May 03 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SUMTER COUTY
Court of Common Pleas

Kristi Curtis, Circuit Court Judge

Case No.: 2018-CP-43-01583

Appellate Case No. 2019-000873

M. B. Hutson ……………......……………………Appellant,

v.

A. Paul Weissenstein ....Respondent

RECORD ON APPEAL

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Appellant, Pro Se

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	CASE NUMBER: 11-CP-14-602
TLC Holdings, LLC, Plaintiff, v. M.B. Hudson a/k/a M.B. Hutson, Defendant.	)	**CONSENT ORDER** 4/13/12
M.B. Hudson a/k/a M.B. Hutson, Defendant and Third Party Plaintiff, v. Richard U. Clark, Jimmy S. Lovell and James C. Thigpen, Third Party Defendants.	)	

THIS MATTER comes before me pursuant to (a) a Motion for Order Requiring Tenant to Pay All Rent Due, or, in the Alternative, for Appointment of Receiver filed in the above-captioned action by Plaintiff, TLC Holdings, LLC ("Plaintiff", "TLC" or "Landlord"), against Defendant, M.B. Hudson a/k/a M.B. Hutson ("Defendant", "Hudson", or "Tenant"); and (b) a Motion to Dismiss filed by Defendant in this action.

BACKGROUND AND PROCEDURAL HISTORY

This action concerns a Lease Purchase Agreement dated December 15, 2010 (the "Lease" or the "Agreement"), by and among Plaintiff, as landlord, Hudson, as tenant, and Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen (the "Third Party Defendants"), for property located in Clarendon County, South Carolina, more fully

WCSR 7205819v1

described in the Lease and commonly known as the Big Water Resort (the "Premises" or the "Property"). Plaintiff has filed this ejectment action against Defendant with respect to the Agreement. Defendant has also recorded a Lis Pendens in this action against the Premises and the Plaintiff and Third Party Defendants (the "Lis Pendens"). In his Answer and Counterclaim and Affirmative Defense and Motion to Dismiss and Third Party Complaint filed in this action, Hudson has asserted counterclaims against Plaintiff, as well as other claims against the Third Party Defendants. However, the Third Party Defendants have not been served with pleadings filed in this action, and none of the Third Party Defendants have made an appearance in this action.

It appears that the parties have agreed to a settlement of the pending motions, and all other matters at issue with respect to the Agreement, or which could have been asserted in this litigation, on those terms set forth in that certain Settlement Agreement dated as of March 30, 2012, a copy of which is attached hereto as **Exhibit "A"** and its terms incorporated herein by this reference (the "Settlement Agreement").

ORDER

NOW, THEREFORE, upon Motion of the Plaintiff, and with the consent of the Defendant, as the only parties having appeared in this action, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Agreement is hereby approved by this Court and incorporated into this Consent Order by this reference;

2. In the event that Hudson fails to comply with the terms of the Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in the Settlement Agreement, time being of the

essence, then the Plaintiff is entitled to file an Affidavit of Default in this action, without notice to Defendant or his counsel of record, and, effectively immediately upon the filing of such Affidavit of Default, Plaintiff is hereby awarded the following immediate relief, without the need for further Order of this Court:

a) The Agreement shall be deemed automatically terminated and of no further force or effect;

b) The Lis Pendens shall be deemed automatically cancelled, terminated of record, and of no further force or effect;

c) Mr. Hudson shall be required immediately to vacate the Property, except only with respect to his personal residence located thereon, as to which he shall be obligated to vacate the same within fifteen (15) days following receipt of a copy of the Affidavit of Default, or the posting of a copy of the Affidavit of Default upon such residence, whichever first occurs (the "Vacation Deadline").

3. In the event that Hudson fails to vacate the Premises by the Vacation Deadline, then the Sheriff of Clarendon County is hereby directed to immediately evict Hudson therefrom, remove any personal property then and there remaining on the Premises, and put the Landlord in peaceful possession of the Premises. Landlord is hereby authorized to change the locks of the Premises effective 11:59 p.m. on the Vacation Deadline.

4. Prior to any such default by Hudson under the Settlement Agreement and the Lease as modified by the Settlement Agreement, the Lease remains in full force and effect in accordance with its terms, as modified by this Settlement Agreement, and during

the Primary Term (as defined in the Lease, and as may be extended as provided in the Settlement Agreement), Hudson shall have full possession of the Property in accordance with, and subject to, the terms of the Lease as modified by the Settlement Agreement.

SO ORDERED.

____
Judge

Manning, South Carolina
April ______, 2012

[*Signatures Continue on Following Page*]

STATE OF SOUTH CAROLINA, COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS
CASE NO. 11-CP-14-602
TLC HOLDINGS, LLC, VS. M.B. HUDSON A/K/A M.B. HUTSON

CONSENT ORDER

WE MOVE:

WOMBLE, CARLYLE, SANDRIDGE & RICE, LLP

[signature]

Thomas L. Harper, Jr., Esq.
5 Exchange Street
Post Office Box 999
Charleston, SC 29402
(843) 722-3400

Attorneys for Plaintiff TLC Holdings, LLC

Charleston, South Carolina
April 3, 2012

WE CONSENT:

WEISSENSTEIN LAW FIRM, LLC

[signature]

Paul Weissenstein, Jr., Esq.
106 Broad Street
Post Office Box 2446
Sumter, SC 29151
(803) 418-5700

Attorneys for Defendant and Third Party Plaintiff M.B. Hudson a/k/a M.B. Hutson

Sumter, South Carolina
April 3, 2012

[*Signatures Continue on Following Page*]

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STATE OF SOUTH CAROLINA, COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS
CASE NO. 11-CP-14-602
TLC HOLDINGS, LLC, VS. M.B. HUDSON A/K/A M.B. HUTSON

CONSENT ORDER

WE AGREE:

TLC HOLDINGS, LLC

Richard U. Clark, its Member

April 3, 2012

Plaintiff and Third Party Defendant

[*Signatures Continue on Following Page*]

STATE OF SOUTH CAROLINA, COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS
CASE NO. 11-CP-14-602
TLC HOLDINGS, LLC, VS. M.B. HUDSON A/K/A M.B. HUTSON

CONSENT ORDER

I AGREE:

M.B. Hudson a/k/a M.B. Hutson

April 3, 2012

Defendant and Third Party Plaintiff

WCSR 7205819v1

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	CASE NUMBER: 11-CP-14-602
TLC Holdings, LLC,	)	
Plaintiff,	)	
v.	)	
M.B. Hudson a/k/a M.B. Hutson,	)	**ORDER**
Defendant.	)	
M.B. Hudson a/k/a M.B. Hutson,	)	
Defendant and Third Party Plaintiff,	)	
v.	)	
Richard U. Clark, Jimmy S. Lovell and James C. Thigpen,	)	
Third Party Defendants.	)	

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 3/21/14
CLERK OF COURT
CLARENDON COUNTY, SC

Before the Court is the Motion to Set Aside Affidavit of Default (the "Affidavit of Default Motion") and Motion for Temporary Restraining Order ("TRO Motion" and, together with the Affidavit of Default Motion, the "Motions") filed in the above-captioned action on December 30, 2013 by Defendant and Third Party Plaintiff, M.B. Hudson a/k/a M.B. Hutson ("Defendant", "Hutson" or the "Debtor"). On January 8, 2014 (the "Petition Date"), during this Court's previous hearing on the Motions, Defendant filed a bankruptcy petition under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Section 101 *et seq.* (the "Bankruptcy Code"), which is pending in the United States Bankruptcy Court for the District of South Carolina (the "Bankruptcy Court"), Case Number 14-00165-jw (the "Bankruptcy Case"). By Order Granting Limited Relief from the Automatic Stay filed on February 21, 2014 (the "Stay Relief Order"), the Bankruptcy Court granted relief from the automatic bankruptcy stay to Plaintiff, TLC Holdings, LLC ("Plaintiff" or "TLC"), for the limited purpose of allowing this Court to determine "whether the Debtor had any property interest in the Property[1] as of the bankruptcy

[1] The term "Property", as used in the Stay Relief Order, means the property located generally at 5277 Dingle Pond Road, Summerton, Clarendon County, South Carolina, along Lake Marion, upon which the Defendant has been operating a business known as the "Big Water Resort". The Consent Order and Settlement Agreement, as defined below, use a similar definition for the term "Property", and this Court will adopt the same definition of that term for purposes of this Order.

WCSR 32047767v2

petition date, January 8, 2014, and, if so, whether the Debtor presently has any remaining property interest in the Property". Stay Relief Order at 4.

This Court conducted a hearing on March 6, 2014 (the "March Hearing"), attended by Plaintiff and its attorneys, R. Wayne Byrd and Thomas L. Harper, Jr., and by Defendant and his attorney, H. Freeman Belser, to consider the Motions and the issues presented to this Court through the Stay Relief Order.

This Court has given careful consideration to the Stay Relief Order, and to the scope of the issues properly before this Court for ruling in light of the procedural posture of this case as of the Petition Date. As set forth more fully below, this Court has concluded that, pursuant to the Stay Relief Order, this Court is authorized by the Bankruptcy Court to decide the Motions that were pending in this action on the Petition Date. To the extent that the Stay Relief Order could be interpreted as requesting or directing that this Court decide issues or matters beyond the scope of the Motions, this Court has concluded that such issues are beyond what has been presented to this Court, and declines to do so. As to the Motions before the Court, for the reasons set forth below, the Court concludes that the Motions should be denied.

The court notes that after advising counsel of the ruling set forth herein, the court, by email, inquired of the parties as to their positions on the issue of whether the court had the authority to rule on the issues set forth in this order. The potential predicament is that the Bankruptcy Court issued the fourteen day stay so this court could rule on the issue of whether the Defendant had any interest in the Property; however, the court is not addressing that specific question in this order. The Defendant maintains that the granting of the stay was to address only that narrow issue and that since this court is not addressing that narrow issue, this court is precluded from addressing any other issues. The Plaintiff maintains the court has the authority to address the issues set forth in this order. The court concludes the stay does not prohibit it from issuing the ruling set forth herein.

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. On December 14, 2011, Plaintiff filed its Summons and Complaint in this action (the "Complaint"), seeking to eject Defendant from the Property and recover money damages from Defendant for Defendant's alleged breach of a Lease Purchase Agreement related to the Property, which was dated on or about December 15, 2010, and entered among Plaintiff, Defendant and the Third Party Defendants named above (the "Lease Purchase Agreement").

2. By Answer and Counterclaim and Affirmative Defense and Motion to Dismiss and Third Party Complaint filed in this action on January 3, 2012 (the "Answer and Counterclaims"), Defendant, through counsel, asserted various affirmative defenses, counterclaims and third party complaints against Plaintiff and the members of Plaintiff relating to the Lease Purchase Agreement and the circumstances surrounding the parties' execution of the same and the Defendant's prospective lease and purchase of the Property from Plaintiff. In the Answer and Counterclaims, Defendant asserted, *inter alia*, that he had obtained an equitable interest in the Property and was entitled to a right of redemption therefor, and that Plaintiff had made various misrepresentations or material omissions regarding facts related to the Property, and had interfered with Defendant's development and/or operation of the Property.

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3. Plaintiff and Defendant settled all claims brought in Plaintiff's Complaint and in Defendant's Answer and Counterclaims by virtue of a Settlement Agreement dated as of March 30, 2012, among Plaintiff, Defendant, and the Third Party Defendants (the "Settlement Agreement"). The parties sought this Court's approval of the Settlement Agreement, and its adoption as the Order of this Court, which was effected by virtue of a Consent Order entered in this action on April 13, 2012 (the "Consent Order"). The Consent Order expressly incorporates the Settlement Agreement by reference, and approves the terms thereof.

4. The Settlement Agreement, as approved by the Consent Order, amended the Lease Purchase Agreement in several respects, including the following:

a. It extended the term of the lease contained in the Lease Purchase Agreement, whereby Hutson was obligated to pay base rent each month to TLC, as well as the property taxes owing on the Property and the rent owing to the South Carolina Public Service Authority (the "Santee Cooper Rent").

b. It imposed an "Approval Deadline" by which Hutson must obtain the "Approvals", which was defined as all necessary governmental approvals for the development and subdivision of the Property, so that Hutson's subdivision plat of the Property could be recorded. The Approval Deadline was July 31, 2012, with three thirty (30) day extension rights which, if exercised, could extend the Approval Deadline to approximately November 1, 2012.

c. It required Hutson to close on the purchase of a portion of the Property within 15 days after he received his Approvals, which thus would have to occur prior to the end of November, 2012.

d. It contained a provision whereby Hutson acknowledged that he owed an "Arrearage" under the Lease Purchase Agreement of $199,969.19 as of March 31, 2012, and it expressly obligated Hutson to repay the Arrearage not later than December 31, 2012. Settlement Agreement ¶ 4.

e. It obligated TLC to review any "Qualified Plat" provided to it by Hutson, and either approve or provide comments thereto. It defined a "Qualified Plat" as "a proposed subdivision plat of a portion of the [Property], which is prepared by a registered South Carolina land surveyor, and which meets the minimum standards for the practice of land surveying under South Carolina law". Settlement Agreement ¶ 5. If TLC approved a Qualified Plat presented to it, then it was obligated to write a letter to the Clarendon County Planning Commission (the "Planning Commission") requesting that the Planning Commission approve that Qualified Plat.

f. Except for a letter due from TLC to the Planning Commission by April 3, 2012, as to which there is no dispute that TLC delivered, TLC was not obligated to deliver other letters to the Planning Commission unless and until it was presented with a Qualified Plat.

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g. It expressly and conspicuously provided, in all capital letters, that Hutson's obligations under the Settlement Agreement were not conditioned upon his receipt of the Approvals. Settlement Agreement ¶ 8.

5. In addition, Section 3 of the Settlement Agreement provides that in the event that Defendant fails to comply with the terms of the Settlement Agreement, "unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in this Settlement Agreement", then the Plaintiff was entitled to "the following immediate relief, without further order of the Court or notice to Defendant or his counsel of record: (a) termination of the [Lease Purchase] Agreement, (b) cancellation of the Lis Pendens [filed by Defendant in this case], (c) immediate vacation of the Property by Defendant except for his personal residence thereon, which shall be vacated within fifteen (15) days; and (d) the provisions of Section 23 shall be effective".

6. Section 23 of the Settlement Agreement contains an automatic release by Defendant, as of the date of termination of the Lease Purchase Agreement, whereby Defendant is deemed to have released, forever discharged and promised never to sue TLC, the Third Party Defendants, and parties related thereto (defined more fully therein as the "TLC Parties") from all claims, known or unknown, and arising at law or in equity, relating to the Lease Purchase Agreement or the relationship between the parties (herein, the "TLC Release").

7. By December 31, 2012, Defendant had breached several provisions of the Settlement Agreement, including:

a. failing to obtain the Approvals by the Approval Deadline;

b. failing to close upon the purchase of at least eight acres of the Property by the closing deadline imposed therein (which was approximately November 15, 2012); and

c. failing to pay the Arrearage prior to December 31, 2012.

8. It is undisputed by the parties that each of the foregoing breaches remains uncured at present. Defendant acknowledges that he has not received his Approvals, nor purchased any portion of the Property, nor repaid the Arrearage.[2]

9. By letter from Plaintiff's counsel to Defendant dated February 7, 2013, Plaintiff notified Hutson that he was in default of the Settlement Agreement and Lease Purchase Agreement for, among other things, failing to pay the Arrearage, failing to pay rent owing thereunder, permitting a mechanics' lien to be filed against the Property by Blue Line Consulting, LLC, and failing to pay the 2012 property taxes for the Property prior to their delinquency on or before January 15, 2013.

[2] Plaintiff alleges that other defaults by Hutson exist under the Lease Purchase Agreement, including failing to pay the 2012 property taxes for the Property prior to their delinquency, failing to pay the Santee Cooper Rent arising after the date of the Settlement Agreement, permitting a mechanic's lien to be filed against the Property, failing to construct certain road improvements to the Property, and failing to comply with certain covenants governing insurance as required under the Settlement Agreement.

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10. Defendant did not cure the defaults outlined in the February 7, 2013 letter.

11. By letter dated December 10, 2013, Hutson was advised by Plaintiff's counsel that Plaintiff had exercised its right under the Settlement Agreement to terminate the Lease Purchase Agreement (the "LPA Termination Letter").

12. On December 11, 2013, in accordance with the Consent Order, Plaintiff filed an Affidavit of Default in this action (the "Affidavit of Default"). Plaintiff enclosed a copy of the Affidavit of Default in the LPA Termination Letter.

13. On December 30, 2013, prior to being ejected from the Property, Hutson filed the Motions, along with a supporting affidavit by Hutson (the "Hutson Affidavit"). In the Motions, Hutson alleged that TLC failed to perform an action expressly required of it in the Settlement Agreement, and that it was that failure by TLC which caused Hutson to be unable to perform his obligations under the Settlement Agreement. Hutson Affidavit ¶ 4.a. Specifically, Hutson alleges the following:

a. that Plaintiff approved the proposed subdivision plat, but failed to provide a letter to the Planning Commission that requested that the Planning Commission approve the subdivision. See TRO Motion ¶ 7.a.

b. that Plaintiff made "verbal assurances" to Hutson that were incorrect, and/or that Plaintiff failed to make "important disclosures" to him regarding the Property. See TRO Motion ¶ 7.b.; Hutson Affidavit ¶ 4.b.

c. that Plaintiff failed to provide notice to Defendant regarding the filing of liens against the Property, or of Defendant's failure to pay property taxes with regard to the Property. TRO Motion ¶ 7.c.; Hutson Affidavit ¶ 4.c.

14. This Court issued a Temporary Restraining Order (the "TRO") on December 30, 2013, enjoining Plaintiff from pursuing further proceedings arising from its issuance of an Affidavit of Default. The TRO was to be in effect through January 9, 2014, pursuant to Rule 65, SCRCP.

