

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE MARVIN H. DUKES, III
BEAUFORT COUNTY MASTER-IN-EQUITY AND
SPECIAL CIRCUIT COURT JUDGE

CASE NO.: 2014-CP-07-0052
APPELLATE CASE NO.: 2018-001969

RECEIVED
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SC Court of Appeals

Lady Beaufort, LLC &
Tideland Realty, Inc.

Respondents/Appellants,

vs.

Hird Island Investments, Inc., Sherwood N. Fender,
Addison D. Fender, Martha B. Fender, William B. Bowen,
Lady Kemmerlin, LLC, Brickyard Holdings, Inc. and
A&K Holding Co., LLC,

Defendants,

AND

William M. Bowen,

Third-Party Plaintiff,

v.

James S. Kerr and Matt Trumps,

Third-Party Defendants,

Of Which Hird Island Investments, Inc.
and Sherwood N. Fender are

Appellants/Respondents.

RECORD ON APPEAL
VOLUME III

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INDEX

VOLUME I

Order of the Honorable Marvin H. Dukes, III dated October 26, 2018.....	1
Order Granting in Part and Denying in Part Hird Island’s Motion to Reconsider dated February 14, 2018	13
Order of the Honorable Marvin H. Dukes III filed on May 11, 2017.....	18
Order of Reference filed November 25, 2014	33
Notice of Appeal dated November 14, 2018	35
Notice of Appeal filed November 5, 2018.....	37
Summons and Complaint filed on January 7, 2014	39
Answer and Counterclaim of Inverness filed on February 5, 2014	44
Answer and Counterclaim of Hird Island filed on February 5, 2014	47
Amended Complaint filed on May 29, 2014	50
Answer and Counterclaim of Hird Island to the Amended Complaint filed on June 11, 2014.....	56
Second Amended Complaint filed on November 24, 2014	60
Answer to Second Amended Complaint of Hird Island and Sherwood Fender filed on November 13, 2014.....	66
Motion to Reconsider filed by Hird Island on May 19, 2017.....	70
Contract Between Lady Beaufort, LLC and Hird Island Investments, Inc. dated August 19, 2013	76
Transcript of Hearing held March 1, 2017.....	85

VOLUME II

Plaintiffs’ Exhibit 1.....	267
Plaintiffs’ Exhibit 1	269
Plaintiffs’ Exhibit 2.....	278
Plaintiffs’ Exhibit 3.....	281
Plaintiffs’ Exhibit 4.....	283

Plaintiffs' Exhibit 5.....	284
Plaintiffs' Exhibit 6.....	286
Plaintiffs' Exhibit 7.....	289
Plaintiffs' Exhibit 8.....	292
Plaintiffs' Exhibit 9.....	293
Plaintiffs' Exhibit 10.....	294
Plaintiffs' Exhibit 11.....	295
Plaintiffs' Exhibit 12.....	296
Plaintiffs' Exhibit 13.....	297
Plaintiffs' Exhibit 14.....	300
Plaintiffs' Exhibit 15.....	302
Plaintiffs' Exhibit 16.....	317
Plaintiffs' Exhibit 17.....	321
Plaintiffs' Exhibit 18.....	339
Plaintiffs' Exhibit 19.....	341
Plaintiff's Exhibit 20.....	342
Plaintiffs' Exhibit 2.....	343
Defendants' Exhibit 1.....	346
Defendants' Exhibit A.....	347
Defendants' Exhibit B.....	357
Defendants' Exhibit C.....	369
Defendants' Exhibit D.....	373
Defendants' Exhibit E.....	375
Defendants' Exhibit F.....	380
Defendants' Exhibit G.....	384
Defendants' Exhibit H.....	387
Defendants' Exhibit I.....	(does not exist)

VOLUME III

Transcript of Hearing held July 23, 2019.....	407
Exhibit 1.....	507
Certificate of Service.....	516

1 State of South Carolina) Court of Common Pleas
 2) 14th Judicial Circuit
 3 County of Beaufort) No.: 2014-CP-07-00052

4 LADY BEAUFORT, LLC &)
 5 TIDELAND REALTY, INC.,)
 6 PLAINTIFF(S),)
 7 vs.)
 8 HIRD ISLAND INVESTMENTS,)
 9 INC., SHERWOOD N. FENDER,)
 10 ADDISON D. FENDER, MARTHA)
 11 B. FENDER, WILLIAM B.)
 12 BOWEN, LADY KEMMERLIN,)
 13 LLC, BRICKYARD HOLDINGS,)
 14 INC., AND A&K HOLDING CO.,)
 15 LLC,)
 16 DEFENDANT(S),)
 17 AND)
 18 WILLIAM M. BOWEN,)
 19 THIRD-PARTY PLAINTIFF,)
 20 vs.)
 21 JAMES S. KERR AND MATT)
 22 TRUMPS,)
 23 THIRD-PARTY DEFENDANTS.)

HEARING
 July 23, 2018

21 Hearing reported by Deborah S. Thomas,
 22 Certified Verbatim Reporter and Notary Public in and
 23 for the State of South Carolina; said hearing held
 24 before Honorable Marvin H. Dukes, III, Beaufort
 25 County Master in Equity and Special Circuit Court

1 Judge in accordance with the South Carolina Rules of
 2 Civil Procedure, at the Beaufort County Courthouse,

000407

3 2018 07 23 - Hrg Transcript - Judge Dukes
102 Ribaut Road, Room 212, Beaufort, South Carolina
4 on July 23, 2018, at the hour of 9:19 a.m.

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25 CONTENTS

4

1		Page
2	Exhibit Index	4
3	ANDREW K. EPTING, JR.	
	Direct by Mr. Rannik	32
4	Cross by Mr. Kuhn	37
	Redirect by Mr. Rannik	40
5	Recross by Mr. Kuhn	43
	Redirect by Mr. Rannik	52
6	Recross by Mr. Kuhn	53
7	Certificate of Reporter	110
8	Word Index	

9

* * * * *

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EXHIBIT INDEX
Page 3

000409

11	Exhibits:	Marked at Page
12	(Exhibits retained by Clerk of Court.)	
13	Plaintiff's Exhibit 1	37
14	(Interrogatories)	
15	Plaintiff's Exhibit 2	40
16	(Affidavit)	
17	Plaintiff's Exhibit 3	63
18	(Contract)	
19	Plaintiff's Exhibit 4	72
20	(Transcript Excerpt)	

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1 This hearing is conducted in
2 accordance with the South Carolina Rules of Civil
3 Procedure.

4 JUDGE DUKES: Good morning. We are
5 here on 2014-CP-07-0052, Lady Beaufort versus Hird.
6 It is the 23rd of July, 9:19 a.m. I had seven
7 motions on the roster, but I understand there are
8 probably some additional matters that the parties
9 have agreed that we are going to discuss.

10 Attorney Bill Bowen is not yet here. He
11 is on his way, but my understanding is that all
12 parties, including Mr. Bowen, have agreed that we
13 will proceed and he will join us here in a little

14 while. So I'm happy to hear from you.

15 MR. RANNIK: Judge, good morning. As
16 an initial matter, certain of the seven motions are
17 -- have been resolved or mooted at this point.
18 Namely there was a May 2nd motion by Plaintiff to
19 dismiss two third-party complaints.

20 Those complaints, which were by Ms. Martha
21 Fender, and the second amended answer and
22 counterclaim by Bill Bowen have been voluntarily
23 dismissed as of Friday afternoon. So that motion is
24 moot.

25 Additionally, Mr. Epting and I were named

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1 as third parties in both of those answers and
2 counterclaims. And Mr. Cook -- Dawes Cook was going
3 to represent us today at this motion and defend us
4 on those, but his motion to dismiss also has been
5 mooted by the voluntary dismissal of those answers
6 and counterclaims.

7 Additionally, Judge, just as a preliminary
8 matter, there are two motions to dismiss filed by
9 Martha Fender on May 17th and by Bill Bowen on May
10 17th after each of those parties had answered in
11 this case. And therefore, they are procedurally
12 defective and we don't believe they should be heard.

13 Finally, there is a motion for summary
14 judgment by Lady Kemmerlin. And Mr. Ward and I have
15 been speaking. And we believe that we can resolve
16 this and get a release for Lady Kemmerlin. And we

17 can accomplish that in short order. Mr. Ward
18 suggested we speak before that motion be heard, but
19 we had also discussed perhaps hearing that motion
20 first in the proceedings so that Mr. Ward can --
21 it's the only motion that he's involved in. So if
22 we can resolve that he can get out of here before we
23 get into the weeds.

24 JUDGE DUKES: Wait. Did you say you
25 thought if you all spoke a minute you could resolve

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1 it or you said it still needs to be heard? I'm
2 confused.

3 MR. RANNIK: Well, we would need to
4 speak before we hear it. Perhaps we can resolve it.
5 If we can't, we would request that it be heard early
6 or first.

7 JUDGE DUKES: Oh. Well, why don't we
8 take a break and you all go talk for a second and
9 see if you can resolve it because I hate to hear --
10 spend 30 minutes hearing something and have to
11 decide on it if you all can resolve it in 10
12 minutes. So is that accurate?

13 MR. WARD: Absolutely. I don't think
14 it will take long.

15 (BREAK TAKEN)

16 JUDGE DUKES: Back on the record.

17 MR. WARD: We've resolved it, Your
18 Honor. I'd like to put something on the record.

19 JUDGE DUKES: All right. Go ahead,
Page 6

000412

20 please.

21 MR. WARD: First as a little bit of
22 history, as you know I'm Jason Ward. I represent
23 Lady Kemmerlin which was an entity that purchased
24 Lot 5, Palmetto Business Park in Lady's Island from
25 Martha Fender.

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1 We were named obviously as a party with
2 the allegations that the transaction should be
3 reversed under the Statute of Elizabeth. I have
4 agreed with counsel for Lady Beaufort, LLC, who
5 brought the claim that they will dismiss the claim
6 contingent upon our providing an affidavit to them
7 that says essentially that Lady Kemmerlin was indeed
8 a bona fide third party purchaser, has no
9 involvement or any connection or ownership interest
10 or anything of that nature with any of the other
11 Defendants.

12 And also the dismissal will have the right
13 to add Lady Kemmerlin back as a party to the extent
14 that the affidavit is otherwise provided to contain
15 things that are false as to the relationship with
16 Lady Kemmerlin and the other Defendants.

17 JUDGE DUKES: All right. That's
18 agreed, of course?

19 MR. RANNIK: That's agreed, Judge.

20 JUDGE DUKES: All right then. Who
21 will prepare an order that accomplishes that?

22 MR. WARD: I'm happy to do that, Your
Page 7

000413

23 Honor.

24 JUDGE DUKES: All right. Thank you
25 so much. And that's all, your entire involvement?

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9

1 MR. WARD: That is it. May I --

2 JUDGE DUKES: Okay. Yes, please.
3 Thank you. Have a great day.

4 MR. WARD: All right. Thank you.

5 JUDGE DUKES: All right. So let me
6 make sure I understand where we are for the rest of
7 these things. We are still going to have a hearing
8 on attorney fees; is that correct?

9 MR. RANNIK: That is correct, Your
10 Honor. Before there is a final judgment we will
11 need to have a hearing on that. Now, Plaintiff's
12 position is that under the contract we are entitled
13 to all attorneys fees that come out of the breach of
14 that contract including the fees we are incurring
15 today and going forward into the future.

16 Judge, the big picture here, the large
17 picture from our perspective, is that Mr. Fender has
18 indicated his intention to appeal this court's
19 ruling. And while Plaintiff's position is that he
20 actually can't appeal it until the supplemental
21 proceedings have been resolved given that he
22 consented to the amendment of the complaint for that
23 purpose, we believe that he will nonetheless likely
24 try to appeal once there is a final judgment.

25 So this shapes our approach. From our

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10

1 perspective it would be better for an appeal to go
2 up that encompasses all of the disputed issued with
3 a complete record rather than there be a piecemeal
4 series of appeals.

5 Along those lines we would actually
6 request that the hearing on attorneys fees be held
7 in abeyance until these other issues are resolved
8 and we have a more complete picture of what our
9 attorneys fees are.

10 JUDGE DUKES: But as I recall, and
11 I'll have to read back through this, it's been
12 awhile, the attorneys fees were a significant
13 portion of the damages. So at this point the
14 damages are not -- can't be calculated?

15 MR. RANNIK: That's correct, Your
16 Honor. And they continue to increase.

17 JUDGE DUKES: But you want to proceed
18 with these motions before we really have a final --
19 and some of these parties were brought in after the
20 initial hearing; is that accurate? I'm trying to
21 look through this very complicated situation.

22 MR. RANNIK: That is accurate, Judge.
23 The motion for consideration we had brought --
24 Plaintiff's had brought a motion to void certain
25 transfers. And it was correctly noted that such a

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11

1 motion should not be heard until all parties to
2 those transfers were brought into the case.

3 Your Honor asked Defendants, Mr. Fender
4 whether he would consent to our amending the
5 complaint for that purpose. And he did so consent.
6 So the order of this court's -- this court's order,
7 one of the two orders that was issued on February
8 14th authorized us to amend our complaint to bring
9 in these third parties.

10 JUDGE DUKES: All right. Any other
11 thoughts on the idea of not hearing the issue of
12 attorneys fees and proceeding on? And you all will
13 have to give me a list of what's left on the motions
14 here in a second. But the remaining motions? All
15 right. So there is general consensus then that we
16 will --

17 MR. KUHN: Oh, no. I object to that.

18 JUDGE DUKES: Oh, okay.

19 MR. KUHN: I thought you were asking
20 them.

21 JUDGE DUKES: Oh, no. I'm --

22 MR. KUHN: I object totally to
23 everything that was just said.

24 JUDGE DUKES: Can you be more
25 specific?

12

1 MR. KUHN: Yes, sir. It makes
2 absolutely no sense. They are saying do not render

2018 07 23 - Hrg Transcript - Judge Dukes
3 a final judgment. Leave it open so that somebody
4 can go ahead and appeal something that is not a
5 final judgment so we can come back and hear the rest
6 of the judgment after the appeal? It makes
7 absolutely no sense, plus it doesn't comply with the
8 law.

9 We have to have a final judgment before
10 any appeal can proceed, if an appeal is going to go.
11 And if -- it maybe that we have absolutely no
12 problem with the order that's issued after a final
13 judgment has been entered. We need to see what
14 decisions are going to be made on the attorney fee
15 issue.

16 And, secondly, Your Honor, simply because
17 someone consents to amending a pleading does not
18 mean that they consent to the substance of the
19 amendment. Let the amendment go through and then we
20 will address the merits of that amendment.

21 And it's our position the amendment has
22 absolutely no merit. We came to this courtroom, and
23 I was involved then, had a final hearing. A final
24 judgment was rendered. A motion to reconsider was
25 made.

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1 And then they amend their complaint to
2 allege multiple causes of action against some of the
3 same Defendants and adding new Defendants. There is
4 just no substantive procedural law or rule that
5 allows someone to amend their complaint after the

2018 07 23 - Hrg Transcript - Judge Dukes
trial has been held.

what they should have done is file a new action if they thought they had new causes of action to assert. You don't try a case and then amend your pleadings to bring it in. If any of this amendment has any merits, what they should do is get a final judgment, try to collect that final judgment.

If the judgment debtor is insolvent and they can prove he's insolvent, then they have a Statute of Elizabeth case. You don't chew it all in the same action.

So, yeah, we would like to go forward, hear the attorney fee issue, see what the decision is. And then a decision will be made do we agree with the decision or not. They may be appealing, not me. Nobody may appeal. No notice of intent to appeal has been filed in this case. They want you to assume we are going to appeal a non-final judgment. It just makes no sense.

MR. EPTING: Judge?

JUDGE DUKES: Yes, sir.

MR. EPTING: Drew Epting for the Plaintiffs. I think part of the issue here would be what is a final judgment now that there are additional parties and additional claims. And -- Part 1. Part 2, the rule specifically says that you can amend a complaint after judgment. That's written into the rule.

9 And so what happened, we thought it would
10 be more efficient because this subsequent pleading,
11 Judge, really was as a result of one of your
12 observations previously. We came before you at the
13 previous hearing and said several of these
14 transactions out of Mr. Fender occurred on the day
15 of the trial or even after your ruling. And that
16 they should be voided.

17 Your comment was, well, that may be true,
18 but I can't do that without the transferees being a
19 part. We agreed with you and said, yes. Okay. I
20 think that's probably right. Whereupon we said we'd
21 like to amend. Fred on behalf of Fender/Hird
22 Island, said we don't have any objection to that.
23 We amended.

24 And at the time we thought there were just
25 two transactions that had occurred that might be

15

1 subject to being set aside, and there turned out to
2 be more. So we amended to add the new parties who
3 were the beneficiaries of transfers out of Mr.
4 Fender.

5 So the nature of the case now is not just
6 the original transaction, but still my client trying
7 to get satisfaction for damages pursuant to the
8 agreement under the contract he signed.

9 And the proposition that we are making to
10 your Honor is that we have some limited discovery
11 surrounding the transferees, come back, let you rule

2018 07 23 - Hrg Transcript - Judge Dukes
12 of the whole thing. Put up our attorneys fees at
13 that time. And that would be more efficient in our
14 estimation.

15 otherwise we would have a hearing on
16 attorneys fees today. And we are prepared, Judge,
17 if you want to to go forward.

