

STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

STEVENS & COOPER, LLC and)
FIDELITY NATIONAL TITLE)
INSURANCE CO.,)

Plaintiffs,)

v.)

Civil Action File

No. 05 VS 0888745-F

DONALD MORELAND and)
MORELAND & LERMAN, PC,)

Defendants/Third-Party)
Plaintiffs,)

v.)

CHASE MANHATTAN MORTGAGE)
CORPORATION,)

Third-Party Defendant.)

**BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT AGAINST PLAINTIFFS STEVENS & COOPER, LLC
AND FIDELITY NATIONAL TITLE INSURANCE CO.**

NOW COME Donald Moreland and Moreland & Lerman, PC, Defendants/Third-Party Plaintiffs in this action, and file this Brief in support of "Defendants' Motion for Summary Judgment against Plaintiffs Stevens & Cooper, LLC and Fidelity National Title Insurance Co." ("Defendants' Motion for Summary Judgment"), and respectfully show the Court as follows:

I. INTRODUCTION.

Plaintiff Stevens & Cooper, LLC ("Plaintiff Stevens & Cooper") is a real estate law firm, which performs services that include closing real property sales transactions, certifying clear title to real property, and issuing title insurance policies as an agent of Plaintiff Fidelity National Title Insurance Company ("Plaintiff Fidelity"). Defendant Donald Moreland ("Defendant Moreland") is a real estate attorney who performs similar services through his law firm, Defendant Moreland & Lerman, PC ("Defendant Moreland & Lerman").

This case arises from an error made by Plaintiff Stevens & Cooper, which had been hired as closing attorney for two, nearly simultaneous sales of a parcel of real property located at 2270 Polar Rock Avenue, Atlanta, Georgia 30315 (the "Polar Rock Property"). As the closing attorney, Plaintiff Stevens & Cooper certified that title to the Polar Rock Property was clear of encumbrances when, in fact, Plaintiff had actual knowledge that the property was encumbered by a deed to secure debt ("Security Deed") held by Emanuel Walker ("Walker"). Plaintiff Stevens & Cooper had actual notice of the Security Deed because its title examiner had listed the Security Deed as an exception in his title abstract and had given Plaintiff a copy of the Security Deed and assignment conveying the Security Deed to Walker.

Despite having actual knowledge of the unsatisfied Security Deed, Plaintiff Stevens & Cooper failed to take reasonable steps to investigate or resolve the outstanding Security Deed. Instead, Plaintiff Stevens & Cooper simply contacted Defendant Moreland (who had previously closed an unrelated sale of the Polar Rock Property) to ask what steps Moreland had taken to certify marketable title, given the existence of the Security Deed. Unlike Plaintiff Stevens & Cooper, Defendant Moreland had no information in his files showing that the Security Deed had been assigned to Emanuel Walker.

When contacted by Plaintiff Stevens & Cooper, Defendant Moreland accurately explained that he had certified unencumbered title to the Polar Rock Property because Third-Party Defendant Chase Manhattan Mortgage Corporation ("Third-Party Defendant Chase"), a prior holder of the Security Deed, had represented that the underlying debt was paid off and that the Security Deed would be cancelled. Defendant Moreland further stated that he had asked Third-Party Defendant Chase to issue a cancellation notice, but Chase had not yet done so. Defendant Moreland accurately related these facts to Plaintiff Stevens & Cooper.

Although Defendant Moreland did not misrepresent any fact to Plaintiff Stevens & Cooper, the substance of Defendant Moreland's communication

should have raised red flags, because it plainly contradicted the information about the Security Deed provided to Plaintiff Stevens & Cooper by its title search company. Plaintiff Stevens & Cooper disregarded the obvious contradiction, however, and never attempted to contact Walker or Third-Party Defendant Chase to confirm that the Security Deed would be canceled. Thus, without ever conducting an independent investigation, Plaintiff Stevens & Cooper certified unencumbered title for the Polar Rock Property, closed two sales, and, as an agent of Plaintiff Fidelity, issued a title insurance policy in the amount of \$64,000.00 to the ultimate purchaser, Atlas Realty, Inc. ("Atlas Realty"). After the sale, the holder of the Security Deed, Walker, initiated foreclosure proceedings, and Atlas Realty lost the Polar Rock Property at foreclosure. Atlas Realty then filed a \$64,000.00 title insurance claim, which Plaintiffs paid in equal shares.

Plaintiffs now allege that Defendant negligently misrepresented that the Security Deed had been cancelled. The uncontested evidence, however, shows that Defendant Moreland never represented that he had personal knowledge concerning the actual status of the Security Deed. Rather, when asked the basis of his decision to certify unencumbered title and close the sale of the Polar Rock Property, Defendant Moreland simply and accurately explained the basis on which he had certified title. Although Defendant

Moreland apparently certified title in reliance on inaccurate information provided by Third-Party Defendant Chase, Defendant never misrepresented any fact to Plaintiff Stevens & Cooper, because Defendant Moreland's representation concerned the basis for his actions and not the actual status of the Security Deed. Regardless, Plaintiff Stevens & Cooper had no reasonable basis for relying on Defendant Moreland's information, because Plaintiff Stevens & Cooper had actual knowledge of two dispositive facts that Defendant Moreland did not know:

- 1) In February 2005, when Defendant Moreland spoke with the representative of Third-Party Defendant Chase concerning the status of the Security Deed, Third-Party Defendant Chase did not own the Security Deed. Rather, Chase had assigned the Security Deed to a third party, Heath Williams, approximately nine months earlier;
- 2) Heath Williams subsequently assigned the Security Deed to Emanuel Williams, and the Security Deed remained unsatisfied of record.

Accordingly, summary judgment must be awarded in Defendants' favor.

