. ☐ S-Det/End Unit **Basement Area** 0 sq.ft. **Roof Surface** composite/average **Trim/Finish** wood/average
☒ Existing ☐ Proposed ☐ Under Const. **Basement Finish** 0 % **Gutters & Downspouts** yes/average **Bath Floor** h.w./t.v./avg.
Design (Style) Traditional ☐ Outside Entry/Exit ☐ Sump Pump **Window Type** d.h.insulated/average **Bath Wainscot** fiber/average
Year Built 1989 **Evidence of** ☐ Infestation **Storm Sash/Insulated** yes/average **Car Storage** ☐ None
Effective Age (Yrs) 26 **Dampness** ☐ Settlement **Screens** yes/average **Driveway - # of Cars** 2
Attic ☐ None **Heating:** ☒ FWA ☐ HWBB ☐ Radiant **Amenities** ☐ Woodstove(s) # 0 **Driveway Surface** concrete
☒ Drop Stair ☐ Stairs ☐ Other **Fuel gas** ☒ Fireplace(s) # 1 **Fence** none **Garage** # of Cars 0
Floor ☐ Scuttle **Cooling:** ☒ Central Air Conditioning ☒ Patio/Deck deck ☒ Porch porch ☒ Carport # of Cars 2
Finished ☐ Heated ☐ Individual ☐ Other ☐ Pool none ☐ Other none ☐ Alt. ☒ Det. ☐ Built-in

Appliances: ☒ Refrigerator ☒ Range/Oven ☒ Dishwasher ☒ Disposal ☐ Microwave ☐ Washer/Dryer ☐ Other (describe)
Finished area above grade contains: 9 Rooms 4 Bedrooms 2.1 Bath(s) 2,970 Square Feet of Gross Living Area Above Grade
Additional features (special energy efficient items, etc.): None; Standard;

Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.): C4; No updates in the prior 15 years; The subject is considered to be in average condition and looks to have been constructed with average materials and workmanship. There were no signs of deterioration or needed renovation. No needed repairs were noted at the time of the inspection

Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? ☐ Yes ☒ No If Yes, describe

Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? ☒ Yes ☐ No If No, describe

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There are 7 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 157,000 to \$ 295,000	
There are 16 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 155,000 to \$ 285,000	
FEATURE	SUBJECT COMPARABLE SALE # 1 COMPARABLE SALE # 2 COMPARABLE SALE # 3
Address	255 Rolling Ridge Rd Rock Hill, SC 29730 363 E Main St Rock Hill, SC 29730 369 Red Fox Trl Rock Hill, SC 29730 271 Country Club Dr Rock Hill, SC 29730
Proximity to Subject	2.52 miles N 0.65 miles SW 0.30 miles W
Sale Price	\$ 145,000 \$ 176,750 \$ 205,000 \$ 156,400
Sale Price/Gross Liv. Area	\$ 48.82 sq.ft. \$ 67.08 sq.ft. \$ 83.37 sq.ft. \$ 65.17 sq.ft.
Data Source(s)	pb.rc./cmis/gis/MLS;DOM 144 pb.rc./cmis/gis/MLS;DOM 16 pb.rc./cmis/gis/MLS;DOM 112
Verification Source(s)	Paragon/CMLS/MLS # 2201956 Paragon/CMLS/MLS # 3050327 Paragon/CMLS/MLS # 2198532
VALUE ADJUSTMENTS	DESCRIPTION DESCRIPTION +(-) \$ Adjustment DESCRIPTION +(-) \$ Adjustment DESCRIPTION +(-) \$ Adjustment
Sales or Financing Concessions	Estate Conv:0 0 ArmLth 0 Conv:0 0 Short 0 Conv:0 0
Date of Sale/Time	s08/14;c06/14 0 s02/15;c12/14 0 s05/14;c02/14 0
Location	N;Res; N;Res; N;Res; N;Res;
Leasehold/Fee Simple	Fee Simple Fee Simple Fee Simple Fee Simple
Site	1.00 ac 10,454 sf 0 37,026 sf 0 38,155 sf 0
View	N;Res;Glfw N;Res; 0 N;Res;neighborh -5,000 N;Res; 0
Design (Style)	DT2;traditional DT2;traditional DT1;traditional DT1;traditional 0
Quality of Construction	Q4 Q4 Q4 Q4 0
Actual Age	26 108 0 60 0 56 0
Condition	C4 C3 -15,000 C3 -20,000 C3 -20,000
Above Grade	Total Bdrms. Baths Total Bdrms. Baths Total Bdrms. Baths Total Bdrms. Baths
Room Count	9 4 2.1 8 4 2.0 8 4 2.1 8 3 3.0 -2,500
Gross Living Area	2,970 sq.ft. 2,635 sq.ft. +10,050 2,459 sq.ft. +15,330 2,400 sq.ft. +17,100
Basement & Finished Rooms Below Grade	0sf 0sf 560sf560sfwo -14,000 0sf 0sf
Functional Utility	Conforms Conforms Conforms Conforms
Heating/Cooling	FWA/CAC FWA/CAC FWA/CAC FWA/CAC
Energy Efficient Items	None Noted None Noted None Noted None Noted
Garage/Carport	2cp2dw 2cp 0 2ga -3,000 2cp 0
Porch/Patio/Deck	porch/deck cov.por./pat. 0 c.p./pa./scn.p. -1,500 c.p./deck 0
Net Adjustment (Total)	\$ + \$ - \$ -2,450 \$ + \$ - \$ -30,670 \$ + \$ - \$ -5,400
Adjusted Sale Price of Comparables	Net Adj. 1.4 % Net Adj. 15.0 % Net Adj. 3.5 %
	Gross Adj. 15.6 % \$ 174,300 Gross Adj. 29.9 % \$ 174,330 Gross Adj. 25.3 % \$ 151,000
☒ did ☐ did not research the sale or transfer history of the subject property and comparable sales. If not, explain	
My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.	
Data Source(s) Public Records	
My research ☒ did ☐ did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.	
Data Source(s) Public Records	
Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).	
ITEM	SUBJECT COMPARABLE SALE #1 COMPARABLE SALE #2 COMPARABLE SALE #3
Date of Prior Sale/Transfer	08/04/2014
Price of Prior Sale/Transfer	
Data Source(s)	County GIS/Realist County GIS/Realist County GIS/Realist County GIS/Realist
Effective Date of Data Source(s)	02/27/2015 02/27/2015 02/27/2015 02/27/2015
Analysis of prior sale or transfer history of the subject property and comparable sales public records indicate comparable 1 transferred as listed above no amount disclosed deed of distribution. public records indicate No additional Prior transfers of the subject were found or recorded as of the date of this report in the past 3 years for the subject and no additional transfers were found or recorded as of the date of this report for the comparables in the past 12 months. The appraiser assumes the standard data sources reporting are complete and accurate as of the date of this report. Note: Some records are recorded late in York County and may appear at a later date as of the effective date of this report.	
Summary of Sales Comparison Approach A search for comparable sales was done with emphasis placed on locating the most recent transfers that were considered to be the most comparable at the time of the inspection. Due to the lack of updating evident in the subject and the lack of comparable sales that exhibited no updating a strait line adjustment for condition was unavoidable however no negative market reaction was evident. No sales that bracketed the subject gla were located that was considered more comparable were located however comparable 2 total living area did bracket. No clear market reaction was evident for golf course view and no adjustment could be established. Comparable 1 is an estate sale and comparable 3 is a short sale however were used due to being the most similar in gla that were of reasonable comparable price ranges and condition ranges. (see additional notes.)	
Indicated Value by Sales Comparison Approach \$ 166,000	
Indicated Value by: Sales Comparison Approach \$ 166,000 Cost Approach (if developed) \$ 169,154 Income Approach (if developed) \$	
The sales comparison approach is considered the most accurate indicator of market value with the cost approach lending support. The income approach was not used to limited market data. The estimated indicated value is determined by using the adjusted sale price of the comparable sales and is considered with the relative weight placed on the comparables. This is a summary report.	
This appraisal is made ☐ "as is", ☐ subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or ☒ subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair. Subject to utilities being turned on	
Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ 166,000 as of 02/27/2015, which is the date of inspection and the effective date of this appraisal.	

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This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit, including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

SCOPE OF WORK: The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing the appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
6. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

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File # 461-6145927**APPRAISER'S CERTIFICATION:** The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.
20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

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21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

Signature 
 Name Brian Blue
 Company Name Appraisal Innovations LLC
 Company Address PO Box 11114
Rock Hill, SC 29731
 Telephone Number (803) 417-5998
 Email Address blueb@comporium.net
 Date of Signature and Report 03/05/2015
 Effective Date of Appraisal 02/27/2015
 State Certification # CR 5336
 or State License # _____
 or Other (describe) _____ State # _____
 State SC
 Expiration Date of Certification or License 06/30/2016

ADDRESS OF PROPERTY APPRAISED

255 Rolling Ridge Rd
Rock Hill, SC 29730

APPRAISED VALUE OF SUBJECT PROPERTY \$ 166,000

LENDER/CLIENT

Name Summit Funding, Inc.
 Company Name Summit Funding, Inc.
 Company Address 2241 Harvard St. #200, Sacramento, CA 95815
 Email Address _____

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature _____
 Name _____
 Company Name _____
 Company Address _____
 Telephone Number _____
 Email Address _____
 Date of Signature _____
 State Certification # _____
 or State License # _____
 State _____
 Expiration Date of Certification or License _____

SUBJECT PROPERTY

- ☐ Did not inspect subject property
☐ Did inspect exterior of subject property from street
 Date of Inspection _____
☐ Did inspect interior and exterior of subject property
 Date of Inspection _____

COMPARABLE SALES

- ☐ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
 Date of Inspection _____

Direct Endorsement Approval for a HUD/FHA-Insured Mortgage

U.S. Department of Housing
and Urban Development

Part I - Identifying Information (mark the type of application) 1. ☒ HUD/FHA Application for Insurance under the National Housing Act		2. Agency Case No. (include any suffix) 461-6145927-703	3. Lender's Case No. CNL1412x614460	4. Section of the Act (for HUD cases) 203B
5. Borrower's Name & Present Address (include zip code) KAREN K. BABER 3356 GOODPLACE Rock Hill, SC 29732		7. Loan Amount (include the UFMIP) \$ 142,023.00	8. Interest Rate 4.375 %	9. Proposed Maturity 30 yrs. mos.
6. Property Address (including name of subdivision, lot & block no. & zip code) 255 ROLLING RIDGE ROAD Rock Hill, SC 29732		10. Discount Amount (only if borrower is permitted to pay) \$ 2,098.88	11. Amount of Up Front Premium \$ 98.37 /mo.	12a. Amount of Monthly Premium 360 months
13. Lender's I.D. Code 1056900188		14. Sponsor / Agent I.D. Code		
15. Lender's Name & Address (include zip code) Summit Funding, Inc. 2241 Harvard St., Suite 200 Sacramento, CA 95815		16. Name & Address of Sponsor / Agent		
17. Lender's Telephone Number 916-266-4400				
Sponsored Originations	Name of Loan Origination Company	Tax ID of Loan Origination Company	NMLS ID of Loan Origination Company	

☒ **Approved:** Approved subject to the additional conditions stated below, if any.

Date Mortgage Approved **04/30/2015**

Date Approval Expires **06/25/2015**

☐ Modified & Approved as follows:	Loan Amount (include UFMIP) \$	Interest Rate %	Proposed Maturity Yrs. Mos	Monthly Payment \$	Amount of Up Front Premium \$	Amount of Monthly Premium \$	Term of Monthly Premium months

Additional Conditions:

- ☐ If this is proposed construction, the builder has certified compliance with HUD requirements on form HUD-92541.
- ☐ If this is new construction, the lender certifies that the property is 100% complete (both on site and off site improvements) and the property meets HUD's minimum property standards and local building codes.
- ☐ Form HUD-92544, Builder's Warranty is required.
- ☐ The property has a 10-year warranty.
- ☐ Owner-Occupancy Not required (Item (b) of the Borrower's Certificate does not apply).
- ☐ The mortgage is a high loan-to-value ratio for non-occupant mortgagor in military.
- ☐ Other: (specify)

☒ This mortgage was rated as an "accept" or "approve" by FHA's Total Mortgage Scorecard. As such, the undersigned representative of the mortgagee certifies to the integrity of the data supplied by the lender used to determine the quality of the loan, that a Direct Endorsement Underwriter reviewed the appraisal (if applicable) and further certifies that this mortgage is eligible for HUD mortgage insurance under the Direct Endorsement program. I hereby make all certifications required for this mortgage as set forth in HUD Handbook 4000.4

Mortgagee Representative **BETTY KEMMER**

☐ This mortgage was rated as a "refer" by FHA's Total Mortgage Scorecard, and/or was manually underwritten by a Direct Endorsement underwriter. As such, the undersigned Direct Endorsement underwriter certifies that I have personally reviewed the appraisal report (if applicable), credit application, and all associated documents and have used due diligence in underwriting this mortgage. I find that this mortgage is eligible for HUD mortgage insurance under the Direct Endorsement program and I hereby make all certifications required for this mortgage as set forth in HUD Handbook 4000.4

Direct Endorsement Underwriter

DE's CHUMS ID Number

The Mortgagee, its owners, officers, employees or directors ☐ do ☒ do not have a financial interest in or a relationship, by affiliation or ownership, with the builder or seller involved in this transaction.

form HUD-92900-A (09/2010)

VA Form 26-1802a (06/2014)

Ellie Mae, Inc.



FILED-RECEIVED

2019 APR -1 PM 12:17

STATE OF SOUTH CAROLINA
COUNTY OF YORK

DAVID HAMILTON
C.C.C.P. 6883
YORK COUNTY, SC

IN THE COURT COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

KAREN K. BABER,
PLAINTIFF,

C/A NO: 2018-CP-46-01592

vs.

SUMMIT FUNDING, INC., A CALIFORNIA
CORPORATION; APPRAISAL INNOVATIONS, LLC, A
SOUTH CAROLINA LIMITED LIABILITY COMPANY;
BRIAN L. BLUE, AN INDIVIDUAL; THE GILLEN LAW
FIRM, P.A., A SOUTH CAROLINA PROFESSIONAL
ASSOCIATION; MICHAEL F. GILLEN, AN INDIVIDUAL;
ALLEN TATE CO., INC., A NORTH CAROLINA
CORPORATION; COLLEEN COESENS, AN INDIVIDUAL;
JONATHAN GARVEY, AN INDIVIDUAL; ROBERT OUZTS,
AN INDIVIDUAL; CONNIE DELANEY, AN INDIVIDUAL;
AND GLORIA LONG-ROBINSON, AN INDIVIDUAL,
DEFENDANTS.

AFFIDAVIT OF PLAINTIFF KAREN K. BABER IN
OPPOSITION TO THE ALLEN TATE
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT

(MEDIATION AND JURY TRIAL DEMANDED)

Plaintiff, Karen K. Baber, acting pro se, being over the age of 21 and competent to testify about the matters set forth herein, hereby submits her Affidavit in Opposition to the Allen Tate Defendants' Motion for Summary Judgment. After being first duly sworn, I hereby testify under oath as follows:

INTRODUCTION

1. Based upon my reading of their motion for summary judgment; it is my understanding that Allen Tate Co., Inc. ("Allen Tate"), its broker-in-charge Colleen Coesens ("Coesens"), its agent (who also acted as my agent) Jonathan Garvey ("Jonathan" or "Garvey"), its agent Robert Ouzts (who acted on behalf of the seller), and its realtor Colleen Delaney ("Delaney") (who had been the seller's original agent but then acted under a power of attorney from the seller) (collectively referred to as "Tate Defendants") have moved to dismiss all my claims against

them on two grounds: (a) that even though the Tate Defendants had a fiduciary duty to me and withheld material information and made material misrepresentations of fact to induce me to execute the Release, that they should be able to escape their clearly fraudulent behavior against me wherein they repeatedly confirmed that Jonathan had obtained a home inspection report and a termite/wood infestation report, which showed that my concerns about the condition of the subject property were unfounded, were apparently only cosmetic, and did not constitute material defects; and (b) that although I responded to the Request for Admissions within thirty days of my actual receipt of those requests, I should not be allowed to contest those admissions because they allege that the Request for Admissions were mailed to me earlier.

2. It also is my understanding that Rule 56 of the South Carolina Rules of Civil Procedure states, among other things:

(c) Motions and Proceedings Thereon. The motion [for summary judgment] shall be served at least 10 days before the time fixed for the hearing. The adverse party [me] may serve opposing affidavits not later than two days before the hearing. The judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law....

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the notion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.

Further, as said in *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 642 S.E.2d 751, 753 (2007) "In determining whether any triable issue of fact exist, the circuit court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party."

3. As will be shown below, I believe that there are many "genuine issues of material facts" with respect to the Tate Defendant's version of incomplete facts, and they are not entitled to judgment as a matter of law. Further, if the court is unwilling to deny the motion for summary judgment based on what is contained in this affidavit alone, then it should delay any ruling until the Tate Defendants respond to my discovery requests to them, which were sent out on or about February 13, 2019, and to which they all received extensions of time to respond.

SUMMARY OF THE ARGUMENT

4. I purchased a home through the Tate Defendants in May 2015. Jonathan Garvey, my agent at Allen Tate; repeatedly told me, the lender Summit Funding, and the closing attorney's staff that he had obtained a home inspection report and a wood infestation report for me that disclosed that there were ***no material defects*** with the house and showed that my the concerns I had about the property were insignificant or immaterial and easily and cheaply remedied. ***Jonathan Garvey lied. His lies were intricate. He identified the name of the person who supposedly had done the inspections; he explained how his inspections would be paid for after the closing. He told me, Summit, and the Gillen law firm that the reports showed no material defects. He said that he would bring the required reports to the closing, but he didn't do that, and promised to bring them by later before the loan package would be sent off. He lied about that also.***

5. If I had known there was no home inspection or termite report, I would not have closed the purchase of the Property, and I would not now be stuck in a house which is not safely habitable; exposes me, my daughter and my two grandchildren to health and safety issues; which has none working appliances and electrical systems; has none working windows and

doors surrounded by rotting and termite damaged wood, etc. An actual home inspection and termite inspection would have revealed those and other material defects and would have revealed what I also believe was a false and fraudulent appraisal. It would have caused me to not go through with the purchase.

6. The Tate Defendants characterize me as someone who is knowledgeable and sophisticated. I have no building or contracting experience, and I do not have any great knowledge as to how to perform a home inspection or a termite inspection to determine whether what I observe or observed showed material damage or defect or whether what I was concerned about was really only minor or cosmetic and easily addressed.

7. I have had a legal background for many years. It is because of that background that I knew that the LLR Property Disclosure form from the seller of a property had to give detailed explanations or reports as to the nature of any noted issue; otherwise any homeowner could simply check off nearly all the boxes on a disclosure statement and avoid liability. The property disclosure form did not contain any such detailed explanations or report. As disclosed in the attached emails, I asked for them. I also knew that a home inspection and a wood infestation report would be obtained which would protect me in the event those inspections revealed significant issues because, if nothing else, I could simply walk away from a defective house and forfeit my earnest money. If need be, I knew that if the inspectors missed a significant matter that I could have recourse against them.

8. I did not anticipate having to do that, however, because I knew the loan I was getting to purchase the house was an FHA-insured mortgage loan. I knew that the FHA would not fund a loan to purchase a house with material defects or evidence of wood infestation. I knew that the

FHA would not fund a loan that had an invalid or false appraisal. I knew that none of the parties or Summit could waive those requirements. Thus, I did express concerns about the condition of the property to my realtor Jonathan Garvey and to Summit's loan officer, Steve Reynolds; and as the attached exhibits show, they assured me that the inspections and appraisal would reveal whether my concerns about the condition of the property were legitimate. If the inspections did so show, then steps could be taken to cause the seller to make repairs, or to re-apply for an FHA rehabilitation loan, or to simply move on to put offers in on some of the other houses that Jonathan had showed me. I also was aware that the home was an older home so I wanted a home warranty. I knew that a home warranty would not cover any issues that existed prior to the issuance of the warranty, but that it would address issues that began from the date of closing. So that provided me comfort as well.

9. It also was because of all those assurances that I signed the subject purchase agreement. While the Tate Defendants highlight that I agreed to purchase the property "as-is," they neglect to point out the language in the purchase agreement that I relied upon, i.e. that my offer was expressly conditioned "upon approval and acceptance of Lender." I knew that Summit would only approve the financing if it met FHA-underwriting requirements, which required that the Property be safe, operational, and suitable for occupancy.

10. Contrary to what the Tate Defendants argue, I did not find out that there was in fact no home or termite inspection until at least the Spring of 2016. It was only then that Allen Tate's broker in charge, Colleen Coesens, emailed me confessing that no termite inspection report had been obtained. Prior to that (and even after), Summit continually assured me that there had to have been a termite inspection report and a home inspection report in order for my FHA-

insured mortgage loan to have been closed. Unfortunately, Summit also failed in its duties by allowing the subject loan to be funded without the wood infestation report and without a valid appraisal in violation of FHA underwriting guidelines for FHA-insured mortgage loans as shown in great detail in Affidavit of *Plaintiff Karen K. Baber in Opposition to Summit Funding, Inc.'s Motion for Summary Judgment*, filed in this case on Friday, March 29, 2019 ("Opposition to Summit MSJ"), and which is incorporated herein by reference.

11. I also found out that Jonathan did not buy me the home warranty that had been promised. When I met with the Allen Tate Defendants in late June 2015, the purpose was to resolve the issue of Jonathan's failure to obtain the home warranty in light of the many problems being experienced at the Property during my first month of occupancy. At that meeting, Ms. Coesens assured me that the termite inspection report had to have been provided to Summit before the loan had closed and that she would provide me a copy of the reports. Jonathan sat at the table and never denied that such a report existed or that he also had provided a home inspection report. It was because of those representations and omissions that I believed that I still had recourse against the person(s) who had performed the inspections and that I signed a General Release. It is now clear that General Release was procured by fraud, because there was no home inspection or even a wood infestation report as was finally admitted by Ms. Coesens in March 2016. Since the General Release was induced by false representations and omissions that I reasonably relied upon (or at least to which there is a jury question), the General Release should be of no effect; and when I found out that what I had been told was false, I immediately cancelled the release.

12. The Tate Defendants quote my deposition transcript at page 141 regarding my signing the release. It appears, however, that they are purposely misleading the Court because they completely omit my testimony immediately before and immediately after their quoted portions which explain the fraudulent inducement. Specifically:

Q. Why do you believe that this [the release] isn't effective?

A. Because, number one, I wasn't the seller; I was the buyer. So that document itself is wrong.¹

Then also at that meeting, *they were fully aware – at that meeting, I believed there to be a termite inspection, which she [Coesens] was going to get me. I believed there to be a home inspection of which Connie Cohens [should be Coesens], she left the meeting, she said, "I will go get those. You had to have had them. You couldn't have closed without them." She said, "This is unfortunate.".... And it never occurred to me that at that point that there was no termite inspection, that there was no home inspection, and that there was a fraudulent appraisal....* (Transcript, p. 140, line 9 – 141, line 4).

[The Tate Defendants' Cited Portion of the Transcript Was Here]

Q. What's the false pretenses?

A. Because when we sat there, we discussed the termite report, the inspection report, and that this was simply an unfortunate situation that happened. And they were --- basically their apologies that these things *did not show up on the report.* (Transcript, p. 141, line 21 – p. 142, line 1.

13. So what were the false pretenses? The Tate Defendants continued to mislead me that the home inspection and termite inspection report existed. Jonathan Garvey sat there in that room with full knowledge that there were no such reports yet he said nothing while his broker-in-charge, Ms. Coesens, continued to reassure me that they existed and that she would get them for me -- *so that I could pursue remedies against the inspector(s) for their negligence in failing to report the defects.*² Those representations were false, and the Tate Defendants, as

¹ The General Release incorrectly identified me as the "Seller(s)" when I was the buyer.

² This also was part of my deposition testimony as shown at p. 144, lines 16 – 22.

my agents, who owed me a fiduciary duty, had an obligation to speak – to tell me the whole truth before I signed a release allegedly waiving any rights against them.

14. In light of the indisputable facts of this case as to the Tate Defendants' outright fraud and deception, it is no wonder that they are trying to avoid liability by relying upon procedural grounds rather than substantive. They do not deny the facts asserted against them in the Verified Complaint. They cannot deny the emails that were exchanged confirming what Jonathan was saying.³ requested an extension of time responding to my requests for admissions, interrogatories and document requests clearly hoping to avoid having to admit their misconduct. They rely upon a failure of me to respond within 30 days to a set of requests for admissions *which I never received when they claimed they sent them in August 2018.*

When I finally did receive them, I fully answered the requests on November 27, 2018. No action was taken by Tate based on the previously unanswered (because I never received them) requests for admissions, until the filing of their motion which they did after taking my deposition where I disputed the facts they had asked me to admit and well-after receiving my responses to their requests for admissions which expressly denied them. The Tate Defendants have suffered no prejudice by the short delay in responding to the requests for admissions after I actually received them and South Carolina case law allows for the withdrawal of any admissions under these circumstances.

15. Finally, pursuant to Rule 56(f), there is outstanding discovery to the Tate Defendants specifically and the other defendants which will bear directly on the issues in this case.

³ Hopefully, my discovery requests to the Tate Defendants also will cause them to produce their text messages to me which I no longer have because my cell phone was destroyed so that I can no longer retrieve them, which will present even more incriminating evidence as to their false representations.

Specifically, the Tate Defendants argue in their memorandum that I do not have any evidence to support my contention that the realtors from Tate knew that the property had substantial defects. I did explain in my deposition that I was aware that Allen Tate, being a large real estate brokerage would likely have had "tours" where they would show properties that they were listing to the realtors in their offices and that remarks would be made about how best to market the property in light of what was seen. In addition, I have sent out discovery to the Tate Defendants specifically requesting information designed to address this issue (as well as all the others). For example, I have asked when they listed the property, what internal documents existed showing the condition of the property, what reactions or statements they received from their own and other realtors when the property would have been shown to them, whether any other offers were made to purchase the property which were not completed because of concerns about the condition of the property, what internal communications existed between Jonathan Garvey and the other realtors, etc. Until I finally receive that discovery, a ruling on the Tate Defendants' motion for summary judgment should be denied.

FACTUAL BACKGROUND AND LEGAL ARGUMENT

16. The following relevant facts show that the Tate Defendants's motion must be denied.

17. I retained Allen Tate generally and Jonathan Garvey specifically to look for a single family residence to purchase. On May 29, 2015, I ultimately purchased a house located at 255 Rolling Ridge Road, Rock Hill, S.C. (the "Property"). That purchase was financed through an FHA-insured mortgage loan issued by Defendant Summit Funding, Inc. ("Summit").

18. My family and I loved the house, but as the Tate Defendants have pointed out in their motion, I had many concerns about the condition of the Property when I visited the Property on

a few occasions, and after receiving a Disclosure Statement from the seller dated March 28, 2014 (Exhibit 1) , indicating a number of issues but with only one minor exception, had no reports or explanations as to exactly what the supposed issues were.⁴ I also expressed some concerns in emails to Jonathan in January 2015 (Exhibit 2).

19. To address those concerns, Jonathan told me that the FHA-insured mortgage loan I was going to get to purchase the Property would require a home inspection, a wood infestation report (both of which he would arrange as my agent), and an appraisal. Those reports would reveal to me whether my concerns were substantive or for the most part only cosmetic issues. We also discussed and agreed (as reflected in the emails) that I would get a home warranty to cover any issues that came up after I began occupying the Property. I suggested that the seller provide the home warranty, but if not, then he said he would buy it for me as an incentive or that I would purchase it.

20. At least as of January 2015, I was looking to purchase a single-family residence for me, my daughter and my two grandchildren. I have very limited income and had little money for a down payment or for repairs or remodels. In fact, I had told Jonathan that I had a budget of only \$10,000 to make any necessary remodels and repairs to any house that I purchased.

21. I was shown the property located at 255 Rolling Ridge Road, Rock Hill, S.C. ("Property"), and I was interested if it met my financial parameters. If not, there were other houses that I

⁴ Page 1 of the Residential Property Condition Disclosure Statement is required by South Carolina Code Section 27-50-40 and stated: "If a question is answered "yes" or asks for a description, then owner **must explain or describe the issue** or attach a descriptive report from an engineer, contractor, pest control operator, expert, or public agency...." The seller did not provide explanations or descriptions of the issues or attach any descriptive reports from experts.

was prepared to look at and purchase that my realtor showed me. I did, however, decide to put an offer in on the Property.

22. On January 14, 2015, I entered into an Exclusive Right to Buy Buyer Agency Contract, a copy of which is attached as Exhibit 3 ("Agency Contract"). I was the "Buyer" and Allen Tate was the Broker and was appointed as my exclusive agent, subject to the terms and conditions stated in the Agency Contract.

23. The Agency Contract provided in relevant part:

- a. "3(a) The Broker ... shall use Broker's professional real estate knowledge and skills to represent the Buyer *in a diligent and effective manner and to locate property which is available for purchase ... and suitable to the Buyer....*
- b. 3(c) if the Broker represents the seller and the Buyer (i.e. disclosed dual agency), the Broker shall not disclose to the Buyer information obtained within the confidentiality *and trust of the fiduciary relationship with the seller, nor to disclose to the seller information similarly obtained from the Buyer....*⁵

24. I understood at the time I executed the Agency Contract that Allen Tate was acting as a dual agent. Defendant Connie Delaney initially represented the seller, Ms. Gloria Long-Robinson ("Seller"), but later obtained a power of attorney to act for Seller, at which time, it was my understanding that Defendant Robert Ouzts became Seller's agent. Defendant Jonathan Garvey acted as my agent for the transaction.

25. On January 23, 2015 (Exhibit 4), **Jonathan Garvey** emailed me to tell me that he had arranged for Robert Evans to make some repairs and perform some remodeling that I was

⁵ Allen Tate was thus acknowledging that they owed a fiduciary duty to me as well as the seller.

interested in doing, ***and that he would perform the required home and wood infestation inspections.*** To put this email in context, ***Jonathan*** told me that he had arranged to have Robert Evans fix a known water leak. ***Jonathan*** said that Mr. Evans also was a licensed home inspector and termite inspector and also that he was a contractor who could make a few modifications to the home. ***Jonathan*** further told me that Mr. Evans' ***home and wood infestation inspection reports*** would be paid for out of the \$10,000 that I had saved for repairs and upgrades.

26. On February 11, 2015, I received an email from Jonathan (Exhibit 5) where he acknowledged my concerns stating, among other things: "We will have to see what the appraisal says about the condition. Maybe the seller will clean up the place and do some repair out of his pocket to make the short sale happen. J"

27. On February 19, 2015, I electronically executed an "Agreement/Contract: To Buy and Sell Real Estate (Residential) (the "Contract") with the seller, Gloria Long-Robinson ("Seller"). A true and complete copy of the Contract is attached hereto as Exhibit 6. While there were a number of amendments to that contract primarily altering dates, the following provisions did not change:

- a. The property located at 255 Rolling Ridge Road, Rock Hill, S.C. was, as noted in paragraph 2, to be purchased by a financing.
- b. In paragraph 4, the real estate brokers were to receive a copy of the settlement statement prior to the Closing for review.
- c. Paragraph 7 expressly stated that "Buyer's obligation under this Contract [X] is ... contingent upon obtaining financing of a [X] 30 year ... purchase money loan.... Final loan approval occurs when Lender transfers funds.... Lender ... SUMMIT FUNDING [X] FHA...

[indicating that my loan was to be an **FHA-insured loan** and not a VA-insured loan, a conventional [non-insured] loan, a seller-financed purchase, or any other form of financing].

d. Paragraph 11 furthered my belief that a CL-100 Wood Infestation Report was to have been obtained on my behalf. It stated: If the Property to be sold has been previously occupied, this Contract is contingent upon the [X] Buyer ... having the Property inspected at their expense by a qualified/licensed/bonded pest control operator selected by the [X] Buyer... and Delivery to Closing of a CL100 Wood Infestation Report dated no earlier than 30 calendar days prior to Closing and no later than 10 calendar days prior to Closing." That paragraph goes on to state that if I did not have wood infestation report within that time frame, then I would waive my rights under that section. Nevertheless, as will be shown below, I did expect that my realtor was obtaining the CL-100 report and a home inspection report and was told by the realtor, the closing attorney's office, and Summit itself that at least the CL-100 wood infestation report had been provided. In addition, this clause does not circumvent the FHA loan requirements. If there was no CL-100 or an accurate appraisal, then there would be no loan closing.

e. Paragraph 28 provided among other things that "PROPERTY TO BE SOLD 'AS IS, WHERE-IS, WITH ALL FAULTS.' CONTRACT CONTINGENT UPON APPROVAL AND ACCEPTANCE OF LENDER." Thus, while I knew that I was going to accept the Property "as-is," I also was assured that an appraisal of the Property would be obtained. Further, the language that the loan would be funded only "upon approval and acceptance of Lender" provided additional confidence to me that Summit would only approve the financing if it met FHA-underwriting requirements, which required that the Property be safe, operational, and suitable for

occupancy. ***This was always my "back-stop" protection – my purchase was conditioned on receiving an FHA-insured mortgage loan and no such loan would be provided if the underwriting requirements, which included a valid appraisal and a wood infestation report, were not met.***

28. There were a series of emails between and among me, ***Jonathan***, and the lender Summit Funding, Inc.'s ("Summit") employees before and even after closing confirming that I correctly and reasonably understood that before my FHA-insured mortgage loan would or could be approved, that Summit would need to receive a valid appraisal, a wood infestation report, and a home inspection. The basis for my understanding is again set forth in great detail in my Opposition to Summit MSJ. Nevertheless, the following emails contain communications or recording of communications from or with ***Jonathan concerning the need to obtain a home inspection report and a termite/wood infestation report:***

- a. On February 17, 2015, I asked Ms. Denise Julian of Summit, when I would get the inspections (the home inspection and termite inspection) because I wanted to know whether my concerns about the Property were valid. On that same date, she responded: "We don't order those. ***Jonathan will get those for you before closing.***" A copy of this email is attached as Exhibit 7.
- b. On March 6, 2015, Steve Reynolds wrote me stating among other things: "I have called Jonathan and asked him to provide you the reports for the "Yes" items on the Disclosure Form. That would be helpful to determine if we may have any problems. Let me know what you think once your [his mistake] have those." A copy of this email is attached as Exhibit 8. Also included in Exhibit 8 is an email dated February 13, 2015 from Mr.

Reynolds assuring me that I would be able to see the appraisal, termite inspection and home inspection report before any closing.

- c. On April 8 and April 9, 2015, I had another email exchange with Summit's loan officer, Steve Reynolds. In his email to me, Mr. Reynolds stated, among other things: **"I have called Jonathan [Garvey] to get the termite report and inspection to me."** A copy of this email is attached as Exhibit 9.
- d. On May 19, 2015, Summit's employee Reynolds again confirmed in an email (Exhibit 10) that he had **"left Jonathan a message to send me the termite report and the inspection."**

29. Around May 22, 2015, only one week before the loan closing, I received a copy of the "Good Faith Estimate (GFE), a copy of which is attached as Exhibit 11. Page 2, Box 6 of the GFE identified both a pest inspection and a home inspection as **required for this loan, i.e. they were "Required services** that you can shop for. These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below." Box 6 then stated: **"PEST INSPECTION COMPANY 75.00 ... HOME INSPECTION 450.00"** (Bold capital letters in original). The bottom of page 2 shows that the total estimated settlement charges was \$7,910.66. Thus, only one week prior to the closing, Summit was further reinforcing to me that a termite inspection report and a home inspection report were **required** before my loan would be funded and the property purchased. As the above communications show, **Jonathan Garvey** had taken the responsibility for getting the wood infestation/termite report and the home inspection.

30. Several days later, **Jonathan Garvey expressly told me that there were no problems with the home inspection or the wood infestation reports and that he would bring them to the closing scheduled for May 29, 2015.**

31. On May 27, 2015, two days before the closing, Steve Reynolds, Summit's loan officer emailed me again (Exhibit 12) stating: "I will call you in the morning to go over everything. **Your termite inspection was condition of loan and was with inspection.** Have a great night."

32. On May 27, 2015, I also received emails from Linda Mattison (Exhibit 13), the paralegal for the closing attorney, Mr. Michael Gillen. Her timing of her first email was interesting. I had just learned that the closing had unexpectedly been scheduled for May 29, 2015. After learning this, I contacted **Jonathan** and told him I wanted to see the property again. **Jonathan** told me he didn't have time to do that in order to get everything done in time to be ready for the closing on May 29, 2015. **Jonathan** told me that Mr. Evans **had done the home inspection**, but the termite inspection was not discussed at that time. I then had the following email exchanges with Ms. Mattison:

- a. At 2:49 p.m., I received the first email in Exhibit 13 where Linda Mattison asked me "Did you have a termite and home inspection done? If so, have they been paid or do I need to pay at closing. Need to know today."
- b. At 4:03 p.m., I responded saying "didn't have termite inspection done... did inspection/appraisal and that has been paid for. **NOTE TO JONATHAN AND STEVE – PLEASE CALL LINDA IF ANYTHING ELSE – THANKS**". What I meant by that email was: To my knowledge the termite inspection had not yet been done by Mr. Evans, and I certainly had not received it. **Jonathan told me that Evans had done the home**

inspection, and it was clear, i.e. there were no major issues with the condition of the house. The appraisal had been paid for and had been done. This was not a statement that I did not want a termite/wood infestation report to be done. In fact, I knew that it was required, which was confirmed to me only a few hours later.

- c. At 5:06 p.m., Linda Mattison emailed back: *"Hi Karen I called Jonathan and he said there was a termite inspection which is good because we cannot close without them. He has sent them to Steve Reynolds. He said to put them as paid POC [meaning paid outside of closing]. Thanks"* Thus, Ms. Mattison was confirming that *Jonathan had expressly told her that he had obtained the required CL-100 wood infestation report.*

As noted above, Jonathan had previously confirmed that Mr. Evans performed the home inspection report in order for the loan to close and allow me to purchase the Property.

33. The loan closing took place on May 29, 2015 at the offices of the Gillen Law Firm, P.A. Michael F. Gillen was the closing attorney chosen by Jonathan among a list of attorneys chosen by Summit. I had requested another attorney, but I was told by Jonathan that I needed to use Mr. Gillen.

34. On that date, I signed numerous documents including a Note secured by a Mortgage. I also signed a HUD-1 Settlement Statement (Exhibit 14), which included an Itemization of Amounts Financed, separately attached as Exhibit 15. The Itemization of Amount Financed again confirmed that a pest inspection and a home inspection (lines 1302 and 1305) of the form were "REQUIRED SERVICES." The HUD-1 showed final settlement charges of \$7,036.81 from the

loan itself and an additional \$988.00 in charges that were paid outside of closing (line 704 for \$500, line 604 for \$413, and line 808 for \$75) for a total of \$8,024.81.⁶

35. After the closing, my family and I began occupying the Property and there were significant issues, all of which would have been disclosed with an actual home inspection and termite inspection and which would have precluded Summit from issuing the FHA-insured mortgage loan and which would have caused me to walk away, even if it meant foregoing my \$500 earnest money. There were other houses that I was interested in and could have purchased rather than the Property.

36. On June 1, 2015, three days after the loan closing, I received another email (Exhibit 16) from the closing attorney's paralegal, Ms. Mattison, where she says, among other things: "Good afternoon Karen I have copied your loan package and you can come by the office to pick up at your convenience. Your check is ready also... ***Jonathan did not bring the inspections on Friday you asked about [i.e. the termite inspection and home inspection reports]. He is supposed to bring them today.... We will mail off the loan package this afternoon after he brings the termite and home inspection.***" It is difficult to understand why she would be telling me these things if ***Jonathan had not said he had obtained the termite and home inspection reports and that they were both clear so that the loan could close.***

⁶ The Good Faith Estimate (Exhibit 9) of one week earlier showed total estimated settlement charges of \$7,910.66. The final closing costs in the HUD-1 Settlement Statement was ***only \$114.15 more than the GFE had estimated.*** I reasonably believed that since the GFE had included estimates for the termite and home inspection that the actual closing costs also included those inspections. It would have taken a very detailed comparison by me to discover that the inspections had not been accounted for especially when I had been told ***by Jonathan*** that Mr. Evans would include the costs of those inspections in his invoice for the construction work he was going to do at the house.

37. Almost immediately after moving into the house, I and my family members noticed many substantial defects with the Property. For the next nine months, I tried to figure out what I could do to make my house livable. Among other things, the roof had holes in it and there had been leaks into the ceiling and into electrical sockets; wood around doors and windows was rotten; appliances, heating and air conditioning did not work; the garbage disposal had been taped into place under the sink; mold was prevalent; etc. It is incomprehensible to me how these and many, many other matters could have been missed by the appraiser, but they certainly would have been observed and noted in the home inspection and wood infestation reports that ***Jonathan said he had obtained.***

38. After I had discovered the many defects with the Property during the month of June 2015, I attended a meeting at the end of June 2015 at Allen Tate's offices. The purpose of the meeting was to find out how so many things could have gone wrong at the house in such a short period of time. I was upset that no home warranty had been purchased despite Jonathan's promise to do so. At that meeting, I continued to be assured by the Broker-in-Charge, Colleen Coesens, that the necessary inspections had to have taken place in order for me to buy the Property, and she assured me that she would get them. At that meeting, it was agreed that Allen Tate would pay me to belatedly obtain my own home warranty for \$409, but in exchange, they wanted a Release signed. I gave that to them a day or two after the meeting (Exhibit 17) based upon their representations that the inspection reports had been performed and would be provided to me. That would enable me to seek recovery from whoever performed the inspections for failure to detect the many material defects. ***The idea that I would have waived or released claims amounting to at least tens of thousands of dollars (if***

not over \$100,000 since the house is not in a condition to be safely be lived in or sold) for a mere \$409 is unconscionable (and probably another violation of their fiduciary duties to me). I signed the Release to address the issue of the lack of home warranty, with the understanding given me by Garvey and Coesens that the home inspection reports and wood infestation reports existed and that I had recourse against the inspector(s) whom I believed had so badly failed to report the numerous defects in the Property.

39. As it turned out, the lies, cover-up and conspiracy continued at that meeting. Again, there were *no inspection reports ever done*. Jonathan knew that and he sat silently why Coesens continually reassured me that she would get me copies of them in order to induce me to sign the General Release.⁷

40. South Carolina law cannot condone a realtor, who had a fiduciary duty to me, to escape liability by inducing me to sign a General Release based upon continued false representations and my own agent sitting there at the table remaining silent in the face of those representations. Had I been told the truth, I never would have signed the General Release.

41. Believing that home inspection and termite inspection reports had been provided, I continuously attempted to get copies so that I could pursue legal remedies against Mr. Evans, or whatever other inspectors had been retained to perform the inspections and write the reports.

42. On March 29, 2016, I received multiple emails from **Defendant Colleen Coesens**

⁷ The lies continue. One of the few things that Jonathan did say at the July 1, 2015 meeting was that he had Robert Evans repair the leak in the water pipe coming into the house, just as he had told me a few months earlier. At my deposition, however, Allen Tate's counsel showed me an invoice from "Ronnie Moore" who has unfortunately passed away, which they now claim was the actual person who performed the water leak repairs on March 11, 2015.

(Exhibit 18). Throughout that day she told me: "Ms. Baber, *I will get you a copy of the CL-100 for you....*" She then told me: "Ms. Baber, the attorney *must have the CL-100 showing it was clear in the package in order to close an FHA loan. That is mandated. Jonathan saying it was there wouldn't make any difference to the closing* one way or another." She then confirmed to me that because this was an FHA-appraisal, the appraiser would have looked at things more closely."

43. On April 18, 2016, I received an email from Coesens where she finally admitted: "Insofar as the CL-100 [wood infestation report], my apologies; however I was mistaken in that I believed that you had such an inspection completed...."⁸

44. Because I was being given conflicting information, I continued my effort to get copies of the inspections, which I continued to be told existed. For example, on May 4, 2016, Macy Smith, a "Greetings Partner" with Summit's North Carolina office (which I had been told is where my loan package with Summit had been sent), emailed me (Exhibit 19) stating: "Here is your appraisal report Mrs. Barber! [misspelling of my last name]. *The closing package had the termite report and the [house] inspection.* I can give you the number for the department in California for you to contact. We don't keep a copy of the closing package. Steve [Reynolds the loan officer] is no longer with us. I did check client files *and he spoke to Jonathan Garvey on May 25 and asked him to send in these reports. Steve [Reynolds, the loan officer] needed*

⁸ Unfortunately, I have not been able to locate a clean copy of this email because someone had hacked into one of my email accounts and at least one of my computers where this email would have resided crashed. I copied this email, however, into part of information I was providing to investigators at the South Carolina Board of Labor, Licensing and Regulation.

these before he could request the loan to be funded. You might want to check with Jonathan
and the closing attorney. Have a great day!"

45. I continued my efforts through the end of May to get documents and to seek help from others to explore ways to resolve this matter. I was unsuccessful. On May 31, 2016, I sent the letter attached as Exhibit 20, cancelling the General Release and putting the Tate Defendants on notice that I considered the General Release to have been procured through fraudulent inducement, and advising the Tate Defendants that I would be filing a complaint with the regulatory authorities.

46. South Carolina courts do not allow enforcement of releases obtained by fraud. In *Manning v. Dial*, 271 S.C. 79, 245 S.E.2d 120, 122 (1978), the defendant obtained a release of the plaintiff's ownership in the company. The court recognized that the managing officer of the company owed the plaintiff a fiduciary duty to make a full disclosure of all relevant facts and that non-disclosure is fraudulent when there is a duty to speak. The jury's verdict awarding damages to the plaintiff was upheld. In *Floyd v. New York Life Ins. Co.*, 110 S.C. 384, 96 S.E. 912, 915 (1918) the court upheld a jury verdict finding that a release is invalid if obtained through a false statement. In *Stafford v. Gareleck*, 330 Ga.App. 757, 769 S.E.2d 169, 173-174 (Ga. 2015), the court said that it was improper to dismiss the plaintiff's claims where he alleged that he was induced to sign a release by misrepresentations and omission, especially where the defendant owed him a fiduciary duty.

47. The Agent Contract recognized that Allen Tate had a fiduciary duty to me. The courts also recognize this. In *Darby v. Furman Co., Inc.*, 334 S.C. 343, 513 S.E.2d 848, 849–850 (1999), the court stated: "Real estate agents occupy a fiduciary relationship with their clients and are

under a legal obligation as well as a high moral duty to give loyal service to the principal.... The duty of an agent to make full disclosure to his principal of all material facts relevant to the agency is fundamental to the fiduciary relationship of principal and agent." In *Vacation Time of Hilton Head Island, Inc. v. Lighthouse Realty, Inc.*, 286 S.C. 261, 332 S.E.2d 781, 785 (1985) the court said: "A broker owes a duty to its principal to keep it fully and promptly informed of all material facts that come to the broker's knowledge with respect to the transaction in which the broker is engaged, affect the principal's interest, and might influence the principal's action." In *Sutton v. Driver*, 211 N.C.App. 92, 712 S.E.2d 318, 323 (2011), the court stated: "More recently, this Court held that '[it] is now well settled that a broker representing a purchaser or seller in the purchase or sale of property owes a fiduciary duty to his client based upon the agency relationship itself.'" On that same page, the court went to state that a broker owes his client a duty to exercise reasonable care, skill and diligence in the transaction and to make a full and truthful disclosure to the principal of all facts known to him, or discoverable with reasonable diligence.

48. Even as of **September 12, 2016**, Ms. Mattison sent me the email attached as Exhibit 21. Therein, she said: "I have copied your loan package and you can come by the office to pick up at your convenience. **We did not keep a copy of the termite report and the [home] inspection.** We were very busy that day and I apologize. **We could not have finalized the ... closing without those and I remember we were having to wait on Jonathan [Garvey] to bring them.** I would think he would have copies or could get them for you. Thanks"

49. Ms. Mattison, Ms. Coesens, the Gillen Law Firm and others were all correct – the CL-100 and a valid appraisal were required. In the case of *Dixon v. Ford*, 362 S.C. 614, 608 S.E.2d 879,

881 (Ct. App. 2005), the court stated: "South Carolina Code of Laws regulation 27-1085(k) **requires a current CL-100, one completed within the last thirty days, at any real estate closing.**" Further, in the case of *McAlhay v. Carter*, 415 S.C. 54, 781 S.E.2d 105, 108 (Ct. App. 2015), the court stated: "A bank **typically requires a CL-100 inspection if the purchaser is borrowing money to buy the home.**" Thus, two South Carolina appellate court cases confirm that South Carolina law requires a CL-100 Wood Infestation report and that it is usual and customary in South Carolina for lenders to require that report before closing and funding a loan. Accordingly, it was **"customary in the area [South Carolina]" and therefore; under FHA regulations, a CL-100 Wood Infestation Report was required for my FHA-insured mortgage loan.** Had that report been obtained, the prior wood rot in the house I purchased would have been discovered. I would not have closed the loan, and I would have looked for another property. Further, it would have highlighted the appraiser's faulty and false appraisal which also failed to note many defects in the house. Contrary to the Agency Contract (Exhibit 1), **Jonathan was not acting in a diligent and effective manner.** The CL-100 was **required** for my loan to purchase the Property. Jonathan repeatedly asserted that he had obtained it and that it showed that there was no evidence of wood rot or termites. All those representations were false.

50. The above-stated facts are incontrovertible. It is not surprising then that the Tate Defendants would now try to escape liability on a procedural basis since they could not do so substantively. They contend that they sent me Requests for Admissions on August 8, 2018. During almost all of August, I was at home recovering from emergency back surgery. Either I received the mail daily or my daughter would have set my mail aside for me. I **never** received

the First Discovery Requests which included the Requests for Admissions.⁹ The first time that I saw them was when I received a copy that accompanied a letter from the Tate Defendants' counsel, dated October 25, 2018, a copy of which is attached as Exhibit 22. I received that letter on October 31, 2018. On November 2, 2018, I responded to counsel's letter with my own, a copy of which is attached as Exhibit 23. Therein, I advised the Tate Defendants' counsel that I had never received the Requests for Admissions or the other discovery and told him that given the health issues I was facing, I would try to respond within the 33 days allowed me under the Rules of Procedure (including the additional three days for mailing).

51. I did in fact respond to the Requests for Admissions on the 33rd day - November 27, 2018; and emailed my responses to all opposing counsel as shown in Exhibit 24. Under these circumstances, I should not be penalized and be deemed to have admitted their clearly false requests for admissions.

52. Based on the foregoing, I am hereby formally applying to the Court to be relieved of any admission made as a result of a failure to respond to them within 30 days of the time that Allen Tate's lawyers claim they sent Defendant Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert Ouzts and Connie Delaney's First Set of Requests for Admission to Plaintiff ("Requests") on August 8, 2018.

⁹ From some reason, my receipt of mailings in this case has been a significant problem. While I have received a number of mailings, many of them have been delayed by over a week. In fact, just recently I received notice of a proposed hearing *after* the date of the hearing itself. Fortunately, that hearing had been cancelled. It is because of this that I have expressly asked and authorized opposing counsel to send me copies of all their filings via email, but they have refused putting me at a significant disadvantage since they all have access to and sharing of documents via electronic filings. I am asking the Court to order the Defendants to serve me with copies of all documents via email.

53. Under these circumstances, any admissions I made by an initial failure to respond to the Requests which I never received should be withdrawn. In *Collins Entertainment, Inc. v. White*, 363 S.C. 546, 611 S.E.2d 262, 268 (Ct. App. 2005), the court stated: "There would be reasons to hold that an express admission, later withdrawn, should be treated in the same fashion as a pleading, *but that if the court has permitted an admission through failure to make timely response to be withdrawn, the admission should pass out of the case entirely.*" Wright & Miller, *Federal Practice and Procedure: Civil* § 2264 at 579 (1994) (footnotes omitted) (emphasis added). We find where an admission is made solely by the failure to make a timely response, such admission being later withdrawn, the party is not allowed to publish the admission to the jury." Also, in *Commerce Center of Greenville, Inc. v. W. Powers McElveen & Associates, Inc.*, 347 S.C. 545, 556 S.E.2d 718, 724 (Ct. App. 2001) the court said: "The trial court may allow a party to amend or withdraw its answers to a request to admit when: (1) the presentation of the merits is furthered by the amendment; and (2) the party who obtained the admission cannot demonstrate prejudice because of the amendment." Obviously, my being able to present my side of the case rather than being silenced by a failure to respond to the Requests which I had yet not received will further the presentation of the merits, and the Tate Defendants cannot say that they were prejudiced. They brought their motion for summary judgment after receiving my responses to the Requests, they took my deposition where I provided live testimony admitting that I had signed the documents which they had attached to the Requests, but denying things which they now seek to have deemed admitted.¹⁰ Thus, if they have incurred additional

¹⁰ I have not yet been presented with the transcript of the deposition by the court reporter, so the deposition itself is still unsigned and inadmissible and changes will be made. For example, there are many spelling errors in the copy of the transcript that was attached to the Tate Defendants' motion.

expenses, it was their own choice knowing full well that I had formally disputed and denied their requests for admissions.

54. I believe that the foregoing testimony and attached exhibits conclusively show that the Tate Defendants are liable to me for fraud, civil conspiracy, negligent misrepresentation, and professional negligence/malpractice; and that I am entitled to declaratory relief that the General Release is invalid because it was obtained by fraud, all as alleged and requested in the Verified Complaint. I believe that the foregoing shows that there are issues of material fact precluding summary judgment and that the Tate Defendants are not entitled to judgment as a matter of law, especially with respect to the enforceability of the General Release which was procured by fraud. Nevertheless, if not presently sufficient, pursuant to Rule 56(f), I hereby request an extension of time to supplement the record based upon the extensive discovery requests that are currently outstanding as to which all the defendants requested additional time to respond. My discovery requests to the Tate Defendants are attached as Exhibit 25. They request admissions, information, and documents regarding (a) nearly all of the factual allegations set forth in this Affidavit, and (b) any denial in their answers to the Verified Complaint. The Tate Defendants essentially denied each and every allegation in the First, Second, Third, Fourth, Eighth, and Eleventh Causes of Action asserted against them, and I am entitled to know the factual basis for those denials. I am entitled to obtain discovery on all those matters, including the circumstances of the signing of the General Release.

55. Finally, in the event that I have failed to address any issue raised in the Tate Defendants' Motion, I hereby request an additional amount of time since I received a copy of the

memorandum in support of their motion only Thursday, March 28, 2019; which has not given me sufficient time to respond which has not given me sufficient to time to fully respond.

56. For these and other reasons presented herein, the Tate Defendants' motion for summary judgment must be denied.

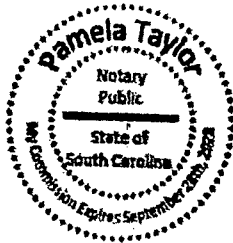
DATED this 1st day of April, 2019.

Karen K. Baber

Karen K. Baber
255 Rolling Ridge
Rock Hill, SC 29730
843-240-0083
Email: klkb1951@gmail.com
Plaintiff, Pro Se

SWORN to and Subscribed before me this 1st day of April, 2019.

Pamela Taylor
Notary Public of South Carolina



CERTIFICATE OF SERVICE

I hereby certify that a true and complete conformed copy of the foregoing document was emailed on March 30, 2019 and fully executed and notarized copy of the foregoing document was mailed via first-class mail, postage prepaid to the following on the date set forth below:

Thomas L. Ogburn, III
POYNER SPRUILL LLP
301 South College Street, Suite 2300
Charlotte, North Carolina 29202
togurn@poynerspruill.com

Attorney for Defendants Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert Ouzts, and Connie Delaney

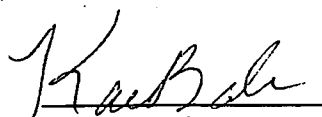
Russell M Racine
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2907 Providence Road, Suite 200
Charlotte, North Carolina 28211
rracine@cshlaw.com

Attorney for Defendants Appraisal Innovations, LLC and Brian L. Blue

Susan E. Driscoll
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Attorney for Defendant Summit Funding, Inc.