18 JUDGE DUKES: Yeah. I guess what
19 worries me is this. I think we can all acknowledge
20 the way Mr. Kuhn just described it is the normal way
21 to do things that we ordinarily see. I can't even
22 remember what the amount of the judgment is.

23 But certainly there's the possibility that
24 the final judgment after we deal with the attorneys
25 fees will be significantly lower than the amount of

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16

1 all of this transferred property.

2 And then we've brought all of these people
3 and parties in sort of for nothing. I mean, and as
4 Mr. Kuhn has correctly pointed out, it's possible
5 that other assets of the Defendant can stand for
6 this judgment and there would be no need to even
7 have a Statute of Elizabeth type of case.

8 MR. EPTING: And, Judge, we think
9 that's a very valid point and something that we
10 hoped might could be accomplished here today in that
11 we have an agreement with Mr. Fender and Hird Island
12 that any assets that they are in possession of will
13 remain in their possession.

14 If we had the same agreement that the

2018 07 23 - Hrg Transcript - Judge Dukes
15 transferees from Mr. Fender will not dispose of
16 assets without this court's approval, then we could
17 probably leave all of that, and it would just be a
18 matter of the wording of it just to make sure that
19 it's not porous and money is walking out the door.
20 And then we've solved a lot of problems.

21 We don't have to go forward with that
22 litigation. My client, to the extent that the
23 judgment may exceed the value of the assets that are
24 in Mr. Fender, they're available should we need
25 them.

17

1 MR. KUHN: Your Honor, right now
2 there is a judgment recorded at the courthouse for a
3 hundred and some thousand dollars against Mr.
4 Fender. He can't get rid of any property. They
5 have a judgment lien right now. If he gets rid of
6 any property it's going to be subject to a judgment
7 lien. I mean --

8 JUDGE DUKES: Is it against Hird
9 Island Investments? Again I've forgotten. This has
10 been so long I've forgotten this thing. Is that
11 judgment against Hird Island?

12 MR. EPTING: And Mr. Fender.

13 MR. KUHN: Both of them.

14 JUDGE DUKES: Does Hird Island have
15 assets that would satisfy whatever the outstanding
16 judgment is? I don't know.

17 MR. WARD: I don't know about Hird

18 2018 07 23 - Hrg Transcript - Judge Duker
Island, but Mr. Fender does.

19 JUDGE DUKES: Okay.

20 MR. KUHN: And, Judge, the nexus of
21 all of this were certain statements that were made
22 by Mr. Fender at the original trial of this case
23 where it was indicated that even should there be a
24 judgment against him, there would be no assets to
25 satisfy it. That is what prompted all of this to go

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1 forward. So if Mr. -- we are now hearing perhaps
2 that is not the case --

3 JUDGE DUKES: Well, let me ask you
4 this. If I disappeared for a minute and you all sat
5 down with Mr. Kuhn and he said, look, between Hird
6 Island and Mr. Fender here are some assets the total
7 of which equal or exceed the value of the
8 outstanding judgment.

9 First of all, I guess Mr. Kuhn is right,
10 they are going to be tied up by this judgment, but
11 to the extent you all have a concern you all might
12 be able to enter into some agreement specifically
13 with regard to these assets that says they are not
14 going anywhere pending this situation. You could
15 dismiss everybody else in this case, right?

16 MR. EPTING: If we were to also get
17 the approval, Judge, of the people who are holding
18 the property, the transferees from Mr. Fender.

19 JUDGE DUKES: No. No. What I'm
20 talking about, I think Mr. Kuhn has suggested that

2018 07 23 - Hrg Transcript - Judge Dukes
21 there are assets other than those that have been
22 transferred that exist. Is that, Fred, what I --

23 MR. KUHN: He can pay the judgment
24 out of the real estate assets, but --

25 JUDGE DUKES: Okay. I mean, do you

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19

1 want to take a second and talk to your client and
2 then you all -- because obviously this whole thing
3 with all of these people filling the room is
4 unnecessary if there are assets that could stand for
5 whatever judgment comes out of this. Is that
6 something you all want to talk about for a second
7 and see if there is a way between -- to satisfy them
8 and then most of this crowd goes away.

9 MR. KUHN: I guess it can't hurt to
10 talk.

11 JUDGE DUKES: Okay. I mean, my
12 understanding of what you are saying is most of
13 these people wouldn't even be --

14 MR. KUHN: I do not want to tie up
15 any assets any more than what they are already tied
16 up.

17 JUDGE DUKES: Well, as you suggested,
18 if there is already a judgment they are tied up
19 anyway, but it sounds like the Plaintiff has a
20 concern that despite the fact that they are tied up
21 somehow they're not ascertainable or they might
22 somehow be transferred or something like that.

23 If you all can come up with a set list of

2018 07 23 - Hrg Transcript - Judge Dukes
24 assets that won't go anywhere, that as you suggest
25 are probably tied up anyway, it's a no harm, no foul

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20

1 kind of thing. It gives them a comfort level. And
2 everybody else goes home without prejudice, of
3 course.

4 Just a thought. I don't know. If you all
5 want to -- it's probably more complicated than five
6 minutes, but if you all want to take about 20
7 minutes and see if you can figure that out, that
8 might, you know, pare this down dramatically. Is
9 that worth taking a few minutes?

10 MR. KUHN: We'll see. It's possible.

11 JUDGE DUKES: All right. Well, I'll
12 disappear and you all let me know.

13 (BREAK TAKEN)

14 JUDGE DUKES: Back on the record then
15 in 14-0052. And so before we went off the record
16 the parties were discussing what could be done to
17 sort of narrow the issues. And what did you all
18 come up with?

19 MR. KUHN: I believe Ms. Eversole and
20 Cherese would like to go ahead and have their
21 motions heard, Your Honor.

22 JUDGE DUKES: Okay.

23 MR. KUHN: And we would like to go
24 ahead and try the attorneys fee issue. I think
25 we've agreed that that is basically a matter of law

1 that we can pretty much stipulate to the bills --
2 the charges, what they were incurred for. And the
3 issue being did their entitlement to attorneys fees
4 stop once the property was recovered or does their
5 entitlement continue to run through today.

6 I believe that -- I believe that's pretty
7 much -- we can agree on the facts. It's pretty much
8 a matter of law that we need Your Honor to rule on.

9 JUDGE DUKES: Okay. So let me make
10 sure I understand what we are talking about here.
11 I've got two motions to dismiss on this roster, both
12 filed May 17th. One on behalf of Bill Bowen, one on
13 behalf of Martha Fender. Those are the two motions
14 to dismiss we would hear? Is that --

15 MS. HANDY: That would be the third
16 one we are defending against --

17 JUDGE DUKES: What was the third one?
18 I'm sorry.

19 MS. HANDY: We are defending a motion
20 -- the Plaintiff's motion for fraudulent conveyance.

21 JUDGE DUKES: Okay. Is that a
22 motion? Ordinarily that's the merits hearing.

23 MS. HANDY: Absolutely, Your Honor.

24 JUDGE DUKES: Let me see. Let me ask
25 the Plaintiff. What -- my understanding is you all

2 proceed according to Mr. Kuhn -- just trying to get
3 consensus here.

4 I've got motions 4 and 5 on my roster. I
5 don't know what you all's looks like, but both filed
6 May 17th for motions to dismiss. And then my
7 understanding is you all have a motion for
8 fraudulent conveyance, motion to void fraudulent
9 transfer. Why would we -- are those the same
10 property that we are talking about?

11 MR. RANNIK: It's two properties,
12 Judge.

13 JUDGE DUKES: Okay.

14 MR. RANNIK: It's the property that
15 was conveyed on the day of trial and then one that
16 was conveyed subsequently.

17 JUDGE DUKES: Okay.

18 MR. RANNIK: And, Judge, again going
19 back to our notion of streamlining, that is indeed
20 the merits. That is -- this could be construed as a
21 motion for summary judgment. Perhaps it makes sense
22 to undertake some very limited discovery before we
23 get -- before we hear that issue to make sure that
24 the record is complete and that we have every
25 opportunity to resolve it.

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23

1 JUDGE DUKES: Okay. So the
2 motions to -- let we make sure we have consensus
3 then on what we are going to hear then. So we would
4 hear the two motions to dismiss previously

5 referenced, both filed 5-17-2018. And we would hear
6 the attorneys fee evidence portion of the trial
7 pursuant to the order on motion to reconsider. Is
8 that -- are those the --

9 MR. RANNIK: There is also a motion
10 to dismiss filed by plaintiffs on April 13th that
11 we would request be heard.

12 JUDGE DUKES: Oh, I thought you all
13 told me early on that one was withdrawn because the
14 claims were withdrawn.

15 MR. RANNIK: Sorry, Judge. That was
16 May 2nd motion to dismiss that was withdrawn.

17 JUDGE DUKES: May 2nd. So many
18 motions. Okay. I see. All right. Is there any
19 logical order in which to take these up? Probably
20 the motions to dismiss first. Does that make some
21 sense or --

22 MS. HANDY: Your Honor?

23 JUDGE DUKES: Yes.

24 MS. HANDY: I would object to the
25 additional discovery in regards to the motion to

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1 void the fraudulent transfer. If we are going to
2 get into additional discovery then this is something
3 that should be litigated during the trial and not
4 litigate the merits on a motion hearing.

5 I would like to actually go on with the
6 fraudulent conveyance transfer motion today and have
7 that heard.

8 JUDGE DUKES: Okay. Well, so we've
9 got your motions to dismiss. Okay? And then we
10 have a motion to void fraudulent transfer --

11 MS. HANDY: Yes.

12 JUDGE DUKES: -- that I thought you
13 all objected to, but you are saying you want to
14 proceed with it? Certainly I guess --

15 MS. HANDY: Yes. We are objecting to
16 the additional discovery in regards to that motion.

17 JUDGE DUKES: Okay. Now, that's not
18 really necessarily before me, the additional
19 discovery.

20 MS. HANDY: Well, the Plaintiff just
21 suggested in regards to the motion for fraudulent
22 transfer to allow additional discovery.

23 JUDGE DUKES: Okay.

24 MS. HANDY: And we would like to
25 dismiss it.

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1 JUDGE DUKES: All right. The motions
2 to dismiss, is that the same property that the
3 transfer -- the void transfer motion filed 6/8 is
4 talking about?

5 MS. HANDY: The motion in opposition
6 to the motion to void fraudulent transfer, it is the
7 same property that is based -- that's in the
8 Plaintiff's Third Amended Complaint. The same
9 allegations, the same property, has been transferred
10 to the motion to void fraudulent transfer.

11 JUDGE DUKES: No. No. But I mean we
12 have two motions to dismiss.

13 MS. HANDY: Yes. Okay. One -- the
14 motion in regards to Martha Fender is to dismiss the
15 Plaintiff's complaint in regards to a transfer made
16 by Martha Fender for the two properties, yes.

17 JUDGE DUKES: I guess my question is
18 this. If we take up the two motions to dismiss
19 first, I don't know how those will come up, but
20 assume for the moment those were granted, does
21 that -- does that then negate the need to hear --
22 I'm trying to come up with a logical order in which
23 to do this. Does that negate the need to hear the
24 motion to void fraudulent transfers filed on 6/8?

25 MS. HANDY: Well, actually no. One

26

1 of the motions to dismiss is for Martha Fender.

2 JUDGE DUKES: Okay.

3 MS. HANDY: And the other is for --
4 on behalf of William Bowen.

5 JUDGE DUKES: Okay.

6 MS. HANDY: And there is still the
7 issue of the transfer to A&K Holdings. So there are
8 three transfers that -- well, four including the
9 transfer to Addison Fender. So there are four
10 transfers that is the subject of the Third Amended
11 Complaint and the motion to void fraudulent
12 transfers.

13 JUDGE DUKES: All right.

14 MS. HANDY: And they are the same in
15 both the complaint and the motion to void fraudulent
16 transfer.

17 JUDGE DUKES: So at least the motion
18 to void fraudulent transfers is partially resolved,
19 depending on the outcome, by hearing the motions to
20 dismiss first. No?

21 MS. HANDY: No.

22 JUDGE DUKES: Not even partially?
23 okay. All right. Do you all have a consensus of
24 how we should proceed? I was trying to come up with
25 a logical way to proceed, but I'm lost.

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1 MR. EPTING: Judge, I think actually
2 I would agree with your assessment of that -- not to
3 mention, Judge, it's our belief that it should be
4 carried over anyway because it ultimately is going
5 to involve some merits. And so it's not a hot
6 button issue with us in any event.

7 JUDGE DUKES: Well, you all are
8 welcome to withdraw your motion if you want. I
9 mean, I don't know if that's what you're saying, but
10 --

11 MR. EPTING: Why don't we do that,
12 Judge. It will make things simpler for the court.

13 JUDGE DUKES: Now, there is some
14 discussion about discovery that certainly the
15 ability to withdraw does not carry with it any
16 special rights for discovery beyond which already

17 exists in the rules. But certainly if you want to
18 withdraw your motion, I'll allow that.

19 So we still have motions to dismiss filed
20 5-17. We still have motions to dismiss
21 counterclaims and third-party claims filed 4-13. We
22 still have the attorneys fee issue and evidence on
23 attorney fees. Is there anything else that we have?

24 MR. RANNIK: Judge, I also have here
25 a motion for summary judgment filed by Mr. Fender on

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1 May 4th, 2018. I don't know if Mr. Kuhn intends
2 to proceed with that today.

3 JUDGE DUKES: Okay. I don't have
4 that one. Mr. Kuhn, were you --

5 MR. RANNIK: I think, too, in large
6 part that covers the same issues as Plaintiff's
7 motion to dismiss filed on April 13th. I think
8 the resolution of one will be the resolution of the
9 other.

10 MR. KUHN: I think so.

11 JUDGE DUKES: All right. I keep
12 thinking that we probably ought to hear the
13 attorneys fee portion first quite honestly because
14 we don't know the extent of you all's earlier
15 discussions when you went out and tried to figure
16 out if there was some property that could just be
17 held pending final resolution of this case would
18 have been made easier if we had known a final
19 judgment amount. We don't.

20 And it seems to me there's not really a
21 good way to settle this or figure out whether the
22 other parties can be released until we have a final
23 order on that. So I'm kind of inclined,
24 particularly in light of the fact it's already 10:15
25 to try to push ahead and just hear the -- hear

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1 whatever evidence there is on the attorneys fee
2 issue unless there is some reason not to do that
3 because it sounds like there is -- I can't come up
4 with a logical way to proceed on any of these
5 motions, but it seems to me that we need a final
6 judgment before a lot of this stuff happens. So --

7 MR. EPTING: Judge, as an observation
8 only, we are perfectly okay with doing that. But
9 there is -- in our estimation in all the motions
10 that are before you they are filed after answers
11 making them all void.

12 And I'm not telling the court what the
13 court ought to rule. I'm just simply saying in each
14 case each of the parties who has moved to dismiss
15 had previously already answered. So the motions to
16 dismiss in our estimation wouldn't take very long to
17 dispose of because you can't do that by rule.

18 So if that has anything to do with your
19 decision about priority, so be it.

20 JUDGE DUKES: Well, let's do this.
21 I'm guessing that there will be a difference of
22 opinion, and everyone will agree to disagree on the

23 rules as they often do. So let's deal with the
24 attorneys fee portion. So as I recall, a judgment
25 was entered. A motion for reconsideration was

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1 filed.

2 As a result of the motion to reconsider --
3 I'll have to dig through my file here to find it --
4 I issued an order partially granting a motion to
5 reconsider and stating, I believe, I can't find it
6 here, but essentially I had probably committed error
7 in the attorneys fee calculation in partially
8 granting, again, that motion to reconsider and
9 asking that the parties to reconvene so that we
10 could deal with specifics of the attorneys fees
11 rather than simply be one number that I think might
12 have been presented at trial if I'm recalling that
13 correctly.

14 MR. RANNIK: And, Judge, I have a
15 copy of your order here which I can hand up to the
16 court.

17 JUDGE DUKES: That would be great
18 because I can't seem to find it here on the
19 e-filing. I'm sure it's here somewhere.

20 MR. RANNIK: As I understand the
21 court's order in the hearing, the primary issue was
22 that there were no findings of fact in the original
23 order as to the reasonableness of the fees.

24 And that that made the order subject to
25 being overturned on that point on appeal. And so to

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1 streamline everything, it was proposed that there be
2 specific findings on the record of whether the fees
3 are reasonable.

4 JUDGE DUKES: That kind of makes
5 sense because I think I just had a number. I'm not
6 sure if I had how those fees were calculated or
7 where they came from. So let's do this then. Does
8 anyone need a break before we begin with that? And
9 then we will just call the Plaintiff's first witness
10 with regard to attorneys fees.

11 MR. KUHN: I'm ready to proceed.

12 JUDGE DUKES: Ready to proceed. All
13 right. Call your first witness, please.

14 MR. EPTING: Let me ask this
15 question. Okay.

16 MR. RANNIK: Your Honor, we call Mr.
17 Drew Epting.

18 JUDGE DUKES: All right. Come on
19 down and have a seat right there if you would,
20 please, sir. This makes everyone move seats, but it
21 works better for our court reporter. Thanks. Mr.
22 Epting, can I get you to hold your right hand up,
23 please. Do you swear or affirm to tell the truth,
24 the whole truth, and nothing but the truth so help
25 you God.

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1 MR. EPTING: I do.