15. The sole relief requested in the Motions was for this Court to set aside the Plaintiff's Affidavit of Default due to the alleged failure of the Plaintiff to perform actions required of it in the Settlement Agreement and Consent Order. The pertinent issues before this Court in the Motions were whether the Plaintiff had failed or refused to perform certain obligations owing by it under the Settlement Agreement and Consent Order, and whether any such failure had been the "direct and proximate" cause of the Defendant's failure to perform his obligations. The Motions and the Hutson Affidavit did not assert any claim by Defendant to a right of redemption or other equitable interest in the Property.

16. The Court scheduled a hearing on the Motions for January 8, 2014 (the "January Hearing"). The sole purpose of the January Hearing was for this Court to determine whether the TRO should be extended. At no time prior to March 6, 2014 was this Court presented with the issue of whether the Defendant had an equitable interest in the Property that

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survived the entry of the Settlement Agreement and Consent Order, and the filing of the Affidavit of Default.

17. During the course of the January Hearing, the Court was advised by the Defendant's attorney that the Defendant had just filed a Chapter 11 petition in the Bankruptcy Court. Therefore, this Court adjourned the hearing, as the Chapter 11 filing automatically stayed further proceedings.

18. On January 24, 2014, Plaintiff filed a Motion for Relief from Automatic Stay or, in the Alternative, for an Order Determining that the Automatic Stay is Inapplicable (the "Stay Relief Motion") in the Bankruptcy Court. It appears that, in the Stay Relief Motion, Plaintiff argued, *inter alia*, that the Property should not be considered property of the Debtor's bankruptcy estate because the Lease Purchase Agreement had been terminated prior to the Petition Date, thereby extinguishing any property interest the Defendant had in the Property. It also appears that Defendant argued in defense of the Stay Relief Motion that he had an equitable interest in the Property, which Plaintiff claimed was asserted previously in Defendant's Answer and Counterclaims, and resolved with finality by the Consent Order and Settlement Agreement.

19. On February 21, 2014, the Bankruptcy Court entered the Stay Relief Order in which it determined that the issue of whether the Defendant has any interest in the Property is a matter of state law, and that considerations of judicial economy, and this Court's familiarity with the dispute, supported its conclusion that this Court is the more appropriate forum to consider the arguments of the parties and to determine what interest, if any, the Defendant has in the Property. The Stay Relief Order granted relief from the automatic bankruptcy stay to Plaintiff for the limited purpose of allowing either Plaintiff or Defendant to seek a determination by this Court of "whether the Debtor had any property interest in the Property as of the bankruptcy petition date, January 8, 2014, and, if so, whether the Debtor presently has any remaining property interest in the Property". Stay Relief Order at 4.

20. On or about February 28, 2014, counsel for the Plaintiff contacted this Court for the purpose of scheduling a hearing. The March Hearing was held in Florence County on March 6, 2014.[3] At the March Hearing, counsel for Defendant submitted a supporting memorandum of law in which Defendant argued that it was a "vendee in possession" of the Property as of the Petition Date, and that, accordingly, Defendant was entitled to claim an equitable interest, and right of redemption, in the Property.

CONCLUSIONS OF LAW

1. In the Stay Relief Order, the Bankruptcy Court determined that this Court was better situated to determine (a) whether the Debtor had any property interest in the Property as of the Petition Date, and (b) if so, whether he has any property interest in the Property at present. At the March Hearing, this Court repeatedly inquired of the parties whether they believed this Court had the authority, based on the matters pending before it, to issue a final decision on the

[3] This Court notes that, with the consent of the parties, the March Hearing was conducted within fourteen days of the entry of the Stay Relief Order, and that this Order is being entered more than fourteen days following the entry of the Stay Relief Order. This Court makes no determination of whether any stay under Fed. R. Bankr. P. 4001(a)(3) has now expired, nor any determination of the legal effect of the existence or expiration thereof.

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merits on these two issues. The parties, through their counsel, insist that this Court does. This Court concludes it does not. All that was presented to this Court prior to the Petition Date was the issue raised in the two Motions. While the issue of whether the Lease Purchase Agreement was properly terminated was before the Court on the Petition Date, the question of whether that termination, if it stands, thereby extinguished any property interest the Defendant had in the Property was not. Again, the issue presented by the Motions is whether the Defendant's failure to perform under the Settlement Agreement and Consent Order was directly and proximately caused by the Plaintiff's failure to perform, not whether the Defendant has retained some sort of equitable or legal interest in the Property by virtue of improvements or other value he has added to the Property. Any notation in the Defendant's Motions, or in the Plaintiff's Stay Relief Motion, that the movant was also seeking "such other and further relief as may be just and proper", does not expand the matters presented to this Court, or this Court's jurisdiction, into the one now urged by the parties.

2. As to the TRO Motion, the Court will now address the issue of whether the TRO should be extended. In so doing, the Court will address the relevant issues raised at the March Hearing as if they had been raised at the January Hearing, when the TRO was still in effect.[4] The law is well-settled in South Carolina that an injunction is a drastic remedy and may only be granted when the party seeking the relief demonstrates (1) he will suffer irreparable harm if the injunction is not granted, (2) he will likely succeed on the merits of the litigation, and (3) there is an inadequate remedy at law. *See AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009). The remedy of an injunction is drastic and should only be applied when legal rights are unlawfully invaded or legal duties are willfully or wantonly neglected. *LeFurgy v. Long Cove Club Owners Assoc., Inc.*, 313 S.C. 555, 443 S.E.2d 577 (Ct. App. 1994). The party seeking an injunction is not required to prove an absolute legal right, but must present a reasonable question as to the existence of such a right. The court may consider the merits of a case to the extent necessary to determine whether a temporary injunction is warranted. "Once a *prima facie* showing has been made entitling the [moving party] to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." *AJG Holdings, LLC*, 382 S.C. at 50-51.

3. Having considered the arguments of Defendant and the evidence presented by the parties, this Court concludes that the Defendant has not demonstrated that his failure to perform his obligations under the Settlement Agreement is a direct and proximate result of Plaintiff's failure to perform an action expressly required of it under the Settlement Agreement. The evidence presented at the March Hearing was convincing that the Defendant breached several provisions of the Settlement Agreement approved by the Court, and made part of the Order of this Court in the Consent Order filed on April 13, 2012. For example, Defendant admits that he has not repaid the Arrearage, nor did he obtain the Approvals by the Approval Deadline, nor has he purchased any portion of the Property. Evidence of other defaults by Defendant was presented at the March Hearing, including his failure to pay rent and property

[4] Pursuant to S.C.R.Civ.P. 65, the TRO was scheduled to expire ten days after its issuance, on January 9, 2014. See TRO. This Court knows of no authority, and none was presented by the parties, addressing whether the Chapter 11 automatic stay also stayed the expiration of the TRO, and, if so, whether the expiration of the fourteen day 4001(a)(3) Stay has now caused the TRO to expire.

taxes required under the Lease Purchase Agreement as modified by the Settlement Agreement, and permitting a mechanic's lien to be filed against the Property.

4. Defendant contends in the Hutson Affidavit that TLC approved a subdivision plat of the Property but failed to submit a requisite letter to the Planning Commission. See TRO Motion ¶ 7.a. The Settlement Agreement does require TLC to consider a proposed Qualified Plat submitted by Hutson and, if approved, submit a letter in support thereof to the Planning Commission. But in his sworn examination taken in the Bankruptcy Case pursuant to F. R. Bankr. P. 2004 (the "2004 Examination"), Hutson admitted that he had not provided a "Qualified Plat" to TLC for consideration prior to January, 2014, well past the Approval Deadline in November, 2012. 2004 Examination p. 460 lns.16-18.

5. With respect to Defendant's allegations in Paragraph 7.b. of the TRO Motion that Plaintiff made "verbal assurances" to Hutson that were incorrect, or that Plaintiff failed to make "important disclosures" to him, Hutson made those same allegations in his Answer and Counterclaims filed in this action on January 3, 2012, and those allegations were included in the settlement of this action pursuant to the Settlement Agreement, which was approved by the Consent Order.. Hutson admitted in his 2004 Examination that these all arose prior to the Settlement Agreement. 2004 Examination p. 515, ln.4 – p. 516, ln. 21. Thus, those alleged misstatements or omissions, even if true, were known to Defendant prior to the entry of the Consent Order, and were the basis of the settlement of this action pursuant to the Settlement Agreement which was approved by the Consent Order.

6. With respect to Defendant's allegations in Paragraph 7.c. of the TRO Motion that no notice was provided by Plaintiff to Defendant regarding liens placed on the Property, or any nonpayment of real property taxes, those allegations are likewise unfounded. In the letter from Plaintiff's counsel to Defendant dated February 7, 2013, Plaintiff expressly advised Hutson that he was in default for, among other things, "permitting a lien to be filed against the Property by Blue Line Consulting, LLC" and "failing to pay the 2012 property taxes for the Property prior to their delinquency on or before January 15, 2013". While the mechanic's lien may have subsequently lapsed by statute, the 2012 property taxes were never paid by Defendant.

7. Accordingly, there has been no *prima facie* showing by the Defendant that the injunction should be extended. The allegations contained in the Hutson Affidavit are refuted by his own testimony in the 2004 Examination, and by the documentary evidence presented by Plaintiff. Defendant has failed to establish that he would be likely to succeed on the merits of his claim that his breaches of the Settlement Agreement were caused by the Plaintiff. The assertions set forth in the Hutson Affidavit must have a reasonable factual basis, and this Court concludes that they do not.

8. Because the Defendant has not established that he is likely to prevail on the merits of his claim, there is no need for this Court to examine whether the Defendant will suffer irreparable harm if the relief is not granted, nor whether the Defendant has an adequate remedy at law. This Court declines to extend the TRO or otherwise to grant an injunction in Defendant's favor against the enforcement of the Consent Order and Settlement Agreement according to their terms.

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9. As to the Affidavit of Default Motion, because this Court concludes that Defendant defaulted under the terms of the Consent Order and Settlement Agreement, and that those defaults were not the "direct and proximate result of TLC's failure to perform an action expressly required of it" under the Settlement Agreement, the Defendant's Motion to Set Aside Affidavit of Default is likewise denied.

10. Pursuant to the express terms of the Consent Order, effective upon the filing of the Affidavit of Default in this action on December 11, 2013, Plaintiff was entitled to the following immediate relief, without further order of the Court or notice to Defendant or his counsel of record: (a) termination of the Lease Purchase Agreement, (b) cancellation of the Lis Pendens [filed by Defendant in this case], (c) immediate vacation of the Property by Defendant except for his personal residence thereon, which shall be vacated within fifteen (15) days; and (d) the provisions of Section 23 shall be effective". Consent Order at ¶ 2.

11. Therefore, the Lease Purchase Agreement was terminated, according to its terms as modified by the Settlement Agreement and Consent Order, as of December 11, 2013 (the "Termination Date"), and Hutson was required to vacate the Property immediately, except only for his personal residence thereon, which he was required to vacate within fifteen (15) days (i.e., December 26, 2013).

12. In the TRO Motion, Defendant acknowledges receiving a copy of the Affidavit of Default on December 18, 2013. TRO Motion ¶ 4. Even if this Court were inclined to commence the fifteen (15) day period for vacating his residence from the date Defendant says he received the Affidavit of Default on December 18, 2013, Defendant was still required to vacate that residence by January 2, 2014. Defendant's rights to possession of the remainder of the Property, other than his residence, expired no later than December 18, 2013, and his right to remain in his residence would have lapsed not later than January 2, 2014.

ORDER

NOW, THEREFORE, it is hereby:

ORDERED, that this Court declines to extend the TRO or otherwise grant an injunction against Plaintiff's enforcement of the Consent Order and Settlement Agreement.

FURTHER ORDERED, that the Motion to Set Aside Affidavit of Default is denied.

FURTHER ORDERED, that the Settlement Agreement and Consent Order are to be enforced according to their terms.

FURTHER ORDERED, that, in conjunction with enforcing the Consent Order according to its terms, pursuant to Paragraph 2 of the Consent Order, upon the filing of the Affidavit of Default on December 11, 2013, Plaintiff was and is entitled to, and is hereby awarded, the following immediate relief, without the need for further Order of this Court:

(a) The Lease Purchase Agreement was deemed automatically terminated and of no further force or effect;

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(b) The lis pendens filed by Defendant against the Property was deemed automatically cancelled, terminated of record, and of no further force or effect; and

(c) Defendant was required immediately to vacate the Property, except only with respect to his personal residence located thereon, as to which he was obligated to vacate the same within fifteen (15) days following receipt of a copy of the Affidavit of Default, or the posting of a copy of the Affidavit of Default upon such residence, whichever first occurs.

FURTHER ORDERED, that pursuant to the Consent Order, Defendant is deemed to have granted the TLC Release to the TLC Parties, as set forth more fully in Section 23 of the Settlement Agreement.

IT IS SO ORDERED.

George C. James, Jr., Circuit Judge

March 20, 2014

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State of South Carolina
The Circuit Court of the Third Judicial Circuit

Kristi Fisher Curtis
Judge

215 North Harvin Street
Sumter, SC 29150
Phone: (803) 436-2152
Fax: (803) 774-2825
kcurtisj@sccourts.org

January 24, 2019

Mr. Steven Kropski
Earhart Overstreet, LLC
P.O. Box 22528
Charleston, SC 29413

Mr. M.B. Hutson
P.O. Box 2755
Orangeburg, SC 29116-2755

RE: Hutson v. Weissenstein, Case no. 2018-CP-43-1583
Motion to Dismiss/ Summary Judgment

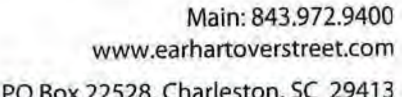
Dear Sirs:

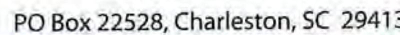
Defendant's motion came before me on December 10, 2018, in Sumter County. I have reviewed the pleadings, motions, and exhibits. Included in Plaintiff's exhibits is an excerpt from an Order with the notation "Judge Norton's Order" at the top. [Exhibit F to Plaintiff's Complaint] This appears to be pages 15 and 16 of a 20-page order by Judge David Norton, District Court Judge. Could one or both of you please provide the court with a complete copy of Judge Norton's order? You can send it to me via e-filing, e-mail, or regular mail, whichever is most convenient.

Thank you,

Kristi Curtis

Kristi Curtis
Circuit Court Judge





Direct: 843.972.9404

January 29, 2018

VIA E-MAIL
Hon. Kristi F. Curtis
215 North Harvin Street
Sumter, SC 29150
kcurtisj@sccourts.org

Re: Hutson v. Weissenstein
Case No.: 2018-CP-43-1583
EO File No.: 120-0452

Dear Judge Curtis:

I am in receipt of your January 24, 2019 letter requesting the complete order of Judge Norton, an excerpt of which was attached to Plaintiff's complaint. Enclosed herewith please find the full twenty-page order from Judge Norton in the federal case captioned, Reed v. Big Water Holdings, v. Hutson. For the Court's convenience, I am also enclosing the report and recommendation of Magistrate Judge Baker, which is referenced throughout Judge Norton's May 20, 2016 Order.

A copy of this correspondence with enclosures is being sent to the Plaintiff contemporaneous herewith.

Sincerely,

STEVEN R. KROPSKI

SRK/rle
Enclosures

cc: M.B. Hutson (P.O. Box 2755, Orangeburg, SC 29116).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

WILLIAM REED, DONNA REED, BONNIE YOUMANS, JANE YATES, PHILLIP CAULDER, *all individually and for the benefit and on behalf of all others similarly situated,*

Plaintiffs,

vs.

BIG WATER RESORT, LLC; TLC HOLDINGS, LLC; RICHARD CLARK; JAMES THIGPEN; JIMMY "STEVE" LOVELL; and OCOEE, LLC,

Defendants.

BIG WATER RESORT, LLC; TLC HOLDINGS, LLC; RICHARD CLARK; JAMES THIGPEN; JIMMY "STEVE" LOVELL; OCOEE, LLC,

Third-Party Plaintiffs,

vs.

M.B. HUTSON, a/k/a M.B. HUDSON,

Third-Party Defendant.

No. 2:14-cv-01583-DCN

ORDER

This matter is before the court on the following three motions: (1) a motion for sanctions filed by third-party plaintiffs Big Water Resort LLC, Richard Clark, Jimmy Lovell, James Thigpen, Ocoee LLC, and TLC Holdings LLC ("third-party plaintiffs") (ECF No. 179); (2) a motion for summary judgment filed by third-party plaintiffs (ECF No. 183); and (3) a motion for summary judgment filed by third-party defendant M.B. Hutson a/k/a M.B. Hudson ("Hutson") (ECF No. 228). Pursuant to the provisions of

Title 28 U.S.C. § 636(b)(1) and Local Rule 73.02(B)(2)(e), the court referred all pretrial matters in this case, involving a pro se litigant, to United States Magistrate Judge Mary Gordon Baker. The magistrate judge conducted a hearing on the aforementioned motions on March 16, 2016 and submitted a report and recommendation ("R&R") to this court recommending that the court deny third-party plaintiffs' motion for sanctions, grant third-party plaintiffs' motion for summary judgment, and deny Hutson's motion for summary judgment. For the reasons set forth below, the court adopts the R&R, denies third-party plaintiffs' motion for sanctions, grants third-party plaintiffs' motion for summary judgment, and denies Hutson's motion for summary judgment.