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115 Cargill Way, Suite B
Hartsville, SC 29550
MSD@swblaw.com
Attorneys for the Gillen Law Firm
and Michael F. Gillen

DATED this 1st day of April, 2019



Karen K. Baber, Pro Se

FILED-RECEIVED

2019 APR - 1 PM 12:17

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

EXHIBIT 1



STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION
DISCLOSURE STATEMENT



The South Carolina Code of Laws (Title 27, Chapter 50, Article 1) requires that an owner of residential real property (single family dwelling unit or a single transaction involving transfer of four dwelling units or less) shall provide to a purchaser this completed and signed disclosure statement prior to forming a real estate contract. This disclosure must be provided in connection with any sale, exchange, installment land sale, and lease with an option to purchase contract. This disclosure statement is not required in connection with transactions listed and exempted by South Carolina Code Section § 27-50-30.

Owners should answer the questions fully, honestly, and appropriately by attaching documents, checking a box for each check box question, and writing in the blanks on this disclosure statement.

If a question is answered "yes" or asks for a description, then owner must explain or describe the issue or attach a descriptive report from an engineer, contractor, pest control operator, expert, or public agency. If owner attaches a report, owner shall not be liable for inaccurate or incomplete information in the report unless owner was grossly negligent in obtaining or transmitting the information. If owner fails to check "yes" or make a disclosure and owner knows there is a problem, owner may be liable for making an intentional or negligent misrepresentation and may owe the purchaser actual damages, court costs, and attorney fees. If a question is answered "no" for any question, the owner is stating that owner has no actual knowledge of any problem.

If a question is answered "no representation" for any question, owner is stating that owner is making no representation regarding the conditions or characteristics of the property, but owner still may have a duty to disclose information that is known or should have been known.

If a question is answered and subsequently new information is obtained or something changes to render the owner's answer incorrect, inaccurate, or misleading (example: roof begins to leak), owner must promptly correct the disclosure. In some situations, the owner may notify the purchaser of the correction. In some situations, the owner may correct or repair the issue.

If owner is assisted in the sale of property by a real estate licensee, owner remains solely responsible for completing and delivering this disclosure statement to the purchaser. The real estate licensee must disclose material facts about the property if the real estate licensee knows or reasonably should have known about the issue, regardless of owner responses on this disclosure. Owner is solely responsible to complete this disclosure as truthfully and fully as possible. Owner and purchasers are solely responsible to consult with their attorneys regarding any disclosure issues. By signing below, owners acknowledge their duties and that failure to disclose known material information about the property may result in owner liability.

Owner must provide the completed disclosure statement to the purchaser prior to the time the owner and purchaser sign a real estate contract unless the real estate contract states otherwise. Owner should provide a signed copy to the purchaser and keep a copy signed by the purchaser.

A real estate contract, not this disclosure, controls what property transfers from owner to purchaser.

Property Address (Including unit # or identifier) 255 Rolling Ridge Rd.

Rock Hill

SC

29730

Owner: LLR () Purchaser () () acknowledge receipt of a copy of this page which is page 1 of 5.

REV: 7/2013

Apply this question below and the three answer choices to the numbered Issues (1-14) on this disclosure.
 As owner, do you have any actual knowledge of any problem(s)* concerning?
 *Problem Includes present defects, malfunctions, damages, conditions, or characteristics.

I. WATER SUPPLY AND SANITARY SEWAGE DISPOSAL SYSTEM

	Yes	No	No Representation
1. Water supply	☒	☐	☐
2. Water quality	☒	☐	☐
3. Water pressure	☒	☐	☐
4. Sanitary sewage disposal system for any waste water	☒	☐	☐

A. Describe water supply ☐ County ☒ City ☐ Private ☐ Corporate ☐ Community ☐ Well ☐ Other _____

B. Describe water disposal ☐ Septic ☒ Sewer ☐ Private ☐ Corporate ☐ Government ☐ Other _____

C. Describe water pipes ☐ PEX ☐ Copper ☒ PVC/CPVC ☐ Polybutylene ☐ Steel ☐ Other/Unknown _____

II. ROOF, CHIMNEYS, FLOORS, FOUNDATION, BASEMENT, AND OTHER STRUCTURAL COMPONENTS AND MODIFICATIONS OF THESE STRUCTURAL COMPONENTS

	Yes	No	No Representation
5. Roof system	☒	☐	☐
6. Gutter system	☒	☐	☐
7. Foundation, slab, fireplaces, chimneys, wood stoves, floors, basement, windows, driveway, storm windows/screens, doors, ceilings, interior walls, exterior walls, sheds, attached garage, carport, patio, deck, walkways, fencing, or other structural components including modifications	☐	☐	☐

A. Approximate year that current roof covering was installed or modified: _____ Approximate year structure was built: 1995

B. During your ownership, describe any known roof system leaks and repairs: Laundry room - leak was near pipe that opens on roof

III. PLUMBING, ELECTRICAL, HEATING, COOLING, AND OTHER MECHANICAL SYSTEMS

	Yes	No	No Representation
8. Plumbing system (pipes, fixtures, water heater, disposal, softener, plumbing components)	☒	☐	☐
9. Electrical system (wiring, panel, fixtures, A/V wiring, outlets, switches, electrical components)	☒	☐	☐
10. Appliances (range, stove, ovens, dishwasher, refrigerator, washer, dryer, other appliances)	☒	☐	☐
11. Built-in systems and fixtures (fans, irrigation, pool, security, lighting, A/V, other)	☒	☐	☐
12. Mechanical systems (pumps, garage door opener, filtration, energy equipment, safety, other)	☐	☒	☐
13. Heating system(s) (HVAC components)	☒	☐	☐
14. Cooling system(s) (HVAC components)	☒	☐	☐

Owner: (MRR) () Purchaser () () acknowledge receipt of a copy of this page which is page 2 of 5.

- A. Describe Cooling System: ☒ Central ☐ Ductless ☐ Heat Pump ☐ Window ☐ Other _____
- B. Describe Heating System: ☒ Central ☐ Ductless ☐ Heat Pump ☐ Furnace ☐ Other _____
- C. Describe HVAC Power: ☐ Oil ☒ Gas ☒ Electric ☐ Solar ☐ Other _____
- D. Describe HVAC system approximate age and any other HVAC system(s):
1 A/C bought New in 2007

IV. PRESENT OR PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS OR DRY ROT OR FUNGUS. THE DAMAGE FROM WHICH HAS NOT BEEN REPAIRED

A. Describe any known present wood problems caused by termites, insects, wood destroying organisms, dry rot or fungus:

B. Describe any termite/pest treatment, coverage to property, name of provider, and termite bond (if any):

C. Describe any known present pest infestations:

V. THE ZONING LAWS, RESTRICTIVE COVENANTS, BUILDING CODES, AND OTHER LAND USE RESTRICTIONS AFFECTING THE REAL PROPERTY, ANY ENCROACHMENTS OF THE REAL PROPERTY FROM OR TO ADJACENT REAL PROPERTY, AND NOTICE FROM A GOVERNMENTAL AGENCY AFFECTING THIS REAL PROPERTY

Apply this question below and the three answer choices to the numbered issues (15-23) on this disclosure.
 As owner, do you have any actual knowledge or notice concerning the following:

	Yes	No	No Representation
15. Violations or variances of the following: zoning laws, restrictive covenants, building codes, permits or other land use restrictions affecting the real property	☐	☒	☐
16. Easements (access, conservation, utility, other), party walls, shared private driveway, private roads, released mineral rights, or encroachments from or to adjacent real property	☐	☒	☐
17. Legal actions, claims, foreclosures, bankruptcies, tenancies, judgments, tax liens, other liens, insurance issues, or governmental actions that could affect title to the property	☐	☒	☐
18. Room additions or structural changes to the property during your ownership	☐	☒	☐
19. Problems caused by fire, smoke, or water to the property during your ownership	☒	☐	☐
20. Drainage, soil stability, atmosphere, or underground problems affecting the property	☐	☒	☐
21. Erosion or erosion control affecting the property	☐	☒	☐
22. Flood hazards, wetlands, or flood hazard designations affecting the property	☐	☒	☐
23. Flood insurance covering the property	☐	☐	☐

A. Describe any green energy, recycling, sustainability or disability features for the property:

B. Describe any Department of Motor Vehicles titled manufactured housing on the property:

Owner: (SRA) () Purchaser () () acknowledge receipt of a copy of this page which is page 3 of 5.

VI. BURIED, UNBURIED, OR COVERED PRESENCE OF THE FOLLOWING: LEAD BASED PAINT, LEAD HAZARDS, ASBESTOS, RADON GAS, METHANE GAS, STORAGE TANKS, HAZARDOUS MATERIALS, TOXIC MATERIALS, OR ENVIRONMENTAL CONTAMINATION

A. Describe any known property environmental contamination problems from construction, repair, cleaning, furnishing, intrusion, operating, toxic mold, methamphetamine production, lead based paint, lead hazards, asbestos, radon gas, methane gas, formaldehyde, corrosion-causing sheetrock, storage tanks, hazardous materials, toxic materials, environmental contamination, or other: _____

VII. EXISTENCE OF A RENTAL, RENTAL MANAGEMENT, VACATION RENTAL, OR OTHER LEASE CONTRACT ANTICIPATED TO BE IN PLACE ON THE PROPERTY AT THE TIME OF CLOSING

A. Describe the lease terms and any leasing problems, if any: _____

B. State the name and contact information for any property management company involved (if any): _____

C. Describe known outstanding charges owed by tenant for gas, electric, water, sewer, and garbage: _____

VIII. THE EXISTENCE OF A METER CONSERVATION CHARGE, AS PERMITTED BY SECTION 58-37-50 THAT APPLIES TO ELECTRICITY OR NATURAL GAS SERVICE TO THE PROPERTY

A. Describe any utility company financed or leased property on the real property: _____

B. Describe known delinquent charges for real property's gas, electric, water, sewer, and garbage: _____

IX. PLEASE USE THE SPACE BELOW FOR "YES" ANSWER EXPLANATIONS AND ATTACH ANY ADDITIONAL SHEETS OR RELEVANT DOCUMENTS AS NEEDED *Bathroom floor broke. Replaced flooring on 1st level except family room.*

Owner: (AKR) () Purchaser () () acknowledge receipt of a copy of this page which is page 4 of 5.

This disclosure does not limit the obligation of the purchaser to inspect the property and improvements which are the subject of the real estate contract. Purchaser is solely responsible for conducting their own off site conditions and psychologically affected property inspections prior to entering into a real estate contract. The real estate licensees (acting as listing or selling agents, or other) have no duty to inspect the on site or off site conditions of the property and improvements. Purchasers should review all applicable documents (covenants, conditions, restrictions, bylaws, deeds, and similar documents) prior to entering into any legal agreements including any contract. The South Carolina Code of Laws describes the Residential Property Condition Disclosure Statement requirements and exemptions at § 27-50-10 (and following) which can be read online (www.southcarolinahouse.gov or other websites).

Current status of property or factors which may affect the closing:

☐ Owner occupied ☒ Short sale ☐ Bankruptcy ☐ Vacant (How long vacant?) _____
☐ Leased ☐ Foreclosure ☐ Estate ☐ Other: _____

A Residential Property Condition Disclosure Statement Addendum ☐ is ☐ is not completed and attached. This addendum should be attached if the property is subject to covenants, conditions, restrictions, bylaws, rules, or is a condominium.

Owner acknowledges having read, completed, and received a copy of this Residential Property Condition Disclosure Statement before signing and that all information is true and correct as of the date signed.

Owner Signature: Gloria Long - Robinson Date: 3/20/14 Time: 9:00 AM

Owner Printed Name: Gloria Long - Robinson

Owner Signature: _____ Date: _____ Time: _____

Owner Printed Name: _____

Purchaser acknowledges prior to signing this disclosure:

- Receipt of a copy of this disclosure
- Purchaser has examined disclosure
- Purchaser had time and opportunity for legal counsel
- This disclosure is not a warranty by the real estate licensees
- This disclosure is not a substitute for obtaining inspections of on site and off site conditions
- This disclosure is not a warranty by the owner
- Representations are made by the owner and not by the owner's agents or subagents
- Purchasers have sole responsibility for obtaining inspection reports from licensed home inspectors, surveyors, engineers, or other qualified professionals

Purchaser Signature: _____ Date: _____ Time: _____

Purchaser Printed Name: _____

Purchaser Signature: _____ Date: _____ Time: _____

Purchaser Printed Name: _____



STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION
DISCLOSURE STATEMENT ADDENDUM



Prior to signing contract, owner shall provide this disclosure addendum to the purchaser if the property is subject to a homeowners association, a property owners association, a condominium owners association, a horizontal property regime, or similar organizations subject to covenants, conditions, restrictions, bylaws or rules (CCRB). These organizations are referred to herein as an owners association.

Purchasers should review the applicable documents (covenants, conditions, restrictions, bylaws, deeds, condominium master deed, and similar documents), all related association issues, and investigate the owners association prior to entering into any legal agreements including a contract. Owners association charges include any dues, fees, assessments, reserve charges, or any similar charges. Purchasers are solely responsible to determine what items are covered by the owners association charges.

Property Address: 255 Rolling Ridge Rd. Rock Hill SC 29730
Describe owners association charges: \$ 25.00 Per Year (month/year/other)
What is the contact information for the owners association? Country Club Estates

As owner do you have any actual knowledge of answers to the following questions?
Please check the appropriate box to answer the questions below.

	Yes	No	No Representation
1. Are there owners association charges or common area expenses?	☐	☒	☐
2. Are there any owners association or CCRBR resale or rental restrictions?	☐	☒	☐
3. Has the owners association levied any special assessments or similar charges?	☐	☒	☐
4. Do the CCRBR or condominium master deed create guest or visitor restrictions?	☐	☒	☐
5. Do the CCRBR or condominium master deed create animal restrictions?	☐	☒	☐
6. Does the property include assigned parking spaces, lockers, garages or carports?	☐	☒	☐
7. Are keys, key fobs or access codes required to access common or recreational areas?	☐	☒	☐
8. Will any membership other than owner association transfer with the properties?	☐	☒	☐
9. Are there any known common area problems?	☐	☒	☐
10. Is property or common area structures subject to South Carolina Coastal Zone Management Act?	☐	☒	☐
11. Is there a transfer fee levied to transfer the property?*	☐	☒	☐

(* Question does not include recording costs related to value or deed stamps.)

Explain any yes answers in the space below and attach any additional sheets or relevant documents as needed: _____

Owner signature: Alana Long - Robinson Date: 3/28/14 Time: 9:00 AM

Owner signature: _____ Date: _____ Time: _____

Purchaser signature: _____ Date: _____ Time: _____

Purchaser signature: _____ Date: _____ Time: _____



DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS ADDENDUM FOR AGREEMENT TO BUY AND SELL REAL ESTATE

Property Address: 255 Rolling Ridge Rd.

Rock Hill

SC

29730

Lead Warning Statement

Every buyer of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure (Initial)

 (a) Presence of lead-based paint and/or lead-based paint hazards (check one below):

☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

☒ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

BRE (b) Records and reports available to the seller (check one below):

☐ Seller has provided the buyer with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

☒ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Buyer's Acknowledgment (Initial)

 (c) Buyer has received copies of all information listed above.

 (d) Buyer has received the pamphlet Protect Your Family from Lead in Your Home.

 (e) Buyer has (check one below):

☐ Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

☐ Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgment (Initial)

CAO (f) Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

Elaine Long-Robinson 3/28/14 Date Seller _____ Date

Connie Delaney 3/28/14 Date Agent _____ Date

Date Buyer _____ Date

EXHIBIT 2

I will check with Steve and see if they will allow or escrow for this type of loan. Some of the loan programs killed escrows for repair and wont close with one in place. I am showing right now ut can come open it once i am done with this client. j

On Sat, Jan 10, 2015 at 1:14 PM, Karen Baber <babar.karen@yahoo.com> wrote:
would like to take some measurements and check some things.

make offer of \$145000 with
up to \$10000 in repairs and improvements to include:..... deck, etc..... to be made the week before closing with the closing attorney to to pay/reimburse
repairs - buyer to use contractors etc who they feel comfortable with and will provide that ahead of time to seller for bank approval

(front of house siding to be repaired/replaced and owner windows in den and dr)

carpet to be replaced in upstairs to match the carpet which has been replaced on stairs

new countertops in kitchen

replace stove and purchase refrigerator

repair deck to meet HUD required safety requirements

paint inside of house

loan approval

closing on or before March 31, 2015

inspection:
normal for closing

seller to pay closing cost

buyer to purchase home warranty policy??

probably didn't write this up right.... just thinking outloud

can we go this afternoon or anytime tomorrow?

On Saturday, January 10, 2015 12:54 PM, Jonathan Garvey <jonathan.garvey@allentate.com> wrote:

Karen, Here are the disclosures or Rolling Ridge. This may clear up alot of the questions. Also, the property had an offer on it for 140 that was rejected by the bank, 4-6 weeks ago as per the list agent. We can try that again and see if they would change their mind. Jonathan

On Fri, Jan 9, 2015 at 8:09 PM, Karen Baber <babar.karen@yahoo.com> wrote:
can I get back in house tomorrow.... want to take some measurements and check some things.

Can you ask the agent some things?

how old is air conditioning unit, water heater, and gas pack, noticed rust on one of units - also dishwasher -

do you have a tape measure - want to measure the front of the house and the deck

the carpet going up the stairs is new... can we find out name of the carpet etc.... (jacky's dad used to have a carpet business - Jacky knows how to put down carpet

crystal wants me to check some things upstairs about the bathrooms and take measurements of some things

also need to measure countertops in kitchen

is it possible to get a home warranty (think that is what it is called) and what would that cover and for how long

thanks

crystal really likes the house - she never saw herself getting a divorce so she is having a hard time with all the changes....

thanks

----- Forwarded message -----
From: "The UPS Store# 4411" <store4411@gmail.com>
Date: Sep 28, 2017 3:46 PM
Subject: Fwd: Fw: Re:
To: "karen baber" <klkb1951@gmail.com>
Cc:

----- Forwarded message -----
From: karen baber <klkb1951@gmail.com>
Date: Tue, Sep 26, 2017 at 10:39 PM
Subject: Fwd: Fw: Re:
To: UPS Store Charlotte Ave <store4411@gmail.com>

----- Forwarded Message -----

From: Karen Baber <baberkaren@yahoo.com>
To: "jonathan.garvey@allentate.com" <jonathan.garvey@allentate.com>
Sent: Saturday, January 10, 2015, 9:17:25 PM EST
Subject: Re:

FYI

when you are talking to your guy i want to ask for a stove (and it will have to have a fan so lady at store recommended a microwave with a fan since the place to put one is already there). the stove and microwave is about 1300 (they don't have used ones that will fit in that space.... and i found a refrigerator for 699. Maybe I could pay for those and that would be part of my 3 percent down... i have serious doubts about the dishwasher

need to have for the ceiling to be fixed - shingles replaced and check for leaks - and rotten wood around doors

would ask them to pay closing cost and to replace countertops since stove will be moved

think they will probably have to fix deck for insurance policy and put up rails but i talked to my son in law and he and his dad will come do that so maybe what we pay them could go toward our 3% too. Shouldn't matter to their bank since it would come out of their pocket one way or the other

insurance - we use State Farm - Rhett

will be curious about siding and what they require since front has so much damage and back has some but sides not as much - and i guess things have changed - windows which won't open close, etc

anyway, we'll figure it out

going to give you \$500

and already another \$1200 being sent and another \$500

if we could work in the stove, etc from above that would be our 3% or more

just let me know what we need to go -last time i owned a house was in manilla inlet in 2006. i saw where that new loan you told me about was that you couldn't have owned a house in last 3 years.... well i got that covered

On Saturday, January 10, 2015 5:25 PM, Karen Baber <baber.karen@yahoo.com> wrote:

thank you for all you are doing.... sure hope we can make this work

let's not forget about fixing ceiling in bedroom where there was a leak and make sure the leak has been fixed

have a good weekend

i'm available all day tomorrow and monday

On Saturday, January 10, 2015 2:33 PM, Jonathan Garvey <jonathan.garvey@allentate.com> wrote:

Your lender. I think we could pull that off. We also will have to deal with the short sale bank too. I'm ready to go over there if your available

On Saturday, January 10, 2015, Karen Baber <haber.karen@yahoo.com> wrote:

ok - let me know

wasn't talking about escrowing - these repairs would be paid at closing - and would already be done -

who is bank?

On Saturday, January 10, 2015 1:19 PM, Jonathan Garvey <jonathan.garvey@allentate.com> wrote:

I will check with Steve and see if they will allow or escrow for this type of loan. Some of the loan programs killed escrows for repair and wont close with one in place. I am showing right now ut can come open it once i am done with this client. Disclosures show those things that will get checked if still a problem. j

On Sat, Jan 10, 2015 at 1:14 PM, Karen Baber <haber.karen@yahoo.com> wrote:

would like to take some measurements and check some things

I don't know what the disclosures mean -

make offer of \$145000 with

up to \$10000 in repairs and improvements by me to include:..... deck, etc..... to be made the week before closing with the closing attorney to to pay/reimburse repairs - buyer to use contractors etc who they feel comfortable with and will provide that ahead of time to seller for bank approval and seller pay anything more than \$10000.

(front of house siding to be repaired/replaced and owner windows in den and dr)

carpet to be replaced in upstairs to match the carpet which has been replaced on stairs

new countertops in kitchen

replace stove and purchase refrigerator

repair deck to meet HUD required safety requirements

paint inside of house

loan approval

closing on or before March 31, 2015

inspection:

normal for closing

seller to pay closing cost

buyer to purchase home warranty policy??

probably didn't write this up right.... just thinking out loud

can we go this afternoon or anytime tomorrow?

From: Karen Baber <baberkaren@yahoo.com>
Sent: Sunday, January 11, 2015 9:19 AM
To: Jonathan Garvey
Subject: windows

aren't going to change size of windows - but need to probably replace with energy efficient windows - having to put insulation on windows is tacky.....
changing windows would be less expensive than putting up new siding

think sellers will have to fix siding, patch and we can power wash

what do you think?

sooooooooooooo we are seeing less that we need sellers to do

appliances (and installation) fix siding, leaks, maybe paint, appliances basic stuff and deck will have to be repaired and rails as required by insurance
company..... roof shingles, etc.

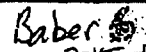
really think this would be perfect house for us

Would want to close around middle of March if possible (i know you said short sales take longer) and give time and give time to get bathrooms, etc. done before
we would move last week in March

i know that is pretty quick so might not be possible

also, might take me longer to get all the money in for downpayment.

EXHIBIT

Baber  KC

001066

EXHIBIT 3



EXCLUSIVE RIGHT TO BUY BUYER AGENCY CONTRACT

EXHIBIT

Broker 4 2-15

1. APPOINTMENT OF BROKER: By this contract Karen Barber ("Buyer") appoints Broker in Charge of Allen Tate Co., Inc. Company ("Broker") as Buyer's exclusive agent, subject to the terms and conditions stated in this Contract. By appointing Broker as Buyer's exclusive agent, Buyer agrees to conduct all negotiations for the types of property described in Section 2 below through Broker, and refer to Broker all inquiries made to Buyer about such properties from other brokers, salespersons, sellers and others during the term of this contract. "Negotiation" as used in this agreement shall mean property shown, negotiated, or information requested by Buyer through Broker.

2. PURPOSE OF AGENCY: Buyer desires to purchase or lease real property (which may include items of personal property) described as follows:

Type: ☒ Residential ☐ Commercial ☐ Industrial ☐ Vacant Land ☐ Other

General Description: Single Family

Approximate Price Range: \$ 250K

General Location: Indian

Preferred Terms: _____

Other: _____

3. BROKER'S DUTIES: (a) The Broker shall provide to Buyer a meaningful explanation of agency and shall use Broker's professional real estate knowledge and skills to represent the Buyer in a diligent and effective manner and to locate property which is available for purchase or lease and suitable to the Buyer; (b) If the Broker is not representing the seller, the Broker shall represent solely the interest of the Buyer in all negotiations and transactions regarding the acquisition of real property, and repudiate any agency or subagency relationship with the seller or the company representing the seller and shall not claim the subagency compensation offered to the selling broker in the Multiple Listing Service; (c) if the Broker represents the seller as well as the Buyer (i.e., disclosed dual agency), the Broker shall not disclose to the Buyer information obtained within the confidentiality and trust of the fiduciary relationship with the seller, nor disclose to the seller information similarly obtained from the Buyer, without the consent of the party adversely affected by the disclosure; (d) the Broker may represent other buyers who may be interested in the same property as the Buyer. Upon the termination or completion of this agreement, Broker shall keep confidential all information received during the course of this agreement which was made confidential by written request or instructions from the client, except as provided for under South Carolina law.

Broker represents that Broker is duly licensed under the laws of the State of South Carolina as a real estate broker. Broker will use his best efforts as Buyer's agent to locate property of the type described in Section 2 of this contract and to negotiate acceptance of any offer by Buyer to purchase or lease such property. During the term of this Contract, Broker will give Buyer information describing and identifying properties that appear to Broker to substantially meet the conditions set forth in Section 2.

4. BUYER'S DUTIES. BUYER AGREES TO:

(A) Work exclusively with Broker and its Affiliated licensees during the term of this agreement by: (1) viewing any property (previewing, etc.) only with Broker or Broker's designated representative and not with another real estate broker, salesperson or seller; and (2) exclusively allowing Broker or Salesperson to identify property, negotiate for Buyer and otherwise to represent Buyer; and (3) referring to Broker all inquiries received in any form from any other real estate broker or affiliated licensees; and (4) holding Broker harmless from liability as a result of incomplete/inaccurate information provided to Broker by Buyer or Seller; (5) holding Broker harmless from liability as a result of Seller's failure to provide a complete Seller's Property Condition Disclosure statement; and (6) indemnifying Broker against all claims, damages, losses, expenses, or liability arising from the handling of earnest money by anyone other than Broker.

(B) Assist Broker and its Affiliated Licensees in the process of identifying, negotiating and contracting to purchase, lease or otherwise acquire by: (1) providing Broker with reliable information (including financial information and written authorization to obtain verification of funds) that Broker deems necessary for the performance of this Agreement; and (2) making himself available to meet with Broker and to see properties, in order that the Broker will be able to perform the promises of the Brokerage Engagement.

(C) Provide Broker and its Affiliated Licensees the following information: (1) general nature, location, and requirements of desired property; and (2) price range, and other terms and conditions relating to desired property.

(D) To authorize Buyer's attorneys and the settlement agent to furnish to Broker copies of the final HUD-1 settlement statement for the transaction prior to the closing date.

5. COMPENSATION OF BROKER: Brokers fees will be deemed earned when Buyer is under contract to purchase any property presented by Broker or negotiated by Buyer. This fee will be due and payable at closing or upon Buyer's default. If Buyer defaults, the total compensation that would have been due Broker will be due and payable immediately in cash from the Buyer. In consideration of the services performed by Broker under the terms of this Contract, Buyer agrees to pay Broker the following fee(s): (CHECK ALL APPLICABLE SECTIONS)

☐ a. Retainer Fee: Buyer will pay Broker a nonrefundable retainer fee of \$ _____ due and payable upon the signing of this contract. This fee ☐ shall or ☐ shall not be credited against the Brokerage fee.

☐ b. Service Fee: Buyer shall pay Broker a Service Fee of \$ _____ to be paid on _____, 20____, whether or not Buyer purchases any property. (Check applicable sub-section.)

☐ This Service Fee shall be the only fee due Broker from Buyer under the terms of this Contract.

☐ This Service Fee shall be credited against the Brokerage Fee described in subsection (c) below and shall be kept by Broker whether or not a Brokerage Fee is earned.

☐ This Service Fee shall be credited against the Brokerage Fee described in subsection (c) below and shall be kept by Broker whether or not a Brokerage Fee is earned, unless Buyer enters in to a purchase and sale agreement. In the event that Buyer enters into a purchase and sale agreement, Buyer and Broker agree that the above Service Fee will be credited against the Brokerage Fee as defined below.

☐ c. Brokerage Fee: Buyer shall pay Broker a Brokerage Fee which is the greater of \$ _____ or _____ % of the purchase or total lease price (renewal, if applicable) of any property purchased or leased by Buyer, including "For Sale by Owner" properties. If within _____ days after the expiration of this Contract Buyer purchases or leases any property which Broker has negotiated during the term of this Contract, Buyer will pay Broker the Brokerage Fee stated above. Broker shall use his best efforts to obtain payment of the Brokerage Fee out of the transaction, but Buyer shall have the obligation to pay Broker the Brokerage Fee set forth in this Contract if Broker cannot obtain payment of such fee out of the transaction. Any fees paid by the seller or seller's agent shall be credited against the Brokerage fee.

☒ d. Brokerage Fee: Broker shall obtain payment of the Brokerage Fee out of the transaction. Broker shall be paid by the cooperating broker as stated in the Multiple Listing Service or as agreed to by the Broker and cooperating broker, or as agreed to by the Broker and Seller in a "For Sale By Owner" transaction. Buyer shall not be responsible for paying Broker the Brokerage fee.

ATCSC#50
Std Form #130



BUYER ☒ BUYER ☐ BROKER HAVE READ THIS PAGE



001068

RECEIVED - 2019 Mar 05 3:01 PM - YORK - COMMON PLEAS - CASE#2018CP4601592

6. **TERM OF AGENCY:** Broker's authority to act as Buyer's exclusive agent under the terms of this Contract shall begin on 11-1, 2018 and shall end at 11:59p.m. on 4-1, 2018.

7. **CONSENT TO DISCLOSED DUAL AGENCY/DESIGNATED AGENCY: (INITIAL APPLICABLE CHOICES)**

Buyer acknowledges receiving an explanation of the types of agency relationships that are offered by brokerage and an Agency Disclosure Form at the first practical opportunity at which substantive contact occurred between the Broker and Buyer.

Buyer acknowledges that after entering into this written agency contract, agent might request a modification in order to act as a dual agent or a designated agent in a specific transaction. If asked:

☐ Permission to act as a dual agent will not be considered.

☒ Permission to act as a dual agent may be considered at the time I am provided with information about the other party to a transaction. If Buyer agrees, Buyer will execute a separate written Dual Agency Agreement.

☐ Permission to act as a designated agent will not be considered.

☒ Permission to act as a designated agent may be considered at the time I am provided with information about the other party to a transaction. If Buyer agrees, Buyer will execute a separate written Designated Agency Agreement.

8. **OTHER POTENTIAL BUYERS:** Buyer understands that other potential buyers have entered into similar agency contracts with Broker which may involve the purchase or lease, through Broker of the same or similar property or properties as Buyer is attempting to purchase or lease. Buyer consents to Broker's representation of such other buyers.

9. **INDEMNIFICATION OF BROKER:** Buyer promises to disclose to Broker whether Buyer has signed any agency agreement with any other Broker, or has been given prior information about any property that is the subject of this Contract by any other Broker or salesperson, or has previously been shown any such property by any other broker or salesperson. If Buyer fails to tell Broker about such other broker's or salesperson's involvement, and Broker incurs any loss or damage as a result of any claim being brought against him on account of such involvement, due to no fault of Broker, then Buyer shall pay Broker all such losses and damages incurred by Broker because of such claim.

10. **DISCLOSURE OF BUYER'S IDENTITY/CONFIDENTIALITY:** The Broker ☒ does or ☐ does not have the Buyer's permission to disclose Buyer's identity to all property owners and other third parties. The Buyer is advised of the possibility that seller or seller's agent may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by confidentiality agreement of the parties.

11. **NONDISCRIMINATION:** Broker and Buyer agree that all actions carried out under this contract shall be in full compliance with local, state, and federal fair housing laws against discrimination on the basis of race, creed, color, religion, national origin, sex, familial status, marital status, age or disabilities.

12. **PROFESSIONAL COUNSEL:** Buyer acknowledges that Broker is being retained solely as a real estate agent and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, home inspector or other professional service provider. Buyer agrees to seek professional advice concerning the condition of the property, legal, tax and other professional service matters.

13. **MEDIATION CLAUSE:** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Buyer or Broker in connection with the services to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

14. **SEX OFFENDER REGISTRY INFORMATION:** The Buyer and Broker agree that during the course of the agency relationship, referred to in the above-mentioned agreement, the Broker and all affiliated agents shall not be responsible for obtaining or disclosing any information contained in the official South Carolina Sex Offender Registry. The Buyer understands that no course of action may be brought against the Broker or his affiliates for failing to obtain and disclose information contained in the official South Carolina Sex Offender Registry. The Buyer understands and agrees that the Buyer shall be responsible for obtaining any such information. The Buyer understands that Sex Offender Registry information may be obtained from the local Sheriff's Department or other appropriate law enforcement officials.

15. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on the reverse, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Broker. It can be changed only by a subsequently written instrument signed by both parties.

16. **CONTINGENCIES:**

17. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that this Agreement may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

THIS IS A LEGALLY BINDING AGREEMENT. BUYER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BUYER AND BROKER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. BUYER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

BUYER Allen Tate Co., Inc. Date 1-14-18 Time 12:53pm Email: John.Kara@4choo.com

BUYER _____ Date _____ Time _____ Email: _____ Phone: _____ Fax: _____

BUYER Address _____

BY: Allen Tate Co., Inc. Broker/Licensee _____ Date 1-14-18 Time _____

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.



EXHIBIT 4

001070

Kimberly Ballentine

From: karen baber <klkb1951@gmail.com>
Sent: Sunday, December 3, 2017 10:48 PM
To: Sharon Cook
Subject: Fwd: Fw: Re: Our offer progress

***** SCANNER NOTICE *****

- This email is from an external email address. Please use caution when deciding whether to open any attachments or when clicking links.
- Personally Identifiable Information (PII) should not be included in e-mail text or attachments. Do not save or transmit PII unencrypted.

On Friday, January 23, 2015 1:27 PM, Jonathan Garvey <jonathan.garvey@allentate.com> wrote:

Yes. We can get Robert to do any of the repairs needed. We will know more after the appraisal and we'll get Robert to do the inspections.

From: Karen Baber <haber.karen@yahoo.com>
To: "jonathan.garvey@allentate.com" <jonathan.garvey@allentate.com>
Sent: Friday, January 23, 2015, 12:21:42 PM EST
Subject: Re: Our offer progress

thanks

what does that mean? will he have a copy of my list of things to check? Are you going to talk to Robert Evans?

On Friday, January 23, 2015 11:22 AM, Jonathan Garvey <jonathan.garvey@allentate.com> wrote:

Karen, I reached out this morning to Robert Oustz to make sure the info was received and in play. He sent me this...

"Yes sir, the complete package was submitted yesterday. Now the seller is sending in updated financials since the Deed in Lieu review has been cancelled. The next event will be the updated BPO/Appraisal – I will meet this person and make sure they accurately portray the value of this house in "as-is" condition."

FYI. Its being worked. J

EXHIBIT 5

001072

Kimberly Ballentine

From: karen baber <klkb1951@gmail.com>
Sent: Sunday, December 3, 2017 10:10 PM
To: Sharon Cook
Subject: Fwd: Fw: Re: Pages from SS Approval conditions 021115.pdf - Adobe Acrobat Professional

SCDLLR NOTICE

- This email is from an external email address. Please use caution when deciding whether to open any attachments or when clicking links.
- Personally Identifiable Information (PII) should not be included in e-mail text or attachments. Do not save or transmit PII unencrypted.

On Wednesday, February 11, 2015 3:29 PM, Jonathan Garvey <jonathan.garvey@allentate.com> wrote:

The bank approved moving the date out to 3/26 to give you more time to get the loan approved. We will have to see what the appraisal says about condition. Maybe the seller will clean up the place and do some repair out of his pocket to make the short sale happen. J

On Wednesday, February 11, 2015, Karen Baber <baber.karen@yahoo.com> wrote:

ok gentlemen

please tell me what to do now

what happens if FHA comes in and tells them they have to do something..... contract says as is

Steve, please give me some numbers so I can contact Mr. Brunner who has the trust fund I am part of in WI and also talk to my mom's POA and get the funds sent

I have already ordered my latest bank statement

please let me know what else to do

we would love to close by Feb 26

can that really happen?

that you

Karen

On Wednesday, February 11, 2015 12:10 PM, Jonathan Garvey <jonathan.garvey@allentate.com> wrote:

Approval of short sale

----- Forwarded message -----

From: Robert Ouzts <robert.ouzs@allentate.com>
Date: Wednesday, February 11, 2015 11:53 AM
Subject: Pages from SS Approval conditions 021115.pdf - Adobe Acrobat Professional
To: Jonathan Garvey <jonathan.garvey@allentate.com>

EXHIBIT 6

001074



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

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

Buyer(s), Karen Baber ("Buyer"), and

Seller(s), Gloria A. Long-Robinson ("Seller").

(A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.

(B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.

(C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing.

(D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to cause this Contract to be binding on all Parties.

(E) "Business Day" - a 24 hour period (Monday/Tuesday/Wednesday/Thursday/Friday) beginning at 10 AM and counted from 10 AM of the first Business Day following the appropriate date (Effective Date, Closing Date, stated date, Notice Delivery date). Business Days shall not begin, end, or include any Saturday, Sunday, or Federal legal holiday.

(F) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.

(G) "Time" - all time stated shall be South Carolina local time. Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.

☐ BUYER ☐ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

2. PURCHASE PRICE: \$ 145,000.00

Payable by transfer of Good Funds via ☒ Finance or ☐ a combination of Finance and Cash USD or ☐ Cash USD.

The sale of Buyer's real property ☐ is ☒ is not a contingency for Purchase and terms ☐ are ☒ are not attached.

3. PROPERTY: Seller will sell and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain the Property and any personal property conveying in working order, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal wear and tear. Buyer acknowledges opportunity to inquire about lease issues prior to signing Contract. Leasing issues and items see Adjustments (e.g. tenants, rents, deposits, documents, fuel tanks with fuel, alarm systems, satellite equipment, roll carts)

Address 255 ROLLING RIDGE ROAD Unit # _____

City ROCK HILL State of South Carolina

Zip 29730 County of YORK

Lot 569 Block _____ Section/Phase _____ Subdivision COUNTRY CLUB ESTATES

Other _____ Tax Map 604-05-02-017

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

4. CONVEYANCE/CLOSING/POSSESSION: "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before March 27, 2015 ("Closing Date") with an automatic extension of _____ business days for an unsatisfied contingency through no fault of either party. Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the

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

FORM 310 PAGE 1 of 8

Allen Tate Realtors - RH, 1602 Ebenezer Rd Rock Hill, SC 29732

Phone: (803)366-7897

Fax:

Robert Ouzts

Produced with zipForm® by zipLoft 18070 Filzen Mills Road, Fraser, Michigan 48026 www.ziploft.com

Karen Baber

title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s): _____

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

5. **EARNEST MONEY:** Total \$ 500.00 (USD) Earnest Money is paid as follows: \$ _____ accompanies this offer and \$ 500.00 will be paid within 2 Business Days after Effective Date and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire) _____ to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Allen Tate Realtors as Escrow Agent to deposit and hold and disburse earnest money according to the terms of this Contract, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT OR AS AGREED UPON IN THIS CONTRACT. FIVE YEARS AFTER CLOSING DATE, ESCROW AGENT MAY DISBURSE EARNEST MONEY TO SOUTH CAROLINA TREASURER AS UNCLAIMED PROPERTY. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR, NONPREVAILING PARTY AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER OR MEDIATION IS TO BE UTILIZED, PARTIES AGREE THAT \$ 100.00 SHALL BE PAID TO THE ESCROW AGENT AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION OR MEDIATION PROCEEDINGS ON EARNEST MONEY.

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

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

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

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

7. **FINANCE:** Buyer's obligation under this Contract ☒ is ☐ is not contingent upon obtaining financing of a ☒ 30 year or ☐ 15 year or ☐ other _____ purchase mortgage at reasonable prevailing market terms with loan(s) equal in amounts to a minimum 96.500 % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize their Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing within 7 Business Days from the

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

10. APPRAISED VALUE:

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

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

11. WOOD INFESTATION REPORT: If the Property to be sold has been previously occupied, this Contract is contingent upon the ☒ Buyer ☐ Seller having the Property inspected at their expense by a qualified/licensed/bonded pest control operator selected by the ☒ Buyer ☐ Seller and Delivery to Closing of a CL100 Wood Infestation Report dated no earlier than 30 calendar days prior to Closing and no later than 10 calendar days prior to Closing. If the Buyer is responsible for having the Property inspected as indicated above, but does not have the Property timely inspected for the report's required Delivery time frame, the Buyer waives any and all rights under the terms of this section. The Seller makes no warranties with regard to matters covered by such Infestation report or any other improvement unless specifically stated in this Contract.

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

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

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

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

15. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Buyer will have the right for 5 Business Days after Notice of damage to Deliver Notice of Termination to the Seller. If Buyer does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be

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responsible to (1) repair all damage, (2) remit to Buyer an amount for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

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

☒ Buyer and Seller agree that Seller has delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy by delivering a corrected CDS to the Buyer or making reasonable repairs prior to Closing. Buyer understands the CDS does not replace Inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers are not responsible nor liable for any information in the CDS and the Brokers have met requirements of SC Code 27-50-70.

☐ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13).

17. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect Your Family From Lead In Your Home."

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

19. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this Contract. It is understood that Broker ☐ may ☒ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

20. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of the SC Code 12-8-580 (as amended) regarding state income tax withholding requirements if the Seller is not a resident or has not filed SC state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

21. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

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

23. DEFAULT:

(A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:

- (i) Deliver Notice of Default to Seller and terminate Contract and
- (ii) Pursue any remedies available to Buyer at law or equity and
- (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer prevails in any action against Seller.

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

24. MEDIATION CLAUSE: Mediation is an alternative dispute resolution system and may help avoid potentially expensive and lengthy litigation. The mediation participants voluntarily decide their settlement with the mediator facilitating their decisions and documentation of the settlement. Mediation is not binding arbitration. The mediator does not decide the outcome. The mediation participants make their own decisions include reaching or not reaching a settlement. Any dispute, claim, breach, or services issues relating to this Contract shall be submitted to mediation in accordance with the Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS® (info@SCREALTORS.org 1-800-233-6381). Disputes include representations made by any Party; Broker, person or entity in connection with the sale, purchase, financing, condition or any other aspect of the Property, including without limitation allegations of concealment, misrepresentation, negligence or fraud. Any agreement signed by the Parties pursuant to mediation is binding. This mediation clause shall survive the Closing Date. The following matters are excluded from mediation herein: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a Interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

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

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

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

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

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Karen Baber

001080

Contract language conflicts. If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, they are further identified or described here:

PROPERTY TO BE SOLD "AS-IS, WHERE-IS, WITH ALL FAULTS." CONTRACT CONTINGENT UPON APPROVAL AND ACCEPTANCE OF LENDER.

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

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

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

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

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

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

BUYER: Karen Baber 2/19/2015 | 3:12 PM ET Date: _____ Time: _____

WITNESS: Jonathan Curry 2/19/2015 | 8:28 AM PT Date: _____ Time: _____

BUYER: _____ Date: _____ Time: _____

WITNESS: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

SELLER: Gloria A. Long-Robinson Date: 2/19/15 Time: 10:11am

WITNESS: _____ Date: _____ Time: _____

SELLER: _____ Date: _____ Time: _____

WITNESS: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

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Karen Baber

ESCROW AGENCY ACKNOWLEDGEMENT SIGNATURE: _____
ESCROW AGENT NAME (BROKER IN CHARGE/OTHER): Allen Tate Realtors
DESCRIBE ESCROW AGENCY (BROKERAGE/LAW FIRM/OTHER): _____
ESCROW AGENT CONTACT INFO: _____

INVOLVED AS: ☐ BUYER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☒ BUYER DESIGNATED AGENT*
LICENSEE: JONATHAN GARVEY SC LICENSE # 38254 EXPIRES 06/30/2016
BROKER IN CHARGE: COLLEEN P. COSENS SC LICENSE # 52849 EXPIRES 06/30/2015
BROKERAGE COMPANY NAME: ALLEN TATE REALTORS
MEMBERS OF: PIEDMONT REGIONAL ASSOCIATION/BOARD OF REALTORS®
NOTICE ADDRESS: 1602 EBENEZER ROAD ROCK HILL SC 29732
NOTICE EMAIL/FAX: 800-936-1966
MOBILE PHONE: (803) 448-1307 OFFICE PHONE: (803) 324-1185 OTHER: _____

INVOLVED AS: ☐ SELLER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☒ SELLER DESIGNATED AGENT*
LICENSEE: ROBERT A. OUZTS SC LICENSE # 22059 EXPIRES 06/30/2015
BROKER IN CHARGE: COLLEEN P. COSENS SC LICENSE # 52849 EXPIRES 06/30/2015
BROKERAGE COMPANY NAME: ALLEN TATE REALTORS
MEMBERS OF: PIEDMONT REGIONAL ASSOCIATION/BOARD OF REALTORS®
NOTICE ADDRESS: 1602 EBENEZER ROAD ROCK HILL SC 29732
NOTICE EMAIL/FAX: 800-940-8320
MOBILE PHONE: (803) 370-2406 OFFICE PHONE: (803) 324-1185 OTHER: _____

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

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ADDENDUM/AMENDMENT TO

☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☐ COUNTEROFFER] OR

☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____

COVERING THE ☒ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as:

Address 255 ROLLING RIDGE ROAD Unit # _____

City ROCK HILL State of South Carolina

Other _____ TMS 604-05-02-017

The undersigned Parties hereby agree as follows: BUYER AND SELLER AGREE TO EXTEND THE TERMS OF THIS AGREEMENT TO JUNE 12, 2015.

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

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: Karen Baber Date: 5/19/2015 | 12:30 PM ET

WITNESS: _____ Date: _____ Time: _____

BUYER: _____ Date: _____ Time: _____

WITNESS: _____ Date: _____ Time: _____

SELLER: Gloria A. Long Robinson Date: 5-19-15 Time: _____

WITNESS: _____ Date: _____ Time: _____

SELLER: _____ Date: _____ Time: _____

WITNESS: _____ Date: _____ Time: _____

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DS
[Signature]

BUYER

[Signature]

BUYER

[Signature]

SELLER

[Signature]

SELLER

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EXHIBIT 7

001084

Kimberly Ballentine

From: karen baber <klkb1951@gmail.com>
Sent: Sunday, December 3, 2017 11:36 AM
To: Sharon Cook
Subject: Fwd: Fw: Additional items

*** SCDLLR NOTICE ***

- This email is from an external email address. Please use caution when deciding whether to open any attachments or when clicking links.
- Personally Identifiable Information (PII) should not be included in e-mail text or attachments. Do not save or transmit PII unencrypted.

think this is it... there is one where jonathan and steve discuss the disclosure form and inspections. trying to put that email link together. and one where summit has told me they wonder if he went to wrong property.

On Tuesday, February 17, 2015 8:23 AM, Denise Julian <Denise.Julian@summitfunding.net> wrote:

Good Morning Karen,

Steve is out of the office this morning. He got your message and asked me to contact you. We have ordered the appraisal.

Denise

On Tuesday, February 17, 2015 9:57 AM, Karen Baber <baber.karen@yahoo.com> wrote:

Did Steve give the appraiser the list with the roof, windows, leaks and all of that to the appraiser.

On Tuesday, February 17, 2015 12:29 PM, Denise Julian <Denise.Julian@summitfunding.net> wrote:

We have ordered the appraisal. Let's see what it looks like.

On Tuesday, February 17, 2015 2:10 PM, Karen Baber <baber.karen@yahoo.com> wrote:

When do we get the inspections?

On Tuesday, February 17, 2015 4:05 PM, Denise Julian <Denise.Julian@summitfunding.net> wrote:

We don't order those. Jonathan will get those for you before closing.

On Tuesday, February 17, 2015 5:15 PM, Karen Baber <baber.karen@yahoo.com> wrote:

Ok thanks

Denise Julian

Loan Partner NMLS ID# 146478



19300 Statesville Road, Suite 201
Cornellus, NC 28031
Branch NMLS ID# 900906

Office 704.895.8770
Fax 704.895.8768
denise.julian@summitfunding.net
www.summitfunding.net

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EXHIBIT 8

001087

Kimberly Ballentine

From: karen haber <klkb1951@gmail.com>
Sent: Sunday, December 3, 2017 3:13 PM
To: Sharon Cook
Subject: Fwd: Fw: Appraisal File(s) Available For Download

*** SCDLLR NOTICE ***

- This email is from an external email address. Please use caution when deciding whether to open any attachments or when clicking links.
- Personally Identifiable Information (PII) should not be included in e-mail text or attachments. Do not save or transmit PII unencrypted.

Have had to copy and paste all of these onto the appraisal file so that you had the conversation flow - otherwise when I tried to transfer it would cut them off and only transfer the appraisal at the bottom... I get mad every time I look at the pictures - These pictures were not made in Feb with over a foot leaves on the ground (and Lonnie Gordon will affirm that. He helped us move and worked on the yard when we moved in June getting all the leaves picked up etc)

I just copied all of these in the yahoo account and then when I put them in gmail the font changed... I have no idea why. ... I have more to send and I hate to do it but I am just going to copy and put on gmail and not try to link together. I will also try to double check and make sure I do not send what you already have. There were 230 emails with Steve Reynolds many copied with Jonathan.

From: Steve Reynolds <steve.reynolds@summitfunding.net>
To: "BABER.KAREN@YAHOO.COM" <BABER.KAREN@YAHOO.COM>; "jonathan.garvey@allentate.com" <jonathan.garvey@allentate.com>
Sent: Friday, March 6, 2015, 11:57 AM EDT
Subject: Fw: Appraisal File(s) Available For Download

On Friday, March 6, 2015, 11:57 AM, Steve Reynolds <Steve.reynolds@summitfunding.net> wrote:

Karen,

Let's look at things after Mr. Blue goes back to the property. I have called Jonathan and asked him to provide you the reports for the "Yes" items on the Disclosure Form. That would be helpful to determine if we may have any problems. Let me know what you think once you have those.

Steve

From: Sabrina Fajardo " <sabrina.fajardo@summitfunding.net>
To: <BABER.KAREN@YAHOO.COM>; "steve.reynolds@summitfunding.net"; jonathan.garvey@allentate.com>
Sent: Friday, March 6, 2015, 11:01 AM EDT
Subject: Fw: Appraisal File(s) Available For Download

I spoke with Steve and he will call you later today. He will also call Jonathan. He does have a copy of the Disclosure Form and your list and will send over to Mr. Blue. The utilities have to be turned on so that he can certify the leak is fixed and do a final certification. Remember too that you will have two inspections. One is the termite inspection and the other is the home inspection. Your loan will



UPS Store <store4411@gmail.com>

Fwd:

~~karen baber <klkb1951@gmail.com>~~
~~To: UPS Store Charlotte Ave <store4411@gmail.com>~~

Thu, Nov 30, 2017 at 12:50 PM

Re: Pages from SS Approval conditions 021115.pdf - Adobe Acrobat Professional15
Yahoo/Drafts

Jonathan Garvey <jonathan.garvey@allentate.com>
To: baber.karen@yahoo.com, steve.reynolds@summitfunding.net

Feb 11, 2015 at 12:10 PM

Approval of short sale

Forwarded message

From: Robert Ouzts <robert.ouzs@allentate.com>
Date: Wednesday, February 11, 2015
Subject: Pages from SS Approval conditions 021115.pdf - Adobe Acrobat Professional
To: Jonathan Garvey <jonathan.garvey@allentate.com>

• Pages from SS Approval conditions 021115.pdf - Adobe Acrobat Professional.pdf
122kb

Show original message

Hide original message

On Thursday, February 13, 2015 11:57 AM, Steve Reynolds <steve.reynolds@summitfunding.net> wrote:

001089

Karen,

Let's look at appraisal and then this loan requires a termite inspection and a home inspection. We can look at rehab loan if there are too many repairs.

Steve

From: "BABER.KAREN@YAHOO.COM" <BABER.KAREN@YAHOO.COM>
Reply-To: "BABER.KAREN@YAHOO.COM" <BABER.KAREN@YAHOO.COM>
Date: Thu, 12 Feb 2015 01:47:12 +0000 (UTC)
To: Steve Reynolds <steve.reynolds@summitfunding.net>
Subject: Re: Pages from SS Approval conditions 021115.pdf - Adobe Acrobat Professional

i have \$12000 being transferred in from the investment account

I hope I added that right

numbers you gave me plus the down payment

I did not see where you included attorney fees???

so I added in for that

On Wednesday, February 11, 2015 7:03 PM, Steve Reynolds <steve.reynolds@summitfunding.net> wrote:

Karen,

Attached is a fee sheet for you to review. Please call me if you have any questions.

From: Karen Baber [mailto:baber.karen@yahoo.com]
Sent: Wednesday, February 11, 2015 4:16 PM
To: Jonathan Garvey
Cc: Steve Reynolds
Subject: Re: Pages from SS Approval conditions 021115.pdf - Adobe Acrobat Professional

that's great but we do want to close asap

tell me what is needed

think we are going to use Morton Getty unless you know someone who will do for less

On Wednesday, February 11, 2015 3:29 PM, Jonathan Garvey <jonathan.garvey@allentate.com> wrote:

EXHIBIT 9



UPS Store <store4411@gmail.com>

Fwd: Fw: Re: docs

karen baber <klkb1951@gmail.com>
To: UPS Store Charlotte Ave <store4411@gmail.com>

Thu, Nov 30, 2017 at 1:29 PM

From: Steve Reynolds <steve.reynolds@summitfunding.net>
To: "BABER.KAREN@YAHOO.COM" <BABER.KAREN@YAHOO.COM>
Sent: Thursday, April 9, 2015, 4:22:28 PM EST
Subject: Re: docs

That is all they are requesting right now. I have called Jonathan to get the termite report and inspection to me.

From: "BABER.KAREN@YAHOO.COM" <BABER.KAREN@YAHOO.COM>
Reply-To: "BABER.KAREN@YAHOO.COM" <BABER.KAREN@YAHOO.COM>
Date: Wed, Apr 8 2015 21:21:02 +0000 (UTC)
To: Steve Reynolds <steve.reynolds@summitfunding.net>
Subject: docs

I did not find anything in my spam or trash or inbox from your office about other docs needed.

I did download (at least I tried) and sent to you bank statement jan/feb

I asked you to let me know if you got it and I haven't heard from you so I guess you didn't so I will need to print out and fax.

what else do you need?

thank you

Karon

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001092

EXHIBIT 10



UPS Store <store4411@gmail.com>

Fwd: Fw: Re: <no subject>

Karen Baber <kfb1851@gmail.com>
To: UPS Store Charlotte Ave <store4411@gmail.com>

Thu, Nov 30, 2017 at 12:24 PM

On Tuesday, May 19, 2015 9:37 PM, Karen Baber <baberkaren@yahoo.com> wrote:

ok
thanks

On Tuesday, May 19, 2015 9:28 PM, Steve Reynolds <steve.reynolds@summitfunding.net> wrote:

Karen,

I will call you in the morning to go over everything, I am trying to get you wrapped up this week to close next. I have left Jonathan a message to send me the termite report and the inspection.

Have a great night,

Steve Reynolds | Loan Officer

NMLS ID# 55918
Office 704.697.1918
Cell 704.562.2848
Fax 704.353.7279
steve.reynolds@summitfunding.net
www.summitfunding.net/steynolds

SUMMIT FUNDING INC.
THE HOME LOAN EXPERTS
NMLS ID# 3199

13325 South Point Blvd., Suite 400 | Charlotte, NC 28273 | Branch NMLS ID# 845565

From: "BABER.KAREN@YAHOO.COM" <BABER.KAREN@YAHOO.COM>
Reply-To: "BABER.KAREN@YAHOO.COM" <BABER.KAREN@YAHOO.COM>
Date: Tue, 19 May 2015 11:57 AM
To: Steve Reynolds <steve.reynolds@summitfunding.net>
Subject: Re: <no subject>

Let me know what else you need
Thanks

On Tuesday, May 19, 2015 11:23 AM, Steve Reynolds <steve.reynolds@summitfunding.net> wrote:

Karen,

Please sign and return I am trying to clear all conditions on your file today.

Thanks

001094

EXHIBIT 11



Good Faith Estimate (GFE)

Name of Originator Summit Funding, Inc. Steve Douglas Reynolds	Borrower KAREN K BABER
Originator Address 19300 Statesville Road, Suite 201 Cornellus, NC 28031	Property Address 255 ROLLING RIDGE ROAD Rock Hill, SC 29732
Originator Phone Number 704-895-8770	Date of GFE 05/22/2015
Originator Email steve.reynolds@summitfunding.net	

Purpose

This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's Special Information Booklet on settlement charges, your *Truth-in-Lending Disclosures*, and other consumer information at www.hud.gov/respa. If you decide you would like to proceed with this loan, contact us.

Shopping for your loan

Only you can shop for the best loan for you. Compare this GFE with other loan offers, so you can find the best loan. Use the shopping chart on page 3 to compare all the offers you receive.