2 JUDGE DUKES: All right. Thank you
3 so much. Please answer any questions your attorney
4 may have of you.

5 WHEREUPON:

6 DREW EPTING, being duly sworn and
7 cautioned to speak the truth, the whole truth and
8 nothing but the truth, testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. RANNIK:

11 Q. Mr. Epting, would you please describe your
12 role in this case.

13 A. I have been the senior partner overseeing
14 all of the activity in this case.

15 Q. And are you familiar with the billings,
16 the amounts that have been billed, and the work that
17 has been done over the course of this case?

18 A. I am.

19 Q. Would you please describe your
20 relationship to Mr. Kerr, the principal of Lady
21 Beaufort?

22 A. Jimmy Kerr was one of my first clients
23 back in 1978 or '79. And I have worked with him and
24 have been involved in a business or two along the
25 way with him and consider him a good client and a

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1 friend.

2 Q. And, Mr. Epting, when did you graduate

2018 07 23 - Hrg Transcript - Judge Dukes
from law school?

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A. I graduated in 1976.

Q. Where have you worked since 1976?

A. I worked in '76 and '77 at Cabinet, C-a-b-i-n-e-t, De, D-e, P-s-a-r, P-i-s-a-r, in Paris, France in '76 and '77. I practiced law with an iteration of Dewey Wise, Mike Cole, Trenham Walker from '78 until 2007. And after 2007, I have been largely a sole practitioner.

Q. Can you describe the nature of your practice?

A. Primarily two pieces. I have a fairly substantial appellate practice. I have appeared and argued in eight or 10 State Courts of Appeal, in seven United States Federal Circuit Courts of Appeal. And the other aspect has been essentially business trial litigation. And most of that has been local, meaning local on the east coast of South Carolina.

Q. Mr. Epting, I note that Michelle Endeman has billed on this file. Can you tell the court a little bit about her?

A. Ms. Endeman was a law student in Chicago.

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1 she followed a man, now her husband, to Charleston.
2 She enrolled in the Charleston Law School in order
3 to finish her work, but she needed to work. And so
4 she came to work with me her second year in law
5 school as a receptionist.

6 And she was quite energetic, wanted to
7 know the practice. Finished at the top of her
8 class. I hired her. And she worked for me for five
9 or six years. Here recently she decided to start a
10 family. And so there's been a little interruption.
11 And ultimately your involvement is as a result of
12 her wanting to spend more time with a set of twins
13 and a third child.

14 Q. And while we are on the topic of me, would
15 you tell the court a little bit about my background?

16 A. You decided that you would be a failed
17 concert guitarist having made that your educational
18 goal, and decided to go to law school. You were
19 quite capable. Clerked for a Federal judge in
20 Baltimore. Worked for a large international firm in
21 Washington, DC. Wanted to come home right about the
22 time that Michelle was giving birth to her third
23 child. And as a consequence you came in and have
24 been with me two years in September.

25 Q. And, finally, can you tell the court a

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1 little bit about Carl Rogers?

2 A. I can tell the court a good bit about Carl
3 Rogers. Carl actually practiced law with me from
4 probably 1978 to 1998. Jimmy Kerr -- Lady Beaufort
5 Jimmy Kerr would have been a client of the firm.
6 Carl left the firm in 1998.

7 I have had very little dealings with him,
8 but he continued on to do Jimmy Kerr's work. And it

2018 07 23 - Hrg Transcript - Judge Dukes
9 was a coincidence of Jimmy being both a client of
10 his and a client of mine. I did not even know that
11 Carl was involved in the transaction or that the
12 transaction had occurred until Jimmy came in my
13 office in the fall of 2013.

14 Q. Mr. Epting, how would you characterize the
15 nature, extent and difficulty of this lawsuit?
16 Let's break that down. What is the -- what was the
17 substance of this lawsuit?

18 A. It was an effort by Lady Beaufort to
19 acquire title to a piece of property that they
20 believe they were entitled to under a contract. And
21 at that level I don't think there was anything
22 particularly difficult about the law.

23 The facts were a little bit convoluted
24 because by the time that occurred, meaning the
25 closing had been aborted, the property had been

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1 transferred to yet another party.

2 And so there was an effort to put a lis
3 pendens on the property in the hands of the third
4 party. It got increasingly more complicated because
5 at some point in time the transferee, Mr. Sample,
6 and Inverness decided they didn't want the property.

7 And so we stepped in, Mr. Kerr and myself
8 and Carl Rogers, and ensured that that property that
9 we had tried -- had once wanted to acquire, still
10 wanted to acquire, was acquired.

11 Q. Did the matter ultimately go to trial?

12 A. The matter ultimately went to trial.

13 Q. And how long was it between when the suit
14 was filed and the case went to trial?

15 A. I think the trial was in March or April
16 of 2017, so three and half years.

17 Q. And in your opinion, was the amount of
18 time spent on this case by yourself and your firm
19 reasonable for the nature of the work?

20 A. I believe it was.

21 THE WITNESS: And, Judge, I have not
22 entered a lot of my time. I took \$6,000 out of the
23 first bill because at the end of the day you want to
24 see these things get resolved. And at my hourly
25 rate it just makes it more and more difficult. And

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1 so I not only believe that the amount of time that
2 is in it is appropriate, in fact, there is more time
3 put in this case than is expressed in the bills.

4 BY MR. RANNIK:

5 Q. Mr. Epting, I'm going to mark as
6 Plaintiff's Exhibit 1 a set of discovery responses
7 that were sent to Mr. Kuhn that contain a copy of
8 our invoices in this case.

9 MR. RANNIK: And let me hand this to
10 the court reporter actually. I'm sorry. I put my
11 own sticker on there.

12 (MARKED PLAINTIFF'S EXHIBIT NO. 1.)

13 BY MR. RANNIK:

14 Q. And I'm going to hand you the exhibit.

15 MR. RANNIK: And, Your Honor, I have
16 a copy for you. I can hand it up.

17 THE WITNESS: This is his or you want
18 me to have this? Got it. Okay.

19 MR. RANNIK: Plaintiff's 1.

20 JUDGE DUKES: Thank you. Do you have
21 one for the court reporter? Okay.

22 BY MR. RANNIK:

23 Q. Now, Mr. Epting, if I could just get you
24 to just thumb through the bills which start, I
25 believe, on around Page 6 or 7 of that exhibit. Are

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1 these the bills that -- the invoices that were
2 generated over the course of this representation?

3 A. There was a file opened on November 26,
4 2013. The first bill was sent on May 15th, 2014.
5 The amount of that bill was \$16,625. There was a
6 second bill rendered commencing June 27th, 2014,
7 and covering the period to June 3rd, 2016, in the
8 amount of \$7,863.61.

9 Q. And I believe, is it correct, that when
10 that invoice was sent a write-down was issued to
11 Mr. Kerr?

12 A. It was.

13 THE WITNESS: And the write-down,
14 Judge, is reflected on Page 3 of the bill. And if
15 the court will notice on the second bill, the court
16 will see that the total amount of time that I have
17 billed for a period of approximately two years is

18 2018 07 23 - Hrg Transcript - Judge Dukes
three-tenths of an hour.

19 BY MR. RANNIK:

20 Q. And what period of time is covered by the
21 subsequent invoice?

22 A. There is a third bill that covers the
23 period June of '16 to February 2017.

24 Q. And that would be the invoice that takes
25 us up to the time of trial?

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1 A. This was the invoice immediately before
2 the time of trial.

3 THE WITNESS: And it's from this
4 invoice, Judge, that we would have requested the
5 amount of fees that we requested at the hearing.
6 Included in that would have been Mr. Rogers' bill as
7 well.

8 And the total amount of this third bill,
9 including costs, is \$21,578.80.

10 MR. RANNIK: Just give me a moment.
11 I'm looking for a calculation I did.

12 THE WITNESS: And, Judge, if you will
13 once again look at that bill, you will see that all
14 the time entered is by Ms. Endeman and not by me,
15 but it's not because I'm not quite active in this
16 case. I was.

17 BY MR. RANNIK:

18 Q. So, Mr. Epting, at the time of trial,
19 including Mr. Rogers' time and your firm's time and
20 including the write-down to Mr. Kerr, the total

2018 07 23 - Hrg Transcript - Judge Dukes
21 amount of our bills and billings was around \$47,000?

22 A. That's true. And Mr. Rogers was
23 another -- how much was Mr. Rogers' bill?

24 Q. 7,000. And I believe that is in the 47.

25 A. Okay. And there's an affidavit to that

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1 effect, correct?

2 Q. That is correct.

3 A. Okay. Good. All right.

4 Q. Mr. Epting, if I could show you what is --
5 I'm now marking as Plaintiff's Exhibit 2.

6 (MARKED PLAINTIFF'S EXHIBIT NO. 2.)

7 BY MR. RANNIK:

8 Q. Are you familiar with the amount of time
9 and what the billings were for the Defendants in
10 this case up until the time of trial?

11 A. I am. Mr. Bowen's, who has a lot more
12 seniority at the bar than I do, fees at the time of
13 trial were \$44,309.

14 Q. Mr. Epting, were Plaintiff's attorneys
15 compensation -- I'm sorry. Was Plaintiff's
16 attorneys compensation contingent upon obtaining a
17 favorable result in this case?

18 A. It was not.

19 Q. But a favorable result was obtained in
20 this case?

21 A. So far, yes.

22 Q. And in your opinion was the amount of
23 Plaintiff's attorneys fees customary for the

24 2018 07 23 - Hrg Transcript - Judge Duker
services provided in this region?

25 A. I believe my firm operates according to

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1 customs and norms for the lower part of South
2 Carolina. This is a bill and a form of a bill that
3 I have used perhaps through different software
4 vendors for 25 years. And the charges conform to
5 the way charges are rendered by lawyers who work by
6 the hour. And so I would say in all respects these
7 bills are the norm.

8 Q. Now, Mr. Epting, that takes us up through
9 the time of trial. I believe if I can point you
10 back to Plaintiff's Exhibit 1, there is an
11 additional bill that we have not yet discussed. Can
12 you tell me what the time period of that bill is?

13 A. This bill is for the period February 2017
14 to May 4th, 2018.

15 Q. And can you briefly describe the nature of
16 the work that occurred in that period?

17 A. I can.

18 THE WITNESS: Judge, there is one
19 irregularity here. There is some time in this
20 fourth bill that is entered by a young man who was a
21 law clerk. And he only gave us his time one month
22 in arrears. So the previous bill that we discussed
23 for the period February would have ended
24 February 26.

25 And here we are with the bill starting on

1 February 16th. And the reason is this time didn't
2 get to us until March the 1st. And so it's only
3 being entered after the fact if you will. But these
4 entries were not part of the third bill that we put
5 together at the time of trial.

6 These entries only came afterwards. So
7 the bill begins February 26 with three entries
8 involving a law clerk who was helping us with the
9 research. And they run through -- the last entry is
10 May 4th, 2018. And the total amount of this bill is
11 \$45,648.

12 And Mr. Kerr -- I advised him to stand
13 down paying any further bills. And there's a
14 previous balance of \$21,578. And so excluding the
15 time since May 4th, there's a balance due this firm
16 of \$68,926.56 of which \$47,347 are the fees incurred
17 after the trial up through May 4th, 2018. There's
18 approximately \$4,000 in costs in all of these bills
19 for depositions, service of pleadings, travel.

20 BY MR. RANNIK:

21 Q. And additional time has been billed to
22 this case since May 4th of 2018, correct?

23 A. Yes.

24 Q. And it continues to be billed as we sit
25 here?

1 A. It does.

2 THE WITNESS: And we stopped at May
3 4th, Judge, just because there had to be some end
4 date. And that was the date I think we landed on
5 because we were trying to get all of this
6 information to Fred in formal interrogatory answers.

7 MR. RANNIK: Thank you. That is
8 everything I have.

9 THE WITNESS: You are welcome.

10 JUDGE DUKES: Yes, sir.

11 MR. KUHN: If it please the court,
12 Your Honor.

13 CROSS EXAMINATION

14 BY MR. KUHN:

15 Q. Mr. Epting, I would like to show you a
16 copy of the transcript from the trial of this
17 action. This is the testimony of Mr. Kerr. If you
18 would just publish to the court that portion where
19 he's talking about how much he's paid in attorneys
20 fees.

21 A. Mr. Kerr.

22 Q. Mr. Kerr. Yes, sir.

23 A. Yeah. And can you tell me how much you
24 have paid in attorneys fees? Approximately \$54,000,
25 period. Continuing on. \$53,924.21 in attorneys

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1 fees.

2 Q. Thank you.

3 MR. KUHN: For the record, Your
4 Honor, it's the transcript at Page 31, Lines 21
Page 39

000445

5 through 24.

6 BY MR. KUHN:

7 Q. If I could show you what was Exhibit 2 to
8 that trial, do you recognize that?

9 A. This is Mr. Rogers' affidavit and Ms.
10 Endeman's affidavits.

11 Q. And the total of those two on the first
12 page is that \$53,924 figure?

13 A. Mr. Rogers' last line says the total
14 attorneys fees and costs associated with the
15 aforementioned legal services was \$7,857. The last
16 paragraph of Ms. Endeman's affidavit states that a
17 total attorneys fees and costs associated with the
18 aforementioned legal representation is \$46,067.41.

19 Q. At the first page has those two figures
20 totaled; is that correct?

21 A. The first page has those two figures, and
22 it is the \$53,924.41.

23 Q. It's the same figure Mr. Kerr at trial
24 testified that he had paid?

25 A. He obviously could have been a little more

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1 detailed in his explanation, paid or been charged.

2 Q. So his testimony that he had paid that,
3 that would be incorrect, wouldn't it?

4 A. It would be incorrect as to \$21,000, yes.

5 Q. The total he has paid in attorneys fees as
6 we sit here is \$16,500; is that correct?

7 A. If you took the total of 53 and you
Page 40

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8 deducted the 21,000 from it, whatever that number
9 is.

10 Q. Plus deduct the 6,000-some that was
11 written off?

12 A. Well, now --

13 Q. Well, let me ask it this way. Every penny
14 that he has paid in connection with this matter is
15 reflected on these invoices that are part of
16 Plaintiff's Exhibit 1; is that correct?

17 A. The answer to the question is everything
18 that he's paid is pursuant to those invoices.
19 You've asked a question that I don't know -- one
20 question that I don't know the answer to. I don't
21 know if there is a claim in the fee proposal for the
22 \$6,000 that I just gave him a credit for or not. I
23 can't answer that question.

24 Q. Okay. As far as payments he's made, money
25 he's actually paid, those would be reflected in

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1 Plaintiff's Exhibit 1; is that correct?

2 A. In the interrogatories, yes, but not in
3 our billings because I don't have Carl Rogers'
4 billings.

5 Q. If I could show you a portion of Judge
6 Dukes' order issued in this case filed May 11th of
7 last year, would you just publish the part that I
8 have underlined?

9 A. It says, Lady Beaufort has also expended
10 \$53,924.41 in attorneys fees and costs in order to

11 obtain the property it lost because of the
12 Defendant's conduct.

13 Q. And then it references as a citation
14 Exhibit 2; is that correct?

15 A. It does.

16 Q. Okay. So the figure testified to that
17 Mr. Kerr says he paid, the figure in Exhibit 2 of
18 that trial and the figure cited in Judge Dukes'
19 order are all this \$53,924 figure; is that correct?

20 A. It is.

21 Q. Okay. Ms. Endeman in her affidavit, which
22 is part of the original Exhibit 2, in Line 2 she
23 indicates that the lawsuit as far as Inverness is
24 concerned terminated in May 2014. Is that correct?

25 A. I don't know that of my independent

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1 knowledge, but, yes, that's what it says. And I
2 imagine it's accurate.

3 Q. Okay. Your billings then, as I understand
4 it, encompass more than just what was incurred in
5 order to obtain the property that Lady Beaufort lost
6 because of the alleged breach of contract. It
7 includes the attorneys fees and costs that have been
8 incurred in order to collect those attorneys fees
9 and costs?

10 A. I disagree with that. I would say that
11 the fees that have been incurred are to defend a
12 claim that there was a breach of contract and to
13 prosecute a claim that there was a breach of

14 contract and ultimately be made whole as a result of
15 a breach of contract.

16 Q. Explain that.

17 A. Everything that we've done in this case,
18 including this hearing, we are still defending
19 damages in terms of attorney fees here today.

20 Q. But you've --

21 A. And trying to make a case for why we are
22 entitled to them which we think are an outgrowth of
23 the original breach of contract.

24 Q. My question was the attorneys fees and
25 costs that were incurred in order to obtain the

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48

1 property, once the property was obtained no more
2 attorneys fees and costs could have been incurred in
3 order to obtain the property, correct? Your client
4 already had it.

5 A. We did and hoped that we would keep it.
6 And defended an action in which there was a claim
7 that we should pay Mr. Fender and Hird Island's fees
8 for all the damages that he had suffered in this
9 transaction.

10 Q. As a result of suing them after the trial
11 of this case?

12 A. As a result of the claim by my clients for
13 breach of contract, yes.

14 Q. Under the contract your client could
15 recover the attorneys fees and costs it incurred in
16 order to obtain the property that was the subject of

17 the contract, correct?

18 A. Wrong. What the contract says --

19 JUDGE DUKES: Do you all have an
20 extra copy of the contract?

21 MR. RANNIK: Yes, Your Honor.

22 JUDGE DUKES: It says it should be on
23 this list. It's not.

24 MR. RANNIK: It's Page 6 that we are
25 looking at.

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1 JUDGE DUKES: Thank you.