II. STATEMENT OF MATERIAL FACTS.

On February 28, 2005, New Hope Realty Investments, Inc. ("New Hope") purchased the Polar Rock Property, located at 2270 Polar Rock Avenue, Atlanta, Georgia 30315.¹ (See Statement of Uncontested Material Facts & Theories of Recovery in Supp. of Defs.' Mot. for Summ. J. Against Pls. Stevens & Cooper, LLC & Fidelity Nat. Title Ins. Co. ¶¶ 8-9, hereinafter cited "Defs.' Statement of Uncontested Facts ¶ '___'"; see also August 24, 2006 Deposition of Donald Moreland,² pp. 107-09, hereinafter cited "Moreland Dep., p. '___'", at App. to Defs.' Statement of Uncontested Facts, Tab A-6, hereinafter cited "Fact App. Tab '___'"; Moreland Dep., Chase Ex. 9 at Fact App. Tab D.) On about March 1, 2005, New Hope executed a sales contract to convey the Polar Rock Property to Goldmie Properties, Inc., which is the same party as 2700 Polar Rock Trust, Mike Cherwenka trustee ("Polar Rock

¹ Uniform Superior Court Rule 6.5 addresses the requirement of filing a statement of uncontested facts. In the instant case, Defendants' Statement of Uncontested Facts is based in part on affidavits, depositions, and documentary evidence. For the Court's convenience, Defendants have filed relevant excerpts from the cited depositions as well as copies of the relevant documentary evidence and affidavits concurrently herewith in an "Appendix to Defendants' Statement of Uncontested Material Facts and Theories of Recovery in Support of Defendants' Motion For Summary Judgment Against Plaintiffs Stevens & Cooper, LLC and Fidelity National Title Insurance Co." ("Appendix to Defendants' Statement of Uncontested Facts").

² On about October 17, 2006, Third-Party Defendant Chase filed an original copy of this deposition transcript with the Court.

Trust"). (See Defs.' Statement of Uncontested Facts ¶ 10; *see also* August 25, 2006 Deposition of Charles R. Burditt, Jr.,³ 123-24 at Fact App. Tab B-23, hereinafter cited "Burditt Dep., p. '___' at Fact App. Tab '___'"; Burditt Dep., p. 75 at Fact App. Tab B-17 (stating that Goldmine Properties and the Polar Rock Trust are really the same party, *i.e.*, Mike Cherwenka); Burditt Dep., Def. Ex. 2 at Fact App. Tab M.) In early March 2005, Polar Rock Trust agreed to sell the Polar Rock property to Atlas Realty, Inc. (Defs.' Statement of Uncontested Facts ¶ 11; Burditt Dep., pp. 90, 160-61 at Fact App. Tabs B-19, B-30; *see also* Burditt Dep., Def. Ex. 10 at Fact App. Tab O.) In conjunction with Polar Rock Trust's purchase and subsequent sale, Polar Rock Trust hired Charles Burditt, Jr., an attorney at Plaintiff Stevens & Cooper, to certify title to the Polar Rock Property and close the sales. (Defs.' Statement of Uncontested Facts ¶ 12; Burditt Dep., p. 32 at Fact App. Tab B-3.)

Although Burditt is a partner at Plaintiff Stevens & Cooper who practices real estate law, and although Burditt is personally authorized to sign and issue title insurance policies on behalf of Plaintiff Fidelity, Burditt has never actually been to a deed room to check title on behalf of a client. (Defs.' Statement of Uncontested Facts ¶¶ 13-15; Burditt Dep., pp. 122-23 at Fact

³ On about October 17, 2006, Third-Party Defendant Chase filed an original copy of this deposition transcript with the Court.

App. Tab B-23.) In fact, the only time Burditt has ever been to the Fulton County deed room to inspect the deed books was as a first-year law student in 1987. (Defs.' Statement of Uncontested Facts ¶ 16; Burditt Dep., pp. 121-22 at Fact App. Tab B-22.) Burditt graduated law school in 1990, passed the Georgia Bar in 1991, and opened his own practice from 1991 through 1995, wherein he did no real estate work. (Defs.' Statement of Uncontested Facts ¶ 17; Burditt Dep., pp. 9-10 at Fact App. Tab B-1.) From 1995 to 1998, Burditt worked as a paralegal for a law firm in San Diego, California, reading deposition transcripts in a tort case against Jack in the Box, Inc. (Defs.' Statement of Uncontested Facts ¶ 18; Burditt Dep., pp. 9-10 at Fact App. Tab B-1.) Having never passed the California Bar exam, Burditt returned to Atlanta in 1998 and joined a firm called Bailey & Burditt, where he remained until 2000. (Defs.' Statement of Uncontested Facts ¶ 19; Burditt Dep., pp. 10-11 at Fact App. Tab B-1.) While at Bailey & Burditt, Burditt learned "the basics of clearing a title and entering HUD statements and closing loans" from a legal assistant to George L. Bailey. (Defs.' Statement of Uncontested Facts ¶ 20; Burditt Dep., pp. 10-11 at Fact App. Tab B-1.) During this time, Burditt never actually searched title himself. (Defs.' Statement of Uncontested Facts ¶ 21; Burditt Dep., pp. 11-12 at Fact App. Tab B-1.) From 2000 through March 2004, Burditt worked in-house for Omni National Bank,

closing real estate loans but never searching title. (Defs.' Statement of Uncontested Facts ¶ 22; Burditt Dep., pp. 12-13, 122-23 at Fact App. Tabs B-1, B-23.) In March 2004, Burditt went to work for Plaintiff Stevens & Cooper, where he closes loans and certifies title but never actually searches title himself. (Defs.' Statement of Uncontested Facts ¶ 23; Burditt Dep., pp. 14-16, 122-23 at Fact App. Tabs B-1, B-23.)

Burditt generally hires Traditional Title Company ("Traditional Title") to perform title searches, although he does not know the steps Traditional Title takes to make a full title search. (Defs.' Statement of Uncontested Facts ¶¶24, 25; Burditt Dep., pp. 16-17, 54 at Fact App. Tabs B-1, B-11.) In particular, Burditt testified:

Q: And as part of that full title search, do you know what steps that Traditional would take to make that full title search?

A: No.

Q: So you don't know what indexes they would look at or how they would – the procedure they would follow to provide you with a full title search?

A: No.

(Burditt Dep., p. 54 at Fact App. Tab B-11.) Despite his lack of knowledge about Traditional Title's activities, Burditt relies on Traditional Title's work in certifying titles and issuing title insurance policies. (Defs.' Statement of

Uncontested Facts ¶ 26; Burditt Dep., pp. 33, 54 at Fact App. Tabs B-4, B-11.)