Important dates

1. The interest rate for this GFE is available through **06/22/2015 5:00 P.M.**. After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
2. This estimate for all other settlement charges is available through **06/08/2015**.
3. After you lock your interest rate, you must go to settlement within **30** days (your rate lock period) to receive the locked interest rate.
4. You must lock the interest rate at least **N/A** days before settlement.

Summary of your loan

Your initial loan amount is	\$ 142,023.00
Your loan term is	30 years
Your initial interest rate is	4.375 %
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$ 807.47 per month
Can your interest rate rise?	☒ No ☐ Yes, it can rise to a maximum of %. The first change will be in
Even if you make payments on time, can your loan balance rise?	☒ No ☐ Yes, it can rise to a maximum of \$
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	☒ No ☐ Yes, the first increase can be in and the monthly amount owed can rise to \$. The maximum it can ever rise to is \$
Does your loan have a prepayment penalty?	☒ No ☐ Yes, your maximum prepayment penalty is \$
Does your loan have a balloon payment?	☒ No ☐ Yes, you have a balloon payment of \$ due in years.

Escrow account information

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of \$ **807.47**.

Do we require you to have an escrow account for your loan?

☐ No, you do not have an escrow account. You must pay these charges directly when due.

☒ Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

Summary of your settlement charges

A	Your Adjusted Origination Charges (See page 2.)	\$ 1,068.42
B	Your Charges for All Other Settlement Services (See page 2.)	\$ 6,842.24
A + B	Total Estimated Settlement Charges	\$ 7,910.66

FINAL

GFE p1 (eff. Jan 2010) - 04/2011 - Encompass360®



Good Faith Estimate (HUD-GFE) 1

001096

**Understanding
your estimated
settlement
charges**

Some of these
charges can change
at settlement. See the
top of page 3 for more
information.

Your Adjusted Origination Charges			
1. Our origination charge This charge is for getting this loan for you.			1,165.00
2. Your credit or charge (points) for the specific interest rate chosen ☐ The credit or charge for the interest rate of % is included in "Our origination charge." (See Item 1 above.) ☒ You receive a credit of \$ 96.58 for this interest rate of 4.375 %. This credit reduces your settlement charges. ☐ You pay a charge of \$ for this interest rate of %. This charge (points) increases your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.			-96.58
A	Your Adjusted Origination Charges		\$ 1,068.42
Your Charges for All Other Settlement Services			
3. Required services that we select These charges are for services we require to complete your settlement. We will choose the providers of these services.			2,623.88
	Service	Charge	Service Charge
	Appraisal Fee	495.00	
	Credit Report	30.00	
	Mortgage Insurance Premium	2,098.88	
4. Title services and lender's title insurance This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.			1,162.00
5. Owner's title insurance You may purchase an owner's title insurance policy to protect your interest in the property.			150.00
6. Required services that you can shop for These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below.			525.00
	Service	Charge	Service Charge
	PEST INSPECTION COMPANY	75.00	PRORATED PROPERTY TAXES
	WELL/SEPTIC COMPANY		
	SURVEYCOMPANY		
	HOME INSPECTION	450.00	
7. Government recording charges These charges are for state and local fees to record your loan and title documents.			125.00
8. Transfer taxes These charges are for state and local fees on mortgages and home sales.			135.00
9. Initial deposit for your escrow account This charge is held in an escrow account to pay future recurring charges on your property and includes ☒ all property taxes, ☒ all insurance, and ☐ other .			957.98
10. Daily interest charges This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is \$ 17.0200 per day for 19 days (if your settlement is 06/12/2015).			323.38
11. Homeowner's Insurance This charge is for the insurance you must buy for the property to protect from a loss, such as fire.			840.00
	Policy	Charge	
	Homeowner's Insurance		840.00
B	Your Charges for All Other Settlement Services		\$ 6,842.24
A	+ B Total Estimated Settlement Charges		\$ 7,910.66

FINAL



Instructions

Understanding which charges can change at settlement

This GFE estimates your settlement charges. At your settlement, you will receive a HUD-1, a form that lists your actual costs. Compare the charges on the HUD-1 with the charges on this GFE. Charges can change if you select your own provider and do not use the companies we identify. (See below for details.)

These charges cannot increase at settlement:	The total of these charges can increase up to 10% at settlement:	These charges can change at settlement:
- Our origination charge - Your credit or charge (points) for the specific interest rate chosen (after you lock in your interest rate) - Your adjusted origination charges (after you lock in your interest rate) - Transfer taxes	- Required services that we select - Title services and lender's title insurance (if we select them or you use companies we identify) - Owner's title insurance (if you use companies we identify) - Required services that you can shop for (if you use companies we identify) - Government recording charges	- Required services that you can shop for (if you do not use companies we identify) - Title services and lender's title insurance (if you do not use companies we identify) - Owner's title insurance (if you do not use companies we identify) - Initial deposit for your escrow account - Daily interest charges - Homeowner's Insurance

Using the tradeoff table

In this GFE, we offered you this loan with a particular interest rate and estimated settlement charges. However:

- If you want to choose this same loan with **lower settlement charges**, then you will have a **higher interest rate**.
- If you want to choose this same loan with a **lower interest rate**, then you will have **higher settlement charges**.

If you would like to choose an available option, you must ask us for a new GFE.

Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.

	The loan in this GFE	The same loan with lower settlement charges	The same loan with a lower interest rate
Your initial loan amount	\$ 142,023.00	\$ 142,023.00	\$ 142,023.00
Your initial interest rate ¹	4.375 %	%	%
Your initial monthly amount owed	\$ 807.47	\$	\$
Change in the monthly amount owed from this GFE	No change	You will pay \$ more every month	You will pay \$ less every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be reduced by \$	Your settlement charges will increase by \$
How much your total estimated settlement charges will be	\$ 7,910.66	\$	\$

¹ For an adjustable rate loan, the comparisons above are for the initial interest rate before adjustments are made.

Using the shopping chart

Use this chart to compare GFEs from different loan originators. Fill in the information by using a different column for each GFE you receive. By comparing loan offers, you can shop for the best loan.

	This loan	Loan 2	Loan 3	Loan 4
Loan originator name				
Initial loan amount				
Loan term				
Initial interest rate				
Initial monthly amount owed				
Rate lock period				
Can interest rate rise?				
Can loan balance rise?				
Can monthly amount owed rise?				
Prepayment penalty?				
Balloon payment?				
Total Estimated Settlement Charges				

FINAL

If your loan is sold in the future

Some lenders may sell your loan after settlement. Any fees lenders receive in the future cannot change the loan you receive or the charges you paid at settlement.



Good Faith Estimate (HUD-GFE) 3

EXHIBIT 12



UPS Store <store4411@gmail.com>

Fwd: Fw: Fwd: Fw: <no subject>

karen bobber <kikb1851@gmail.com>
To: UPS Store Charlotte Ave <store4411@gmail.com>

Thu, Nov 30, 2017 at 12:27 PM

On Wednesday, May 27, 2015 9:28 PM, Steve Reynolds <steve.reynolds@summitfunding.net> wrote:

Karen,

I will call you in the morning to go over everything. Your termite inspection was condition of loan and was with inspection.

Have a great night,

Steve Reynolds | Loan Officer

NMLS ID# 55918
Office 704.697.1918
Cell 704.662.2848
Fax 704.353.7279
steve.reynolds@summitfunding.net
www.summitfunding.net/sreynolds

 **SUMMIT FUNDING, inc.**
THE HOME LOAN EXPERTS
NMLS ID# 3199 

13325 South Point Blvd., Suite 400 | Charlotte, NC 28273 | Branch NMLS ID# 843566

001100

EXHIBIT 13

From: Karen Baber <baber.karen@yahoo.com>
Sent: Wednesday, May 27, 2015 4:03 PM
To: Linda Mattison; Jonathan Garvey; Steve Reynolds
Subject: Re: closing

didn't have termite inspection done...

did inspection/appraisal and that has been paid for

NOTE TO JONATHAN AND STEVE - PLEASE CALL LINDA IF ANYTHING ELSE - THANKS

On Wednesday, May 27, 2015 2:49 PM, Linda Mattison <linda@gillenlawfirm.com> wrote:

Hi Karen

Left you vm msg and trying to get your settlement statement approved so we can close Fri. Did you have a termite and home inspection done? If so, have they been paid or do I need to pay at closing. Need to know by today.

Thanks

Linda M. Mattison, Paralegal
Gillen Law Firm, PA
1803 Ebenezer Road
Rock Hill, SC 29732

803-327-0777 (Direct)
803-327-5011 (Fax)

EXHIBIT

Baber 14
00710219 KC

Subject: Re: closing

didn't have termite inspection done...

did inspection/appraisal and that has been paid for

NOTE TO JONATHAN AND STEVE - PLEASE CALL LINDA IF ANYTHING ELSE - THANKS

On Wednesday, May 27, 2015 5:06 PM, Linda Mattison <linda@gillenlawfirm.com> wrote:

Hi Karen

I called Jonathan and he said there was a termite and home inspection which is good because we cannot close without them. He has sent them to Steve Reynolds. He said to put them as paid POC.

Thanks

Linda M. Mattison, Paralegal
Gillen Law Firm, PA
1803 Ebenezer Road
Rock Hill, SC 29732

803-327-0777 (Direct)
803-327-5011 (Fax)

On Monday, June 1, 2015 3:15 PM, Linda Mattison <linda@gillenlawfirm.com> wrote:

Good afternoon Karen

I have copied your loan package and you can come by the office to pick up at your convenience. Your check is ready also.

Jonathan did not bring the inspections on Friday you asked about. He is supposed to bring them today. I have copied the loan package for him to come by the office to pick up. The check for Allen Tate is also ready.

We will mail off the loan package this afternoon after he brings the termite and home inspection.

001103

EXHIBIT 14

001104



A. Settlement Statement (HUD-1)

OMB Approva

B. Type of Loan

1. ☒ FHA	2. ☐ RHS	3. ☐ Conc. Unins.	5. File Number: BABE0022	7. Loan Number: CNL1412X014460	8. Mortgage Insurance Case Number: 481-6143921-703
4. ☐ VA	5. ☐ Conc. Ins.				

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "T.p.a.c." were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower: KAREN K. BABER 3358 GOODPLACE ROCK HILL, SC 29732	E. Name and Address of Seller: GLORIA A. LONG-ROBINSON 3221 KELOX ROAD GAYNOR, MD 21207	F. Name and Address of Lender: SUMMIT FUNDING, INC. 2241 HARVARD STREET, SUITE 200 SACRAMENTO, CA 95815
G. Property Location: 355 ROLLING RIDGE ROAD ROCK HILL, SC 29730 York County, South Carolina COUNTRY CLUB ESTATES	H. Settlement Agent: Glen Law Firm, PA 1603 Ebenezer Road Rock Hill, SC 29732 Place of Settlement: 1603 Ebenezer Road Rock Hill, SC 29732	I. Settlement Date: May 29, 2015

J. Summary of Borrower's transaction		K. Summary of Seller's transaction	
100. Gross Amount Due from Borrower:		400. Gross Amount Due to Seller:	
101. Contract sales price	145,000.00	401. Contract sales price	145,000.00
102. Personal property		402. Personal property	
103. Settlement Charges to Borrower (Line 1400)	7,038.81	403.	
104.		404.	
105.		405.	
Adjustments for items paid by Seller in advance		Adjustments for items paid by Seller in advance	
106. City/Town Taxes to		406. City/Town Taxes to	
107. County Taxes to		407. County Taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due from Borrower	152,038.81	420. Gross Amount Due to Seller	145,000.00
200. Amounts Paid by or in Behalf of Borrower		500. Reductions in Amount Due Seller:	
201. Deposit or earnest money	500.00	501. Earnest deposit (see instructions)	
202. Principal amount of new loan(s)	142,023.00	502. Settlement charges to Seller (Line 1400)	6,774.20
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. Lender Credit-applied overpayment	7.00	504. Payoff First Mortgage to JP Morgan Chase Bank, NA	135,055.29
205. Gift Funds	10,000.00	505. Payoff Second Mortgage	
206.		506. Disb. retained (\$500.00)	500.00
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by Seller		Adjustments for items unpaid by Seller	
210. City/Town Taxes to		510. City/Town Taxes to	
211. County Taxes 01/01/15 to 05/29/15	670.51	511. County Taxes 01/01/15 to 05/29/15	670.51
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid by/Borrower	153,200.81	520. Total Reduction Amount Due Seller	145,000.00
300. Cash at Settlement from/Borrower		520. Cash at Settlement from/Borrower	
301. Gross amount due from Borrower (Line 120)	152,038.81	521. Gross amount due to Seller (Line 420)	145,000.00
302. Less amount paid by/Borrower (Line 220)	(1,163,200.51)	522. Less reductions due Seller (Line 520)	145,000.00
303. Cash ☐ From ☒ To Borrower	1,163.70	523. Cash ☐ To ☐ From Seller	0.00

The undersigned hereby acknowledge receipt of a completed copy of this statement & any attachments referred to herein.

Borrower

KAREN K. BABER

Seller

Gloria A. Long-Robinson
Comm. Delivery POE

The Public Reporting Burden for this collection of information is estimated to be 30 minutes per response for reviewing, collecting, reviewing, and reporting the data. This survey is not subject to the information, and you are not required to respond to this form, unless it displays a survey use or OMB control number. Do not send this to the Bureau of the Census. This is designed to provide the public with a means to comment on this information during the test phase.

L. Settlement Charges				Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Real Estate Broker Fees			\$ 8,700.00		
Division of commission (line 700) as follows:					
701. \$ 4,082.70	to	The Allen Tate Company/Roberts Curtis			
Note: Line 701 includes Adjustment of -267.30 For Seller cost pd by listing agt					
702. \$ 4,350.00	to	The Allen Tate Company/Jonathan Garvey			
703. Commission paid at settlement					7,932.70
704. Disposition Refd By Listing Agent			to The Allen Tate Company/Roberts Curtis	\$500.00 (POC)	
705.					
706. Items Payable in Connection with Loan					
801. Origination charge		\$ 1,165.00	(from GFE #1)		
802. Your credit or charge (points) for the specific interest rate chosen		\$ -18.58	(from GFE #2)		
803. Your adjusted origination charges			(from GFE #A)	1,084.42	
804. Appraisal fee	to APPRAISAL INNOVATIONS		(from GFE #3) P.O.C. \$413.00/PT		
805. Credit Report	to ADVANTAGE CREDIT		(from GFE #3)	45.70	
806. Tax service	to		(from GFE #3)		
807. Flood certification	to		(from GFE #3)		
808. Compliance Inspection R	to APPRAISAL INNOVATIONS		(from GFE #3) P.O.C. \$75.00/PT		
809.			(from GFE #3)		
810.			(from GFE #3)		
811.			(from GFE #3)		
900. Items Required by Lender to Be Paid in Advance					
901. Daily interest charges from 05/29/15 to 08/01/15	3 @ \$17.020000/day		(from GFE #10)	51.06	
902. Mortgage insurance premium for	months to FHA		(from GFE #3)	2,098.88	
903. Homeowner's insurance for	1.0 years to STATE FARM/Real RuRand		(from GFE #11)	1,059.00	
904.			(from GFE #11)		
905.			(from GFE #11)		
1000. Reserves Deposited with Lender					
1001. Initial deposit for your escrow account			(from GFE #8)	1,130.25	
1002. Homeowner's insurance	6,000 months @ \$ 55.25 per month	\$ 441.25			
1003. Mortgage insurance	months @ \$ 98.37 per month	\$			
1004. Property taxes		\$ 1,102.40			
County Taxes	6,000 months @ \$ 137.60 per month				
1005.		\$			
1006.	months @ \$	per month	\$		
1007.	months @ \$	per month	\$		
1008.		\$			
1009. Aggregate Adjustment		\$ -413.40			
1100. Title Charges					
1101. Title services and lender's title insurance			(from GFE #4)	1,139.00	
1102. Settlement or closing fee	to Glen Law Firm, PA	\$ 375.00			300.00
1103. Owner's title insurance to Investors Title Insurance Co., Inc.		\$ 424.50	(from GFE #5)		
1104. Lender's title insurance to Investors Title Insurance Co., Inc.		\$ 500.00			
1105. Lender's title policy limit	\$ 142,023.00				
1106. Owner's title policy limit	\$ 145,000.00				
1107. Agent's portion of the total title insurance premium	to Title One, LLC	\$ 434.70			
1108. Underwriter's portion of the total title insurance premium	to Investors Title Insurance Co., Inc.	\$ 269.80			
1109.		\$			
1110.		\$			
1111.		\$			
1112.		\$			
1113.		\$			
1200. Government Recording and Transfer Charges					
1201. Government recording charges	to Clerk of Court		(from GFE #7)	24.00	
1202. Deed \$ 10.00	Mortgage \$ 14.00	Releases \$ 5.00	Other \$		5.00
1203. Transfer taxes			(from GFE #8)		
1204. City/County tax/stamps	Deed \$ 538.60	Mortgage \$			538.60
1205. State tax/stamps	Deed \$	Mortgage \$			
1206.					
1207.					
1300. Additional Settlement Charges					
1301. Required services that you can shop for			(from GFE #6)		
1302.		\$			
1303.		\$			
1304.		\$			
1305.		\$			
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)				7,036.81	8,774.20

* Print outside of closing by borrower (B), seller (S), lender (L), or title party (T)
By signing page 1 of this document, the signatory acknowledges receipt of a complete copy of page 2 & 3 of this three-page document.

Glen Law Firm, PA, Settlement Agent

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
Charges That Cannot Increase			
	HUD-1 Line Number		
Our origination charge	# 801	1,165.00	1,165.00
Your credit or charge (points) for the specific rate chosen	# 802	-96.58	-88.58
Your adjusted origination charges	# 803	1,068.42	1,068.42

Charges That in Total Cannot Increase More than 10%		Good Faith Estimate	HUD-1
Government recording charges	#1201	125.00	24.00
Appraisal fee	# 804	495.00	413.00
Credit report	# 805	30.00	45.70
Compliance Inspection Report	# 808		78.00
Mortgage Insurance Premium	# 902	2,098.88	2,098.88
TiE services and lender's life insurance	#1101	1,182.00	1,138.00
Owner's life insurance to investors TiE Insurance Co., Inc.	#1103	150.00	424.50

Total	4,060.88	4,218.08
Increase between GFE and HUD-1 Charges	\$ 165.20 or	3.82%

Charges That Can Change		Good Faith Estimate	HUD-1
Initial deposit for your escrow account	#1001	957.98	1,130.25
Daily interest charges	# 801 \$ 17.020000/day	323.38	\$1.08
Homeowner's insurance	# 903	840.00	1,059.00

Loan Terms

Your initial loan amount is	\$ 142,023.00
Your loan term is	30.00 years
Your initial interest rate is	4.3750 %
Your initial monthly amount owed for principal, interest and any mortgage insurance is	\$ 807.47 includes ☒ Principal ☒ Interest ☒ Mortgage Insurance
Can your interest rate rise?	☒ No ☐ Yes, it can rise to a maximum of ____%. The first change will be on ____ and can change again every ____ months after _____. Every change date, your interest rate can increase or decrease by ____%. Over the life of the loan, your interest rate is guaranteed to never be lower than ____% or higher than ____%.
Even if you make payments on time, can your loan balance rise?	☒ No ☐ Yes, it can rise to a maximum of \$_____.
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	☒ No ☐ Yes, the first increase can be on _____ and the monthly amount owed can rise to \$_____. The maximum it can ever rise to is \$_____.
Does your loan have a prepayment penalty?	☒ No ☐ Yes, your maximum prepayment penalty is \$_____.
Does your loan have a balloon payment?	☒ No ☐ Yes, you have a balloon payment of \$_____ due in ____ years on _____.
Total monthly amount owed including escrow account payments	☐ You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. ☒ You have an additional monthly escrow payment of \$226.03 that results in a total initial monthly amount owed of \$1,033.52. This includes principal, interest, any mortgage insurance and any items checked below: ☒ Property taxes ☐ Flood Insurance ☐ ☒ Homeowner's insurance ☐ ☐

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

Lender: Summit Funding, Inc.

Date: 05/29/2015

Borrower Name(s): KAREN K-BABER

Loan #: CHL1412614480

MIN #: 1002411-0611116536-3

Loan Amount: \$142,023.00

Property Address: 255 ROLLING RIDGE ROAD
Rock Hill, SC 29732

ITEMIZATION OF AMOUNT FINANCED

ITEMIZATION OF AMOUNT FINANCED OF:

NET PROCEEDS FOR FUNDING:

\$137,448.56

\$133,730.61

P.O.C. AMOUNTS: P = Borrower Paid S = Seller Paid L = Lender Paid B = Broker Paid O = Other
FINANCED FEE AMOUNTS: F = Fee is Financed and Included in Loan Amount

0804	AMOUNT PAID TO OTHERS ON YOUR BEHALF		
0805	Appraisal Fee to Appraisal Innovations		\$413.00
0806	Credit Report to ADVANTAGE CREDIT	\$413.00/POC P	\$45.70
0808	\$10- Compliance Inspection Report to Appraisal Innovations		\$75.00
0803	Hazard Insurance Premium to State Farm	\$75.00/POC P	\$1,039.80
1002	HOMEOWNER'S INSURANCE RESERVES (3 @ \$44.25)		\$441.25
1004	COUNTY PROP TAX RESERVES (1 @ \$137.10)		\$1,102.40
1011	AGGREGATE ADJUSTMENT		(\$413.40)
1101	TITLE SERVICES AND LENDER'S TITLE INSURANCE INCLUDES		
1104	Lenders Title Insurance		\$300.00
1201	TOTAL RECORDING CHARGES INCLUDES		
1202	Recording Fees		\$35.00
1203	TRANSFER TAXES INCLUDES		
1203	Transfer Taxes		\$138.00
1301	REQUIRED SERVICES THAT YOU CAN SHOP FOR INCLUDES		
1302	PEST INSPECTION COMPANY		\$76.40
1305	HOME INSPECTION		\$450.00
	TOTAL AMOUNT PAID TO OTHER		\$2,717.95
0801	ITEMIZATION OF THE PREPAID FINANCE CHARGE		
	OUR ORIGINATION CHARGE INCLUDES		
	Processing Fee to Summit Funding, Inc.		\$285.00
	\$01-Administration Fee to Summit Funding, Inc.		\$170.00
0801	INTEREST TO FIRST PAYMENT (3 @ \$17.02)		\$51.06
0802	Mortgage Insurance Premium		\$2,098.88
1101	TITLE SERVICES AND LENDER'S TITLE INSURANCE INCLUDES		
1102	Settlement or Closing Fee		\$635.00
1103	Owners Title Insurance		\$424.50
	TOTAL PREPAID FINANCE CHARGE		\$4,474.44
0802	FEES PAID BY LENDER ON BEHALF OF BORROWER		
	YOUR CREDIT CHARGE (POINTS) FOR SPECIFIC INTEREST RATE CHOSEN		
	Includes		
	Origination Credit @ 0.000 % = \$36.58		(\$36.58)
	TOTAL		(\$36.58)

The undersigned acknowledge receiving and reading a completed copy of this disclosure. Neither you nor the creditor previously has become obligated to make or accept this loan. This disclosure is not part of your loan contract.

Karen K Baber
KAREN K-BABER

5-29-15
DATE

Equi Max, Inc.



GIOAF 0711
GIOAF
05/27/2015 07:19 AM PST

001108

EXHIBIT 15

001109

Lender: Summit Funding, Inc.

Date: 05/29/2015

Loan #: CHL1412614469

Borrower Name(s): KAREN K BABER

MIN #: 1002411-0611116936-J

Loan Amount: \$142,023.00

Property Address: 259 ROLLING RIDGE ROAD
Rock Hill, SC 29732

ITEMIZATION OF AMOUNT FINANCED

ITEMIZATION OF AMOUNT FINANCED OF: \$137,448.58
NET PROCEEDS FOR FUNDING: \$133,730.64

P.O.C. AMOUNTS: P = Borrower Paid S = Seller Paid L = Lender Paid B = Broker Paid O = Other
FINANCED FEE AMOUNTS: F = Fee is Financed and Included in Loan Amount

0804	AMOUNT PAID TO OTHERS ON YOUR BEHALF		
0805	Appraisal Fee to Appraisal Innovations		\$413.00
0808	Credit Report to ADVANTAGE CREDIT	\$413.00/POC P	\$413.00
0808	\$10- Compliance Inspection Report to Appraisal Innovations		\$45.70
0803	Hazard Insurance Premium to State Farm	\$75.00/POC P	\$75.00
1002	HOMEOWNER'S INSURANCE RESERVES (3 @ \$48.25)		\$1,059.88
1004	COUNTY PROP TAX RESERVES (8 @ \$137.80)		\$1,102.40
1011	AGGREGATE ADJUSTMENT		(\$413.40)
1101	TITLE SERVICES AND LENDER'S TITLE INSURANCE INCLUDES		
1104	Lenders Title Insurance		\$300.00
1201	TOTAL RECORDING CHARGES INCLUDES		\$35.00
1202	Recording Fees		\$35.00
1203	TRANSFER TAXES INCLUDES		\$135.00
1203	Transfer Taxes		\$135.00
1301	REQUIRED SERVICES THAT YOU CAN SHOP FOR INCLUDES		
1302	PEST INSPECTION COMPANY		\$75.00
1305	HOME INSPECTION		\$450.00
	TOTAL AMOUNT PAID TO OTHER		\$3,717.18
0801	ITEMIZATION OF THE PREPAID FINANCE CHARGE		
0801	OUR ORIGINATION CHARGE INCLUDES		
	Processing Fee to Summit Funding, Inc.		\$135.00
	801 - Administration Fee to Summit Funding, Inc.		\$170.00
0801	INTEREST TO FIRST PAYMENT (3 @ \$17.02)		\$51.06
0802	Mortgage Insurance Premium		\$2,092.88
1101	TITLE SERVICES AND LENDER'S TITLE INSURANCE INCLUDES		
1102	Settlement or Closing Fee		\$835.00
1103	Owners Title Insurance		\$424.50
	TOTAL PREPAID FINANCE CHARGE		\$4,574.44
0802	FEES PAID BY LENDER ON BEHALF OF BORROWER		
	YOUR CREDIT CHARGE (POINTS) FOR SPECIFIC INTEREST RATE CHOSEN		
	INCLUDES		
	Origination Credit @ 0.000 % = \$36.58		(\$36.58)
	TOTAL		(\$36.58)

The undersigned acknowledge receiving and reading a completed copy of this disclosure. Neither you nor the creditor previously has become obligated to make or accept this loan. This disclosure is not part of your loan contract.


KAREN K BABER

5-29-15
DATE

Eds Mac, Inc.

GIOAF 0711
GIOAF
05/27/2015 07:19 AM PST



001110

EXHIBIT 16

Subject: Re: closing

didn't have termite inspection done...

did inspection/appraisal and that has been paid for

NOTE TO JONATHAN AND STEVE - PLEASE CALL LINDA IF ANYTHING ELSE - THANKS

On Wednesday, May 27, 2015 5:06 PM, Linda Mattison <linda@gillenlawfirm.com> wrote:

Hi Karen

I called Jonathan and he said there was a termite and home inspection which is good because we cannot close without them. He has sent them to Steve Reynolds. He said to put them as paid POC.

Thanks

Linda M. Mattison, Paralegal
Gillen Law Firm, PA
1803 Ebenezer Road
Rock Hill, SC 29732

803-327-0777 (Direct)
803-327-5011 (Fax)

On Monday, June 1, 2015 3:15 PM, Linda Mattison <linda@gillenlawfirm.com> wrote:

Good afternoon Karen

I have copied your loan package and you can come by the office to pick up at your convenience. Your check is ready also.

Jonathan did not bring the inspections on Friday you asked about. He is supposed to bring them today. I have copied the loan package for him to come by the office to pick up. The check for Allen Tate is also ready.

We will mail off the loan package this afternoon after he brings the termite and home inspection.

001112

EXHIBIT 17

STATE OF South Carolina

GENERAL RELEASE

COUNTY OF York

THIS RELEASE is executed this 1 day of July 2015 by the undersigned.

WITNESSETH:

In consideration of payment in the sum of \$ 429.00 to Karen Baber ("Seller(s)"), Seller(s) does hereby release and forever discharge Allen Tate Co., Inc., its parent entities, predecessors, successors and assigns, officers, directors, brokers, agents, employees and related and affiliated companies, from any and all, and all manner of, disputes, actions, claims, demands, and liabilities whatsoever in law or equity, including complaints to any professional association and/or commission, and claims for contribution and indemnification, arising from and by reason of any and all known and unknown, foreseen and unforeseen, injuries and damages, and the consequences thereof, related to and associated with the Offer to Purchase and Contract dated February 15, 2015 and any and all transactions and circumstances regarding the property located at 255 Rolling Ridge Road, Rock Hill, South Carolina.

It is understood that the payment stated herein is a good will gesture on the part of Allen Tate Co., Inc. and does not constitute admission of liability or responsibility with regard to the matters stated herein or the matters in dispute between the parties.

As further consideration of the above payment Seller(s) agrees not to disclose the terms of this settlement and release to any person, firm or entity unless ordered by a court of appropriate jurisdiction.

IN WITNESS WHEREOF, the undersigned have executed this Release Agreement as of the day and year first above written.

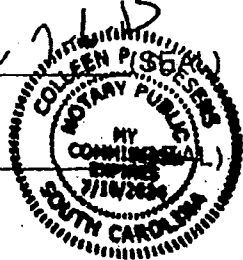
Karen Baber 7/1/15


EXHIBIT 18

Fwd: tuesday March 29 2016

1 message

karen baber <klkb1951@gmail.com>

Mon, Sep 25, 2017 at 11:23 PM

To: "klkb1951@gmail.com" <klkb1951@gmail.com>, Erin Baldwin <Erin.Baldwin@llr.sc.gov>, Sharon Cook <sharon.cook@llr.sc.gov>, UPS Store Charlotte Ave <store4411@gmail.com>

----- Forwarded message -----

From: Colleen P. Coesens <colleen.coesens@allentate.com>

Date: Tue, Mar 29, 2016 at 11:46 AM

Subject: Re: tuesday March 29 2016

To: karen baber <klkb1951@gmail.com>

Ms. Baber,

I will get a copy of the CL-100 for you. I have also been in touch with the City of Rock Hill to ascertain if they were indeed at the site of the leak on the day Jonathan maintains the repair was made. The supervisor is providing me with the documentation one way or another. I await any further information from you.

Colleen

Colleen P. Coesens

ABR, CRB, CRS, GRI, SRES

Broker-in-Charge

Allen Tate Rock Hill

Direct Line: 803-817-9652

colleen.coesens@allentate.com

<http://www.allentate.com/colleencoesens>



I am including the contact information of our attorney for all future correspondence.

On Mar 29, 2016 1:41 PM, "Colleen P. Coesens" <colleen.coesens@allentate.com> wrote:

Understand; however as clarification, the appraiser cannot complete the appraisal until the utilities are on and functioning at the time of the appraisal. This was an FHA appraisal and, as such, although not an inspection by any means, these appraisals look a little closer at specific areas such as the roof, etc.

Colleen

Colleen P. Coesens
ABR, CRB, CRS, GRI, SRES
Broker-in-Charge
Allen Tate Rock Hill
Direct Line: 803-817-9652
colleen.coesens@allentate.com
<http://www.allentate.com/colleencoesens>

On Tue, Mar 29, 2016 at 1:38 PM, Colleen P. Coesens <colleen.coesens@allentate.com> wrote:

Ms. Baber, the attorney must have the CL-100 showing it was clear in the package in order to close an FHA loan. That is mandated. Jonathan saying it was there wouldn't make any difference to the closing one way or another. The appraiser determines that the actual value of the property is the same or greater than what the seller and the buyer agreed upon as the sales price. He cannot provide the appraisal if the utilities are not functioning (again, FHA requirements) as that would mean the house is not "habitable." The water would have to be running, the electric would have to be on when he came through again to ensure they were functioning.

Colleen

Colleen P. Coesens
ABR, CRB, CRS, GRI, SRES
Broker-in-Charge
Allen Tate Rock Hill
Direct Line: 803-817-9652
colleen.coesens@allentate.com
<http://www.allentate.com/colleencoesens>

you do not have one in your file I have included a copy of the **Walk Through Acknowledgement** executed on May 29, 2015.

Insofar as the CL-100, my apologies; however I was mistaken in that I believed that you had such an inspection completed. From what I understand from an email you sent to your lender, you did not have one completed, therefore, there is not a CL-100.

I am including the contact information of our attorney for all future correspondence.

On Mar 29, 2016 1:41 PM, "Colleen P. Coesens" <colleen.coesens@allentate.com> wrote:
Understand; however as clarification, the appraiser cannot complete the appraisal until the utilities are on and functioning at the time of the appraisal. This was an FHA appraisal and, as such, although not an inspection by any means, these appraisals look a little closer at specific areas such as the roof, etc.

Colleen

Colleen P. Coesens
ABR,CRB,CRS,GRI,SRES
Broker-in-Charge
Allen Tate Rock Hill
Direct Line: 603.917.8652
colleen.coesens@allentate.com
<http://www.allentate.com/colleen.coesens>

On Tue, Mar 29, 2016 at 1:38 PM, Colleen P. Coesens <colleen.coesens@allentate.com> wrote:
Ms. Baber, the attorney must have the CL-100 showing it was clear in the package in order to close an FHA loan. That is mandated. Jonathan saying it was there wouldn't make any difference to the closing one way or another. The appraiser determines that the actual value of the property is the same or greater than what the seller and the buyer agreed upon as the sales price. He cannot provide the appraisal if the utilities are not functioning (again, FHA requirements) as that would mean the house is not "habitable." The water would have to be running, the electric would have to be on when he came through again to ensure they were functioning.

Colleen

Colleen P. Coesens
ABR,CRB,CRS,GRI,SRES
Broker-in-Charge
Allen Tate Rock Hill

EXHIBIT 19



UPS Store <store4411@gmail.com>

Fwd: Fw: Appraisal Report

karen baber <klkb1951@gmail.com>
To: UPS Store Charlotte Ave <store4411@gmail.com>

Thu, Nov 30, 2017 at 12:00 PM

On Thursday, May 5, 2016 11:33 AM, Karen Baber <babar.karen@yahoo.com> wrote:

Thank you for the report.

Would you please clarify with your appraisal....

he has the re-inspection dated March 12, 2016 which is on a Saturday.

I will call Jonathan again about the termite report and inspection. The attorney's office can't find.

On Wednesday, May 4, 2016 5:49 PM, Macy Smith <Macy.Smith@summitfunding.net> wrote:

Here is your appraisal report Mrs. Barber! The closing package had the termite report and the inspection. I can give you the number for the department in California for you to contact. We don't keep a copy of the closing package. Steve is no longer with us. I did check client files and he spoke to Jonathan Garvey on May 25 and asked him to send in these reports. Steve needed these before he could request the loan to be funded. You might want to check with Jonathan and the closing attorney. Have a great day!

Thanks,

Macy Smith | Greetings Partner

Office: (704) 895-8770 (Ext: 2306)

Fax: (704) 895-8768

macy.smith@summitfunding.net

www.summitfunding.net



NMLS ID# 3199 

19300 Statesville Road Suite 201 | Cornelius, NC 28031 | Branch NMLS ID# 900906



This communication from Summit Funding - may contain privileged and/or confidential

001120

EXHIBIT 20

001121

May 31, 2016

CERTIFIED MAIL RETURN RECEIPT

The Allen Tate Company

Ms. Colleen Cozens

Mr. Jonathan Garvey

Mr. Robert Ours

Ms. Connie Delaney

Re: Cancellation of General Release - Re: 255 Rolling Ridge Drive, Rock Hill, SC 29730

Please be advised that the Release signed by me on July 1, 2015 is hereby cancelled due to fraudulent inducement.

In addition, a Complaint is being made against all parties listed above with the South Carolina Department of Consumer Affairs as well as the South Carolina Real Estate Commission. This complaint includes, but is not limited to, numerous counts of fraud, ethical misconduct, misrepresentation, false statements, conspiracy, reckless endangerment, a false statement within the release that I was the Seller when I was the Purchaser, and compromising the financial and emotional well-being of others including myself, my daughter, and my two young grand children who live with me.

Sincerely,

Karen Baber

255 Rolling Ridge Rd, Rock Hill, SC 29730

CC: Summit Funding; Michael F. Gillen, Closing Attorney; Consumer Affairs; Real Estate Commission

EXHIBIT 21

001123

Kimberly Ballentine

From: karen baber <klkb1951@gmail.com>
Sent: Friday, December 1, 2017 9:51 AM
To: Sharon Cook
Subject: Fwd: loan pkg

***** SCDDLRR NOTICE *****

- This email is from an external email address. Please use caution when deciding whether to open any attachments or when clicking links.
- Personally Identifiable Information (PII) should not be included in e-mail text or attachments. Do not save or transmit PII unencrypted.

From: karen baber <klkb1951@gmail.com>
Date: Mon, Sep 12, 2016 at 10:28 AM
Subject: Re: loan pkg
To: Linda Mattison <linda@gillenlawfirm.com>

Thank you so much. Hope your husband fully recovers so you can enjoy entirement for many years to come

From: Linda Mattison <linda@gillenlawfirm.com>
Date: Mon, Sep 12, 2016 at 9:43 AM
Subject: loan pkg
To: karen baber <klkb1951@gmail.com>

Good morning Karen

I have copied your loan package and you can come by the office to pick up at your convenience. We did not keep a copy of the termite report and the inspection. We were very busy that day and I apologize. We could not have finalized the the closing without those and I remember we were having to wait on Jonathan to bring them. I would think he would have copies or could get them for you.

Thanks

Linda M. Mattison, Paralegal

EXHIBIT 22

Poyner Spruill^{LLP}

Thomas L. Ogburn, III
Attorney-at-Law
Licensed in NC and SC
Direct Dial: 704.342.5258
Facsimile: 704.342-5264
togburn@poynerspruill.com

October 25, 2018

Karen K. Baber
255 Rolling Ridge Road
Reck Hill, South Carolina 29730

Re: Baber v. Summit Funding, Inc., et al., York County case no.: 2018-CP-46-01592)

Dear Ms. Baber:

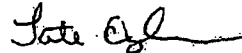
On August 8, 2018, we served copies of *Defendants Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert Ouzts and Connie Delaney's First Set of Interrogatories and Request for Production of Documents to Plaintiff and Defendants Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert Ouzts and Connie Delaney's First Requests for Admission to Plaintiff* on you by first class mail. Additional copies of these documents are enclosed for your convenience. Pursuant to the South Carolina Rules of Civil Procedure, you were required to serve your responses by September 12, 2018. It has now been over six weeks since the deadline to respond passed. Pursuant to Rule 35, SCRPC, the Requests for Admission are deemed admitted. However, we require your responses to the Interrogatories and Requests for Production.

Please accept this letter as a demand that you fully and completely respond to the Interrogatories and Requests for Production by November 9, 2018. If we do not receive your responses by that date, we will be forced to file a Motion to Compel seeking a court order compelling your responses. If we have to file a Motion to Compel, we will also ask the Court to award us any attorney's fees and costs incurred in prosecuting the motion.

Please let us know if you have any questions.

Sincerely,

POYNER SPRUILL LLP



Thomas L. Ogburn, III

TLO/avd
Enclosures

cc: Martin S. Driggers, Jr., Esq. (via e-mail, w/enclosures)
Russell M. Racine, Esq. (via e-mail, w/enclosures)
Susan E. Driscoll, Esq. (via e-mail, w/enclosures)

WWW.POYNERSPRUILL.COM

RALEIGH

CHARLOTTE

ROCKY MOUNT

SOUTHERN PINES

101 S. College Street, Suite 2900, Charlotte, NC 28202-8021

704.342.5250

EXHIBIT

1

001126

EXHIBIT 23

001127

Ogburn, Tate

From: karen baber <klkb1951@gmail.com>
Sent: Friday, November 02, 2018 9:50 PM
To: Ogburn, Tate; Martin S. Driggers, Jr.; Russell M. Racine; Susan Driscoll
Subject: Fwd: Emails on the house case

November 2, 2018

Mr. Thomas L. Ogburn, III
Poyner Spruill LLP
301 S College St
Charlotte, NC 28202

Deliver Via Email Only: togburn@poynerspruill.com

Re: York County Case No. 2018-CP-46-01592

Dear Mr. Ogburn:

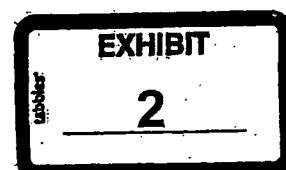
On October 31, 2018, I received your letter dated and postmarked October 25, 2018. Enclosed was your "First Set of Interrogatories and Request for production of Documents to Plaintiff" and "First Set of Request for Admission to Plaintiff"; both signed by you on August 8, 2018. I have delayed responding to your letter to verify that I never received these documents.

As I believe you are aware, I went to the emergency room on July 21, 2018 with an injury which originally occurred on July 15, 2018. During the following weeks I incurred several falls and lost feeling in the right leg and foot and after having one back procedure required emergency spine surgery on August 30. However, from those dates, it is clear that I was home during the time that your discovery requests would have been sent. I am confident that I never received them.

Three days after my August 30 surgery, I was taken by ambulance to Mercy Hospital and then to a rehab facility. I did not return home until September 20 where I began in-home rehab. Thus, even if your first set of discovery had been received, I would have been unable to respond.

Having received your discovery requests for the first time in your letter dated October 25, 2018, I will attempt to respond within 33 days, i.e. by November 27. Please be aware, however, that I may yet need an additional extension of time because there is a possibility that I will need another spine surgery given re-injury to my back the week of October 21st. I will not know that until an MRI is performed on November 7 and then after I consult with Dr. Spectra to determine the course of action. Until that time I have been advised that I am to limit all activity, elevate my foot and leg to try to keep the swelling down, and to not drive. All therapy has stopped.

I will keep you advised as to whether additional time will be needed.



Sincerely,

Karen Baber

cc: Martin S. Driggers, Jr. Esq. / via email
Russell M. Racine, Esq. / via email
Susan E. Driscoll, Esq. / via email
Gloria Long-Robinson / via US Mail

EXHIBIT 24

001130

From: karen baber <klkb1951@gmail.com>
Subject: Fwd: Request for Admissions
Date: December 5, 2018 at 9:22 AM
To: Stephen Hard <sthards5@gmail.com>

----- Forwarded message -----

From: karen baber <klkb1951@gmail.com>
Date: Tue, Nov 27, 2018, 8:36 PM
Subject: Fwd: Request for Admissions
To: Tate Ogburn <togburn@poynerspruill.com>

----- Forwarded message -----

From: karen baber <klkb1951@gmail.com>
Date: Tue, Nov 27, 2018, 10:48 AM
Subject: Request for Admissions
To: Tate Ogburn <togburn@poynerspruill.com>, Russell M. Racine <rracine@cshlaw.com>, Susan Driscoll <sdriscoll@driscollsheedy.com>, Martin S. Driggers, Jr. <MSD@swblaw.com>
Cc: karen baber <klkb1951@gmail.com>



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**STATE OF SOUTH CAROLINA
COUNTY OF YORK**

KAREN K. BABER,
PLAINTIFF,

VS.

**SUMMIT FUNDING, INC., A CALIFORNIA CORPORATION;
APPRAISAL INNOVATIONS, LLC, A SOUTH CAROLINA
LIMITED LIABILITY COMPANY; BRIAN L. BLUE, AN
INDIVIDUAL; THE GILLEN LAW FIRM, P.A., A SOUTH
CAROLINA PROFESSIONAL ASSOCIATION; MICHAEL F.
GILLEN, AN INDIVIDUAL; ALLEN TATE CO., INC., A NORTH
CAROLINA CORPORATION; COLLEEN COESENS, AN
INDIVIDUAL; JONATHAN GARVEY, AN INDIVIDUAL; ROBERT
OUZTS, AN INDIVIDUAL; CONNIE DELANEY, AN INDIVIDUAL;
AND GLORIA LONG-ROBINSON, AN INDIVIDUAL,
DEFENDANTS.**

**IN THE COURT COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT**

C/A NO:

**PLAINTIFF' KAREN K. BABER'S RESPONSES TO
DEFENDANTS ALLEN TATE Co., INC., COLLEEN
COESENS, JONATHAN GARVEY, ROBER OUZTS, AND
CONNIE DELANEY'S FIRST REQUEST FOR ADMISSIONS
TO PLAINTIFF.**

(MEDIATION AND JURY TRIAL DEMANDED)

Plaintiff Karen K. Baber, acting pro se, hereby provides her responses to the Tate Defendants' First Request for Production of Documents. In so responding, Plaintiff makes these responses solely for the purpose of this action. Each response is made subject to all objections to competence, materiality, relevance or other objection as to the admissibility that may apply in the event that any such response, or the information contained therein, is sought to be used in court. The Plaintiff expressly reserves all such objections.

GENERAL STATEMENT

Based upon the Defendants' recently filed motion to compel, it appears that they may attempt to contend that Plaintiff has admitted all the requests for admissions because of an alleged failure to respond to such requests within the time period prescribed by Rule 36 of the

South Carolina Rules of Procedure. Plaintiff did not receive a copy of the Requests for Admission until provided a copy of the same with Defendant's' counsel's letter dated October 25, 2018. Accordingly, with the three additional days to respond to documents served by mail, these responses to the First Request for Admissions have been timely responded to and are timely served.

REQUEST FOR ADMISSIONS

REQUEST NO. 1: Admit that the document attached hereto as Exhibit A is a true and accurate copy of the Agreement/Contract to Buy and Sell Real Estate (Residential) you signed on or about February 19, 2015.

RESPONSE TO REQUEST NO. 1: Plaintiff admits that Attachment A is true and accurate copy of what is believed to be the second of as many as five agreement/contracts to buy and sell real estate, for which Plaintiff authorized her electronic signature. Exhibit "A" is not the final Agreement/Contract which was a part of the closing package.

REQUEST NO. 2: Admit that the document attached hereto as Exhibit B is a true and accurate copy of the Professional Services and Disclosure election you signed.

RESPONSE TO REQUEST NO. 2: Plaintiff denies having signed Exhibit B.

REQUEST NO. 3: Admit that the document attached hereto as Exhibit C is a true and accurate copy of the General Release you signed on or about July 1, 2015:

RESPONSE TO REQUEST NO. 3: Plaintiff admits that she signed the General Release dated July 1, 2015; Exhibit C. Plaintiff affirmatively alleges that she then rescinded the General Release upon learning that there had, in fact, been no clear CL100 Wood Infestation Report or a home inspection report as had been previously represented.

REQUEST NO. 4: Admit that the document attached hereto as Exhibit C is a true and accurate copy of the General Release you referenced in paragraph 58 of your Complaint.

RESPONSE TO REQUEST NO. 4: Plaintiff admits that the document attached hereto as Exhibit C is a true and accurate copy of the General Release she referenced in paragraph 58 of your Complaint.

REQUEST NO. 5: Admit that the document attached hereto as Exhibit D is a true and accurate copy of the Walk-Through Acknowledgement you signed on or about February 19, 2015.

RESPONSE TO REQUEST NO. 5: Plaintiff admits that she signed the Walk-through acknowledgement date May 29, 2015; however, the SC LLR Disclosure Form was attached with all items marked "YES" and is not attached to Exhibit D. The Disclosure Form required that the Seller actually provide detailed information regarding the nature of the issue being disclosed. The Seller failed to do so and is thus not excused by simply marking a bunch of the "Yes" boxes on the disclosure. In addition, upon information and belief, agents of Tate were aware of the defects in the condition of the Property which should have been disclosed. Pursuant to the Disclosure Form and South Carolina law, Tate and its agents are liable for failure to fully disclose those known defects.

REQUEST NO. 6: Admit the document attached hereto as Exhibit E is a true and accurate copy of the Closing Instructions you signed on or about February 12, 2015.

RESPONSE TO REQUEST NO. 6: Plaintiff admits that she signed the document attached as Exhibit E. This form expired on February 26, 2015.

REQUEST NO. 7: Admit that the document attached hereto as Exhibit F is a true and accurate copy of the Settlement Statement you signed on or about May 29, 2015.

RESPONSE TO REQUEST NO. 7: Plaintiff admits signing Exhibit F which included Form GFE as shown on Line 1301 on page 2 of 3 with said form not being attached to Exhibit F. Form GFE identified the items required for closing as set forth by Summit Funding and Fannie Mae which included a termite inspection report and a home inspection. Specifically, the instructions to the

Loan Processor that the loan could not be funded and the closing attorney could not close the loan without these items.

REQUEST NO. 8: Admit that you knew before you purchased the Property on May 29, 2015 that no termite inspection had been performed on the Property.

RESPONSE TO REQUEST NO. 8: Plaintiff denies that she knew before May 29, 2015 that no termite inspection had been performed on the Property. This was not known until 2016 at which time Defendants acknowledged that they had failed to obtain the required inspections.

REQUEST NO. 9: Admit that you knew before you purchased the Property on May 29, 2015 that no CL-100 Official South Carolina Wood Infestation Report existed relating to the Property.

RESPONSE TO REQUEST NO. 9: Plaintiff denies that she knew before purchasing the Property on May 29, 2015 that no CL-100 Official Wood Infestation Report existed relating to the property as was required by Underwriting and FHA/Fannie Mae. This was not known until 2016 when Defendants admitted they had failed to obtain a wood infestation or house inspection report. It was upon learning this that Baber withdrew and rescinded the Release she had provided the Defendants due to their fraud and misrepresentation. Plaintiff affirmatively alleges that in 2016, Tate acknowledged/apologized for failing to obtain CL-100.

REQUEST NO. 10: Admit that you knew before you purchased the Property on May 29, 2015 that no home inspection (other than the appraisal performed by Brian Blue of Appraisal Innovations, LLC) had been performed on the Property.

RESPONSE TO REQUEST NO. 10: Plaintiff denies that she knew before purchasing the property on May 29, 2015 that no home inspection had been performed as required by underwriting and FHA/Fannie Mae. This was not known until 2016 when Defendants admitting failure to obtain the home inspection as was required.

REQUEST NO. 11: Admit that you knew before you purchased the Property on May 29, 2015 that the appraisal performed by Brian Blue of Appraisal Innovations, LLC was the only inspection performed on the Property prior to closing.

RESPONSE TO REQUEST NO. 11: Plaintiff denies knowing that the appraisal was the only inspection performed on the property prior to closing for the reasons stated in response to requests numbers 8 - 10 above.

REQUEST NO. 12: Admit that you told one or more of the Tate Defendants that you did not want to pay for a home inspection.

RESPONSE TO REQUEST NO. 12: Plaintiff denies telling anyone at Allen Tate that she did not want to pay for a home inspection. A home inspection report was required by Summit Funding and was an underwriting requirement. This was also a requirement of the Fannie Mae loan. It was not optional. Plaintiff affirmatively alleges that in 2016, Tate acknowledged failing to obtain the Home inspection as was required.

REQUEST NO. 13: Admit that you told one or more of the Tate Defendants that you did not want to pay for a termite inspection.

RESPONSE TO REQUEST NO. 13: Plaintiff denies telling anyone at Allen Tate that she did not want to pay for a termite inspection. A CL-100 was required by Summit Funding and was an underwriting requirement for a Fannie Mae Loan. In 2016, Allen Tate Broker, Colleen Coesens, acknowledged that the CL100 was not optional and apologized for failing to obtain the required termite inspection and notified Plaintiff that Tate had obtained legal counsel.

DATED this 27th day of November, 2018



Karen K. Baber, Plaintiff, Pro Se
255 Rolling Ridge
Rock Hill, SC 29730
843-240-0083
Email: klkb1951@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing document was emailed to the following on the date set forth below:

Thomas L. Ogburn, III
POYNER SPRUILL LLP
301 South College Street, Suite 2300
Charlotte, North Carolina 29202
togburn@poynerspruill.com
Attorney for Defendants Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert Ouzts,
and Connie Delaney

Russell M Racine
CRANFILL SUMNER & HARTZOG, LLP
2907 Providence Road, Suite 200
Charlotte, North Carolina 28211
rracine@cshlaw.com
Attorney for Defendants Appraisal Innovations, LLC and Brian L. Blue

Susan E. Driscoll
DRISCOLL SHEEDY, P.A.
11520 N. Community House Road, Suite 200
Charlotte, North Carolina 28277
sdriscoll@driscollsheedy.com
Attorney for Defendant Summit Funding, Inc.

Martin S. Driggers, Jr.
SWEENEY, WINGAGE & BARROW, P.A.
115 Cargill Way, Suite B
Hartsville, South Carolina 29550
msd@swblaw.com
Attorney for Defendants Gillen Law Firm, P.A. and Michael F. Gillen

and a copy sent by first-class mail, postage prepaid to

Gloria Long-Robinson
3221 Kelox Road
Gwynn Oak, Maryland 21207
Defendant, Pro Se

DATED this 27th day of November, 2018

Karen K. Baber

Karen K. Baber, Plaintiff, Pro Se

255 Rolling Ridge

Rock Hill, SC 29730

843-240-0083

- Email: kkb1951@gmail.com

**STATE OF SOUTH CAROLINA
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BRIAN L. BLUE, AN INDIVIDUAL; THE GILLEN LAW
FIRM, P.A., A SOUTH CAROLINA PROFESSIONAL
ASSOCIATION; MICHAEL F. GILLEN, AN INDIVIDUAL;
ALLEN TATE CO., INC., A NORTH CAROLINA
CORPORATION; COLLEEN COESENS, AN INDIVIDUAL;
JONATHAN GARVEY, AN INDIVIDUAL; ROBERT OUZTS,
AN INDIVIDUAL; CONNIE DELANEY, AN INDIVIDUAL;
AND GLORIA LONG-ROBINSON, AN INDIVIDUAL,
DEFENDANTS.**

**IN THE COURT COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT**

C/A NO:

**PLAINTIFF'S FIRST SET OF DISCOVERY
REQUESTS TO THE
TATE DEFENDANTS**

(MEDIATION AND JURY TRIAL DEMANDED)

NOW COMES Plaintiff Karen K. Baber, Pro Se, and pursuant to Rules 26, 33, 34 and 36 of the South Carolina Rules of Civil Procedure, hereby requires each of the Defendants Allen Tate Co., Inc. ("Tate" or "Allen Tate"), Colleen Coesens ("Coesens"), Jonathan Garvey ("Garvey"), Robert Ouzts ("Ouzts") and Connie Delaney ("Delaney") (collectively, the "Tate Defendants"), by and through Tate Defendants' counsel, to each answer separately and under oath the following requests for admissions and interrogatories, and to produce documents responsive to the following request for production within thirty (30) day after the service hereof to the email of Plaintiff "KLKB1951@gmail.com" as has been agreed upon between the parties.

DEFINITIONS AND INSTRUCTIONS

1. "Appraisal" means the Uniform Residential Appraisal Report prepared with respect to the Property (as defined below) by Brian Blue of Appraisal Innovations, LLC with an

Effective Date of February 27, 2015 and signed on March 5, 2015 and as later supplemented.

2. "Blue" means Defendant Brian Blue and Appraisal Innovations, Inc.
3. "Complaint" shall mean Plaintiff's Verified Complaint filed in this matter on May 29, 2018.
4. "Document" as used herein, is defined in the broadest sense permitted by the SC Rules of Civil Procedure and means the embodiment, in any form (including electronic for), of any attempt, by any means, to utilize, memorialize or communicate thoughts or information. As used herein, the term "document" shall mean every writing or record of every type that is, or has been, in the possession, custody or control of Tate Defendants, or of which Tate Defendants has knowledge, including, without limitation, the original and all copies regardless of origin or location or any writings, notes, correspondence, communications of any nature, telegrams, memoranda, electronic mail, messages, text messages, summaries or records of personal conversations, diaries, reports, calendars, drawings, photographs, sketches, minutes, or records of minutes, agreements, summaries of negotiations, brochures, pamphlets, advertisements, circulars, press releases, newspaper articles, tapes or recordings of any form, drafts of any documents, revisions of any drafts of documents and printed matter of every kind or description, including all information in computers, in computer readable form or on microfilm or microfiche.