2 THE WITNESS: So, Judge, it's
3 Provision 27 called Default.

4 JUDGE DUKES: Okay. And you can
5 answer the question if you would like. Do you need
6 to re-ask the question, Mr. Kuhn?

7 BY MR. KUHN:

8 Q. Under the contract you can recover
9 attorneys fees and costs -- your client can recover
10 attorneys fees and costs incurred as a result of the
11 breach of the contract, correct?

12 A. Certainly that's true.

13 Q. Okay. Thank you.

14 A. But can -- okay.

15 Q. Your client filed a suit to specifically
16 perform the contract and obtain the property,
17 correct?

18 A. And sought damages as a result.

19 Q. Of the breach of the contract?

20 A. Of the breach of the contract and
21 negligent misrepresentation and whatever else is in
22 the contract. I mean in the lawsuit.

23 Q. But you're not entitled to recover
24 attorneys fees for anything other than the breach of
25 the contract, correct?

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1 A. I would disagree with that, too.

2 Q. Okay. In May 2014, Lady Beaufort acquired
3 the property, correct?

4 A. Yes.

5 JUDGE DUKES: What was that date
6 again? I'm sorry.

7 MR. KUHN: May 2014, May 30th,
8 2014.

9 JUDGE DUKES: Thanks.

10 BY MR. KUHN:

11 Q. Once your client acquired the property,
12 they continued to incur attorney fees and costs?

13 A. They did.

14 Q. Would it be fair to say those attorneys
15 fees and costs were not incurred in an effort to
16 acquire the property?

17 A. They were not incurred in an effort to
18 acquire the property.

19 Q. The bills that are part of Plaintiff's
20 Exhibit 1, as far as Mr. Rogers' fees go, the
21 \$7,857, do you know how much of that fee was
22 incurred by him after the property was acquired by-

23 Lady Beaufort in May of 2014?

24 A. I don't think any of it. I think his
25 affidavit says that.

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1 Q. You say you don't think. I have his
2 affidavit here if you want to refer to it. Do you
3 know anything more about it other than what is set
4 forth in the affidavit?

5 A. I probably do, but it would be from him.

6 Q. Okay. As far as the attorneys fees and
7 costs that were incurred by -- on behalf of your
8 firm, the dates set forth in the bills, the
9 invoices, that are attached Exhibit 1, those dates
10 are accurate?

11 A. The dates are accurate, yes.

12 Q. In other words, that fee or that expense
13 was incurred on the date shown in the invoice?

14 A. The time entries are certainly accurate by
15 date. A cost could have been incurred, an American
16 Express bill rendered later and the cost paid at
17 some later date, but that would be reflected in the
18 bill, too.

19 Q. As far as expenses go, the expense could
20 have been incurred earlier, but certainly never
21 later?

22 A. Right.

23 Q. Okay. Good. And the final invoice in
24 that package, Exhibit 1, that invoice didn't even
25 exist when this case was tried, correct?

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1 A. That's true.

2 MR. KUHN: That's all I have, Your
3 Honor.

4 MR. RANNIK: Your Honor, if I may, I
5 have a few -- two questions on redirect.

6 JUDGE DUKES: Yes. Go ahead, please.

7 REDIRECT EXAMINATION

8 BY MR. RANNIK:

9 Q. Mr. Epting, can you please read from the
10 contract the provision that relates to the
11 entitlement of the prevailing party to attorneys
12 fees?

13 A. Default, Paragraph 27.a. If seller
14 defaults in the performance of any of the seller's
15 obligations under this contract, Default, buyer may,
16 1, deliver notice of default to seller and terminate
17 contract and, 2, pursue any remedies available to
18 buyer at law or equity. And, 3, recover attorneys
19 fees and all other direct costs of litigation if
20 buyer prevails in any action against the seller.

21 Q. The language that says the buyer may
22 pursue any remedy at law or equity, would that
23 include a suit that alleges breach of contract,
24 breach of contract with a fraudulent act and
25 fraudulent misrepresentation?

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1 MR. KUHN: Object to that. It's
2 calling for a legal conclusion.

3 JUDGE DUKES: Yeah.

4 MR. RANNIK: Withdrawn.

5 BY MR. RANNIK:

6 Q. Now, did damages in the form of attorneys
7 fees stemming from the breach of the contract
8 continue to accrue after May of 2014?

9 A. They do continue, yes.

10 MR. RANNIK: Thank you.

11 RECROSS EXAMINATION

12 BY MR. KUHN:

13 Q. If I can just -- your interpretation of
14 damages includes not just attorneys fees and costs
15 in order to -- as a direct result of the breach of
16 contract or to obtain specific performance of the
17 contract, but it includes attorneys fees and costs
18 incurred in an attempt to collect attorneys fees and
19 costs and damages incurred as a result of the breach
20 of contract? What you're here for today is to
21 collect the attorneys fees and damages incurred as a
22 result of the breach of contract, correct?

23 A. I would say that I'm here to prove the
24 amount of my damages that resulted from the breach
25 of contract as evidenced by testifying that in the

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54

1 course of pursuing this matter we've incurred
2 attorneys fees and incur them up to today's date

2018 07 23 - Hrg Transcript - Judge Dukes
3 because we are also defending as well Mr. Fender and
4 Hird Island's claim, the motion to reconsider and
5 whether or not the court erred.

6 And in my estimation if there's an appeal
7 of that order it all goes back to whether or not
8 there was an initial breach. And so, yes, I would
9 say that everything that has happened and that
10 continues to happen relates to the initial breach.

11 MR. KUHN: That's all I have.

12 JUDGE DUKES: Any other counsel have
13 any questions of this witness? I have a question.
14 Is it ascertainable, if you could take a moment and
15 figure out what the attorneys fees were on May 30th,
16 2014, that would be helpful to this record I would
17 think.

18 MR. KUHN: I think we can in all
19 fairness agree that they were -- Mr. Rogers' \$7,857
20 plus Mr. Epting's and Ms. Endeman's bill of the very
21 first invoice; is that correct?

22 THE WITNESS: That would be very
23 close, Judge, because the second bill ends May 13,
24 2014, and it's \$16,627. I read Mr. Rogers'
25 affidavit to be through the time of the second

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1 closing which was May 30th, 2014. And so the only
2 time that would be missing would be my firm's time
3 for the period May 13th, 2014, to May 30th.

4 JUDGE DUKES: Okay. So -- and I
5 apologize. I started to write that number and then

6 2018 07 23 - Hrg Transcript - Judge Dukes
7 you -- so give me then just a summary again of the
8 total calculation of all attorneys fees as of that
9 May 2014 date.

10 THE WITNESS: As of --

11 MR. KUHN: I come up with 24,482.

12 THE WITNESS: That sounds right,
13 Judge, through May 13th.

14 MR. KUHN: Which is the \$16,625 for
15 Mr. Epting's firm and the 7,857 of Mr. Carlyle
16 Rogers.

17 JUDGE DUKES: Okay. But the parties
18 agree and acknowledge that that total, from whatever
19 source, is 24,482; is that correct?

20 MR. KUHN: Yes.

21 JUDGE DUKES: Oaky. All right.
22 Anything else from the Plaintiff on this issue?

23 MR. RANNIK: No, Your Honor.

24 JUDGE DUKES: Okay. So the -- all
25 right. Happy to hear any argument from the
 Plaintiff and then from Defendant.

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56

1 MR. RANNIK: Judge, is --

2 THE WITNESS: Judge, I'm going to
3 move next door.

4 JUDGE DUKES: Yes. Sorry. Go ahead,
5 please.

6 MR. RANNIK: Get out of the hot seat.

7 JUDGE DUKES: Sorry about that.

8 MR. RANNIK: Judge, I'm delighted to

2018 07 23 - Hrg Transcript - Judge Dukes
9 make my argument now. Would also request the
10 opportunity to brief this issue as I believe we are
11 entitled to do so.

12 Your Honor, the contract has very broad
13 language saying that a prevailing party will be
14 entitled to attorneys fees. It says that if a
15 seller defaults in the performance of any of the
16 seller's obligations under this contract, which is
17 what this court found, the buyer may pursue any
18 remedies available to buyer at law or equity and in
19 the process may recover attorneys fees and all other
20 direct costs of litigation if buyer prevails in any
21 action against the seller.

22 Your Honor, we have an action against the
23 seller. It went to trial in 2017. And Plaintiffs
24 prevailed. Under the plain reading of the contract
25 the buyer is entitled to recover attorneys fees and

57

1 all other direct costs of that litigation.

2 That litigation continues. It's the same
3 case number we are here today. If the case goes up
4 on appeal, it will still be part of the same
5 litigation. And all of those costs and attorneys
6 fees are recoverable by the buyer.

7 Your Honor found that in the original
8 order finding that Plaintiff was entitled to the
9 full amount of attorneys fees at the time of trial.
10 And we believe that finding was correct and should
11 not be disturbed.

2018 07 23 - Hrg Transcript - Judge Dukes
Would you give me one moment, please.

12

JUDGE DUKES: Sure.

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MR. RANNIK: And, Judge, in addition,

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your order found that there was a negligent
misrepresentation and that fees were incurred as a
part or as a result of that negligent
misrepresentation.

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So they also remain recoverable as damages
as a result of the contract and the default and a
tort.

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JUDGE DUKES: Mr. Kuhn, happy to hear
from you.

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MR. KUHN: May it please the court,
Your Honor. That is a very broad unsustainable

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58

1 interpretation of this contract which Your Honor has
2 already ruled on as a result of the initial trial.

3 Their interpretation of any action is
4 nonsensical. It is clear from reading the contract
5 that what they are talking about is attorneys fees
6 and costs incurred if there is a default by the
7 seller under the seller's obligations under the
8 contract.

9 In this case since they sought specific
10 performance of the contract that would incur
11 anything that they incurred in order to obtain the
12 property, in order to obtain specific performance.
13 They obtained the specific performance in May
14 of 2014. They got the property.

15 It cost them \$25,000 more since that is
16 the -- they had to pay that much more to obtain the
17 property from the third-party than what the contract
18 called for. And they incurred \$24,482 in attorneys
19 fees obtaining that specific performance.

20 Once that property was acquired, the
21 damages that they sustained as a result of the
22 breach of the contract stopped. Everything else
23 that they've incurred is over and above that.

24 And Your Honor found in the initial
25 hearing, this is your finding, Lady Beaufort has

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59

1 also expended 53,924.41 in attorneys fees and costs
2 in order to obtain the property it lost because of
3 the Defendant's conduct.

4 So I interpret it Your Honor has already
5 found correctly. And it's also now the law of the
6 case that their damages are limited to what they
7 incurred in order to obtain the property it lost,
8 which is the 24,482 and then the \$25,000 additional
9 purchase price.

10 Under their theory, they can wrongfully
11 sue third parties alleging frivolous fraudulent
12 transfer claims, have to defend these claims when
13 they are counterclaimed, and still recover the
14 attorneys fees and costs.

15 If Your Honor will look at this bill, it
16 incurs -- it includes defending claims brought
17 against them by the third parties who are not even

2018 07 23 - Hrg Transcript - Judge Dukes
18 part of the contract. That's a nonsensical
19 interpretation of what you can recover as damages
20 under this contract.

21 I think reading this contract the plain
22 English common sense you can recover the attorneys
23 fees and costs you've incurred as a direct breach of
24 the contract. So if you sue for damages, you can
25 get those damages. Or if you sue for specific

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1 performance, you can get the damages you incurred
2 compelling the specific performance. But once
3 you've done that, it stops.

4 And that is what Your Honor found; that
5 they can recover the attorneys fees and costs that
6 they incurred in order to obtain the property. They
7 obtained that in May of 2014. After that the
8 Plaintiff elected to proceed further and try to
9 recover more.

10 They, in effect, want to recover attorneys
11 fees for trying to recover attorney fees that
12 they're not entitled to recover under the contract
13 to begin with. That's a circular argument that
14 could go on forever and ever.

15 I respectfully submit that the judgment
16 should be modified and amended so that the attorneys
17 fees and costs correctly reflects what they incurred
18 in order to obtain the property which is the 24,482
19 contrary to Mr. Kerr's false lies during the trial
20 that he actually paid \$53,000 to do it upon which

2018 07 23 - Hrg Transcript - Judge Dukes
21 Your Honor relied. But now that we've asked for the
22 details we see that he did not. He's only paid
23 \$16,500 total in connection with this lawsuit. I
24 would request Your Honor amend the order and change
25 the figure from 53,924.41 to 24,482.

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61

1 MR. EPTING: Judge, could I be heard
2 in reply?

3 JUDGE DUKES: Well, you've kind of
4 got an attorney, sure. Go ahead.

5 MR. EPTING: Suppose, Judge, the
6 transfer was to someone who would not sell the
7 property back to Mr. Kerr. Does that mean since we
8 couldn't acquire the property that we don't get
9 attorneys fees pursuing the breach?

10 JUDGE DUKES: Well, of course, I've
11 got to deal with the facts on the ground. And the
12 facts of the ground is you did get the property
13 back.

14 MR. KUHN: If we change the facts, we
15 change the results.

16 MR. EPTING: I know, but I'm just
17 saying is this contract doesn't draw any
18 distinction. It says nothing about acquiring the
19 property. It talks about a breach of contract. And
20 I was just making the observation it just so
21 happened that we mitigated our damage and acquired
22 the property. But that that is an event that
23 happened, does it mean if that event didn't happen

2018 07 23 - Hrg Transcript - Judge Dukes
24 that under Fred's theory of the case we wouldn't
25 have a claim for fees because it was not in pursuit

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62

1 of reclaiming the property? I don't think so.

2 MR. KUHN: If the facts were
3 different, the attorneys fees and costs would be
4 different. They would be able to recover whatever
5 damages the Plaintiff incurred as a result of the
6 breach of the contract.

7 JUDGE DUKES: Yeah, but I guess what
8 I'm struggling with --

9 MR. KUHN: In this particular case,
10 the damages that they've incurred -- they got the
11 property, so they have that. They had to pay
12 \$25,000 more it. In order to get the property, they
13 had to pay about another 25,000. Those are the
14 facts of this case. And those are the facts upon
15 which this order, or course, needs to be based.

16 MR. RANNIK: And, Judge, if I might
17 respond to that. While it's true there were \$25,000
18 in damages incurred because of the extra expense of
19 having to buy the property from Inverness,
20 Mr. Fender disagreed that he owed us that \$25,000.
21 And we had to spend \$50,000 to get to the point
22 where we could even recover that \$25,000.

23 This provision -- this contract, the
24 purpose is to make the non-defaulting party whole as
25 a result of any breach of the contract. That is all

1 that we are asking. And our attorneys fees are
2 damages that are incurred by our client and under
3 the contract he is entitled to recover them.

4 JUDGE DUKES: All right. And you
5 wanted how long to brief the issue? I'm sorry.

6 MR. RANNIK: Ten days.

7 JUDGE DUKES: All right. Mr. Kuhn,
8 does that work with your schedule?

9 MR. KUHN: Yes, sir, Your Honor.
10 Thank you.

11 JUDGE DUKES: Okay. Yes?

12 COURT REPORTER: There was a document
13 that was passed around, and I saw some writing being
14 done on it, but I don't recall that an Exhibit 3 was
15 ever submitted. I don't have it.

16 JUDGE DUKES: What was Exhibit 3?

17 MR. RANNIK: Can I take care of that?
18 Exhibit 3, Your Honor, is the contract. And it's
19 true it got passed around and never entered, so
20 thank you for catching that.

21 JUDGE DUKES: All right. Has it got
22 a 3 on it? That is your 3? Is that good?

23 COURT REPORTER: It's good.

24 (MARKED PLAINTIFF'S EXHIBIT NO. 3.)

25 JUDGE DUKES: Okay. That will be 3

1 then. I'm sure it's already in several times, but
Page 57

000463

2 then again -- all right. why don't we take a
3 five-minute break and then we will move on to
4 whatever else we have to deal with today.

5 (BREAK TAKEN)

6 JUDGE DUKES: All right then. Back
7 on the record in 14-0052. And I think we have some
8 motions here. so we have in order of filing date we
9 have a motion to dismiss all counterclaims and
10 third-party claims filed 4/13. And then we have two
11 motions to dismiss filed 5/17. And I think that's
12 it. so I'm happy to hear the -- hear them in the
13 order filed, so a motion to dismiss counterclaims
14 and third-party claims.

15 MR. RANNIK: Thank you, Judge. Your
16 Honor, this motion is directed at two particular
17 pleadings, first the counterclaims of all of the
18 Defendants as filed on March 15th of this year.
19 And, secondly, the amended counterclaim of
20 Mr. William Bowen that was filed in the beginning of
21 April.

22 There are multiple claims in each of those
23 two pleadings, so I'm going to take them one
24 pleading at a time. With regard to the March 15th
25 pleading, there are two claims brought against the

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1 Plaintiffs -- counterclaims brought against the
2 Plaintiffs. One by Mr. Sherwood Fender for abuse of
3 process and one by the remaining Defendants also for
4 abuse of process.

5 Mr. Kuhn will correct me if I
6 mischaracterize the arguments, but I understand them
7 to be twofold. Firstly, Mr. Fender contends that it
8 is improper and not allowable to amend the complaint
9 after a judgment has been entered.

10 Secondly, he argues that it is improper to
11 re-sue a client or a party after a judgment has been
12 entered on the same causes of action. With regard
13 to the first of those two arguments, that no amended
14 pleading can be filed after a judgment, Your Honor,
15 I would point to the record before this court in
16 November 13th of 2017 where the Defendants consented
17 to us doing that very thing.