Consistent with his customary practice, Burditt hired Traditional Title to perform the title search when Polar Rock Trust hired him to close the sale of the Polar Rock Property in March 2005. (Defs.' Statement of Uncontested Facts ¶ 27; Burditt Dep., pp. 33, 54 at Fact App. Tabs B-4, B-11.) On about March 3, 2005, Traditional Title provided Burditt with a title abstract for the Polar Rock Property. (Defs.' Statement of Uncontested Facts ¶ 28; Burditt Dep., pp. 34, 55, 141 at Fact App. Tabs B-5, B-12, B-25.) A title abstract is a schedule of the documents within the chain of title for a piece of property such as any mortgage or deed to secure debt. (Defs.' Statement of Uncontested Facts ¶ 29; Burditt Dep., pp. 34, 55, 141 at Fact App. Tabs B-5, B-12, B-25.) Traditional Title's title abstract contained attached copies of the actual documents from within the chain of title that could affect the ability to pass marketable title to the Polar Rock Property. (Defs.' Statement of Uncontested Facts ¶ 30; Burditt Dep., pp. 34, 55, 141 at Fact App. Tabs B-5, B-12, B-25.) Defendant's Exhibit "8" to the Burditt Deposition is a true and correct copy of the title abstract Burditt received from Traditional Title. (Defs.' Statement of Uncontested Facts ¶ 31; Burditt Dep., p. 139 at Fact App. Tab B-24; Burditt Dep., Def. Ex. 8 at Fact App. Tab N.) When Burditt

certified unencumbered title to the Polar Rock Property on March 9, 2005, he had read, understood, and relied upon the documents attached to Traditional Title's title abstract. (Defs.' Statement of Uncontested Facts ¶ 32; Burditt Dep., pp. 34-36, 143-46 at Fact App. Tabs B-5, B-26; Burditt Dep., Def. Ex. 8 at Fact App. Tab N.)

Relevant to the instant case, Traditional Title's title abstract disclosed the following specific exception to title of the Polar Rock Property as of March 2, 2005:

| Mortgage Information | | | |
|----------------------|---|------------------------|---|
| Mortgagee: | Advanta National Bank | | |
| Mortgagor: | Janet W. Williams | | |
| Amount: | \$45,000.00 | Revolving Credit Line: | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| Dated: | 9/10/1998 | Recorded: | 10/1/1998 |
| Deed Book: | 25447 | Page: | 313 |
| Open Ended: | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | | |
| Assigned to: | Emanuel Walker | | |
| Dated: | 5/20/2004 | Recorded: | 6/11/2004 |
| Deed Book: | 37769 | Page: | 101 |
| Affidavit @ | Book 37769, Page 92. | | |

(Defs.' Statement of Uncontested Facts ¶ 33; Burditt Dep., Def. Ex. 8 at Fact App. Tab N.) This exception notes the existence of the Security Deed discussed above, which is an outstanding deed to secure debt originally held by Advanta National Bank and subsequently assigned to Emanuel Walker ("Walker") on May 20, 2004. (*Id.*) Burditt admits that Traditional Title's title abstract demonstrates the existence of the Security Deed encumbering title to the Polar Rock Property and its assignment to Walker. (Defs.' Statement of

Uncontested Facts ¶ 33; Burditt Dep., pp. 34-36, 143-46 at Fact App. Tabs B-5, B-26.)

An actual copy of the original Security Deed encumbering title to the Polar Rock Property is attached to Traditional Title's title abstract along with certain other documents demonstrating the assignment of the Security Deed to Walker, including:

- (a) the original Security Deed, which is a deed to secure debt on the Polar Rock Property from Janet Williams to Advanta National Bank in the amount of \$45,000.00, filed in Fulton County Deed Book 25447, page 313;
- (2) a lost note affidavit filed by Third Party Defendant Chase in Fulton County Deed Book 37769, page 92, indicating that Chase had acquired the Security Deed from Advanta National Bank and desired to assign it to a third party; and
- (c) a "Corporate Assignment of Mortgage" filed in Fulton County Deed Book 37769, p. 101, by which Heath W. Williams, LLC assigned the Security Deed to Emanuel Walker on June 10, 2004.

(Defs.' Statement of Uncontested Facts ¶ 34; Burditt Dep., pp. 142-146 at Fact App. Tab B-26; Burditt Dep., Def. Ex. 8 at Fact App. Tab N.) Burditt admits that, before he certified title to the Polar Rock Property, he received and reviewed copies of the documents attached to Traditional Title's title abstract.

(Defs.' Statement of Uncontested Facts ¶ 35; Burditt Dep., pp. 142-148 at Fact

App. Tab B-26; Burditt Dep., Def. Ex. 8 at Fact App. Tab N.) In his deposition testimony, Burditt admitted:

Q. And so based on the title search that you received from Traditional, you were aware prior to the closing that the records of Fulton County showed that the Advanta mortgage had been assigned to someone named Emanuel Walker; is that correct?

A. Yes.

Q. All right. So you had actual knowledge of that assignment; is that correct?

A. Yes.

(Burditt Dep., p. 36 at Fact App. Tab B-6.) Burditt also admits that he understood before he certified title that "[a]s of June 2004, there was an assignment from Heath Williams to Emanuel Walker". (Defs.' Statement of Uncontested Facts ¶ 36; Burditt Dep., pp. 36, 142-146 at Fact App. Tabs B-6, B-26.) Burditt admits that Traditional Title's title abstract stated Emanuel Walker's current address, 1550 Versailles Drive, S.W., Atlanta, Georgia 30331, as well as the current address for Walker's attorney, Heath Williams, 170 Mitchell Street, SW, Atlanta, Georgia 30303. (Defs.' Statement of Uncontested Facts ¶ 37; Burditt Dep., p. 36 at Fact App. Tab B-6; Burditt Dep., Chase Ex. 14 at Fact App. Tab F.)

Despite having actual knowledge that the Fulton County records show that the Security Deed had been assigned to Walker, Burditt never asked

Traditional Title to obtain a complete chain of title for the Security Deed. (Defs.' Statement of Uncontested Facts ¶ 38; Burditt Dep., pp. 149, 156 at Fact App. Tabs B-27, B-28.) Moreover, at no point before the March 9, 2005 closings of the Polar Rock Property did Burditt or any other representative of Plaintiff Stevens & Cooper bother to contact Third-Party Defendant Chase, Emanuel Walker, or Heath W. Williams, all of whom were shown by the title abstract to have held the Security Deed at some point. (Defs.' Statement of Uncontested Facts ¶ 39; Burditt Dep., pp. 36-37, 40, 156-59 at Fact App. Tabs B-6, B-8, B-29.) Burditt failed to investigate the Security Deed even though he admitted that, under the circumstances, the proper procedure would have been to contact the last known holder of the deed, Emanuel Walker. (Defs.' Statement of Uncontested Facts ¶¶ 40-41; Burditt Dep., pp. 29-30 at Fact App. Tab B-2.) Specifically, Burditt testified:

Q: Let's start over. If you discover a security deed of record in which the seller cannot provide you with information, what steps do you take then?