5. "Disclosure Statement" means the LLR State of South Carolina Residential Property Condition Disclosure Statement signed and dated March 28, 2014 by Seller and all updates or addendum thereto.
6. "FNMA" shall mean the Federal National Mortgage Association.
7. "Identify" when used in reference to a document, means to state the type of document (e.g. letter, memorandum, chart, etc.) or some other means of identifying it, the date of the document, its author and originator, the location or custodian of the document, a summary of its contents, and any other information necessary to distinguish the document from all others.
8. "Identify" when used in reference to an individual means to state the individual's business address, residence address, telephone numbers, and if appropriate, position or occupation.
9. "Identify" when used in reference to an oral communication means to state the names of the parties participating in the oral communication, the date of the oral communication, all other persons present during the communication, a summary of the oral communication, the location or custodian of any written record of the oral communication, and any other information necessary to distinguish the oral communication from all others.
10. "Identify" when used in reference to a civil action, arbitration or administrative proceeding shall mean stating the court or administrative agency in which the action originated; the identity of parties to the action, arbitration or proceeding; and the

allegations or claimed violations made against you in such action, arbitration or proceeding.

11. "Identify" when used in reference to a meeting shall mean to identify the date such meeting occurred; identify the persons at such meeting whether such meeting occurred in person or via electronic means or a combination thereof; and state the content of the communications made during such meeting.
12. "Plaintiff" shall mean Plaintiff Karen K. Baber.
13. "Property" shall mean the real property located at 255 Rolling Ridge Rd, Rock Hill, SC.
14. The "Purchase" shall mean the purchase of the Property by Plaintiff from the Seller, Gloria Long-Robinson.
15. "Purchase Contract" shall mean the Agreement/Contract: To Buy and Sell Real Estate (Residential) between Karen Baber as Buyer and Gloria A. Long-Robinson as Seller, originally signed February 18 and February 19, 2015 by those parties, and as later amended on May 19, 2015.
16. "Seller" shall mean Gloria Long-Robinson.
17. "Summit Funding" shall mean "Summit Funding, Inc."
18. "You", "your", "they" and "Tate Defendants" or any combinations of one or more of the Tate Defendants individually or collectively, shall mean each of the Tate Defendants named in the introductory paragraph and the Tate Defendants' attorneys, representatives, agents, private investigators, and others who are in the possession of or may have obtained information for or on behalf of, any of the aforementioned persons.

19. If any information called for by an Interrogatory or document responsive to a Document Request is withheld on the basis of a claim of privilege or attorney work-product, the claimed basis for withholding the information and nature of the information withheld shall be set forth, together with a statement of all the circumstances relied upon to support such claim.

20. These Interrogatories and Request for Production and Documents shall be deemed continuing in nature so as to require supplemental answers between the time answers are served and the time of trial in accordance with Rule 26(e) of the SC Rules of Civil Procedure. Such supplemental responses are to be served upon Plaintiff within thirty (30) days after receipt of such information.

21. When, after a reasonable and thorough investigation using due diligence, you are unable to answer any part of an Interrogatory because of lack of information available to you, specify in full and complete detail the type of information which you claim is not available to you and what has been done by you to locate such information. In addition, specify what knowledge or belief you have concerning the unanswered portion of the Interrogatory, set forth the facts upon which such knowledge or belief is based, and identify the person who has or is likely to have the information which you claim is not available.

REQUEST FOR ADMISSIONS

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, you are requested to admit or deny the following Requests for Admission:

REQUEST #1: Admit that a State of South Carolina Residential Property Condition Disclosure Statement was required with respect to the Purchase.

RESPONSE TO REQUEST #1

REQUEST #2: Admit that the Seller, Gloria Long-Robinson, provided a Disclosure Statement dated March 28, 2014 ("Disclosure Statement") to one or more of the Tate Defendants, which was provided to Baber.

RESPONSE TO REQUEST #2

REQUEST #3: Admit that each "YES" response on the Disclosure Statement required the Seller (a) to explain or describe the issue or (b) attach a descriptive report from an engineer, contractor, pest control operator, expert, or public agency.

RESPONSE TO REQUEST #3

REQUEST #4: Admit that the Disclosure Statement contained no descriptive report from an engineer, contractor, pest control operator, expert or public agency regarding any of the items that had been marked "Yes" on the Disclosure Statement.

RESPONSE TO REQUEST #4

REQUEST #5: Admit that the only explanation provided by Seller on the Disclosure Statement regarding any item marked "Yes" was that: "hose broke. Replaced flooring on 1st level except family room."

RESPONSE TO REQUEST #5

REQUEST #6: Admit that each of the real estate licensees involved with the Purchase were required to "disclose material facts about the property if the real estate licensee knows or reasonably should have known about the issue, regardless of owner responses on the [Disclosure Statement]."

RESPONSE TO REQUEST #6

REQUEST #7: Admit that Seller originally retained Tate to list the Property for sale sometime in 2014.

RESPONSE TO REQUEST #7

REQUEST #8: Admit that one or more of Tate's agents took pictures of the Property at or near the time of the listing in 2014 and at other times during the time it was listed by Tate and/or that it had pictures of the Property taken by others which pictures were provided to Tate and these pictures were put in various MLS and other advertising sites.

RESPONSE TO REQUEST #8

REQUEST #9: Admit that the Property was receiving electricity and water at the time of the listing of the Property in 2014.

RESPONSE TO REQUEST #9

REQUEST #10: Admit that the utilities servicing the Property had been turned off by Seller in January 2015 and that the Property was not regularly receiving or using electricity and water from January 2015 to the date of the Purchase.

RESPONSE TO REQUEST #10

REQUEST #11: Admit that the purchase contract between Baber and Seller was expressly made "contingent upon approval and acceptance of lender."

RESPONSE TO REQUEST #11

REQUEST #12: Admit that "approval and acceptance of lender," as stated in the Purchase Contract, anticipated compliance with the lender's underwriting guidelines and specifically with respect to the Purchase, compliance with HUD requirements for the purchase of an existing residence in South Carolina.

RESPONSE TO REQUEST #12

REQUEST #13: Admit that Summit Funding, Inc. required a CL-100 wood infestation report with respect to the Property.

RESPONSE TO REQUEST #13

REQUEST #14: Admit that Summit Funding, Inc. required a home inspection report with respect to the Property.

RESPONSE TO REQUEST #14

REQUEST #15: Admit that it is the usual and customary practice in South Carolina for a CL-100 wood infestation report to be obtained in connection with a bank-financed purchase of an existing residence.

RESPONSE TO REQUEST #15

REQUEST #16: Admit that Defendant Garvey recommended Steve Reynolds, Loan Manager with Summit Funding to process Plaintiff's loan application.

RESPONSE TO REQUEST #16

REQUEST #17: Admit that Garvey recommended the Gillen Law Firm from a list Summit provided to Plaintiff to represent Plaintiff in in the loan closing.

RESPONSE TO REQUEST #17

REQUEST #18: Admit that Garvey was notified that Brian Blue had been requested to perform a preliminary appraisal of the Property in February of 2015 with the Appraisal being performed on February 27, 2015.

RESPONSE TO REQUEST #18

REQUEST #19: Admit that Brian Blue of Appraisal Innovations, Inc. prepared the Appraisal.

RESPONSE TO REQUEST #19

REQUEST #20: Admit that the pictures of the Property that were in the Appraisal were not taken in February 2015.

RESPONSE TO REQUEST #20

REQUEST #21: Admit that Summit Funding requested that Garvey provide a copy of the LLR Disclosure Statement to the appraiser to ensure that the appraiser was able to clear all items marked "Yes" on the Disclosure Statement and upon finding any defects to make sure they were clearly described on the appraisal.

RESPONSE TO REQUEST #21

REQUEST #22: Admit that Ouzts caused the utilities going to the Property to be placed in his name and that on March 10, 2015 he ordered the utilities to be turned on March 11, 2015 by the City of Rock Hill Utilities Department and set an appointment time for the Rock Hill City water department employee to turn on the water and meet a plumber who would at the Property to fix a leak.

REPONSE TO REQUEST #22

REQUEST #23: Admit that on March 11, 2015, a Rock Hill City water department employee, after meeting an individual identifying himself as a plumber, returned to the Property to turn off the water because the leak had not been fixed, water continued running, and the water was then shut off by the Rock Hill City water department employee.

RESPONSE TO REQUEST #23

REQUEST #24: Admit that on March 11, 2015, a Rock Hill City water department employee read the water meter for the Property and then turned off the water to the Property.

RESPONSE TO REQUEST #24

REQUEST #25: Admit that Garvey was not at the Property on March 11, 2015.

RESPONSE TO REQUEST #25

REQUEST #26: Admit that realtors are not issued or provided keys to turn culinary water supply on or off in Rock Hill, SC.

RESPONSE TO REQUEST #26

REQUEST #27: Admit that appraisers are not issued or provided keys to turn culinary water supply on or off in Rock Hill, SC.

RESPONSE TO REQUEST #27

REQUEST #28: Admit that Ouzts, having previously put the Rock Hill Utility Account for Property into his name, closed the account on April 3, 2015 and requested a final bill.

RESPONSE TO REQUEST #28

REQUEST #29: Admit that the water to the Property was not on and functioning on March 12, 2015.

RESPONSE TO REQUEST #29

REQUEST #30: Admit that Garvey was not present at the Property on March 12, 2015 when Blue certified the Appraisal.

RESPONSE TO REQUEST #30

REQUEST #31: Admit that Blue was not at the Property at any time on March 12, 2015.

RESPONSE TO REQUEST #31

REQUEST #32: Admit that you knew that Blue could not have properly certified the Appraisal without all utilities being on and functioning.

RESPONSE TO REQUEST #32

REQUEST #33: With respect to each item below, separately ADMIT that you knew with respect to the Appraisal of the Property:

- a. Pictures in the Appraisal dated February and March of 2015 were not taken at those times.
- b. All utilities were not on and functioning.
- c. The Appraisal did not meet the guidelines set forth in HUD handbook 4905.1 and 4150.2.
- d. The HVAC was not on and functioning properly.
- e. The attic did not have drop stairs.
- f. The foundation had no crawl space.
- g. The range/oven, dishwasher and disposal were not functioning.
- h. Exterior walls, roof surface, gutters and downspouts, windows, and storm sash were not in average condition.

- i. The windows did not have screens.
- j. No "head and shoulders inspections" of the attic or the crawl spaces were or could have been performed.
- k. The house on the Property did not meet the standards pertaining to the presence and installation of smoke detector and carbon monoxide detectors of the local and state jurisdiction guidelines.
- l. The Property did not conform with HUD handbook 4150.2: 306, A, 2 which provides:
"The property must be free of all known hazards and adverse conditions that may affect the health and safety of the occupants; may affect the structural soundness of the improvements, may impair the customary use and enjoyment of the property."
- m. The Property did not conform with HUD handbook 4150.2: 306, A, 6 which provides:
"Wood Structural Components: Termites... FHA requires maximum assurances that a home is free of any infestation. A pest inspection is always required for: any structure that is ground level; any structures where the wood touches ground... all area of the property that have potential for termite infestations, including the bottoms of exterior doors and frames."
- n. The condition of the Property did show signs of deterioration or needed renovation and repairs were needed at the time of the inspection.
- o. There were physical deficiencies or adverse conditions that affected the livability, soundness or structural integrity of the property.

RESPONSE TO REQUEST #33

REQUEST #34: Admit that rails were missing on the deck that were required in order to comply with FHA safety requirements.

RESPONSE TO REQUEST #34

REQUEST #35: Admit that you understood that you, as Plaintiff's designated real estate agent and as contact to the Appraiser, were liable for failure to contact the appraiser to correct errors in the Appraisal.

RESPONSE TO REQUEST #35

REQUEST #36: Admit that you knew that the Property could not obtain a clear CL100 Wood Infestation Report at the time of the Purchase.

RESPONSE TO REQUEST #36

REQUEST #37: Admit that you knew that a home inspection of the Property would reveal the need for repairs to the house at the time of the Purchase.

RESPONSE TO REQUEST #37

REQUEST #38: Admit that you knew that you were liable for failing to disclose deficiencies in the Property not revealed or discussed in the Disclosure Statement.

RESPONSE TO REQUEST #38

REQUEST #39: Admit that Garvey was Plaintiff's agent.

RESPONSE TO REQUEST #39

REQUEST #40: Admit that Garvey owed a fiduciary duty to Plaintiff.

RESPONSE TO REQUEST #40

REQUEST #41: Admit that you signed and certified documents at the closing of the Purchase that you knew were not accurate.

RESPONSE TO REQUEST #41

REQUEST #42: Admit that the agents for Seller were Connie Delaney and Robert Ouzts.

RESPONSE TO REQUEST #42

REQUEST #43: Admit that Connie Delaney was given a Power of Attorney by and for Seller.

RESPONSE TO REQUEST #43

REQUEST #44: Admit that Plaintiff sent emails to Garvey in which Plaintiff stated or asked:

- a. "is it possible to get a home warranty (think that is what it is called) and what would that a cover and for how long. thanks"
- b. "Don't forget about fixing the ceiling in bedroom where there was a leak and make sure leak has been fixed."
- c. "Shingles replaced and check for leaks."
- d. "think they will probably have to fix deck for the insurance policy. I talked to my son in law and he and his dad will come do that so maybe what we pay them could go toward our 3% too."
- e. "will be curious about the siding and what they require - inspector in the past would never pass on windows which won't close, etc. like these - I guess things have changed".
- f. "going to give you the \$500"
- g. "how old is air conditioning unit, water heater, and gas pack, noticed rust on one of units - also dishwasher - and rust on water heater"
- h. "think seller will have to fix siding, patch and we can power wash. what do you think?"
- i. "Fix siding, maybe paint, appliances basic stuff and deck and will to be repaired and rails as required by insurance, roof shingles"

j. "repair deck to meet HUD required safety requirements".

k. "inspection"

l. "buyer to purchase home warranty if seller won't?"

RESPONSE TO REQUEST #44

REQUEST #45: Admit that Garvey sent emails to Plaintiff stating:

- a. "I will check with Steve and see if they will allow or escrow for this type of loan. Some of the loan programs killed escrows for repair and won't close with one in place. i am showing right now but can come once I am done with this client. Disclosures show those things that will get checked if still a problem."
- b. "Your lender I think we could pull that off. We also have to deal with the short sale bank too."

RESPONSE TO REQUEST #45

REQUEST #46: Admit to the following email exchanges from February 17, 2015 with Denise

Julian of Summit Funding to Plaintiff and copied to Garvey:

"Good Morning Karen,

Steve is out of the office this morning. He got your message and asked me to contact you. We have ordered the appraisal. Denise"

Karen: "Did Steve give the appraiser the list with the roof, windows, leaks and all of that to the appraiser."

Denise: "We have ordered the appraisal. Let's see what it looks like."

Karen: "When do we get the inspections?"

Denise: "We don't order those. Jonathan will get those for you before closing."

RESPONSE TO REQUEST #46

REQUEST #47: Admit that you did not order a termite inspection with respect to the Property.

RESPONSE TO REQUEST #47

REQUEST #48: Admit that you did not order a home inspection with respect to the Property.

RESPONSE TO REQUEST #48

REQUEST #49: Admit that the mortgage loan for the purchase of the Property was contingent upon a CL100 Wood Infestation Report and a home inspection.

RESPONSE TO REQUEST #49

REQUEST #50: Admit that March 7, 2015, Garvey sent an email to Plaintiff which stated: "they checked roof and made sure no leaks right? (there was that spot in the upstairs bedroom. what about the wood infestation report?"

RESPONSE TO REQUEST #50

REQUEST #51: Admit that the mortgage loan Plaintiff qualified for to purchase the Property was an FHA/FNMA government insured loan.

RESPONSE TO REQUEST #51

REQUEST #52: Admit that a CL100 Wood Infestation Report was required to meet the requirements for the closing the FNMA government insured loan for Plaintiff's Purchase.

RESPONSE TO REQUEST #52

REQUEST #53: Admit that a home inspection report was required to meet the requirements for the closing the FNMA government insured loan for Plaintiff's Purchase.

RESPONSE TO REQUEST #53

REQUEST #54: Admit that you knew that the FNMA government loan for the purchase of the Property could not be properly funded without a CL100 Wood Infestation Report and a home inspection report.

RESPONSE TO REQUEST #54

REQUEST #55: Admit to the stream of emails exchanges between Garvey, Plaintiff and Summit on February 11 and 12, 17 2015 and March 2015.

"Approval of short sale" J

"What happens if FHA comes in and tells them they have to do something" Karen

"The bank approved moving the date out to 3/26 to give you more time to get the loan approved. We will have to see what the appraisal says about condition. Maybe the seller will clean up the place and do some repair out of his pocket to make the short sale happen. J"

"Let's look at appraisal and then this loan requires a termite inspection and a home inspection. We can look at rehab loan if there are too many repairs" Steve
"when do we get inspections?" Karen

"We don't order those. Jonathan will get those for you before closing." Denise

Julian/Summit Funding
Sabrina Fajardo/Summit Funding to Karen Baber Steve Reynolds/Summit
Funding/ Jonathan Garvey/ Allen Tate

"I spoke with Steve and he will call you later today. He will also call Jonathan. He does have a copy of the Disclosure Form and your list and will send over to Mr. Blue. The utilities have to be turned on so that he can certify the leak is fixed and do a final certification. Remember too that you will have two inspections. One is the termite inspection and the other is the home inspection. Your loan will require both. As soon as the loan is approved Steve will let you know so Jonathan can get these ordered. If a lot of repairs are needed it might take several weeks. We do not want you to be disappointed but there is always a change that if a lot of repairs are needed the seller might refuse to fix. There are many options as to the types of loans that might be available. I believe Steve has already discussed these with you.

I think you may have misunderstood Mr. Blue. He does more than just walk through the house to make sure the value is there so the lender can recover any loss should you default. If he needs to make any corrections to the appraisal when he returns to do the recertification I am confident he will do so.

Please call should you have any additional questions."

Steve Reynolds/Summit Funding to Karen Baber/ Jonathan Garvey/AllenTate

"Karen,

Let's look at things after Mr. Blue goes back to property. I have called Jonathan and asked him to provide you the reports for the "Yes" items on the Disclosure Form. That would be helpful to determine if we may have any problems. Let me know what you think once you have those". Steve.

RESPONSE TO REQUEST #55

REQUEST #56: Admit that Steve Reynolds had email communications with Plaintiff on May 19, 2015 which included:

" I have called Jonathan to get the termite report and inspection to me."

"Karen,
Please sign and return I am trying to clear all condition so your file
today. Thanks. Steve"

"Karen, I will call you in the morning to go over everything. Your termite inspection was condition of loan and was with inspection. Have a great night." Steve

RESPONSE TO REQUEST #56

REQUEST #57: Admit that on May 25, 2015 Steve Reynolds of Summit Funding spoke with Garvey and asked him to send in the home and termite inspection reports so that he could request the loan to be funded.

RESPONSE TO REQUEST #57

REQUEST #58: Admit that the closing for the Purchase took place on May 29, 2015 in the office of Michael Gillen and that those present included Plaintiff, Garvey, and Delaney as well as Linda Mattison.

RESPONSE TO REQUEST #58

REQUEST #59: Admit after the signing of all closing documents, Gillen advised that no funds could be disbursed for the payoff to the mortgage holder, commissions, escrow fees, and

payment to the Appraiser until the receipt of the CL100 and the home inspection reports had been received.

RESPONSE TO REQUEST #59

REQUEST #60: Admit Gillen advised the attendees at the closing that the loan package must have all documents, including the CL 100 and the home Inspection reports, all of which was to be mailed by Tuesday June 2, 2015 or the closing would have to be rescheduled with all closing documents re-issued by Summit Funding.

RESPONSE TO REQUEST #60

REQUEST #61: Admit that on June 1, 2015 Mattison of Gillen's office wrote Plaintiff stating:

"Good afternoon Karen

I have copied your loan package and you can come by the office to pick up at your convenience. Your check is ready also.

Jonathan did not bring the inspections on Friday you asked about. He is supposed to bring them today. I have copied the loan package for him to come by the office to pick up. The check for Allen Tate is also ready.

We will mail off the loan package this afternoon after he brings the termite and home inspection.

Linda Mattison, Paralegal"

RESPONSE TO REQUEST #61

REQUEST #62: Admit that you knew that Gillen had closed and Summit had funded the loan to purchase the Property without a CL100 Wood Infestation Report or a home inspection report.

RESPONSE TO REQUEST #62

REQUEST #63: Admit that on June 1, 2015, Garvey sent an email to Baber containing the following messages along with DocuSign documents:

"I have a few things left in my file that I need. I'll send them right quick for signatures. J
will drop off warranty. called robert but he has not returned call did you call him?"
"Bringing warranty. Will keep calling Robert.
Thank you. Jonathan Garvey"

RESPONSE TO REQUEST #63

REQUEST #64: Admit that Garvey failed to obtain a home warranty prior to the Purchase.

RESPONSE TO REQUEST #64

REQUEST #65: Admit that Garvey represented to Baber that Robert Evans, a contractor, would be asked to make upgrades to the house on the Property after closing and that he would not charge for performing the CL100 Wood Infestation Report and the home inspection report.

RESPONSE TO REQUEST #65

REQUEST #66: Admit that Garvey did not ask Robert Evans to perform a CL100 Wood Infestation Report or a home inspection report.

RESPONSE TO REQUEST #66

REQUEST #67: Admit that Robert Evans was not licensed to perform CL100 Wood Infestation reports or home inspection reports.

RESPONSE TO REQUEST #67

REQUEST #68: Admit that between June 2015 and March 2016, Plaintiff made numerous calls to you and other of the Tate Defendants in an effort to locate the CL100 Wood Infestation Report and the home inspection report that were supposed to have been provided at closing to Summit Funding.

RESPONSE TO REQUEST #68

REQUEST #69: Admit that between June 2015 and March 2016, Plaintiff made numerous calls to you and other of the Tate Defendants to advise that the Appraisal was inaccurate and in March 2016 that the Appraisal was fraudulent.

RESPONSE TO REQUEST 69

REQUEST #70: Admit that Baber received emails in March 2016 from the following individuals, which stated:

- a. An email from Macy Smith with Summit Funding stating:

"Here is your appraisal report Mrs. Barber! The closing package had the termite report and the inspection. I can give you the number for the department in California for you to contact. We don't keep a copy of the closing package. Steve is no longer with us. I did check client files and he spoke to Jonathan Garvey on May 25 and asked him to send in these reports. Steve needed these before he could request the loan to be funded. You might to check with Jonathan and the closing attorney. Have a great day."

- b. An email from Ouzts stating:

"Karen, I remember Jonathan and his plumber actually did the work to replace a damaged pipe tee where the irritation splits off the main water line from the meter box to the house. I don't think they needed the assistance of the city to do this work since they had their own meter key to shut off and on the water to do this job. i hope this helps. Robert"

- c. An email from Garvey stating:

"I contacted a plumber to come fix the issue, was there when the repair took place, bought the parts for the plumber and talked to the city of rock hills tech after he cut the water off and then back on when the repair was made to the cracked T joint on the front hard close to the meter. I notified your lender to send the appraiser back out as it was "subject to" the water being on to get the property appraised. The appraiser came out and cleared the appraisal. I then paid the plumber for his work out of my pocket. We had a street key for the water turn off and back on but it didn't fit properly so we had to call for the city to help. I hope this helps as well. JG"

- d. In response to an email from Baber stating "you said at the meeting you paid Robert Evans. They city said they did not receive a service order to turn the water on again until after closing. Please have the appraiser provide the date he came back out and

had the water turned back on and checked the leak," Garvey stated: "Not sure I follow. I've provided all that I can at this point. J"

RESPONSE TO REQUEST #70

REQUEST #71: Admit that May 29, 2016, Coesens sent an email to Plaintiff stating:

"Ms. Baber, the attorney must have the CL100 showing it was clear in the package in order to close an FHA loan. That is mandated. Jonathan saying it was there wouldn't make any difference to the closing one way or the other. The appraiser determines the actual value of the property is the same or greater than what the seller and buyer agreed upon as the sales price. He cannot provide the appraisal if the utilities are not functioning. (again, FHA requirements) as that would mean the house is not "habitable". The water would have to be running, the electrical would have to be on when he came through again to ensure they were functioning.

Understand; however as clarification, the appraiser cannot complete the appraisal until the utilities are on and functioning at the time of the appraisal. This was an FHA appraisal and, as such, although not an inspection by any means, these appraisals look a little closer at specific areas such as the roof, etc."

"Ms. Baber, I will get a copy of the CL-100 for you. I have also been in touch with the City of Rock Hill to ascertain if they were indeed at the site of the leak on the day Jonathan maintains the repairs were made. The supervisor is providing me with the documentation one way or another. I await any further information from you."

"Insofar as the CL-100, my apologies; however I was mistaken in that I believed that you had such an inspection completed. From what I understand from an email you sent to your lender, you did not have one completed, therefore, there is not a CL-100. I am including the contact information of our attorney for all future correspondence"

RESPONSE TO REQUEST #71

REQUEST #72: Admit that for the ten years prior to the Purchase, you have not represented a seller or a buyer of a single family residence more than one year old that was financed with an FHA/FNMA government guaranteed loan for which a CL100 Wood Infestation Report was not provided.

RESPONSE TO REQUEST #72

REQUEST #73: Admit that on March 23, 2016 Blue sent a text message to Baber stating: "An appraiser does not have utilities turned on or off. Only the Seller or the sellers agent can do that."

RESPONSE TO REQUEST #73

REQUEST #74: Admit that Baber forwarded a July 20, 2016 email from Larry Robinson of Summit Funding to you stating:

"Dear Ms. Baber,

Thank you for contacting Summit Funding, Inc. ("Summit") with your concerns. After conducting a thorough investigation focused on information received from you, our investigation did not reveal any wrongdoing on Summit's behalf. To explain, the loan would not have closed without meeting the Federal Housing Administration's ("FHA") underwriting guidelines.

Regarding your belief that Summit is partially responsibility for the CL100 Wood Infestation Report the loan could not have funded without receipt of this CL100. Sincerely,

LARRY ROBINSON
Compliance Analyst II"

RESPONSE TO REQUEST #74

REQUEST #75: Verify that in January or February of 2015, Garvey forwarded a copy of the Purchase Contract to Steve Reynolds at Summit Funding to facilitate qualifying Plaintiff for a loan.

RESPONSE TO REQUEST #75

REQUEST #76: Admit that on May 27, 2015, Linda Mattison sent an email to Plaintiff stating:

"Hi Karen

I called Jonathan and he said there was a termite and home inspection which is

good because we cannot close without them. He has sent them to Steve Reynolds. He said to put them as paid POC.

Thanks.

Linda M. Mattison, Paralegal"

RESPONSE TO REQUEST #76

INTERROGATORIES

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, please answer the following interrogatories.

1. If you have denied any of the Requests for Admissions, state with specificity the complete legal and factual basis for such denial.

ANSWER

2. State in detail the complete factual basis for any denial of any and allegations asserted in the Complaint.

ANSWER

3. Identify the persons known to you to be witnesses concerning the facts of this case and indicate whether or not written or recorded statements have been taken from the witnesses. For each person known to you to be a witness concerning the facts of this case, set forth either a summary sufficient to inform the other parties of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from or with witnesses.

ANSWER

4. Give the name of each of the Tate Defendants and detail each as to their history as a realtor, broker, or other involvement in the real estate industry. This should include, but not be limited to the following:
- a. By whom each is currently employed;
 - b. Each such person's prior work history in buying or selling real estate and their positions and titles from January 2005 through the date of the responses to these interrogatories; and
 - c. A description of any complaints made formally or informally against any of the Tate Defendants from January 2005 through the date of responses to these interrogatories, and the resolution of each such complaint.

ANSWER

5. Provide the dates that Allen Tate has been registered to do business in South Carolina.

ANSWER

6. Give the number of real estate agents who worked for Tate from January 1, 2013 through December 31, 2017 For the period January 1, 2010 through December 31, 2015; with respect to existing residences that were at least one year old at the time the Tate agent was engaged to act as agent for the buyer or seller of such properties:
- a. State the number of such engagements during that period.
 - b. Of those engagements state the number of properties involved that did not require an LLR State of South Carolina Residential Property Condition Disclosure Statement ("Disclosure").

- c. Of those properties for which such Disclosures were required and which had any "YES" answers to the questions asked on the Disclosures, state the number that had detailed explanations of the items marked "YES" or which required reports attached?
- d. Of those properties wherein the Disclosure had "YES" answers and did not provide explanations or reports for the "YES" answers explain the reason why the reports were not required.
- e. Of those properties that were ultimately sold to or by a client of Tate, state the number that were financed pursuant to any type of a HUD loan program.
- f. Of those properties purchased pursuant to a HUD loan program, state the number of such properties that required an appraisal before the purchase loan could be closed.
- g. Of those properties purchased pursuant to a HUD loan program, state the number of such properties that required a CL100 Wood Infestation Report before the purchase loan could be closed.
- h. Of those properties purchased pursuant to a HUD loan program, state the number of such properties that required a home inspection report before the purchase loan could be closed.

ANSWER

- 7. For the period January 1, 2010 through December 31, 2015, state:
 - a. The total number of loans obtained on behalf of all of Allen Tate's clients to purchase residential properties (that were built more than one year prior to the loan);
 - b. The total number of loans for which CL100 Wood Infestation Reports were provided prior to the funding of those loans.

- c. The total number of loans in which any requirement of a CL100 Wood Infestation Report was waived by the lender and the reason given as to why any such requirement was waived.

ANSWER

8. State the date of each listing agreement for the Property with Allen Tate or any of its agents.

ANSWER

9. State the number of offers that were made to the purchase the Property while you acted as Seller's agent.

ANSWER

10. With respect to any offer made for the purchase of the Property while you acted as Seller's agent, state whether any different Disclosure Statement with different answers or additional explanations or reports were provided to a prospective purchaser.

ANSWER

11. Identify each and every communication between you and any prospective purchaser of the Property wherein the prospective purchaser expressed any complaint or concern about the condition of the Property.

ANSWER

12. As related to the Property, state the number of showings of the Property made by a Tate agent that occurred between the date of first listing with Tate until May 1, 2015; and with regard to each such showing, identify each and every communication concerning any complaint or concern about the condition of the Property, including any

request from any person to have a contractor, plumber, insurance company, home repair company or any other person looking at the Property to determine the condition of the house, what would be required to make the Property eligible for a loan, or to provide full details as to any item for which there had been a "YES" answer on the Disclosure Statement.

ANSWER

13. Explain what you understand to be the differences between a FNMA loan from other types of government guaranteed loans.

ANSWER

14. Is it your understanding that properties eligible for financing with FNMA loans generally must be "Move In Ready;" and if not, state what FNMA guidelines provide as to what portion of any loan funds may be used for repairs or improvements to a property.

ANSWER

15. Identify any person known to you to be a witness concerning the facts of the investigation by the South Carolina Department of Labor, Licensing and Regulation ("LLR") regarding a complaint to the LLR by Plaintiff against the Tate Defendants and identify any written or recorded statement and evidence that was provided regarding any such investigation.

ANSWER

16. Identify each and every person associated with or employed by any public agency, Offices of the State of South Carolina House of Representatives or Offices of the United States Congress or agencies such as HUD/FNMA or the Office of Inspector General or

any committee formed to investigate FNMA, who have advised you that they may open or re-open an investigation or make inquiries related to the factual matters asserted in the Complaint.

ANSWER

17. List the names and addresses of any expert witnesses whom you propose to use as a witness at the trial of the case and provide a brief description of the subject matter of the expert's anticipated testimony.

ANSWER

18. For each person known to you to be a witness concerning the facts of this case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER

19. List the names and addresses of any expert witnesses whom you propose to use as a witness regarding the answers on the SCL LLR Disclosure form signed by the seller in 2014.

ANSWER

20. List the names and addresses of any expert witness whom you propose to use as a witness as to a realtor's duty of care to a client under South Carolina law.

ANSWER

21. List the names and addresses of any expert witness whom you propose to use as a witness as to the condition of the Property from January 1, 2013 through May 29, 2015.

ANSWER

22. State whether any realtor other than Tate Realtors showed the Property while listed with Tate; and if so, identify each such realtor, and identify any communications with such realtors concerning the Property.

ANSWER

23. Identify the person who you claim repaired the water leak that had existed on the Property when Garvey was present and who Garvey paid for repairing said leak on March 11, 2015.

ANSWER

24. Identify each meeting or communication regarding:

- a. The condition of the Property when listed;
- b. Feedback from anyone showing the house;
- c. Any suggestions on how to best market the Property; and
- d. Any suggestions made to the Seller as to what could be done to better market the Property.

ANSWER

25. Identify each person who performed any type of home inspection, termite inspection, electrical inspection, plumbing inspection, or any inspection for any purpose with respect to the Property on behalf of the Seller from January 1, 2013 to May 29, 2015.

ANSWER

26. State whether you have ever been convicted of any felony criminal offense or any misdemeanor, state the offenses or charges, the approximate dates of the conviction and the names and jurisdiction of the court(s).

ANSWER

27. Identify each civil action, arbitration or administrative proceeding in which you have been named a party to over the last five (5) years.

ANSWER

28. State how often are realtors required to attend continuing education classes or participate in compliance reviews?

ANSWER

29. State the dates and continuing education classes that you attended over the five years prior to your responses to these interrogatories.

ANSWER

30. Describe in detail what actions you took to determine whether a CL100 Wood Infestation Report or a home inspection report was ever obtained for the Property prior to the Purchase of the Property.

ANSWER

31. Describe in detail the actions you took to advise Summit Funding that no CL100 Wood Infestation Report or a home inspection report was ever obtained for the Property prior to the Purchase of the Property.

ANSWER

32. Describe in detail what actions you took to determine whether the Appraisal accurately reported the condition of the Property.

ANSWER

33. Describe in detail what actions you took to advise Summit Funding that the Appraisal may not have accurately reported the condition of the Property.

ANSWER

34. State whether you have ever been reprimanded regarding any action or non-action regarding a real estate transaction or issue by the South Carolina Real Estate Commission or from any real estate brokerage with whom you were associated or employed; and if so, foreach such reprimand, state the date of each such reprimand, by whom the reprimand was made, and the nature of the action or non-action that was the subject of the reprimand, and state what discipline, penalties, fines or sanctions were imposed.

ANSWER

35. State in detail the actions that Tom Gongaware took in response to the request for information made by Plaintiff in March, 2016 to Tate, including, but not limited to:

- a. Identify the individuals whom Gongaware engaged or instructed to investigate;
- b. Identify any documents located in response to Plaintiff's inquiry;
- c. Identify any communications between you and Gongaware;
- d. State in detail what your investigation revealed;
- e. Identify any document constituting a summary of the results of your investigations.

ANSWER

36. With respect to your responses to any inquiries or investigations from any government agency, including but not limited to the SC Labor and Licensing Board, HUD, the OIG, or any other parties:

- a. Identify the person who responded to any investigation on your behalf;
- b. Identify any and all communications with such investigative agents or employees;
- c. Identify any and all documents you provided in response to such inquiries or
investitions; and
- d. Identify the persons who participated in any meetings concerning any such inquiries
or investigations.

ANSWER

37. State each of your user names for each of the social media accounts used, created or signed up for by you from since January 1, 2014 through December 31, 2018, including but not limited to the user name for any account on Facebook, Instagram, LinkedIn, Snapchat, YouTube and Twitter; and include all email accounts and phone numbers used for telephone calls by you related to your real estate business.

ANSWER

38. Identify each person from whom you obtained information or whom assisted you in responding to these interrogatories.

ANSWER

REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, please produce documents responsive to the following requests within thirty (30) days of service of these requests for production of documents upon you:

1. Produce a copy of any document identified in any of your responses to the foregoing Requests for Admissions and Interrogatories.

RESPONSE

2. Produce any and all documents regarding or referring to Baber.

RESPONSE

3. Produce any and all documents regarding or referring to Seller.

RESPONSE

Produce any and all documents regarding or referring to the Property.

RESPONSE

4. Produce any and all documents regarding or referring to the Purchase Contract.

RESPONSE

5. Produce any and all documents regarding or referring to any efforts made by you to obtain a CL100 Wood Infestation Report for the Property.

RESPONSE

6. Produce any and all documents regarding or referring to any efforts made by you to obtain a home inspection report for the Property.

RESPONSE

7. Produce any and all documents regarding or referring to any repairs made to the Property in 2015.

RESPONSE

8. Produce any and all documents regarding or referring to any damages to the Property prior to or during anytime that the Property was listed with Allen Tate or any of its agents.

RESPONSE

9. Produce any and all communications between you and:
- a. Plaintiff;
 - b. Seller;
 - c. Any agent or employee of Summit Funding;
 - d. Brian Blue or any agent of Appraisal Innovations, LLC;
 - e. Any other agent, officer or employee of Allen Tate regarding any matter referred to the Complaint;
 - f. Any employee of the City of Rock Hill with respect to the Property;
 - g. Any person regarding repairs to the Property;
 - h. Any person regarding obtaining a home warranty for Baber or with respect to the Property.
 - i. Any insurance agent regarding the Property.
 - j. Gillen, the Gillen Law Firm or any employee of the Gillen Law Firm.
 - k. Any regulatory agency.

RESPONSE

10. Produce copies of any and all listing agreements between Allen Tate and any of its agents relating to the Property.

RESPONSE

11. Produce copies of any all pictures of the Property taken by any person at your request or instruction.

RESPONSE

12. Produce copies of any information provided by you to any other realtors or brokerages regarding the Property.

RESPONSE

DATED this 13th day of February, 2019.

/s/ Karen K. Baber

Karen K. Baber

255 Rolling Ridge

Rock Hill, SC 29730

843-240-0083

Email: klkb1951@gmail.com

Plaintiff Pro Se

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing document was, by agreement of the parties, to the following on the date set forth below:

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Attorney for Gloria Long-Robinson

DATED this 13th day of February, 2019

/s/ Karen K. Baber

Karen K. Baber, Plaintiff Pro Se

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Karen K. Baber,)

Plaintiff,)

vs.)

Summit Funding, Inc.; Appraisal)
Innovations, LLC; Brian L. Blue; The Gillen)
Law Firm, P.A.; Michael F. Gillen; Allen)
Tate Co., Inc.; Colleen Coesens; Jonathan)
Garvey; Robert Ouzts; Connie Delaney; and)
Gloria Long-Robinson,)

C.A. No.: 18-CP-46-1592

Defendants.)

**MEMORANDUM IN SUPPORT OF
SUMMIT'S MOTION FOR SUMMARY JUDGMENT**

In support of its Motion for Summary Judgment (Motion), defendant Summit Funding, Inc. (Summit) respectfully submits the following.

Undisputed Facts

Plaintiff signed a Agreement/Contract: To Buy and Sell Real Estate (Residential) (the "Agreement"), pursuant to which she agreed to purchase 255 Rolling Ridge Road, Rock Hill, South Carolina 29730 (the "Property"). (Baber Depos. Tr., Exhibit 11.) Under that Agreement, Plaintiff had the right, at her own expense, to obtain a CL-100 Wood Infestation Report by a party of her own choosing. (Baber Depos. Tr., Exhibit 11, paragraph 11.) The Agreement made clear that a failure on the part of Plaintiff to exercise this right waived any and all rights of Plaintiff thereunder. (Baber Depos. Tr., Exhibit 11, paragraph 11.) The Agreement also gave Plaintiff the right, at her expense,

to inspect the Property on her own and with a South Carolina licensed and insured inspector. (Baber Depos. Tr., Exhibit 11, paragraphs 8 and 9.) Plaintiff did not have either of these inspections performed. (Baber Depos. Tr. pp 86, 102, 181, Exhibit 14.)

Plaintiff initialed and executed a Professional Services Disclosure and Election. (Baber Depos. Tr., Ex. 20.) Under the terms of the Disclosure, Plaintiff "has either selected the service provider listed or elected not to have the service performed." (Baber Depos. Tr., Ex. 20.) Plaintiff identified the Gillen Law Firm as the closing attorney and Summit Funding, Inc. as the party from whom she would seek financing. (Baber Depos. Tr., Ex. 20.) The Disclosure listed several other services in the chart, including Home Inspections and Wood Infestations, neither of which were initialed or completed. (Baber Depos. Tr., Ex. 20.)

To finance the purchase of the Property, Plaintiff obtained a loan from Summit. (Verified Complaint, p. 4, paragraph 16.) Summit provided a pre-approval of the loan, which contained certain conditions that would need to be satisfied. (Baber Depos. Tr., Ex. 10.) That pre-approval did not set forth any requirement of a home inspection; however there was a requirement of a Full Property Appraisal. (Baber Depos. Tr., Ex. 10.) The pre-approval listed a termite report as "if applicable". (Baber Depos. Tr., Ex. 10.)

An appraisal of the Property was performed by Brian Blue of Appraisal Innovations. (Baber Depos. Tr., Ex. 16.) Plaintiff received a copy of the appraisal on March 16, 2015. (Verified Complaint, p. 9, paragraph 36.) The appraisal stated "The subject property meets the standards put forth in the guidelines in HUD handbooks 4905.1 and 4150.2." (Verified Complaint, p. 9, paragraph

36.) There was no indication in the appraisal of any termite damage to the Property. (Baber Depos. Tr., Ex. 16.)

After the appraisal was completed, Summit issued a Direct Endorsement Approval for a HUD/FHA-Insured Mortgage as of April 30, 2015, which was signed by both Summit and Plaintiff. (Baber Depos. Tr., Ex. 26.) Under the section labeled "Additional Conditions", none of the boxes were checked. There was no requirement of a home inspection or a termite inspection. (Baber Depos. Tr., Ex. 16.)

At 2:49 P.M. on May 27, 2015, Linda M. Mattison, a paralegal with the Gillen Law Firm (Closing Attorney), e-mailed Plaintiff asking her if she had a termite and home inspection performed on the Property. (Baber Depos. Tr., Ex. 14.) Baber responded that the appraisal had been performed, but that she "didn't have termite inspection done." (Baber Depos. Tr., Ex. 14.) At 3:35 P.M. that same afternoon, Ms. Mattison e-mailed Summit with a copy of the proposed HUD-1 for review and approval by Summit. (Anderson Affidavit, Ex. A.) On that draft HUD-1, line 1302 - Termite Inspection and 1303 - Home Inspection were left blank. (Anderson Affidavit, Ex. A.) The draft HUD-1 Attachment contained no cost for either a home inspection, or a termite inspection. (Anderson Affidavit, Ex. A.) At 7:21 P.M. that evening, May Cha of Summit replied to Ms. Mattison and asked that lines 1302 and 1303 be removed from the HUD-1, "as there are no charge[s]" for either of those services. (Anderson Affidavit, Ex. A.)

At 9:04 A.M. on May 28, 2015, Ms. Mattison responded to Ms. Cha's e-mail with a revised HUD-1 that eliminated any reference to lines 1302 and 1303 and asked for approval of the document. (Anderson Affidavit, Ex. A.) At 1:06 P.M. that afternoon, Ms. Cha responded to Ms. Mattison that

the HUD-1 was approved. (Anderson Affidavit, Ex. A.) The HUD-1 attached to Ms. Cha's e-mail, which contained no reference to either a home inspection or termite report, was marked "APPROVED by May Cha at 9:53 a.m., May 28, 2015". (Anderson Affidavit, Ex. A.) At 1:22 P.M. that same afternoon, Paiton Drew, the Assistant Closing Coordinator for Summit, responded to Ms. Cha's e-mail that the HUD-1 had been reviewed and approved by the requisite branch as well. (Anderson Affidavit, Ex. A.)

Closing of the purchase of the Property took place on May 29, 2015 at the offices of the Gillen Law Firm. (Verified Complaint, p. 12, paragraph 51.) Plaintiff executed the HUD-1 statement that had been approved by Summit. (Catching Affidavit, Ex. A.) Through her signature thereon, Plaintiff agreed that she had carefully reviewed the HUD-1 and that it was a true and accurate statement of all receipts and disbursements made on her behalf. (Baber Depos. Tr., Ex. 30.) It contained no reference to either a home inspection or termite report. (Catching Affidavit, Ex. A.) At closing, Plaintiff also executed a Truth in Lending Disclosure, which set forth the estimate of costs provided to Plaintiff and does not represent actual costs incurred by her. (Catching Affidavit, paragraph 4, Ex. B.) Summit funded the loan and Plaintiff acquired title to the Property. (Baber Depos. Tr. pp. 196-97.)

Discussion

- I. The loan by Summit to Plaintiff had no requirement of either a home inspection, or a CL-100.**
- a. Summit had no contractual obligation to provide Plaintiff with a home inspection, or a CL-100.**

“In South Carolina, the formation of a contract is governed by well-settled principles. Quite simply a contract exists where there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act.” *Carolina Amusement Co., Inc. v. Connecticut Nat. Life Ins. Co.*, 313 S.C. 215, 220, 437 S.E.2d 122, 125 (Ct. App. 1993). “[T]here must be an offer and an acceptance accompanied by valuable consideration.” *Id.*

Plaintiff's sole remaining cause of action against Summit is for breach of contract. (Verified Complaint, p. 34, ¶¶ 173-177.) Plaintiff alleges that by not getting either a home inspection or a CL-100, Summit failed to comply with the terms of the “loan agreement”. (Verified Complaint, p. 34, ¶ 175.) The only contract between Summit and Plaintiff was that Summit agreed to fund a loan to Plaintiff. That contract was first evidenced by the pre-approval letter, which contained certain conditions. (Baber Depos. Tr., Ex. 10.) If Plaintiff satisfied those conditions, the loan would fund. As evidenced by the Direct Endorsement Approval for a HUD/FHA-Insured Mortgage, Plaintiff did meet these conditions and final approval was issued. (Baber Depos. Tr., Ex. 26.) The loan was funded and Plaintiff acquired the Property. Plaintiff has not produced any document executed by both parties through which Summit agreed, at no cost to Plaintiff, to provide both a home inspection and a CL-100. Summit met its contractual requirements when it funded the loan.

During the loan approval process, there was never any offer on the part of Summit to obtain either a home inspection or a CL-100, free of charge, for Plaintiff. By Plaintiff's own admission, Jonathan Garvey and Plaintiff made the decision to hire Robert Evans to do both the home inspection and the termite inspection. (Depos. Tr. Baber, pp. 79-80; Verified Complaint, p.7, ¶ 30.) Plaintiff testified she understood Garvey was arranging for the termite inspection. (Baber Depos. Tr. p. 99.) Summit was not involved. In her Verified Complaint, Plaintiff alleged that Garvey, not Summit or any employee thereof, was to bring the inspection reports to the closing. (Verified Complaint, p. 11, ¶ 48.) There is no evidence of any kind of any contractual obligation on the part of Summit to obtain for Plaintiff either a home inspection, or a CL-100. The Tenth Cause of Action against Summit should be dismissed with prejudice.¹

- b. Even if there were a requirement under the National Housing Act, or any regulation promulgated thereunder, for either a home inspection or a CL-100, Summit's failure to do so does not result in a private cause of action by Plaintiff against Summit.**

"As other courts have observed, the regulations promulgated under the National Housing Act govern relations between the mortgagee and the government, and give the mortgagor no claim for duty owed or for the mortgagee's failure to follow said regulations." *Mitchell v. Chase Home Finance, LLC*, 2008 WL 623395,*3 (N.D. Tex. 2008). "The overall purpose of the FHA mortgage

¹ Under South Carolina law, the "elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach." *Hotel and Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 652, 780 S.E.2d 263, 272 (Ct. App. 2015). The party seeking to "recover damages for a breach of contract must demonstrate that he has performed his part of the contract, or at least that he was, at the appropriate time, able, ready, and willing to perform it." *Id.* Even if there were a contractual obligation on th part of Summit to obtain either the home inspection, or the CL-100, it was Plaintiff's obligation to pay for each of them, as she acknowledged in her deposition. (Baber Depos. Tr. pp. 90, 94.) She never paid the party she selected to perform the home inspection and the termite inspection. (Baber Depos. Tr. pp. 90, 94, 98, 181-82.) Absent payment, neither inspection could be performed. Plaintiff failed to perform her part of the alleged contract and, as a result, cannot sue Summit for breach thereof.

insurance program is to encourage leading lenders, in exchange for a government guarantee of the loan, to extend mortgages to those carrying higher credit risks.” *Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705, 719, 922 A.2d 538, 546 (Ct. App. 2007). “Thus, the regulations do not control directly the relationship between mortgagor and mortgagee and *may not be invoked by the mortgagor as a sword in an offensive cause of action against the mortgagee.*” *Id.* (Emphasis added.). “[T]he regulations exist primarily to govern the relationship between the government and the mortgagee.” *Id.* at 720. “Therefore, it uses the regulations to protect its interests and manage the program.” *Id.* “It appears well accepted [] that no private right of action exists under the HUD regulations.” *Dixon v. Wells Fargo Bank, N.A.*, 2012 WL 4450502, *6 (E.D. Mich. 2012). *See Federal National Mortgage Ass’n v. LeCrone*, 868 F.2d 190, 193 (6th Cir.1989) (“no express or implied right of action in favor of the mortgagor exists for violation of HUD mortgage servicing policies”). *See also PNC Bank, N.A. v. Van Hoornaar*, 44 F. Supp. 3d 846, 853 (E.D. Wisc. 2014) (“[T]he Court concurs with the courts that have held that such regulations do not confer a private right of action for affirmative relief and damages.”); *Collins v. BAC Home Loans*, 2013 WL 2249123, *3 (N.D. Ala. 2013) (“Federal courts throughout the country have repeatedly rejected similar attempts by borrowers to bring claims under the National Housing Act and its implementing regulations.”); *Meyer v. Citimortgage, Inc.*, 2012 WL 511995, *3 (E.D. Mich. 2012) (“It is well established that the National Housing Act and attending regulations do not expressly or implicitly create a private right of action to mortgagors for a mortgagee’s noncompliance with the Act or regulations”); *Kakarala v. Wells Fargo Bank, N.A.*, 2012 WL 1458235 (D. Ariz. 2012) (“Courts have routinely held that HUD regulations promulgated under the National Housing Act [] do not provide a claim to the mortgagor

for duty owed or for the mortgagee's failure to follow the regulations."); *Wells Fargo Bank, N.A. v. Favino*, 2011 WL 1256771, at *12 (N.D. Ohio 2011) (finding no private right of action available to a mortgagor for a mortgagee's noncompliance with the National Housing Act or breach of HUD regulations); *Scocca v. Cendant Mortg. Corp.*, 2004 WL 2536837, at * 1 (E.D. Pa. 2004) ("there is no private right of action against a mortgagee based on alleged violations of [HUD rules]"). The "National Housing Act and the regulations promulgated thereunder deal only with the relations between the mortgagee and the government, and give the mortgagor no claim to duty owed nor remedy for failure to follow." *Roberts v. Cameron-Brown Co.*, 556 F.2d 356, 360 (5th Cir. 1977), citing *Baker v. Northland Mortgage Co.*, 344 F. Supp. 1385 (N.D. Ill. 1972).

As set forth in the Handbook, the programs identified therein are "various mortgage insurance programs which insure approved Mortgagees against losses on Mortgages." (Handbook, Section II, Subsection A, Paragraph 1(b), Subparagraph (i).) This program provides lenders with additional security in the form of this insurance, which allows certain borrowers with higher risk ratings to qualify for a loan. If a lender did not comply with the requirements of the Handbook and a property did not meet either MPR or MPS, then HUD has the right to either fine the lender, or force the lender to repurchase the loan.

What the Handbook does not do; however, is provide for a separate, private cause of action against a lender by a disgruntled borrower. Alleged violations of the Handbook or any other underwriting criteria of FHA or any other division of HUD are between the mortgagee and HUD, not the mortgagee and the borrower. To the extent Plaintiff's Tenth Cause of Action is based upon any alleged breach of the Handbook, her claim fails as a matter of law. There is no private right of

action for violating the underwriting criteria for an FHA loan. The Tenth Cause of Action against Summit should be dismissed with prejudice.

C. The Federal Housing Administration guidelines require only an appraisal, not a separate home inspection, or a CL-100.

The Federal Housing Administration guidelines are contained in the Single Family Housing Policy Handbook 4000.1, which is available from the Department of the Housing and Urban Development (the "Handbook"). Section II of the Handbook details the requirements for a federally insured loan from Origination through Post-Closing/Endorsement. Under this Section II, the Handbook makes it clear that the "Mortgagee is responsible for obtaining an appraisal to verify the value of the Property and the Property's compliance with HUD's Minimum Property Standards." (Handbook, Section II, Subsection A, Paragraph 1(b), Subparagraph iv(C).) The Handbook states that the "Mortgagee must underwrite the completed appraisal report to determine if the Property provides sufficient collateral for the FHA-insured Mortgage." (Handbook, Section II, Subsection A, Paragraph 3.) "The Mortgagee must evaluate the appraisal [] to determine if the Property is eligible for an FHA-insured Mortgage. If defective conditions exist and correction is not feasible, the Mortgagee must reject the Property." (Handbook, Section II, Subsection A, Paragraph 3(a)(i).)

The "Appraiser provides preliminary verification that a Property meets the Property Acceptability Criteria, which includes HUD's Minimum Property Requirements (MPR) and Minimum Property Standards (MPS)." (Handbook, Section II, Subsection A, Paragraph 3(a)(ii).)

When examination of a Property reveals noncompliance with the Property Acceptability Criteria, the Appraiser must note all repairs necessary to make the Property comply with HUD's Property Acceptability Criteria, together with the estimated cost to cure. If the

Appraiser cannot determine that a Property meets HUD's MPR or MPS, the Mortgagee may obtain an inspection from a qualified Entity to make the determination. Mortgagees must use professional judgment in determining when inspections are necessary to determine that a property meets MPR or MPS.

(Handbook, Section II, Subsection A, Paragraph 3(a)(ii).) As to damage from wood destroying insects, if "the appraisal is made subject to inspection by a qualified pest control specialist, the Mortgagee must obtain such inspection and evidence of any required treatment to confirm the Property is free of wood destroying insects and organisms." (Handbook, Section II, Subsection A, Paragraph 3(a)(ii)(R).)

There is no requirement of a separate home inspection, only the appraisal to assure the Property's compliance with HUD's Minimum Property Standards. If the appraisal confirms that the property is in compliance with the MPR and/or MPS, no further inspections, including those for wood destroying insects, are required. Absent some notation by the appraiser that they cannot confirm that the property meets MPR and/or MPS, there is no obligation for any further inspections to be obtained by the mortgagee.

The appraisal performed in this case by Appraisal Innovations stated specifically that the requisite HUD guidelines had been satisfied. (Verified Complaint, p. 9, paragraph 36.) The appraiser did not note any necessary repairs that were required to have the property comply with the guidelines, nor did he note any termite damage or that the appraisal was made subject to an inspection by a qualified pest control specialist. (Baber Depos. Tr., Ex. 16.) Absent such disclosures by the appraiser, Summit had no need, much less any obligation, to obtain any additional inspection reports related to the Property. Based upon the appraisal, the Property met the MPR and MPS of

HUD and the loan would qualify as an insurable loan under the applicable federal program.

To the extent Plaintiff's Tenth Cause of Action is based upon any alleged requirement under the Handbook to obtain a home inspection or a termite inspection separate and apart from the appraisal, her claim fails as a matter of law. There is no such requirement.² The Tenth Cause of Action against Summit should be dismissed with prejudice.

II. Even if Summit had been required to obtain either a home inspection, or a CL-100, Plaintiff knew prior to closing that neither had been done and proceeded to close without them.

"A waiver is a voluntary and intentional abandonment or relinquishment of a known right." *Osbey v. State*, 2019 WL 1053251, *2 (S.C. 2019). "Waiver requires a party to have known of a right and known that right was being abandoned." *Id.*

Under the terms of the Agreement under which Plaintiff contracted to buy the Property, she had the right to obtain both a home inspection and a termite inspection. (Baber Depos. Tr., Ex. 11.) By her e-mail of May 27, 2015, Plaintiff acknowledged that no inspections other than the appraisal had been performed. (Baber Depos. Tr., Ex. 14.) That e-mail acknowledgment was supplemented by Summit's e-mail exchange with Plaintiff's closing attorney pursuant to which Summit instructed the attorney to revise the HUD-1 to reflect the fact that there had been no charges incurred for either

² In her affidavit, Plaintiff directs the Court to S.C. Code Ann. Reg. 27-1085(k), which addresses the standards for prevention or control of wood destroying organisms. No where in that regulation is there a requirement for a lender to obtain a CL-100 prior to closing. Plaintiff also references dicta in *Dixon v. Ford*, 362 S.C. 614, 608 S.E.2d 879 (Ct. App. 2005) to support her claim that the CL-100 was required by that regulation. *Dixon* addressed an undated CL-100 used at a real estate closing. The Court referenced the regulation for its temporal component, because a CL-100 older than thirty days cannot be used at a real estate closing. There is no mandate for a CL-100 contained in the regulation, nor did the Court reference one. The other case cited by Plaintiff, *McAlhay v. Carter*, 415 S.C. 54, 781 S.E.2d 105 (Ct. App. 2015) supports that with a reference, again as dicta, to a bank "typically" requiring a CL-100. If the CL-100 were mandatory, then it would not be typical, it would be required at every closing. It is not and Plaintiff is misstating the law.

inspection. (Anderson Affidavit, Ex. A.) At closing, Plaintiff executed the revised HUD-1 that contained no reference to either a termite inspection or a home inspection. Through her signature thereon, Plaintiff certified that she had reviewed it and, to the best of her knowledge, it was a true and accurate statement of all receipts and disbursements made. (Baber Depos. Tr. Ex. 30.) As of the date of closing, Plaintiff knew the only inspection of the Property consisted of the appraisal performed by Appraisal Innovations. She knew there had been no separate home inspection, or termite inspection. She knew she had not paid for either inspection to be performed. With this knowledge, she elected to proceed with closing.³ In doing so, Plaintiff waived her alleged right to have such inspections performed. The Tenth Cause of Action against Summit should be dismissed with prejudice.