18 We asked the court for permission to file
19 an amended complaint with regard to -- with an aim
20 to bringing in the additional parties to transfers
21 because we believed there may be fraudulent
22 transfers. And we asked if we could amend the
23 complaint to do so.

24 Your Honor asked the Defendants if they
25 had a problem with that. They said no. They

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1 consented. So we did. Your Honor ordered that we
2 be allowed to do that on February 14th of this year,
3 2018.

4 There's also case law that says this is
5 permissible. There is a United States Supreme Court
6 case by the name of Griffin, which I'll pull up a
7 copy here in a moment where that's exactly what

8 happened. There was a case that went to trial.
9 Actually about 10 years later that new facts were
10 discovered that found that the original plaintiffs
11 were still entitled to additional relief.

12 New parties were brought in to accord full
13 relief. And the matter proceeded with an amended
14 complaint. Let me find you that case if you'll bear
15 with me just a moment. It's called Griffin. It's
16 the United States Supreme Court. I'm having a hard
17 time laying my hands on it right now.

18 JUDGE DUKES: Is this a Federal case?
19 A State case?

20 MR. RANNIK: It's a Federal -- yes,
21 it's a Federal case, Your Honor, I believe. Here we
22 go.

23 JUDGE DUKES: Basically a final
24 judgment was entered in a Federal case and then 10
25 years later they reopened the same case and amended

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67

1 the pleadings?

2 MR. RANNIK: That is correct. Yes,
3 Your Honor. And the case is Griffin versus County
4 School Board of Prince Edward County. And the
5 citation in the Supreme Court is 377 U.S. 218. It's
6 a case from 1964.

7 But in any event, Your Honor, I do not
8 believe it can be an abuse of process to file an
9 amended complaint when the defendant who is bringing
10 that claim of abuse of process has consented to that

Page 60

000466

11 amendment. That's simply not proper.

12 With regard to the remaining defendants
13 who also bring an abuse of process claim, Your
14 Honor, they are necessary parties under Rule 19.
15 The amended complaint suggests that certain
16 transfers by Mr. Fender should be void because they
17 were fraudulent under the Statute of Elizabeth.

18 In order for relief to be afforded on that
19 ground, all the parties to the transfers need to be
20 made parties to the suit. They are necessary
21 parties. There cannot be full relief without them.
22 It is not an abuse of process to bring them into the
23 suit for that reason purpose. Nor are they
24 prejudiced in any way by having the claims brought
25 in an existing suit rather than a new suit being

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68

1 filed.

2 So on those two bases the March 15th
3 pleading should be dismissed. The counterclaim
4 should be dismissed. Now, Your Honor, perhaps it
5 would be best at this point to let Mr. Kuhn respond
6 before I go into Mr. Bowen's motion, but I'm happy
7 to do it however you prefer.

8 JUDGE DUKES: All right. Let's let
9 -- hear from Mr. Kuhn and then we will --

10 MR. KUHN: May it please the court,
11 Your Honor. When a party consents to allowing the
12 other side to amend their pleadings that is all they
13 are consenting to. You can amend the pleadings.

Page 61

000467

14 That does not mean that they are
15 consenting to the substance of the amendment. That
16 does not mean that they agree that the allegations
17 of the amendment are valid or that there is any
18 basis for the amendment or even that the amendment
19 itself is proper. Simply go ahead and amend your
20 pleadings and we will then deal with it once you've
21 amended pleadings.

22 If their argument is true that by
23 consenting to an amendment you are agreeing that it
24 is valid, then no one will ever consent to an
25 amendment again. It's putting the cart before the

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69

1 horse. It's saying even before you've amended your
2 pleadings, before we've seen the amendment, before
3 the amendment has been filed, we are agreeing that
4 you can go ahead and do that? That makes no sense.

5 All we consent to is make your amendment
6 and then we will deal with it. That was no way
7 intended or in fact a consent to the validity of the
8 amendment. As to the validity of the amendment
9 itself, they are basically fraudulent conveyance
10 claims, claims under the Statute of Elizabeth.

11 In order for them to do that they have to
12 have, Number 1, a judgment against the judgment
13 debtor. If you are going to set aside a fraudulent
14 conveyance or set aside a conveyance on the ground
15 that it was done with the fraudulent intent to
16 defeat a claim of a creditor because you owe that

17 creditor money, the very first thing you have to
18 prove is you owe them money. You have to have a
19 final judgment. That is the first prerequisite.
20 There is no final judgment in this case.

21 The second thing you have to show just to
22 get your foot in the door in the Statute of
23 Elizabeth is, okay, I've got a valid judgment. You
24 can't pay it. They haven't proved that. They
25 haven't gotten to that point, Number 1, because they

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70

1 don't have a valid judgment so they haven't even --
2 they cannot collect on a nonexistent judgment.

3 So they cannot prove my client is judgment
4 proof because there is no judgment obtained against
5 him. Lastly, they have to get into the merits of
6 the statute of Elizabeth. That it was done with a
7 fraudulent intent so that he would not have to pay
8 to the judgment holder funds because he is now
9 judgment proof.

10 So they have taken a fraudulent conveyance
11 claim saying, we have a judgment, when they don't.
12 You are judgment proof, when he's not. And you did
13 this to defeat this claim, which he did not do.

14 Lastly, Your Honor, in addition to this
15 not being a consent to the substance of the
16 amendment and the fact that a Statute of Elizabeth
17 claim is totally premature and unfounded in both
18 fact and law at this stage, what they've done is
19 they've taken one lawsuit to collect -- to get the

20 judgment and amended those same pleadings to again
21 allege Mr. Fender breached the contract with
22 fraudulent intent, negligent misrepresentation,
23 filed those exact same claims against him that have
24 already been tried.

25 If you look at the complaint, the

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71

1 allegations against Mr. Fender are the exact same
2 allegations that have already been tried. And they
3 have done this after the final trial of the case to
4 bring in additional parties, additional defendants,
5 which is why this case has gotten unnecessarily
6 complicated.

7 I respectfully submit that if their claims
8 had any validity, the proper course of action would
9 have been to get a judgment, try to collect it. If
10 they could not collect it, then see are there any
11 allegedly fraudulent conveyances. And then bring a
12 separate action to set aside those allegedly
13 fraudulent conveyances.

14 And as part of that prove we have a final
15 judgment, you are judgment proof, and then facts of
16 whatever it is that they believe constitutes fraud.

17 They have put the cart way before the
18 horse. In the same case they are trying to
19 establish the judgment, they are trying to set aside
20 fraudulent conveyances. And they have re-sued
21 Mr. Fender for the exact same things that they've
22 already gone to trial on, which makes absolutely no

23 sense.

24 If you look at my answer, I had to answer
25 all of these allegations again. They simply refiled

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72

1 the amended complaint against Mr. Fender so we are
2 having to re-defend those claims. And then they
3 added more parties to set aside conveyances to
4 collect on a judgment that doesn't exist against a
5 person who can pay the judgment if it's valid.

6 So I believe our abuse of process claim is
7 proper. And, of course, the stage we are at,
8 12(b)(6) stage, the allegations of the complaint
9 have to be accepted -- or the counterclaim have to
10 be accepted as true given the light most favorable
11 to the -- in this case the counterclaiming
12 plaintiff.

13 MR. RANNIK: Your Honor, in response
14 if I could read from the transcript. And I can make
15 this exhibit. I have it here that the transcript is
16 from the hearing before this court on November
17 the 13th. And could I ask the court reporter to
18 mark this as I think she marks them better than I
19 do.

20 (MARKED PLAINTIFF'S EXHIBIT NO. 4.)

21 MR. RANNIK: This is just an excerpt.

22 JUDGE DUKES: Thanks.

23 MR. RANNIK: And if I could direct
24 the court's attention to Page 39 in the middle there
25 it says -- and I'm going to read if I may.

1 Mr. Rannik. Well, Judge, would the court
2 be amenable to allowing us to amend our complaint to
3 add the transferees as parties rather than filing an
4 entirely separate action?

5 The Judge. Let me ask counsel.

6 Mr. Bowen. I would not oppose that.

7 The Judge. Okay. Well, then I won't
8 argue it. It's not opposed.

9 Your Honor, they are estopped from arguing
10 otherwise. They consented to this exact course of
11 action and now they are trying to say that it's an
12 abuse of process. I believe I heard Mr. Kuhn say
13 something that consent to an amendment does not mean
14 that there is an agreement that the amendment is
15 proper and not an abuse of process.

16 I don't see how that can be the case. How
17 can you consent to something and then say, oh, now
18 we are going to turn around and say that is an abuse
19 of process.

20 Secondly, with regard to the validity of
21 the allegations. Your Honor, respectfully that is
22 not before you at the present time. There was no
23 motion to dismiss filed by the Defendants. They
24 answered.

25 Now whether the claims are valid would be

1 a defense to our claims. Certainly they can argue
2 that -- you know, when we get further on they can
3 argue that we are wrong. That it's improper. That
4 is a defense, but that is not the basis for a
5 counterclaim for abuse of process.

6 Finally, an amendment does not mean we are
7 bringing the same causes of action against
8 Mr. Fender again. In the same way that when you
9 amend a complaint before a trial and include the
10 same causes of action, you are not re-alleging them.
11 You are not bringing a duplicate claim. You are
12 simply saying this claim still exists.

13 Mr. Kuhn said that they are now having to
14 re-defend those claims. Your Honor, that is not
15 true. We are not -- those are in the bag. Your
16 Honor has ruled and they are there. If we had
17 amended the complaint without including those it
18 could have been seen that we had waived them, and
19 that probably would have been the argument.

20 It's simply -- I believe Mr. Kuhn
21 misapprehends the nature of our amended complaint.
22 And the causes of action for abuse of process should
23 be dismissed.

24 JUDGE DUKES: Let me ask you this
25 because, again, I'm going to put the cart before the

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1 horse now because you correctly stated the status of
2 the pleadings and motions and what hasn't been filed

2018 07 23 - Hrg Transcript - Judge Dukes
3 yet with regard to these, but Mr. Kuhn stated the
4 way things are usually done around here, I guess
5 there are different ways to do things, but
6 ordinarily a final judgment would be entered,
7 supplemental proceedings would proceed.

8 There would be a finding of nolo bono.
9 Maybe then there would be some Statute of Elizabeth
10 actions filed, but it would be in separate actions
11 after a final judgment. And I can read the
12 transcript here. I mean, I probably wasn't thinking
13 all the way through to today when I said, yeah,
14 whatever you all agree to, go ahead. You know,
15 you've got two parties across the table from one
16 another. Who am I to get in the middle of an
17 agreement when they attempt to agree, but certainly
18 that agreement didn't include the other parties that
19 were then brought in.

20 And the agreement appears, looked at it in
21 the light most favorable to Plaintiff, to have been
22 the expansion of this case into a Statute of
23 Elizabeth claim, but of course the other Defendants
24 in that matter certainly weren't here and they
25 weren't capable of complaining.

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76

1 The whole reason that the claim exists now
2 against Mr. Fender has to do with the Statute of
3 Elizabeth claim, I guess, right? I mean, that --
4 but the rest of them weren't here to agree.

5 So I guess my question is does it make

2018 07 23 - Hrg Transcript - Judge Dukes
6 some sense to separate that case off and handle it
7 on its own? Of course it's premature, so we are not
8 going to get an agreement from those parties. I
9 don't know. I recognize here looking at this
10 transcript that Mr. Bowen on behalf of the Defendant
11 agreed that, sure, go ahead and amend. I didn't
12 have an issue with it, but of course no one in that
13 room could have agreed for the other Defendants that
14 were then brought in to what is essentially a
15 Statute of Elizabeth claim.

16 And then I guess my other question, going
17 back to what we heard earlier, is is the attorneys
18 fees clock continuing to run through all of these
19 hearings, bringing all these other people in? Is
20 that the Plaintiff's claim, that all this money
21 spent on pursuing these other parties is money that
22 needs to be added to the tab for this Defendant even
23 though these are issues that have to do with third
24 parties that have nothing to do with the original
25 contract?

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1 MR. EPTING: Judge, if I could, were
2 we not after the hearing watching property be
3 transferred, this case would have taken its normal
4 course. And that Mr. Fender testified at trial that
5 he had no assets. And we find on that very day he
6 transferred an asset and then subsequently
7 transferred another asset, we would have likely just
8 finished this case. Perhaps the rehearing would

2018 07 23 - Hrg Transcript - Judge Dukes
9 have been heard, and we would be off and running.

10 I tell you that because your notion about
11 all of this other litigation, I suggested this in
12 the beginning. And, in fact, Fred and I had some
13 favorable dialogue about it. We are not interested
14 in pursuing the other pieces of this. We just want
15 to make sure that the transfers don't get yet
16 transferred again.

17 Because Mr. Fender has a hand in every one
18 of them. And so what we were trying to work out is
19 some agreement where basically all of this can just
20 be parked, not with freezing any subsequent transfer
21 by a new defendant, but rather it would require
22 coming before you and getting leave of disposing of
23 the asset.

24 And if that happened, then of course all
25 of this would be over and we would basically be down

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78

1 to a pursuit of the case against Mr. Fender. The
2 appeal and the fraudulent transfer would likely be
3 mooted because presumably Fred and I could come to
4 some sort of agreement that these assets were going
5 to remain where they were.

6 And so the way you're thinking I think is
7 the right way forward. We are certainly not trying
8 to make this more complicated. And, as I said, but
9 for seeing transactions occurring during trial and
10 after judgment, because you would think after
11 judgment, Judge, they wouldn't be transferred.

12 So there ought to be a more direct way
13 forward. Your question, Judge, about do we get to
14 pursue these for third parties and bringing them in
15 here. I think the answer is not clear. But I'm
16 willing to concede that the way you're thinking
17 about it is certainly pushing the boundary of the
18 contractual provision that we have.

19 And it may be that were we at that place,
20 whatever fees that we would request going forward
21 would be changed and some of that would be modified
22 out.

23 JUDGE DUKES: But, I mean, some of it
24 has to be backed up now because these parties have
25 now been in play for months, right?

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1 MR. EPTING: Judge, I don't think the
2 court is wrong in asking that question. What my
3 remark would be is all of this is the result of
4 Mr. Fender disposing of assets and seeking to avoid
5 paying the damages as a result of the breach of
6 contract.

7 MR. KUHN: Which we vehemently deny.

8 JUDGE DUKES: Okay. Anyway, I've
9 gone way outside of the motion. The motion is
10 simply to dismiss. And -- but I guess I'm still
11 trying to figure out the structure of the case. But
12 anyway, anything else on this motion?

13 MR. KUHN: Not from the Defendant,
14 Your Honor.

15 JUDGE DUKES: Okay. All right. Let
16 me think about that one while I'm thinking about
17 everything else. The next motions we have are
18 motions to dismiss filed 5/17; is that correct?

19 MR. RANNIK: Actually, Judge, there
20 is a second part to the motion that we just heard --

21 JUDGE DUKES: Second part? All
22 right.

23 MR. RANNIK: -- which is -- relates
24 to Mr. Bowen's amended counterclaim.

25 JUDGE DUKES: Okay. All right.

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1 Happy to hear that first then. Go ahead.

2 MR. RANNIK: Thank you, Judge. In
3 that amended counterclaim there are several things.
4 Mr. Bowen brings a negligence and equitable
5 indemnification claims against the original
6 Plaintiffs and also the principals of the two
7 companies; Mr. Kerr and Mr. Trumps.

8 As an initial matter with regard to
9 Mr. Kerr and Mr. Trumps, Rule 14 provides that a
10 defendant can only bring in a third party within ten
11 days of filing their answer. The Defendants
12 answered on March 15th. And then the amended
13 counterclaim of Mr. Bowen was April the 2nd. So
14 it's outside the ten days. So without leave of
15 court they cannot bring in Mr. Kerr and Mr. Trumps.
16 So those two Defendants should be dismissed on that
17 basis.

18
19 claim, again I believe there's a misapprehension of
20 the nature of Mr. Bowen's inclusion in this case.
21 Mr. Bowen was brought in because his name appeared
22 on a deed that related to a transfer occurring or
23 appeared to relate to a transfer after the start of
24 trial.

25 We were challenging whether Mr. Fender had

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81

1 done that properly or fraudulently. But in order to
2 do so we needed to bring in all transferees and
3 parties to that transfer which included Mr. Bowen.
4 He was brought in simply to defend his interest in
5 that property, if any.

6 The counterclaim for negligence really is
7 in the manner of a defense rather than a
8 counterclaim. It's, well, you are not correct in
9 your allegations, but it doesn't rise to there being
10 negligence or there being a cause of action for
11 negligence against an opposing party who files a
12 complaint.

13 I don't believe the rules or the case law
14 provides for such a cause of action. With regard to
15 the equitable indemnification claim, Your Honor,
16 equitable indemnification is -- of course you will
17 know better than I, applies where one party has had
18 to pay a judgment because of another party's
19 negligence.

20 Here that's not the case and it's not

2018 07 23 - Hrg Transcript - Judge Dukes
21 pled. There's no allegation in Mr. Bowen's amended
22 counterclaim that Mr. Bowen was forced to pay any
23 judgment on behalf of anyone else's negligence.

24 So, Your Honor, both the negligence and
25 equitable indemnification claims should be

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82

1 dismissed.