A: I would try to track down that lender and get the requisite information as to whether that loan is still open or is paid off.

Q: All right. And so you would contact the lender that – you would check your title, and then the title has indicated that there is a security deed out there. And then you would contact the lender that is shown on the security deed or that the security – to which the security deed has

been assigned, and try to determine the status of the loan; is that correct?

A: If there was a mortgage on the title and the seller told me that he did not have a mortgage and was not making any payments at that point, I would call, try to contact the last lender listed on the title, yes.

Q: All right. So the last holder of the loan?

A: Yes.

Q: All right. Whoever that may be based on what you found out at the record room; is that correct?

A: Yes.

(*Id.*) In the instant case, however, Burditt did not attempt to contact the last known holder of the Security Deed shown on Traditional Title's title abstract. (Defs.' Statement of Uncontested Facts ¶ 41; Burditt Dep., pp. 36-37 at Fact App. Tab B-6.) Instead, Burditt merely contacted Defendant Moreland (who had closed a prior, unrelated sale of the Polar Rock Property) to inquire how Defendant Moreland had dealt with the Security Deed. (Defs.' Statement of Uncontested Facts ¶ 42; Moreland Dep., p. 214 at Fact App. Tab A-5.)

Burditt's testimony is clearly insufficient to demonstrate a misrepresentation of fact. Burditt testified that he "might have had one" telephone conversation with Defendant Moreland before the March 9, 2005 sale of the Polar Rock Property. (Defs.' Statement of Uncontested Facts ¶ 43; Burditt Dep., pp. 38-39 at Fact App. Tab B-7.) Burditt could not recall the

substance of any conversation with Defendant Moreland. (Defs.' Statement of Uncontested Facts ¶ 44; Burditt Dep., pp. 38-39 at Fact App. Tab B-7 (testifying, "*I cannot recall any specific conversations with Mr. Moreland*") (emphasis added); Burditt Dep., pp. 149-50 at Fact App. Tab B-27 (testifying that Burditt cannot swear to a jury that he even spoke to Defendant Moreland, much less the substance of any such conversation).) Further, Burditt cannot recall whether he spoke with any person in Defendant Moreland's office other than Defendant Moreland before closing the sales of the Polar Rock Property. (Defs.' Statement of Uncontested Facts ¶ 45; Burditt Dep., pp. 149-50 at Fact App. Tab B-27.) Specifically, Burditt testified:

Q: But as you sit here today, are you able to actually swear to the jury that you have a personal recollection today of speaking to Donnie Moreland? Are you able to swear that to the jury today?

A: No, sir.

Q: *All right. And so you're not able to swear to the jury anything that you said to Donnie Moreland since you can't swear that you actually spoke with him; right?*

A: *That is correct.*

Q: *Now, as you sit here today, are you able to swear that you spoke to any other person in Donnie Moreland's office between March the 3rd and when you closed this transaction on March the 9th, 2005?*

A: *No, sir.*

(Burditt Dep., pp. 149-50 at Fact App. Tab B-27 (emphasis added).)

Unlike Burditt, Defendant Moreland recalls the substance of his conversations with Burditt. (Defs.' Statement of Uncontested Facts ¶ 46; Moreland Dep. pp. 95, 184 at Fact App. Tabs A-2, A-4.) In particular, Defendant Moreland testified:

Q: Were the communications occurring between Charles Burditt at Stevens & Cooper and yourself personally with regard to the Advanta outstanding security deed?

A: Yes. Not just me and not just Charles, but, yes, we had conversations.

Q: Do you remember how many conversations you personally had with Charles before his closing on 3/9?

A: No. Two, three maybe.

Q: Two or three telephone conversations?

A: (Witness nods head affirmatively.)

(Moreland Dep., p. 184 at Fact App. Tab A-4.) Concerning the substance of these conversations, Defendant Moreland testified:

Q: Okay. Do you remember the substance of the conversations?

A: Yes. It was did you do a transaction? Where are the deeds? *How did you handle the lien?*

Q: Brief?

A: Or how did you handle – yeah, he needed help based on my knowledge of the situation at the time *as to what I did.*

(*Id.*, p. 214 at Fact App. Tab A-5 (emphasis added).)

Burditt called Defendant Moreland to ask what steps Moreland had taken to certify title for the Polar Rock Property given the existence of the Security Deed. (Defs.' Statement of Uncontested Facts ¶ 47; Moreland Dep. pp. 95, 184, 214 at Fact App. Tab A-2, A-4, A-5; *see also* Affidavit of Donald Moreland ¶¶ 5-6, Filed January 8, 2007, hereinafter cited "Moreland Aff. ¶ ___", at Fact App. Tab R.) Burditt did not ask Moreland to represent from his personal knowledge whether the Security Deed had actually been cancelled. (Defs.' Statement of Uncontested Facts ¶ 48; Moreland Dep. pp. 95, 184, 214 at Fact App. Tab A-2, A-4, A-5; Moreland Aff. ¶¶ 6, 8 at Fact App. Tab R.) Moreover, Burditt never engaged, retained, or offered to pay Defendant Moreland to provide a title opinion or legal research concerning the status of the Security Deed. (Defs.' Statement of Uncontested Facts ¶ 60; Burditt Dep., p. 47 at Fact App. Tab B-10.) Instead, Burditt asked what steps Defendant Moreland had taken to *satisfy himself* that the Security Deed had been cancelled. (Defs.' Statement of Uncontested Facts ¶ 49; Moreland Dep. pp. 95, 184, 214 at Fact App. Tab A-2, A-4, A-5; Moreland Aff. ¶¶ 6, 8 at Fact App. Tab R.)

In response to Burditt's questions, Defendant Moreland truthfully stated that he decided to certify unencumbered title after a representative of Third-Party Defendant Chase had told him that the debt underlying the Security

Deed had been paid off and that the Security Deed would be cancelled. (Defs.' Statement of Uncontested Facts ¶ 50; Moreland Aff. ¶ 7 at Fact App. Tab R.) The October 12, 2006 Affidavit of Thomas E. Reardon⁴ ("Reardon Affidavit"), Mortgage Officer and authorized representative of Third-Party Defendant Chase, confirms the occurrence and the substance of Defendant Moreland's conversation with the Chase representative about the Security Deed. (Defs.' Statement of Uncontested Facts ¶ 51; *see also* Reardon Aff. ¶¶ 7, 9 at Fact App. Tab Q.) In particular, the Reardon Affidavit states, "[w]hen Chase operators were contacted by persons in February inquiring about the status of the loan, operators who reviewed the account saw that it showed a zero balance and assumed the Advanta note had been paid off". (Defs.' Statement of Uncontested Facts ¶ 52; Reardon Aff. ¶ 7 at Fact App. Tab Q.) Further, the Reardon Affidavit states, "various [Chase] employees misread the account records believing that the reported zero balance on the Williams account indicated that the Advanta note and the Advanta Security Deed had been paid off rather than assigned". (Defs.' Statement of Uncontested Facts ¶ 53; Reardon Aff. ¶ 9 at Fact App. Tab Q.)