III. Even if there were a requirement of a home inspection or a CL-100, the statute of limitations has run on Plaintiff's alleged cause of action.

In South Carolina, the statute of limitations for a breach of contract action is three years. S.C. Code Ann. § 15-3-530(1) (2005). "Under the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered." *Coastal States Bank v. Hanover Homes of South Carolina, LLC*, 408 S.C. 510, 517, 759 S.E.2d 152, 156 (Ct. App. 2014). "Pursuant to the discovery rule, a breach of contract action accrues not on the date of the breach, but rather on the date the aggrieved party either discovered the breach, or could or should have discovered the breach through the exercise of reasonable diligence." *Id.*

³ Plaintiff makes reference to her reliance on representations from various parties, including Summit. Plaintiff's cause of action is for breach of contract. It does not sound in tort; therefore, her claims regarding any alleged misrepresentation do not offer support to her breach of contract claim against Summit.

On May 27, 2015, Plaintiff confirmed through e-mail traffic with the Gillen Law Firm, that a termite inspection had not been done and the only home inspection that had been performed was the appraisal. (Baber Depos. Tr., Ex. 14.) That same date, Plaintiff's selected closing attorney contacted Summit with a draft HUD-1 that had no reference to any fees incurred or paid for either a separate home inspection, or termite inspection. (Anderson Affidavit, Ex. A.) Summit responded that the lines related to the termite and home inspection should be deleted, as no charges for either had been incurred. (Anderson Affidavit, Ex. A.) Those lines were deleted and the HUD-1 was finalized with no reference to a termite or home inspection. (Anderson Affidavit, Ex. A.)

The Gillen Law Firm was the closing attorney selected by Plaintiff to represent her in the acquisition of the Property. As such, any communication to the Firm was tantamount to a communication to Plaintiff.⁴ On May 27, 2015, Summit, through the e-mail traffic regarding the HUD-1, informed Plaintiff's counsel that there was neither a home inspection, nor a termite inspection that had been performed on the Property at the direction or cost of Summit. In addition to the communications from Summit, Plaintiff acknowledged on May 27, 2015 that there had been no termite inspection on the Property.

⁴ "There is no doubt that the general rule is that notice to the attorney is notice to the client, but the knowledge of the attorney must be acquired while acting for the principal, and the information must relate to a matter within the scope of his agency; the theory of the law being that the agent is presumed to have communicated to his principal knowledge which it was his duty to have communicated and which it is reasonable to suppose he did actually communicate." *Strickland v. Capital City Mills*, 74 S.C. 16, 54 S.E. 220, 223 (1906). It was reasonable for Summit to assume that any communications it made to Plaintiff's attorney would then be shared with Plaintiff by her attorney.

The statute of limitations began to run on Plaintiff's alleged breach of contract action on the date she knew or should have known of the breach.⁵ That date, as evidenced by the e-mail traffic between or among the parties, was May 27, 2015. Plaintiff did not file this action until May 29, 2018, which is outside the three year statute. The Tenth Cause of Action against Summit should be dismissed with prejudice.

Conclusion

There was no contractual obligation on the part of Summit to obtain either a home inspection or a CL-100, nor was there any legal requirement under the Handbook that obligated Summit to do so. Even if there had been such a requirement, there is no private right of action on the part of Plaintiff resulting from such alleged failure on the part of Summit. Further, if this Court were able to make it over those first three hurdles, Plaintiff's election to close the loan with knowledge that neither of these inspections had taken place eliminates her right to recover against Plaintiff. Finally, even without these other four grounds, the running of the statute of limitations thwarts any prospect of relief on the part of Plaintiff. Standing alone, any one of these grounds is enough to grant summary judgment in favor of Summit. Taken together, the arguments in favor of dismissal with prejudice of the last remaining cause of action against Summit is overwhelming. Summary judgment should be granted in favor of Summit and the Tenth Cause of Action should be dismissed with prejudice.

⁵ Plaintiff attempts to convince this Court to use the twenty year statute of limitations in S.C. Code Ann. § 15-3-520. That is inapplicable. The contract *secured* by the mortgage is the note executed by Plaintiff, which has no requirement of a CL-100 or a home inspection. The twenty year statute applies only to enforcement of the Note and Mortgage, not Plaintiff's claims against Summit.

Further, to the extent Plaintiff is in some way claiming that the document labeled Itemization of Amount Financed stands as the basis for her claim against Summit, that claim is subject to a one year statute of limitations that began to run on the date of the loan closing. See *Harris v. Sand Canyon Corp.*, 274 F.R.D. 556 (D.S.C., 2010), citing 15 U.S.C. § 1640(e) (2005).

Charlotte, NC

Date: 04/03/2019

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ELECTRONICALLY FILED - 2019 Apr 03 7:09 AM - YORK - COMMON PLEAS - CASE#2018CP4601592

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Karen K. Baber,

Plaintiff,

vs.

Summit Funding, Inc.; Appraisal Innovations, LLC; Brian L. Blue; The Gillen Law Firm, P.A.; Michael F. Gillen; Allen Tate Co. Inc.; Collen Coesens; Jonathan Garvey; Robert Ouzts; Connie Delaney; and Gloria Long-Robinson,
Defendants.

IN THE COURT OF COMMON PLEAS

2018-CP-46-01592

**NOTICE OF MOTION AND MOTION
TO RECONSIDER, ALTER, AND
AMEND JUDGMENT**

PLEASE TAKE NOTICE that Plaintiff, by and through her undersigned Counsel, hereby moves for an Order to reconsider, alter, and amend the judgment dated May 29, 2019 granting both the Motion for Summary Judgment for Defendant Summit Funding, Inc. ("Summit") and the Motion for Summary Judgment for Defendants Allen Tate Co., Inc. ("Allen Tate"), Colleen Coesens ("Coesens"), Jonathan Garvey ("Garvey"), Robert Ouzts ("Ouzts") and Connie Delaney ("Delaney") (collectively, the "Tate Defendants").

Plaintiff's Motion to Reconsider, Alter, and Amend will be supported by memorandum and affidavits as appropriate. Plaintiff respectfully requests a Hearing concerning said Motion.

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Winnsboro, South Carolina
June 6, 2019

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Karen K. Baber,

Plaintiff,

vs.

Summit Funding, Inc.; Appraisal Innovations, LLC; Brian L. Blue; The Gillen Law Firm, P.A.; Michael F. Gillen; Allen Tate Co. Inc.; Collen Coesens; Jonathan Garvey; Robert Ouzts; Connie Delaney; and Gloria Long-Robinson,

Defendants.

IN THE COURT OF COMMON PLEAS

2018-CP-46-01592

**MEMORANDUM IN SUPPORT OF
MOTION
TO RECONSIDER, ALTER, AND AMEND
JUDGMENT**

The Plaintiff submits her Memorandum in Support of her Motion to Alter or Amend the Court's order granting summary judgment in the above captioned case. For the reasons set forth herein the Plaintiff respectfully requests the Court amend the order and deny summary judgment.

Summary judgment is appropriate when there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law." Rule 56, SCRPC. Summary judgment is not appropriate where there are genuine issues of material fact in dispute. Moreover, Rule 56 requires that summary judgment should not be granted, even when there is no dispute as to evidentiary facts, if there is disagreement concerning the conclusion to be drawn from those facts. In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Hancock v. Mid-South Management Co., Inc., 673 S.E.2d 801 (2009) quoting Koester v. Carolina Rental Ctr., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).

The S.C. Court of Appeals held in BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005)

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000); *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (Ct.App.2004). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000); *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct.App.2004).

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 593 S.E.2d 183 (Ct.App.2004). Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 594 S.E.2d 455 (2004); *Hawkins*, 358 S.C. at 289, 594 S.E.2d at 561-62; *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct.App.2001).

Baughman v. American Telephone and Telegraphy Company, 306 S.C. 101, 410 S.E.2d 537 (S.C. 1991). Hancock v. Mid-South Management Co., Inc., 673 S.E.2d 801, 381 S.C. 326 (S.C., 2009) “Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” Froneberger v. Smith, 406 S.C. 37, 748 S.E.2d 625 (Ct. App. 2013)

In this case there are a number of factual disputes as well as disagreement with regard to the conclusions to be drawn from the documentary evidence. First, the documentary evidence referenced by the Defendant in the Motion for Summary Judgment does not establish the absence of genuine issues of material fact; rather the documentary evidence actually establishes the existence of genuine issues of material fact. Second, summary judgment is a drastic remedy that denies a person his day in court, therefore it “should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issue.” Id. (Baughman)

The South Carolina Supreme Court has held that summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Dawkins v. Fields, 354 S.C. 58 (S.C., 2003). The Plaintiff's discovery requests had not been answered. The Plaintiff stated in her affidavit:

There is substantial outstanding discovery which I have not received from Summit which bear directly on the issues raised in the Motion, and I request that no judgment be entered until I have had a chance to present evidence from the additional discovery.

Summary judgment should not be granted nor should a hearing be held until each party has a full and fair opportunity to complete discovery. In this case, the outstanding discovery due to the Plaintiff was not produced prior to the hearing on the Motion for Summary Judgment. The outstanding discovery was relevant to the issues raised in the Defendants' Motion for Summary Judgment. According to the Plaintiff's affidavit the outstanding discovery relates to the FHA requirement that a home appraisal and CL-100 Wood Infestation Report (termite inspection) be performed for purchases of existing homes with a mortgage insured by the FHA and whether Summit complied with FHA requirements. The Plaintiff claims the documents will show the termite inspection report was never received.

The South Carolina Court of Appeals held in Schmidt v. Courtney, 357 S.C. 310 (S.C. App., 2003):

Because this is a negligence claim, it is important to note that, "[g]enerally, negligence claims are not susceptible of summary adjudication because of the many questions normally present in such cases concerning the reasonableness of a party's conduct, foreseeability, and proximate cause." *Folkens v. Hunt*, 290 S.C. 194, 199, 348 S.E.2d 839, 842 (Ct.App. 1986). Concomitantly, we reverse the grant of summary judgment.

The Plaintiff alleged negligence claims against the Defendants in her Complaint including:

1. Not making sure the home and termite inspections were performed
2. The purchase contract was contingent upon a termite inspection - the realtor was negligent in not making sure the inspection was done and in not advising the Plaintiff as to the status of the inspection.
3. Not delaying closing until the home inspection and termite inspections were completed and clear reports received.
4. Negligently misrepresenting to the Plaintiff that the inspections had been completed and the home was cleared.
5. Not following FHA requirements.
6. Closing and funding the loan in violation of FHA requirements.

The South Carolina Supreme Court has held that in cases applying the preponderance of the evidence standard, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Hancock v. Mid-South Management Company Inc., 381 S.C. 326, 673 S.E.2d 801 (S.C. 2009). In this case, the Plaintiff has submitted substantial evidence in support of each of the causes of action in the form of her affidavit in opposition to summary judgment, which included numerous documents. Furthermore, the South Carolina Supreme Court has held that a verified complaint constitutes an affidavit at the summary judgment phase. Dawkins v. Fields, 354 S.C. 58 (S.C., 2003).

The Plaintiff filed a verified complaint; however, it does not appear the verified complaint was considered as an affidavit during the summary judgment proceedings. The Plaintiff's memorandum in opposition to summary judgment and the verified complaint are replete with evidence the Defendants made material misrepresentations to the Plaintiff, the Defendants admitted a home and termite inspection and appraisal were required by the FHA insured loan she was using to purchase the property, had been performed and were paid. As it turned out, the Defendants misrepresented these facts to the Plaintiff. If the inspections and

appraisal had been performed the closing would not have taken place. Some of the facts alleged in the Plaintiff's affidavit include:

1. The Plaintiff was repeatedly told by the Defendants that a home inspection and wood infestation report (termite inspection) were required by the FHA before the loan could be issued.
2. The Summit loan officer repeatedly told the Plaintiff that the wood infestation report and home inspection were conditions of the loan, the realtor had obtained the reports and would provide the reports before the loan would be funded.
3. The realtors, the staff for the closing attorneys and Summit employees repeatedly told the Plaintiff that a home inspection and termite inspection were mandated for her FHA insured loan and had been provided before the loan closed and funded.
4. For a year after the closing, employees of Summit continued to represent to the Plaintiff that a termite inspection had to be done because it is required before the loan could have funded.
5. The Plaintiff was told by the Defendants that these reports had been received and were "clear," meaning there were no material defects with the house and her initial concerns were cosmetic rather than functional.
6. The Plaintiff was told by the Defendants that the termite inspection and home inspection had been arranged by the realtor Jonathan Garvey.
7. Defendant Jonathan Garvey told the Plaintiff he had arranged for Robert Evans to do the home inspection and termite inspection and that the inspections would be paid for out of the \$10,000.00 the Plaintiff had for repairs and upgrades.
8. The purchase contract was contingent upon the property being inspected for termites.
9. The Plaintiff was told the home passed the inspections.
10. The Plaintiff was told the inspection reports were brought to closing but the closing attorney failed to make copies for the Plaintiff.
11. Plaintiff did not know the home inspection and termite inspections were not done.
12. Representations made by the Defendants to the Plaintiff were false.
13. The good faith estimate provided to the Plaintiff by the Defendants one week prior to the closing indicated a wood infestation report and a home inspection report were required. The Good faith estimate indicated the termite inspection was \$75.00 and the home

inspection was \$450.00 and the total settlement charges were \$7,910.66 leading the Plaintiff to believe these inspections were being paid through the closing.

14. The Plaintiff was also led to believe the termite and home inspection would be included in Robert Evans invoice along with the charges for the repairs he made. Under these circumstances the charges for the termite and home inspections would not necessarily be reflected on the HUD-1 settlement statement.
15. The realtor told the Plaintiff there were no problems with the home inspection or termite inspection and that he would bring the reports to the closing on May 29, 2015.
16. At closing the HUD-1 Settlement Statement had an attached document titled "Itemization of Amount Financed" which listed the home and termite inspections as being financed either from the loan proceeds or paid outside of closing.
17. The charges paid outside of closing identified on page 14 ¶16 of the Plaintiff's affidavit would lead a reasonable person to conclude the termite and home inspection were performed and paid.

Based on these representations (misrepresentations) the Plaintiff proceeded to close on the loan and accept the house in its "as-is" condition. The Plaintiff signed the documents related to accepting the house in its "as-is" condition because she was told that the loan would not be issued if the reports and appraisal showed any major defects. The Plaintiff was specifically told the required reports came back showing no major defects with the property. Accepting the property in its "as-is" condition was itself contingent upon the home inspection, termite inspection and valid appraisal – once those were done and the home cleared those inspections, then it would be accepted in its "as-is" condition. Fundamentally, the acceptance of the home in its "as-is" condition is contingent upon the Plaintiff being fully informed of the condition of the house. The Plaintiff cannot reasonably be expected to accept a home in its "as-is" condition without first knowing the "as-is" condition. If a termite inspection were done and a wood infestation report completed the closing would not have taken place. If a home inspection and /or appraisal were done the closing would not have taken place.

Conclusion

The Plaintiff's affidavit, the verified complaint and supporting documents constitute at least a scintilla of evidence that warrant the denial of summary judgment in this case. Whether or not the Plaintiff wanted to pay for the home and termite inspections is not relevant. These inspections were required by the FHA loan.

Based on the foregoing, the evidence submitted in the Plaintiff's affidavit in opposition to summary judgment, the verified complaint and supporting exhibits the Plaintiff submits she has submitted more than a mere scintilla of evidence demonstrating genuine issues of material fact exists justifying the denial of summary judgment in this case.

Respectfully Submitted,

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Attorneys for the Plaintiff

Winnsboro, South Carolina
 July 10, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
2018-CP-46-01592

COUNTY OF YORK

KAREN K. BABER,

Plaintiff,

vs.

SUMMIT FUNDING, INC., APPRAISAL
INNOVATIONS, LLC, BRIAN L. BLUE, THE
GILLEN LAW FIRM, P.A., MICHAEL F.
GILLEN, ALLEN TATE CO., INC., COLLEEN
COESENS, JONATHAN GARVEY, ROBERT
OUZTS, CONNIE DELANEY, and GLORIA
LONG-ROBINSON,

Defendants.

**MEMORANDUM OF LAW IN
OPPOSITION TO MOTION TO
RECONSIDER PURSUANT TO
RULE 59(e), SCRPC**

On May 29, 2019, this Court granted summary judgment in favor of Defendants Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert Ouzts and Connie Delaney (collectively, the "Tate Defendants") and dismissed all of Plaintiff's claims against the Tate Defendants, with prejudice. As noted in the Order Granting Motion for Summary Judgment ("Order"), after Plaintiff announced at the hearing that an attorney was in the process of filing an appearance on her behalf, the Court contacted one of Plaintiff's current counsel to ask whether he would be representing the Plaintiff at the hearing and confirmed that the attorney would not be defending the Tate Defendants' motion for summary judgment. (Order, p. 2). Regardless, after the hearing was concluded, Plaintiff's counsel sent the Court a letter asking that the Court deny the motion for summary judgment and schedule a supplemental hearing to allow them time to review the file, complete discovery and prepare a response. (Id.) The Court denied this request.

Now seeking yet another bite at the apple, Plaintiff filed a Motion to Reconsider, Alter and Amend Judgment ("Motion") on June 6, 2019. In her Motion, Plaintiff enumerates no grounds on

which the Court should reconsider its prior ruling. Rather, the Motion simply says that it will be supported “by memorandum and affidavits as appropriate.” (Motion, p.1).¹ To date (over one month after Plaintiff filed the Motion), the Tate Defendants have received no affidavits or memoranda supporting the Motion and are unaware of the grounds upon which the Plaintiff believes the Court should reconsider its ruling.

Plaintiff’s motion fails to state with particularity the grounds on which it seeks reconsideration of the Order, as required by Rule 7(b)(1), SCRCP. This leaves the Court and the Tate Defendants guessing as to the basis for the Motion and greatly prejudices the Tate Defendants’ ability to respond and defend the Motion. Therefore, the Motion should be denied. See, Lucey v. Meyer, 401 S.C. 122, 131 (Ct. App. 2012) (“Rule 7(b)(1), SCRCP requires that motions shall state with particularity the grounds therefor, and shall set forth the relief or order sought. . . . By requiring notice to the court and the opposing party of the basis for the motion, rule 7(b)(1) advances the policies of reducing prejudice to either party and assuring that the court can comprehend the basis of the motion and deal with it fairly.”) (citations omitted).

The Tate Defendants set out their grounds and arguments in support of their motion for summary judgment in the motion, exhibits and supporting brief. To the extent necessary, those grounds and arguments are incorporated herein by reference. Plaintiff has set forth no basis for the Court to reconsider its decision that Plaintiff waived all claims against the Tate Defendants when she executed the General Release on or about July 1, 2015, or that the her failure to respond

¹ The Court should disregard any affidavits produced by the Plaintiff at this late date, in light of the requirement set out in Rule 56(c), SCRCP, for affidavits in opposition to a motion for summary judgment be served at least two days prior to the hearing.

to Requests for Admission and concession that she does not have evidence to support certain claims, support dismissing the claims against the Tate Defendants.

To the extent that Plaintiff intends to raise new issues by her Motion not raised during the hearing, the Court should not consider those issues. See, Anderson Mem'l Hosp. v. Hagen, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994) ("A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not.")

The Plaintiff has not set forth any basis for her request for the Court to reconsider the Order. Additionally, the Court properly granted summary judgment in favor of the Tate Defendants. Therefore, the Court should deny the Motion.

This the 10th day of July, 2019.

POYNER SPRUILL LLP

s/ Thomas L. Ogburn III

Thomas L. Ogburn III

S.C. State Bar No. 11761

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ATTORNEYS FOR DEFENDANTS ALLEN

TATE CO., INC., COLLEEN COESENS,

JONATHAN GARVEY, ROBERT OUZTS, AND

CONNIE DELANEY

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Karen K. Baber,

Plaintiff,

vs.

Summit Funding, Inc.; Appraisal
Innovations, LLC; Brian L. Blue; The Gillen)
Law Firm, P.A.; Michael F. Gillen; Allen)
Tate Co., Inc.; Colleen Coesens; Jonathan)
Garvey; Robert Ouzts; Connie Delaney; and)
Gloria Long-Robinson,)

C.A. No.: 18-CP-46-1592

Defendants.

SUMMIT'S RESPONSE TO PLAINTIFF'S RULE 59(e) MOTION

Defendant Summit Funding, Inc. (Summit) hereby responds to Plaintiff's Motion to Alter, Amend or Reconsider Pursuant to Rule 59(e), SCRCP, (the "Motion"), as follows.

"Rule 7(b)(1), SCRCP requires that motions 'shall state with particularity the grounds therefor, and shall set forth the relief or order sought.'" *Camp v. Camp*, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010). "By requiring notice to the court and the opposing party of the basis for the motion, rule 7(b)(1) advances the policies of reducing prejudice to either party and assuring that the court can comprehend the basis of the motion and deal with it fairly." *Id.* (Citations omitted.). In making its evaluation, the "court should ask whether any party is prejudiced by a lack of particularity or whether the court can comprehend the basis for the motion and deal with it fairly." *Id.*

Plaintiff's one paragraph motion does not meet the standard set forth in Rule 7(b)(1), SCRCP. It does not provide with any particularity the grounds for relief sought under Rule 59(e);

SCRCF. It does not give counsel for Summit, or counsel for the Tate Defendants, a meaningful opportunity to brief their opposition to the Motion, because there is nothing to alert them as to the basis for the Motion. Plaintiff's failure to include a particular listing of the grounds upon which the Motion is based prejudices both Summit and the Tate Defendants by denying them the ability to set forth their opposing arguments.¹ The Motion should be denied.

Even if this Court were to proceed forward and consider the Motion, Rule 59(e) is unavailable to raise a new issue that could have been heard prior to judgment but was not. *Gartside v. Gartside*, 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009); *Crary v. Djebelli*, 321 S.C. 38, 467 S.E.2d 128 (Ct.App. 1995); and *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (1990). "[A] party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not." *Poch v. Bayshore Concrete Products / South Carolina*, 386 S.C. 13, 31, 686 S.E.2d 689, 699 (Ct. App. 2009) (citations omitted.). "[A] party cannot use Rule 59(e) to present new evidence to the court." *Mozingo v. Ford Motor Company*, 2009 WL 9528979, *1 (Ct. App. 2009), citing *Brailsford v. Brailsford*, 380 S.C. 443, 448, 669 S.E.2d 342, 345 (Ct. App. 2008) (holding issue not preserved for appeal where it was never presented to the trial court prior to the filing of the motion to alter or amend.).

Rule 56(c) allows materials in opposition to a motion for summary judgment to be submitted "not later than two days before the hearing." There is nothing under Rules 56(c) or 59(e), or the decisional law interpreting either, that permits submission of supplementary evidence after the

¹ An important distinction between this case and *Camp* is that there were oral arguments in *Camp* that allowed the party opposing the Rule 59(e) motion to hear and argue against the claims of the movant. That is not the case here. Neither the Tate Defendants, nor Summit can respond through briefs when grounds for relief have not been outlined by the Motion.

dispositive motion has been decided and while the motion is subject to reconsideration pursuant to Rule 59(e). The Motion here mentions that additional affidavits may be presented. As set forth clearly by the cited law, that is impermissible and should not be allowed.

The Orders filed by this Court set forth rulings on each issue presented to the Court through the summary judgment motions. There were no issues or arguments presented that were not ruled upon. The Motion is nothing more than a delay tactic that should not be countenanced by this Court.

WHEREFORE, for the foregoing reasons, the Motion should be denied.

Charlotte, NC

DRISCOLL SHEEDY, P.A.

Date: 07/10/2019

By: s/ Susan E. Driscoll
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ATTORNEYS FOR SUMMIT

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2018-CP-46-1592

90691
RECEIVED
AUG 28 2019
SC Court of Appeals

Karen K. Baber Appellant,

v.

Summit Funding, Inc.; Appraisal Innovations, LLC;
Brian L. Blue; The Gillen Law Firm, P.A.;
Michael F. Gillen; Allen Tate Co. Inc.; Collen Coesens;
Jonathan Garvey; Robert Ouzts; Connie Delaney; and Gloria Long-Robinson,

of whom Summit Funding, Inc.; Allen Tate Co. Inc.;
Collen Coesens; Jonathan Garvey; Robert Ouzts; Connie Delaney; and
Gloria Long-Robinson are the Respondents.

NOTICE OF APPEAL

Karen K. Baber appeals the orders of the Honorable Daniel D. Hall dated May 29, 2019 and July 29, 2019. Appellants received written notice of entry of this order on May 29, 2019 and July 29, 2019.

August 28, 2019

Respectfully submitted,

By:



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Attorneys for Appellant

001206

Other Counsel of Record:

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Attorney for Respondent Gloria Long-Robinson

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2018-CP-46-1592

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Karen K. Baber Appellant,

v.

Summit Funding, Inc.; Appraisal Innovations, LLC;
Brian L. Blue; The Gillen Law Firm, P.A.;
Michael F. Gillen; Allen Tate Co. Inc.; Collen Coesens;
Jonathan Garvey; Robert Ouzts; Connie Delaney; and Gloria Long-Robinson,

of whom Summit Funding, Inc; Allen Tate Co. Inc.;
Collen Coesens; Jonathan Garvey; Robert Ouzts; Connie Delaney; and
Gloria Long-Robinson are the Respondents.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that I served a copy of the Notice of Appeal upon the following:

Poyner Spruill, LLP
Thomas Lynn Ogburn, III
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By depositing the same in the United States Mail, postage prepaid, this the 13th Day of October, 2008.

August 28, 2019



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Attorneys for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF YORK

KAREN K. BABER,

Plaintiff,

vs.

SUMMIT FUNDING, INC., APPRAISAL
INNOVATIONS, LLC, BRIAN L. BLUE, THE
GILLEN LAW FIRM, P.A., MICHAEL F.
GILLEN, ALLEN TATE CO., INC., COLLEEN
COESENS, JONATHAN GARVEY, ROBERT
OUZTS, CONNIE DELANEY, and GLORIA
LONG-ROBINSON,

Defendants.

IN THE COURT OF COMMON PLEAS
2018-CP-46-01592

RECEIVED

AUG 28 2019

SC Court of Appeals

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER comes before the Court upon the Motion for Summary Judgment ("Motion") filed on March 5, 2019 by Defendants Allen Tate Co., Inc. ("Allen Tate"), Colleen Coesens ("Coesens"), Jonathan Garvey ("Garvey"), Robert Ouzts ("Ouzts") and Connie Delaney ("Delaney") (collectively, the "Tate Defendants"). The Court conducted a hearing in this matter on April 3, 2019 after proper notice to all parties. Present at the hearing were Plaintiff Karen Baber ("Baber"), counsel for the Tate Defendants, Thomas L. Ogburn III, counsel for Summit Funding, Inc., Susan Driscoll, and counsel for Appraisal Innovations, LLC and Brian L. Blue, Russell Racine.

In support of the Motion, the Tate Defendants presented the Motion, a supporting brief, the Plaintiff's deposition transcript and selective exhibits, the Tate Defendants' Requests for Admission and the Affidavit of Thomas L. Ogburn III. In opposition to the Motion, Baber presented an Affidavit of Plaintiff Karen K. Baber in Opposition to the Tate Defendants' Motion for Summary Judgment and attached exhibits ("Baber Affidavit").

As an initial point, Ms. Baber announced at the beginning of the hearing that Creighton Coleman was in the process of filing an appearance on her behalf in this matter. The undersigned contacted Mr. Coleman by telephone in open court. Mr. Coleman told the Court that he had agreed to meet with Ms. Baber on Friday, April 5, 2019, but had not yet agreed to represent her in this matter. Mr. Coleman confirmed that he was not representing Ms. Baber in defending the Tate Defendants' Motion. Based on this representation and Ms. Baber's presence in the courtroom, the Court exercised its discretion to proceed in hearing the Motion.

On April 8, 2019, after the hearing on the Motion, Mr. Coleman sent a letter to the Court announcing that he and Glenn Bowens were now representing Baber and requesting that the Court deny the Motion without prejudice because discovery was not complete. Mr. Coleman also requested that the Court set a supplemental hearing on the Motion at least 30 days later to allow he and Mr. Bowens ample time to review Baber's file, complete discovery and prepare a response to the Motion. The Tate Defendants opposed this request. Based on, among other things, Mr. Coleman's prior representation at the time of the hearing that he was not representing Baber, the fact that the Motion was based on Baber's own testimony and the prejudice that the Tate Defendants would suffer if the Court were to conduct another hearing on the Motion, Mr. Coleman's request is denied in the Court's discretion.

At the hearing, Counsel for the Tate Defendants objected to the Court's consideration of the Baber Affidavit in opposition to the Motion because, among other things: (1) the Baber Affidavit contains hearsay and does not comply with Rule 56(e), SCRCP; (2) Baber testified in her deposition that e-mails that she produced to all of the Defendants may have been the product of "cutting and pasting" multiple e-mails or combining multiple e-mails and the Tate Defendants

argued that most of the e-mails attached to the Baber Affidavit were not accurate representations of the actual e-mails; and (3) the Baber Affidavit may contain e-mails that were falsified, such as Exhibit 13 of the Baber Affidavit, which was not an accurate representation of Exhibit 14 from Baber's deposition. Additionally, the Tate Defendants objected to the Court's consideration of the Baber Affidavit to the extent that it contradicted her sworn deposition testimony. After reviewing and considering the Baber Affidavit the Court overrules the Tate Defendants' objection and has considered the Baber Affidavit in ruling on the Motion.

Based on the Court's review of the documents submitted by the parties, the pleadings in the Court's file and the arguments of counsel and Baber, the Court determines that there is no genuine issue as to any material fact in this matter and the Tate Defendants are entitled to judgment as a matter of law on all of Baber's claims against them. Therefore, the Court grants the Motion on the grounds set forth herein.

FACTS

1. Baber is a former South Carolina licensed real estate broker who has also worked for attorneys in handling real estate closings. (Deposition of Karen Baber ("Baber Dep."), pp. 22-23).
2. In January, 2015, Baber was searching for a home to purchase in Rock Hill, South Carolina. At the time, she was working with Garvey, who served as her real estate agent pursuant to an Exclusive Right to Buy Buyer Agency Contract signed by both Baber and Garvey. (Baber Dep. p. 36 and Ex. 4).
3. Between January 9, 2015 and January 11, 2015, Baber and Garvey exchanged several e-mails about a property located at 255 Rolling Ridge Road, Rock Hill, South Carolina.

("Property") (Baber Dep., Ex. 5-7). As part of those e-mails, Baber questioned Garvey about certain issues with the Property that she identified when she walked through the Property, including the condition of the air conditioning, water heater, gas pack, deck, stove, siding, bedroom ceiling, windows, and roof shingles, among other things. (*Id.*) As part of this exchange, Garvey provided Baber with the Residential Property Condition Disclosure Statement ("Disclosure Statement") signed by Gloria Long-Robinson, the owner of the Property. (Baber Dep. pp. 59-60 and Ex. 7).¹

4. In the Disclosure Statement, Long-Robinson represented that *she had actual knowledge of problems with twelve of the fourteen systems described on page 2 of the Disclosure Statement*, including: the water supply, water quality, water pressure, sanitary sewer, roof system, gutter system, plumbing system, electrical system, appliances, built-in systems and fixtures, heating system and cooling system. (Baber Dep., Ex. 7, p.2). Long-Robinson also disclosed on page 3 of the Disclosure Statement that she was also aware of problems caused by water during her ownership. (Baber Dep., Ex. 7, p. 3). Many of these systems Long-Robinson identified in the Disclosure Statement as having problems were the same items that Baber had already observed and questioned in her e-mail exchange with Garvey between January 9 and January 11. (*See*, Baber Dep. Ex. 5-7).

5. Shortly thereafter, Baber submitted a proposed Agreement/Contract to Buy and Sell Real Estate to Long-Robinson in which she offered to purchase the Property for \$145,000.00. (Baber Dep. p. 75). The offer includes, among other things, a requirement that Long-Robinson

¹ Ms. Long-Robinson was represented in the sale of the property by Delaney and Ouzts, who are also defendants in this matter. (Baber Dep. p. 29).

pay for a home warranty for Baber. (Baber Dep. Ex., 9, § 14). Long-Robinson ultimately did not agree to purchase a home warranty on the property. (Baber Dep. p. 75). After Long-Robinson refused to purchase a home warranty, Baber testified that Garvey agreed to pay for a home warranty, but admitted that “well, if you don't, I will, because we need one.” (Baber Dep. p. 76).

6. On or about February 19, 2015, Baber and Long-Robinson entered into an Agreement/Contract to Buy and Sell Real Estate (“Purchase Contract”) pursuant to which Baber agreed to purchase the property for \$145,000.00. (Baber Dep. Ex. 11). The Purchase Contract clearly indicated that Baber was purchasing the property “As-Is, Where Is, With all Faults” and the sale was contingent on Long-Robinson’s lender approving a short sale of the Property. (*Id.* § 28 and Short Sale Addendum). The Purchase Contract did not require that a home warranty be purchased. (*Id.* § 14). The Purchase Contract gave Baber the right to inspect the condition of the Property and to have the property inspected for wood infestation. (*Id.* §§ 8 and 11).

7. Most of Baber’s claims against the Tate Defendants are based on alleged representations made by the Tate Defendants and others prior to closing that termite and home inspections had been performed and came back clear or that such inspections were a condition on her closing of the loan. Baber claims that had she known the true condition of the Property, she would not have purchased it. (*See, e.g.*, Complaint ¶¶ 106, 135, 165).

8. Baber testified in her deposition that when she received the original appraisal of the Property on March 5, 2015 (Baber Dep. Ex. 16), she immediately questioned the accuracy of the appraisal because it did not identify the defects in Property she had spotted in January. (Baber Dep. pp. 110-113). More specifically, she was concerned that appraisal did not address:

a hole I thought I saw in the roof from the outside, two rusted holes in the air conditioner, the rotten and unsafe deck which I did not think met FHA standards, the rotten wood around the windows, window seals, overhangs, doors and signing, the gutters that were falling off and water spots in the ceiling.

(Baber Dep. pp. 112-113 and Ex. 17).

9. Baber closed on her purchase of the Property on May 29, 2015. (Baber Dep. P. 122). Immediately prior to closing, Baber notified Linda Mattison, the paralegal for the closing attorney, Michael Gillen, by e-mail that she "didn't have a termite inspection done" and "did have an inspection/appraisal" which had been paid for. (Baber Dep. Ex. 14). Baber admitted in her deposition that she never received any bill for any inspections or any invoices for repairs to the Property prior to closing. (Baber Dep. pp. 90, 94).

10. As part of the closing, Baber concedes that she executed a Walk-Through Acknowledgment ("Acknowledgement") in which she represented that she "accepts the repairs and condition of the property." (Baber Dep. pp. 123-124 and Ex. 19). She also executed a Professional Services Disclosure and Election ("Professional Services Disclosure") in which she did not indicate that she had selected anyone to perform a home inspection or a wood infestation inspection. (Baber Dep. p. 129 and Ex. 20).

11. Baber testified that within the first few days of her purchase of the Property on March 29, 2015 she was aware of the majority of the problems with the Property of which she now complains. (Baber Dep. pp. 130-131). She demanded a meeting with Coesens, Garvey and others at Allen Tate to discuss the Property and the fact that she did not receive a home warranty on the Property. (Baber Dep. 133-134).

12. Baber testified that she met with Coesens, Garvey and Ouzts on June 29, 2015. (Baber Dep. pp. 136-137). During that meeting, Allen Tate offered to pay Baber \$409.00 towards

the cost of a home warranty and asked her to sign a release of claims against Allen Tate and its agents in exchange for that payment. (Baber Dep. pp. 137-138).

13. On June 30, 2015, Baber purchased a home warranty (Baber Dep. Ex. 23). She received the \$409.00 payment and signed a General Release ("Release") in which she released "Allen Tate Co., Inc., its parent entities, predecessors, successors and assigns, officers, directors, brokers, agents, employees and related and affiliated companies" (which includes all of the Tate Defendants) from:

any and all manner of, disputes, actions claims, demands, and liabilities whatsoever in law or equity, including complaints to any professional association or commission, and all claims for contribution and indemnification, arising from and by reason of any and all known and unknown, foreseen and unforeseen, injuries and damages, and the consequences thereof, related to and associated with the Offer to Purchase and Contract dated February 15, 2015 and any and all transactions and circumstances regarding the property located at 255 Rolling Ridge Road, Rock Hill, South Carolina.

(Baber Dep. pp. 138 and Ex. 22). Baber admitted in her deposition that she signed the release, received the payment and gave up all rights and claims against the Tate Defendants. (Baber Dep. pp. 139-140). Baber further conceded in her deposition that she gave the Tate Defendants the Release in exchange for the Tate Defendants providing her with the funds to purchase a home warranty. (See, Baber Dep. pp. 139-140, 141).

14. Baber filed this action on May 29, 2018 and has alleged that the Tate Defendants and others failed to disclose material information concerning the condition of the house, that many people made false representations about what inspections were required, that inspections were

performed that showed no issues with the house and Baber was ultimately fraudulently induced to purchase the property through a conspiracy among the defendants.²

15. On August 8, 2018, the Tate Defendants served Requests for Admission on Baber pursuant to Rule 36, SCRCR. As demonstrated in the Affidavit of Thomas L. Ogburn, Baber failed to timely respond to the requests for admission and failed to timely either seek an extension of time to respond or seek relief from the effects of Rule 36.

LEGAL STANDARD

Summary judgment shall be granted “if the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” Rule 56(c), SCRCR. A party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 592, 545 S.E.2d 500, 505 (2001). “Once the moving party carries its initial burden, the ‘opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as the material facts but must come forward with specific facts showing that there is a genuine issue for trial.’” Id. “The party opposing summary judgment cannot simply rest on mere allegations and denials contained in the pleadings.” Id. at 593, 454 S.E.2d at 505, citing Rule 56(e), SCRCR.

LAW/ANALYSIS

The Tate Defendants are entitled to summary judgment on all of Baber’s claims against them because there are no genuine issues of material fact and the Tate Defendants are entitled to

² All of Baber’s claims against Allen Tate Co., Inc. are based on the alleged acts of Coesens, Ouzts, Delaney and Garvey. (Complaint, ¶ 7-11). Baber does not allege any independent acts by Allen Tate Co., Inc.

judgment as a matter of law. Baber knowingly and voluntarily released all claims against the Tate Defendants when she executed the Release in exchange for the money to purchase a home warranty. As an additional ground for dismissal, the Tate Defendants are entitled to summary judgment on certain of Baber's claims against them because of admissions arising from Baber's failure to respond to Requests for Admission and on the remaining claim Baber admitted that she had no evidence to support it.

Release

The Release signed by Baber bars her claims in this action. All of Baber's claims against the Tate Defendants arise from her purchase of the Property on May 29, 2015, or from her execution of the Release shortly after closing. Baber testified that she was aware of the vast majority of alleged defects in the Property of which she now complains within a few days of closing and before she signed the Release. Baber further admitted in her deposition that she signed the Release in exchange for a payment of \$409.00 for a home warranty, that she received the funds and purchased the home warranty.

The clear, unambiguous language of the Release confirms Baber's deposition testimony and her understanding that she released all claims against the Tate Defendants based on a payment of \$409.00 for a home warranty, not based on any representations that Baber would be provided with copies of non-existent inspection reports. Therefore, the Tate Defendants' Motion should be granted and Baber's claims against the Tate Defendants should be dismissed, with prejudice.

Admissions by Plaintiff

The Tate Defendants are also entitled to summary judgment on Baber's second, third, fourth, eighth, and eleventh causes of action due to Baber's admissions arising from her failure to

respond to Requests for Admission and on Baber's first cause of action because Baber admitted that she had no evidence to support it.

Since Baber failed to timely respond to the Requests for Admission, it is deemed admitted for the purposes of this action that: (1) Baber was aware before she purchased the Property on May 29, 2015, that no termite inspection or home inspection had been performed on the Property; (2) she knew prior to purchasing the property that no CL-100 existed relating to the Property; and (3) she told one or more of the Tate Defendants that she did not want to pay for a home inspection or termite inspection. See, Hinson-Barr, Inc. v. Pinckard, 292 S.C. 267, 269-70, 356 S.E.2d 115, 116 (1987) ("Under Rule 36(a), SCRPC, all matters contained in a Request for Admission are admitted unless the party serves answers or objects within a certain time.").

Plaintiff's claims against the Tate Defendants in her Second, Third, Fourth, Eighth, and Eleventh causes of action are each based on alleged misrepresentations concerning whether a termite inspection or home inspection had been performed and the results of those inspections. (See, Complaint ¶¶ 112, 126, 132, 164, 180). Based on Baber's admissions, she was fully aware those inspections had not been performed and had told the Tate Defendants that she was not willing to pay for those inspections. Therefore, the Tate Defendants are entitled to summary judgment on those claims.

Finally, the Tate Defendants are entitled to summary judgment on Baber's first cause of action because Baber has conceded in her deposition that she has no evidence to support it. Baber's first Cause of Action alleges that Long-Robinson, Delaney, Ouzts and Allen Tate knew that the Disclosure Statement omitted material information concerning the condition of the Property.

(Complaint, ¶¶ 100-110).³ Baber admitted in her deposition that she had no evidence to support her First Cause of Action that Delaney and Ouzts knew that material information had been omitted from the Disclosure Statement. (Baber Dep. pp. 70-71). Therefore, the Tate Defendants are entitled to summary judgment on that claim as well. See, Chastain v. Hiltabidle, 381 S.C. 508, 520-21, 673 S.E.2d 826, 832-33 (Ct. App. 2009).

BASED ON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Mr. Coleman's request to deny the Motion and set a supplemental hearing is denied;
2. The Tate Defendants' objection to the Court's consideration of the Baber Affidavit is overruled; and
3. The Tate Defendants' Motion for Summary Judgment is granted and all of Plaintiff's claims against the Tate Defendants are dismissed with prejudice.

IT IS SO ORDERED.

[Signature contained on following page]

³ The Court previously dismissed the claims against Long-Robinson.



York Common Pleas

Case Caption: Karen K Baber VS Summit Funding Inc , defendant, et al

Case Number: 2018CP4601592

Type: Order/Summary Judgment

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2019-05-29 14:44:30 page 12 of 12

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4601592

Karen K Baber
PLAINTIFF(S)

Appraisal Innovations Llc et al
DEFENDANT(S)

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

Plaintiff's Motion to Reconsider is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/29/2019 .

RECEIVED
AUG 28 2019
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

ELECTRONICALLY FILED - 2019 JUL 29 10:41 AM - YORK - COMMON PLEAS - CASE#2018CP4601592



York Common Pleas

Case Caption: Karen K Baber VS Summit Funding Inc , defendant, et al

Case Number: 2018CP4601592

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2019-07-29 10:38:56 page 3 of 3

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2018-CP-46-1592

RECEIVED
AUG 28 2019
SC Court of Appeals

Karen K. Baber Appellant,

v.

Summit Funding, Inc.; Appraisal Innovations, LLC;
Brian L. Blue; The Gillen Law Firm, P.A.;
Michael F. Gillen; Allen Tate Co. Inc.; Collen Coesens;
Jonathan Garvey; Robert Ouzts; Connie Delaney; and Gloria Long-Robinson,

of whom Summit Funding, Inc; Allen Tate Co. Inc.;
Collen Coesens; Jonathan Garvey; Robert Ouzts; Connie Delaney; and
Gloria Long-Robinson are the Respondents.

NOTICE OF APPEAL

Karen K. Baber appeals the orders of the Honorable Daniel D. Hall dated May 29, 2019 and July 29, 2019. Appellants received written notice of entry of this order on May 29, 2019 and July 29, 2019.

August 28, 2019

Respectfully submitted,

By:



Glenn E. Bowens, Esq.
Creighton Coleman, Esq.
P.O. Box 424
Winnsboro, South Carolina 29180
Phone: (803) 714-7766
Fax: (803) 714-0775
Attorneys for Appellant

ELECTRONICALLY FILED - 2019 Sep 30 4:57 PM - YORK - COMMON PLEAS - CASE#2018CP4601592

Other Counsel of Record:

Poyner Spruill, LLP
Thomas Lynn Ogburn, III
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Attorney for Respondents Allen Tate Co. Inc., Collen Coesens, Jonathan Garvey, Robert Ouzts;
Connie Delaney

Driscoll Sheedy, P.A.
Susan Elizabeth Driscoll
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Charlotte, NC 28277

Attorney for Respondent Summit Funding, Inc
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125 Hampton Street, Suite 200
PO Box 566
Rock Hill, SC 29731

Attorney for Respondent Gloria Long-Robinson

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2018-CP-46-1592

RECEIVED
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Karen K. Baber Appellant,

v.

Summit Funding, Inc.; Appraisal Innovations, LLC;
Brian L. Blue; The Gillen Law Firm, P.A.;
Michael F. Gillen; Allen Tate Co. Inc.; Collen Coesens;
Jonathan Garvey; Robert Ouzts; Connie Delaney; and Gloria Long-Robinson,

of whom Summit Funding, Inc; Allen Tate Co. Inc.;
Collen Coesens; Jonathan Garvey; Robert Ouzts; Connie Delaney; and
Gloria Long-Robinson are the Respondents.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that I served a copy of the Notice of Appeal upon the following:

Poyner Spruill, LLP
Thomas Lynn Ogburn, III
301 S. College Street, Suite 2900
Charlotte, NC 28202

Driscoll Sheedy, P.A.
Susan Elizabeth Driscoll
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Rock Hill, SC 29731

ELECTRONICALLY FILED - 2019 Sep 30 4:57 PM - YORK - COMMON PLEAS - CASE#2018CP4601592

By depositing the same in the United States Mail, postage prepaid, this the 13th Day of October, 2008.

August 28, 2019



Glenn E. Bowens, Esq.
Creighton Coleman, Esq.
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Attorneys for Appellant

ELECTRONICALLY FILED - 2019 Sep 30 4:57 PM - YORK - COMMON PLEAS - CASE#2018CP4601592

001228

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
2018-CP-46-01592

COUNTY OF YORK

KAREN K. BABER,

Plaintiff,

vs.

SUMMIT FUNDING, INC., APPRAISAL
INNOVATIONS, LLC, BRIAN L. BLUE, THE
GILLEN LAW FIRM, P.A., MICHAEL F.
GILLEN, ALLEN TATE CO., INC., COLLEEN
COESENS, JONATHAN GARVEY, ROBERT
OUZTS, CONNIE DELANEY, and GLORIA
LONG-ROBINSON,

Defendants.

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER comes before the Court upon the Motion for Summary Judgment ("Motion") filed on March 5, 2019 by Defendants Allen Tate Co., Inc. ("Allen Tate"), Colleen Coesens ("Coesens"), Jonathan Garvey ("Garvey"), Robert Ouzts ("Ouzts") and Connie Delaney ("Delaney") (collectively, the "Tate Defendants"). The Court conducted a hearing in this matter on April 3, 2019 after proper notice to all parties. Present at the hearing were Plaintiff Karen Baber ("Baber"), counsel for the Tate Defendants, Thomas L. Ogburn III, counsel for Summit Funding, Inc., Susan Driscoll, and counsel for Appraisal Innovations, LLC and Brian L. Blue, Russell Racine.

In support of the Motion, the Tate Defendants presented the Motion, a supporting brief, the Plaintiff's deposition transcript and selective exhibits, the Tate Defendants' Requests for Admission and the Affidavit of Thomas L. Ogburn III. In opposition to the Motion, Baber presented an Affidavit of Plaintiff Karen K. Baber in Opposition to the Tate Defendants' Motion for Summary Judgment and attached exhibits ("Baber Affidavit").

As an initial point, Ms. Baber announced at the beginning of the hearing that Creighton Coleman was in the process of filing an appearance on her behalf in this matter. The undersigned contacted Mr. Coleman by telephone in open court. Mr. Coleman told the Court that he had agreed to meet with Ms. Baber on Friday, April 5, 2019, but had not yet agreed to represent her in this matter. Mr. Coleman confirmed that he was not representing Ms. Baber in defending the Tate Defendants' Motion. Based on this representation and Ms. Baber's presence in the courtroom, the Court exercised its discretion to proceed in hearing the Motion.

On April 8, 2019, after the hearing on the Motion, Mr. Coleman sent a letter to the Court announcing that he and Glenn Bowens were now representing Baber and requesting that the Court deny the Motion without prejudice because discovery was not complete. Mr. Coleman also requested that the Court set a supplemental hearing on the Motion at least 30 days later to allow he and Mr. Bowens ample time to review Baber's file, complete discovery and prepare a response to the Motion. The Tate Defendants opposed this request. Based on, among other things, Mr. Coleman's prior representation at the time of the hearing that he was not representing Baber, the fact that the Motion was based on Baber's own testimony and the prejudice that the Tate Defendants would suffer if the Court were to conduct another hearing on the Motion, Mr. Coleman's request is denied in the Court's discretion.

At the hearing, Counsel for the Tate Defendants objected to the Court's consideration of the Baber Affidavit in opposition to the Motion because, among other things: (1) the Baber Affidavit contains hearsay and does not comply with Rule 56(e), SCRCP; (2) Baber testified in her deposition that e-mails that she produced to all of the Defendants may have been the product of "cutting and pasting" multiple e-mails or combining multiple e-mails and the Tate Defendants

argued that most of the e-mails attached to the Baber Affidavit were not accurate representations of the actual e-mails; and (3) the Baber Affidavit may contain e-mails that were falsified, such as Exhibit 13 of the Baber Affidavit, which was not an accurate representation of Exhibit 14 from Baber's deposition. Additionally, the Tate Defendants objected to the Court's consideration of the Baber Affidavit to the extent that it contradicted her sworn deposition testimony. After reviewing and considering the Baber Affidavit the Court overrules the Tate Defendants' objection and has considered the Baber Affidavit in ruling on the Motion.

Based on the Court's review of the documents submitted by the parties, the pleadings in the Court's file and the arguments of counsel and Baber, the Court determines that there is no genuine issue as to any material fact in this matter and the Tate Defendants are entitled to judgment as a matter of law on all of Baber's claims against them. Therefore, the Court grants the Motion on the grounds set forth herein.

FACTS

1. Baber is a former South Carolina licensed real estate broker who has also worked for attorneys in handling real estate closings. (Deposition of Karen Baber ("Baber Dep."), pp. 22-23).

2. In January, 2015, Baber was searching for a home to purchase in Rock Hill, South Carolina. At the time, she was working with Garvey, who served as her real estate agent pursuant to an Exclusive Right to Buy Buyer Agency Contract signed by both Baber and Garvey. (Baber Dep. p. 36 and Ex. 4).

3. Between January 9, 2015 and January 11, 2015, Baber and Garvey exchanged several e-mails about a property located at 255 Rolling Ridge Road, Rock Hill, South Carolina.

("Property") (Baber Dep., Ex. 5-7). As part of those e-mails, Baber questioned Garvey about certain issues with the Property that she identified when she walked through the Property, including the condition of the air conditioning, water heater, gas pack, deck, stove, siding, bedroom ceiling, windows, and roof shingles, among other things. (*Id.*) As part of this exchange, Garvey provided Baber with the Residential Property Condition Disclosure Statement ("Disclosure Statement") signed by Gloria Long-Robinson, the owner of the Property. (Baber Dep. pp. 59-60 and Ex. 7).¹

4. In the Disclosure Statement, Long-Robinson represented that *she had actual knowledge of problems with twelve of the fourteen systems described on page 2 of the Disclosure Statement*, including: the water supply, water quality, water pressure, sanitary sewer, roof system, gutter system, plumbing system, electrical system, appliances, built-in systems and fixtures, heating system and cooling system. (Baber Dep., Ex. 7, p.2). Long-Robinson also disclosed on page 3 of the Disclosure Statement that she was also aware of problems caused by water during her ownership. (Baber Dep., Ex. 7, p. 3). Many of these systems Long-Robinson identified in the Disclosure Statement as having problems were the same items that Baber had already observed and questioned in her e-mail exchange with Garvey between January 9 and January 11. (*See*, Baber Dep. Ex. 5-7).

5. Shortly thereafter, Baber submitted a proposed Agreement/Contract to Buy and Sell Real Estate to Long-Robinson in which she offered to purchase the Property for \$145,000.00. (Baber Dep. p. 75). The offer includes, among other things, a requirement that Long-Robinson

¹ Ms. Long-Robinson was represented in the sale of the property by Delaney and Ouzts, who are also defendants in this matter. (Baber Dep. p. 29).

pay for a home warranty for Baber. (Baber Dep. Ex., 9, § 14). Long-Robinson ultimately did not agree to purchase a home warranty on the property. (Baber Dep. p. 75). After Long-Robinson refused to purchase a home warranty, Baber testified that Garvey agreed to pay for a home warranty, but admitted that “well, if you don't, I will, because we need one.” (Baber Dep. p. 76).

6. On or about February 19, 2015, Baber and Long-Robinson entered into an Agreement/Contract to Buy and Sell Real Estate (“Purchase Contract”) pursuant to which Baber agreed to purchase the property for \$145,000.00. (Baber Dep. Ex. 11). The Purchase Contract clearly indicated that Baber was purchasing the property “As-Is, Where Is, With all Faults” and the sale was contingent on Long-Robinson’s lender approving a short sale of the Property. (*Id.* § 28 and Short Sale Addendum). The Purchase Contract did not require that a home warranty be purchased. (*Id.* § 14). The Purchase Contract gave Baber the right to inspect the condition of the Property and to have the property inspected for wood infestation. (*Id.* §§ 8 and 11).

7. Most of Baber’s claims against the Tate Defendants are based on alleged representations made by the Tate Defendants and others prior to closing that termite and home inspections had been performed and came back clear or that such inspections were a condition on her closing of the loan. Baber claims that had she known the true condition of the Property, she would not have purchased it. (*See, e.g.*, Complaint ¶¶ 106, 135, 165).

8. Baber testified in her deposition that when she received the original appraisal of the Property on March 5, 2015 (Baber Dep. Ex. 16), she immediately questioned the accuracy of the appraisal because it did not identify the defects in Property she had spotted in January. (Baber Dep. pp. 110-113). More specifically, she was concerned that appraisal did not address:

a hole I thought I saw in the roof from the outside, two rusted holes in the air conditioner, the rotten and unsafe deck which I did not think met FHA standards, the rotten wood around the windows, window seals, overhangs, doors and signing, the gutters that were falling off and water spots in the ceiling.

(Baber Dep. pp. 112-113 and Ex. 17).

9. Baber closed on her purchase of the Property on May 29, 2015. (Baber Dep. P. 122). Immediately prior to closing, Baber notified Linda Mattison, the paralegal for the closing attorney, Michael Gillen, by e-mail that she “didn’t have a termite inspection done” and “did have an inspection/appraisal” which had been paid for. (Baber Dep. Ex. 14). Baber admitted in her deposition that she never received any bill for any inspections or any invoices for repairs to the Property prior to closing. (Baber Dep. pp. 90, 94).

10. As part of the closing, Baber concedes that she executed a Walk-Through Acknowledgment (“Acknowledgement”) in which she represented that she “accepts the repairs and condition of the property.” (Baber Dep. pp. 123-124 and Ex. 19). She also executed a Professional Services Disclosure and Election (“Professional Services Disclosure”) in which she did not indicate that she had selected anyone to perform a home inspection or a wood infestation inspection. (Baber Dep. p. 129 and Ex. 20).

11. Baber testified that within the first few days of her purchase of the Property on March 29, 2015 she was aware of the majority of the problems with the Property of which she now complains. (Baber Dep. pp. 130-131). She demanded a meeting with Coesens, Garvey and others at Allen Tate to discuss the Property and the fact that she did not receive a home warranty on the Property. (Baber Dep. 133-134).