2 JUDGE DUKES: All right. Thank you
3 so much. Happy to hear from you.

4 MS. EVERSOLE: Your Honor, we filed
5 the amended complaint within 30 days -- I mean,
6 excuse me, the amended answer and the counterclaims
7 within 30 days. There had been no responsive
8 pleading filed or anything at that -- in between
9 that time, so we have the right under the rules to
10 amend the complaint -- amend the answer.

11 So we added the causes of action against
12 the Plaintiffs for negligence and equitable
13 indemnification. And I think the negligence claim
14 sort of speaks for itself. The Plaintiffs did not
15 do their homework in this. They did a cursory
16 search of the public records and found a deed that
17 Mr. Bowen had signed, and that's it.

18 And they included him in this litigation
19 claiming that he was involved in this fraudulent
20 transfer stuff. And it's negligent on their part
21 for not doing at least sufficient research to learn
22 that even that the property that's involved in that
23 deed is owned by somebody other than -- somebody who

2018 07 23 - Hrg Transcript - Judge Dukes
24 is not even included in this lawsuit. They
25 currently own -- it's Trask owns that property now.

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83

1 And they should have known that before even filing a
2 lawsuit against Mr. Bowen.

3 I need to go back to -- since Mr. Bowen
4 was Mr. Fender's attorney at that time and consented
5 to this amendment, again, like Mr. Kuhn has said, it
6 was an agreement to an amendment. It wasn't an
7 agreement to the content of the amendment. And then
8 lo and behold, they turn around and they are suing
9 him, the Defendant's attorney.

10 So the motion to dismiss is based on what?
11 Under what rule is this motion to dismiss brought?
12 Mr. Bowen complied with the rules of procedure,
13 filed this amended answer. Mr. Kuhn had filed the
14 original answer. And then Mr. Bowen retained me to
15 represent him and we filed the amended answer
16 consistent with what his claims are in his answer.

17 That really leads me into our motion to
18 dismiss.

19 JUDGE DUKES: All right. Let me see
20 if there is any response on the first one and then
21 we'll get right back to you. So, yes, sir.

22 MR. RANNIK: Judge, I'll be very
23 quick. Again, the ten days piece that I was raising
24 was only with regard to Mr. Kerr and Mr. Trumps
25 individually. Rule 14(d), if I can quote, says, the

1 third-party plaintiff need not obtain leave to make
2 service of a third-party action if he files the
3 third-party complaint not later than ten days after
4 he serves his original answer.

5 Again, that wasn't done with regard to
6 Mr. Kerr and Mr. Trumps. No leave was sought from
7 the court. And so the third-party action against
8 them should be dismissed on that basis.

9 Again, the characterization that we are
10 suing Mr. Bowen, he is a nominal defendant because
11 he had an interest in a piece of property. And we
12 were challenging that particular transfer of that
13 piece of property.

14 He has a right to be heard. He has an
15 interest to defend, and therefore he was named. But
16 to say that we are suing him and that we didn't do
17 our homework and -- again, I think doesn't quite
18 capture the nature of his inclusion in this suit.

19 We have no quarrel with Mr. Bowen. His
20 name was on a deed, and rather than go after it
21 without giving him an opportunity to defend his
22 interest, he was named as a nominal defendant.

23 JUDGE DUKES: But, I mean, he was
24 named as a defendant after -- if I'm reading the
25 allegations correctly, you allege he had already

1 transferred it out to someone else though, right?
Page.76

000482

2 MR. RANNIK: Your Honor, we -- in the
3 course of searching for additional properties that
4 Mr. Fender may have transferred after the start of
5 this litigation, we came across a deed in which both
6 Mr. Fender and Mr. Bowen quit claimed a property to
7 Mrs. Martha Fender for \$10.

8 That was the basis for our inclusion of
9 him in this suit. We thought, well, that looks like
10 that could be another fraudulent transfer. And he
11 has an interest in it, so we included him.

12 That the property has been transferred
13 subsequently or whether it has I don't know factors
14 into the equation of whether we committed negligence
15 by allowing him the opportunity to be heard with
16 regard to his interest in the property.

17 JUDGE DUKES: Again, I'm just
18 wondering if he's a witness or a party. I guess I
19 was trying to figure out what the assertion was with
20 regard to his ownership during the course of this.

21 MR. EPTING: We --

22 MS. EVERSOLE: Your Honor -- no.

23 MR. EPTING: We actually, Judge,
24 reached out and are willing to pursue this to make
25 sure that there's no agreement -- to try to see if

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86

1 there is some agreement in which Mr. Bowen can be
2 dismissed, but did not hear back. But we are
3 certainly willing to revisit that because as
4 Mr. Rannik keeps pointing out we thought he may have

5 some interest. Did not know. If he doesn't have an
6 interest and we can come to some sort of affidavit
7 like we did with Mr. Ward, there is a way to take
8 that piece out of here.

9 JUDGE DUKES: Anything else on this
10 part of the motion?

11 MS. EVERSOLE: Well, just, Your
12 Honor, there was argument about the third parties.
13 We had dismissed that second amended complaint. And
14 I think that's what he is referring to. There isn't
15 a third-party that's claimed in the -- in our
16 amended answer.

17 MR. RANNIK: Your Honor, I have a
18 copy if I could hand it up. This is the April
19 2nd --

20 MS. EVERSOLE: We do. Jaan is
21 correct. My apologies.

22 MR. RANNIK: Actually I have my
23 writing all over it, but --

24 JUDGE DUKES: Okay.

25 MR. EPTING: But is there any -- are

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87

1 you saying that there is no objection to dismissing
2 him?

3 JUDGE DUKES: I don't know. That's
4 always open.

5 MR. EPTING: Did you intend to
6 dismiss him? Because we will certainly agree to
7 that.

8 MS. EVERSOLE: If you agree to
9 dismiss with prejudice we are done.

10 MR. EPTING: Well, it's your claim.

11 JUDGE DUKES: I think you all might
12 be talking about two different things. What are --
13 you're talking about dismissing which claim?

14 MR. EPTING: We are saying the
15 third-party claims that she brought against Mr. Kerr
16 and Trumps were not proper because they were outside
17 the time allowed by Rule 14.

18 JUDGE DUKES: Okay. Ms. Eversole,
19 are you saying that you consent to dismissing those
20 claims?

21 MS. EVERSOLE: No. I was not saying
22 that, Your Honor.

23 JUDGE DUKES: Okay. I thought you
24 all were talking about two different things. So
25 what claims did you think were dismissed already,

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88

1 Ms. Eversole?

2 MS. EVERSOLE: I don't -- which
3 claims were dismissed? Oh, we filed a second
4 amended complaint that was dismissed. That's the
5 voluntary dismissal that we did on Friday.

6 JUDGE DUKES: Okay. So you all are
7 talking about two different things. Okay.

8 MS. EVERSOLE: I thought he was
9 talking about that complaint -- or that second
10 amended complaint, but he was talking about this

11 amended complaint -- amended answer. I don't know
12 why I keep saying complaint because there is a
13 counterclaim.

14 JUDGE DUKES: It's one complicated
15 case. I'll tell you that. Okay. I think about --
16 anything else on that Part 2 of Motion 1?

17 MR. RANNIK: Not from Plaintiffs,
18 Your Honor.

19 JUDGE DUKES: Okay. All right. Then
20 I'm happy to hear on the motions to dismiss filed
21 5/17.

22 MS. EVERSOLE: I can move forward
23 with Mr. Bowen's motion on that.

24 JUDGE DUKES: All right. Please go
25 ahead.

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89

1 MS. EVERSOLE: Okay. We filed a
2 12(c) motion to dismiss the Plaintiffs' complaint
3 against Mr. Bowen on the grounds that the Plaintiff
4 cannot prove on the allegations in the complaint,
5 the factual allegations in the complaint, would not
6 even -- even if viewed in their favor would not
7 allow them to recover or prevail in this action
8 against Mr. Bowen.

9 There was only one fact alleged in the
10 third amended complaint of Plaintiffs that brought
11 Mr. Bowen into this action, and that fact is in
12 Paragraph 4.c. of their third amended complaint.

13 And basically, it's -- not basically. It
Page 80

000486

14 is just a statement that there exists this quitclaim
15 deed that Mr. Bowen signed and Mr. Fender signed.

16 And that alone is the only fact alleged to
17 support their claim that Mr. Bowen had fraudulently
18 intended -- you know, fraudulently was involved in
19 this transfer of the property. And there's nothing
20 more on that.

21 I filed a memorandum of law with respect
22 to this case. And we do admit the fact in the case
23 that this deed does exist, but there is nothing in
24 the complaint to support that Mr. Bowen did anything
25 or any act in an effort to hinder, delay, or thwart

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90

1 Mr. Fender's creditors or potential creditors
2 including the Plaintiffs.

3 And the complaint made no allegation that
4 Mr. Bowen was made to hinder or delay Lady Beaufort
5 in collecting any judgment it may obtain or had
6 obtained to avoid the Defendant's liability to Lady
7 Beaufort by attempting to hide assets beyond the
8 reach of Lady Beaufort.

9 And I say hide because they didn't put
10 that word in there, but they failed to state any
11 fact to support that allegation. In Paragraph 48
12 the same thing. The complaint states the transfer
13 was made with the actual intent of defrauding Lady
14 Beaufort and -- Lady Beaufort -- from collecting any
15 judgment it may obtain or had obtained.

16 They failed to make any allegation or

17 factual statement in there that Mr. Bowen had any
18 judgment against him that they were trying to
19 recover from. And there wasn't a -- there wasn't a
20 judgment alleged.

21 There's nothing in that complaint to allow
22 them to prevail simply because there's a deed signed
23 by Mr. Bowen. And the rule states that in the event
24 that that doesn't prevail, I went on to do a motion
25 for summary judgment which lays out in detail the

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91

1 transfers of the property in the public records that
2 was available to them.

3 This property was -- first belonged to
4 Backstreet Investments, which was a company owned by
5 Sherwood Fender and Mr. Bowen. That property was
6 acquired on December 20th of 1993. On October
7 27th of the year 2000, the lots were prepared -- a
8 plat of the lots was prepared by Mr. Fender.

9 On October 15th of 2002, Backstreet
10 Investments conveyed by a quitclaim deed all the
11 interest in the lots to Bowen and Fender
12 individually as co-tenants. That's 2002.
13 January of 2011, Fender conveyed all his interest in
14 the lots to Mr. Bowen for fair consideration of
15 \$135,000.

16 On December 9th of 2013, Mr. Bowen
17 conveyed all of his interest in the lots by
18 quitclaim deed Martha Fender. Mr. Bowen didn't even
19 own an interest in this property when the Plaintiffs

20 sued him in this action.

21 The quitclaim deed was done specifically
22 for clearing up a discrepancy in the legal
23 description when Ms. -- Mrs. Fender sold the
24 property to the current owner, Trask Investments,
25 who is not named as a defendant in this action.

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92

1 JUDGE DUKES: Which Trask is Trask
2 Investments?

3 MS. EVERSOLE: Paul Trask.

4 JUDGE DUKES: Okay.

5 MS. EVERSOLE: So, I mean, it's clear
6 that they can't prevail in this case because -- I
7 mean, Mr. Bowen didn't own the property. And
8 setting aside a deed that just because he had signed
9 it is going to cause a cloud upon title perhaps to
10 Mr. Trask's property.

11 JUDGE DUKES: When was that transfer,
12 that quitclaim deed?

13 MS. EVERSOLE: That was -- when was
14 that one?

15 MR. RANNIK: December of 2014, I
16 believe, Your Honor.

17 MS. EVERSOLE: Yeah. It was
18 December 2014. And that was the quitclaim deed, but
19 Mrs. Fender, she sold the property.

20 JUDGE DUKES: Anything else?

21 MS. EVERSOLE: No, Your Honor.

22 JUDGE DUKES: Okay. Happy to hear
Page 83

000489

23 from you, sir.

24 MR. RANNIK: Your Honor, again,
25 Mr. Bowen's involvement in this case, we reached out

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93

1 via letter I believe of March 15th to Mr. Kuhn
2 asking whether Mr. Bowen had any interest in this
3 property, explaining that we did have any complaint
4 -- any quarrel with them. And asking if we could
5 resolve it and let him out of the case. We never
6 heard back.

7 With regard to the deed itself, Your
8 Honor, there's nothing on the face of this deed that
9 suggests that it is to correct a scrivener's error.
10 It does not talk about prior conveyances of the
11 property. I have a copy if I could --

12 MS. EVERSOLE: It's in our motion.

13 MR. S. FENDER: It's in the
14 derivation property.

15 MS. EVERSOLE: There are copies of it
16 in my motion.

17 MR. RANNIK: If I could hand the copy
18 to the court.

19 JUDGE DUKES: Well, let me look at
20 her --

21 MR. RANNIK: At her motion?

22 JUDGE DUKES: It's so hard to find
23 these things now digitally, so if you've got a copy
24 of --

25 MR. RANNIK: I do. I do, Your Honor.

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94

1 JUDGE DUKES: Thank you.

2 MR. RANNIK: And, Your Honor, this
3 quitclaim deed was filed after the lawsuit was filed
4 -- or it was signed after the lawsuit was filed,
5 after the lis pendens was filed, the underlying lis
6 pendens that this case is about.

7 And actually it wasn't recorded until
8 January of 2015. We had seen other transfers for
9 nominal amounts of money of properties that
10 Mr. Fender had an interest in. And this seemed to
11 fit the pattern.

12 And so again, not because we sought to sue
13 Mr. Bowen, but because we thought he might have an
14 interest in this property, he had to be named as a
15 party to this suit. That is the purpose of him
16 being in the suit and --

17 JUDGE DUKES: Why would he have an
18 interest in the property though if he quitclaim
19 deeded his interest out?

20 MR. RANNIK: Well, he would have an
21 interest in the transfer. And if this transfer was
22 void because it occurred after this lawsuit began
23 then Mr. Bowen would have the right to make whatever
24 argument he has about why the transfer should not be
25 voided.

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1 Accordingly, he's a necessary party under
2 Rule 19(a). Necessary party in order for there to
3 be complete relief afforded between the parties.
4 For that reason the motion to dismiss should be
5 denied.

6 MS. EVERSOLE: Your Honor, I think --

7 MR. RANNIK: Also, Judge -- I'm
8 sorry. Can I say one more thing?

9 MS. EVERSOLE: Okay.

10 MR. RANNIK: Thank you. Judge, it
11 also sounds a little bit like this is a motion --
12 it's stated as being under 12(c). It sounds a
13 little bit like a motion under 12(b)(b) for failure
14 to allege sufficient facts to sustain the claim.

15 To the extent that is the case or the
16 court finds that to be the underlying purpose of
17 this motion, we would say it's procedurally improper
18 because it was filed after Mr. Bowen had already
19 answered in the case.

20 And Rule 12(b) says that a motion making
21 any defense under this section shall be made before
22 a pleading if further pleading is permitted.

23 With regard to the pleading itself, there
24 are facts sufficient to sustain this cause of
25 action. And a motion for a judgment on the

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96

1 pleadings would (inaudible). Thank you.

2 JUDGE DUKES: All right.

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MS. EVERSOLE: Your Honor --

JUDGE DUKES: What are -- I'm scrolling through here. What are the allegations against Mr. Bowen in the third-party complaint?

MR. RANNIK: Your Honor, again, the allegations are not against Mr. Bowen. They are against Mr. Fender. And because they relate to a transaction in which Mr. Bowen was a party, at least with regard to one -- I'm looking at Page 6 of our third amended complaint. It's Paragraph 46, subparagraph (b).

There was a transfer of a property, it appeared from the face of the deed, after suit was filed in which Mr. Fender and Mr. Bowen quitclaimed their interests to Mr. Fender's wife, Martha Fender, for \$10.

JUDGE DUKES: So you seek no relief against Mr. Bowen?

MR. RANNIK: That's correct.

JUDGE DUKES: All right.
Ms. Eversole?

MS. EVERSOLE: I am astounded. They are not seeking any relief, but they are naming him

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97

1 as a defendant and having to go through all the
2 costs of answering and having to deal with this
3 litigation and they are not trying to seek anything
4 against Mr. Bowen?

5 That is a fishing expedition and an

2018 07 23 - Hrg Transcript - Judge Dukes
6 improper one at that for filing and bringing
7 somebody into court. Now I'd like to talk about the
8 date of the transfer to Mrs. Fender and that
9 quitclaim deed.

10 If this court were to find that that --
11 just the date alone and the deed alone is
12 sufficient -- it can't be sufficient. That would
13 have a chilling effect on anybody having any
14 transactions.

15 Just because a case is filed against
16 somebody doesn't mean that they're trying to hide
17 something when they are conveying property. That --
18 the suit was filed in the beginning of, what, 2014,
19 I think somewhere around in there. And then this
20 transfer took place at the end of 2014. This case
21 didn't even go to trial until 2017.

22 So, I mean, I just can't imagine why
23 Mr. Bowen would be included in this lawsuit under
24 that set of facts.

25 MR. RANNIK: Judge, if I may?

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98

1 JUDGE DUKES: Go ahead.

2 MS. EVERSOLE: And I would also like
3 to say under Rules 12(c) -- an action under 12(c) is
4 brought because after the pleadings are closed, but
5 within such time as not to delay the trial, any
6 party may move for judgment on the pleadings.
7 That's why we are filing it under Rule 12(c).

8 MR. RANNIK: And I would say a rose

2018 07 23 - Hrg Transcript - Judge Dukes
9 by any other name is still a rose. And whether it's
10 under 12(c), but really is a motion under 12(b)(6)
11 is a matter beyond my pay grade.