I. BACKGROUND

The plaintiffs are members of a putative class of over 1,000 individuals who purchased memberships in defendant Big Water Resort, LLC. Am. Compl. ¶¶ 40, 41. The Big Water Resort, LLC membership agreements ("membership agreements") grant plaintiffs "a right to use all . . . campground facilities and services" at Big Water Resort ("BWR"), a recreational campground and an accommodation located in Clarendon County, South Carolina and owned by TLC Holdings LLC. Id. ¶¶ 14, 79. Third-party plaintiffs Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark ("Clark"), James Thigpen ("Thigpen"), and Jimmy "Steve" Lovell ("Lovell") allegedly had an interest in BWR in various capacities, fully set forth in the court's order on plaintiffs' motion to certify class. Id. ¶¶ 17, 19; see also ECF No. 193. Big Water Resort, LLC sold memberships from BWR's opening in 2003 until the it was transferred to third-party defendant Hutson in December 2010 through a lease-purchase agreement. Am. Compl. ¶¶ 70–72; Hutson Answer and Countercl. ¶ 5.

Plaintiffs make various allegations regarding this transfer. They allege that: (1) Big Water Resort, LLC was insolvent at the time of the transfer; (2) Hutson did not have the financial ability to continue its operations; and (3) there was no long term contract between defendant TLC Holdings, LLC—the owner of the property on which BWR is located—and Big Water Resort, LLC to ensure that members would have continued access to BWR. Am. Compl. ¶¶ 36, 38, 82. Following this transaction, the BWR became a public facility and Big Water Resort, LLC ceased operations. Id. ¶¶ 28, 82.

Plaintiffs, taking issue with this conversion, filed suit in this court on April 22, 2014. The disputes between plaintiffs and third-party defendants have been settled. The court entered an order granting preliminary approval of the class settlement. ECF No. 248. The final fairness hearing, during which the court considered whether to finally approve the class action settlement, was held on May 16, 2016. The issues now before the court involve ancillary disputes between third-party plaintiffs and Hutson.

In December 2011, TLC Holdings, LLC instituted an action against Hutson in the Court of Common Pleas for Clarendon County for "breach of the lease-purchase agreement, seeking damages and ejectment." Third-Party Pls.' Mot. Ex. 4. Hutson filed a third-party complaint against Clark, Lovell, and Thigpen. Id. at Ex. 5. The parties entered into a settlement agreement resolving the dispute on March 30, 2012. In this action, third-party plaintiffs allege that:

> In March 2012, the parties to the lease-purchase agreement entered into a Settlement Agreement. The terms of the Settlement Agreement imposed many duties on [Hutson], including the duty to make certain improvements to the campground property and the duty to make certain payments to [TLC Holdings, LLC]. The Settlement Agreement was approved by consent order in April 2012.

Third-Party Defs.' Answer ¶ 138; see also Ex. 6. Judge James approved the Settlement Agreement and incorporated it into a Consent Order in April 2012. Third-Party Pls.' Mot. Ex. 7. Hutson defaulted on the March 2012 Settlement Agreement, and despite third-party plaintiffs notifying him of such default on numerous occasions, he did not cure the default. Third-Party Defs.' Answer ¶¶ 139–40; see also Ex. 9. Third-party plaintiffs filed an affidavit of default in December 2013, and Hutson filed a "motion to set aside the affidavit of default and a motion for a temporary restraining order" in response. Id. ¶ 141; see also Third-Party Pls.' Mot. Exs. 11–13. On March 23, 2013, Judge James declined to set aside the affidavit of default or issue a preliminary injunction and ruled that the March 2012 Settlement Agreement and April 2012 Consent Order should be enforced. Id. ¶ 144; see also Ex. 8. Judge James deemed the lease-purchase agreement terminated and ordered Hutson to vacate the property pursuant to the terms of the settlement agreement. Id. In April 2014, Hutson vacated the property, at which time Clark, Lovell, and Thigpen resumed operation of BWR. Id. ¶ 145.

After plaintiffs filed suit in this court, third-party plaintiffs filed a third-party complaint against Hutson alleging that Hutson failed to operate BWR in a manner beneficial to the members. Defs.' Answer, ECF No. 72, ¶ 133. Third-party plaintiffs allege that in December 2010, they sold their membership interests in Big Water Resort, LLC to Hutson pursuant to a lease-purchase agreement, making Hutson the sole member of the LLC. Id. ¶ 134. According to third-party plaintiffs' complaint, the sale price was $500,000.00, $499,990.00 of which was payable under a promissory note executed by Hutson in favor of Clark, Lovell, and Thigpen. Id.; see also Defs.' Mot. Summ. J., Ex. 2. They further allege that they "entered into a lease-purchase agreement with . . . Hutson,"

under which third-party plaintiffs agreed to sell certain property to Hutson, including the land on which BWR was located. Id. ¶ 135; see also Ex. 3. Third-party plaintiffs contend that Hutson defaulted on both the promissory note and the lease-purchase agreement. Id. ¶ 136. Third-party plaintiffs bring a cause of action for equitable indemnity, alleging that Hutson's actions during his control of the BWR exposed them to potential liability. Id. ¶¶ 146–50. Third-party plaintiffs further allege that they "have incurred, and may continue to incur, expenses necessary to protect their interest in defending the claims brought by the members of the [BWR] campground." Id. ¶¶ 147, 150. According to the allegations in the complaint, "an obligation in equity exists on . . . Hutson to indemnify [third-party plaintiffs]." Id. ¶ 148.

Hutson answered the third-party complaint and filed counterclaims against third-party plaintiffs. ECF No. 75. In his pleadings, Hutson explains how BWR came to be open to the public. He alleges that in early 2011, he contacted Clark "asking permission to convert the beautiful recreational building, known as the Clubhouse, into a public restaurant." Hutson Answer ¶ 8. As a result of this conversion, members "would no longer have open, free access to that former recreational building as presented in their membership agreement. The restaurant was to be open to the public and all incoming business was required to pay for their meals." Id.

Hutson alleges that after learning about the property from a real estate agent, he met with Clark and Lovell, who told Hutson that if he purchased three tracts of land, he "would also be required to purchase the rights to approximately 700 existing club memberships." Id. ¶¶ 51–54. Hutson alleges that when he asked Clark and Lovell how much the campground lost and profited, "[t]heir response was that it was not making a

profit yet but had much potential." Id. ¶ 55. Hutson further alleges that prior to purchasing the rights to club memberships and the option to purchase the real property, he told third-party plaintiffs that he intended to develop the property for sale to the public. Id. ¶ 56. Hutson alleges that third-party plaintiffs understood his desire to develop the property and never indicated that he would be prohibited from doing so by the terms of the membership agreements or otherwise. Id. Hutson alleges that after he moved onto the property, he discovered that there was only approximately $5,000.00 in the club's existing checking account. Id. ¶ 57. According to Hutson, he soon realized that there was not enough income to properly operate and maintain the campground. Id. Hutson alleges that he had no choice but to let go approximately 90% of the employees, cut back on the telephone lines, change insurance companies, and use part-time employees. Id. ¶ 58. Clark suggested that Hutson raise the membership fees drastically, which would encourage members to drop their memberships and allow Hutson to seek business from the general public. Id. ¶¶ 60–65. Thereafter, Hutson raised member fees, and members began to drop their memberships and threatened to file a class-action lawsuit. Id. ¶ 66.

Hutson alleges that prior to his involvement with BWR, third-party plaintiffs allowed the public to access the campground. Id. ¶ 70. Hutson alleges that he eventually realized that third-party plaintiffs intended to use him as a scapegoat after collecting millions of dollars from lifetime club members. Id. ¶ 71. Hutson claims that third-party plaintiffs intentionally misled him and failed to disclose pertinent information, putting him in an impossible situation that prevented him from developing the property. Id. ¶ 72. Hutson alleges that third-party plaintiffs failed to disclose the exclusive nature of the

memberships, BWR's yearly losses of $250,000.00, the lack of sufficient reserves or income for proper maintenance of the resort club, the fact that local authorities imposed a sewer moratorium on the property, and the fact that BWR was subject to large charges by the utility company. Id. ¶ 73. Hutson claims that third-party plaintiffs' actions caused him to become financially destitute and forced him to file for bankruptcy. Id. ¶ 76. Hutson also alleges that third-party plaintiffs defamed him and caused him duress and mental anguish. Id. ¶ 76–77. Hutson brings the following counterclaims: (1) breach of contract; (2) breach of contract accompanied by fraud; (3) fraud and fraud in the inducement; (4) negligent misrepresentation; (5) constructive fraud; (6) breach of the covenant of good faith and fair dealing; (7) negligence, recklessness, willfulness, and wantonness; and (8) defamation.

On September 3, 2015, third-party plaintiffs filed a motion for sanctions against Hutson. On September 9, 2015, third-party plaintiffs filed a motion for summary judgment. Hutson filed a response in opposition to the motion for sanctions on September 11, 2015, and an amended response that same day. On September 14, 2015, Hutson filed another response in opposition to the motion for sanctions and a response in opposition to the motion for summary judgment. Hutson filed an additional response to both motions on September 29, 2015. Third-party plaintiffs replied on October 8, 2015, and Hutson filed a sur-reply on October 13, 2015. Hutson filed a motion for summary judgment on third-party plaintiffs' equitable indemnity claim on January 6, 2016. Third-party plaintiffs filed a response in opposition on January 25, 2016, and Hutson replied on February 5, 2016. Hutson filed a second reply on February 10, 2016. The magistrate judge held a hearing on all pending motions on March 16, 2015. On April 5, 2016, the

magistrate judge issued an R&R, recommending that the court deny third-party plaintiffs' motion for sanctions, grant third-party plaintiffs' motion for summary judgment, and deny Hutson's motion for summary judgment. Hutson and his counsel—representing him on the equitable indemnity claim only—filed objections to the R&R. Third-party plaintiffs did not file objections to the R&R, but they filed a reply to Hutson's objections on May 9, 2016. The motions have been fully briefed and are ripe for the court's review.[1]

II. STANDARD

This court is charged with conducting a de novo review of any portion of the magistrate judge's report to which specific, written objections are made, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). The magistrate judge's recommendation does not carry presumptive weight, and it is the responsibility of this court to make a final determination. Mathews v. Weber, 423 U.S. 261, 270–71 (1976). A party's failure to object may be treated as agreement with the conclusions of the magistrate judge. See Thomas v. Arn, 474 U.S. 140, 150 (1985).

Summary judgment shall be granted "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "By its very terms, this standard provides that the mere existence of some

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[1] Hutson did not object to the magistrate judge's recommendation that the court grant third-party plaintiffs' motion as it pertains to the defamation claim. Further, third-party plaintiffs did not file objections. After reviewing the record de novo, the court adopts the R&R as it pertains to third-party plaintiffs' motion for sanctions and motion for summary judgment as to Hutson's defamation claim. Accordingly, the court denies the motion for sanctions and dismisses Hutson's defamation claim.

alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247–48 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Id. at 248. "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.

"[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Id. at 249. When the party moving for summary judgment does not bear the ultimate burden of persuasion at trial, it may discharge its burden by demonstrating to the court that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). The non-movant must then "make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322. The court should view the evidence in the light most favorable to the non-moving party and draw all inferences in its favor. Anderson, 477 U.S. at 255.

III. DISCUSSION

A. Third-Party Plaintiffs' Motion for Summary Judgment

Third-party plaintiffs argue that the court should grant their motion for summary judgment because Hutson's counterclaims are barred by the doctrine of res judicata in light of the Settlement Agreement incorporated into Judge James's 2012 Consent Order

in the state court action. Third-Party Pls.' Mot. 7. The R&R recommends that the court grant third-party plaintiffs' motion and hold that Hutson's claims for breach of contract, breach of contract accompanied by fraud, fraud and fraud in the inducement, negligent misrepresentation, constructive fraud, breach of the covenant of good faith and fair dealing, and negligence, recklessness, willfulness, and wantonness are barred by the release Hutson executed in settling the state court action. R&R 14–15. Hutson objects to the magistrate judge's recommendation, arguing that an exception to the doctrine of res judicata applies because the release was procured by fraud. Third-Party Def.'s Obj. 17–20.

"'The doctrine of res adjudicata (or res judicata) in the strict sense of that time-honored Latin phrase had its origin in the principle that it is in the public interest that there should be an end of litigation and that no one should be twice sued for the same cause of action.'" S.C. Dep't of Soc. Servs. v. Basnight, 551 S.E.2d 274, 278 (S.C. Ct. App. 2001) (quoting First Nat'l Bank of Greenville v. U.S. Fid. & Guar. Co., 35 S.E.2d 47, 56 (S.C. 1945)). Res judicata, or claim preclusion, bars litigation of claims that were litigated or could have been litigated in an earlier suit. Nevada v. United States, 463 U.S. 110, 130 (1983); Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n of S.C., 362 S.E.2d 176, 177 (S.C. 1987). To determine the preclusive effect of a state court judgment, federal courts look to state law. Allen v. McCurry, 449 U.S. 90, 95–96 (1980); Laurel Sand & Gravel, Inc. v. Wilson, 519 F.3d 156, 161–62 (4th Cir. 2008). In South Carolina, res judicata requires proof of three elements: (1) "a final, valid judgment was entered on the merits of the first suit"; (2) "the parties to both suits are the same"; and (3) "the

subsequent action involves matters properly included in the first action." Judy v. Judy, 677 S.E.2d 213, 217 (S.C. Ct. App. 2009).

As stated above, in December 2011, third-party plaintiffs instituted an action against Hutson in the Court of Common Pleas for Clarendon County for "breach of the lease-purchase agreement, seeking damages and ejectment." Third-Party Pls.' Mot. Ex. 4; TLC Holdings, LLC v. M.B. Hudson, a/k/a M.B. Hutson, Civ. A. 2011-co-14-602 (hereafter "state court case"). Hutson filed counterclaims against TLC Holdings, LLC and a third-party complaint against Clark, Lovell, and Thigpen. Third-Party Pls.' Mot. Ex. 5, Hutson Answer. Hutson alleged that third-party plaintiffs "knew that defects existed in regard to the premises," including that a moratorium was imposed on the property for sewer installation and of the large utility bills. Id. Ex. 5 at 7, 14. Hutson further alleged that third-party plaintiffs "made misrepresentations to [Hutson] or otherwise concealed relevant and material statements of facts regarding the condition, usefulness, and ability to develop the property." Id. at 12. According to Hutson's third-party complaint, third-party plaintiffs interfered with his development of the property by notifying Clarendon County of the pending litigation in an attempt to hinder and delay Hutson's performance under the lease-purchase agreement. Id. ¶ 85. Hutson further alleged that he should be given an equitable interest in the property because of the improvements made thereon. Id.

On March 30, 2012, Hutson and TLC Holdings, LLC signed a settlement agreement ("Settlement Agreement") resolving the dispute. Third-Party Pls.' Mot. Ex. 6. Although the other third-party plaintiffs did not sign the Settlement Agreement, its provisions provide:

> This Settlement Agreement shall be incorporated into a Consent Order (the "Consent Order") entered in the above-referenced case (the "Litigation"). Although Richard U. Clark, Jimmy S. Lovell and James C. Thigpen are parties to this Settlement Agreement by virtue of being parties to the [Lease Purchase] Agreement, and are named as Third Party Defendants in the Litigation, they have not been served with the pleadings in the Litigation and shall not be deemed to have appeared in the Litigation by their execution of this Settlement Agreement. This Settlement Agreement shall be binding upon all of the undersigned parties even though Richard U. Clark, Jimmy S. Lovell and James C. Thigpen have not appeared in the Litigation and are not parties to the Consent Order.

Id. The Settlement Agreement further provides:

> Pursuant to the Consent Order, in the event that Mr. Hudson fails to comply with the terms of the Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in this Settlement Agreement, time being of the essence, then the Plaintiff is entitled to the following immediate relief, without further notice of the court or notice to Defendant or his attorney: (a) termination of the [Lease Purchase] Agreement, (b) cancelation [sic] of the lis pendens filed by Hudson in this action, (c) immediate vacation of the Property by Mr. Hudson except for his personal residence, which shall be vacated within 15 days, enforceable by the Clarendon County Sheriff; and (d) the provisions of Section 23 shall be effective. Prior to any such default by Hudson hereunder, the parties acknowledge that the Lease remains in full force and effect in accordance with its terms, as modified by this Settlement Agreement, and during the Primary Term (as may be extended as provided herein), Hutson shall have full possession of the Property in accordance with, and subject to, the terms of the Lease as modified by this Settlement Agreement.

Id. at 2 (emphasis added).

Section 23 of the Settlement Agreement, titled "Release," provides as follows:

> As a material consideration of this Settlement Agreement, in the event of the termination of the [Lease Purchase] Agreement pursuant to Section 4 above as a result of Hudson['s] breach hereof, then automatically and without further action of the parties, as of the date of such termination (the "Termination Date"), Hudson shall be deemed to have released, forever discharged and promised never to sue TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, and their respective agents, attorneys, insurance companies, parent companies, subsidiaries, affiliates, predecessors, successors, or assigns (together, the "TLC Parties"), from

> any and all injuries, personal or property, known or unknown, causes of action, demands, warranty claims, damages, suits at law or in equity, of whatsoever kind and nature, or because of any matter or thing done, omitted or suffered to be done, by the TLC Parties, prior to and including the Termination Date, on account of all injuries and damages, including attorneys' fees and litigation expenses, arising from the Lease or the relationship between Hudson, on the one hand, and TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, on the other hand, and any causes of action, known or unknown, relating to the Lease, including any and all claims alleged, or which could have been alleged, in the Litigation.

Id. at 6–7 (emphasis added).

Judge James entered a Consent Order on April 12, 2012 approving the Settlement Agreement and incorporating it into the Consent Order by reference. Third-Party Pls.' Mot. Ex. 7. By December 31, 2012, Hutson was in default of the provisions of the Settlement Agreement. Id. at Ex. 8, 4. After sending numerous default letters to Hutson, TLC Holdings, LLC filed an affidavit of default, signed by Clark. Id. at Ex. 11. In response, Hutson filed a motion to set aside the affidavit of default and a motion for a restraining order against TLC Holdings, LLC. Id. at Exs. 12, 13. Judge James held a hearing on these motions on January 8, 2014.