Shortly after their initial conversation, Defendant Moreland and Burditt exchanged facsimiles. (Defs.' Statement of Uncontested Facts ¶ 55; Moreland

⁴ On about October 17, 2006, Third-Party Defendant Chase filed an original copy of this affidavit with the Court.

Dep., p. 95 at Fact App. Tab A-2.) On March 9, 2005, Defendant Moreland sent Burditt a facsimile reiterating, "S/D [Security Deed] in favor of Avanta National Bank (25447/313) \$45,000.00 is paid off. They are to have it cancelled and send us confirmation but have not done so yet. Takes 90-120 days". (Defs.' Statement of Uncontested Facts ¶ 56; Moreland Dep., pp. 94-98 at Fact App. Tab A-2; *see also* Moreland Dep., Chase Ex. 7 at Fact App. Tab C.) Additionally, Defendant Moreland sent Burditt a facsimile containing a copy of his marked up title commitment, which also indicated Defendant Moreland's understanding that the Security Deed had been paid off. (Defs.' Statement of Uncontested Facts ¶ 57; Burditt Dep., p. 45 at Fact App. Tab B-9; Moreland Dep., pp. 115-19 at Fact App. Tab A-3; Moreland Dep., Chase Ex. 12, p. 3 at Fact App. Tab E.) The handwritten notes on Defendant Moreland's title commitment concerning the Security Deed state, "Assigned to Chase; Paid Off 4-15-04; Request for release sent 2/28/05. 90-120 day turn around". (Defs.' Statement of Uncontested Facts ¶ 58; Moreland Dep., Chase Ex. 12, p. 3 at Fact App. Tab E.)

Significantly, Burditt testified that he recognized the contradiction between the information from Third-Party Defendant Chase provided by Defendant Moreland and the information contained in Traditional Title's title abstract, but he did nothing to resolve it. (Defs.' Statement of Uncontested

Facts ¶ 59; Burditt Dep., pp. 58-60 at Fact App. Tab B-13.) In fact, Burditt should have known that the information about the Security Deed represented by Third-Party Defendant Chase was incorrect, because Traditional Title's title abstract and the attached records plainly show that, in April or May 2004, third-Party Defendant Chase assigned the Security Deed to a third party named Heath Williams, who subsequently assigned the it to Emanuel Walker. (Defs.' Statement of Uncontested Facts ¶¶ 34, 54; Reardon Aff. ¶¶ 3-4 at Fact App. Tab Q; Burditt Dep., Def. Ex. 8 at Fact App. Tab N.) These assignments occurred approximately nine months before Third-Party Defendant Chase represented that the note had been paid off and the Security Deed would be cancelled, and approximately nine months before Defendant Moreland sent facsimiles to Plaintiff Stevens & Cooper relaying the Chase representative's statements about the Security Deed. (Defs.' Statement of Uncontested Facts ¶ 54; Reardon Aff. ¶¶ 3-4 at Fact App. Tab Q.) Nonetheless, Burditt failed to investigate. Specifically, Burditt admitted:

Q: All right. And as we were previously discussing, you were aware that contrary to what Mr. Moreland said, that there on record was a series of assignments of the Advanta mortgage that ultimately ended up in Emanuel Walker's name; is that correct?

A: As of the time of the title examination, the title examination reflects the last assignment to Mr. Walker, correct.

Q: All right. So as on the record, the records that were available to your title searcher, the title on the record was in – for the Advanta security deed was held by Emanuel Walker; is that correct?

A: That's correct.

* * *

Q: All right. *And you took no steps to reconcile the inconsistent information you received from Mr. Moreland with the record title showed to you on the abstract; is that correct?*

* * *

A: *That is correct.*

(Burditt Dep., pp. 58-60 at Fact App. Tab B-13 (emphasis added).)

Concerning Defendant Moreland's oral and facsimile communications, Burditt understood that Defendant Moreland was simply conveying information obtained from Third-Party Defendant Chase as opposed to information about which Defendant Moreland had personal knowledge. (*See* Burditt Dep., pp. 67-68.) Specifically, Burditt testified:

Q: So, but in any event, somehow [Moreland] represented to you that he obtained information from Chase concerning the loan; is that correct?

A: That is correct, yes.

(Defs.' Statement of Uncontested Facts ¶ 60; Burditt Dep., pp. 67-68 at Fact App. Tab B-16.) No other conclusion would be possible, because both of Defendant Moreland's facsimile's indicated that he had requested a formal

cancellation for the Security Deed but that Third-Party Defendant Chase had not yet issued one. (Defs.' Statement of Uncontested Facts ¶¶ 56, 58; Moreland Dep., pp. 94-98 at Fact App. Tab A-2; *see also* Moreland Dep., Chase Ex. 7 at Fact App. Tab C; Moreland Dep., Chase Ex. 12, p. 3 at Fact App. Tab E.) Defendant Moreland never represented that he had personal knowledge concerning the status of the Security Deed other than the information he had been provided by the representative of Third-Party Defendant Chase. (Defs.' Statement of Uncontested Facts ¶ 60; Moreland Aff. ¶ 8 at Fact App. Tab R.) Despite this, Burditt admitted that he took no steps to verify the accuracy of the information from Third-Party Defendant Chase, even though Burditt had no way of knowing whether this information was reliable. (Defs.' Statement of Uncontested Facts ¶ 61; Burditt Dep., pp. 67-69 at Fact App. Tab B-16.) In particular, Burditt testified:

Q: So you didn't know whether Mr. Moreland had actually contacted the right folks at Chase or not; is that correct?

A: I have no way of knowing that, that is correct.

Q: All right. You don't know the quality – whether the information he received had any quality to it at all, whether it was true or not; is that correct?

A: That is correct.

Q: And you don't know whether it was completely mistaken information from Chase; is that correct?

A: That is correct.

Q: All right. And you made no effort to ascertain whether this information was accurate or not; is that correct?

A: That is correct.