12 Judge, the way that this all came about is
13 because Mr. Fender was transferring properties on
14 the day of trial and after trial, after a judgment
15 had been entered against him, often for no
16 consideration.

17 We found another instance of that being
18 the case. And because we were correctly told and
19 instructed that we should bring in all parties to
20 transfers before we could challenge those transfers,
21 Mr. Bowen was a necessary party. And he had to be
22 brought in as a defendant because there was no other
23 mechanism for bringing him in.

24 MS. EVERSOLE: May I make a comment?
25 Mr. Bowen was Mr. Fender's attorney at the time of

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1 that agreement. Mr. Bowen had no idea that he was
2 going to be served papers as a defendant when he
3 agreed to that amendment. He agreed to an
4 amendment, not to what was contained in the
5 amendment. And to bring him in like this is
6 basically frivolous.

7 JUDGE DUKES: All right. Anything
8 else on that one?

9 MR. RANNIK: No, Your Honor. Not
10 from Plaintiffs.

11 JUDGE DUKES: Thank you. Ms.

12 2018 07 23 - Hrg Transcript - Judge Dukes
Eversole, you had one for Mr. Fender as well I
13 think.

14 MS. EVERSOLE: I think that -- that
15 is Ms. Handy, this one.

16 JUDGE DUKES: Oh, okay. Sorry. Go
17 ahead.

18 MS. HANDY: Okay. Your Honor, Mr.
19 Fender's motion to dismiss is also based on Rule
20 12(c). And the facts are similar to William Bowen's
21 motion to dismiss. There are two particular pieces
22 of property in regards to Mrs. Fender being brought
23 a party to this action.

24 The first -- I'll deal with each parcel
25 one at a time instead of doing it altogether. I

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1 will start with the Lot 5, Palmetto Business Park.

2 This is the same property that was
3 conveyed by Martha Fender to Lady Kemmerlin for
4 valuable consideration, \$90,000. Before that Martha
5 Fender acquired the property, Lot 5, Palmetto
6 Business Park, from Brickyard Holdings. And that
7 transaction occurred on April 21st, 2014.

8 Brickyard Holdings at the time of that
9 transfer was not a party to the lawsuit. In fact,
10 Brickyard Holdings was not named a defendant in this
11 current lawsuit until March 2018, more than four
12 years after this transfer.

13 Prior to that, Brickyard Holdings acquired
14 the property from TMS, Inc., in March 27th, 2007.

2018 07 23 - Hrg Transcript - Judge Dukes
15 So at the time when Martha Fender acquired the
16 property, Brickyard Holdings was not indebted --
17 still is not indebted to the Plaintiff.

18 Brickyard Holdings was not a defendant of
19 any lawsuit. And Brickyard Holdings, again, was not
20 a party to the lawsuit until March 2018. Therefore,
21 Martha Fender could have conveyed this property to
22 whomever she liked free and clear because the
23 transfer does not fall under the Elizabeth Statute.

24 In order for a transfer to fall under the
25 Elizabeth Statute, one of the crux questions would

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101

1 be is the debtor or transferor indebted to the
2 plaintiff or creditor at the time of the transfer.

3 And it is clear in regards to Lot 5,
4 Palmetto Business Park, Brickyard Holdings was not
5 indebted or made a party to any lawsuit at the time
6 of the conveyance to Martha Fender.

7 JUDGE DUKES: Thank you. Happy to
8 hear from you.

9 MR. RANNIK: Do you want to go on
10 with the second piece of property or should -- I
11 believe there is a second piece of property that is
12 the subject --

13 JUDGE DUKES: Oh, go ahead. I'm
14 sorry. I didn't know that.

15 MS. HANDY: The second piece of
16 property is the same property in regards to William
17 Bowen transfer, the quitclaim deed in December 2014.

2018 07 23 - Hrg Transcript - Judge Dukes
18 At the time of that transfer, William Bowen had no
19 interest in the property. The property -- the
20 quitclaim deed was signed and recorded to correct
21 any deficiencies in the legal description to -- in
22 order to perfect the sale from Martha Fender to
23 Trask, who is not a party to the lawsuit who has
24 interest in the transfer that the Plaintiff is
25 trying to say is a fraudulent transfer.

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102

1 In my exhibits to my memorandum, if you
2 look at Exhibit H and H-1 you would see there's a
3 survey of the property. And on that survey it shows
4 Parcel 269 and I believe Parcel 267.

5 The legal description on that survey, the
6 surveying notes, label the property Lots 1, 2, 3, 4,
7 5, 6, Block F, Beaufort Development. That is
8 precisely the legal description in the quitclaim
9 deed from Bill Bowen to Martha.

10 And that also gives indication that it is
11 a quitclaim deed to correct the legal description in
12 the original deed that Martha acquired for valuable
13 consideration from Bill Bowen in December 2013.

14 Again, Mr. Bowen was not a party to the
15 lawsuit at the time of the arm's-length transaction
16 between him and Martha in 2013. And the deed that
17 was signed in 2014 was merely a technicality or
18 formality to perfect the legal description to Trask
19 Development who is not a party to this lawsuit.

20 So, Your Honor, on those bases, it's clear

2018 07 23 - Hrg Transcript - Judge Dukes
21 that none of the transfers to Martha Fender falls
22 within the statute of Elizabeth because none of the
23 transferors were indebted to the creditor or made a
24 party to the lawsuit at the time of the original
25 transfers. So we ask that Martha Fender's

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103

1 properties and she be dismissed from the Plaintiff's
2 complaint.

3 JUDGE DUKES: All right. Thank you
4 so much. Happy to hear from you.

5 MR. RANNIK: Thank you, Judge.
6 Judge, first, when Ms. Handy began her argument she
7 said that this was a motion under 12(b). To the
8 extent that is the case, once again, it would be
9 improper because it's made after the date of the
10 answer.

11 With regard to the rest of the argument,
12 Your Honor, this is an argument about the merits.
13 We are at the motion to dismiss stage. It's not
14 proper to be arguing the merits at this stage.

15 Thirdly, with response to the argument
16 that there was no indebtedness in the time of the
17 transfer, the case law does not require there be an
18 indebtedness at the time of the transfer.

19 If I quote from case of Judy v. Judy,
20 which is 403 SC 203 from the Court of Appeals, it
21 says, a subsequent creditor may successfully set
22 aside a voluntary transfer if it was made with a
23 view to a future indebtedness or actual fraudulent

2018 07 23 - Hrg Transcript - Judge Dukes
24 intent on the part of the grantor to evade
25 creditors.

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104

1 Now, Judge, the transfer that is the
2 quitclaim to Martha Fender we've said plenty about.
3 And I think Your Honor knows everything you need to
4 know about that one. With regard to the other
5 transfer, there is a portion in the middle where
6 Brickyard Holdings sold it to Martha Fender for I
7 believe it was \$10 after this suit had been
8 commenced.

9 Brickyard Holdings -- the principal of
10 Brickyard Holdings was Sherwood Fender.
11 Accordingly, that seems to be a transfer between
12 family members for no consideration after litigation
13 began. That is three batches of fraud. And we
14 believe that we have adequately stated a cause of
15 action that it should be avoided. Accordingly, the
16 motion to dismiss should be denied.

17 MS. HANDY: Your Honor, may I follow?

18 JUDGE DUKES: Yes. Go ahead, please.

19 MS. HANDY: Under Judy v. Judy it
20 deals with a voluntary transfer, yes. And a
21 voluntary transfer is one without consideration.
22 However, the facts in Judy v. Judy was a brother who
23 transferred the property to his children. After he
24 transferred the property to his children he -- the
25 court said he transferred in title only.

1 He continued to farm the property. He
2 continued to use the property as collateral. And he
3 continued to make money off of the property. Here
4 the transfer from Brickyard Holdings to Sherwood --
5 to Martha Fender -- first of all, Brickyard Holdings
6 is an entity outside of or separate from Sherwood
7 Fender.

8 Secondly, the Plaintiff has not shown or
9 proved where Brickyard Holdings retained possession
10 of the property, still realized income off of the
11 property, and still in general exercised ownership
12 of the property.

13 Lastly, Your Honor, in the transfer the
14 Plaintiff has not pleaded any facts to show that the
15 transfer was looking forward to or made --
16 anticipation of being indebted or a lawsuit from the
17 Plaintiffs. The transfer from Brickyard Holdings to
18 Martha Fender was in April 21st, 2014.

19 The lawsuit had not been reduced to a
20 judgment until May 11th, 2017, three years after.
21 The hearing -- the trial did not occur until May
22 1st, 2017, three years after.

23 It's absurd to allege that three years
24 beyond a transfer that Brickyard Holdings
25 anticipated being brought in to a lawsuit by way of

2 violation of the Elizabeth Statute. It's way to
3 attenuated to -- for this transaction to fall under
4 Judy v. Judy.

5 JUDGE DUKES: All right. Anything
6 else on that motion?

7 MR. RANNIK: Very briefly if I may.

8 JUDGE DUKES: All right.

9 MR. RANNIK: Ms. Handy said that
10 there are not allegations in the complaint that the
11 transfers were made in order to put any assets
12 beyond the reach of a judgment. I would refer the
13 court to Paragraphs 47 and 48 of the third amended
14 which say exactly that.

15 And finally, Judge, we just need discovery
16 to know exactly what Mr. Fender's role was in
17 Brickyard Holdings, whether frankly that was a
18 transfer from him to his wife or whether it was a
19 legitimate transfer between a valid entity and a
20 disinterested party.

21 Accordingly, a motion to dismiss at this
22 stage would not be appropriate.

23 JUDGE DUKES: All right. Are there
24 other motions? I think that was it that we had for
25 today.

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107

1 MR. EPTING: Yeah. We withdrew the
2 motion to declare the transactions void.

3 JUDGE DUKES: All right. Well, I
4 then will attempt to consider all of this in some

5 expeditious manner. I would encourage you all to
6 attempt to continue to see what you can do.

7 I understand you wanted ten days to do a
8 brief with regard to the attorneys fees issue. And
9 then, Fred, you wanted another 10 to respond. No
10 problem.

11 And then once -- yeah. I mean I will try
12 to consider this all at once, but I have a feeling
13 that the resolution of that may or may not cause you
14 all to talk some more and see what you can do. And
15 I'll try to consider what I can do with the rest of
16 this for now.

17 MR. EPTING: Judge, would it be
18 helpful -- would you prefer to have briefs or
19 proposed orders? Does it matter to you? What's
20 easier?

21 JUDGE DUKES: You know, proposed
22 orders sometimes I end up just -- or whoever does
23 the order ends up just blocking and moving from the
24 briefs. So proposed orders are probably a bit
25 easier. Mr. Kuhn, does that suit you?

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108

1 MR. KUHN: Yes, sir.

2 JUDGE DUKES: Okay. All right.
3 well, proposed orders then.

4 MR. EPTING: And, Judge, we would ask
5 perhaps to submit a proposed order on the other
6 motions as well within the same ten-day period.

7 JUDGE DUKES: Hold off on that for

8 now. I'll try to figure out what happens with this
9 first thing and then I'll see where we go with that.

10 MR. EPTING: All right. Okay.

11 JUDGE DUKES: I mean -- well, let's
12 just see what happens on the first one. As always,
13 I would ask you all to consider -- keep talking.
14 See if there's a resolution to this because what
15 I've heard today is the word appeal about ten times.
16 So, you know, no matter what I do, this whole thing
17 gets tangled up and goes on forever unless you all
18 try to come up with some creative way to get rid of
19 it. So anything else for today's record?

20 MR. EPTING: No, sir.

21 JUDGE DUKES: All right. Thank you
22 so much. You all have a good day.

23 MR. RANNIK: Thank you, Judge.

24 MR. EPTING: Judge, there is one last
25 thing.

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109

1 JUDGE DUKES: We are still on the
2 record?

3 MR. EPTING: Yes. Would it be
4 appropriate here to inquire whether or not Mr. Bowen
5 claims an interest in this piece of property?

6 JUDGE DUKES: Why don't you all do
7 that off the record. So that will conclude the
8 record.

9 (Whereupon, the hearing was concluded
10 at 12:13 p.m.)

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1 Certificate of Reporter

2

3 I, Deborah S. Thomas, Certified Verbatim
4 Reporter and Notary Public in and for the State of
5 South Carolina, do hereby certify that I reported
6 the hearing of Lady Beaufort vs. Hird Island, on the
7 23rd day of July, 2017; and that the foregoing pages
8 constitute a true and correct transcription of the
9 said hearing.

7

8 I further certify that I am neither
9 attorney nor counsel for, nor related to or employed
10 by, any of the parties connected with this action,
11 nor am I financially interested in said cause.

10

11 I further certify that the original of
12 said transcript shall be hereafter delivered to
13 Cherese T. Handy, Esquire, Eversole Law Firm, PC,
1509 King Street, Beaufort, South Carolina 29902

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In witness whereof I set my hand and seal
this 16th of September, 2018.

My Commission
expires 2/7/28

Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

♀

STATE OF SOUTH CAROLINA
COUNTRY OF BEAUFORT

LADY BEAUFORT, LLC. & TIDELAND
REALTY INC.,

Plaintiffs,

v.

HIRD ISLAND INVESTMENTS, INC. AND
SHERWOOD FENDER,

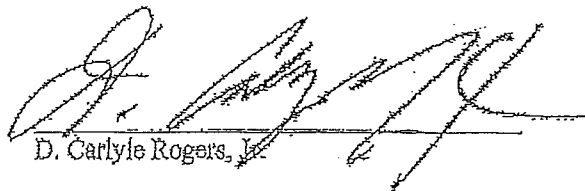
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH CIRCUIT

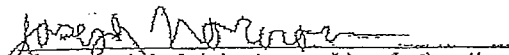
Case No. 2014-CP-07-0052

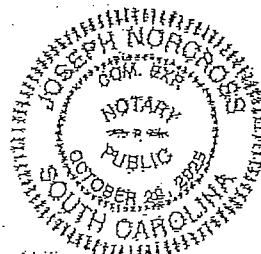
AFFIDAVIT OF ATTORNEYS FEES

1. My name is D. Carlyle Rogers, Jr., and I am a practicing attorney licensed in the state of South Carolina since 1986.
2. I represented the Plaintiff, Lady Beaufort, LLC in the attempted closing with Hird Island, LLC as well as the successful closing of the transaction between Lady Beaufort, LLC and Inverness, LLC.
3. I also assisted Lady Beaufort with the filing of a *lis pendens* on the property at issue in this case located at 9 Sams Point Rd as well as with putting the Seller, Hird Island, LLC on notice of its default under its contract with Lady Beaufort.
4. The total attorney's fees and cost associated with the aforementioned legal services was \$7,857.00.


D. Carlyle Rogers, Jr.

Sworn to and Subscribed before me
On this 23 day of February 2017.


Notary Public for the State of South Carolina
My Commission expires: 10/24/2023



000507

STATE OF SOUTH CAROLINA
COUNTRY OF BEAUFORT

LADY BEAUFORT, LLC & TIDELAND
REALTY INC.,

Plaintiffs,

v.

HIRD ISLAND INVESTMENTS, INC. AND
SHERWOOD FENDER,

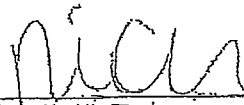
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH CIRCUIT

Case No. 2014-CP-07-0052

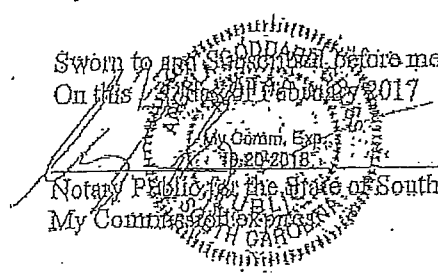
AFFIDAVIT OF ATTORNEYS FEES

1. My name is Michelle N. Endemann, and I am a practicing attorney licensed in the state of South Carolina since 2010.
2. I am employed by the law firm of Andrew K. Epting, Jr., LLC. The Epting firm represents the Plaintiffs in this action as well as in the action against Inverness, LLC which concluded in settlement on May 30, 2014.
3. The total attorney's fees and cost associated with the aforementioned legal representation is \$46,067.41.