On March 20, 2014, Judge James entered an order in which he found that Hutson had breached several provisions of the Settlement Agreement. Id. at Ex. 8, at 6. Judge James's order further stated that pursuant to the express terms of the Consent Order, Hutson defaulted as of the filing date of the affidavit of default on December 11, 2013, resulting in a termination of the lease-purchase agreement and his immediate vacation of the property, except his personal residence thereon, which he was required to vacate within fifteen days. Id. at 9. In light of Hutson's default and the terms of the Settlement Agreement, Judge James's order deemed Hutson to have granted "the TLC Release to the

TLC Parties, as set forth more fully in Section 23 of the Settlement Agreement." Id. at 11–12.

Judge James's order is plainly a final judgment on the merits of the state court case. Further, it is clear that Hutson's counterclaims for breach of contract, breach of contract accompanied by fraud, fraud and fraud in the inducement, negligent misrepresentation, constructive fraud, breach of the covenant of good faith and fair dealing, and negligence, recklessness, willfulness, and wantonness fall within the broad, express language of the Settlement Agreement and its Release provision. The state court action involved the same parties currently before the court, although not named in the caption, and the Settlement Agreement was binding on all of the parties. Lastly, the state court action involves matters that are now before the court that were, or could have been, brought by Hutson.

Hutson's objections, construed broadly, do not appear to object to the magistrate judge's finding that the Settlement Agreement and the Release, incorporated into the state court order, encompass his present counterclaims against third-party plaintiffs. Nor does Hutson object to the magistrate judge's finding that the principles of res judicata apply. Rather, Hutson argues that the Release is unenforceable. Specifically, Hutson argues that he could not have pursued a claim for fraud in the state court action because he did not have knowledge upon which to raise the claim until after he signed the Settlement Agreement. Third-Party Def.'s Obj. 20–21. Hutson specifically points to Lovell's deposition and meeting minutes from a January 2009 meeting to support his claims that he did not have knowledge of the alleged fraudulent conduct. Id. Hutson additionally

argues that the Release and Settlement Agreement should be set aside for public policy reasons. Id. at 21–30.

Although Hutson contends that the alleged fraud was ongoing, he does not point to any alleged fraudulent conduct that took place after December 11, 2013.[2] There is no dispute that Hutson knew about the "life time" membership agreements when he purchased BWR. See Third-Party Def.'s Obj. 20; see also Third-Party Pls.' Reply, Ex. 3 (email from Hutson's real estate agent expressing his concerns about the effect of the life time membership agreements).[3] The Release clearly releases all claims against third-party plaintiffs that arose on or prior to December 11, 2013, the date on which third-party plaintiffs filed the Affidavit of Default.

Further, all of Hutson's claims of fraud relate to the original transaction and not the procurement of the Release. Hutson was represented by an attorney in the underlying state court action and was therefore presumably advised of the application and effect of

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[2] Section 23 of the Settlement Agreement provides that in the event of Hutson's default, as of the date of the termination of the lease-purchase agreement, "Hutson shall be deemed to have released, forever discharged, and promised never to sue" third-party plaintiffs. Third-Party Pls.' Mot. Ex. 6, at 7. Judge James's order provided that, effective upon the filing of the Affidavit of Default on December 11, 2013, third-party plaintiffs remained entitled to the relief set forth in the Settlement Agreement. See Judge James's Order, Third-Party Pls.' Mot. Ex. 8, at 9; see also Consent Order, Ex. 7, at 2–3. The order also states that Hutson is deemed to have granted the Release as set forth in the Settlement Agreement. Id. at 10. Therefore, the court uses the date of the filing of the Affidavit of Default as the date of termination to trigger the Release provision.

[3] The R&R extensively outlines Hutson's allegations as set forth in his many filings with this court. See R&R 22–25. The R&R also provides the lengthy basis of Hutson's knowledge of the underlying allegations of fraud prior to signing the Release, as set forth in his own filings and representations made to the court during various hearings. Id. The court has reviewed the magistrate judge's representations of the allegations and Hutson's respective knowledge thereof and finds no error. Because the R&R provides a comprehensive outline of Hutson's allegations and his knowledge of the alleged fraud, the court does not find it necessary to regurgitate that information in this order and will refer the parties to the R&R for further discussion thereof.

the Release. See House v. Aiken Cty. Nat. Bank, 956 F. Supp. 1284, 1291 (D.S.C.) ("[T]hey have failed to produce an affidavit or statement from the attorney who represented them in the former litigation, any documents to show they were not fully informed or advised as to the content of the settlement of that previous litigation, or any other evidence sufficient to raise a genuine factual dispute as to this issue. Plaintiff's conclusory allegations, without more, are insufficient to provide evidence of fraud or to defeat a properly supported motion for summary judgment."). Hutson has failed to provide any evidence whatsoever of fraud in the procurement of the Release. Therefore, there is no basis to set aside the Release. See House, 956 F. Supp. at 1292 ("Plaintiffs have failed to provide any evidence, other than their own conclusory allegations, that they were induced to enter into this release because of fraud or misrepresentation.").

Hutson also makes various public policy arguments for his assertion that the Release should be set aside, including that public policy disfavors releases procured by fraudulent conduct, there was a disparity in bargaining power, and there was no meeting of the minds between the parties. Third-Party Def.'s Obj. 21–28. Again, all of Hutson's allegations of fraud relate to the original transaction and not the procurement of the Release. Further, as stated above, Hutson was represented by counsel in the state court action. The Settlement Agreement and Release were reviewed by an impartial judge and incorporated into his order. There is absolutely no indication that Hutson held an unfair bargaining position. Further, although Hutson continues to argue that he did not have sufficient knowledge to form a binding contract, all of the evidence on the record points to the contrary. Hutson made the same allegations of third-party plaintiffs' fraudulent misrepresentations in the state court action that were thereafter released by the Settlement

Agreement. See Third-Party Pls.' Mot. Ex. 8 at 2. Therefore, Hutson's public policy arguments also fail.

Thus, the court grants third-party plaintiffs' motion for summary judgment as to Hutson's claims for breach of contract, breach of contract accompanied by fraud, fraud and fraud in the inducement, negligent misrepresentation, constructive fraud, breach of the covenant of good faith and fair dealing, and negligence, recklessness, willfulness, and wantonness.[4]

B. Third-Party Defendant's Motion for Summary Judgment

Hutson seeks summary judgment as to third-party plaintiffs' equitable indemnity claim. ECF No. 228. The magistrate judge recommends that the court deny Hutson's motion for summary judgment because the third-party plaintiffs' alleged failure to record the membership agreements did not cause the damage of which plaintiffs complain. R&R 30–35. Hutson objects to the magistrate judge's recommendation, arguing that the magistrate judge defines plaintiffs' damages too narrowly.[5] Third-Party Def.'s Obj. 7.

[4] The magistrate judge did not find that the Settlement Agreement and Release applied to Hutson's defamation claim because his allegations of defamation occurred after December 11, 2013. R&R 27. However, the R&R recommends that the court grant third-party plaintiffs' motion for summary judgment as to Hutson's defamation claim because "the undisputed evidence reveals that the statements of which Hutson complains were, in fact, true . . . ." R&R 30. In his objections, Hutson states that he "would not object to a dismissal without prejudice on the defamation claim as he will pursue it in state court." Third-Party Def.'s Obj. 30. After reviewing the R&R de novo, the court agrees with the magistrate judge that third-party plaintiffs are entitled to summary judgment as to Hutson's defamation claim because the alleged defamatory statements are true. Therefore, the court also grants third-party plaintiffs' motion for summary judgment as to Hutson's defamation claim.

[5] Hutson has an attorney who represents him only on the equitable indemnification claim. His attorney submitted objections on his behalf that relate only to the magistrate judge's recommendation as to the equitable indemnity claim. However, Hutson's objections to the magistrate judge's other recommendations were filed pro se.

"The law of equitable indemnification allows recovery of expenses when the act of the wrongdoer involves the innocent defendant in litigation or places him in such relation with others as makes it necessary to incur expenses to protect his interest." Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 518 S.E.2d 301, 305 (S.C. Ct. App. 1999). Third-party plaintiffs must prove the following three things to recover against Hutson for equitable indemnification: (1) Hutson was liable for causing plaintiffs' damages; (2) third-party plaintiffs were exonerated from any liability for those damages; and (3) third-party plaintiffs suffered damages as a result of the plaintiffs' claims against it which were eventually proven to be Hutson's fault. Id. at 307.

Hutson argues that third-party plaintiffs' "failure to record the membership agreements and the alleged lease between TLC and BWR is negligence per se which is fault and, as a matter of law, TLC cannot prevail on its claim for equitable indemnity." Third-Party Def.'s Obj. 6. Hutson argues that the plaintiffs' damages all arise out of third-party plaintiffs' failure to record the membership agreements. However, not all of plaintiffs' alleged damages relate to third-party plaintiffs' failure to record the membership agreements. Most notably, plaintiffs allege that the public was allowed to access BWR in violation of the membership agreements. There is evidence on the record the BWR was opened to the public prior to Hutson's involvement. See Youmans Dep. 14:11–15:11, ECF No. 91, Ex. 9. On the other hand, there is also evidence that Hutson opened the resort to the public. See Mot. to Certify Class, Ex. 23 Hutson letter to members; see also Hutson Dep. 320:18–32:25, ECF No. 126 ("QUESTION: And about six months later, sometime in 2012, because of the financial condition that – that you inherited this – this club in, you opened it up to the general public as an at-large; isn't that

right? ANSWER: We always took the members. But we would take every person that we could coming in from the public. We didn't have no [sic] choice.").

Third-party plaintiffs cannot recover for equitable indemnity if they had any fault in causing plaintiffs' damages. See Walterboro Cmty. Hosp. v. Meacher, 709 S.E.2d 71, 74 (S.C. Ct. App. 2011) ("The most important requirement for . . . equitable indemnity is that the party seeking to be indemnified is adjudged without fault and the indemnifying party is the one at fault." (citation omitted)); Vermeer, 518 S.E.2d at 307 ("[T]here can be no [equitable] indemnity among mere joint tortfeasors."). The court cannot say as a matter of law who is at fault, and there is evidence in the record—when viewed in the light most favorable to the third-party plaintiffs as the nonmoving parties—from which a jury could determine that Hutson caused the plaintiffs' damages. There is a genuine issue of material fact as to who opened BWR to the public, thereby causing plaintiffs' alleged damages. The court agrees with the magistrate judge that this dispute cannot be resolved at the summary judgment stage. Because there is conflicting evidence of who is at fault in causing plaintiffs' damage, Hutson's motion for summary judgment is denied. See Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Const., LLC, 776 S.E.2d 426, 432 (S.C. Ct. App. 2015) ("[W]e find the evidence is conflicting, and viewing the evidence in the light most favorable to [the nonmoving party], the record contains evidence a factfinder could reasonably find supports the conclusion [the nonmoving party] was not at fault. Because of this conflicting evidence, the equitable indemnity cause of action must be remanded for a trial.").

IV. CONCLUSION

For the foregoing reasons, the court **ADOPTS** the R&R, **DENIES** third-party plaintiffs' motion for sanctions, **GRANTS** third-party plaintiffs' motion for summary judgment, and **DENIES** third-party defendant's motion for summary judgment.

AND IT IS SO ORDERED.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

May 20, 2016
Charleston, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

William Reed, Donna Reed, Bonnie Youmans, Jane Yates, Phillip Caulder, all individually and for the benefit and on behalf of all others similarly situated,

Plaintiffs,

v.

Big Water Resort, LLC; TLC Holdings, LLC; Richard Clark; James Thigpen; Jimmy "Steve" Lovell; and Ocoee, LLC,

Defendants.

TLC Holdings, LLC; Richard Clark; James Thigpen; Jimmy "Steve" Lovell; and Ocoee, LLC,

Third-Party Plaintiffs,

v.

M.B. Hutson a/k/a M.B. Hudson,

Third-Party Defendant.

C/A: 2:14-1583-DCN-MGB

REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE

This matter is before the Court upon various motions: (a) a Motion for Sanctions filed by Big Water Resort LLC, Richard Clark, Jimmy Lovell, Ocoee LLC, TLC Holdings LLC, James Thigpen (Dkt. No. 179); (b) a Motion for Summary Judgment filed by Richard Clark, Jimmy Lovell, Ocoee LLC, TLC Holdings LLC, James Thigpen (Dkt. No. 183); and (c) a Motion for Summary Judgment filed by M.B. Hutson a/k/a M.B. Hudson (Dkt. No. 228). Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1) and Local Rule 73.02(B)(2)(e), D.S.C., all pretrial matters

in cases involving *pro se* litigants are referred to a United States Magistrate for consideration. A hearing was held before the undersigned on March 16, 2016 at 10:00 a.m. (*See* Dkt. No. 257; Dkt. No. 267.) For the reasons set forth herein, the undersigned recommends denying Third-Party Plaintiffs' Motion for Sanctions (Dkt. No. 179), granting Third-Party Plaintiffs' Motion for Summary Judgment (Dkt. No. 183); and denying Hutson's Motion for Summary Judgment (Dkt. No. 228).

FACTUAL BACKGROUND

Plaintiffs are all purchasers of memberships in the club known as "Big Water Resort." (*See generally* Am. Compl.) The crux of the dispute between Plaintiffs and Defendants centers upon whether Plaintiffs' memberships in the Big Water Resort, LLC entitled Plaintiffs to the use of a private, members-only resort, or whether that resort could be opened to the public. Plaintiffs contend that they purchased memberships in a private, members-only resort. (*See generally* Am. Compl.) Defendants, on the other hand, contend that the membership agreements "do not promise exclusivity[,] and any evidence to the contrary is inadmissible under the parol evidence rule and under the terms of the merger clause contained in the agreement." (Dkt. No. 88 at 13.) This portion of the dispute has been settled, and on February 1, 2016, Judge Norton entered an Order granting the Motion for Preliminary Approval of the Settlement. (*See* Dkt. No. 248; *see also* Dkt. No. 242.) Ancillary disputes are before the Court today.

Defendants/Third-Party Plaintiffs[1] filed a Third-Party Complaint against Third-Party Defendant M.B. Hutson a/k/a M.B. Hudson (hereinafter "Hutson"). Third-Party Plaintiffs allege that their third-party complaint "arises from . . . Hutson's failure to operate the Big Water Resort

[1]Third-Party Plaintiffs are TLC Holdings, LLC; Richard Clark; James Thigpen; Jimmy "Steve" Lovell; and Ocoee, LLC (hereinafter "Third-Party Plaintiffs").

campground in a manner beneficial to the members." (Dkt. No. 72 ¶ 133.) Third-Party Plaintiffs allege that in December of 2010, they sold their membership interests in Big Water Resort, LLC to Hutson, "making Hutson the sole member of that LLC." (*Id.* ¶ 134.) According to Third-Party Plaintiffs, the sale price was $500,000, "of which $499,990 was payable under a promissory note executed by Hutson in favor of" Third-Party Plaintiffs Clark, Lovell, and Thigpen. (*Id.*) Third-Party Plaintiffs further allege that in December of 2010, they "entered into a lease-purchase agreement with . . . Hutson," under which Third-Party Plaintiffs "agreed to sell certain property to Hutson," including the land on which the Big Water Resort campground was located. (*Id.* ¶ 135.) Third-Party Plaintiffs allege that Hutson "defaulted on both the promissory note and the lease-purchase agreement." (*Id.* ¶ 136.)

Third-Party Plaintiffs allege that in December of 2011, they instituted an action against Hutson in state court "for breach of the lease-purchase agreement, seeking damages and ejectment." (*Id.* ¶ 137.) Third-Party Plaintiffs further allege as follows:

> In March 2012, the parties to the lease–purchase agreement entered into a Settlement Agreement. The terms of the Settlement Agreement imposed many duties on Third-Party Defendant Hutson, including the duty to make certain improvements to the campground property and the duty to make certain payments to Third-Party Plaintiff TLC Holdings, LLC. The Settlement Agreement was approved by a consent order in April 2012.

(*Id.* ¶ 138.) Third-Party Plaintiffs allege that Hutson defaulted under the March 2012 Settlement Agreement and was notified of such default in February of 2013 but did not cure the defaults. (*Id.* ¶¶ 139-40.) Third-Party Plaintiffs assert that they filed an affidavit of default in December of 2013, and in response, Hutson filed a "motion to set aside the affidavit of default and a motion for a temporary restraining order." (*Id.* ¶ 141.) Third-Party Plaintiffs further allege, *inter alia*,

> 144. In an Order dated March 20, 2013, Judge James declined to set aside the affidavit of default or issue a preliminary injunction and ruled that the March 2012 Settlement Agreement and April 2012 Consent Order should be enforced. Specifically, he ordered that the lease–purchase agreement was terminated and that Third-Party Defendant Hutson was required to vacate the property.
>
> 145. Third-Party Defendant Hutson vacated the property in April 2014, at which time Third-Party Plaintiffs Clark, Lovell, and Thigpen were able to resume control and operation of the Big Water Resort campground.

(*Id.* ¶¶ 144-45.)

Third-Party Plaintiffs allege a cause of action for equitable indemnity against Hutson. (*Id.* ¶¶ 146-150.) Third-Party Plaintiffs allege that Hutson has "exposed Third-Party Plaintiffs to potential liability" by "his alleged wrongful acts" and that they "have incurred, and may continue to incur, expenses necessary to protect their interest in defending the claims brought by the members of the Big Water Resort campground." (*Id.* ¶¶ 147, 150.) Third-Party Plaintiffs allege that Hutson "is solely responsible for the acts that have allegedly harmed the members that compose the class in the underlying action" and that they "have no fault and did not join in Third-Party Defendant Hutson's allegedly wrongful acts." (*Id.* ¶ 149.) According to Third-Party Plaintiffs, the relationship between them and Hutson "is such that an obligation in equity exists on Third-Party Defendant Hutson to indemnify Third-Party Plaintiffs." (*Id.* ¶ 148.)