12. Baber testified that she met with Coesens, Garvey and Ouzts on June 29, 2015. (Baber Dep. pp. 136-137). During that meeting, Allen Tate offered to pay Baber \$409.00 towards

the cost of a home warranty and asked her to sign a release of claims against Allen Tate and its agents in exchange for that payment. (Baber Dep. pp. 137-138).

13. On June 30, 2015, Baber purchased a home warranty (Baber Dep. Ex. 23). She received the \$409.00 payment and signed a General Release ("Release") in which she released "Allen Tate Co., Inc., its parent entities, predecessors, successors and assigns, officers, directors, brokers, agents, employees and related and affiliated companies" (which includes all of the Tate Defendants) from:

any and all manner of, disputes, actions claims, demands, and liabilities whatsoever in law or equity, including complaints to any professional association or commission, and all claims for contribution and indemnification, arising from and by reason of any and all known and unknown, foreseen and unforeseen, injuries and damages, and the consequences thereof, related to and associated with the Offer to Purchase and Contract dated February 15, 2015 and any and all transactions and circumstances regarding the property located at 255 Rolling Ridge Road, Rock Hill, South Carolina.

(Baber Dep. pp. 138 and Ex. 22). Baber admitted in her deposition that she signed the release, received the payment and gave up all rights and claims against the Tate Defendants. (Baber Dep. pp. 139-140). Baber further conceded in her deposition that she gave the Tate Defendants the Release in exchange for the Tate Defendants providing her with the funds to purchase a home warranty. (See, Baber Dep. pp. 139-140, 141).

14. Baber filed this action on May 29, 2018 and has alleged that the Tate Defendants and others failed to disclose material information concerning the condition of the house, that many people made false representations about what inspections were required, that inspections were

performed that showed no issues with the house and Baber was ultimately fraudulently induced to purchase the property through a conspiracy among the defendants.²

15. On August 8, 2018, the Tate Defendants served Requests for Admission on Baber pursuant to Rule 36, SCRCPP. As demonstrated in the Affidavit of Thomas L. Ogburn, Baber failed to timely respond to the requests for admission and failed to timely either seek an extension of time to respond or seek relief from the effects of Rule 36.

LEGAL STANDARD

Summary judgment shall be granted “if the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” Rule 56(c), SCRCPP. A party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 592, 545 S.E.2d 500, 505 (2001). “Once the moving party carries its initial burden, the ‘opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as the material facts but must come forward with specific facts showing that there is a genuine issue for trial.’” Id. “The party opposing summary judgment cannot simply rest on mere allegations and denials contained in the pleadings.” Id. at 593, 454 S.E.2d at 505, citing Rule 56(e), SCRCPP.

LAW/ANALYSIS

The Tate Defendants are entitled to summary judgment on all of Baber’s claims against them because there are no genuine issues of material fact and the Tate Defendants are entitled to

² All of Baber’s claims against Allen Tate Co., Inc. are based on the alleged acts of Coesens, Ouzts, Delaney and Garvey. (Complaint, ¶ 7-11). Baber does not allege any independent acts by Allen Tate Co., Inc.

judgment as a matter of law. Baber knowingly and voluntarily released all claims against the Tate Defendants when she executed the Release in exchange for the money to purchase a home warranty. As an additional ground for dismissal, the Tate Defendants are entitled to summary judgment on certain of Baber's claims against them because of admissions arising from Baber's failure to respond to Requests for Admission and on the remaining claim Baber admitted that she had no evidence to support it.

Release

The Release signed by Baber bars her claims in this action. All of Baber's claims against the Tate Defendants arise from her purchase of the Property on May 29, 2015, or from her execution of the Release shortly after closing. Baber testified that she was aware of the vast majority of alleged defects in the Property of which she now complains within a few days of closing and before she signed the Release. Baber further admitted in her deposition that she signed the Release in exchange for a payment of \$409.00 for a home warranty, that she received the funds and purchased the home warranty.

The clear, unambiguous language of the Release confirms Baber's deposition testimony and her understanding that she released all claims against the Tate Defendants based on a payment of \$409.00 for a home warranty, not based on any representations that Baber would be provided with copies of non-existent inspection reports. Therefore, the Tate Defendants' Motion should be granted and Baber's claims against the Tate Defendants should be dismissed, with prejudice.

Admissions by Plaintiff

The Tate Defendants are also entitled to summary judgment on Baber's second, third, fourth, eighth, and eleventh causes of action due to Baber's admissions arising from her failure to

respond to Requests for Admission and on Baber's first cause of action because Baber admitted that she had no evidence to support it.

Since Baber failed to timely respond to the Requests for Admission, it is deemed admitted for the purposes of this action that: (1) Baber was aware before she purchased the Property on May 29, 2015, that no termite inspection or home inspection had been performed on the Property; (2) she knew prior to purchasing the property that no CL-100 existed relating to the Property; and (3) she told one or more of the Tate Defendants that she did not want to pay for a home inspection or termite inspection. See, Hinson-Barr, Inc. v. Pinckard, 292 S.C. 267, 269-70, 356 S.E.2d 115, 116 (1987) ("Under Rule 36(a), SCRCP, all matters contained in a Request for Admission are admitted unless the party serves answers or objects within a certain time.").

Plaintiff's claims against the Tate Defendants in her Second, Third, Fourth, Eighth, and Eleventh causes of action are each based on alleged misrepresentations concerning whether a termite inspection or home inspection had been performed and the results of those inspections. (See, Complaint ¶¶ 112, 126, 132, 164, 180). Based on Baber's admissions, she was fully aware those inspections had not been performed and had told the Tate Defendants that she was not willing to pay for those inspections. Therefore, the Tate Defendants are entitled to summary judgment on those claims.

Finally, the Tate Defendants are entitled to summary judgment on Baber's first cause of action because Baber has conceded in her deposition that she has no evidence to support it. Baber's first Cause of Action alleges that Long-Robinson, Delaney, Ouzts and Allen Tate knew that the Disclosure Statement omitted material information concerning the condition of the Property.

(Complaint, ¶¶ 100-110).³ Baber admitted in her deposition that she had no evidence to support her First Cause of Action that Delaney and Ouzts knew that material information had been omitted from the Disclosure Statement. (Baber Dep. pp. 70-71). Therefore, the Tate Defendants are entitled to summary judgment on that claim as well. See, Chastain v. Hiltabidle, 381 S.C. 508, 520-21, 673 S.E.2d 826, 832-33 (Ct. App. 2009).

BASED ON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Mr. Coleman's request to deny the Motion and set a supplemental hearing is denied;
2. The Tate Defendants' objection to the Court's consideration of the Baber Affidavit is overruled; and
3. The Tate Defendants' Motion for Summary Judgment is granted and all of Plaintiff's claims against the Tate Defendants are dismissed with prejudice.

IT IS SO ORDERED.

[Signature contained on following page]

³ The Court previously dismissed the claims against Long-Robinson.



York Common Pleas

Case Caption: Karen K Baber VS Summit Funding Inc , defendant, et al

Case Number: 2018CP4601592

Type: Order/Summary Judgment

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2019-05-29 14:44:30 page 12 of 12

ELECTRONICALLY FILED - 2019 May 29 3:09 PM - YORK - COMMON PLEAS - CASE#2018CP4601592
ELECTRONICALLY FILED - 2019 Sep 30 4:57 PM - YORK - COMMON PLEAS - CASE#2018CP4601592

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4601592

Karen K Baber
PLAINTIFF(S)

Appraisal Innovations Llc et al
DEFENDANT(S)

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

Plaintiff's Motion to Reconsider is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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RECEIVED

AUG 28 2019

SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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ELECTRONICALLY FILED - 2018 Sep 29 10:47 AM - YORK - COMMON PLEAS - CASE#2018CP4601592

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4601592

Karen K Baber
PLAINTIFF(S)

Appraisal Innovations Llc et al
DEFENDANT(S)

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), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

Plaintiff's Motion to Reconsider is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

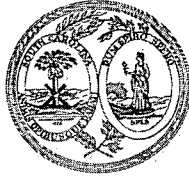
This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/29/2019.

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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ELECTRONICALLY FILED - 2019 Jul 29 10:41 AM - YORK - COMMON PLEAS - CASE#2018CP4601592
ELECTRONICALLY FILED - 2019 Sep 30 4:57 PM - YORK - COMMON PLEAS - CASE#2018CP4601592



York Common Pleas

Case Caption: Karen K Baber VS Summit Funding Inc , defendant, et al

Case Number: 2018CP4601592

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2019-07-29 10:38:56 page 3 of 3

ELECTRONICALLY FILED - 2019 Jul 29 10:41 AM - YORK - COMMON PLEAS - CASE#2018CP4601592
ELECTRONICALLY FILED - 2019 Sep 30 4:57 PM - YORK - COMMON PLEAS - CASE#2018CP4601592

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Karen K. Baber,

Plaintiff,

vs.

Summit Funding Inc.; Appraisal
Innovations, LLC.; Brian L. Blue; The
Gillan Law Firm; P.A.; Michael F. Gillen;
Allen Tate Co., Inc.; Colleen Coesens;
Jonathan Garvey; Robert Ouzts; Connie
Delaney and Gloria Long-Robinson,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO. 2018-CP46-01592

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT SUMMIT
FUNDING'S MOTION TO DISMISS**

This matter was heard by the Court upon motion by Defendant, Summit Funding Inc. ("Summit"), to have Plaintiff's claims dismissed pursuant to Rule 12(b)(6), SCRPC. Present at the hearing was Susan E. Driscoll, counsel for Summit. Karen K. Baber, appeared *pro se*.

BACKGROUND

Plaintiff (borrower) brought this action against Summit (lender), alleging Summit failed to obtain a termite and home inspection report as required by their loan agreement. As a result, Plaintiff states five causes of action against Summit, seeking rescission of the loan agreement, reimbursement for all loan payments made, and damages incurred in repairing issues with the home. Plaintiff's causes of action against Summit include; mutual mistake, unilateral mistake, promissory estoppel, breach of contract and declaratory relief.

STANDARD OF REVIEW

The factual analysis of a Rule 12(b)(6) motion is confined to the four corners of the complaint, and all allegations of the pleading and the inferences reasonably deducible therefrom, are deemed admitted. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). "If the

ELECTRONICALLY FILED - 2019 Jan 31 1:48 PM - YORK - COMMON PLEAS - CASE#2018CP4601592
ELECTRONICALLY FILED - 2019 Sep 30 4:57 PM - YORK - COMMON PLEAS - CASE#2018CP4601592

facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper.” *Id.* Based on the facts as alleged by Plaintiff in the complaint, I make the following findings and conclusions.

DISCUSSION

To establish breach of contract, the facts must show the existence of a contract, its breach, and damages caused by the breach. *Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 705 S.E.2d 73 (Ct. App. 2010). A party to a written contract may also have the court determine the construction or validity of the writing and “obtain a declaration of rights, status or other legal relations thereunder”. S.C. Code Ann. § 15-53-30 (1976, as amended).

In this case, Plaintiff alleges the loan agreement required the termite and home inspection be obtained prior to the issuance of loan, Summit failed to get the reports as required, and as a result this failure, Plaintiff is entitled to have the loan rescinded and be reimbursed for payments and other damages. (Complaint ¶¶ 173-175). These statements (deemed admitted) are sufficient to support Plaintiff’s claims for breach of contract and declaratory relief.

Mistake is an equitable remedy used to invalidate the formation of a contract. *Harper v. McCoy*, 276 S.C. 170, S.E.2d 782 (1981). The mistake occurs in the terms of the contract, not in an error that occurs subsequent to the contract’s formation. *Id.* Further, promissory estoppel applies where there is no contract. See *Barnes v. Johnson*, 402 S.C. 458, 742 S.E.2d 6 (Ct. App. 2013).

Plaintiff does not allege there was a misunderstanding with the terms of the contract. Instead, Plaintiff relies on the terms of the loan and facts that occurred subsequent to the formation

of the contract to support her claims. These allegations do not state claims of mistake or promissory estoppel.

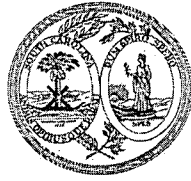
ORDER

Therefore, based on the Discussion above, it is hereby ordered:

1. Defendant's motion to dismiss is denied as to Plaintiff's claims for breach of contract and declaratory relief.
2. Defendant's motion to dismiss all other claims is granted and those claims are dismissed without prejudice.

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



York Common Pleas

Case Caption: Karen K Baber VS Summit Funding Inc , defendant, et al
Case Number: 2018CP4601592
Type: Order/Other

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2019-01-31 13:43:13 page 4 of 4

ELECTRONICALLY FILED - 2019 Jan 31 1:48 PM - YORK - COMMON PLEAS - CASE#2018CP4601592
ELECTRONICALLY FILED - 2019 Sep 30 4:57 PM - YORK - COMMON PLEAS - CASE#2018CP4601592



York Common Pleas

Case Caption: Karen K Baber VS Summit Funding Inc , defendant, et al
Case Number: 2018CP4601592
Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2019-07-29 10:38:56 page 3 of 3

ELECTRONICALLY FILED - 2019 Jul 29 10:41 AM - YORK - COMMON PLEAS - CASE#2018CP4601592

STATE OF SOUTH CAROLINA

COUNTY OF YORK

KAREN K. BABER,

Plaintiff,

vs.

SUMMIT FUNDING, INC., APPRAISAL
INNOVATIONS, LLC, BRIAN L. BLUE, THE
GILLEN LAW FIRM, P.A., MICHAEL F.
GILLEN, ALLEN TATE CO., INC., COLLEEN
COESENS, JONATHAN GARVEY, ROBERT
OUZTS, CONNIE DELANEY, and GLORIA
LONG-ROBINSON,

Defendants.

IN THE COURT OF COMMON PLEAS
2018-CP-46-01592

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT

RECEIVED

AUG 28 2019

SC Court of Appeals

THIS MATTER comes before the Court upon the Motion for Summary Judgment ("Motion") filed on March 5, 2019 by Defendants Allen Tate Co., Inc. ("Allen Tate"), Colleen Coesens ("Coesens"), Jonathan Garvey ("Garvey"), Robert Ouzts ("Ouzts") and Connie Delaney ("Delaney") (collectively, the "Tate Defendants"). The Court conducted a hearing in this matter on April 3, 2019 after proper notice to all parties. Present at the hearing were Plaintiff Karen Baber ("Baber"), counsel for the Tate Defendants, Thomas L. Ogburn III, counsel for Summit Funding, Inc., Susan Driscoll, and counsel for Appraisal Innovations, LLC and Brian L. Blue, Russell Racine.

In support of the Motion, the Tate Defendants presented the Motion, a supporting brief, the Plaintiff's deposition transcript and selective exhibits, the Tate Defendants' Requests for Admission and the Affidavit of Thomas L. Ogburn III. In opposition to the Motion, Baber presented an Affidavit of Plaintiff Karen K. Baber in Opposition to the Tate Defendants' Motion for Summary Judgment and attached exhibits ("Baber Affidavit").

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As an initial point, Ms. Baber announced at the beginning of the hearing that Creighton Coleman was in the process of filing an appearance on her behalf in this matter. The undersigned contacted Mr. Coleman by telephone in open court. Mr. Coleman told the Court that he had agreed to meet with Ms. Baber on Friday, April 5, 2019, but had not yet agreed to represent her in this matter. Mr. Coleman confirmed that he was not representing Ms. Baber in defending the Tate Defendants' Motion. Based on this representation and Ms. Baber's presence in the courtroom, the Court exercised its discretion to proceed in hearing the Motion.

On April 8, 2019, after the hearing on the Motion, Mr. Coleman sent a letter to the Court announcing that he and Glenn Bowens were now representing Baber and requesting that the Court deny the Motion without prejudice because discovery was not complete. Mr. Coleman also requested that the Court set a supplemental hearing on the Motion at least 30 days later to allow he and Mr. Bowens ample time to review Baber's file, complete discovery and prepare a response to the Motion. The Tate Defendants opposed this request. Based on, among other things, Mr. Coleman's prior representation at the time of the hearing that he was not representing Baber, the fact that the Motion was based on Baber's own testimony and the prejudice that the Tate Defendants would suffer if the Court were to conduct another hearing on the Motion, Mr. Coleman's request is denied in the Court's discretion.

At the hearing, Counsel for the Tate Defendants objected to the Court's consideration of the Baber Affidavit in opposition to the Motion because, among other things: (1) the Baber Affidavit contains hearsay and does not comply with Rule 56(e), SCRCP; (2) Baber testified in her deposition that e-mails that she produced to all of the Defendants may have been the product of "cutting and pasting" multiple e-mails or combining multiple e-mails and the Tate Defendants

argued that most of the e-mails attached to the Baber Affidavit were not accurate representations of the actual e-mails; and (3) the Baber Affidavit may contain e-mails that were falsified, such as Exhibit 13 of the Baber Affidavit, which was not an accurate representation of Exhibit 14 from Baber's deposition. Additionally, the Tate Defendants objected to the Court's consideration of the Baber Affidavit to the extent that it contradicted her sworn deposition testimony. After reviewing and considering the Baber Affidavit the Court overrules the Tate Defendants' objection and has considered the Baber Affidavit in ruling on the Motion.

Based on the Court's review of the documents submitted by the parties, the pleadings in the Court's file and the arguments of counsel and Baber, the Court determines that there is no genuine issue as to any material fact in this matter and the Tate Defendants are entitled to judgment as a matter of law on all of Baber's claims against them. Therefore, the Court grants the Motion on the grounds set forth herein.

FACTS

1. Baber is a former South Carolina licensed real estate broker who has also worked for attorneys in handling real estate closings. (Deposition of Karen Baber ("Baber Dep."), pp. 22-23).

2. In January, 2015, Baber was searching for a home to purchase in Rock Hill, South Carolina. At the time, she was working with Garvey, who served as her real estate agent pursuant to an Exclusive Right to Buy Buyer Agency Contract signed by both Baber and Garvey. (Baber Dep. p. 36 and Ex. 4).

3. Between January 9, 2015 and January 11, 2015, Baber and Garvey exchanged several e-mails about a property located at 255 Rolling Ridge Road, Rock Hill, South Carolina.

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2018-CP-46-1592

Karen K. Baber Appellant,

v.

Summit Funding, Inc.; Appraisal Innovations, LLC; Brian L. Blue; The Gillen Law Firm,
P.A.; Michael F. Gillen; Allen Tate Co., Inc.; Colleen Coesens; Jonathan Garvey; Robert
Ouzts; Connie Delaney; and Gloria Long-Robinson,

of whom

Summit Funding, Inc.; Allen Tate Co., Inc.; Colleen Coesens; Jonathan Garvey; Robert
Ouzts; and Connie Delaney are the Respondents.

MOTION TO DISMISS APPEAL

NOW COME Respondents Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey,
Robert Ouzts and Connie Delaney (collectively, the "Tate Respondents") and move the Court,
pursuant to Rules 203 and 260, SCACR, to dismiss Appellant's appeal. In support of this
motion, Respondents rely on the Memorandum of Law In Support of Motion to Dismiss Appeal
filed with this Motion and show the Court as follows:

1. The Appellant filed her Notice of Appeal with the Court of Appeals on August
28, 2019. The Certificate of Service for the Notice of Appeal erroneously indicated that the
Notice of Appeal was served on October 13, 2008, so on September 19, 2019, the Appellant filed

an amended certificate of service at the Court's direction indicating that she served the Notice of Appeal on August 28, 2019.

2. Pursuant to Rule 203(d)(1)(B), SCACR, "The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served." Therefore, the Appellant's deadline to file the Notice of Appeal with the York County Clerk of Court (the lower court) was Monday, September 9, 2019 (September 7 being a Saturday).

3. On September 10, 2019, counsel for the Tate Respondents e-mailed counsel for the Appellant and asked whether the Notice of Appeal had been filed with the York County Clerk of Court. In response, Counsel for Appellant attempted to electronically file the Notice of Appeal in York County and replied that Counsel for the Appellant had filed the Notice of Appeal with York County on the same day it was filed with the Court of Appeals, but it was sent back. Later, Appellant's electronic filing of the Notice of Appeal was rescinded by York County. Attached hereto as Exhibits A and B are true and correct copies of the e-mails between counsel and the Notice of Electronic Filing from York County rescinding the filing of the Notice of Appeal, which are incorporated herein by reference.

4. On September 16, 2019, counsel for the Tate Respondents again e-mailed counsel for the Appellant asking if the Notice of Appeal was ever filed with the lower court. Counsel for Appellant did not respond to this e-mail. A true and correct copy of this e-mail is attached hereto as Exhibit C and incorporated herein by reference.

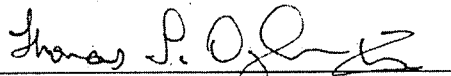
5. To date, the Appellant has not filed the Notice of Appeal with the lower court.

6. Pursuant to Rule 260, SCACR, "Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court."

7. Appellant has failed to comply with Rule 203(d)(1)(B), SCACR, despite ample opportunity to do so. Therefore, this appeal should be dismissed.

WHEREFORE, Respondents respectfully request that the Court dismiss Appellant's appeal, pursuant to Rules 203 and 260, SCACR, for failure to timely file her Notice of Appeal with the Clerk of Court of York County and for such other and further relief as may be just and proper.

This the 24th day of September, 2019.

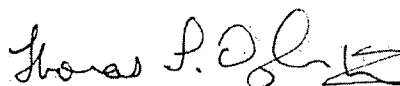


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Telephone: (704) 342-5250
E-mail: togburn@poynerspruill.com
Attorneys for Respondents Allen Tate Co., Inc.;
Colleen Coesens; Jonathan Garvey; Robert Ouzts;
and Connie Delaney

Susan E. Driscoll
Driscoll Sheedy, P.A.
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Charlotte, NC 28277
ATTORNEYS FOR SUMMIT
FUNDING, INC.

Russell M. Racine
Cranfill Sumner & Hartzog, LLP
2907 Providence Road, Suite 200
Charlotte, NC 28211
ATTORNEYS FOR APPRAISAL
INNOVATIONS, LLC AND
BRIAN L. BLUE

This the 24th day of September, 2019.



Thomas L. Ogburn III
S.C. State Bar No. 11761
Poyner Spruill LLP
301 South College Street, Suite 2900
Charlotte, North Carolina 28202
Telephone: (704) 342-5250
E-mail: togburn@poynerspruill.com
Attorneys for Respondents Allen Tate Co., Inc.;
Colleen Coesens; Jonathan Garvey; Robert Ouzts;
and Connie Delaney

Ogburn, Tate

From: Glenn Bowens <gbowens@bowenslawsc.com>
Sent: Tuesday, September 10, 2019 4:11 PM
To: Ogburn, Tate; Creighton Coleman
Cc: Glenn Bowens
Subject: Re: Allen Tate/Baber - Filing of Notice of Appeal

I filed it with the York County Court the same day it was filed with the Court of Appeals - they just sent it back so I e-filed it today. Sorry for any confusion

On Sep 10, 2019, at 2:21 PM, Ogburn, Tate <TOgburn@POYNERSPRUILL.COM> wrote:

Creighton and Glenn – Yesterday was the deadline to file the Notice of Appeal with the Court of Appeals and the York County Clerk of Court. (Rule 203(d)(1), SCACR). The Notice of Appeal that you sent appears to have been filed with the Court of Appeals, but I do not see where it was filed with the York County Clerk of Court. Was the Notice of Appeal filed with York County?

Tate

Thomas L. Ogburn III | Partner
Licensed in NC and SC

<image001.jpg>

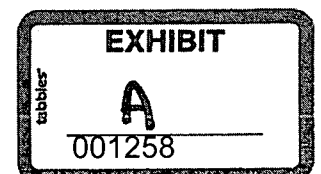
301 S. College Street, Suite 2900, Charlotte, NC 28202

D: 704 342 5258 | F: 704 342 5264

togburn@poynerspruill.com | www.poynerspruill.com

<image002.png> <image003.png> <image004.png>

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Ogburn, Tate

From: efiledonotreply@sccourts.org
Sent: Tuesday, September 10, 2019 4:16 PM
To: Ogburn, Tate
Cc: Dineen, Amy V.
Subject: Retraction: Courtesy NEF RE: 2018CP4601592

The Notice below is **RESCINDED**
The filing was not filed.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP4601592

Official File Stamp: 09-10-2019 04:08:16 PM
Court: CIRCUIT COURT
Common Pleas
York
Case Caption: Karen K Baber VS Summit Funding Inc., defendant, et al
Document(s) Submitted: Notice/Other
Notice/Other
Notice/Other
Filed by or on behalf of: Glenn E. Bowens

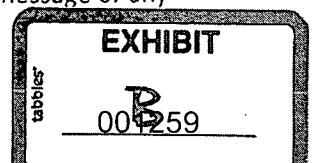
This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Creighton B. Coleman for Karen K Baber
Glenn E. Bowens for Karen K Baber
Susan Elizabeth Driscoll
Russell M. Racine for Appraisal Innovations Llc, Brian L Blue
Thomas Lynn Ogburn, III for Jonathan Garvey, Robert Ouzts, Connie Delaney, Allen
Tate Co Inc, Colleen Coesens

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any



attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

---

Case No. 2018-CP-46-1592

---

Karen K. Baber .....Appellant,

v.

Summit Funding, Inc.; Appraisal Innovations, LLC; Brian L. Blue; The Gillen Law Firm,  
P.A.; Michael F. Gillen; Allen Tate Co., Inc.; Colleen Coesens; Jonathan Garvey; Robert  
Ouzts; Connie Delaney; and Gloria Long-Robinson,

of whom

Summit Funding, Inc.; Allen Tate Co., Inc.; Colleen Coesens; Jonathan Garvey; Robert  
Ouzts; and Connie Delaney are the..... Respondents.

---

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS APPEAL**

---

Thomas L. Ogburn III  
Poyner Spruill LLP  
301 South College Street, Suite 2900  
Charlotte, North Carolina 28202  
(704) 342-5250  
Attorneys for Respondents Allen Tate Co., Inc.;  
Colleen Coesens; Jonathan Garvey; Robert Ouzts;  
and Connie Delaney

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## PROCEDURAL HISTORY

Appellant Karen K. Baber filed a complaint in the York County Court of Common Pleas on May 29, 2018 alleging, among other things, that Respondents Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert Ouzts, and Connie Delaney (collectively, the “Tate Respondents”), and others, engaged in fraud, conspiracy, negligent misrepresentation, and professional negligence in connection with Appellant’s purchase of a house in York County, South Carolina. On May 29, 2019, the Honorable Daniel D. Hall granted summary judgment in favor of the Tate Respondents and entered an order dismissing Appellant’s claims, with prejudice.

On June 6, 2019, Appellant filed a Motion to Reconsider, Alter and Amend Judgment, which was subsequently denied by Judge Hall by order filed on July 29, 2019. The Appellant then

served her Notice of Appeal on August 28, 2019 and filed the Notice of Appeal with the Court of Appeals on the same day. However, Appellant failed to timely file her Notice of Appeal with the York County Clerk of Court, as required by Rule 203(d)(1)(B), SCACR.

On September 10, 2019, counsel for the Tate Respondents e-mailed counsel for the Appellant and asked whether the Notice of Appeal had been filed with the York County Clerk of Court. In response, Counsel for Appellant attempted to electronically file the Notice of Appeal in York County and replied that Counsel for the Appellant had filed the Notice of Appeal with York County on the same day it was filed with the Court of Appeals; but it was sent back. Later, Appellant's electronic filing of the Notice of Appeal was rescinded by York County.

On September 16, 2019, counsel for the Tate Respondents again e-mailed counsel for the Appellant asking if the Notice of Appeal was filed with the lower court. To date, counsel for the Tate Respondents has not received a response to this e-mail and the Notice of Appeal has not been filed with the York County Clerk of Court.

#### ARGUMENT

SINCE THE APPLICABLE DEADLINE TO FILE THE NOTICE OF APPEAL WITH THE LOCAL COURT HAS PASSED, RULES 203 AND 260, SCACR REQUIRE THAT THIS APPEAL BE DISMISSED.

There is no question that the Appellant has failed to timely file the Notice of Appeal with the Clerk of Court for York County, as required by Rule 203(d)(1)(B). As a result, the Court must dismiss her appeal.

Rule 260(a), SCACR, clearly states:

Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not

be reinstated except by leave of the court, upon good cause shown, after notice to all parties.

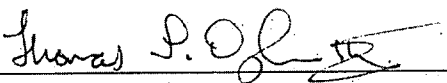
Appellant's failure to timely file her their Notice of Appeal with the York County Clerk of Court necessitates dismissal of her appeal. See, Wise v. S.C. Dep't of Corr., 372 S.C. 173, 174, 642 S.E.2d 551 (2007) ("Whenever it appears that an appellant has failed to comply with the requirements of the SCACR, an order of dismissal shall be issued.<sup>1</sup>")

The Appellant was required to file the Notice of Appeal with the York County Clerk of Court on or before September 9, 2019. Not only did she fail to meet this deadline, she has never filed the Notice of Appeal in York County despite multiple inquiries from the Tate Respondents' counsel and ample opportunity do so. As a result, Rule 260, SCACR, requires that the Court dismiss the Appellant's appeal.

#### CONCLUSION

Based on the foregoing, the Tate Respondents respectfully request that the Court dismiss the Appellant's appeal.

This the 24<sup>th</sup> day of September, 2019.

  
Thomas L. Ogburn III  
S.C. State Bar No. 11761  
Poyner Spruill LLP  
301 South College Street, Suite 2900  
Charlotte, North Carolina 28202  
Telephone: (704) 342-5250  
E-mail: togburn@poynerspruill.com  
Attorneys for Respondents Allen Tate Co., Inc.;  
Colleen Coesens; Jonathan Garvey; Robert Ouzts;  
and Connie Delaney

---

<sup>1</sup> The Wise court cites to Rule 231(a), SCACR instead of Rule 260. Id. However, on April 29, 2009, Rule 231 was renumbered to Rule 260. See, commentary to Rule 260, SCACR. The operative language is the same as the former Rule 231.

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

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Case No. 2018-CP-46-1592

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Karen K. Baber .....Appellant,

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Summit Funding, Inc.; Appraisal Innovations, LLC; Brian L. Blue; The Gillen Law Firm,  
P.A.; Michael F. Gillen; Allen Tate Co., Inc.; Colleen Coesens; Jonathan Garvey; Robert  
Ouzts; Connie Delaney; and Gloria Long-Robinson,

of whom

Summit Funding, Inc.; Allen Tate Co., Inc.; Colleen Coesens; Jonathan Garvey; Robert  
Ouzts; and Connie Delaney are the..... Respondents.

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**CERTIFICATE OF SERVICE**

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The undersigned attorney hereby certifies that true copies of the Memorandum of Law in  
Support of Motion to Dismiss Appeal in the above-referenced case have been served upon  
opposing counsel by depositing in the United States mail addressed to the parties below on this  
24<sup>th</sup> day of September, 2019.

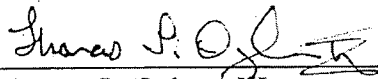
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ATTORNEYS FOR PLAINTIFF

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FUNDING, INC.

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Charlotte, NC 28211  
ATTORNEYS FOR APPRAISAL  
INNOVATIONS, LLC AND  
BRIAN L. BLUE

This the 24<sup>th</sup> day of September, 2019.



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S.C. State Bar No. 11761  
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Attorneys for Respondents Allen Tate Co., Inc.;  
Colleen Coesens; Jonathan Garvey; Robert Ouzts;  
and Connie Delaney

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Karen K. Baber,

Plaintiff,

vs.

Summit Funding, Inc.; Appraisal Innovations, LLC; Brian L. Blue; The Gillen Law Firm, P.A.; Michael F. Gillen; Allen Tate Co. Inc.; Collen Coesens; Jonathan Garvey; Robert Ouzts; Connie Delaney; and Gloria Long-Robinson,

Defendants.

IN THE COURT OF COMMON PLEAS

2018-CP-46-01592

**AFFIDAVIT**

**PERSONALLY APPEARED BEFORE ME** Karen Baber who after being sworn deposes and says:

1. I am Karen Baber, the Plaintiff in the above captioned action.
2. I am over eighteen years of age and have personal knowledge of the matters set forth in this affidavit.
3. In February 2015 Summit Funding, Inc. hired Appraisal Innovations, LLC and Brian L. Blue to perform an appraisal on the home I was purchasing.
4. Mr. Blue was the agent of Summit Funding, Inc.
5. Mr. Blue is the principal and owner of Appraisal Innovations, LLC and performed the appraisal at issue in this litigation.
6. A valid appraisal was a Federal Home Administration ("FHA") requirement.
7. Mr. Blue was on a list of approved FHA appraisers.
8. Mr. Blue knew he was performing an appraisal for an FHA loan – see paragraph 11 of his affidavit.
9. Mr. Blue performed the initial appraisal on February 27, 2015. (**Exhibit 1**).

10. Mr. Blue performed the second appraisal or update on March 12, 2015. (**Exhibit 2 p.2**)
11. Mr. Blue knew that I was relying on his appraisal report because the report was both a bank and FHA requirement in order to obtain the loan to purchase the property.
12. A negative report would have resulted in the bank and FHA denying the loan.
13. Mr. Blue did not follow the appropriate standard of care, if he had the problems with the property would have been identified in the appraisal as set forth below.
14. Mr. Blue caused me damage by submitting a false, inaccurate and invalid appraisal.
15. If Mr. Blue had submitted a correct valid appraisal that identified the problems with the property the bank and FHA would have denied the loan and I would not be in the situation I am in now.
16. Upon information and belief Mr. Blue appraised the wrong property:
  - a. The appraisal states the home's foundation is a crawl space, it is not, the home is on a concrete slab. (**Exhibit 1 p. 1 of 6**)
  - b. The appraisal states there is a drop stair for access to the attic, it does not, attic access is via a scuttle. (**Exhibit 1 p. 1 of 6**)
  - c. The utilities were required to be on for the appraisal to be valid. The appraisal stated it was "subject to utilities being turned on and confirmation that the subject will meet the following upon utilities being turned on." (**Exhibit 1 p. 3 of 6**)
  - d. The appraisal also states in the same paragraph that "the utilities were on and functioning at the time of the inspection." (**Exhibit 1 p. 3 of 6**)
  - e. If Mr. Blue had actually gone to the correct house on February 27, 2015 he would know the utilities were not turned on.



- f. The updated appraisal states that “The utilities and HVAC were on and functioning at the time of the inspection.” The water was not turned on and the HVAC was not working on March 12, 2015 – the date of the updated appraisal. **(Exhibit 2 p. 1 of 1)**
  - g. The appraisal states the improvements have been completed in accordance with the requirements and conditions stated in the original appraisal report. **(Exhibit 2 p. 1 of 1)**; however, the initial appraisal states no repairs were needed. **(Exhibit 1 p. 1 of 6)**
  - h. The attic had leaves in it from holes in the roof. If Mr. Blue had inspected the attic he would have discovered the leaves and holes and documented this deficiency in the appraisal.
  - i. I called Steve Reynolds and Jonathan Garvey when I got the Feb 27, 2015 appraisal because nothing was identified as being deficient and there were errors in the appraisal. Summit Funding (Steve Reynolds) told me Mr. Blue appraised the wrong house.
- 17. A neighbor, who was also a retired contractor, was going to buy the house told me there was so much wrong with the house it was not worth buying and fixing it up.
  - 18. The type of FHA loan that was funding the purchase of the house requires photos be taken by the appraiser at the time of the appraisal. The appraisal did not contain photos taken at the time of the appraisal – the photos attached to the appraisal were from the MLS system from 2014.

19. I raised concerns I had with the seller's disclosure statement and was told by the real estate agent and Summit Funding, Inc. to wait until the appraisal came back.

However, when the appraisal came back there were no deficiencies noted. This indicates to me the real estate agent, Summit Funding, Inc. and Mr. Blue were colluding and conspiring to use a false and misleading appraisal in order to get the loan approved.

20. Problems with the Property the Appraiser Should have Discovered

- a. Roof had gray spots and damage from a hailstorm the appraiser should have discovered.
- b. The gutters had damage
- c. Upstairs bedroom there was yellow discoloration like from a leak.
- d. The deck did not meet FHA safety requirements.
- e. Discolored wood on front door.
- f. Rusted spot on air conditioning unit.
- g. The air conditioning unit did not work.
- h. Siding had rotten areas.
- i. The entire street had the roofs replaced because of a hailstorm.
- j. I was told by State Farm the seller received \$13,000.00 for roof replacement but did not have the roof replaced. All of the homeowners on the street received their checks for roof damage the same day and saw the seller's check – they compared checks in the street. One of the neighbors, who is a general contractor, offered to repair the roof on the house.
- k. Discolored molding from water damage.
- l. Carpet started coming apart.
- m. Termites in the molding.
- n. Mold at front door.

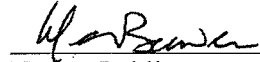
- o. The hot water heater was rusted through and did not work.
  - p. Disposal did not work – it was being held up by tape.
  - q. None of the windows would open. FHA requirement that the windows open.
  - r. Two of the three toilets were not working.
  - s. The kitchen range was not working, the burners did not work.
21. See the paragraph 64 of the verified Complaint for more items and fuller description of problems with the house.
  22. I did not discover the extent of the damage described above and in the verified Complaint until after closing.
  23. Mr. Blue's statements in the appraisal that (1) the property was of "average condition" (2) no signs of deterioration or needed renovation, and (3) did not require repairs were not true. (**Exhibit 1 p. 1 of 6**)
  24. Mr. Blue told me the appraisal was to make sure that Summit Funding, Inc. could recover the amount of the loan should I default.
  25. Summit Funding, Inc. informed me they had communicated my concerns to Mr. Blue. When no changes were made to the appraisal I was led to believe there were no material defects with the house.
  26. Summit Funding and Mr. Blue conspired to mislead me to believe there were no material defects with the house and to submit a false appraisal so the loan could be funded.
  27. Mr. Garvey told me to hire Robert Evans to do the repairs. These repairs were not noted in the appraisal.

28. Mr. Garvey also stated that a water leak had to be located and repaired and the water turned on prior to Mr. Blue certifying the appraisal; however, as of March 12, 2015, the date of the updated appraisal the water leak had not been repaired. Even though Mr. Blue claims the utilities were on and functioning on that date.
29. Mr. Garvey told me he notified Summit Funding, Inc. to send the appraiser back out because the appraisal was subject to the water being on. The appraiser supposedly came back to the property and cleared the appraisal.
30. Mr. Blue subsequently told me that he does not have the utilities turned on or off, which means he could not have verified the water was turned on at the time of the appraisal.
31. Mr. Garvey conspired with Mr. Blue and Summit Funding, Inc. to deceive me into believing there were no material defects with the house.
32. Mr. Blue submitted a false appraisal in order to assist Summit Funding, Inc. to get the loan funded and to mislead myself and the FHA into believing the home had no material defects.
33. Mr. Garvey used the false appraisal to induce me to believe there were no material defects and to go forward with the closing.
34. I have not received responses to my discovery requests from Appraisal Innovations, LLC and Mr. Blue. **(Exhibit 3)**

**FURTHER AFFIANT SAYETH NAUGHT**

  
Karen Baber

Subscribed and sworn to before me in my presence  
This 30<sup>th</sup> Day of September 2019

  
Notary Public  
My Commission Expires 7-10-23

**STATE OF SOUTH CAROLINA  
COUNTY OF YORK**

**KAREN K. BABER,  
PLAINTIFF,**

**VS.**

**SUMMIT FUNDING, INC., A CALIFORNIA  
CORPORATION; APPRAISAL INNOVATIONS, LLC, A  
SOUTH CAROLINA LIMITED LIABILITY COMPANY;  
BRIAN L. BLUE, AN INDIVIDUAL; THE GILLEN LAW  
FIRM, P.A., A SOUTH CAROLINA PROFESSIONAL  
ASSOCIATION; MICHAEL F. GILLEN, AN INDIVIDUAL;  
ALLEN TATE CO., INC., A NORTH CAROLINA  
CORPORATION; COLLEEN COESENS, AN INDIVIDUAL;  
JONATHAN GARVEY, AN INDIVIDUAL; ROBERT OUZTS,  
AN INDIVIDUAL; CONNIE DELANEY, AN INDIVIDUAL;  
AND GLORIA LONG-ROBINSON, AN INDIVIDUAL,  
DEFENDANTS.**

**IN THE COURT COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT**

**C/A NO: 2018-CP-46-01592**

**PLAINTIFF'S FIRST SET OF DISCOVERY  
REQUESTS TO THE DEFENDANTS APPRAISAL  
INNOVATIONS, LLC AND BRIAN L. BLUE**

**(MEDIATION AND JURY TRIAL DEMANDED)**

NOW COMES Plaintiff Karen K. Baber, Pro Se, and pursuant to Rules 26, 33, 34 and 36 of the South Carolina Rules of Civil Procedure, hereby requires Appraisal Innovations, LLC and Brian L. Blue (Defendants) by and through Defendants' counsel, to each answer separately and under oath the following requests for admissions and interrogatories, and to produce documents responsive to the following request for production within thirty (30) day after the service hereof to the email of Plaintiff "[KLKB1951@gmail.com](mailto:KLKB1951@gmail.com)" as has been agreed upon between the parties.

**DEFINITIONS AND INSTRUCTIONS**

1. "Appraisal" means the Uniform Residential Appraisal Report prepared with respect to the Property (as defined below) by Brian Blue of Appraisal Innovations, LLC with an

Effective Date of February 27, 2015 and signed on March 5, 2015 and as later supplemented.

2. "AI" means Defendant Appraisal Innovations, LLC and each of its officers, directors, managers, members, employees, agents, or attorneys.
3. "Blue" means Defendant Brian Blue and Appraisal Innovations, Inc.
4. "Complaint" shall mean Plaintiff's Verified Complaint filed in this matter on May 29, 2018.
5. "Defendants" or any combinations of one or more of the Defendants individually or collectively, shall mean each of the Defendants named in the introductory paragraph representatives, agents, private investigators, and others who are in the possession of or may have obtained information for or on behalf of, any of the aforementioned persons.
6. "Document" as used herein, is defined in the broadest sense permitted by the SC Rules of Civil Procedure and means the embodiment, in any form (including electronic for), of any attempt, by any means, to utilize, memorialize or communicate thoughts or information. As used herein, the term "document" shall mean every writing or record of every type that is, or has been, in the possession, custody or control of Defendant, or of which Defendant has knowledge, including, without limitation, the original and all copies regardless of origin or location or any writings, notes, correspondence, communications of any nature, telegrams, memoranda, electronic mail, messages, text messages, summaries or records of personal conversations, diaries, reports, calendars, drawings, photographs, sketches, minutes, or records of minutes, agreements,

summaries of negotiations, brochures, pamphlets, advertisements, circulars, press releases, newspaper articles, tapes or recordings of any form, drafts of any documents, revisions of any drafts of documents and printed matter of every kind or description, including all information in computers, in computer readable form or on microfilm or microfiche.

7. "Disclosure Statement" means the LLR State of South Carolina Residential Property Condition Disclosure Statement signed and dated March 28, 2014 by Seller and all updates or addendum thereto.
8. "FHA" shall mean the Federal Housing Administration.
9. "FNMA" shall mean the Federal National Mortgage Association.
10. "GNMA" shall mean the Government National Mortgage Association.
11. "HUD" shall mean the United States Department of Housing and Urban Development.
12. "Identify" when used in reference to a document, means to state the type of document (e.g. letter, memorandum, chart, etc.) or some other means of identifying it, the date of the document, its author and originator, the location or custodian of the document, a summary of its contents, and any other information necessary to distinguish the document from all others.
13. "Identify" when used in reference to an individual means to state the individual's business address, residence address, telephone numbers, and if appropriate, position or occupation.
14. "Identify" when used in reference to an oral communication means to state the names of the parties participating in the oral communication, the date of the oral



communication, all other persons present during the communication, a summary of the oral communication, the location or custodian of any written record of the oral communication, and any other information necessary to distinguish the oral communication from all others.

15. "Identify" when used in reference to a civil action, arbitration or administrative proceeding shall mean stating the court or administrative agency in which the action originated; the identity of parties to the action, arbitration or proceeding; and the allegations or claimed violations made against you in such action, arbitration or proceeding.
16. "Identify" when used in reference to a meeting shall mean to identify the date such meeting occurred; identify the persons at such meeting whether such meeting occurred in person or via electronic means or a combination thereof; and state the content of the communications made during such meeting.
17. "Loan" shall mean the loan transaction evidenced by a Note from Karen K. Baber as borrower to Summit Funding, Inc. as Lender, dated May 29, 2015 in the amount of \$142,023.00 and which Note was secured by a Mortgage with Karen K. Baber as mortgagor, Mortgage Electronic Registration Systems, Inc. as mortgagee, and Summit Funding, Inc. as Lender.
18. "Plaintiff" shall mean Plaintiff Karen K. Baber.
19. "Property" shall mean the real property located at 255 Rolling Ridge Rd, Rock Hill, SC.
20. The "Purchase" shall mean the purchase of the Property by Plaintiff from the Seller, Gloria Long-Robinson.

21. "Purchase Contract" shall mean the Agreement/Contract: To Buy and Sell Real Estate (Residential) between Karen Baber as Buyer and Gloria A. Long-Robinson as Seller, originally signed February 18 and February 19, 2015 by those parties, and as later amended on May 19, 2015.
22. "Seller" shall mean Gloria Long-Robinson.
23. "Summit Funding" shall mean "Summit Funding, Inc."
24. "USPAP" shall mean the Uniform Standards of Professional Appraisal Practice.
25. "You" shall mean each "Defendant," "Al," or "Blue."
26. If any Request for Admission or Interrogatory herein has subparts, each subpart shall be responded to separately.
27. If any information called for by an Interrogatory or document responsive to a Document Request is withheld on the basis of a claim of privilege or attorney work-product, the claimed basis for withholding the information and nature of the information withheld shall be set forth, together with a statement of all the circumstances relied upon to support such claim.
28. These Interrogatories and Request for Production and Documents shall be deemed continuing in nature so as to require supplemental answers between the time answers are served and the time of trial in accordance with Rule 26(e) of the SC Rules of Civil Procedure. Such supplemental responses are to be served upon Plaintiff within thirty (30) days after receipt of such information.
29. When, after a reasonable and thorough investigation using due diligence, you are unable to answer any part of an Interrogatory because of lack of information available

to you, specify in full and complete detail the type of information which you claim is not available to you and what has been done by you to locate such information. In addition, specific what knowledge or belief you have concerning the unanswered portion of the Interrogatory, set forth the facts upon which such knowledge or belief is based, and identify the person who has or is likely to have the information which you claim is not available.

### **REQUEST FOR ADMISSIONS**

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, each of you are individually requested to admit or deny the following Requests for Admission:

**REQUEST #1:** Admit that Innovative Appraisal LLC is licensed for the appraisals of residential properties in the State of South Carolina.

#### **RESPONSE TO REQUEST #1**

**REQUEST #2:** Admit that Brian L. Blue is a licensed appraiser in South Carolina.

#### **RESPONSE TO REQUEST #2**

**REQUEST #3:** Admit that in February 2015, Blue was contacted by Defendant Summit to perform an appraisal for the Property.

#### **RESPONSE TO REQUEST #3**

**REQUEST #4:** Admit that Defendant has experience in appraising existing residential properties the purchases of which were to be financed pursuant to FHA, FNMA, or GNMA loan programs.

#### **RESPONSE TO REQUEST #4**

**REQUEST #5:** Admit that you expressly conditioned the Appraisal on the utilities being turned on at the time of your visual inspection of the Property.

**RESPONSE TO REQUEST #5**

**REQUEST #6:** Admit that you represented that the Appraisal was performed in accordance with USPAP standards.

**RESPONSE TO REQUEST #6**

**REQUEST #7:** Admit that the USPAP standards required that an appraiser act competently with respect to a subject appraisal.

**RESPONSE TO REQUEST #7**

**REQUEST #8:** Admit that the USPAP standards required compliance with the USPAP Ethics Rule ("Ethics Rule").

**RESPONSE TO REQUEST #8**

**REQUEST #9:** Admit that the Ethics Rule required that an appraiser not communicate assignment results with the intent to mislead or to defraud.

**RESPONSE TO REQUEST #9**

**REQUEST #10:** Admit that the Ethics Rule required that an appraiser not use or communicate a report or assignment results known to be misleading or fraudulent.

**RESPONSE TO REQUEST #10**

**REQUEST #11:** Admit that the Ethics Rule required that an appraiser not perform an assignment in a grossly negligent manner.

**RESPONSE TO REQUEST #11**

**REQUEST #12:** Admit that the USPAP standards required compliance with the Record Keeping Rule.

**RESPONSE TO REQUEST #12**

**REQUEST #13:** Admit that an appraiser is required to keep all data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with USPAP for a period of at least five years.

**RESPONSE TO REQUEST #13**

**REQUEST #14:** Admit that the USPAP standards required compliance with the USPAP Competency Rule ("Competency Rule").

**RESPONSE TO REQUEST #14**

**REQUEST #15:** Admit that an appraiser is required under the Competency Rule to have the knowledge and experience to complete the assignment competently.

**RESPONSE TO REQUEST #15**

**REQUEST #16:** Admit that the USPAP standards required compliance with the USPAP Standard 1: Real Property Appraisal Development ("Standard 1").

**RESPONSE TO REQUEST #16**

**REQUEST #17:** Admit that Standard 1 required that the appraiser not commit a substantial error of omission or commission that significantly affects the appraisal.

**RESPONSE TO REQUEST #17**

**REQUEST #18:** OMITTED.

**REQUEST #19:** Admit that Standard 1 required that the appraiser not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

**RESPONSE TO REQUEST #19**

**REQUEST #20:** Admit that the Appraisal stated that it was made subject to HUD handbooks 4805.1 and 4150.2.

**RESPONSE TO REQUEST #20**

**REQUEST #21:** Admit that the reference to HUD handbook "4805.1" was a typographical error and should have referenced "4905.1."

**RESPONSE TO REQUEST #21**

**REQUEST #22:** Admit that HUD handbook 4905.1 sets forth the minimum requirements for existing housing to be considered technically acceptable by both HUD and the Department of Veteran Affairs.

**RESPONSE TO REQUEST #22**

**REQUEST #23:** Admit that HUD handbook 4905.1 states: "Defective construction, poor workmanship ... excessive dampness, leakage, decay, termites, or other conditions impairing the safety, sanitation or structural soundness of the dwelling shall render the property unacceptable until the defects or conditions have been remedied and the probability of further damage eliminated."

**RESPONSE TO REQUEST #23**

**REQUEST #24:** Admit that HUD handbook 4905.1 states: "MECHANICAL SYSTEMS must be safe to operate, be protected from destructive elements, have reasonable future utility, durability and economy, and have adequate capacity and quality."

**RESPONSE TO REQUEST #24**

**REQUEST #25:** Admit that HUD handbook 4905.1 states: "ROOF COVERING must prevent entrance of moisture and provide reasonable future utility, durability and economy of maintenance...."

**RESPONSE TO REQUEST #25**

**REQUEST #26:** Admit that HUD handbook 4905.1 states: "HAZARDS. The property must be free of hazards which may adversely affect the health and safety of the occupants or the structural soundness of the improvements, or which may impair the customary use and enjoyment of the property by the occupants."

**RESPONSE TO REQUEST #26**

**REQUEST #27:** Admit that HUD handbook 4150.2 required the appraiser to make a complete visual inspection of the subject property.

**RESPONSE TO REQUEST #27**

**REQUEST #28:** Admit that HUD handbook 4150.2 states that: "Termites can cause serious problems in the wood structural components of a house and may go undetected for a long period of time. FHA requires maximum assurances that a home is free of any infestation. A pest inspection is always required for: any structure that is ground level ...."

**RESPONSE TO REQUEST #28**

**REQUEST #29:** Admit that HUD handbook 4150.2 states that an appraiser is to: "Observe all areas of the property that have potential for termite infestation, including the bottoms of exterior doors and frames, and wood siding in contact with the ground and crawl spaces...."

**RESPONSE TO REQUEST #29**

**REQUEST #30:** Admit that HUD handbook 4150.2 states that: "A property with defective conditions is unacceptable until the defects or conditions have been remedied and the probability of further damage eliminated. Defective conditions include: ... leakage, decay, termites, other readily observable conditions that impair the safety, sanitation or structural soundness of the dwelling."

**RESPONSE TO REQUEST #30**

**REQUEST #31:** Admit that HUD handbook 4150.2 states that: "Natural ventilation of structural space – such as attics and crawl spaces – must be provided to reduce the effects of excess heat and moisture that are conducive to decay and deterioration of the structure. All attics must have ventilation to allow moisture and excessive heat to escape. The appraiser must check the attic areas to determine whether the ventilation is adequate...."

**RESPONSE TO REQUEST #31**

**REQUEST #32:** Admit that HUD handbook 4150.2 states that: "To ensure against conditions that could cause the property to deteriorate and seriously affect the marketability of the property, it is required that: There must be adequate access to the crawl space; the appraiser must be able to access the crawl space for inspection. Access is defined as ability to visually examine all areas the crawl space [sic]. Specifically, the minimum distance is 18 inches.... The crawl space must be clear of all debris and trash and must be properly vented...."

**RESPONSE TO REQUEST #32**

**REQUEST #33:** Admit that HUD handbook 4150.2 states that: "The covering must prevent moisture from entering and must provide reasonable future utility, durability and economy of



maintenance.... The appraiser must observe the roof to determine whether the deficiencies present a health and safety hazard or do not allow for reasonable future utility."

**RESPONSE TO REQUEST #33**

**REQUEST #34:** Admit that HUD handbook 4150.2 states that: "These are the requirements of mechanical systems: must be safe to operate,... must have reasonable future utility, durability and economy, must have adequate capacity and quality. The appraiser must observe the systems ... and determine if any of the conditions do not meet the above stated criteria.

**RESPONSE TO REQUEST #35**

**REQUEST #36:** Admit that HUD handbook 4150.2 states that: "Heating must be adequate for healthful and comfortable living conditions...."

**RESPONSE TO REQUEST #36**

**REQUEST #37:** Admit that HUD handbook 4150.2 states that: "The appraiser must note and make a repair requirement for any health and safety deficiencies as they relate to the subject property, including: broken windows, doors or steps...."

**RESPONSE TO REQUEST #37**

**REQUEST #38:** Admit that HUD handbook 4150.2 states that: "The appraiser must operate a representative number of windows, ... and all exterior and garage doors....."

**RESPONSE TO REQUEST #38:**

**REQUEST #39:** Admit that you conducted an appraisal at the Property, with a "effective date of appraisal" of February 27, 2015 and a "date of signature and report" date of March 5, 2015.

**RESPONSE TO REQUEST #39**

**REQUEST #40:** Admit that in the Appraisal, you represented that you performed a complete visual inspection of the interior and exterior areas of the Property.

**RESPONSE TO REQUEST #40**

**REQUEST #41:** Admit that in the Appraisal, you represented that you had reported the condition of the improvements in factual, specific terms.

**RESPONSE TO REQUEST #41**

**REQUEST #42:** Admit that in the Appraisal, you represented that you had identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.

**RESPONSE TO REQUEST #42**

**REQUEST #43:** Admit that in the Appraisal you represented that you had noted any adverse conditions (such as, but not limited to, needed repairs, deterioration ....., etc.) observed during the inspection of the subject property.

**RESPONSE TO REQUEST #43**

**REQUEST #44:** Admit that in the Appraisal you authorized the lender/client to disclose the report to the borrower without requiring your consent.

**RESPONSE TO REQUEST #44**

**REQUEST #45:** Admit that in the Appraisal you represented that the borrower "may rely on this appraisal report as part of any mortgage finance transaction that involves one or more of these parties."

**RESPONSE TO REQUEST #45**

**REQUEST #46:** Admit that in the pages of the Appraisal titled "Subject Photo Page,"

"Comparable Photo Page," and "Plat Map" you identified the "Borrower/Client" as Plaintiff

Karen K. Baber.

**RESPONSE TO REQUEST #46**

**REQUEST #47:** Admit that the in order for the Loan to be provided, it had to meet FHA and HUD requirements.

**RESPONSE TO REQUEST #47**

**REQUEST #48:** Admit that the Note which was part of the Loan transaction was an "FHA Multistate Fixed Rate Note."

**RESPONSE TO REQUEST #48**

**REQUEST #49:** Admit that the Loan was an FHA-insured mortgage loan or loan transaction.

**RESPONSE TO REQUEST #49**

**REQUEST #50:** Admit that the Good Faith Estimate received by Baber from Summit Funding, Inc. indicated that there were "Required services" that included a "PEST INSPECTION COMPANY" and a "HOME INSPECTION."