(Burditt Dep., pp. 67-69 at Fact App. Tab B-16.)

Significantly, although Burditt admitted that he had no way to verify the accuracy of Third-Party Defendant Chase's representations, Burditt also testified that *there is no evidence Moreland intentionally misled him*. (Defs.' Statement of Uncontested Facts ¶ 62; Burditt Dep., pp. 111-12 at Fact App. Tab B-21.) Specifically, Burditt testified:

Q: All right. Now, is it your contention that Mr. Moreland and Moreland & Lerman intentionally misrepresented whether the security deed had been paid off?

A: I have no way of knowing that whatsoever.

Q: You have no information that would indicate that Mr. Moreland intentionally misled you?

A: I have no information to indicate that he intentionally misled me, that is correct.

(Burditt Dep., pp. 111-12 at Fact App. Tab B-21.)

Thus, Plaintiffs have no evidence suggesting that Defendant Moreland misrepresented either the steps he took in attempting to certify unencumbered title to the Polar Rock Property or the substance of his communications with Third-Party Defendant Chase. (Defs.' Statement of Uncontested Facts ¶ 63;

Moreland Dep., pp. 82-83 at Fact App. Tab A-1; Burditt Dep., pp. 111-12 at Fact App. Tab B-21.) In fact, the only evidence on this point is Defendant Moreland's testimony that he personally called a representative of Third-Party Defendant Chase, who stated that the debt underlying the Security Deed had been paid and that the Security Deed would be cancelled.⁵ (*Id.*) This uncontradicted evidence shows that Defendant Moreland truthfully represented to Burditt that he had acted in reliance on Third-Party Defendant Chase's representation that the Security Deed would be canceled at a time in the future. This is not a representation concerning the status of the Security Deed; rather it is a representation concerning Defendant Moreland's actions and what Chase representatives had stated would be done in the future. In fact, Defendant Moreland never suggested that he had personal knowledge concerning the status of the Security Deed other than what he had been told

⁵ During this conversation, Defendant Moreland asked the Chase representative to look up the account history for the Security Deed on her computer. (Moreland Dep., p. 83 at Fact App. Tab A-1.) The Chase representative told Defendant Moreland that the loan secured by the Security Deed was paid off on April 5, 2004. (*Id.*) Defendant Moreland then asked, "what makes you believe that the loan was paid in full and not assigned to another company?" (*Id.*) The Chase representative answered, "because I'm looking at the account history". (*Id.*) Next, Defendant Moreland asked, "are you telling me that you're looking at the account history and you see payments made on a regularly scheduled payment schedule and that it is brought to a zero balance?" (*Id.*) To this, the Chase representative responded, "yes". (*Id.*)

by Third-Party Defendant Chase, and there is no evidence to the contrary. (Defs.' Statement of Uncontested Facts ¶ 64; Moreland Aff. ¶ 8.)

Regardless, on March 9, 2005, *relying on nothing more than the information received from Defendant Moreland (which Burditt admits to be unreliable hearsay), and ignoring the documents included with his own title searcher's report demonstrating that the Security Deed had been assigned to Emanuel Walker and was unsatisfied of record*, Burditt closed the sale of the Polar Rock Property to 2700 Polar Rock Trust, Mike Cherwenka trustee ("Polar Rock Trust"); then, later the same day, Burditt closed the sale of the Polar Rock Property from Polar Rock Trust to Atlas Realty. (Defs.' Statement of Uncontested Facts ¶ 65; Burditt Dep., pp. 46-49, 59, 65, 75-81, 89-92, 155-57 at Fact App. Tabs B-10, B-14, B-15, B-18, B-28; Burditt Dep., Chase Exs. 29, 30, 31, 32, and 33 at Fact App. Tab G, Tab H, Tab I, Tab J, and Tab K.)

Atlas Realty purchased the Polar Rock Property for \$64,000.00, and on March 9, 2005, an attorney from Plaintiff Stevens & Cooper issued a title insurance policy in the amount of \$64,000.00 to Atlas Realty. (Defs.' Statement of Uncontested Facts ¶ 66; Burditt Dep., pp. 92-95 at Fact App. Tab B-20; Burditt Dep., Chase Ex. 34 at Fact App. Tab L.) Plaintiff Stevens & Cooper did these acts despite the fact that Plaintiff's own title search firm,

Traditional Title, had provided Plaintiff with *actual notice* that the Security Deed had been assigned to Emanuel Walker *and was unsatisfied of record*.

In May 2005, Emanuel Walker, acting through his attorney, Heath Williams, declared the debt underlying the Security Deed to be in default and advertised the Polar Rock property for foreclosure sale; thereafter, on June 7, 2005, Walker foreclosed on the property and sold it on the Fulton County Courthouse steps to Neighborhood Investment Group, LLC for \$63,500.00. (Defs.' Statement of Uncontested Facts ¶ 67; Burditt Dep., pp. 161-62 at Fact App. Tab B-30; Burditt Dep., Def.'s Ex. 11 at Fact App. Tab P.) After this, Neighborhood Investment Group, LLC contacted Atlas Realty to demand that Atlas Realty turn over the Polar Rock Property. (Defs.' Statement of Uncontested Facts ¶ 68; Burditt Dep., p. 163 at Fact App. Tab B-30.)

III. ARGUMENT AND CITATION OF AUTHORITIES.

Plaintiff Fidelity and Plaintiff Stevens & Cooper have sued Defendant Moreland for negligent misrepresentation. To prevail, Plaintiffs must establish: (1) that Defendant Moreland negligently supplied false information to Plaintiff Stevens & Cooper; (2) that Plaintiff Stevens & Cooper's reasonably relied upon the false information; and (3) that Plaintiff Stevens & Cooper sustained economic injury proximately caused by its reliance on the false information. *Hattaway v. Conner*, 635 Ga. App. 330, 330 (2006);

Marquis Towers, Inc. v. Highland Group, 265 Ga. App. 343, 345-46 (2004); *Hardaway Co. v. Parsons, Brinckerhoff, Quade & Douglas, Inc.*, 267 Ga. 424, 426 (1997); *Newitt v. First Union Nat'l Bank*, 270 Ga. App. 538, 546 (2004). In order to survive this motion for summary judgment, Plaintiffs must show evidence demonstrating each element. *Hattaway*, 635 Ga. App. at 330 (citing *Williams v. Fallaize Ins. Agency*, 220 Ga. App. 411, 413 (1996)). If Plaintiffs fail to do so, "[a]ll of the other disputes of fact are rendered immaterial" and Plaintiffs' negligent misrepresentation claim "tumbles like a house of cards". *Metropolitan Atlanta Rapid Transit Authority v. Mosley*, 280 Ga. App. 486, 487-88 (2006) (citing *Hillcrest Foods v. Kiritsy*, 227 Ga. App. 554, 554-55 (1997)).