Hutson answered the third-party complaint and filed a counterclaim against Third-Party Plaintiffs. (*See* Dkt. No. 75.) Hutson alleges that in December of 2010, he "became aware of the Big Water Resort through a conversation with a realtor . . . , who stated that the resort was for sale as a campground and for other uses." (Dkt. No. 75 ¶ 51.) Hutson alleges that after various discussions with the realtor and Third-Party Plaintiffs, he met with Clark and Lovell in Chattanooga. (*Id.* ¶¶ 52-

54.) According to Hutson, Clark and Lovell told Hutson, *inter alia*, that if Hutson purchased three tracts of land, he "would also be required to purchase the rights to approximately 700 existing club memberships." (*Id.* ¶ 54.) Hutson alleges that when he asked Clark and Lovell how much profit or loss the campground was experiencing, "[t]heir response was that it was not making a profit yet but had much potential." (*Id.* ¶ 55.) Hutson further alleges,

> At or about the end of December, 2010 the Third-Party Defendant agreed to purchase the rights to the club memberships and the option to purchase all the tracts of real property and Third-Party Defendant moved onto the property. Prior to these transactions Third-Party Defendant told the Third-Party Plaintiffs that he intended to develop the property for sale to the public and the Third-Party Plaintiffs understood this and never indicated to Third-Party Defendant that he would be prohibited from doing so by virtue of any of the terms of the club membership agreements or otherwise.

(*Id.* ¶ 56.)

Hutson alleges that when he moved onto the property, he discovered there was only approximately $5,000 in the club's checking account, and that over the next few weeks, he determined "that there was not likely enough income to properly operate and maintain the campground." (*Id.* ¶ 57.) Hutson asserts he "had no choice but to dismiss" most of the campground's employees and cut back on various other expenses "because of lack of money and income from the campground resort operation." (*Id.* ¶ 58.) Approximately two months after moving onto the property "and discovering the . . . situation," Hutson "realized at that time that the resort was a seasonal business," something Third-Party Plaintiffs "never disclosed" to Hutson. (*Id.* ¶ 61.) Hutson alleges he told Clark that "there was no business from the club members and that the resort was essentially dead." (*Id.* ¶ 61.) Hutson states that Clark suggested raising club members' fees, which Hutson did.

(*Id.* ¶¶ 62-66.) Hutson further alleges that Clark told Hutson that Third-Party Plaintiffs "did not want to be responsible for the obligations to the class members, and that perhaps if [Hutson] raised the membership fees drastically then members would be encouraged to drop their memberships." (*Id.* ¶ 64.) Hutson alleges that Clark also told him "that if the members dropped their memberships it would provide an opportunity for [Hutson] to seek business from the general public as opposed to only the club members and that it would lessen the potential of a class-action lawsuit against TLC Holdings, LLC and its owners." (*Id.* ¶ 65.) According to Hutson, when he raised fees, "members began to drop their memberships and threatened to file a class-action lawsuit, stating that they thought they had been scammed and that their memberships had become worthless." (*Id.* ¶ 66.)

Hutson alleges that prior to his involvement in the Big Water Resort, Third-Party Plaintiffs "were allowing members of the public to rent campsites, despite [the fact] that the club membership agreements arguably created a private club resort exclusive to the club's members." (*Id.* ¶ 70.) Hutson further alleges, *inter alia*,

> 71. Eventually, by the end of 2013, Third-Party Defendant realized that TLC Holdings, LLC and its owners intended to use him as a scapegoat. Once the Third-Party Plaintiffs collected millions of dollars from the lifetime club members the Third-Party Plaintiffs immediately began to quietly market the property for sale through realtor Susan Stroman. Susan Stroman has subsequently told Third-Party Defendant that she was instructed by the Third-Party Plaintiffs not to list the property for sale, but to instead . . . quietly and privately help them find a buyer.
>
> 72. Unbeknownst to Third-Party Defendant, the Third-Party Plaintiffs placed him in an impossible situation which prevented him from successfully purchasing the land and developing a subdivision in the middle of the campsites, despite that Third-Party Plaintiffs were fully aware, prior to entering into the . . . transactions with Third-Party Defendant, that this was Third-Party Defendant's plan and reason for entering into the transactions with Third-Party Plaintiffs.

> 73. Third-Party Plaintiffs intentionally misled and failed to disclose vital information to Third-Party Defendant, including but not limited to the facts that Third-Party Plaintiffs had previously promised the benefits of club membership including the exclusive right to enjoy the club land and property to club members for two lifetimes into the future, that Big Water Resort was losing approximately $250,000 per year and had insufficient reserves or income for proper maintenance of the resort club, that the local authorities had imposed a sewer moratorium on the subject tracts of land, and that the Big Water Resort was subject to exorbitant charges by the Black River Electric utility company.
>
> 74. Third-Party Plaintiffs acknowledged to Third-Party Defendant, after they had entered into the transactions with Third-Party Defendant for the purchase of the rights to the club memberships and the lease-purchase agreement for the land, and after entering into the . . . settlement agreement with Third-Party Defendant, that Third-Party Plaintiffs' real reason for entering into these transactions with Third-Party Defendant was [to] distance themselves from the club members and avoid a potential class-action lawsuit against Third-Party Plaintiffs.

(Dkt. No. 75 at ¶¶ 71-74.)

Hutson alleges that "[b]ecause of the wrongful acts and omissions" of Third-Party Plaintiffs, he "became financially destitute and was forced to file for Chapter 11 bankruptcy." (*Id.* ¶ 76.) Hutson asserts he "became in a state of duress and suffered mental anguish because of this situation." (*Id.*) Hutson alleges that Third-Party Plaintiffs "have falsely told third-parties, verbally and in writing, that the failure of Third-Party Defendant's ability to successfully operate and maintain the Big Water Resort was Third-Party Defendant's fault, defaming him and damaging his reputation." (*Id.* ¶ 77.) Hutson contends that Third-Party Plaintiffs "were fully aware that Big Water Resort, LLC was totally insolvent and financially vulnerable prior to contracting" with him. (*Id.* ¶ 78.) Hutson lists the following causes of action against Third-Party Plaintiffs: breach of contract; breach of contract accompanied by fraud; fraud and fraud in the inducement; negligent

misrepresentation; constructive fraud; breach of the covenant of good faith and fair dealing; negligence, recklessness, wilfulness and wantonness; and defamation. (Dkt. No. 75 at 15-18 of 19.)

DISCUSSION

As noted above, three motions are pending before the Court: (a) Third-Party Plaintiffs' Motion for Sanctions (Dkt. No. 179); (b) Third-Party Plaintiffs' Motion for Summary Judgment (Dkt. No. 183); and (c) Third-Party Defendant's Motion for Summary Judgment (Dkt. No. 228). The undersigned addresses the motions in turn.

A. Motion for Sanctions (Dkt. No. 179)

In the Motion for Sanctions, Third-Party Plaintiffs seek sanctions against Hutson. (*See generally* Dkt. No. 179-1.) Third-Party Plaintiffs state, *inter alia*,

> Throughout the course of this litigation, Third-Party Defendant Hutson has engaged in a pattern of behavior designed to harass and unduly burden Third-Party Plaintiffs and which has made a mockery of the judicial system. He has also attempted to extort a settlement from Third-Party Plaintiffs on numerous occasions by threatening them with criminal prosecution. This behavior has manifested itself primarily through Third-Party Defendant's filings with this Court and his communications with counsel for Third-Party Plaintiffs.

(Dkt. No. 179-1 at 2 of 15.) Third-Party Plaintiffs list a litany of actions taken by Hutson that they contend warrant sanctions. (*See* Dkt. No. 179-1 at 3-15 of 15; *see also* Dkt. No. 179-2; Dkt. No. 179-3; Dkt. No. 179-5; Dkt. No. 179-6; Dkt. No. 179-7; Dkt. No. 179-8; Dkt. No. 179-9; Dkt. No. 179-10; Dkt. No. 179-11; Dkt. No. 179-12; Dkt. No. 179-13; Dkt. No. 179-14; Dkt. No. 179-15; Dkt. No. 179-16; Dkt. No. 179-17; Dkt. No. 179-18; Dkt. No. 179-19; Dkt. No. 179-20; Dkt. No. 179-21; Dkt. No. 179-23; Dkt. No. 179-27; Dkt. No. 179-28; Dkt. No. 179-29; Dkt. No. 179-30.)

Rule 11(b) of the Federal Rules of Civil Procedure provides as follows:

> **(b) Representations to the Court.** By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> > **(1)** it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
> > **(2)** the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
> > **(3)** the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
> > **(4)** the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

FED. R. CIV. P. 11(b).

Third-Party Plaintiffs present evidence of the following in support of their motion for sanctions:

- In an email dated March 25, 2015 to Attorneys Byrd and Wilkerson, Hutson stated that it was his "civic duty to report and provide evidence to the claims department" of Auto Owners Insurance, letting the insurance company know "that TLC's members are up to more no good." (Dkt. No. 179-2.) Hutson asserted TLC is "[t]rying to defraud more victims." (*Id.*) He "[r]espectfully" inquired, "How can someone file an insurance claim for something they plotted and planned and finally got caught?" (*Id.*)

- Hutson has frequently filed motions in this case with "no supporting exhibits" and no "supporting factual information or legal authority." (*See* Dkt. No. 179-1 at 2.) Third-Party Plaintiffs point to his May 5, 2015 motion asking the court to "set aside" his deposition in his bankruptcy case. (*See* Dkt. No. 112.)

- On June 29, 2015, Hutson filed a Motion "to be Allowed to Use Tape Recordings Found During Jury Trial." (Dkt. No. 138.)[2] Third-Party Plaintiffs assert this motion was "an attempt . . . to circumvent this Court's Order compelling him to respond to Third-Party Plaintiffs' first set of requests for production by May 24, which he did not comply with." (Dkt. No. 179-1 at 4.) During his 2014 deposition, Hutson stated that he had not recorded anybody in the room (which included Clark); in this motion, however, he asserts he was able to find a 2011 recording he made of Clark. (*See* Dkt. No. 138; Dkt. No. 179-5 at 10, 13 of 14.)

- On July 5, 2015, Hutson sent an email to Mr. Wilkerson stating that if they were not able to settle, Hutson "plan[s] to quickly move in some new directions to get justice and restitution regarding [his] case that will soon go in another direction plus the civil with [sic] also remain." (Dkt. No. 179-6.) Third-Party Plaintiffs assert this is a "thinly-veiled threat at instituting criminal prosecution of Third-Party Plaintiffs." (Dkt. No. 179-1 at 5.)

- On July 11, 2015, Hutson emailed a copy of a draft complaint against Turner Padget Graham & Laney to Attorneys Byrd, Wilkerson, and Cromer. (Dkt. No. 179-7; Dkt. No. 179-8.) The email itself was blank other than the subject line of "Revised Federal Complaint final draft." (Dkt. No. 179-7.) In the draft complaint, Hutson complained about his treatment when deposed by Attorney Byrd at Turner Padget's office. (Dkt. No. 179-8.) Hutson also accused Turner Padget of, *inter alia*, "unprofessional behavior" and violating the "SC Bar Association's Code of Conduct." (Dkt. No. 179-8 at 2 of 2.)

- One day later, on July 12, 2015, Hutson emailed Attorneys Byrd, Wilkerson, and Cromer with an updated draft of the complaint against Turner Padget. (Dkt. No. 179-9; Dkt. No. 10.) In the email, Hutson told Wilkerson that the draft complaint "will be filed this coming Wed. and also an additional motion request[ing] that your law firm be barred from representing the Class Action/TLC Holdings/Third Party Defendant MB Hutson based on multiple conflicts of interest." (Dkt. No. 179-9.) Hutson also told Wilkerson that he "believe[s] that [Wilkerson's] clients will soon need criminal attorneys." (*Id.*) In the updated draft, Hutson continued to accuse Turner Padget attorneys of "ethics and civil rights violations." (Dkt. No. 179-10 at 3 of 4.) The draft complaint had a "cc" line to the "State Bar Association of South Carolina," though it is unclear whether the draft complaint was in fact forwarded to the Bar. (*Id.* at 4 of 4.)

- One day later, on July 13, 2015, Hutson emailed Wilkerson and told Wilkerson that he was prepared to pay the filing fee and file the complaint against Turner Padget. (Dkt. No. 179-

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[2]This motion was denied via text order on July 2, 2015. (Dkt. No. 145.)

11.) Hutson stated, *inter alia*, "I have prepared the necessary paper work for the South Carolina State Bar and will attach all necessary exhibits and other documents including depositions regarding your firm's involvement. . . . I honestly can't see how the State Bar Association will allow or support your firm being involved under these clear circumstances." (Dkt. No. 179-11.)

- On July 29, 2015, Hutson emailed Wilkerson, Byrd, and Cromer; the subject line was "Motion to consider criminal first." (Dkt. No. 179-14.) Hutson attached a draft motion entitled "Motion Asking the Honorable Court to Prioritize the Issue of Criminal Felony Theft Over the Civil Issues Involving Certification." (Dkt. No. 179-15.) It does not appear this motion was ever filed with the court.

- On or about July 29, 2015, Hutson filed a motion entitled "Third-Party Defendant's Motion Citing Reasons for the Piercing of Any Veil that Owners of TLC Holdings, LLC Do and Could Hide Behind, and a Formal Plea for the Immediate Investigation of Criminal Wrongdoings by TLC Holdings, LLC., et al. to Be Made by This Honorable Court to the Appropriate Investigative Departments of the United States." (Dkt. No. 160.)[3] This motion was withdrawn on or about December 3, 2015. (Dkt. No. 213.)

- On July 30, 2015, Hutson emailed Byrd, Wilkerson, Cromer, Padget, Thomas, and Perry. (Dkt. No. 179-18.) The email was blank other than the subject line, which stated "Wayne Byrd Conspiracy." (*Id.*) A draft motion was attached; that draft motion was entitled, "Third-Party Defendant's Motion Regarding Third Parties Defense Attorney Wayne Byrd Showing a Conspiring Rol[e] to Protect Their Clients Felony Theft By Deception." (Dkt. No. 179-19.) Hutson filed this motion on or about August 3, 2015, and withdrew it on or about December 3, 2015. (Dkt. No. 162; Dkt. No. 213.)

- On or about July 31, 2015, Hutson filed a document entitled "Third-Party Defendant Shows To Honorable Court How TLC Committed Felony Theft by Deception According to Federal Law." (Dkt. No. 161.) In that filing, Hutson "prays" that the Court "immediately turn this entire scheme into a First Class WHITE COLLAR FELONY CRIME case, having all three TLC owners arrested and charged with FELONY THEFT BY DECEPTION and prosecuted . . . ." (Dkt. No. 161 at 2 of 2.)

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[3]To the extent Hutson attempts to have criminal charges brought against Thigpen, Lovell, and/or Clark, he cannot do so in the instant civil action. *See Sattler v. Johnson*, 857 F.2d 224, 227 (4th Cir. 1988) (rejecting argument that the plaintiff "had an enforceable right as a member of the public at large and as a victim to have the defendants criminally prosecuted," stating, "There is . . . no such constitutional right . . . .").

- On July 31, 2015, Hutson emailed Byrd, Wilkerson, Cromer, Padget, Thomas, and Perry. (Dkt. No. 179-20.) The email is blank other than the subject line, which states, "WAYNE Byrd." (*Id.*) The document he attached to that email was entitled "The Supreme Court of South Carolina Office of Disciplinary Counsel Has Opened Investigation into TLC Holdings, LLC's Defense Team & CEO, Wayne Byrd Regarding this Case, Thus Third Party Defendant Asks that the Turner Padget Defense Team for TLC Holdings, LLC Be Barred Based on Various, Potentially Serious, Conflicts." (Dkt. No. 179-21.) Hutson filed that document on or about August 7, 2015. (Dkt. No. 168.) Hutson asserted therein that Byrd is "in such blatant disregard of ethical and professional behavior that he is now under investigation by the Supreme Court of South Carolina's Disciplinary Counsel pertaining to this case." (Dkt. No. 168.)

- In an email dated August 4, 2015 to Byrd, Wilkerson, Padget, Thomas, Harper, and Perry, Hutson stated that he planned to file suit in the South Carolina Court of Common Pleas "regarding case number 11cp-14602," asking that the "case number and rulings be dropped, reversed or over-turned on the grounds of fraud, theft, deception, and entrapment." (Dkt. No. 179-23.)

- On September 1, 2015, Hutson emailed Byrd, Wilkerson, Cromer, Thomas, and Padget; the email was blank except for the subject line of "Ammended [sic] filing 9/1/15." (Dkt. No. 179-27.) Hutson attached a draft motion to his email; the draft motion was entitled "Motion Citing Felony Theft by Deception Committed by TLC Holdings, LLC Owners." (Dkt. No. 179-28.) Hutson therein asserted that the Third-Party Plaintiffs violated South Carolina Code Section 16-13-260. (Dkt. No. 179-28.) Hutson filed this motion on or about September 9, 2015 and withdrew it on December 3, 2015. (Dkt. No. 186; Dkt. No. 213.)

- On September 2, 2015, Hutson emailed Byrd, Wilkerson, Cromer, Padget, and Thomas. (Dkt. No. 179-29.) The email was blank except for the subject line, which stated "ORIGINAL Federal Header TLC." (Dkt. No. 179-29.) Hutson attached a draft motion entitled "Third-Party Defendant's Motion Outlining Reasons for All Pending Motions to Be Heard in Court Before the Honorable Judge Baker." (Dkt. No. 179-30.) Although Hutson did not name this individual by name, presumably he was describing Byrd when Hutson said, "Third Party Plaintiff's Counsel (CEO) is shrewd, conniving, involved, [and] entwined with his clients in fraudulent and dishonest actions . . . ." (Dkt. No. 179-30.) Hutson filed this document on September 9, 2015. (Dkt. No. 185.)