**RESPONSE TO REQUEST #50**

**REQUEST #51:** Admit that the Loan was pooled with other loans into securities to be guaranteed by GNMA.

**RESPONSE TO REQUEST #51**

**REQUEST #52:** Admit that the Loan was eligible for inclusion in the pool the GNMA-guaranteed, because it was guaranteed by the FHA.

**RESPONSE TO REQUEST #52**

**REQUEST 53:** Admit each of the following with respect to the Appraisal:

- a. You did not take the pictures included in the Appraisal.
- b. You were given the pictures that were included in the Appraisal.
- c. The Property was listed for sale on April 21, 2014.
- d. At least some of the pictures in the Appraisal were from April 2014.
- e. You took the measurements of the deck at the Property.
- f. Under the "General Description" portion of the Appraisal, you marked that the Property had an "Attic Drop Stair."
- g. Under the "Foundation" portion of the Appraisal, you marked that the house on the Property had a "Crawl Space."
- h. Under the "Exterior Description" portion of the Appraisal, you stated that the house on the Property's "Exterior Walls" were "siding/average."
- i. Under the "Exterior Description" portion of the Appraisal, you stated that the house on the Property's "Roof Surface" was "composite/average."
- j. Under the "Exterior Description" portion of the Appraisal, you stated that the Property had "Gutters & Downspouts" and that their condition was "average."
- k. Under the "Exterior Description" portion of the Appraisal, you stated that the house on the Property had "d.h.insulated" windows and that their condition was "average."
- l. Under the "Exterior Description" portion of the Appraisal, you stated that the house on the Property had a "Storm Sash/Insulated" and that its condition was "average."

- m. Under the "Exterior Description" portion of the Appraisal, you stated that the house on the Property had "Screens" and that they were "average."
- n. Under the "Interior" portion of the Appraisal, you stated that the house on the Property had "Walls" consisting of "drywall/panel" and that their condition was "avg."
- o. Under the section of the Appraisal form asking you to "Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.), you stated, among other things, that the house on the Property was in a "C4" condition.
- p. In the Appraisal, a property described as being in "C4" condition means that "The improvements feature some minor deferred maintenance and physical deterioration due to normal wear and tear. The dwelling has been adequately maintained and requires only minimal repairs to building components/mechanical systems and cosmetic repairs. All major building components have been adequately maintained and are functionally adequate."
- q. Under the section of the Appraisal form asking you to "Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.), you stated, among other things, that "There were no signs of deterioration or needed renovation. No needed repairs were noted at the time of the inspection."
- r. Under the section of the Appraisal form asking "Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property?" you marked the box saying "No."

**RESPONSE TO REQUEST #53**

**REQUEST #54:** Admit each of the following with respect to the house on the Property at the time the Appraisal inspection was performed on February 27, 2015:

- a. The electricity to the house was not on and functional.
- b. The deck at the Property was missing handrails required by FHA and local ordinances or building codes.
- c. The Property did not have an "Attic Drop Stair."
- d. The Property had two scuttles to the attic; one from the downstairs utility room and one from the upstairs bedroom located to the right of the stairs.
- e. The attic space above the downstairs bedroom comprising approximately one-quarter of the attic space at the Property had no attic access and no ventilation.
- f. There was no crawl space under the house on the Property.
- g. The house was over three-fourths on a slab and one-fourth built up from the ground with no crawl space.
- h. The exterior walls had siding that had holes and dry rot.
- i. The roof of the house had holes in it.
- j. Water had come through the holes in the roof of the house and damaged at least some of the wall electrical outlets, light ceiling fixtures, the ceiling of the smallest upstairs bedroom, and the ceiling above the built-in vanity in the upstairs master.
- k. The gutters and downspouts on the exterior of the house on the Property were damaged.

- l. Several of the downstairs windows of the house on the Property were not functioning because they had been sealed shut with putty, they lacked insulation, they had rotten overhangs and seals, and newspapers had been shoved in to hold the putty-sealed windows in place.
- m. There were 13 windows in the house on the Property, two of which had no screens and eight of which had torn screens, and two additional windows (that were not sealed shut) that did not open or close.
- n. The carpet in the house on the Property was loose and buckled in various places.
- o. There was a hole in the wall in an upstairs bathroom.
- p. The downstairs heating/cooling unit was rusted and connections were broken off
- q. The garbage disposal under the kitchen sink in the house on the Property was held in place by tape and was not functioning.
- r. Some of the electrical outlets in the house on the Property were not operating.
- s. Some of the electrical outlets in the house on the Property were not properly grounded.
- t. The deck on the exterior of the house on the Property had sections that were rotten.
- u. The front door of the house on the Property was missing a handle and a lock, the seal was rotten, and there was wood rot at the bottom of the door.
- v. One of the back doors for a bedroom of the house on the Property could not be opened due to the deadbolt being locked and the key missing.
- w. The oven was not functioning properly.
- x. The HVAC was not working.

y. The hot water heater was not working and was severely rusted.

**RESPONSE TO REQUEST #54**

**REQUEST #55:** Admit that the Appraisal was made "subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require or repair: Subject to utilities being turned on."

**RESPONSE TO REQUEST NO. #55**

**REQUEST #56:** Admit that you represented that you had made "a complete visual inspection of the interior and exterior area of the subject property... as of 02/27/2015, which is the date of the inspection and the effective date of this appraisal."

**RESPONSE TO REQUEST NO. #56**

**REQUEST #57:** Admit that at Page 3 of 6 of the Appraisal, you stated, among other things, that: "A head and shoulders inspection of the attics and crawl spaces was done at the time of the appraisal. The utilities were on and function at the time of the inspection. The subject meets the standards pertaining to the presence and installation of smoke detectors and carbon monoxide detectors of the local and state jurisdictional guidelines that are applicable."

**RESPONSE TO REQUEST #57**

**REQUEST #58:** Admit that you did not perform "a head and shoulders inspection of the attics and crawl spaces" at the house on the Property at the time of the appraisal.

**RESPONSE TO REQUEST #58**

**REQUEST #59:** Admit that there were no smoke detectors and carbon monoxide detectors installed in the house on the Property at the time of the Appraisal.

**RESPONSE TO REQUEST #59**



**REQUEST #60:** Admit that the water to the Property was not on at the time of the February Appraisal.

**RESPONSE TO REQUEST #60**

**REQUEST #61:** Admit that the statement in the Appraisal that "the subject property meets the standards put forth by the guidelines in HUD handbooks 4905.1 and 4150.2" was not truthful.

**RESPONSE TO REQUEST #61**

**REQUEST #62:** Admit that the certifications in the following paragraphs of the "APPRAISER'S CERTIFICATION" portion of the Appraisal were not true:

- a. Paragraph 2.
- b. Paragraph 3.
- c. Paragraph 14.
- d. Paragraph 15.
- e. Paragraph 16.
- f. Paragraph 19.

**RESPONSE TO REQUEST #62**

**REQUEST #63:** Admit that Plaintiff, upon receiving a copy of the Appraisal from Defendant Summit, called you questioning some items in the Appraisal, but that you told Plaintiff that you could not discuss the Appraisal with her.

**RESPONSE TO REQUEST #63**

**REQUEST #64:** Admit that Defendant Garvey gave you a copy of the Seller's SC LLR Disclosure form with instructions for you to determine if you appraised the right property and to make adjustments to the Appraisal as needed.

**RESPONSE TO REQUEST #64**

**REQUEST #65:** Admit that in preparing the Appraisal and the Appraisal Update that you did not take into account the information contained in the Seller's SC LLR Disclosure form regarding the Property.

**RESPONSE TO REQUEST #65**

**REQUEST #66:** Admit that you made no corrections to the Appraisal.

**RESPONSE TO REQUEST #66**

**REQUEST #67:** Admit that on March 12, 2015, you signed the "Freddie Mac" Form 442 March 2005 and the Fannie Mae Form 1004D March 2005, which is titled "Appraisal Update and/or Completion Form" ("Appraisal Update").

**RESPONSE TO REQUEST #67**

**REQUEST #68:** Admit that one of the stated purposes of the Appraisal Update was "to provide the lender/client with an accurate update of an appraisal and/or to report a certification of completion."

**RESPONSE TO REQUEST #68**

**REQUEST #69:** Admit that in the Appraisal Update, you checked the box indicating that it was a "Certification of Completion" and that you certified that: "THE IMPROVEMENTS [HAVE] BEEN COMPLETED IN ACCORDANCE WITH THE REQUIREMENTS AND CONDITIONS STATED IN THE ORIGINAL" and that "The subject property meets the standards set forth by the guidelines in HUD handbooks 4905.1 and 4150.2. The utilities and HVAC were on and functioning at the time of the inspection. The subject is complete."

**RESPONSE TO REQUEST #69**

**REQUEST #70:** Admit that you signed the Appraisal Update.

**RESPONSE TO REQUEST #70**

**REQUEST #71:** Admit that on March 12, 2015, that the water to the house on the Property was not on and functioning.

**RESPONSE TO REQUEST #71**

**REQUEST #72:** Admit that the pictures included in the Appraisal Update were not taken on March 12, 2015.

**RESPONSE TO REQUEST #72**

**REQUEST #73:** Admit that some of the pictures included in the Appraisal Update were copied from pictures taken at the time of the initial listing of the Property.

**RESPONSE TO REQUEST #73**

**REQUEST #74:** Admit that you did not inspect the interior of the house on the Property on March 12, 2015.

**RESPONSE TO REQUEST #74**

**REQUEST #75:** Admit each of the following with respect to the house on the Property as of March 12, 2015:

- a. The electricity was on and functioning.
- b. The deck at the Property was missing handrails required by FHA and local ordinances or building codes.
- c. The house did not have an "Attic Drop Stair."
- d. The house had two scuttles to the attic; one from the downstairs utility room and one from the upstairs bedroom located to the right of the stairs.

- e. The attic space above the downstairs bedroom of the house comprising approximately one-quarter of the attic space of the house had no attic access and no ventilation.
- f. There was no crawl space under the house on the Property.
- g. The house on the Property is over three-fourths on a slab and one-fourth built up from the ground with no crawl space.
- h. The exterior walls of the house had siding that had holes and dry rot.
- i. The roof of the house had holes in it.
- j. Water had come through the holes in the roof of the house and damaged at least some of the wall electrical outlets, light ceiling fixtures, the ceiling of the smallest upstairs bedroom, and the ceiling above the built-in vanity in the upstairs master.
- k. The gutters and downspouts on the exterior of the house were damaged.
- l. Several of the downstairs windows of the house were not functioning because they had been sealed shut with putty, they lacked insulation, they had rotten overhangs and seals, and newspapers had been shoved in to hold the putty-sealed windows in place.
- m. There were 13 windows in the house on the Property, two of which had no screens and eight of which had torn screens, and two additional windows (that were not sealed shut) did not open or close.
- n. The carpet in the house on the Property was loose and buckled in various places.
- o. There was a hole in the wall in an upstairs bedroom.
- p. The downstairs heating/cooling unit was rusted and connections were broken off

- q. The garbage disposal under the kitchen sink in the house on the Property was held in place by tape and was not functioning.
- r. Some of the electrical outlets in the house on the Property were not operating.
- s. Some of the electrical outlets in the house on the Property were not property grounded.
- t. The deck on the exterior of the house on the Property had sections that were rotten.
- u. The front door of the house on the Property was missing a handle and a lock, the seal was rotten, and there was wood rot at the bottom of the door.
- v. One of the back doors for a bedroom of the house on the Property could not be opened due to the deadbolt being locked and the key missing.
- w. The oven was not functioning properly.
- x. The HVAC was not working.
- y. The hot water heater was not working.

**RESPONSE TO REQUEST #75**

**REQUEST #76:** Admit that you never made any corrections to the inaccuracies of the Appraisal.

**RESPONSE TO REQUEST #76**

**REQUEST #77:** Admit that you did not go to the Property on March 12, 2015 and conduct an Appraisal Update and/or Completion Report

**RESPONSE TO REQUEST #77**

**REQUEST #78:** Admit that no one went with you to the Property on March 12, 2015.

**RESPONSE TO REQUEST #78**

**REQUEST #79:** Admit that you did not meet anyone at the Property on March 12, 2015.

**RESPONSE TO REQUEST NO. #79**

**REQUEST #80:** Admit that you were contacted by Summit Funding regarding communications from Plaintiff as to the accuracy of the Appraisal.

**RESPONSE TO REQUEST #80**

**REQUEST #81:** Admit that you were contacted by Great American Insurance Group regarding communications from Plaintiff as to the accuracy of the Appraisal.

**RESPONSE TO REQUEST #81**

**REQUEST #82:** Admit that you have failed to notify the parties to the Loan of any inaccuracies in the Appraisal.

**RESPONSE TO REQUEST #82**

**INTERROGATORIES**

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, each of you should answer the following interrogatories.

**INTERROGATORY NO. 1:** If you have denied any of the Requests for Admissions or any subpart thereof, state with specificity the complete legal and factual basis for such denial.

**ANSWER:**

**INTERROGATORY NO. 2:** State in detail the complete factual basis for any denial of any and allegations asserted in the Complaint.

**ANSWER:**

**INTERROGATORY NO. 3:** Identify the persons known to you to be witnesses concerning the facts of this case and indicate whether or not written or recorded statements have been taken from the witnesses. For each person known to you to be a witness concerning the facts of this

case, set forth either a summary sufficient to inform the other parties of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from or with witnesses.

**ANSWER:**

**INTERROGATORY NO. 4:** Provide the dates that you were first licensed as an appraiser in South Carolina.

**ANSWER:**

**INTERROGATORY NO. 5:** Provide your educational background, beginning from high school graduation through December 31, 2018.

**ANSWER:**

**INTERROGATORY NO. 6:** Provide your work history from the date of your graduation from high school through December 31, 2018.

**ANSWER:**

**INTERROGATORY NO. 7:** With respect to appraisals of existing residences that you have performed during the period January 1, 2013 through December 31, 2018, state the following:

- a. State the total number of such appraisals you performed.
- b. State the total number that you knew or believed were subject to HUD and/or FHA requirements or guidelines.
- c. State the number of appraisals that you completed without all utilities being on and functioning.
- d. State the number of appraisal reports that included pictures that were not taken at or near the time the appraisal report was completed.

- e. State the number of loans of which you are aware that were issued for the purchase of existing homes appraised by you wherein the lender waived any HUD or FHA requirements.
- f. Of those properties for which you performed appraisals, state the number of which you are aware where a CL-100 Wood Infestation Report was **not** required before a loan to purchase the existing residence was issued.
- g. Of those appraisals, state how many times you found errors that later were corrected.
- h. Of those properties for which you performed appraisals, state the number of proposed purchases that did not close because of the failure to obtain a CL-100 Wood Infestation Report.

**ANSWER:**

**INTERROGATORY NO. 8:** For the period January 1, 2013 and December 31, 2018, identify each and every communication between you and any prospective purchaser or actual purchaser of an existing residence wherein the prospective purchaser or purchaser expressed any complaint or concern about the accuracy of an appraisal that you performed, and state in detail the complaint or concern that was expressed.

**ANSWER:**

**INTERROGATORY NO. 9:** Identify each person who accompanied you to the Property on either date upon which you contend you performed a visual inspection of the Property for the purposes of the Appraisal or the Appraisal Update.

**ANSWER:**



**INTERROGATORY NO. 10:** If in your responses to the foregoing Requests for Admissions, you admitted that any statement or representation in the Appraisal or Appraisal Update was in error, please state in detail how it was that the error occurred.

**ANSWER:**

**INTERROGATORY NO. 11:** Identify any person known to you to be a witness concerning the facts involving any investigations by any federal or state regulatory agency investigating you or any appraisals that you have performed.

**ANSWER:**

**INTERROGATORY NO. 12:** State whether you are aware inquiries from or any investigations by any federal or state agency or any elected officials regarding you or any appraisal that you have performed; and if so, identify each and every communication you have had with any person associated with or employed by any such agency or elected official's office.

**ANSWER:**

**INTERROGATORY NO. 13:** List the names and addresses of any expert witnesses whom you propose to use as a witness at the trial of the case and provide a brief description of the subject matter of the expert's anticipated testimony.

**ANSWER:**

**INTERROGATORY NO. 14:** For each person known to you to be a witness concerning the facts of this case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness or provide a copy of any written or recorded statements taken from such witnesses.

**ANSWER:**

**INTERROGATORY NO. 15:** Other than privileged communications with counsel, identify each meeting or communication regarding Plaintiff, the Appraisal, the Appraisal Update, any of the other defendants in this case, and/or Mr. Michael F. Gillen or any employees of the Gillen Law Firm, P.A.

**ANSWER:**

**INTERROGATORY NO. 16:** Identity any and all documents regarding procedures to be employed when it is discovered that an error has occurred in an appraisal that was used to qualify a loan for the purchase of an existing residence that was a HUD or FHA guaranteed loan.

**ANSWER:**

**INTERROGATORY NO. 17:** State any significant differences regarding requirements for appraisals used in connection with the purchases of existing residences to be funded with FHA-guaranteed mortgage loans or loans to be sponsored, sold to or identified as FNMA, "Freddie Mac" or GNMA loans.

**ANSWER:**

**INTERROGATORY NO. 18:** State each and every reason, if any, as to why you did not have to meet FHA or HUD requirements applicable to the Appraisal.

**ANSWER:**

**INTERROGATORY NO. 19:** State whether in your role as an appraiser, you have ever been subject to any fines, sanctions, reprimand, disciplinary action or cancellation of license; and if so, with respect to each, state the following:

- a. The reason for such action.
- b. The date such action was taken.

c. The regulatory agency or court in which the action took place.

d. Identify the person initiating the action.

**ANSWER:**

**INTERROGATORY NO. 20:** State whether you have ever been convicted of any felony criminal offense or any misdemeanor involving moral turpitude; and if so, state the offenses or charges, the approximate dates of the conviction and the names and jurisdiction of the court(s) in which such conviction(s) occurred.

**ANSWER:**

**INTERROGATORY NO. 21:** For the period January 1, 2013 through December 31, 2018, state whether you have been involved as a witness or a party in any civil action, arbitration or administrative proceeding; and if so, state the name of the proceeding and the case or matter number; identify the persons who were parties to such actions or proceedings; and state the courts or agencies in which such actions or proceedings took place.

**ANSWER:**

**INTERROGATORY NO. 22:** Identify each and every communication with each and every person with whom you had discussions regarding the falsification of any item reported or represented in the Appraisal or to not correct any errors made in the Appraisal.

**ANSWER:**

**INTERROGATORY NO. 23:** State each of your user names for each of the social media accounts used, created or signed up for by you from since January 1, 2013 through December 31, 2018, including but not limited to the user name for any account on Facebook, Instagram, LinkedIn,

Snapchat, YouTube and Twitter; and include all email accounts and phone numbers used for telephone calls regarding your appraisal business.

**ANSWER:**

**INTERROGATORY NO. 24:** Identify each person from whom you obtained information or whom assisted you in responding to these interrogatories

**ANSWER:**

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, each of you should produce documents responsive to the following requests within thirty (30) days of service of these requests for production of documents upon you:

**REQUEST NO. 1:** Produce a copy of any document identified or requested to be identified in any of your responses to the foregoing Requests for Admissions and Interrogatories.

**RESPONSE:**

**REQUEST NO. 2:** Produce any and all documents regarding or referring to Plaintiff.

**RESPONSE:**

**REQUEST NO. 3:** Produce any and all documents regarding or referring to the Appraisal.

**RESPONSE:**

**REQUEST NO. 4:** Produce any and all documents regarding any inquiry by or investigation in to the Loan or the Appraisal by any person including the Plaintiff or any individual or state or federal regulatory agency, or any party who would have an interest in the reasons as to how this happened, why it happened, and why has it not been resolved.

**RESPONSE:**

**REQUEST NO. 4:** Produce any and all documents regarding any inquiry by or investigation in to this Loan by any party including the Plaintiff or any individual or state or federal regulatory agency, or any party who would have an interest in the reasons as to how this happened, why it happened, and why has it not been resolved.

**RESPONSE:**

**REQUEST NO. 5:** Produce any and all documents regarding or referring to or efforts made you to obtain the requirements necessary to correct the Appraisal.

**RESPONSE:**

**REQUEST NO. 6:** With respect to the Plaintiff, the Property or the Loan; produce any and all documents containing communications between or exchanged between you and:

- a. Plaintiff;
- b. Seller;
- c. Any agent or employee of Allen Tate Realty;
- d. Any agent, officer or employee of Summit;
- e. Any employee of the City of Rock Hill, including any reports regarding the turning off or turning on of any utilities running to the Property;
- f. Michael F. Gillen or any employee of the Gillen Law Firm, P.A.
- g. Any person regarding repairs to the Property;
- h. Any employee of any state or federal agency or department;
- i. Any employee of any insurance company that has provided insurance related to the Property;

- j. Any member or employee associated with the office of a member of the South Carolina Legislature; and/or
- k. Any member or employee associated with the office of a member of the United States Congress;

**RESPONSE:**

**REQUEST NO. 7:** Produce copies of any all pictures of the Property taken by any person at your request or instruction to include meta data showing the date and time that the pictures were taken.

**RESPONSE:**

**REQUEST NO. 8:** Produce copies of your file containing all notes, measurements, reports, and recordings of discussions with any person regarding or relating to the Property.

**RESPONSE:**

DATED this 5<sup>th</sup> day of March, 2019.

/s/ Karen K. Baber  
Karen K. Baber  
255 Rolling Ridge  
Rock Hill, SC 29730  
843-240-0083  
Email: klkb1951@gmail.com  
Plaintiff Pro Se

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing document was, by agreement of the parties, emailed to the following on the date set forth below:

Thomas L. Ogburn, III  
POYNER SPRUILL LLP  
301 South College Street, Suite 2300  
Charlotte, North Carolina 29202  
[togurn@poynerspruill.com](mailto:togurn@poynerspruill.com)  
Attorney for Defendants Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert Ouzts, and Connie Delaney

Russell M Racine  
CRANFILL SUMNER & HARTZOG, LLP  
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Charlotte, North Carolina 28211  
[rracine@cshlaw.com](mailto:rracine@cshlaw.com)  
Attorney for Defendants Appraisal Innovations, LLC and Brian L. Blue

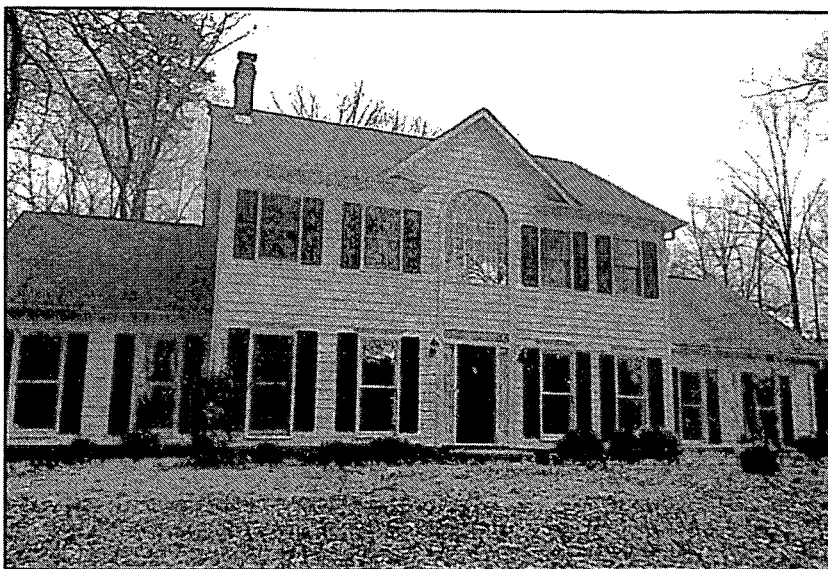
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Attorneys for the Gillen Law Firm  
and Michael F. Gillen

DATED this 5th day of March, 2019  
/s/ Karen K. Baber  
Karen K. Baber, Plaintiff Pro Se

|                  |                      |        |      |          |                   |
|------------------|----------------------|--------|------|----------|-------------------|
| Borrower/Client  | Karen K Barber       |        |      | File No. | BLB15030933       |
| Property Address | 255 Rolling Ridge Rd |        |      |          |                   |
| City             | Rock Hill            | County | York | State    | SC Zip Code 29730 |
| Lender           | Summit Funding, Inc. |        |      |          |                   |

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**EXHIBIT**  
001308 34  
Daber  
2-15-19 KC



## Appraisal Update and/or Completion Report

BLB15030933  
File # BLB15030933

The purpose of this report form is to provide the lender/client with an accurate update of an appraisal and/or to report a certification of completion. The appraiser must identify the service(s) provided by selecting the appropriate report type.

Property Address: 255 Rolling Ridge Rd Unit #  
City Rock Hill State SC Zip Code 29730  
Legal Description Deed Book 6666-273/ Plat Book 853-3/ Lot 569 County York  
Borrower Karen K Barber Contract Price \$ 145,000 Date of Sale 02/18/2015 Effective Date of Original Appraisal 02/27/2015  
Property Rights Appraised ☒ Fee Simple ☐ Leasehold ☐ Other (describe) Original Appraised Value \$ 166,000  
Original Appraiser Brian Blue Company Name Appraisal Innovations LLC  
Original Lender/Client Summit Funding, Inc. Address 2241 Harvard St. #200, Sacramento, CA 95815

**SUMMARY APPRAISAL UPDATE REPORT**

**INTENDED USE:** The intended use of this appraisal update is for the lender/client to evaluate the property that is the subject of this report to determine if the property has declined in value since the date of the original appraisal for a mortgage finance transaction.

**INTENDED USER:** The intended user of this appraisal update is the lender/client.

**SCOPE OF WORK:** The appraiser must, at a minimum: (1) concur with the original appraisal, (2) perform an exterior inspection of the subject property from at least the street, and (3) research, verify, and analyze current market data in order to determine if the property has declined in value since the effective date of the original appraisal.

**HAS THE MARKET VALUE OF THE SUBJECT PROPERTY DECLINED SINCE THE EFFECTIVE DATE OF THE PRIOR APPRAISAL?** ☐ Yes ☐ No

**APPRaiser's CERTIFICATION:** The appraiser certifies and agrees that:

- I have, at a minimum, developed and reported this appraisal update in accordance with the scope of work requirements stated in this appraisal update report and concur with the analysis and conclusions in the original appraisal.
- I performed this appraisal update in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal update was prepared.
- I have updated the appraisal by incorporating the original appraisal report.
- I have summarized my analysis and conclusions in this appraisal update and retained all supporting data in my work file.

**SUPERVISORY APPRAISER'S CERTIFICATION:** The Supervisory Appraiser certifies and agrees that:

- I directly supervised the appraiser for this appraisal update assignment, have read the appraisal update report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
- I accept full responsibility for the contents of this appraisal update report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.

**CERTIFICATION OF COMPLETION**

**INTENDED USE:** The intended use of this certification of completion is for the lender/client to confirm that the requirements or conditions stated in the appraisal report referenced above have been met.

**INTENDED USER:** The intended user of this certification of completion is the lender/client.

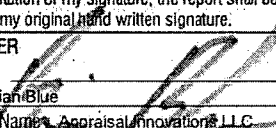
**HAVE THE IMPROVEMENTS BEEN COMPLETED IN ACCORDANCE WITH THE REQUIREMENTS AND CONDITIONS STATED IN THE ORIGINAL APPRAISAL REPORT?** ☒ Yes ☐ No If No, describe any impact on the opinion of market value. The subject property meets the standards put forth by the guidelines in HUD handbooks 4905.1 and 4150.2. The utilities and HVAC were on and functioning at the time of the inspection. The subject is complete.

**APPRaiser's CERTIFICATION:** I certify that I have performed a visual inspection of the subject property to determine if the conditions or requirements stated in the original appraisal have been satisfied.

**SUPERVISORY APPRAISER'S CERTIFICATION:** I accept full responsibility for this certification of completion.

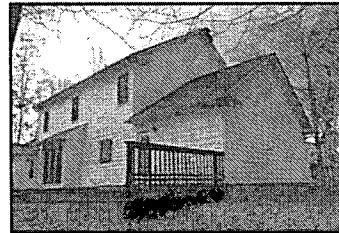
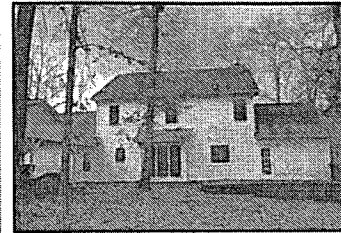
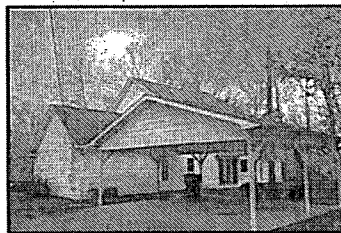
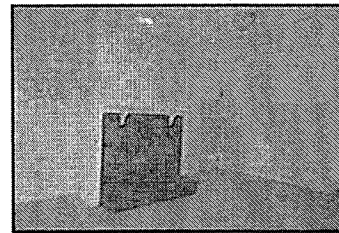
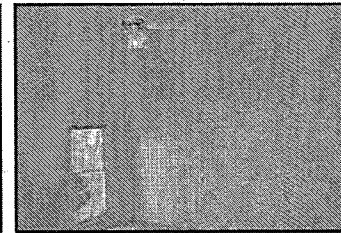
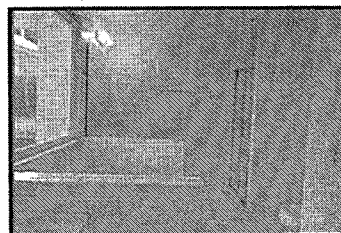
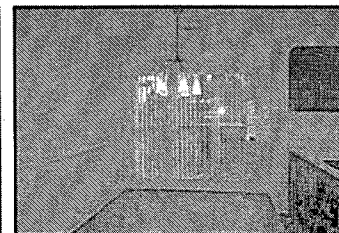
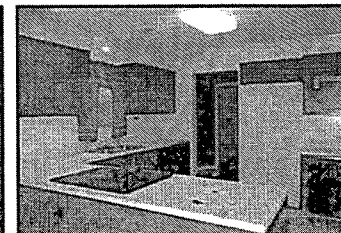
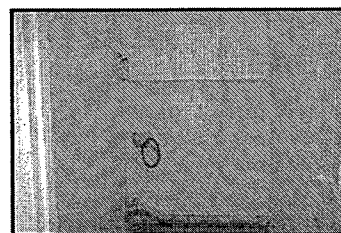
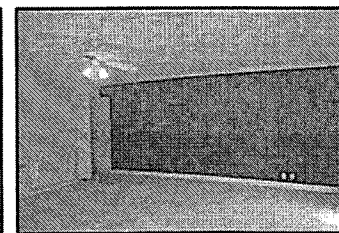
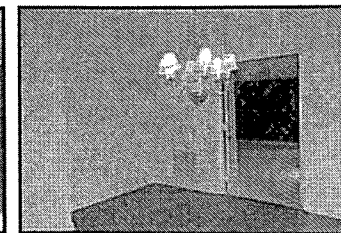
**SIGNATURES**

**ADDITIONAL CERTIFICATION:** I/we certify that if this report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this report containing a copy or representation of my signature, the report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>APPRaiser</b></p> <p>Signature </p> <p>Name Brian Blue</p> <p>Company Name Appraisal Innovations LLC</p> <p>Company Address PO Box 1114, Rock Hill, SC 29731</p> <p>Telephone Number (803) 417-5998</p> <p>Date of Signature and Report March 12, 2015</p> <p>Effective Date of Appraisal Update</p> <p>Date of Inspection</p> <p>State Certification # CR 5336</p> <p>or State License #</p> <p>or Other (describe) State #</p> <p>State SC</p> <p>Expiration Date of Certification or License 06/30/2016</p> <p><b>CURRENT LENDER/CLIENT</b></p> <p>Name</p> <p>Company Name Summit Funding, Inc.</p> <p>Company Address 2241 Harvard St. #200, Sacramento, CA 95815</p> | <p><b>SUPERVISORY APPRAISER (ONLY IF REQUIRED)</b></p> <p>Signature</p> <p>Name</p> <p>Company Name</p> <p>Company Address</p> <p>Telephone Number</p> <p>Date of Signature</p> <p>State Certification #</p> <p>or State License #</p> <p>or Other</p> <p>State</p> <p>Expiration Date of Certification or License</p> <p><b>SUPERVISORY APPRAISER</b></p> <p><input type="checkbox"/> Did not inspect subject property</p> <p><input type="checkbox"/> Did inspect exterior of subject property from street</p> <p>Date of Inspection</p> <p><input type="checkbox"/> Did inspect interior and exterior of subject property</p> <p>Date of Inspection</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

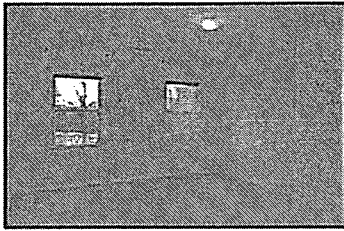
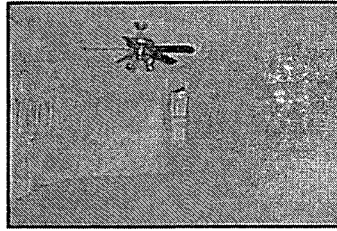
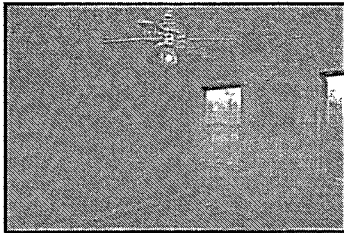
**Subject Photos**

|                  |                      |             |                         |
|------------------|----------------------|-------------|-------------------------|
| Borrower/Client  | Karen K Barber       |             |                         |
| Property Address | 255 Rolling Ridge Rd |             |                         |
| City             | Rock Hill            | County York | State SC Zip Code 29730 |
| Lender           | Summit Funding, Inc. |             |                         |

**Subject****Subject****Subject****Subject****Subject****Subject****Subject****Subject****Subject****Subject****Subject****Subject****Subject****Subject****Subject**

**Subject Photos**

|                  |                      |        |      |       |                   |
|------------------|----------------------|--------|------|-------|-------------------|
| Borrower/Client  | Karen K Barber       |        |      |       |                   |
| Property Address | 255 Rolling Ridge Rd |        |      |       |                   |
| City             | Rock Hill            | County | York | State | SC Zip Code 29730 |
| Lender           | Summit Funding, Inc. |        |      |       |                   |

**Subject****Subject****Subject****Subject**

## License

|                  |                      |        |      |       |                   |
|------------------|----------------------|--------|------|-------|-------------------|
| Borrower/Client  | Karen K Barber       |        |      |       |                   |
| Property Address | 255 Rolling Ridge Rd |        |      |       |                   |
| City             | Rock Hill            | County | York | State | SC Zip Code 29730 |
| Lender           | Summit Funding, Inc. |        |      |       |                   |

BCD1047981

State of South Carolina  
 Department of Labor, Licensing and Regulation  
 Real Estate Appraisers Board

**BRIAN L BLUE**

Is hereby entitled in practice as a:

Certified Residential Appraiser

License Number: 5336

Expiration Date: 06/30/2016

POCKET CARD

  
 ADMINISTRATOR

**E&O Insurance**

|                  |                      |        |      |       |                   |
|------------------|----------------------|--------|------|-------|-------------------|
| Borrower/Client  | Karen K Barber       |        |      |       |                   |
| Property Address | 255 Rolling Ridge Rd |        |      |       |                   |
| City             | Rock Hill            | County | York | State | SC Zip Code 29730 |
| Lender           | Summit Funding, Inc. |        |      |       |                   |



301 E. Fourth Street, Cincinnati, OH 45202

**DECLARATIONS**  
for  
**REAL ESTATE APPRAISERS  
LIABILITY INSURANCE POLICY**

**THIS IS BOTH A CLAIMS MADE AND REPORTED INSURANCE POLICY.**

**THIS POLICY APPLIES TO THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED  
AND REPORTED IN WRITING TO THE COMPANY DURING THE POLICY PERIOD.**

Insurance is afforded by the company indicated below: (A capital stock corporation)

☒ Great American Assurance Company

Note: The Insurance Company selected above shall herein be referred to as the Company.

Policy Number: RAP4112901-15

Renewal of:

Program Administrator: Herbert H. Landy Insurance Agency Inc.  
75 Second Ave Suite 410 Needham, MA 02494-2876

Item 1. Named Insured: Brian L Blue

Item 2. Mailing Address: P.O. Box 11114

City, State, Zip Code: Rock Hill, SC 29731

Item 3. Policy Period: From 02/07/2015 To 02/07/2016  
(Month, Day, Year) (Month, Day, Year)

(Both dates at 12:01 a.m. Standard Time at the address of the Named Insured as stated in Item 2.)

Item 4. Limits of Liability:

A. \$ 1,000,000 Damages Limit of Liability - Each Claim

B. \$ 1,000,000 Claim Expenses Limit of Liability - Each Claim

C. \$ 1,000,000 Damages Limit of Liability - Policy Aggregate

D. \$ 1,000,000 Claim Expenses Limit of Liability - Policy Aggregate

Item 5. Deductible (Inclusive of Claim Expenses):

A. \$ 500 Each Claim

B. \$ 1,000 Aggregate

Item 6. Premium: \$ 773.00

Item 7. Retroactive Date (if applicable): 02/07/2008

Item 8. Forms, Notices and Endorsements attached:

D42100 (05/13) D42300 SC (05/13)  
D42402 (05/13) D42408 (05/13)

*Betsy A. Magnuson*  
Authorized Representative

D42101 (05/13)

Page 1 of 1

## Uniform Residential Appraisal Report

BLB15022613

File # 461-6145927

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address 255 Rolling Ridge Rd City Rock Hill State SC Zip Code 29730  
 Borrower Karen K Baber Owner of Public Record Gloria A Long-Robinson County York  
 Legal Description Deed Book 6666-273/ Plat Book B53-3/ Lot 569  
 Assessor's Parcel # 604-05-02-017 Tax Year: 2014 R.E. Taxes \$ 1,854  
 Neighborhood Name Country Club Estates Map Reference 6040502017 Census Tract 0613.01  
 Occupant ☐ Owner ☐ Tenant ☒ Vacant Special Assessments \$ 0 ☒ PUD HOA \$ 25 ☐ per year ☐ per month  
 Property Rights Appraised ☒ Fee Simple ☐ Leasehold ☐ Other (describe)  
 Assignment Type ☒ Purchase Transaction ☐ Refinance Transaction ☐ Other (describe)  
 Lender/Client Summit Funding, Inc. Address 2241 Harvard St. #200, Sacramento, CA 95815  
 Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? ☒ Yes ☐ No  
 Report data source(s) used, offering price(s), and date(s). DOM 284/MLS/Paragon/CMLS. The subject property was listed on 4/21/2014 and is currently listed for 159900  
 I ☒ did ☐ did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed. Arms length sale; The subject is currently under a contract dated 2/18/2015 for 145000  
 Contract Price \$ 145,000 Date of Contract 02/18/2015 Is the property seller the owner of public record? ☒ Yes ☐ No Data Source(s) Public records  
 Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? ☐ Yes ☒ No  
 If Yes, report the total dollar amount and describe the items to be paid. \$0;  
 Note: Race and the racial composition of the neighborhood are not appraisal factors.  
 Neighborhood Characteristics One-Unit Housing Trends One-Unit Housing Present Land Use %  
 Location ☐ Urban ☒ Suburban ☐ Rural Property Values ☐ Increasing ☒ Stable ☐ Declining PRICE AGE One-Unit 75 %  
 Built-Up ☐ Over 75% ☒ 25-75% ☐ Under 25% Demand/Supply ☐ Shortage ☒ In Balance ☐ Over Supply \$ (000) (yrs) 2-4 Unit %  
 Growth ☐ Rapid ☒ Stable ☐ Slow Marketing Time ☐ Under 3 mths ☒ 3-6 mths ☐ Over 6 mths 155 Low 20 Multi-Family %  
 Neighborhood Boundaries The subject property is roughly bound to the north and east by hwy 901 and the south and west by oakdale rd. 285 High 108 Commercial %  
 220 Pred. 48 Other 25 %  
 Neighborhood Description The subject is located in a developing area of homes. Homes vary as to age, design, style, GLA and room count.  
 Maintenance of properties and improvements are average. The subject property is located in close proximity to places of employment, local restaurants etc., and major traffic arteries. The subject area is approximately 75% built up with 25% undeveloped (Other).  
 Market Conditions (including support for the above conclusions) The subject market appears to have stabilized at current rates with some variables with REO and short sales being present. Property values have declined over past years. The immediate market and similar homes has been more stable as compared to the market as a whole. Supply is typical for market trends. Marketing/Exposure time 30 to 200 days with some variables.  
 Dimensions See Plat Area 1.00 ac Shape rectangular View N; Res: Gifw  
 Specific Zoning Classification R1 Zoning Description Residential  
 Zoning Compliance ☒ Legal ☐ Legal Nonconforming (Grandfathered Use) ☐ No Zoning ☐ Illegal (describe)  
 Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use? ☒ Yes ☐ No If No, describe  
 Utilities Public Other (describe) Public Other (describe) Off-site Improvements - Type Public Private  
 Electricity ☒ ☐ Water ☒ ☐ Street asphalt ☒ ☐  
 Gas ☒ ☐ Sanitary Sewer ☒ ☐ Alley None ☐ ☐  
 FEMA Special Flood Hazard Area ☐ Yes ☒ No FEMA Flood Zone X FEMA Map # 45091C0318E FEMA Map Date 09/26/2008  
 Are the utilities and off-site improvements typical for the market area? ☒ Yes ☐ No If No, describe  
 Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? ☐ Yes ☒ No If Yes, describe  
 General Description Foundation Exterior Description materials/condition Interior materials/condition  
 Units ☒ One ☐ One with Accessory Unit ☐ Concrete Slab ☒ Crawl Space Foundation Walls masonry/average Floors h.w./ca./t.v./avg.  
 # of Stories 2 ☐ Full Basement ☐ Partial Basement Exterior Walls siding/average Walls drywall/pane/avg.  
 Type ☒ Det. ☐ Att. ☐ S-Det./End Unit Basement Area 0 sq.ft. Roof Surface composite/average Trim/Finish wood/average  
☒ Existing ☐ Proposed ☐ Under Const. Basement Finish 0 % Gutters & Downspouts yes/average Bath Floor h.w./ti/avg.  
 Design (Style) Traditional ☐ Outside Entry/Exit ☐ Sump Pump Window Type d.h.insulated/average Bath Wainscot fiber/average  
 Year Built 1989 Evidence of ☐ Infestation Storm Sash/Insulated yes/average Car Storage ☐ None  
 Effective Age (Yrs) 26 ☐ Dampness ☐ Settlement Screens yes/average ☒ Driveway # of Cars 2  
 Attic ☐ None Heating ☒ FWA ☐ HWBB ☐ Radiant Amenities ☐ Woodstoves(s) # 0 Driveway Surface concrete  
☒ Drop Stair ☐ Stairs ☐ Other Fuel gas ☒ Fireplace(s) # 1 ☐ Fence none ☐ Garage # of Cars 0  
☐ Floor ☐ Scuttle Cooling ☒ Central Air Conditioning ☒ Patio/Deck deck ☒ Porch porch ☒ Carport # of Cars 2  
☐ Finished ☐ Heated ☐ Individual ☐ Other ☐ Pool none ☐ Other none ☐ Att. ☒ Det. ☐ Built-in  
 Appliances ☐ Refrigerator ☒ Range/Oven ☒ Dishwasher ☒ Disposal ☐ Microwave ☐ Washer/Dryer ☐ Other (describe)  
 Finished area above grade contains: 9 Rooms 4 Bedrooms 2.1 Bath(s) 2,970 Square Feet of Gross Living Area Above Grade  
 Additional features (special energy efficient items, etc.) None; Standard;  
 Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.). C4; No updates in the prior 15 years. The subject is considered to be in average condition and looks to have been constructed with average materials and workmanship. There were no signs of deterioration or needed renovation. No needed repairs were noted at the time of the inspection  
 Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? ☐ Yes ☒ No If Yes, describe  
 Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? ☒ Yes ☐ No If No, describe

## Uniform Residential Appraisal Report

BL:815022613  
File # 461-6145927

|                                                                                                                                                                                                                                         |                                                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| There are 7 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 157,000 to \$ 295,000                                                                                                 |                                                                                                                                              |
| There are 16 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 155,000 to \$ 285,000                                                                                             |                                                                                                                                              |
| FEATURE                                                                                                                                                                                                                                 | SUBJECT                                                                                                                                      |
| Address                                                                                                                                                                                                                                 | 255 Rolling Ridge Rd<br>Rock Hill, SC 29730                                                                                                  |
| 363 E Main St<br>Rock Hill, SC 29730                                                                                                                                                                                                    | 369 Red Fox Trl<br>Rock Hill, SC 29730                                                                                                       |
| 271 Country Club Dr<br>Rock Hill, SC 29730                                                                                                                                                                                              |                                                                                                                                              |
| Proximity to Subject                                                                                                                                                                                                                    | 2.52 miles N                                                                                                                                 |
| 0.65 miles SW                                                                                                                                                                                                                           | 0.30 miles W                                                                                                                                 |
| Sale Price                                                                                                                                                                                                                              | \$ 145,000                                                                                                                                   |
| \$ 176,750                                                                                                                                                                                                                              | \$ 205,000                                                                                                                                   |
| \$ 156,400                                                                                                                                                                                                                              |                                                                                                                                              |
| Sale Price/Gross Liv. Area                                                                                                                                                                                                              | \$ 48.82 sq.ft.                                                                                                                              |
| \$ 67.08 sq.ft.                                                                                                                                                                                                                         | \$ 83.37 sq.ft.                                                                                                                              |
| \$ 65.17 sq.ft.                                                                                                                                                                                                                         |                                                                                                                                              |
| Data Source(s)                                                                                                                                                                                                                          | pb.rc./cmls/gis/MLS;DOM 144                                                                                                                  |
| pb.rc./cmls/gis/MLS;DOM 16                                                                                                                                                                                                              | pb.rc./cmls/gis/MLS;DOM 112                                                                                                                  |
| Verification Source(s)                                                                                                                                                                                                                  | Paragon/CMLS/MLS # 2201956                                                                                                                   |
| Paragon/CMLS/MLS # 3050327                                                                                                                                                                                                              | Paragon/CMLS/MLS # 2198532                                                                                                                   |
| VALUE ADJUSTMENTS                                                                                                                                                                                                                       | DESCRIPTION                                                                                                                                  |
| DESCRIPTION                                                                                                                                                                                                                             | +(-) \$ Adjustment                                                                                                                           |
| DESCRIPTION                                                                                                                                                                                                                             | +(-) \$ Adjustment                                                                                                                           |
| DESCRIPTION                                                                                                                                                                                                                             | +(-) \$ Adjustment                                                                                                                           |
| Sales or Financing                                                                                                                                                                                                                      | Estate                                                                                                                                       |
| 0                                                                                                                                                                                                                                       | 0                                                                                                                                            |
| Concessions                                                                                                                                                                                                                             | Conv;0                                                                                                                                       |
| 0                                                                                                                                                                                                                                       | 0                                                                                                                                            |
| Date of Sale/Time                                                                                                                                                                                                                       | s08/14;c06/14                                                                                                                                |
| 0                                                                                                                                                                                                                                       | 0                                                                                                                                            |
| Location                                                                                                                                                                                                                                | N;Res;                                                                                                                                       |
| N;Res;                                                                                                                                                                                                                                  | N;Res;                                                                                                                                       |
| Leasehold/Fee Simple                                                                                                                                                                                                                    | Fee Simple                                                                                                                                   |
| Fee Simple                                                                                                                                                                                                                              | Fee Simple                                                                                                                                   |
| Site                                                                                                                                                                                                                                    | 1.00 ac                                                                                                                                      |
| 10,454 sf.                                                                                                                                                                                                                              | 0                                                                                                                                            |
| View                                                                                                                                                                                                                                    | N;Res;Glfvw                                                                                                                                  |
| N;Res;                                                                                                                                                                                                                                  | -5,000                                                                                                                                       |
| Design (Style)                                                                                                                                                                                                                          | DT2;traditional                                                                                                                              |
| DT2;traditional                                                                                                                                                                                                                         | 0                                                                                                                                            |
| Quality of Construction                                                                                                                                                                                                                 | Q4                                                                                                                                           |
| Q4                                                                                                                                                                                                                                      | Q4                                                                                                                                           |
| Actual Age                                                                                                                                                                                                                              | 26                                                                                                                                           |
| 108                                                                                                                                                                                                                                     | 0                                                                                                                                            |
| Condition                                                                                                                                                                                                                               | C4                                                                                                                                           |
| C3                                                                                                                                                                                                                                      | -15,000                                                                                                                                      |
| Above Grade                                                                                                                                                                                                                             | Total                                                                                                                                        |
| Bdms                                                                                                                                                                                                                                    | Baths                                                                                                                                        |
| Room Count                                                                                                                                                                                                                              | 9                                                                                                                                            |
| 4                                                                                                                                                                                                                                       | 2.1                                                                                                                                          |
| 8                                                                                                                                                                                                                                       | 4                                                                                                                                            |
| 2.0                                                                                                                                                                                                                                     | +2,500                                                                                                                                       |
| Gross Living Area                                                                                                                                                                                                                       | 2,970 sq.ft.                                                                                                                                 |
| 2,635 sq.ft.                                                                                                                                                                                                                            | +10,050                                                                                                                                      |
| Basement & Finished                                                                                                                                                                                                                     | 0sf                                                                                                                                          |
| Rooms Below Grade                                                                                                                                                                                                                       | 0sf                                                                                                                                          |
| 560sf560sfwo                                                                                                                                                                                                                            | -14,000                                                                                                                                      |
| 0n0br0.1ba1o                                                                                                                                                                                                                            | -2,500                                                                                                                                       |
| Functional Utility                                                                                                                                                                                                                      | Conforms                                                                                                                                     |
| Conforms                                                                                                                                                                                                                                | Conforms                                                                                                                                     |
| Heating/Cooling                                                                                                                                                                                                                         | FWA/CAC                                                                                                                                      |
| FWA/CAC                                                                                                                                                                                                                                 | FWA/CAC                                                                                                                                      |
| Energy Efficient Items                                                                                                                                                                                                                  | None Noted                                                                                                                                   |
| None Noted                                                                                                                                                                                                                              | None Noted                                                                                                                                   |
| Garage/Carport                                                                                                                                                                                                                          | 2cp2dw                                                                                                                                       |
| 2cp                                                                                                                                                                                                                                     | 0                                                                                                                                            |
| Porch/Patio/Deck                                                                                                                                                                                                                        | porch/deck                                                                                                                                   |
| cov.por./pat.                                                                                                                                                                                                                           | -1,500                                                                                                                                       |
| 0                                                                                                                                                                                                                                       | 0                                                                                                                                            |
| Net Adjustment (Total)                                                                                                                                                                                                                  | \$ -2,450                                                                                                                                    |
| \$ -30,670                                                                                                                                                                                                                              | \$ -5,400                                                                                                                                    |
| Adjusted Sale Price                                                                                                                                                                                                                     | Net Adj. 1.4 %                                                                                                                               |
| Net Adj. 15.6 %                                                                                                                                                                                                                         | Net Adj. 15.0 %                                                                                                                              |
| Gross Adj. 15.6 %                                                                                                                                                                                                                       | Gross Adj. 29.9 %                                                                                                                            |
| \$ 174,300                                                                                                                                                                                                                              | \$ 174,330                                                                                                                                   |
| Gross Adj. 25.3 %                                                                                                                                                                                                                       | \$ 151,000                                                                                                                                   |
| I <input checked="" type="checkbox"/> did <input type="checkbox"/> did not research the sale or transfer history of the subject property and comparable sales. If not, explain                                                          |                                                                                                                                              |
| My research <input type="checkbox"/> did <input checked="" type="checkbox"/> did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.                     |                                                                                                                                              |
| Data Source(s) Public Records                                                                                                                                                                                                           |                                                                                                                                              |
| My research <input checked="" type="checkbox"/> did <input type="checkbox"/> did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.                         |                                                                                                                                              |
| Data Source(s) Public Records                                                                                                                                                                                                           |                                                                                                                                              |
| Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3):                                                           |                                                                                                                                              |
| ITEM                                                                                                                                                                                                                                    | SUBJECT                                                                                                                                      |
| COMPARABLE SALE #1                                                                                                                                                                                                                      | COMPARABLE SALE #2                                                                                                                           |
| COMPARABLE SALE #3                                                                                                                                                                                                                      |                                                                                                                                              |
| Date of Prior Sale/Transfer                                                                                                                                                                                                             | 08/04/2014                                                                                                                                   |
| Price of Prior Sale/Transfer                                                                                                                                                                                                            |                                                                                                                                              |
| Data Source(s)                                                                                                                                                                                                                          | County GIS/Realist                                                                                                                           |
| County GIS/Realist                                                                                                                                                                                                                      | County GIS/Realist                                                                                                                           |
| County GIS/Realist                                                                                                                                                                                                                      | County GIS/Realist                                                                                                                           |
| Effective Date of Data Source(s)                                                                                                                                                                                                        | 02/27/2015                                                                                                                                   |
| 02/27/2015                                                                                                                                                                                                                              | 02/27/2015                                                                                                                                   |
| Analysis of prior sale or transfer history of the subject property and comparable sales                                                                                                                                                 | public records indicate comparable 1 transferred as listed above no                                                                          |
| amount disclosed deed of distribution. public records indicate                                                                                                                                                                          | No additional Prior transfers of the subject were found or recorded as of the date of                                                        |
| this report in the past 3 years for the subject and no additional transfers were found or recorded as of the date of this report for the comparables in                                                                                 | the past 12 months. The appraiser assumes the standard data sources reporting are complete and accurate as of the date of this report. Note: |
| Some records are recorded late in York County and may appear at a later date as of the effective date of this report.                                                                                                                   |                                                                                                                                              |
| Summary of Sales Comparison Approach A search for comparable sales was done with emphasis placed on locating the most recent transfers that                                                                                             |                                                                                                                                              |
| were considered to be the most comparable at the time of the inspection. Due to the lack of updating evident in the subject and the lack of                                                                                             |                                                                                                                                              |
| comparable sales that exhibited no updating a strait line adjustment for condition was unavoidable however no negative market reaction was                                                                                              |                                                                                                                                              |
| evident. No sales that bracketed the subject gla were located that was considered more comparable were located however comparable 2 total                                                                                               |                                                                                                                                              |
| living area did bracket. No clear market reaction was evident for golf course view and no adjustment could be established. Comparable 1 is an                                                                                           |                                                                                                                                              |
| estate sale and comparable 3 is a short sale however were used due to being the most similar in gla that were of reasonable comparable price                                                                                            |                                                                                                                                              |
| ranges and condition ranges. (see additional notes:)                                                                                                                                                                                    |                                                                                                                                              |
| Indicated Value by Sales Comparison Approach \$ 166,000                                                                                                                                                                                 |                                                                                                                                              |
| Indicated Value by: Sales Comparison Approach \$ 166,000 Cost Approach (if developed) \$ 169,154 Income Approach (if developed) \$                                                                                                      |                                                                                                                                              |
| The sales comparison approach is considered the most accurate indicator of market value with the cost approach lending support. The income                                                                                              |                                                                                                                                              |
| approach was not used to limited market data. The estimated indicated value is determined by using the adjusted sale price of the comparable                                                                                            |                                                                                                                                              |
| sales and is considered with the relative weight placed on the comparables. This is a summary report.                                                                                                                                   |                                                                                                                                              |
| This appraisal is made <input type="checkbox"/> "as is", <input type="checkbox"/> subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been                           |                                                                                                                                              |
| completed, <input type="checkbox"/> subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or <input checked="" type="checkbox"/> subject to the |                                                                                                                                              |
| following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair. Subject to utilities being turned on                                                        |                                                                                                                                              |
| Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting                                                                          |                                                                                                                                              |
| conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is                                                                                 |                                                                                                                                              |
| \$ 166,000 as of 02/27/2015 which is the date of inspection and the effective date of this appraisal.                                                                                                                                   |                                                                                                                                              |



## Uniform Residential Appraisal Report

BLB15022613  
File # 461-6145927

Notes: I certify as the appraiser that this report is done in compliance with USPAP in all aspects of the appraisal process. I have no current or prospective interest in the subject property or the parties involved, and no services were performed by the appraiser within the past 3 year period immediately preceding acceptance of this assignment pertaining to the subject property, as an appraiser or in any capacity. I certify, as the appraiser, that I have completed all aspects of this valuation, including reconciling my opinion of value, free of influence from the client, client's representatives, borrower, or any other party to the transaction. Additional comments Continued on ADDITIONAL SUPPORTING APPRAISER COMMENTS Page(s)

Notes: Minor amenities such as fireplaces, stoops, fences, typical storage buildings, etc. are not included in the grid section for the subject or the comparables when no clear market reaction is evident and the MLS data for the comparables does not correctly include this information consistently for the comparable sales or active listings.