Michelle N. Endemann

Sworn to and subscribed before me
On this 30th day of August 2017



Notary Public for the State of South Carolina
My Commission Expires 11/30/2018

1000508

2

Andrew K. Byting, Jr. LLC
 46A State Street
 Charleston, SC 29401

Kerr, James J.
 AMCS, Inc.
 PO Box 1302
 John's Island, SC 29467

Date: 5/15/2014

Regarding: 2086-001 Lady Beaufort
 Invoice No: 20084279

Services Rendered

<u>Date</u>	<u>Description</u>	<u>Hours</u>	<u>Charges</u>
11/26/2013	Administratively open file, conflicts check, terms of engagement in E-mail, preliminary review of documents	1.50	\$375.00
12/27/2013	Review Rannik report and Lis Pendens	0.50	\$270.00
12/27/2013	Prepare Lis Pendens, letter to Clerk; conference with AKE; conference with AGG regarding [REDACTED]	0.50	\$126.00
12/27/2013	Telephone call with Dean regarding [REDACTED]	0.20	\$80.00
12/30/2013	Telephone call with Rogers	0.30	\$135.00
1/02/2014	Review file and prepare Summons, Complaint and Lis Pendens	1.50	\$375.00
1/08/2014	Review pleading and confer with client	0.50	\$225.00
1/14/2014	Review suit and call with Kerr	0.50	\$270.00
1/14/2014	Review Complaint filed by Mathison	0.50	\$126.00
1/14/2014	Conference with AGG regarding [REDACTED]	0.50	\$126.00
1/17/2014	Review suit and confer with MNE regarding [REDACTED]	0.50	\$225.00
1/18/2014	Conference with AKE regarding [REDACTED]	0.30	\$76.00
2/04/2014	Telephone call with client and confer with MNE regarding [REDACTED]	0.50	\$225.00
2/04/2014	Conference with AKE	0.30	\$76.00
2/05/2014	Review Answer and Counterclaim of Hird	0.40	\$100.00
2/10/2014	Review claim; review Motion to Dismiss; confer with MNE regarding [REDACTED]	1.30	\$585.00
2/10/2014	Conference with AKE regarding [REDACTED]	0.30	\$76.00
2/10/2014	Prepare Motion to Dismiss or In the Alternative Consolidate Inverness suit into Lady Beaufort's suit	0.70	\$176.00
2/11/2014	Conference with MNE regarding [REDACTED]; call with client	0.50	\$270.00
2/11/2014	Conference with AKE	0.20	\$80.00
2/18/2014	Review Answer, Counterclaim and Motion to Dismiss of Inverness	0.50	\$126.00
2/18/2014	E-mail Correspondence with Mathison	0.20	\$80.00
2/19/2014	Review pleadings, memo of client; confer with MNE; memo to client	1.20	\$540.00
2/20/2014	Conference with AKE regarding [REDACTED]	0.40	\$100.00
2/21/2014	Telephone call with client; review opposition response and call with client	0.80	\$360.00
2/21/2014	E-mail Correspondence with Mathison	0.20	\$80.00
2/26/2014	Review memo and call with client	0.40	\$180.00
2/27/2014	Review counsel and client memos; call with client and confer with MNE regarding [REDACTED]; review letter	1.30	\$585.00
2/28/2014	E-mail Correspondence with client	0.20	\$80.00
2/28/2014	Conference with AKE	0.30	\$126.00

000509

3/01/2014	Telephone call with client and MNE over two days; review proposals and call with client	1.00	\$450.00
3/01/2014	Conference with AKE regarding [REDACTED]	0.40	\$100.00
3/02/2014	Prepares memo to MNE and confer with client	0.60	\$270.00
3/03/2014	Review memos; calls with MNE and client	1.20	\$540.00
3/03/2014	Prepares Release of Lis Pendens	0.40	\$100.00
3/03/2014	Review memo of AKE; call with AKE; call with Mr. Kerr; E-mail memos with Mr. Kerr and E-mail to Mathison	1.20	\$500.00
3/04/2014	Telephone call with client; review memos regarding [REDACTED] and call with MNE	0.80	\$380.00
3/05/2014	Prepares settlement conclusion	0.30	\$135.00
3/05/2014	E-mail Correspondence with Mathison	0.30	\$75.00
3/07/2014	Telephone call with MNE regarding [REDACTED]	0.20	\$90.00
3/07/2014	Prepares Answer to Hfd Counterclaim and call with AKE	1.30	\$325.00
3/11/2014	Telephone call with Kerr and confer with MNE regarding [REDACTED]	0.60	\$270.00
3/11/2014	Conference with AKE regarding [REDACTED]	0.30	\$75.00
3/13/2014	Conference with client	0.30	\$135.00
3/13/2014	Review memos and confer with client	0.30	\$135.00
3/24/2014	Prepares Answer to Counterclaim of Inverness	0.50	\$125.00
3/25/2014	Telephone call with client and confer with MNE	0.30	\$135.00
3/25/2014	Conference with AKE	0.20	\$60.00
4/07/2014	Review memo and call with client	0.30	\$135.00
4/08/2014	E-mail Correspondence with Mathison	0.20	\$50.00
4/14/2014	Review counsel memos and confer with MNE	0.40	\$180.00
4/14/2014	Conference with AKE regarding [REDACTED]	0.30	\$75.00
4/14/2014	Prepares Motion for continuance and proposed Order; call with clerk	0.50	\$125.00
4/14/2014	E-mail Correspondence with Mathison regarding Hearing	0.60	\$150.00
4/16/2014	Review settlement proposal and [REDACTED]	0.40	\$180.00
4/15/2014	E-mail Correspondence with client regarding [REDACTED]	0.20	\$50.00
4/16/2014	Conference with MNE regarding [REDACTED]	0.70	\$315.00
4/16/2014	Prepares memo to AKE regarding [REDACTED]; conference with AKE regarding [REDACTED]	0.80	\$200.00
4/16/2014	E-mail Correspondence with Mathison regarding settlement, drainage, access, and easement	0.40	\$100.00
4/21/2014	Review counsel memos; confer with MNE	0.60	\$270.00
4/21/2014	E-mail Correspondence with Judge's Clerk and Mathison regarding [REDACTED]; conference with AKE	0.50	\$125.00
4/21/2014	Conference with AKE	0.30	\$75.00
4/22/2014	Telephone call with counsel and client and confer with MNE	0.60	\$270.00
4/22/2014	Conference with AKE regarding [REDACTED] and memo to AKE regarding M. Trumps	0.30	\$75.00
4/22/2014	E-mail Correspondence with Heather in Judge's office	0.20	\$60.00
4/30/2014	Telephone call with client	0.20	\$90.00
5/03/2014	E-mail Correspondence with Mathison	0.20	\$50.00
5/04/2014	Review Mathison Motion to dissolve Lis Pendens	0.30	\$75.00
5/05/2014	Conference with MNE regarding [REDACTED]; review Mathison memo	0.70	\$315.00
5/05/2014	Prepares for hearing; [REDACTED]; research [REDACTED]; pull case law for use at Hearing; create argument notebook	3.40	\$850.00

000510

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5/05/2014	Conference with AKE regarding [REDACTED]	0.50	\$125.00
5/06/2014	Conference with MNE regarding [REDACTED]; call to client	0.80	\$360.00
5/06/2014	Appear at Hearing on all outstanding Motions; conference with AKE on [REDACTED]	1.80	\$450.00
5/06/2014	Review proposed Order prepared by Mathison; conference AKE regarding [REDACTED]	1.20	\$300.00
5/07/2014	Prepare Lady Beaufort version of Order; memo to Judge Dukes regarding objections to Inverness proposed Order and new version	1.40	\$350.00
5/07/2014	E-mail Correspondence with Judge's Clerk	0.20	\$50.00
5/07/2014	E-mail Correspondence with Mathison regarding Orders	0.30	\$75.00
5/08/2014	Review compelling Orders and Court memo	0.40	\$160.00
5/13/2014	Review Order signed by Judge Dukes; conference AKE	0.60	\$150.00
		Total Fees	\$16,560.00

<u>Expenses</u>	<u>Description</u>	<u>Charges</u>
<u>Start Date</u>		
1/08/2013	#3356 Filing Fee - Summons and Complaint	\$150.00
11/26/2013	#3316 Filing Fee - Lis Pendens	\$10.00
12/20/2013	#3325 Tupper Grimsley & Dean - Reimbursement Filing Fee Lis Pendens	\$10.00
12/20/2013	#3327 Jean Rannick - Research	\$610.00
2/07/2014	#3390 - Asset Protection & Investigation - Service of Process	\$235.00
3/11/2014	#3395 Clerk of Court - Filing Fee - Motion to Dismiss or In Alternative to Consolidate	\$25.00
4/11/2014	#3427 Clerk of Court - Motion for Continuance	\$25.00
Total Expenses		\$1,065.00

Total New Charges

\$16,625.00

Staff Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>
Andrew K Epting	19.80	\$450.00
Michelle Nicole Endemann	27.80	\$250.00

000511

Andrew R. Byting, Jr, LLC
 46A State Street
 Charleston, SC 29401

Kerr, James J.
 AMCS, Inc.
 PO Box 1302
 John's Island, SC 29457

Date: 6/04/2016

Regarding: 2008-001 Lady Beaufort
 Invoice No: 20081448

Services Rendered

Date	Description	Hours	Charges
6/27/2014	Telephone call to Bowen	0.30	\$135.00
12/22/2014	Travel to and appear at Deposition of Sample and conferences with Fender and Bowen	8.00	\$2,000.00
1/06/2015	Review discovery and draft Answers; review Email memos of Kerr regarding [REDACTED]; conference with AKE	1.70	\$425.00
3/02/2015	Review Consent Order to Refer as signed and memo from Judge regarding Reference Fee; memo to Judge	0.40	\$100.00
4/28/2015	Review letter from Bowen	0.20	\$50.00
5/12/2015	E-mail Correspondence with Bowen	0.30	\$75.00
5/28/2015	Prepare draft Responses to Discovery; review file for [REDACTED] Emails	3.40	\$850.00
6/08/2015	E-mail Correspondence with client regarding [REDACTED]	0.20	\$60.00
6/09/2015	E-mail Correspondence with Bowen; conference with AGG Service of Discovery	0.40	\$100.00
6/16/2015	E-mail Correspondence with client regarding [REDACTED]	0.20	\$50.00
6/16/2015	E-mail Correspondence with client regarding [REDACTED]	0.20	\$50.00
6/28/2015	E-mail Correspondence with client forward to [REDACTED]	0.20	\$50.00
8/29/2015	E-mail Correspondence regarding [REDACTED]; conference with AKE	0.50	\$125.00
6/30/2015	E-mail Correspondence with Cindy regarding mediation	0.20	\$50.00
7/01/2015	Prepare Mediation Notebook, [REDACTED]	2.50	\$625.00
7/02/2015	Review Email of client regarding [REDACTED]	0.20	\$60.00
8/12/2015	Prepare Discovery to Fender and Hird	0.50	\$125.00
2/11/2016	Telephone call with Bowen regarding status of Discovery Requests	0.30	\$75.00
2/12/2016	Review Notices of Deposition of Plaintiffs	0.60	\$150.00
3/01/2016	Telephone call with Parry and Emails regarding Depositions and outstanding Discovery	0.30	\$75.00
3/03/2016	E-mail Correspondence with Bowen	0.40	\$100.00
3/03/2016	Conference with AGG regarding [REDACTED] and conference with AKE regarding [REDACTED]	0.40	\$100.00
3/10/2016	E-mail Correspondence with Trumps regarding [REDACTED]	0.20	\$50.00
3/11/2016	E-mail Correspondence with client	0.20	\$50.00
3/15/2016	E-mail Correspondence with Bowen	0.20	\$50.00
3/17/2016	E-mail Correspondence with Trumps regarding [REDACTED]	0.30	\$75.00
3/29/2016	E-mail Correspondence with Rogers	0.20	\$50.00
3/30/2016	Prepare Notices of Deposition of Hird Fender and Gilbert and prepare Subpoena for Gilbert's file	0.70	\$175.00

000512

6

3/31/2016	E-mail Correspondence with Trumps	0.20	\$50.00
3/31/2016	Review memo from Judge's Clerk and respond	0.30	\$75.00
3/31/2016	E-mail Correspondence with Rogers regarding [REDACTED]	0.40	\$100.00
3/31/2016	[REDACTED]		
3/31/2016	E-mail Correspondence with Bowen	0.30	\$75.00
4/04/2016	E-mail Correspondence with Trumps	0.20	\$50.00
4/04/2016	E-mail Correspondence with Rogers	0.20	\$50.00
4/04/2016	Telephone call with Gilbert regarding Attorney to respond to Subpoena	0.30	\$75.00
4/06/2016	E-mail Correspondence with Bowen	0.60	\$150.00
4/06/2016	E-mail with Perry and update Judge Dukes; Appear at meeting with Trumps and review file; Conference with AGG regarding [REDACTED]; Email with Rogers regarding [REDACTED]; E-mail with Gilbert and call to Gilbert and Wood; Call with Client	2.00	\$500.00
4/13/2016	E-mail Correspondence with Gilbert's Attorney; call to Bowen regarding file and claim of privilege	0.50	\$125.00
4/20/2016	E-mail Correspondence with Rogers	0.20	\$50.00
4/28/2016	E-mail Correspondence with Judge's Clerk	0.20	\$50.00
6/10/2016	E-mail Correspondence with Bowen	0.30	\$75.00
5/11/2016	E-mail Correspondence with Rogers	0.20	\$50.00
5/11/2016	E-mail Correspondence with Wood regarding Gilbert file production status	0.20	\$50.00
6/25/2016	E-mail Correspondence regarding [REDACTED]	0.50	\$125.00
6/02/2016	E-mail Correspondence with Rogers regarding [REDACTED]	0.20	\$50.00
6/03/2016	[REDACTED]		
6/03/2016	Telephone call with Wood and Emails regarding Gilbert	0.30	\$75.00
6/03/2016	E-mail Correspondence with Bowen	0.20	\$50.00
		Total Fees	\$7,860.00

Expenses	Description	Charges
Start Date		
9/30/2014	#3554 Clerk of Court Filing Fee - Motion to Amend	\$25.00
11/11/2014	#3555 Clerk of Court Filing Fee - Consent Order to Amend and Refer	\$25.00
11/12/2014	#9642 A. William Roberts - Deposition R. Sataple (#213215)	\$79.47
2/23/2016	#3882 Beaufort County Master In Equity - Reference Fee	\$50.00
3/31/2016	#3982 Beaufort County Clerk of Court - Filing Fee Cancellation of Lis Pendens	\$1.00
4/20/2016	Federal Express to Beaufort Clerk of Court	\$28.14
Total Expenses		\$203.61

Total New Charges

\$7,863.61

Previous Balance

\$16,625.00

6/08/2014 Payment 1531 Lady Beaufort, LLC \$-10,000.00
 Payment from Keir

000513

8/01/2014	Write Off per AKE	Lady Beaufort, LLC	\$-6,625.00
Total Payments and Credits			<u>\$-16,625.00</u>
Balance Due			<u><u>\$7,803.61</u></u>

Staff Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>
Andrew K Epling	0.30	\$450.00
Michelle Nicole Endemann	30.10	\$250.00

000514

8

Andrew K. Epling Jr LLC

46A State Street
Charleston, SC 29401
Tel: 843-977-1871 Fax: 843-377-1310
ake@epling-law.com

Invoice Submitted To:

James J Kerr
AMCS, Inc.
Post Office Box 1302
John's Island, SC 29457

Invoice

Invoice Date: Feb 27, 2017
Invoice Num: 1087
Billing Through: Feb 27, 2017

In Reference To: Lady Beaufort (2086-001) - Managed by (AKE)

Professional Services

Date	Description	Employee	Hours	Amount
6/6/2016	Email with Perry re: Fender deposition	MNE	0.30	\$75.00
6/9/2016	Emails with Gilbert and Bowen	MNE	0.40	\$100.00
6/13/2016	Email with Bowen	MNE	0.20	\$50.00
6/14/2016	Email and call with Wood re: Gilbert's file and depo	MNE	0.40	\$100.00
6/20/2016	Call with client	MNE	0.20	\$50.00
6/22/2016	Email with client	MNE	0.20	\$50.00
6/27/2016	Review [REDACTED]	MNE	2.40	\$600.00
6/27/2016	Emails re: depo of Gilbert	MNE	0.50	\$125.00
6/28/2016	Review [REDACTED] and email with Rogers	MNE	2.00	\$500.00
6/28/2016	Email re Gilbert depo	MNE	0.20	\$50.00
6/28/2016	Review [REDACTED]	MNE	1.00	\$250.00
6/29/2016	Travel to and appear at depositions of Trumps and Rogers; conferences with client, witnesses, Bowen	MNE	6.50	\$1,625.00
6/30/2016	Review [REDACTED]	MNE	0.30	\$75.00
7/1/2016	Email re: location of depositions	MNE	0.30	\$75.00
7/1/2016	Email to Judge's clerk with update	MNE	0.20	\$50.00
7/5/2016	Email re: [REDACTED]	MNE	0.60	\$150.00
7/6/2016	Email with Wood re: [REDACTED] and set call	MNE	0.60	\$150.00
7/7/2016	Call with Wood and cont AKE	MNE	0.40	\$100.00
7/8/2016	Conference with AKE re: [REDACTED]	MNE		
7/18/2016	Email with client and conference with AGG re: [REDACTED]	MNE	0.80	\$200.00
7/26/2016	Email with Bowen re: supplemental production	MNE	0.30	\$75.00
10/3/2016	Email with Judge's clerk re: dispositive motions/trial date	MNE	0.20	\$50.00
11/4/2016	Email correspondence with client [REDACTED]	MNE	0.30	\$75.00
11/16/2016	Email memo to AGG re: [REDACTED]	MNE	0.20	\$50.00
11/17/2016	Email re: [REDACTED]	MNE	0.20	\$50.00
11/17/2016	Email with Bowen	MNE	0.20	\$50.00
11/21/2016	Email with Bowen	MNE	0.20	\$50.00
12/6/2016	Email re: [REDACTED] research file; call with AGG and memo regarding [REDACTED]	MNE	1.00	\$250.00
12/14/2016	Prepare outline for deposition of Fender; call with Bowen	MNE	2.40	\$600.00
12/15/2016	Prepare exhibits for use in depo of Fender; cont AGG	MNE	1.80	\$450.00
12/16/2016	Travel to and appear at deposition of Fender; cont AKE	MNE	6.20	\$1,550.00
1/4/2017	Email with Judge's clerk re: trial date	MNE	0.30	\$75.00
1/5/2017	Email with Judge's clerk re: trial date	MNE	0.20	\$50.00

9