The instant Motion for Sanctions was filed on September 3, 2015. (*See* Dkt. No. 179.) As noted above, Rule 11 "specifies that attorneys and *pro se* plaintiffs must sign pleadings, motions or other papers filed with the court" and that such a signature "constitutes a certification that (1) the paper is not being presented for any 'improper purpose,' (2) legal contentions therein are 'warranted,' (3) allegations have evidentiary support, and (4) denials of allegations are warranted on the evidence." *Johnson v. Lyddane*, 368 F. Supp. 2d 529, 532 (E.D. Va. 2005). "The purpose of Rule 11 is to deter conduct that frustrates the just, speedy, and inexpensive determination of civil actions." *Laremont-Lopez v. Se. Tidewater Opportunity Ctr.*, 968 F. Supp. 1075, 1078 (E.D. Va. 1997). Although *pro se* pleadings are held to less stringent standards than formal pleadings drafted by lawyers, *see Haines v. Kerner*, 404 U.S. 519 (1972), Rule 11 sanctions can still be appropriate against an individual despite his or her *pro se* status. *See Harmon v. O'Keefe*, 149 F.R.D. 114, 116 (E.D. Va. 1993).

In the case *sub judice*, Hutson has accused Turner Padget's attorneys of a variety of nefarious actions, though it does appear Hutson ultimately withdrew the motions accusing Turner Padget of criminal activities. (*See* Dkt. No. 209; Dkt. No. 213.) Despite being previously told that motions pertaining to trial (such as to exclude evidence) are premature, Hutson continued to file such motions. (*See, e.g.* Dkt. No. 145; Dkt. No. 260.) In addition, he re-filed the motion pertaining to his deposition that Judge Marchant previously denied. (*See* Dkt. No. 255; *see also* Dkt. No. 121.)

Given Hutson's *pro se* status, the fact that he withdrew many objectionable filings prior to Third-Party Plaintiffs' filing the Motion for Sanctions, the fact that Hutson had not been previously warned that he was in violation of Rule 11, and the fact that Hutson will no longer be proceeding

pro se if the District Judge adopts the undersigned's recommendation as to Third-Party Plaintiffs' Motion for Summary Judgment (Dkt. No. 183),[4] the undersigned recommends denying Third-Party Plaintiffs' Motion for Sanctions (Dkt. No. 179). *See Pizzuto v. Smith*, Civ. A. No. 5:12-CV-149, 2014 WL 1648269, at *15 (N.D. W. Va. Apr. 23, 2014), adopted at 2014 WL 2155039 (N.D.W. Va. May 22, 2014) ("Courts that have imposed sanctions against *pro se* parties frequently attach importance to the fact that the party had already been placed on notice that she was close to violating Rule 11."); *see also Sharp v. Town of Kitty Hawk, N.C.*, Civ. A. No. 2:11-cv-13-BR, 2011 WL 5520432, at *2 (E.D.N.C. Nov. 14, 2011) ("While plaintiff's complaint in this action was largely factually and legally duplicative of the one she filed in her earlier action here, such repetition does not rise to a level violative of 'an objective standard of reasonableness' worthy of Rule 11 sanctions. Nor is it indicative of the bad faith and vexatious behavior necessary to invoke the court's inherent power to sanction.").

B. Motion for Summary Judgment (Dkt. No. 183)

Third-Party Plaintiffs seek summary judgment as to all of Hutson's counterclaims against them. Third-Party Plaintiffs contend they are entitled to summary judgment "on Hutson's Counterclaims because the Counterclaims are barred by the doctrine of *res judicata*." (Dkt. No. 183-1 at 7.) Specifically, Third-Party Plaintiffs assert Hutson's claims against them "are barred by *res judicata* due to the Settlement Agreement which was incorporated into Judge James' 2012 Consent Order." (Dkt. No. 183-1 at 9.) As explained below, many of the claims Hutson raises in the case *sub*

[4] Hutson has counsel as to the claim against him for equitable indemnity. (*See* Dkt. No. 253.) Counsel does not represent Hutson as to Hutson's counterclaims against Third-Party Plaintiffs. (*Id.*)

judice are the identical claims he raised in the state court case of *TLC Holdings, LLC v. M.B. Hudson a/k/a M.B. Hutson*, Civ. A. No. 2011-CP-14-602 (hereinafter the "State Court Case"); the parties to that action settled it and entered into a release. For the reasons set forth below, the undersigned recommends concluding Hutson's claims for breach of contract; breach of contract accompanied by fraud; fraud and fraud in the inducement; negligent misrepresentation; constructive fraud; breach of the covenant of good faith and fair dealing; and negligence, recklessness, wilfulness and wantonness are barred by the release he executed in settling the state court action. The undersigned further recommends concluding that Hutson's claim for defamation fails as a matter of law. Accordingly, Third-Party Plaintiffs' Motion for Summary Judgment (Dkt. No. 183) should be granted.

Before turning to the legal analysis, the undersigned will review the allegations, the settlement, and the Orders issued in the State Court Case.

1. The Allegations in the State Court Case (2011-CP-14-602)

The case *sub judice* is not the first civil action between the parties; TLC filed suit against Hutson in the State Court Case. The 2012 Consent Order to which Third-Party Plaintiffs refer was issued in the State Court Case. Most of the allegations Hutson makes against Third-Party Plaintiffs in the case *sub judice* are the same allegations he made against them in the State Court Case.

In the State Court Case, Hutson filed a counterclaim against TLC Holdings, LLC and a Third-Party Complaint against Clark, Lovell, and Thigpen. (*See* Dkt. No. 183-5.) Hutson raised the Third-Party Plaintiffs' knowledge (and failure to disclose)–and Hutson's lack of knowledge– that the South Carolina Public Health and Environmental Control "had imposed a moratorium on the

property that prevented the property from tying into public water and sewer services." (Dkt. No. 183-5 at ¶¶ 42-44; ¶ 58.) Hutson also raised therein Third-Party Plaintiffs' knowledge that Hutson intended to develop condominiums and other residential structures and failure to disclose that "there was no sewer capacity at that time." (*Id.* ¶¶ 47-48.) He also alleged as follows:

> 49. Pursuant to the contract, Hutson caused a title examination to be made of the premises and found that [TLC Holdings, LLC] was involved in litigation affecting the premises. The Sellers in the contract disclosed the existence of that litigation, but set forth a Covenant, Consent and Agreement that included language that said "Seller covenants, consents and agrees that these actions shall be dismissed or otherwise addressed on or before closing of the entire premises, so that said pending legal action shall in no way encumber the property or hinder such closing." To date, those actions are still pending and Hutson has been unable to proceed to purchase the property.

(*Id.* ¶ 49.) He also alleged that Third-Party Plaintiffs interfered with his development of the property; specifically, Hutson alleges therein that Third-Party Plaintiffs notified Clarendon County Council of the pending litigation in order to "delay and hinder . . . [Hutson] from further performance pursuant to the Lease Purchase Agreement." (*Id.* ¶ 85.) He also alleged that Third-Party Plaintiffs "deliberately and maliciously t[ook] steps to try to cause [him] to fail at this project in order for them to recover same with the value of the project enhanced through [his] efforts." (*Id.* ¶ 89.) Hutson further asserted therein that he should be given an equitable interest in the property for his improvements. (*See id.* ¶¶ 55-56.)

<u>2.</u> <u>The Orders in the State Court Case</u>

The Settlement Agreement to which Third-Party Plaintiffs point was signed by Hutson on March 30, 2012. (*See* Dkt. No. 183-6 at 10 of 10.) The Settlement Agreement purports to be between

Hutson and TLC Holdings, LLC. (*See* Dkt. No. 183-6 at 1 of 10.) However, it also provides as follows:

> 2. This Settlement Agreement shall be incorporated into a Consent Order (the "Consent Order") entered in the above-referenced case (the "Litigation"). Although Richard U. Clark, Jimmy S. Lovell and James C. Thigpen are parties to this Settlement Agreement by virtue of being parties to the [Lease Purchase] Agreement, and are named as Third Party Defendants in the Litigation, they have not been served with the pleadings in the Litigation and shall not be deemed to have appeared in the Litigation by their execution of this Settlement Agreement. This Settlement Agreement shall be binding upon all of the undersigned parties even though Richard U. Clark, Jimmy S. Lovell and James C. Thigpen have not appeared in the Litigation and are not parties to the Consent Order.

(Dkt. No. 183-6 at 1-2 of 10.) The Settlement Agreement further provides, *inter alia*,

> 4. Pursuant to the Consent Order, in the event that Mr. Hutson fails to comply with the terms of the Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in this Settlement Agreement, time being of the essence, then the Plaintiff is entitled to the following immediate relief, without further notice of the court or notice to Defendant or his attorney: (a) termination of the [Lease Purchase] Agreement, (b) cancelation [sic] of the lis pendens filed by Hudson in this action, (c) immediate vacation of the Property by Mr. Hudson except for his personal residence, which shall be vacated within 15 days, enforceable by the Charendon County Sheriff; and (d) the provisions of Section 23 shall be effective. Prior to any such default by Hudson hereunder, the parties acknowledge that the Lease remains in full force and effect in accordance with its terms, as modified by this Settlement Agreement, and during the Primary Term (as may be extended as provided herein), Hutson shall have full possession of the Property in accordance with, and subject to, the terms of the Lease as modified by this Settlement Agreement.

(Dkt. No. 183-6 at 2 of 10.)

Section 23, the "Release," provides as follows:

> 23. As a material consideration of this Settlement Agreement, in the event of the termination of the [Lease Purchase] Agreement pursuant to Section 4 above as a

> result of Hudson['s] breach hereof, then automatically and without further action of the parties, as of the date of such termination (the "Termination Date"), Hudson shall be deemed to have released, forever discharged and promised never to sue TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, and their respective agents, attorneys, insurance companies, parent companies, subsidiaries, affiliates, predecessors, successors, or assigns (together, the "TLC Parties"), from any and all injuries, personal or property, known or unknown, causes of action, demands, warranty claims, damages, suits at law or in equity, of whatsoever kind and nature, or because of any matter or thing done, omitted or suffered to be done, by the TLC Parties, prior to and including the Termination Date, on account of all injuries and damages, including attorneys' fees and litigation expenses, arising from the Lease or the relationship between Hudson, on the one hand, and TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, on the other hand, and any causes of action, known or unknown, relating to the Lease, including any and all claims alleged, or which could have been alleged, in the Litigation.

(Dkt. No. 183-6 at 6-7 of 10.)

On April 12, 2012, Judge James issued a Consent Order that approved the Settlement Agreement and incorporated the Settlement Agreement into the Consent Order by reference. (*See generally* Dkt. No. 183-7; *see also* Dkt. No. 183-7 at 2 of 7.) In an Order dated March 20, 2014, Judge James addressed various motions in the State Court Case, including Hutson's Motion to Set Aside Affidavit of Default and Motion for Temporary Restraining Order. (*See generally* Dkt. No. 183-8; *see also* Dkt. No. 183-8 at 3 of 12.) Judge James found that Hutson had breached several provisions of the Settlement Agreement, including, *inter alia*, failing to pay the arrearage prior to December 31, 2012. (Dkt. No. 183-8 at 6 of 12.) Judge James' Order further stated,

> 10. Pursuant to the express terms of the Consent Order, effective upon the filing of the Affidavit of Default in this action on December 11, 2013, Plaintiff was entitled to have the following immediate relief, without further order of the Court or notice to Defendant or his counsel of record: (a) termination of the Lease Purchase Agreement, (b) cancellation of the Lis Pendens [filed by Defendant in this case], (c) immediate vacation of the Property by Defendant except for his personal residence

> thereon, which shall be vacated within fifteen (15) days; and (d) the provisions of Section 23 shall be effective." Consent Order at ¶ 2.
>
> 11. Therefore, the Lease Purchase Agreement was terminated, according to its terms as modified by the Settlement Agreement and Consent Order, as of December 11, 2013 (the "<u>Termination Date</u>"), and Hutson was required to vacate the Property immediately, except only for his personal residence thereon, which he was required to vacate within fifteen (15) days (i.e., December 26, 2013).

(Dkt. No. 183-8 at 11 of 12.) That order further provides,

> [I]t is hereby:
>
> . . .
>
> FURTHER ORDERED, that the Settlement Agreement and Consent Order are to be enforced according to their terms.
>
> FURTHER ORDERED, that, in conjunction with enforcing the Consent Order according to its terms, pursuant to Paragraph 2 of the Consent Order, upon the filing of the Affidavit of Default on December 11, 2013, Plaintiff was and is entitled to, and is hereby awarded, the following immediate relief, without the need for further Order of this Court:
>
> (a) The Lease Purchase Agreement was deemed automatically terminated and of no further force or effect; [and]
>
> (b) The lis pendens filed by Defendant against the Property was deemed automatically cancelled, terminated of record, and of no further force or effect . . . .
>
> . . .
>
> FURTHER ORDERED, that pursuant to the Consent Order, Defendant is deemed to have granted the TLC Release to the TLC parties, as set forth more fully in Section 23 of the Settlement Agreement.

(Dkt. No. 183-8 at 11-12 of 12.)

3. Release

Hutson's claims for breach of contract; breach of contract accompanied by fraud; fraud and fraud in the inducement; negligent misrepresentation; constructive fraud; breach of the covenant of good faith and fair dealing; and negligence, recklessness, wilfulness and wantonness are barred by the release he entered in settling the State Court Case. As in *Bowers v. Department of Transportation*, 360 S.C. 149, 600 S.E.2d 543 (Ct. App. 2004), the Settlement Agreement in the case *sub judice* is a contract. *Bowers*, 360 S.C. at 153, 600 S.E.2d at 545; *see also Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735 (D.S.C. 2001). In *Bowers*, the South Carolina Court of Appeals upheld dismissal of two suits against the Department of Transportation, concluding that the releases executed by two drivers in an accident released the Department of Transportation. The court noted that the release was a contract and that since the release "unambiguously sets forth the contracting parties' intent, [the court is] bound by that clearly expressed intent without resort to extrinsic evidence." *Bowers*, 360 S.C. at 153, 600 S.E.2d at 545. The court further stated,

> The terms of the Release do not evince an intent to limit its scope to any specifically identified parties. Rather, the Release is general and all encompassing in its scope. It clearly states that the Appellants released the tort-feasor "and all other persons, firms or corporations liable, or who might be claimed to be liable." This language is a clear, explicit, and unequivocal indication of the parties' intent that *all* claims arising from the accident-now and in the future-are barred under the terms of the Release. Had Appellants intended a contrary result and desired to limit the operation of the Release to named persons only, the terms of the Release could have been easily tailored to that end. We are constrained by the plain, unambiguous language of the Release to find that Appellants' claims against SCDOT fall within the terms of the Release.

Id. at 154, 600 S.E.2d at 545-46.

Turning to the case *sub judice*, the Release–paragraph 23 of the Settlement Agreement–unequivocally provides that if the Lease Purchase Agreement is terminated as a result of Hutson's breach, Hutson "shall be deemed to have released, forever discharged and promised never to sue" Third-Party Plaintiffs for "any and all injuries, personal or property, known or unknown, causes of action, demands, warranty claims, damages, suits at law or in equity, of whatsoever kind and nature, or because of any matter or thing done, omitted or suffered to be done" by Third-Party Plaintiffs, "prior to and including" December 11, 2013. (Dkt. No. 183-6 at 6-7 of 10; *see also* Dkt. No. 183-8 at 11 of 12.) This Release is cut and dry–Hutson has clearly released Third-Party Plaintiffs from liability for actions they took (or actions they failed to take) prior to December 11, 2013.

A contract can be set aside for fraud, *see First Equity Inv. Corp. v. United Serv. Corp. of Anderson*, 299 S.C. 491, 497, 386 S.E.2d 245, 249 (1989) ("As a general rule, a defrauded party to a contract has a choice of remedies; he may rescind the contract and recover what he has paid, or he may affirm the contract and recover damages."), and Hutson asserts he has been defrauded. However, having reviewed all of Hutson's allegations and assertions, the undersigned concludes–for the reasons set forth below–that this Settlement Agreement and Release ***cannot*** be set aside due to fraud.

In arguing that the Settlement Agreement and Release should be set aside due to fraud, Hutson refers to the January 2009 meeting minutes as well as the "2015 depositions." (Dkt. No. 192; *see also* Dkt. No. 200-1 at 9-11 of 28.) Hutson asserts the minutes of the January 2009 meeting reveal the "severe options" TLC was "consider[ing] to rid themselves of the BWR campground and

its members." (Dkt. No. 200 at 3 of 7.) Although Hutson refers to "2015 depositions," the only deposition transcript he attached to his filings opposing the Motion for Summary Judgment were transcripts from Lovell's deposition taken on February 16, 2011. (*See* Dkt. No. 200-1 at 15-16, 21 of 28.)

In his Supplemental Response in Opposition, Hutson contends that TLC knew–as of April 2003–that sewer service was needed to support further development at the Big Water Resort and that such service was not available until the water treatment plant in Manning was enlarged. (Dkt. No. 200 at 1 of 7.) Hutson states, "TLC Holdings, LLC and its owners were fully aware of this serious long term problem as it prevented ANY developer from getting any of the necessary local governmental approvals to develop at that location." (*Id.* at 2 of 7.) According to Hutson, TLC's owners "knew that water and sewer as an essential component for the Buyer signing," and they also knew that "water and sewer WAS NOT AVAILABLE." (Dkt. No. 200 at 4 of 7.)

To support his claim for "FELONY THEFT BY DECEPTION," Hutson asserts that although TLC "was not EVER with clear title to close, they continued to collect hundreds of thousands of dollars from [Hutson] for a 'right to purchase.'" (Dkt. No. 200 at 5 of 7.) He states, "Is it not theft by deception to then add mandatory cash requirements totaling hundreds of thousands of dollars for the 'Right to Purchase'–even if they could be credited toward closing–since the Seller had NO INTENTION to close?" (Dkt. No. 200 at 2 of 7.) Hutson points to TLC's admission that "they had financially subsidized" the Big Water Resort "just to keep the gates open." (Dkt. No. 200 at 2 of 7.)