As noted above, Plaintiffs' claim fails and summary judgment must be granted in Defendant Moreland's favor because: (1) Plaintiff Stevens & Cooper cannot demonstrate reasonable reliance as a matter of law; and (2) there exists no evidence that Defendant Moreland misrepresented any fact.

A. **Defendant Moreland is Entitled to Summary Judgment Because Undisputed Facts Show That Plaintiff Stevens & Cooper Did Not Reasonably Rely on the Representations by the Moreland Defendants.**

Plaintiffs' negligent misrepresentation claim fails because Plaintiffs cannot offer admissible evidence demonstrating reasonable reliance on

Defendant Moreland's statements concerning the Security Deed. *See Marquis Towers*, 265 Ga. App. at 345-46; *see also Newitt*, 270 Ga. App. at 546.

Reliance may be deemed unreasonable as a matter of law when a plaintiff with the ability to perform effective due diligence chooses instead to rely blindly on a misrepresentation of the defendant. *See, e.g., Johnston v. Correale*, 272 Ga. App. 502, 505 (2005). In the instant case, Plaintiff Stevens & Cooper failed to perform *any* due diligence concerning the Security Deed despite having actual knowledge that Third-Party Defendant Chase *was not* the holder of the Security Deed and that the Security Deed had been assigned to Emanuel Walker long before Defendant Moreland spoke with Chase representatives. (*See supra* § II, pp. 20-22.) Plaintiff Stevens & Cooper's authorized agent, Burditt, readily admits that he possessed contact information for both Walker and Walker's attorney, Heath Williams. (*See supra* § II, p. 13.) Burditt further admits that, under the circumstances, he should have contacted the last known holder of the deed, Walker. (*Id.*) Despite this admission, Burditt made *no* effort whatsoever to contact Walker, Williams, or Third-Party Defendant Chase about the status of the Security Deed. (*See supra* § II, pp. 14-15.) Plaintiff Stevens & Cooper performed *no* due diligence and instead now contends that it blindly relied on a hearsay representation that Plaintiff's agent admits was unreliable. (*Id.*)

Summary judgment is appropriate in negligent misrepresentation cases like the instant case where the plaintiff had the ability to perform effective due diligence but failed to do so. In *Johnston v. Correale*, for example, the Court found that the plaintiff "was fully capable of doing independent research" to verify the truth of the defendant's misrepresentations but that "[s]he simply chose not to do so". *Id.*, at 505. Accordingly, the Court held that the plaintiff's negligent misrepresentation claim lacked merit because she failed to show reasonable reliance.⁶ *Id.* Similarly, in *Hardage v. Lewis*, 199 Ga. App. 632, 633-34 (1991), the Court of Appeals found that the "[a]ppellants made no independent effort to verify the sellers'

⁶ A significant number of other decisions also support this conclusion. In *Consulting Construction Corporation v. Edwards*, 207 Ga. App. 296, 298 (1993), the Court of Appeals held that the plaintiff's "blind reliance" on the defendant's representation was unreasonable was a matter of law because, "[b]efore signing the sales contract, appellants did not request that appellee disclose income tax records for the purpose of verifying appellee's statements regarding the gross receipts of the business they were purchasing". In *Real Estate International, Inc. v. Buggay*, 220 Ga. App. 449, 451 (1996), the Court of Appeals noted that "the alleged misrepresentation concerned an existing characteristic of the property that [the plaintiff] Buggay could have discovered independently by following the recommendation of his own home inspector to obtain a report from a drainage specialist" and held therefore that "the record shows it to be plain and indisputable that Buggay did not and could not have justifiably relied upon any representations regarding the water problems at the house". In *Fann v. Mills*, 248 Ga. App. 460 (2001), the Court of Appeals noted that the plaintiff, Mills, "clearly had the means to discover the cause of the water damage" and held therefore that "[i]n failing to avail herself of those means, she cannot now complain that she was somehow deceived by the defendants".

representations", and held therefore that the "appellants cannot assert that they were injured as a result of their *blind reliance* upon the seller's representations". *Id.* (emphasis added).

Hardage is particularly relevant to the instant case. In *Haradge*, a document containing an impediment to clear title for a piece of real property had been recorded, such that the appellants would have discovered it had they made any effort to search title. *Id.* The appellants, however, made no such effort, and the Court held that:

[i]t is presumed that a purchaser has examined every deed and instrument affecting the title. He is charged with notice of every fact *shown by the records*, and is presumed to know every other fact *which an examination suggested by the records would have disclosed*.

Id. (emphasis added). When the Court of Appeals found that the appellants had "made *no independent effort* to verify the sellers' representations", the Court held that the lack of due diligence precluded liability and affirmed the Superior Court's decision to grant summary judgment. *See Hardage*, 199 Ga. App. at 633-34.

In the instant case, Burditt testified that he did not know Defendant Moreland or anyone at the law firm of Defendant Moreland & Lerman, PC, and he did not know anything about the ability or skill of Defendant Moreland or anyone at Defendant Moreland & Lerman, PC. (Defs.' Statement of

Uncontested Facts ¶ 69; Burditt Dep., p. 37 at Fact App. Tab B-6.) Moreover, Burditt never engaged, retained, or offered to pay Defendant Moreland to provide a title opinion or legal research concerning the status of the Security Deed, and Defendant Moreland never stood to benefit in any way from Plaintiff Stevens & Cooper's closing of the sale of the Polar Rock Property. (Defs.' Statement of Uncontested Facts ¶ 60; Burditt Dep., p. 47 at Fact App. Tab B-10.) Further, Burditt admitted that he knew the information provided by Defendant Moreland contradicted information supplied by Plaintiff Stevens & Cooper's title searcher, Traditional Title. (*See supra* § II, pp. 13-14.) Further, Plaintiff Stevens & Cooper had actual possession of documents demonstrating that Third-Party Defendant Chase's statement about the Security Deed was false. (*Id.*) Burditt failed to investigate the Security Deed even though he admitted that, under the circumstances, the proper procedure would have been to contact the last known holder of the deed, Emanuel Walker. (*Id.*) Plaintiff Stevens & Cooper admittedly made *no independent effort* to verify the truth of Third-Party Defendant Chase's representation as relayed by Defendant Moreland. (*Id.*) Specifically, Burditt testified:

Q: All right. So you made no attempt to reconcile what was shown on the open record and ... the information you had received from Mr. Moreland; is that correct?