Notes: Site sizes vary in the subject local market however no clear market reaction was evident and no adjustment was required.

Notes: This report is done subject to utilities being turned on and confirmation that the subject will meet the following upon utilities being turned on: The subject property meets the standards put forth by the guidelines in HUD handbooks 4905.1 and 4150.2. A head and shoulders inspection of the attics and crawl spaces was done at the time of the appraisal. The utilities were on and functioning at the time of the inspection. The subject meets the standards pertaining to the presence and installation of smoke detectors and carbon monoxide detectors of the local and state jurisdictional guidelines that are applicable. The intended use for this appraisal is for lending purposes by the lender of record. No other intended users are identified for this report.

Notes: The local market is not urban. The comparable sales and active listings used to establish the Neighborhood Characteristics and One-Unit Housing Trends are based on the subject immediate neighborhood or area. The neighborhood One-Unit Housing Price and Age ranges section and for the 1004MC are based on an expanded criteria to establish the market as a whole which may differ from the Neighborhood Characteristics and One-Unit Housing Trends for the subject immediate neighborhood or area. For the 1004MC and One-Unit Housing Price and Age ranges properties that exhibited too large of a variance from the subject in gla, appeal, site values, age and quality were excluded when necessary to show the market conditions for homes similar to the subject. Housing Trend changes in the past twelve months are as reported and are not reflective of year over year trends or minor variances.

Notes: The subject estimate of value is below the predominant value of the subject local market but is within the value range and no negative market reaction was evident.

## COST APPROACH TO VALUE (not required by Fannie Mae)

Provide adequate information for the lender/client to replicate the below cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value) The site value used is reflective of other land and lot sales in the subject properties local and surrounding markets. Data is gathered through MLS, builders and land transfers.

|                                                                                                                                                                                                                                                    |                                      |       |          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|-------|----------|
| ESTIMATED <input type="checkbox"/> REPRODUCTION OR <input checked="" type="checkbox"/> REPLACEMENT COST NEW                                                                                                                                        | OPINION OF SITE VALUE                | = \$  | 35,000   |
| Source of cost data: Local Build./etc.                                                                                                                                                                                                             | DWELLING 2,970 Sq.Ft. @ \$ 75.50     | = \$  | 224,235  |
| Quality rating from cost service Average Effective date of cost data: 2014                                                                                                                                                                         | 0 Sq.Ft. @ \$                        | = \$  |          |
| Comments on Cost Approach (gross living area calculations, depreciation, etc.)                                                                                                                                                                     | De./Po./Ap./Etc.                     | = \$  | 3,000    |
| The Gross Living Area calculations are based on either physical measurement of the home or plans provided. Depreciation is calculated based on a total life of 60 years and the effective age being applied to reach a percentage of depreciation. | Garage/Carport 400 Sq.Ft. @ \$ 10.50 | = \$  | 4,200    |
|                                                                                                                                                                                                                                                    | Total Estimate of Cost-New           | = \$  | 231,435  |
|                                                                                                                                                                                                                                                    | Less Physical Functional External    |       |          |
|                                                                                                                                                                                                                                                    | Depreciation 100,281                 | = \$( | 100,281) |
|                                                                                                                                                                                                                                                    | Depreciated Cost of Improvements     | = \$  | 131,154  |
|                                                                                                                                                                                                                                                    | *As-Is Value of Site Improvements    | = \$  | 3,000    |
| Estimated Remaining Economic Life (HUD and VA only) 34 Years                                                                                                                                                                                       | INDICATED VALUE BY COST APPROACH     | = \$  | 169,154  |

## INCOME APPROACH TO VALUE (not required by Fannie Mae)

Estimated Monthly Market Rent \$ X Gross Rent Multiplier = \$ Indicated Value by Income Approach  
Summary of Income Approach (including support for market rent and GRM)

## PROJECT INFORMATION FOR PUDs (if applicable)

Is the developer/builder in control of the Homeowners' Association (HOA)? ☐ Yes ☒ No Unit type(s) ☒ Detached ☐ Attached  
Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.

Legal Name of Project Country Club Estates

Total number of phases Total number of units Total number of units sold

Total number of units rented Total number of units for sale Data source(s)

Was the project created by the conversion of existing building(s) into a PUD? ☐ Yes ☐ No If Yes, date of conversion.

Does the project contain any multi-dwelling units? ☐ Yes ☐ No Data Source

Are the units, common elements, and recreation facilities complete? ☐ Yes ☐ No If No, describe the status of completion.

Are the common elements leased to or by the Homeowners' Association? ☐ Yes ☐ No If Yes, describe the rental terms and options.

Describe common elements and recreational facilities.



## Uniform Residential Appraisal Report

BLB15022613  
File # 461-6145927

This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit; including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

**SCOPE OF WORK:** The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

**INTENDED USE:** The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

**INTENDED USER:** The intended user of this appraisal report is the lender/client.

**DEFINITION OF MARKET VALUE:** The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions\* granted by anyone associated with the sale.

\*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

**STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS:** The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing the appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
6. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

## Uniform Residential Appraisal Report

BLB15022613  
File # 461-6145927**APPRAISER'S CERTIFICATION:** The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.
20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

## Uniform Residential Appraisal Report

BLB15022613  
File # 461-6145927

21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

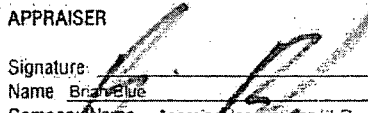
24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

**SUPERVISORY APPRAISER'S CERTIFICATION:** The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

**APPRAISER**

Signature:   
 Name Brian Blue  
 Company Name Appraisal Innovations LLC  
 Company Address PO Box 11114  
Rock Hill, SC 29731  
 Telephone Number (803) 417-5998  
 Email Address blueb@comporium.net  
 Date of Signature and Report 03/05/2015  
 Effective Date of Appraisal 02/27/2015  
 State Certification # CR 5336  
 or State License # \_\_\_\_\_  
 or Other (describe) \_\_\_\_\_ State # \_\_\_\_\_  
 State SC  
 Expiration Date of Certification or License 06/30/2016

**ADDRESS OF PROPERTY APPRAISED**

255 Rolling Ridge Rd  
Rock Hill, SC 29730

APPRAISED VALUE OF SUBJECT PROPERTY \$ 165,000

**LENDER/CLIENT**

Name Summit Funding, Inc.  
 Company Name Summit Funding, Inc.  
 Company Address 2241 Harvard St. #200, Sacramento, CA 95815  
 Email Address \_\_\_\_\_

**SUPERVISORY APPRAISER (ONLY IF REQUIRED)**

Signature \_\_\_\_\_  
 Name \_\_\_\_\_  
 Company Name \_\_\_\_\_  
 Company Address \_\_\_\_\_  
 Telephone Number \_\_\_\_\_  
 Email Address \_\_\_\_\_  
 Date of Signature \_\_\_\_\_  
 State Certification # \_\_\_\_\_  
 or State License # \_\_\_\_\_  
 State \_\_\_\_\_  
 Expiration Date of Certification or License \_\_\_\_\_

**SUBJECT PROPERTY**

- ☐ Did not inspect subject property  
☐ Did inspect exterior of subject property from street  
 Date of Inspection \_\_\_\_\_  
☐ Did inspect interior and exterior of subject property  
 Date of Inspection \_\_\_\_\_

**COMPARABLE SALES**

- ☐ Did not inspect exterior of comparable sales from street  
☐ Did inspect exterior of comparable sales from street  
 Date of Inspection \_\_\_\_\_

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2018-CP-46-1592

**RECEIVED**

OCT 03 2019

SC Court of Appeals

Karen K. Baber ..... Appellant,

v.

Summit Funding, Inc., Appraisal Innovations, LLC, Brian L. Blue, The Gillen Law Firm, P.A., Michael F. Gillen, Allen Tate Co. Inc., Collen Coesens, Jonathan Garvey, Robert Ouzts, Connie Delaney, and Gloria Long-Robinson,

Of Which Summit Funding, Inc., Allen Tate Co. Inc., Collen Coesens, Jonathan Garvey, Robert Ouzts, Connie Delaney, and Gloria Long-Robinson .....are the Respondents.

**RESPONSE TO MOTION TO DISMISS**

NOW COMES the Appellant and submits her response to the Respondents' Motion to Dismiss. The Respondents' Motion to Dismiss should be denied for the following reasons. The Appellant acted in good faith and complied with SCACR 203(d)(1)(B). The Appellant mailed the Notice of Appeal to the York County Clerk of Court on August 28, 2019 at the same time the Notice of Appeal was served on the Respondents. The receipts for the mailing of the Notice of Appeal are attached as **Exhibit 1**. This action complied with SCACR 203(d)(1)(B).

The York County Clerk of Court subsequently returned the Notice of Appeal along with a notice that it should be filed electronically. The notice is attached as **Exhibit 2**. The ten (10) day time period for filing the Notice of Appeal with the lower court had elapsed by the time counsel for the Appellant received the clerk's notice.

On September 10, 2019 the Appellant filed the Notice of Appeal electronically and received a Notice of Electronic Filing stating the Notice of Appeal had been received by the Circuit Court, which is attached as **Exhibit 3**. The York County Clerk of Court then rejected the electronic filing because (1) it was filed as "Notice/Other" and (2) the last two documents (the orders) were not submitted as exhibits to the Notice of Appeal. The York County Clerk of Court's notice is attached as **Exhibit 4**. The Appellant then re-filed the Notice of Appeal in accordance with the instructions of the York County Clerk of Court as set forth in **Exhibit 4**. The Notice of Electronic Filing is attached as **Exhibit 5**.

As a preliminary matter the Appellant would argue that the Respondents have not been prejudiced in any way by the alleged failure to file the Notice of Appeal with the York County Clerk of Court. As the Appellant's exhibits make clear the Notice of Appeal was mailed to the York County Clerk of Court in a timely manner. Mailing the Notice of Appeal to the York County Clerk of Court on August 28, 2019 satisfied the requirement of SCACR 203(d)(1)(B).

By the time the York County Clerk of Court notified Appellant's counsel that the Notice of Appeal must be filed electronically the 10 day time period provided in SCACR 203(d)(1)(B) had expired. The Appellant complied with the instructions of the York County Clerk of Court and received notification the lower court had received the Notice of Appeal (**Exhibit 3**). When the York County Clerk of Court rejected the electronic filing the Appellant then re-filed the Notice of Appeal in accordance with the clerk's instructions (**Exhibit 4 and 5**).

Under these circumstances SCAR 260(a) does not require dismissal of the appeal. The Appellant provided the lower court with a copy of the Notice of Appeal by mailing it to the York County Clerk of Court on August 28, 2019. Thereafter the Appellant complied with the York County Clerk of Court's instructions on how to file the Notice of Appeal electronically. The Appellant acted in good faith in complying with SCACR 203(d)(1)(B). Based on the foregoing the Appellant respectfully requests the Respondents' Motion to Dismiss be denied.

Respectfully submitted,

October 4, 2019

By:

  
Glen E. Bowens, Esq.  
Creighton Coleman, Esq.  
P.O. Box 424  
Winnsboro, South Carolina 29180  
Phone: (803) 714-7766  
Fax: (803) 714-0775  
Attorneys for Appellant

Other Counsel of Record:

Poyner Spruill, LLP  
Thomas Lynn Ogburn, III  
301 S. College Street, Suite 2900  
Charlotte, NC 28202

Attorney for Respondents Allen Tate Co. Inc., Collen Coesens, Jonathan Garvey; Robert Ouzts;  
Connie Delaney

Driscoll Sheedy, P.A.  
Susan Elizabeth Driscoll  
11520 N. Community House Road, Suite 200  
Charlotte, NC 28277

Attorney for Respondent Summit Funding, Inc  
Belton, Montrie Montess Sr.  
125 Hampton Street, Suite 200  
PO Box 566  
Rock Hill, SC 29731

Attorney for Respondent Gloria Long-Robinson

=====

COLUMBIA  
1601 ASSEMBLY ST

COLUMBIA  
SC  
29201-9998  
451804-9550  
8/28/2019 (800)275-8777 04:29 PM

=====

| Product                                                                                                                       | Qty | Unit Price | Price  |
|-------------------------------------------------------------------------------------------------------------------------------|-----|------------|--------|
| First-Class Mail®                                                                                                             | 1   | \$1.45     | \$1.45 |
| Large Envelope<br>(Domestic)<br>(CHARLOTTE, NC 28277)<br>(Weight:3.70 oz)<br>(Estimated Delivery Date)<br>(Friday 08/30/2019) |     |            |        |

Total: \$1.45

VISA \$1.45

(Account #:XXXXXXXXXX0263)  
(Approval #)  
(Transaction #:010175)  
(Receipt #:010175)  
(AID:A0000000980840 Chip)  
(AL:US DEBIT)  
(PIN:Not Required)

Receipt #: 840-12900506-1-735077-1

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29201-9998  
451804-9550  
8/28/2019 (800)275-8777 04:24

=====

| Product                                                                                                                  | Qty | Unit Price | Price  |
|--------------------------------------------------------------------------------------------------------------------------|-----|------------|--------|
| First-Class Mail®                                                                                                        | 1   | \$1.45     | \$1.45 |
| Large Envelope<br>(Domestic)<br>(YORK, SC 29745)<br>(Weight:3.70 oz)<br>(Estimated Delivery Date)<br>(Friday 08/30/2019) |     |            |        |

Total: \$1.45

VISA \$1.45

(Account #:XXXXXXXXXX0263)  
(Approval #)  
(Transaction #:010173)  
(Receipt #:010173)  
(AID:A0000000980840 Chi  
(AL:US DEBIT)  
(PIN:Not Required)

Receipt #: 840-12900506-1-735033-1

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COLUMBIA  
SC  
29201-9998  
451804-9550  
8/28/2019 (800)275-8777 04:26 PM

=====

| Product                                                                                                                       | Qty | Unit Price | Price  |
|-------------------------------------------------------------------------------------------------------------------------------|-----|------------|--------|
| First-Class Mail®                                                                                                             | 1   | \$1.45     | \$1.45 |
| Large Envelope<br>(Domestic)<br>(ROCK HILL, SC 29731)<br>(Weight:3.70 oz)<br>(Estimated Delivery Date)<br>(Friday 08/30/2019) |     |            |        |

Total: \$1.45

VISA \$1.45

(Account #:XXXXXXXXXX0263)  
(Approval #)  
(Transaction #:010174)  
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(AL:US DEBIT)  
(PIN:Not Required)

Receipt #: 840-12900506-1-735077-1

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COLUMBIA  
1601 ASSEMBLY ST

COLUMBIA  
SC  
29201-9998  
451804-9550  
8/28/2019 (800)275-8777 04:31 PM

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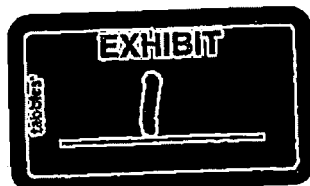
| Product                                                                                                                       | Qty | Unit Price | Price  |
|-------------------------------------------------------------------------------------------------------------------------------|-----|------------|--------|
| First-Class Mail®                                                                                                             | 1   | \$1.45     | \$1.45 |
| Large Envelope<br>(Domestic)<br>(CHARLOTTE, NC 28202)<br>(Weight:3.70 oz)<br>(Estimated Delivery Date)<br>(Friday 08/30/2019) |     |            |        |

Total: \$1.45

VISA \$1.45

(Account #:XXXXXXXXXX0263)  
(Approval #)  
(Transaction #:010176)  
(Receipt #:010176)  
(AID:A0000000980840 Chip)  
(AL:US DEBIT)  
(PIN:Not Required)

001323



# Attention Attorneys:

On Tuesday, February 27, 2018 the York County Clerk of Court of Common Pleas went live on E-filing.

Any mail that was received with a postmark of February 26<sup>th</sup> and earlier has and will be accepted. If your mail/check has a post mark of February 27<sup>th</sup> or later it is being returned to you for E-filing.

If you have any questions or concerns pertaining to E-filing (training, instructions, updates..etc) please visit  
[\*http://www.sccourts.org/efiling/\*](http://www.sccourts.org/efiling/)

*Thank you,*

*York County Clerk of Court of Common Pleas*

*(803) 684-8507*





From: efiledonotreply@sccourts.org  
Subject: Courtesy NEF RE: 2018CP4601592  
Date: September 10, 2019 at 4:08 PM  
To: gbowens@bowenslawsc.com



\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP4601592

**Official File Stamp:** 09-10-2019 04:08:16 PM  
**Court:** CIRCUIT COURT  
Common Pleas  
York  
**Case Caption:** Karen K Baber VS Summit Funding Inc , defendant, et al  
**Document(s) Submitted:** Notice/Other  
Notice/Other  
Notice/Other  
**Filed by or on behalf of:** Glenn E. Bowens

This notice was automatically generated by the Court's auto-notification system.

**The following people were served electronically:**

Creighton B. Coleman for Karen K Baber  
Glenn E. Bowens for Karen K Baber  
Susan Elizabeth Driscoll  
Russell M. Racine for Appraisal Innovations Llc, Brian L Blue  
Thomas Lynn Ogburn, III for Jonathan Garvey, Robert Ouzts, Connie Delaney, Allen Tate Co Inc, Colleen Coesens

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



From: efiledonotreply@sccourts.org
Subject: Received Notice: Your filing, Re: 2018CP4601592 - (150) Fraud/Bad Faith - Notice/Other, was received
Date: September 10, 2019 at 4:08 PM
To: gbowens@bowenslawsc.com



To: Glenn E. Bowens gbowens@bowenslawsc.com
From: efiledonotreply@sccourts.org
Date: 2019-09-10 16:08:16.123
Subject: Your electronic filing, Re: 2018CP4601592 - (150) Fraud/Bad Faith - Notice/Other, was received by CIRCUIT COURT.

Case Number: 2018CP4601592
Case Type: (150) Fraud/Bad Faith
Document Type: Notice/Other
Document Type: Notice/Other
Document Type: Notice/Other

~~~~~ CONFIDENTIALITY NOTICE ~~~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

**From:** efiledonotreply@sccourts.org  
**Subject:** Rejection Notice: Your filing, Re: 2018CP4601592 - (150) Fraud/Bad Faith - Notice/Other, was rejected  
**Date:** September 10, 2019 at 4:16 PM  
**To:** gbowens@bowenslawsc.com

---



**To:** Glenn E. Bowens gbowens@bowenslawsc.com  
**From:** efiledonotreply@sccourts.org  
**Date:** 2019-09-10 16:08:16.123  
**Subject:** Your electronic filing, Re: 2018CP4601592 - (150) Fraud/Bad Faith - Notice/Other, was rejected by CIRCUIT COURT.

**Case Number:** 2018CP4601592  
**Case Type:** (150) Fraud/Bad Faith  
**Document Type:** Notice/Other  
**Document Type:** Notice/Other  
**Document Type:** Notice/Other

**Reason(s) rejected:** You will need to submit as Appeal/Notice of Appeal to Court of Appeals and submit your last 2 documents as exhibits to the Appeal. Please correct and resubmit. Thank you, Donna Yarbrough

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP4601592

Official File Stamp: 09-30-2019 04:57:40 PM

Court: CIRCUIT COURT

Common Pleas

York

Case Caption: Karen K Baber VS Summit Funding Inc ,
defendant, et al

Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals

- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits

Filed by or on behalf of: Creighton B. Coleman

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Creighton B. Coleman for Karen K Baber

Glenn E. Bowens for Karen K Baber

Susan Elizabeth Driscoll

Russell M. Racine for Appraisal Innovations Llc,
Brian L Blue

Thomas Lynn Ogburn, III for Jonathan Garvey,
Robert Ouzts, Connie Delaney, Allen Tate Co Inc,
Colleen Coesens

The following people have not been served electronically by the Court. Therefore, they must
be served by traditional means:



IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2019-001440

Karen K. Baber, ... Appellant,

vs.

Summit Funding, Inc.; Appraisal Innovations, LLC; Brian L. Blue; The Gillen Law Firm, P.A.;
Michael F. Gillen; Allen Tate Co., Inc.; Colleen Coesens; Jonathan Garvey; Robert Ouzts;
Connie Delaney and Gloria Long-Robinson, ... Defendants,

Of which Summit Funding, Inc.; Allen Tate Co., Inc.; Colleen Coesens; Jonathan Garvey, Robert
Ouzts; Connie Delaney; and Gloria Long-Robinson are the Respondents.

RESPONSE TO MOTION TO DISMISS APPEAL

Pursuant to Rule 240(e), SCACR, Respondent Summit Funding, Inc. (Summit) hereby
submits the within response (Response) to the Motion to Dismiss Appeal filed by the Tate
Respondents (Motion).

Summit joins in the grounds set forth in the Motion for dismissal of the above captioned
appeal. In addition to the grounds identified by the Tate Respondents, the appeal as to Summit
should be dismissed as a result of Appellant's failure to comply with Rule 203(d)(1)(B)(ii),
SCACR. In the Notice of Appeal filed August 28, 2019, Appellant did not include either the
order granting summary judgment in favor of Summit, or the order denying the Rule 59(e)
motion filed by Appellant. The Notice of Appeal itself did not identify either order, but merely

listed two orders by the date they were filed, with reference to receipt of a single order for each date.

On Friday, August 30, 2019, upon receipt of the Notice of Appeal, counsel for Summit contacted counsel for Appellant by e-mail to inquire whether the summary judgment order granted in favor of Summit was being appealed. *See Exhibit A.* Counsel failed to respond to that e-mail. On September 5, 2019, counsel for Summit sent a follow up e-mail, which also went without response. *See Exhibit B.* The following day, September 6, 2019, counsel for Summit sent a formal request by letter setting a September 11th deadline for counsel to respond. *See Exhibit C.* No response was ever provided. As of the date of this filing, the Notice of Appeal on file with this Court has only the two orders as to the Tate Defendants. There is nothing as to Summit.

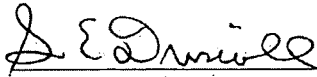
At 4:57 p.m. on September 30, 2019, counsel for Appellant e-filed a copy of the Notice of Appeal with the York County Clerk of Court. A copy of the January 31, 2019 Order Granting In Part and Denying In Part Defendant Summit Funding's Motion to Dismiss was attached as an exhibit. *See Exhibit D.* The time within which Appellant had to appeal that final order expired seven months ago. There is no Notice of Appeal on file with the York County Clerk of Court that references or has attached a copy of the order granting summary judgment in favor of Summit, nor has one been served upon Summit.¹ Any appeal of the summary judgment awarded to Summit is untimely under both Rule 203(b)(1) and 203(d)(1)(B) and should be dismissed.

¹ This is beyond a clerical error. In *Weatherford v. Price*, 340 S.C. 572, 532 S.E.2d 310 (2000), this Court ruled that an appellant's failure to reference the order in the Notice of Appeal did not warrant dismissal, because a copy of the order being appealed was attached. What Appellant did here is precisely the opposite. There is no reference in the Notice of Appeal to the Orders granted in favor of Summit, nor are they attached thereto. This is beyond a mere clerical error and warrants Summit's dismissal from this appeal.

WHEREFORE, Summit asks that the Motion filed by the Tate Respondents be granted for the reasons set forth therein and for the additional reason cited hereinabove and the appeal be dismissed.

Respectfully submitted,

Date: 10/2/19



Susan E. Driscoll, S.C. Bar No. 71447

Driscoll Sheedy, P.A.

11520 N. Community House Road

Suite 200

Charlotte, N.C. 28277

(704) 341-2101 - Telephone

(704) 341-2015 - Facsimile

sdriscoll@driscollsheedy.com

Attorneys for Summit

Exhibit A

Susan Driscoll

From: Susan Driscoll
Sent: Friday, August 30, 2019 3:24 PM
To: Creighton Coleman
Cc: gbowens@bowenslawsc.com; Ogburn, Tate; Russell M. Racine
Subject: Baber v. Summit Funding, Inc., et al. - Appeal

Creighton,

I received your Notice of Appeal in today's mail. The only SJ order that was attached was the order granting SJ in favor of the Tate Defendants. The SJ order in favor of my client Summit Funding was not attached. There is only a generic reference to "Orders" in the notice itself. Are you appealing just the SJ order in favor of the Tate Defendants, or are you also appealing the SJ order in favor of Summit Funding?

Susan

From: Creighton Coleman [mailto:creighton@colemantolen.com]
Sent: Monday, April 08, 2019 9:45 AM
To: Ogburn, Tate
Cc: gbowens@bowenslawsc.com; Susan Driscoll; Russell M. Racine
Subject: Re: Baber v. Summit Funding, Inc., et al.

Tate, how about 1:30 conference call today. We will call you at what number?

Sent from my iPhone

On Apr 8, 2019, at 8:08 AM, Ogburn, Tate <TOgburn@poynerspruill.com> wrote:

Creighton and Glenn – Judge Hall ordered at the summary judgment hearing that the deadlines for all pending discovery to Summit or the Allen Tate defendants is extended until two weeks after he rules on the summary judgment motions. Also, he has agreed to stay all discovery until two weeks after he rules. We would like to submit a Form 4 memorializing his order. Neither of you were at the hearing, but I wanted to run this by you since you have now made appearances. Let me know if you have any issue with our submitting this Form 4.

Tate

From: Ogburn, Tate
Sent: Sunday, April 07, 2019 3:07 PM
To: creighton@colemantolen.com; gbowens@bowenslawsc.com
Cc: Susan Driscoll <sdriscoll@driscollsheedy.com>
Subject: Baber v. Summit Funding, Inc., et al.

Creighton and Glenn – We saw that the two of you entered appearances for Ms. Baber in this matter on Friday. Would you have time tomorrow to discuss the case with Susan Driscoll and I? I am pretty available, but I think that Susan can only talk before 9:30 or after 1. What would work for you?

Tate

Thomas L. Ogburn III | Partner

Licensed in NC and SC

<image001.jpg>

301 S. College Street, Suite 2900, Charlotte, NC 28202

D: 704 342 5258 | F: 704 342 5264

togburn@poynerspruill.com | www.poynerspruill.com

<image002.png> <image003.png> <image004.png>

This message constitutes a confidential attorney-client communication. If you have received this communication in error, do not read it. It is not intended for transmission to, or receipt by, any unauthorized persons. Please delete it from your system without copying it, and notify the sender by reply email or by calling 919-783-6400, so that our address record can be corrected. Thank you.

<Form 4 - Extension of Discovery Deadlines - Allen Tate_Baber.docx>

Exhibit B

Susan Driscoll

From: Susan Driscoll
Sent: Thursday, September 05, 2019 11:54 AM
To: Creighton Coleman
Cc: gbowens@bowenslawsc.com; Ogburn, Tate; Russell M. Racine
Subject: Baber v. Summit Funding, Inc., et al. - Appeal

Creighton,

Just following up on my below e-mail. Was the notice of appeal you filed directed toward both SJ orders, or just the one as to the Tate Defendants?

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From: Susan Driscoll
Sent: Friday, August 30, 2019 3:24 PM
To: Creighton Coleman
Cc: gbowens@bowenslawsc.com; Ogburn, Tate; Russell M. Racine
Subject: Baber v. Summit Funding, Inc., et al. - Appeal

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To: Ogburn, Tate
Cc: gbowens@bowenslawsc.com; Susan Driscoll; Russell M. Racine
Subject: Re: Baber v. Summit Funding, Inc., et al.

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Tate

Thomas L. Ogburn III | Partner

Licensed in NC and SC

<image001.jpg>

301 S. College Street, Suite 2900, Charlotte, NC 28202

D: 704 342 5258 | F: 704 342 5264

togburn@poynerspruill.com | www.poynerspruill.com

<image002.png> <image003.png> <image004.png>

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<Form 4 - Extension of Discovery Deadlines - Allen Tate_Baber.docx>

Exhibit C

Susan Driscoll

From: Susan Driscoll
Sent: Friday, September 06, 2019 2:48 PM
To: gbowens@bowenslawsc.com
Cc: Ogburn, Tate; Russell M. Racine; Creighton Coleman
Subject: Baber v. Summit Funding, Inc., et al.-- Appeal
Attachments: 20190906144416542.pdf

Glenn,

See attached.

Susan

From: Susan Driscoll
Sent: Thursday, September 05, 2019 11:54 AM
To: Creighton Coleman
Cc: gbowens@bowenslawsc.com; Ogburn, Tate; Russell M. Racine
Subject: Baber v. Summit Funding, Inc., et al. - Appeal

Creighton,

Just following up on my below e-mail. Was the notice of appeal you filed directed toward both SJ orders, or just the one as to the Tate Defendants?

Susan

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Cc: gbowens@bowenslawsc.com; Ogburn, Tate; Russell M. Racine
Subject: Baber v. Summit Funding, Inc., et al. - Appeal

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To: Ogburn, Tate
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Subject: Re: Baber v. Summit Funding, Inc., et al.

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Cc: Susan Driscoll <sdriscoll@driscollsheedy.com>

Subject: Baber v. Summit Funding, Inc., et al.

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Thomas L. Ogburn III | Partner

Licensed in NC and SC

<image001.jpg>

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togburn@poynerspruill.com | www.poynerspruill.com

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<Form 4 - Extension of Discovery Deadlines - Allen Tate_Baber.docx>



A PROFESSIONAL ASSOCIATION | ATTORNEYS AT LAW

Susan E. Driscoll
Lic. in NC & SC
Direct: 704 341 2103
Fax: 704 341 2105
sdriscoll@driscollsheedy.com

Ballantyne: 11520 N. Community House Road
Suite 200 | Charlotte, NC 28277
South Carolina Office: 331 E. Main Street
Fountain Park Business Center
Suite 235 | Rock Hill, SC 29730
PO Box 4589 | Rock Hill, SC 29732
www.driscollsheedy.com

September 6, 2019

Via E-mail and U.S. Mail

Glenn E. Bowens
P.O. Box 424
Winnsboro, S.C. 29180

Re: Karen K. Baber v. Summit Funding, Inc.
Appellate Case No.: 2019-001440

Dear Glenn:

On August 30, 2019, upon receipt of the Notice of Appeal in the above referenced matter, I e-mailed Creighton, with a copy to you, to inquire whether the appeal in question was as to summary judgment awarded against Summit Funding, Inc. (Summit), or just as to summary judgment awarded in favor of the Tate Defendants. I received no response.

On September 5, 2019, I sent another e-mail reiterating my question. You were also copied on that e-mail. I received no response.

Today, I received a letter from the Court of Appeals designating an appellate case number and docketing the appeal. In the event I do not receive an answer to my question on or before Wednesday, September 11, 2019, I will be forced to seek the Court's assistance in making a determination as to what orders are being appealed. If I have to go that route, I will be seeking the fees and costs associated therewith.

Respectfully,

DRISCOLL SHEEDY, P.A.

Susan E. Driscoll

Glenn E. Bowens
September 6, 2019
Page 2

cc: Scott Bruggemann, Esq. (via e-mail)
Tate Ogburn, Esq. (via e-mail)

Exhibit D

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2018-CP-46-1592

RECEIVED
AUG 28 2019
SC Court of Appeals

Karen K. Baber Appellant,

v.

Summit Funding, Inc.; Appraisal Innovations, LLC;
Brian L. Blue; The Gillen Law Firm, P.A.;
Michael F. Gillen; Allen Tate Co. Inc.; Collen Coesens;
Jonathan Garvey; Robert Ouzts; Connie Delaney; and Gloria Long-Robinson,

of whom Summit Funding, Inc; Allen Tate Co. Inc.;
Collen Coesens; Jonathan Garvey; Robert Ouzts; Connie Delaney; and
Gloria Long-Robinson are the Respondents.

NOTICE OF APPEAL

Karen K. Baber appeals the orders of the Honorable Daniel D. Hall dated May 29, 2019 and July 29, 2019. Appellants received written notice of entry of this order on May 29, 2019 and July 29, 2019.

Respectfully submitted,

August 28, 2019

By:



Glenn E. Bowens, Esq.
Creighton Coleman, Esq.
P.O. Box 424
Winnsboro, South Carolina 29180
Phone: (803) 714-7766
Fax: (803) 714-0775
Attorneys for Appellant

ELECTRONICALLY FILED - 2019 Sep 30 4:57 PM - YORK - COMMON PLEAS - CASE#2018CP4601592

Other Counsel of Record:

Poyner Spruill, LLP
Thomas Lynn Ogburn, III
301 S. College Street, Suite 2900
Charlotte, NC 28202

Attorney for Respondents Allen Tate Co. Inc., Collen Coesens, Jonathan Garvey, Robert Ouzts;
Connie Delaney

Driscoll Sheedy, P.A.
Susan Elizabeth Driscoll
11520 N. Community House Road, Suite 200
Charlotte, NC 28277

Attorney for Respondent Summit Funding, Inc
Belton, Montrie Montess Sr.
125 Hampton Street, Suite 200
PO Box 566
Rock Hill, SC 29731

Attorney for Respondent Gloria Long-Robinson

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2018-CP-46-1592

RECEIVED

AUG 28 2019

SC Court of Appeals

ELECTRONICALLY FILED - 2019 Sep 30 4:57 PM - YORK - COMMON PLEAS - CASE#2018CP4601592

Karen K. Baber Appellant,

v.

Summit Funding, Inc.; Appraisal Innovations, LLC;
Brian L. Blue; The Gillen Law Firm, P.A.;
Michael F. Gillen; Allen Tate Co. Inc.; Collen Coesens;
Jonathan Garvey; Robert Ouzts; Connie Delaney; and Gloria Long-Robinson,

of whom Summit Funding, Inc; Allen Tate Co. Inc.;
Collen Coesens; Jonathan Garvey; Robert Ouzts; Connie Delaney; and
Gloria Long-Robinson are the Respondents.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that I served a copy of the Notice of Appeal upon the following:

Poyner Spruill, LLP
Thomas Lynn Ogburn, III
301 S. College Street, Suite 2900
Charlotte, NC 28202

Driscoll Sheedy, P.A.
Susan Elizabeth Driscoll
11520 N. Community House Road, Suite 200
Charlotte, NC 28277

Belton, Montrio Montess Sr.
125 Hampton Street, Suite 200
PO Box 566
Rock Hill, SC 29731

By depositing the same in the United States Mail, postage prepaid, this the 13th Day of October, 2008.

August 28, 2019



Glenn E. Bowens, Esq.
Creighton Coleman, Esq.
P.O. Box 424
Winnsboro, South Carolina 29180
Phone: (803) 714-7766
Fax: (803) 714-0775
Attorneys for Appellant

ELECTRONICALLY FILED - 2019 Sep 30 4:57 PM - YORK - COMMON PLEAS - CASE#2018CP4601592

STATE OF SOUTH CAROLINA

COUNTY OF YORK

KAREN K. BABER,

Plaintiff,

vs.

SUMMIT FUNDING, INC., APPRAISAL
INNOVATIONS, LLC, BRIAN L. BLUE, THE
GILLEN LAW FIRM, P.A., MICHAEL F.
GILLEN, ALLEN TATE CO., INC., COLLEEN
COESENS, JONATHAN GARVEY, ROBERT
OUZTS, CONNIE DELANEY, and GLORIA
LONG-ROBINSON,

Defendants.

IN THE COURT OF COMMON PLEAS
2018-CP-46-01592

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER comes before the Court upon the Motion for Summary Judgment ("Motion") filed on March 5, 2019 by Defendants Allen Tate Co., Inc. ("Allen Tate"), Colleen Coesens ("Coesens"), Jonathan Garvey ("Garvey"), Robert Ouzts ("Ouzts") and Connie Delaney ("Delaney") (collectively, the "Tate Defendants"). The Court conducted a hearing in this matter on April 3, 2019 after proper notice to all parties. Present at the hearing were Plaintiff Karen Baber ("Baber"), counsel for the Tate Defendants, Thomas L. Ogburn III, counsel for Summit Funding, Inc., Susan Driscoll, and counsel for Appraisal Innovations, LLC and Brian L. Blue, Russell Racine.

In support of the Motion, the Tate Defendants presented the Motion, a supporting brief, the Plaintiff's deposition transcript and selective exhibits, the Tate Defendants' Requests for Admission and the Affidavit of Thomas L. Ogburn III. In opposition to the Motion, Baber presented an Affidavit of Plaintiff Karen K. Baber in Opposition to the Tate Defendants' Motion for Summary Judgment and attached exhibits ("Baber Affidavit").

ELECTRONICALLY FILED - 2019 May 29 3:09 PM - YORK - COMMON PLEAS - CASE#2018CP4601592
ELECTRONICALLY FILED - 2019 Sep 30 4:57 PM - YORK - COMMON PLEAS - CASE#2018CP4601592

As an initial point, Ms. Baber announced at the beginning of the hearing that Creighton Coleman was in the process of filing an appearance on her behalf in this matter. The undersigned contacted Mr. Coleman by telephone in open court. Mr. Coleman told the Court that he had agreed to meet with Ms. Baber on Friday, April 5, 2019, but had not yet agreed to represent her in this matter. Mr. Coleman confirmed that he was not representing Ms. Baber in defending the Tate Defendants' Motion. Based on this representation and Ms. Baber's presence in the courtroom, the Court exercised its discretion to proceed in hearing the Motion.

On April 8, 2019, after the hearing on the Motion, Mr. Coleman sent a letter to the Court announcing that he and Glenn Bowens were now representing Baber and requesting that the Court deny the Motion without prejudice because discovery was not complete. Mr. Coleman also requested that the Court set a supplemental hearing on the Motion at least 30 days later to allow he and Mr. Bowens ample time to review Baber's file, complete discovery and prepare a response to the Motion. The Tate Defendants opposed this request. Based on, among other things, Mr. Coleman's prior representation at the time of the hearing that he was not representing Baber, the fact that the Motion was based on Baber's own testimony and the prejudice that the Tate Defendants would suffer if the Court were to conduct another hearing on the Motion, Mr. Coleman's request is denied in the Court's discretion.

At the hearing, Counsel for the Tate Defendants objected to the Court's consideration of the Baber Affidavit in opposition to the Motion because, among other things: (1) the Baber Affidavit contains hearsay and does not comply with Rule 56(e), SCRCP; (2) Baber testified in her deposition that e-mails that she produced to all of the Defendants may have been the product of "cutting and pasting" multiple e-mails or combining multiple e-mails and the Tate Defendants

argued that most of the e-mails attached to the Baber Affidavit were not accurate representations of the actual e-mails; and (3) the Baber Affidavit may contain e-mails that were falsified, such as Exhibit 13 of the Baber Affidavit, which was not an accurate representation of Exhibit 14 from Baber's deposition. Additionally, the Tate Defendants objected to the Court's consideration of the Baber Affidavit to the extent that it contradicted her sworn deposition testimony. After reviewing and considering the Baber Affidavit the Court overrules the Tate Defendants' objection and has considered the Baber Affidavit in ruling on the Motion.

Based on the Court's review of the documents submitted by the parties, the pleadings in the Court's file and the arguments of counsel and Baber, the Court determines that there is no genuine issue as to any material fact in this matter and the Tate Defendants are entitled to judgment as a matter of law on all of Baber's claims against them. Therefore, the Court grants the Motion on the grounds set forth herein.

FACTS

1. Baber is a former South Carolina licensed real estate broker who has also worked for attorneys in handling real estate closings. (Deposition of Karen Baber ("Baber Dep."), pp. 22-23).

2. In January, 2015, Baber was searching for a home to purchase in Rock Hill, South Carolina. At the time, she was working with Garvey, who served as her real estate agent pursuant to an Exclusive Right to Buy Buyer Agency Contract signed by both Baber and Garvey. (Baber Dep. p. 36 and Ex. 4).

3. Between January 9, 2015 and January 11, 2015, Baber and Garvey exchanged several e-mails about a property located at 255 Rolling Ridge Road, Rock Hill, South Carolina.

("Property") (Baber Dep., Ex. 5-7). As part of those e-mails, Baber questioned Garvey about certain issues with the Property that she identified when she walked through the Property, including the condition of the air conditioning, water heater, gas pack, deck, stove, siding, bedroom ceiling, windows, and roof shingles, among other things. (*Id.*) As part of this exchange, Garvey provided Baber with the Residential Property Condition Disclosure Statement ("Disclosure Statement") signed by Gloria Long-Robinson, the owner of the Property. (Baber Dep. pp. 59-60 and Ex. 7).¹

4. In the Disclosure Statement, Long-Robinson represented that *she had actual knowledge of problems with twelve of the fourteen systems described on page 2 of the Disclosure Statement*, including: the water supply, water quality, water pressure, sanitary sewer, roof system, gutter system, plumbing system, electrical system, appliances, built-in systems and fixtures, heating system and cooling system. (Baber Dep., Ex. 7, p.2). Long-Robinson also disclosed on page 3 of the Disclosure Statement that she was also aware of problems caused by water during her ownership. (Baber Dep., Ex. 7, p. 3). Many of these systems Long-Robinson identified in the Disclosure Statement as having problems were the same items that Baber had already observed and questioned in her e-mail exchange with Garvey between January 9 and January 11. (*See*, Baber Dep. Ex. 5-7).

5. Shortly thereafter, Baber submitted a proposed Agreement/Contract to Buy and Sell Real Estate to Long-Robinson in which she offered to purchase the Property for \$145,000.00. (Baber Dep. p. 75). The offer includes, among other things, a requirement that Long-Robinson

¹ Ms. Long-Robinson was represented in the sale of the property by Delaney and Ouzts, who are also defendants in this matter. (Baber Dep. p. 29).

pay for a home warranty for Baber. (Baber Dep. Ex., 9, § 14). Long-Robinson ultimately did not agree to purchase a home warranty on the property. (Baber Dep. p. 75). After Long-Robinson refused to purchase a home warranty, Baber testified that Garvey agreed to pay for a home warranty, but admitted that “well, if you don’t, I will, because we need one.” (Baber Dep. p. 76).

6. On or about February 19, 2015, Baber and Long-Robinson entered into an Agreement/Contract to Buy and Sell Real Estate (“Purchase Contract”) pursuant to which Baber agreed to purchase the property for \$145,000.00. (Baber Dep. Ex. 11). The Purchase Contract clearly indicated that Baber was purchasing the property “As-Is, Where Is, With all Faults” and the sale was contingent on Long-Robinson’s lender approving a short sale of the Property. (*Id.* § 28 and Short Sale Addendum). The Purchase Contract did not require that a home warranty be purchased. (*Id.* § 14). The Purchase Contract gave Baber the right to inspect the condition of the Property and to have the property inspected for wood infestation. (*Id.* §§ 8 and 11).

7. Most of Baber’s claims against the Tate Defendants are based on alleged representations made by the Tate Defendants and others prior to closing that termite and home inspections had been performed and came back clear or that such inspections were a condition on her closing of the loan. Baber claims that had she known the true condition of the Property, she would not have purchased it. (*See, e.g.*, Complaint ¶¶ 106, 135, 165).

8. Baber testified in her deposition that when she received the original appraisal of the Property on March 5, 2015 (Baber Dep. Ex. 16), she immediately questioned the accuracy of the appraisal because it did not identify the defects in Property she had spotted in January. (Baber Dep. pp. 110-113). More specifically, she was concerned that appraisal did not address:

a hole I thought I saw in the roof from the outside, two rusted holes in the air conditioner, the rotten and unsafe deck which I did not think met FHA standards, the rotten wood around the windows, window seals, overhangs, doors and signing, the gutters that were falling off and water spots in the ceiling.

(Baber Dep. pp. 112-113 and Ex. 17).

9. Baber closed on her purchase of the Property on May 29, 2015. (Baber Dep. P. 122). Immediately prior to closing, Baber notified Linda Mattison, the paralegal for the closing attorney, Michael Gillen, by e-mail that she "didn't have a termite inspection done" and "did have an inspection/appraisal" which had been paid for. (Baber Dep. Ex. 14). Baber admitted in her deposition that she never received any bill for any inspections or any invoices for repairs to the Property prior to closing. (Baber Dep. pp. 90, 94).

10. As part of the closing, Baber concedes that she executed a Walk-Through Acknowledgment ("Acknowledgement") in which she represented that she "accepts the repairs and condition of the property." (Baber Dep. pp. 123-124 and Ex. 19). She also executed a Professional Services Disclosure and Election ("Professional Services Disclosure") in which she did not indicate that she had selected anyone to perform a home inspection or a wood infestation inspection. (Baber Dep. p. 129 and Ex. 20).

11. Baber testified that within the first few days of her purchase of the Property on March 29, 2015 she was aware of the majority of the problems with the Property of which she now complains. (Baber Dep. pp. 130-131). She demanded a meeting with Coesens, Garvey and others at Allen Tate to discuss the Property and the fact that she did not receive a home warranty on the Property. (Baber Dep. 133-134).

12. Baber testified that she met with Coesens, Garvey and Ouzts on June 29, 2015. (Baber Dep. pp. 136-137). During that meeting, Allen Tate offered to pay Baber \$409.00 towards

the cost of a home warranty and asked her to sign a release of claims against Allen Tate and its agents in exchange for that payment. (Baber Dep. pp. 137-138).

13. On June 30, 2015, Baber purchased a home warranty (Baber Dep. Ex. 23). She received the \$409.00 payment and signed a General Release ("Release") in which she released "Allen Tate Co., Inc., its parent entities, predecessors, successors and assigns, officers, directors, brokers, agents, employees and related and affiliated companies" (which includes all of the Tate Defendants) from:

any and all manner of, disputes, actions, claims, demands, and liabilities whatsoever in law or equity, including complaints to any professional association or commission, and all claims for contribution and indemnification, arising from and by reason of any and all known and unknown, foreseen and unforeseen, injuries and damages, and the consequences thereof, related to and associated with the Offer to Purchase and Contract dated February 15, 2015 and any and all transactions and circumstances regarding the property located at 255 Rolling Ridge Road, Rock Hill, South Carolina.

(Baber Dep. pp. 138 and Ex. 22). Baber admitted in her deposition that she signed the release, received the payment and gave up all rights and claims against the Tate Defendants. (Baber Dep. pp. 139-140). Baber further conceded in her deposition that she gave the Tate Defendants the Release in exchange for the Tate Defendants providing her with the funds to purchase a home warranty. (See, Baber Dep. pp. 139-140, 141).

14. Baber filed this action on May 29, 2018 and has alleged that the Tate Defendants and others failed to disclose material information concerning the condition of the house, that many people made false representations about what inspections were required, that inspections were

performed that showed no issues with the house and Baber was ultimately fraudulently induced to purchase the property through a conspiracy among the defendants.²

15. On August 8, 2018, the Tate Defendants served Requests for Admission on Baber pursuant to Rule 36, SCRCP. As demonstrated in the Affidavit of Thomas L. Ogburn, Baber failed to timely respond to the requests for admission and failed to timely either seek an extension of time to respond or seek relief from the effects of Rule 36.

LEGAL STANDARD

Summary judgment shall be granted “if the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” Rule 56(c), SCRCP. A party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 592, 545 S.E.2d 500, 505 (2001). “Once the moving party carries its initial burden, the ‘opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as the material facts but must come forward with specific facts showing that there is a genuine issue for trial.’” Id. “The party opposing summary judgment cannot simply rest on mere allegations and denials contained in the pleadings.” Id. at 593, 454 S.E.2d at 505, citing Rule 56(e), SCRCP.

LAW/ANALYSIS

The Tate Defendants are entitled to summary judgment on all of Baber’s claims against them because there are no genuine issues of material fact and the Tate Defendants are entitled to

² All of Baber’s claims against Allen Tate Co., Inc. are based on the alleged acts of Coesens, Ouzts, Delaney and Garvey. (Complaint, ¶ 7-11). Baber does not allege any independent acts by Allen Tate Co., Inc.

judgment as a matter of law. Baber knowingly and voluntarily released all claims against the Tate Defendants when she executed the Release in exchange for the money to purchase a home warranty. As an additional ground for dismissal, the Tate Defendants are entitled to summary judgment on certain of Baber's claims against them because of admissions arising from Baber's failure to respond to Requests for Admission and on the remaining claim Baber admitted that she had no evidence to support it.

Release

The Release signed by Baber bars her claims in this action. All of Baber's claims against the Tate Defendants arise from her purchase of the Property on May 29, 2015, or from her execution of the Release shortly after closing. Baber testified that she was aware of the vast majority of alleged defects in the Property of which she now complains within a few days of closing and before she signed the Release. Baber further admitted in her deposition that she signed the Release in exchange for a payment of \$409.00 for a home warranty, that she received the funds and purchased the home warranty.

The clear, unambiguous language of the Release confirms Baber's deposition testimony and her understanding that she released all claims against the Tate Defendants based on a payment of \$409.00 for a home warranty, not based on any representations that Baber would be provided with copies of non-existent inspection reports. Therefore, the Tate Defendants' Motion should be granted and Baber's claims against the Tate Defendants should be dismissed, with prejudice.

Admissions by Plaintiff

The Tate Defendants are also entitled to summary judgment on Baber's second, third, fourth, eighth, and eleventh causes of action due to Baber's admissions arising from her failure to

respond to Requests for Admission and on Baber's first cause of action because Baber admitted that she had no evidence to support it.

Since Baber failed to timely respond to the Requests for Admission, it is deemed admitted for the purposes of this action that: (1) Baber was aware before she purchased the Property on May 29, 2015, that no termite inspection or home inspection had been performed on the Property; (2) she knew prior to purchasing the property that no CL-100 existed relating to the Property; and (3) she told one or more of the Tate Defendants that she did not want to pay for a home inspection or termite inspection. See, Hinson-Barr, Inc. v. Pinckard, 292 S.C. 267, 269-70, 356 S.E.2d 115, 116 (1987) ("Under Rule 36(a), SCRPC, all matters contained in a Request for Admission are admitted unless the party serves answers or objects within a certain time.").

Plaintiff's claims against the Tate Defendants in her Second, Third, Fourth, Eighth, and Eleventh causes of action are each based on alleged misrepresentations concerning whether a termite inspection or home inspection had been performed and the results of those inspections. (See, Complaint ¶¶ 112, 126, 132, 164, 180). Based on Baber's admissions, she was fully aware those inspections had not been performed and had told the Tate Defendants that she was not willing to pay for those inspections. Therefore, the Tate Defendants are entitled to summary judgment on those claims.

Finally, the Tate Defendants are entitled to summary judgment on Baber's first cause of action because Baber has conceded in her deposition that she has no evidence to support it. Baber's first Cause of Action alleges that Long-Robinson, Delaney, Ouzts and Allen Tate knew that the Disclosure Statement omitted material information concerning the condition of the Property.

(Complaint, ¶¶ 100-110).³ Baber admitted in her deposition that she had no evidence to support her First Cause of Action that Delaney and Ouzts knew that material information had been omitted from the Disclosure Statement. (Baber Dep. pp. 70-71). Therefore, the Tate Defendants are entitled to summary judgment on that claim as well. See, Chastain v. Hiltabidle, 381 S.C. 508, 520-21, 673 S.E.2d 826, 832-33 (Ct. App. 2009).

BASED ON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Mr. Coleman's request to deny the Motion and set a supplemental hearing is denied;
2. The Tate Defendants' objection to the Court's consideration of the Baber Affidavit is overruled; and
3. The Tate Defendants' Motion for Summary Judgment is granted and all of Plaintiff's claims against the Tate Defendants are dismissed with prejudice.

IT IS SO ORDERED.

[Signature contained on following page]

³ The Court previously dismissed the claims against Long-Robinson.



York Common Pleas

Case Caption: Karen K Baber VS Summit Funding Inc , defendant, et.al
Case Number: 2018CP4601592
Type: Order/Summary Judgment

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2019-05-29 14:44:30 page 12 of 12

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4601592

Karen K Baber
PLAINTIFF(S)

Appraisal Innovations Llc et al
DEFENDANT(S)

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

Plaintiff's Motion to Reconsider is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/29/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

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York Common Pleas

Case Caption: Karen K Baber VS Summit Funding Inc , defendant, et al
Case Number: 2018CP4601592
Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2019-07-29 10:38:56 page 3 of 3

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4601592

Karen K Baber
PLAINTIFF(S)

Appraisal Innovations Llc et al
DEFENDANT(S)

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
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- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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AUG 28 2019

SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

Karen K. Baber,

Plaintiff,

vs.

Summit Funding Inc.; Appraisal
Innovations, LLC.; Brian L. Blue; The
Gillan Law Firm; P.A.; Michael F. Gillen;
Allen Tate Co., Inc.; Colleen Coesens;
Jonathan Garvey; Robert Ouzts; Connie
Delaney and Gloria Long-Robinson,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO. 2018-CP46-01592

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT SUMMIT
FUNDING'S MOTION TO DISMISS**

This matter was heard by the Court upon motion by Defendant, Summit Funding Inc. ("Summit"), to have Plaintiff's claims dismissed pursuant to Rule 12(b)(6), SCRPC. Present at the hearing was Susan E. Driscoll, counsel for Summit. Karen K. Baber, appeared *pro se*.

BACKGROUND

Plaintiff (borrower) brought this action against Summit (lender), alleging Summit failed to obtain a termite and home inspection report as required by their loan agreement. As a result, Plaintiff states five causes of action against Summit, seeking rescission of the loan agreement, reimbursement for all loan payments made, and damages incurred in repairing issues with the home. Plaintiff's causes of action against Summit include; mutual mistake, unilateral mistake, promissory estoppel, breach of contract and declaratory relief.

STANDARD OF REVIEW

The factual analysis of a Rule 12(b)(6) motion is confined to the four corners of the complaint, and all allegations of the pleading and the inferences reasonably deducible therefrom, are deemed admitted. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). "If the

facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper.” *Id.* Based on the facts as alleged by Plaintiff in the complaint, I make the following findings and conclusions.

DISCUSSION

To establish breach of contract, the facts must show the existence of a contract, its breach, and damages caused by the breach. *Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 705 S.E.2d 73 (Ct. App. 2010). A party to a written contract may also have the court determine the construction or validity of the writing and “obtain a declaration of rights, status or other legal relations thereunder”. S.C. Code Ann. § 15-53-30 (1976, as amended).

In this case, Plaintiff alleges the loan agreement required the termite and home inspection be obtained prior to the issuance of loan, Summit failed to get the reports as required, and as a result this failure, Plaintiff is entitled to have the loan rescinded and be reimbursed for payments and other damages. (Complaint ¶¶ 173-175). These statements (deemed admitted) are sufficient to support Plaintiff’s claims for breach of contract and declaratory relief.

Mistake is an equitable remedy used to invalidate the formation of a contract. *Harper v. McCoy*, 276 S.C. 170, S.E.2d 782 (1981). The mistake occurs in the terms of the contract, not in an error that occurs subsequent to the contract’s formation. *Id.* Further, promissory estoppel applies where there is no contract. See *Barnes v. Johnson*, 402 S.C. 458, 742 S.E.2d 6 (Ct. App. 2013).

Plaintiff does not allege there was a misunderstanding with the terms of the contract. Instead, Plaintiff relies on the terms of the loan and facts that occurred subsequent to the formation

of the contract to support her claims. These allegations do not state claims of mistake or promissory estoppel.

ORDER

Therefore, based on the Discussion above, it is hereby ordered:

1. Defendant's motion to dismiss is denied as to Plaintiff's claims for breach of contract and declaratory relief.
2. Defendant's motion to dismiss all other claims is granted and those claims are dismissed without prejudice.

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW

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York Common Pleas

Case Caption: Karen K Baber VS Summit Funding Inc , defendant, et al

Case Number: 2018CP4601592

Type: Order/Other

So Ordered

s/ Teasa K. Weaver 3084

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM YORK COUNTY
Daniel D. Hall, Circuit Court Judge

SC Court of Appeals

Case No. 2018-CP-46-01592

Karen K. Baber, ... Appellant,

v.

Summit Funding, Inc., Appraisal Innovations, LLC, Brian L. Blue, The Gillen Law Firm, P.A.,
Michael F. Gillen, Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert Ouzts, Connie
Delaney, and Gloria Long-Robinson,

Of Which Summit Funding Inc., Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert
Ouzts, Connie Delany, and Gloria Long-Robinson are the Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed
to be included by any of the parties and not any other material.

s/Glenn E. Bowens
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June 10, 2020

Attorneys for Appellant

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