Hutson asserts that TLC knew–as outlined in its January 2009 minutes–that the membership agreements "creat[ed] un-marketable title for home loans." (Dkt. No. 202 at 1 of 2; *see also* Dkt. No.

202-1.)[5] According to Hutson, TLC found several buyers "who wanted to buy and develop the property into a condo subdivision," but these developers "found that TLC Holdings, LLC could not get marketable title." (Dkt. No. 200 at 2-3 of 7.) Hutson notes that Community Resource Bank had a "very large lien on all of the property for approximately two years," and each time Hutson asked Clark "if the title was now clear in order for Third Party Defendant to start making plans to acquire purchase contracts from potential Buyers to move toward closing," "[n]ever once did the Seller or any of its agents inform the Buyer[] that clear title had been resolved." (Dkt. No. 200 at 4 of 7.)

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[5]Hutson knew about the membership agreements at the time he purchased the Big Water Resort. (*See* Dkt. No. 266-1 at 7 of 35; *see also* Dkt. No. 266-1 at 31-34 of 35.) Renee Roark was Hutson's realtor in connection with the purchase of Big Water Resort. (*See* Dkt. No. 266-1 at 4-7 of 15.) On November 11, 2010, Ms. Roark emailed Mr. Coffey of Coffey Chandler & Kent; that email stated, *inter alia*,

> Attached is Susan's lifetime membership info. regarding Big Water camp ground. My buyer **is concerned about the "life time" memberships and the impact they can have on the future development of the property**. In other words, in your opinion, what is the easiest, legal way to terminate the lifetime memberships of Big Water? Will these memberships have an impact on obtaining clear title for the property?

(Dkt. No. 266-3 (emphasis added).) At the hearing, Mr. Hutson stated, "I knew that there were memberships, but I did not know, and was not ever told that the memberships created defective title." On the one hand, Hutson stated at the hearing that he knew there were memberships but "was told that they were annual," and on the other hand, he stated that he "asked Renee Roark if the . . . lifetime memberships would affect the title." Hutson complained at the hearing that he never received an answer as to whether the lifetime memberships would have an impact on obtaining clear title. He also stated at the hearing that he bought Big Water Resort without looking at the books or business records. Furthermore, the Lease Purchase Agreement contained the following provision:

> Purchaser shall, within ninety (90) days after the Effective Date, investigate Seller's title to the Premises and identify any exceptions to title which are not acceptable to Purchaser (any such exception being referred to herein as a "Title Exception"). Purchaser shall within ninety (90) days after the Effective Date provide Seller notice of any such Title Exception. If Purchaser does not notify Seller in writing of Title Exceptions within ninety (90) days after the Effective Date, then Purchaser shall be deemed to have accepted title to the Premises with all exceptions and conditions. . . .

(Dkt. No. 266-6 at 5 of 34.) The "Effective Date" was in December of 2010. (*See* Dkt. No. 266-3 at 1, 25-27 of 34.) Hutson admitted at the hearing that he had access to the membership agreements within this ninety day period.

Hutson was also represented by an attorney–Andrew Tucker–in conjunction with his purchase of Big Water Resort. (*See* Dkt. No. 266-1 at 9-13 of 35.) At his deposition, Hutson stated that approximately four or five days after Christmas of 2010, he and Tucker "actually started reading some of the membership agreements." (Dkt. No. 266-1 at 15 of 35.) Hutson continued,

> And lo and behold, I can't tell you why, [Tucker] never picked up on the fact that I was obligated, according to you, for 60 years, for each one of these people. Because if so, it would be–why–why bother to get a–a sales contract and charge me $10–$10,000 a month, when they know good and well that I can't develop, because I've got to keep this place as a whole for 60 years?

(Dkt. No. 266-1 at 15-16 of 35.) Hutson indicated that he and Tucker "sat at the table together and went over" the membership agreements before closing. (Dkt. No. 266-1 at 16 of 35.)

Hutson contends he was required to close within 24 months, but he was "trapped and unable to close" because of the liens on the property. (*Id.*)

Hutson asserts Third-Party Plaintiffs "intentionally held back and misrepresented critical information (ex.: sewer . . .) and the sixty year obligation to family members for an exclusive right to use all property covered by the contract and improvements thereon." (Dkt. No. 200 at 5 of 7.) Hutson contends he had seven months under the contract to "repave all private roads, parking lots and recreational vehicle (RV) parking spaces on the Premises," but it was impossible to do so within seven months because "the municipalities would not approve any permanent asphalt roads" unless he was able to address the sewer issues. (Dkt. No. 200 at 5 of 7.)

According to Hutson, Third-Party Plaintiffs never had any plan to "actually sell" the property but that instead their "plan was to stage it so they could re-call the property." (Dkt. No. 200 at 6 of 7.) He asserts that Third-Party Plaintiffs knew–"as far back as January 16, 2009"–that they could not sell real estate that was leased for an extended period of time. (Dkt. No. 200 at 6 of 7.) Hutson claims "theft" in that he "was not offered nor given" an "'equitable interest' for accomplishments during [his] tenure on-site, which was appraised at over one million dollars . . . WITHOUT the impact of the restaurant." (Dkt. No. 200 at 6 of 7.)

As to contractual interference, Hutson asserts that attorney Thomas Harper, who was representing TLC, "contractually interfered, on behalf of TLC Holdings, LLC . . . by contacting government approval agencies to slow down [Hutson's] progress in acquiring approvals for the development project," negatively impacting his "ability to close within the contract's 24 months." (Dkt. No. 200 at 6 of 7.)

Hutson asks this Court to "set aside paragraph 23 [of the Settlement Agreement] for it was designed to be a fraudulent buffer providing protection to TLC Holdings, LLC and it's [sic] owners to carry out the criminal acts." (Dkt. No. 192 at 3 of 4.)

Hutson's claims for breach of contract; breach of contract accompanied by fraud; fraud and fraud in the inducement; negligent misrepresentation; constructive fraud; breach of the covenant of good faith and fair dealing; and negligence, recklessness, wilfulness and wantonness all arise out of the Lease Purchase Agreement and Hutson's dealings with TLC, Thigpen, Lovell, and Clark in purchasing the Big Water Resort. The Release plainly releases all claims against Third-Party Plaintiffs for claims that arose on December 11, 2013 or before. (*See* Dkt. No. 183-8 at 11 of 12.)

Hutson has not alleged fraud that took place after December 11, 2013, and there is accordingly no basis to set aside the Release.[6] Most of the circumstances to which he now points (with the exception of his claim for defamation, discussed below) were raised in his counterclaim

[6] At the hearing, Hutson argued he was "misled" via "six direct fraudulent paths" and submitted a document laying out his arguments. (*See* Hutson Ex. 3.) The alleged misrepresentations which, according to Hutson, constitute fraud, are as follows:

> (a) Big Water Resort has no known debt, when the campground was operating with an annual shortfall;
> (b) The financial reports listed memberships as a "present net value" of over $1.7 million, when they "were in fact a liability";
> (c) "T[]here w[ere] no actions, suits, or proceedings, either at law or equity . . . or to the knowledge of Sellers, threatened," where Third-Party Plaintiffs were aware of the threat of suit by the individuals who purchased membership agreements;
> (d) "[The] Seller represents, warrants and covenants to Purchaser" that seller is "[i]n compliance with all laws, regulation and orders applicable to its business," where Third-Party Plaintiffs failed to record the membership agreements pursuant to South Carolina Code § 27-33-30;
> (e) Third-Party Plaintiffs had "[g]ood and marketable title" to all "properties and assets," where Big Water Resort "did not own any real estate"; and
> (f) Third-Party Plaintiffs had "[g]ood and marketable title" where (1) the sellers "agreed to owner finance the purchase," as it "appeared from their willingness to owner finance that they were confident in the value of the property and the marketability of their title" and where (2) the sellers "agreed to be paid from the proceeds of the sale of condominiums and lots," as the sellers' "willingness to accept a percentage gave confidence that they had good and marketable title to the property."

(Hutson's Ex. 3.) All of these alleged "fraudulent paths" arise out of Hutson's purchase of the Big Water Resort; they do not pertain to the Release.

and third-party claim in the state court action, so he clearly had notice of these circumstances at the time he entered into the Settlement Agreement and Release. All of Hutson's claims pertaining to fraud relate to the ***original*** transaction, ***not the Release***. In other words, Hutson cannot set aside the Release because he has not made any showing that fraud induced him to enter into the Release. *See House v. Aiken Cnty. Nat'l Bank*, 956 F. Supp. 1284, 1291-92 (D.S.C. 1996) (granting motion to dismiss–treated as motion for summary judgment–without prejudice where "[t]he only issue before this Court is whether the release signed as a result of that previous settlement is invalid because of fraud, misrepresentation or like circumstances. Plaintiffs have failed to provide any evidence, other than their own conclusory allegations, that they were induced to enter into this release because of fraud or misrepresentation."); *see also Hopkins v. Fidelity Ins. Co.*, 240 S.C. 230, 125 S.E.2d 468 (1962).

Moreover, to establish fraud, Hutson would have to prove the following elements:

> (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

Armstrong v. Collins, 366 S.C. 204, 218-19, 621 S.E.2d 368, 375 (Ct. App. 2005) (quoting *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 444-45 (Ct. App. 2003)). Although Hutson frequently contends he was defrauded, he has not clearly alleged the elements of fraud. For example,

it is not clear upon what representation or representations he asserts he relied, nor is it clear such representation was false or that he had the right to rely on such representation(s).[7]

Although Hutson repeatedly asserts fraud, none of his assertions of fraud pertain to the Release. He is therefore is not entitled to set aside the Release. *See House*, 956 F. Supp. at 1291-92; *see also Hopkins*, 240 S.C. 230, 125 S.E.2d 468. Third-Party Plaintiffs are entitled to summary judgment on the following claims Hutson makes against them: breach of contract; breach of contract accompanied by fraud; fraud and fraud in the inducement; negligent misrepresentation; constructive fraud; breach of the covenant of good faith and fair dealing; and negligence, recklessness, wilfulness and wantonness.

4. Defamation

Hutson's claim for defamation requires a slightly different analysis, as the events giving rise to this claim occurred after execution of the Settlement Agreement and Release. At the hearing, Mr. Hutson clarified that the only basis for his defamation claim is the April 3, 2014 letter from TLC to "Members of the Big Water Resort Campground." (*See* Dkt. No. 77-17.) That letter provides, in relevant part,

> Over the course of the past three (3) years, Mr. Hutson breached his obligations under the [Lease Purchase] Agreement in numerous respects. Those breaches began just months after he took over the property. For example, he failed to pay rents he owed to TLC Holdings, LLC, and taxes owing to Clarendon County that were his responsibility under the Agreement. He failed to pave or repave the roads as required by the Agreement, which would have been a benefit to everyone at the campground. At times, he failed to carry insurance that was necessary to

[7]For example, Hutson indicates he asked Lovell and Clark–"right before [he] bought" Big Water–how much money the campground was making, and Hutson admits they said none. (*See* Dkt. No. 135 at 28, 83-84 of 328.) He complains, however, that TLC "didn't bother to tell [him] it was losing $300,000 a year." (*Id.*)

protect the property and the club [that] operated on it. TLC Holdings, LLC has been forced to make tax payments and insurance payments to protect the property that were Mr. Hutson's responsibility under the Agreement.

Beginning in 2011, TLC Holdings has endeavored to enforce the obligations of Mr. Hutson with regard to the campground. As a result of Mr. Hutson's breaches, TLC Holdings, LLC sued him in state court back in 2011. Mr. Hutson has vigorously resisted TLC Holdings' efforts to enforce his obligations. After protracted litigation in the state court, when TLC holdings was finally on the verge of success in evicting Mr. Hutson from the property, Mr. Hutson then filed for bankruptcy on January 8th of this year, delaying for a few more months TLC Holdings' recovery of the property. For all these months that Mr. Hutson has resisted TLC Holdings' efforts to recover the property, he has continued the breaches of the Agreement that have hurt TLC Holdings, LLC, and the club members who have used the property.

. . .

As a result of TLC Holdings' successes in the state court and bankruptcy court, TLC Holdings, LLC is now finally in control of the campground property for the first time since December, 2010. Much has changed over those three years, and it appears that much work is needed. . . .

Unfortunately, because the records recovered by TLC Holdings, LLC from Mr. Hutson are incomplete in some respects, we ask that you provide to us your understanding of your current status with regard to your membership agreement with Big Water Resort. . . .

. . .

We understand that this protracted litigation may have confused or frustrated you. It certainly has us. . .

(Dkt. No. 77-17.)

The undersigned recommends granting summary judgment as to Hutson's claim for defamation. "The tort of defamation allows a plaintiff to recover for injury to her reputation as the result of the defendant's communication to others of a false message about the plaintiff."

Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998); *see also Parrish v. Allison*, 376 S.C. 308, 321, 656 S.E.2d 382, 389 (Ct. App. 2007) ("A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating with him." (citing *Holtzscheiter*, 332 S.C. at 530, 506 S.E.2d at 513 (Toal, J., concurring))). As stated in *Parrish*,

> To recover for defamation, the plaintiff must establish by a preponderance of the evidence, that there was (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged communication; (3) fault on the defendant's part in publishing the statement; and (4) either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication.

Parrish, 376 S.C. at 320, 656 S.E.2d at 388 (citations omitted).

Hutson complained at the hearing that TLC stated he filed for bankruptcy but did not explain why he filed for bankruptcy. Because Hutson *did* file for bankruptcy, however, TLC's statement is true, and Hutson cannot prevail on a claim of defamation for such a statement. *See Fountain v. First Reliance Bank*, 398 S.C. 434, 442-44, 730 S.E.2d 305, 309-10 (2012). The same can be said of the other statements contained in the April 3, 2014 letter. The letter indicated that Mr. Hutson "failed to pay rents he owed to TLC Holdings, LLC and taxes owing to Clarendon County." (Dkt. No. 77-17.) The Settlement Agreement in the State Court Action–which Mr. Hutson signed–indicated that Hutson was in arrearage to TLC in the amount of $199,969.19. (*See* Dkt. No. 183-6 at 2 of 10.) Mr. Hutson stated in his deposition that he " didn't have enough money to pay the taxes on the property like [he] was supposed to." (Hutson Dep. at 199; Dkt. No. 135.) As to the statement that Hutson failed to carry insurance, there is undisputed evidence in the record that Hutson did not always carry

insurance. (*See* Clark Dep. at 21-22; Dkt. No. 134.) Similarly, as to the statement in the letter that Hutson failed to pave the roads, Hutson admitted that he did not pave the roads. (Hutson Dep. at 80, 82; Dkt. No. 135.) In the letter of April 3, 2014, TLC states that Hutson "has continued the breaches of the [Lease Purchase] Agreement. (Dkt. No. 77-17.) Of course, that is exactly what Judge James found in the State Court Action in his Order dated March 20, 2014. (*See* Dkt. No. 183-8; Dkt. No. 183-8 at 6 of 12.) Because the undisputed evidence reveals that the statements of which Hutson complains were, in fact, true, Third-Party Plaintiffs are entitled to summary judgment as to Hutson's claim against them for defamation.

C. Motion for Summary Judgment (Dkt. No. 228)

Hutson seeks summary judgment as to Third-Party Plaintiffs' claim against him for equitable indemnity. (*See* Dkt. No. 228.)[8] As stated in *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999),

> For a party to recover under a theory of equitable indemnification, three things must be proven: (1) the indemnitor was liable for causing the Plaintiff's damages; (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the Plaintiff's claims against it which were eventually proven to be the fault of the indemnitor.

Vermeer, 336 S.C. at 63, 518 S.E.2d at 307. Stated another way, in order for Third-Party Plaintiffs to recover pursuant to a theory of equitable indemnification, Third-Party Plaintiffs must prove that (1) Hutson "was liable for causing the Plaintiff's damages"; (2) Third-Party Plaintiffs were

[8]From a reading of Hutson's motion, it is not entirely clear to the undersigned whether Hutson also seeks summary judgment as to his counterclaims against Third-Party Plaintiffs. (*See* Dkt. No. 228.) To the extent Hutson seeks summary judgment as to his counterclaims against Third-Party Plaintiffs, such a request should be denied because, as set forth above, Hutson's counterclaims against Third-Party Plaintiffs fail.

"exonerated from any liability for those damages"; and (3) Third-Party Plaintiffs suffered damages as a result of the Plaintiff's claims against [them] which were eventually proven to be the fault of" Hutson. *See Vermeer*, 336 S.C. at 63, 518 S.E.2d at 307.

In his written filings, Hutson asserts he is entitled to summary judgment on the claim for equitable indemnity because "Third Party Plaintiffs were sued by the Class due to broken promises and fraudulent behaviors by the Third Party Plaintiffs in the years prior to Third Party Defendant's arrival." (Dkt. No. 251 at 16 of 20.) Hutson points to Judge Norton's Order of February 1, 2016 to support his position that Third Party Plaintiffs "convert[ed] the 'club' to a public club and allowed the public onto the property several years prior to 2011." (Dkt. No. 251 at 16 of 20.)

At the hearing, Hutson argued that he is entitled to summary judgment as to Third-Party Plaintiffs' claim for equitable indemnity because the Court can find as a matter of law that TLC is at fault for the circumstances "that we find ourselves here in today." Hutson asserted that TLC violated several South Carolina statutes by not recording the membership agreements or the "purported lease" between Big Water Resort and TLC–which he contends is negligence per se. Hutson argued that negligence per se is fault and that, as a matter of law, TLC is at fault and cannot prevail on its claim for equitable indemnity.