A: Yes, that's correct.

(Burditt Dep., p. 48.) Therefore, as a matter of law, Plaintiff Stevens & Cooper did not reasonably rely on Third-Party Defendant Chase's representation about the Security Deed. *Hardage*, 199 Ga. App. at 633-34. Plaintiffs' negligent misrepresentation claim thus "tumbles like a house of cards", and summary judgment must be granted in Defendant Moreland's favor. *Mosley*, 280 Ga. App. at 487-88.

B. Defendant Moreland is Entitled to Summary Judgment Because Undisputed Facts Show That He Did Not Misrepresent Any Fact to Plaintiff Stevens & Cooper.

Plaintiffs' negligent misrepresentation claim also fails because Plaintiffs cannot present admissible evidence demonstrating that Defendant Moreland supplied false information to Plaintiff Stevens & Cooper. *Hattaway v. Conner*, 635 Ga. App. 330, 330 (2006) (citing *Johnston v. Correale*, 272 Ga. App. 502, 505 (2005)).

The undisputed evidence demonstrates that Burditt asked Defendant Moreland what steps Defendant Moreland had taken to certify unencumbered title for the Polar Rock Property, and how Defendant Moreland had dealt with the outstanding Security Deed. (*See supra* § II, pp. 17-19.) To this question, Defendant Moreland responded truthfully and accurately by describing the investigation he made before certifying unencumbered title, including a description of the conversation in which a representative of Third-Party

Defendant Chase stated to him that the Security Deed would be cancelled because the underlying debt had been paid off. (*Id.*) Defendant Moreland also sent facsimile communications demonstrating that he had relied on the representation of Third-Party Defendant Chase, which had stated that the Security Deed would be cancelled but which had not yet issued a formal cancellation. (*See supra* § II, pp. 19-20.)

Plaintiff Stevens & Cooper's representative, Burditt, has testified that there is no evidence that Defendant Moreland intentionally misrepresented the substance or occurrence of this conversation with Third-Party Defendant Chase. (*See supra* § II, pp. 23-24.) In fact, there is no evidence that Defendant Moreland misrepresented the substance of this conversation at all. Instead, the evidence demonstrates that Defendant Moreland truthfully and accurately described the information on which he had relied in closing the sale of the Polar Rock Property. (*See supra* § II, pp. 17-20.) Although Defendant Moreland shared information from his files concerning the basis for his own decision to certify title and close the sale of the Polar Rock Property, Defendant Moreland *had no duty* to safeguard Plaintiff Stevens & Cooper's interests by guaranteeing the accuracy of Third-Party Defendant Chase's statement. Moreover, Plaintiff Stevens & Cooper never engaged,

retained, or paid Defendant Moreland to undertake such a duty or to make a personal representation concerning the actual status of the Security Deed.

In an apparent attempt to shift the blame for their own negligence, Plaintiff Stevens & Cooper is now attempting to recharacterize as a misrepresentation Defendant Moreland's truthful and accurate recount of his conversation with Third-Party Defendant Chase and his subsequent decision to certify unencumbered title to the Polar Rock Property. This characterization is inaccurate, because Defendant Moreland never represented that he had personal knowledge that the Security Deed was cancelled. Rather, Defendant Moreland was clear that, in certifying unencumbered title, he had relied on the Third-Party Defendant Chase's representation about the Security Deed and acts it would take in the future. (*See supra* § II, pp. 18-19, 22-23.) Moreover, Defendant Moreland was clear that he was waiting for Third-Party Defendant Chase's written notice to confirm the cancellation. (*See supra* § II, pp. 19-20.)

The testimony of Plaintiff Stevens & Cooper's representative, Burditt, confirms that Defendant Moreland was clearly describing information he had obtained from a third-party as opposed to making a representation of fact based on his personal knowledge:

Q: So, but in any event, somehow [Moreland] represented to you that he obtained information from Chase concerning the loan; is that correct?

A: That is correct, yes.

(Burditt Dep., pp. 67-68 at Fact App. Tab B-16.) Similarly, Plaintiff Stevens & Cooper's counsel appears to have interpreted Defendant Moreland's communications to Plaintiff Stevens & Cooper to be nothing more than representations concerning what he had been told by Third-Party Defendant Chase:

Q: But when you wrote here takes 90 to 120 days, *you were referencing information that you had been given by Chase, by either Sonia or Deb at Chase*, that they would cancel the security deed within 90 to 120 days?

A: That Chase would, yes.

(Moreland Dep., pp. 215-17; *see also* Chase Ex. 7.) Once again, there is no evidence indicating that Defendant Moreland misrepresented any fact in relaying the substance of this conversation to Plaintiff Stevens & Cooper. (See *supra* § II, p. 24.)

Moreover, at the time of Defendant Moreland's supposedly negligent misrepresentation, Moreland was responding to a question concerning the basis for his actions in clearing title for the Polar Rock Property. The truth and accuracy of Defendant Moreland's response does not depend on the accuracy of Third-Party Defendant Chase's statement concerning the Security

Deed. Rather, it depends only on whether Defendant Moreland truthfully described the basis for his actions, which the uncontradicted evidence shows that he did.

Accordingly, Plaintiffs cannot prove that Defendant Moreland misrepresented any fact, and Plaintiffs' negligent misrepresentation claim "tumbles like a house of cards". *Mosley*, 280 Ga. App. at 487-88.

IV. CONCLUSION.

As demonstrated above, Plaintiff Fidelity and Plaintiff Stevens & Cooper cannot prove essential facts necessary to support their negligent misrepresentation claim. In particular, Plaintiffs cannot prove that Defendant Moreland misrepresented any fact. Further, Plaintiffs cannot prove that their blind reliance on Defendant Moreland's communication was reasonable. Accordingly, Defendants respectfully requests that Defendants' Motion for Summary Judgment be granted and that summary judgment be entered against Plaintiffs on Counts I, II, and III of Plaintiffs' Complaint.

[Signature on following page]

Dated this 8th day of January, 2007.

Respectfully submitted,

By: 

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served a true and correct copy of the within and foregoing "Brief in Support of Defendants' Motion for Summary Judgment against Plaintiffs Stevens & Cooper, LLC and Fidelity National Title Insurance Co.", upon the following parties by manner of service as indicated below, in properly addressed envelopes, addressed as follows:

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