The undersigned recommends denying Hutson's Motion for Summary Judgment (Dkt. No. 228.) Hutson's arguments about Third-Party Plaintiffs' failure to record–while interesting–are red herrings. Even if TLC violated the South Carolina Code in failing to record the membership agreements and the lease between Big Water and TLC, this failure did not cause the *Plaintiffs'* damages. *See Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Constr., LLC*, 413 S.C.

615, 619, 625-26, 776 S.E.2d 426, 428, 432 (Ct. App. 2015) (noting that the party seeking equitable indemnification (the general contractor Marick) "cannot recover for equitable indemnity" from Clear View (the subcontractor) "if [Marick] had any fault in causing Stoneledge's damages," where Stoneledge "brought this lawsuit seeking damages resulting from construction defects that allowed water into the townhomes" and "[t]wo of the construction defects alleged by Stoneledge related to the stonework performed by Clear View"). The crux of Plaintiffs' claim is that they were injured when the resort changed from a private resort to a public resort. Simply put, whether lease and the membership agreements were recorded had nothing to do with changing the resort from a private resort to a public resort. Whatever damages Hutson contends he suffered due to the failure to record, it is clear that the *Plaintiffs* suffered no damages.

To the extent Hutson argues that Judge Norton's order of February 1, 2016 supports his position that it was Third-Party Plaintiffs who converted the club from a private club to a public club, the undersigned finds no such support therein.[9] The portion of the Order to which Hutson points provides,

> The Defendants asserted numerous defenses arguing among other things that the conversion of the club to a public club was not a breach of contract and that the public was allowed onto the property several years prior to 2011 which would render all claims time barred by the statute of limitations.

(Dkt. No. 248 at 3 of 10.) The fact that Defendants pled the statute of limitations as a defense does not mean that they cannot also argue that Plaintiffs' damages were caused by a third party, as

[9]Hutson also asserts that Third-Party Plaintiffs "have agreed to pay damages/restitution to the Class Members because they are guilty of contract violations for the exclusivity of use to the Class Members." (Dkt. No. 251 at 17 of 20.) However, the Settlement Agreement contains no admission of liability. (*See* Dkt. No. 218-1.)

inconsistent defenses may be pleaded. *See* FED. R. CIV. P. 8(d)(3) ("A party may state as many separate claims or defenses as it has, regardless of consistency."); *see also Little v. Texaco, Inc.*, 456 F.2d 219, 220 (10th Cir.1972) ("[A] defendant is at liberty to deny and at the same time advance an affirmative defense.").

Third-Party Plaintiffs contend that Hutson is the one who opened Big Water Resort up to the public, thereby causing Plaintiffs' damages, and Hutson contends Third-Party Plaintiffs opened Big Water Resort to the public, thereby causing Plaintiffs' damages. Who in fact opened the resort to the public–Third-Party Plaintiffs or Hutson–is a classic factual dispute;[10] accordingly, Hutson's Motion for Summary Judgment as to the claim for equitable indemnity should be denied. *See Stoneledge*, 413 S.C. at 626, 776 S.E.2d at 432 ("Marick cannot recover for equitable indemnity if it had any fault in causing Stoneledge's damages. We have carefully examined the record in this case, and we cannot say as a matter of law Marick is at fault. Rather, we find the evidence is

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[10]The record contains evidence that Big Water Resort was opened to the public before Hutson ever arrived. One of the named Plaintiffs in this case–Bonnie Youmans–testified at her deposition that in 2008 or 2009, she noticed that nonmembers were coming in off I-95 and staying for just one night; she indicated these people were not at the resort for a tour. (Youmans Dep. 14-15, 20; Dkt. No. 91-9.) Ms. Youmans testified that she, along with Linda Hudson and Frances McDonald, consulted an attorney in 2008 or 2009 about a possible class action. (Youmans Dep. 34-35; Dkt. No. 91-9.)

Of course, the record also contains evidence that Hutson was the one who opened the resort to the public. On or about August 19, 2011, Hutson sent a letter to the "Members"; that letter stated, *inter alia* (verbatim),

> Regarding the issue of taking in the public, please let us clear this up. The same as each member use to be (public prior to becoming a member) other outsiders who express an interest are being considered. The only difference is we allow perspective new members to visit our park under trial membership which allows us the opportunity to observe that potential member for longer yearly memberships. All new members will and do pay more money for each visit for campsites and cabin sites. Existing members will always pay far less. The new system will help with the financial growth of Big Water and provide opportunity for Big Water to offer more than ever, with your help and support. . . .

(Dkt. No. 77-23 at 1-2 of 2.) Hutson testified during his deposition that Big Water began to "take every person that we could coming in from the public" about six months after his August 2011 letter (in other words, in early 2012). (Hutson Dep. at 320-21; Dkt. No. 126-1.) He also testified, however, that members complained to him about public access to the resort as early as five or six days after he arrived there. (Hutson Dep. 58-65, 88, 91; Dkt. No. 135.)

conflicting, and viewing the evidence in the light most favorable to Marick, the record contains evidence a factfinder could reasonably find supports the conclusion Marick was not at fault. Because of this conflicting evidence, the equitable indemnity cause of action must be remanded for a trial."). While Third-Party Plaintiffs "cannot recover for equitable indemnity if they had any fault in causing Plaintiffs' damages," because the evidence of who is at fault is conflicting, Hutson's motion should be denied. *See id.* at 626, 776 S.E.2d at 432.

CONCLUSION

It is therefore RECOMMENDED, for the foregoing reasons, that Third-Party Plaintiffs' Motion for Sanctions (Dkt. No. 179) be DENIED. It is further RECOMMENDED that Third-Party Plaintiffs' Motion for Summary Judgment (Dkt. No. 183) be GRANTED, and that Third-Party Defendant's Motion for Summary Judgment (Dkt. No. 228) be DENIED.

IT IS SO RECOMMENDED.

MARY GORDON BAKER
UNITED STATES MAGISTRATE JUDGE

April 5, 2016
Charleston, South Carolina

The parties' attention is directed towards the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. **Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections.** "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

received on Feb. 7th 2019

State of South Carolina
The Circuit Court of the Third Judicial Circuit

Kristi Fisher Curtis
Judge

215 North Harvin Street
Sumter, SC 29150
Phone: (803) 436-2152
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kcurtisj@sccourts.org

February 4, 2019

Mr. Steven Kropski
Earhart Overstreet, LLC
P.O. Box 22528
Charleston, SC 29413

Mr. M.B. Hutson
P.O. Box 2755
Orangeburg, SC 29116-2755

RE: Hutson v. Weissenstein, Case no. 2018-CP-43-1583
Motion to Dismiss/ Summary Judgment

Dear Sirs:

This Motion to Dismiss/Summary Judgment was before me on December 10, 2018. After reviewing the pleadings, motions, memoranda and applicable law, the Defendant's Motion for Summary Judgment is granted. I find that this action is outside of the applicable statute of limitations and that all of the issues currently being raised, and specifically the issue of the existence of the lifetime memberships, were known to the Plaintiff at the time he entered into the settlement agreement in March of 2012.

Mr. Kropski, please prepare a proposed order to that effect within the next 30 days. You can send it to me and Mr. Hutson via e-filing, e-mail, or regular mail, whichever is most convenient.

Thank you,

Kristi Curtis

Kristi Curtis
Circuit Court Judge

ELECTRONICALLY FILED - 2019 Feb 25 8:42 AM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

STATE OF SOUTH CAROLINA COUNTY OF SUMTER MB HUTSON A/K/A MB HUTSON, Plaintiff, vs. PAUL WEISSENSTEIN (Attorney)/ PAUL WEISSENSTEIN, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE THIRD JUDICIAL CIRCUIT CASE NO.: 2018-CP-43-1583 **ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on Defendant's motion for summary judgment. The parties have filed submissions in support of their respective positions, and the Court heard oral arguments from Plaintiff, pro se, and counsel for the Defendant on December 10, 2018. After careful consideration of the pleadings, affidavits, documentary evidence and the arguments of the parties, the Court grants the Defendant's motion for summary judgment.

BACKGROUND

This matter arises out of a long-term dispute between Plaintiff, M.B. Hutson, and non-parties TLC Holdings, LLC, and the individual members of TLC Holdings, LLC (collectively the "TLC Parties"). Defendant, Attorney Paul Weissenstein, represented Plaintiff in one of several lawsuits between Hutson and the TLC Parties. Although not directly related to Weissenstein's representation of the Plaintiff, a recitation of the history between Hutson and the TLC Parties aids in the disposition of this motion.

In fall of 2010, Plaintiff and the TLC Parties began discussing a potential real property and business transaction wherein Hutson would take over a campground known as "Big Water Resort"

(“BWR”), along with the real property on which it was located. At the time of the BWR Transaction, Hutson was not represented by the Defendant Weissenstein, but was represented by a lawyer based out of Tennessee, Andrew Tucker, Esq.

In connection with the BWR transaction, on December 10, 2010 Hutson executed a lease purchase agreement (“LPA”) related to real property in Clarendon County, South Carolina on which BWR was located. Plaintiff also purchased the limited liability company that operated BWR (“BWR, LLC”).

Prior to the BWR Transaction, BWR, LLC sold what the parties refer to as “lifetime retail membership agreements” (“Lifetime Memberships”) to individuals and families who then became members of BWR. These agreements were entered into between BWR, LLC and the campground members, and purported to give the members exclusive access to the campground. Hutson alleges that he did not want to operate a campground, but rather wished to develop residential structures on certain portions of the unimproved Property[1]. At the time of the transaction, Hutson was aware of the Lifetime Memberships.

On November 11, 2010, Hutson’s realtor wrote to the realtor for the TLC Parties:

> Attached is Susan’s lifetime membership info. (sic) regarding Big Water camp ground. ***My buyer is concerned about the “life time” members and the impact they can have on the future development of the property***. In other words, in your opinion, what is the easiest, legal way to terminate the lifetime memberships of Big Water? Will these memberships have an impact on obtaining clear title for the property.?

[1] For purposes of this motion, the evidence and all inferences which can be reasonably drawn from the evidence are viewed in the light most favorable to the Plaintiff.

ELECTRONICALLY FILED - 2019 Feb 25 8:42 AM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

Consistent with Hutson's intention to develop the property, the LPA provided Hutson an opportunity to examine marketable title to the Property, identify any title defects, and potentially terminate the transaction if title defects were not cured. Page 5 of the LPA states:

> Purchaser shall, within ninety (90) days after the Effective Date [of the LPA], investigate Seller's title to the Premises and identify any exceptions to title which are not acceptable to Purchaser. Purchaser shall within ninety (90) days after the Effective Date provide Seller notice of any such Title Exception. If Purchaser does not notify Seller in writing of Title Exceptions within ninety days after the Effective Date, then the Purchaser shall be deemed to have accepted title to the premises with all exceptions and conditions. If Purchaser timely notifies Seller of Title Exceptions (other than the Title Exceptions that can be cured by the payment of money to satisfy any liens as of the Closing, which Title Exceptions shall be cured as of the Closing), Seller may (but shall not be required to) cause all Title Exceptions to be deleted as Exceptions from the Title Commitment, as the case may be, on or prior to 30 days prior to closing (the "Cure Deadline"). If Seller fails or refuses to cure any Title Exceptions prior to the Cured Deadline, then Purchaser may, as its sole and exclusive remedy for the existence of, or Seller's failure to cure, such Title Exceptions before the Cured Deadline, elect to terminate this Agreement, or waive its right to terminate this Agreement in writing and accept the Title Commitment with all uncured Title Exceptions.

Hutson and the TLC Parties signed the LPA and related transaction documents in December of 2010.

By November 29, 2011, Hutson defaulted under the LPA and the TLC Parties filed to eject him from the subject property. Defendant Weissenstein represented Hutson in this ejectment action, in which Hutson asserted counterclaims against the TLC Parties for various misrepresentations, including a sewer moratorium, issues with the utility provider, and pending litigation which was to have been dismissed prior to closing on the LPA, but allegedly remained pending as of November 2011. Weissenstein, on behalf of Hutson, did not file a counterclaim

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alleging fraudulent concealment of title defects created by the Lifetime Memberships and there is no evidence in the record that such a counterclaim was considered.

Ultimately, the 2011 ejectment action ended in a settlement incorporated into a consent order that, *inter alia*, extended Hutson's time to comply with his payment obligations and attempts to develop the property.

Thereafter, Hutson defaulted under the terms of the settlement agreement, and the TLC Parties again initiated an action to eject Hutson from the subject property. Defendant Weissenstein did not represent Hutson in this subsequent ejectment proceeding, which concluded with an order ejecting Hutson from the property.

In April 2014, a class action lawsuit was filed against the TLC Parties in Federal District Court by over 1,000 putative class members who purchased Lifetime Memberships. *Reed et al. v. Big Water Resorts et al.*, Case no. 2:14-cv-01583 (U.S. Dist. Court, D.S.C.). The TLC Parties filed a third-party complaint against Hutson alleging he was responsible for the damages alleged by the putative class members.

Hutson then counterclaimed against the TLC Parties alleging, *inter alia*, that the TLC Parties defrauded him by failing to disclose that the Lifetime Memberships created a title defect,[2] and that the settlement agreement resolving the 2011 ejectment action was procured by fraud since he was unaware of the alleged title defect created by the Lifetime Memberships.

The District Court adopted the Magistrate Judge's Report and Recommendation dismissing Hutson's counterclaims based upon a theory of *res judicata*. The Court held that

[2] Hutson alleges that the Lifetime Memberships were leases that clouded title to the subject property. For purposes of this motion, this allegation is construed in favor of the nonmoving party, Hutson. However, the Court expressly makes no ruling on the merits of this allegation as it is not material to the disposition of the motion.

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settlement of the 2011 ejectment action precluded the re-litigation of counterclaims that were or could have been asserted in the 2011 ejectment action.

In their decisions, the Magistrate Judge and District Judge noted that documentary evidence, deposition testimony, and open court statements by Hutson established that he was aware of the Lifetime Memberships prior to closing, he was aware they may impact title prior to closing, and was, thus, aware of these issues prior to entering into the settlement agreement as part of the 2011 ejectment action. In light of these findings, the Federal Court held that the subject settlement agreement was not procured by fraud. *Reed et al. v. Big Water Resorts et al.*, case no. 2:14-cv-01583 (U.S. Dist. Ct., D.S.C.) (5-20-2016 order of Judge D. Norton) (4-5-2016 Report & Recommendation of Judge M. Baker).

Hutson now alleges that Weissenstein committed legal malpractice by failing to recognize the title defect created by the Lifetime Memberships. In his Amended Complaint, Hutson advances two theories. First, Hutson alleges that Weissenstein failed to advise him that the Lifetime Memberships were a cloud on title that TLC concealed at the time of the LPA. Second, Hutson alleges that, but for Weissenstein allowing him to enter into the settlement agreement as part of the 2011 eviction action, Hutson would not have lost his counterclaim in the Federal class action. Hutson alleges that Weissenstein committed malpractice by failing to assert a counterclaim in the 2011 ejectment action for fraud based upon the TLC Parties' concealment of the cloud on title created by the Lifetime Memberships. Hutson alleges that he would have prevailed on a claim of fraudulent concealment against the TLC Parties.

In support of his claim, Hutson also submitted the expert affidavit of Mark Hardee, Esq., which alleges:

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> h. M.B. Hutson intended to purchase and develop property on lake Marion through a lease purchase agreement which also included an on going business.
>
> i. Unknown to Mr. Hutson was that a title defect existed on the property due to hundreds of 70 year right to sole use agreements which had been sold by TLC Holdings, LLC and Big Water Resort.
>
> j. Mr. Hutson was unaware that these agreements constituted a title defect on the property which would keep him from developing the property as planned.
>
> …
>
> o. Mr. Weissenstein fell below the standard of care expected of attorneys in similar situation at the time, by failing to advise Mr. Hutson that the existence and effect of the long term leases would prevent him from ever developing the property as he intended, and that his default of the settlement agreement was inevitable, and that he would be forever barred from prosecuting and using as a defense the fraud perpetrated on him by TLC Holding LLC.

Weissenstein argues that he cannot be liable for Hutson's failure to discover the alleged title defect, as Hutson was represented by a different lawyer with respect to the initial transaction with the TLC Parties, including the LPA.

Weissenstein further argues that the evidence shows Hutson was both aware of the Lifetime Memberships before closing on the LPA, and aware that the Lifetime Memberships could potentially impact title prior to closing on the LPA. Weissenstein avers that after the LPA's ninety day examination period expired, Hutson's could not seek recourse against the TLC Parties for alleged title defects, including in the 2011 ejectment action.

Finally, Weissenstein argues that Hutson's legal malpractice claim is barred by the statute of limitations, since Hutson knew or should have known that no counterclaim for concealment of the alleged title defect created by the Lifetime Memberships was brought in the 2011 ejectment action at the time he signed the settlement agreement.

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LEGAL STANDARD

"Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Rule 56, SCRCP; *South Carolina Prop. & Cas. Guar. Ass'n. v. Yensen,* 345 S.C. 512, 528, 518, 548 S.E.2d 880, 883 (Ct.App.2001). "When ruling on a motion for summary judgment, the trial judge must consider all of the documents and evidence within the record, including the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits." *Anthony v. Padmar, Inc.,* 307 S.C. 503, 415 S.E.2d 828 (Ct. App. 1992). "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)). "However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

ANALYSIS

I

In his Amended Complaint, Hutson asserts twelve causes of action styled as "counts of malpractice": (1) breach of duty by attorney #1; (2) breach of duty by attorney #2; (3) negligence; (4) damage to the client/plaintiff; (5) proximate causation of the client's damages by the breach; (6) fraudulent coverup by defendant(s); (7) gross negligence damaging plaintiff; (8) gross negligence; (9) gross negligence: failure to introduce S.C. Law 27-33-30; (10) negligence and lack of concern; (11) allowing fraud upon the court; (12) on-going damages from malpractice.

As an initial matter, although Hutson separately lists his counts of malpractice, each separate count alleges the same thing; that Defendant Weissenstein breached a duty arising out of

the attorney-client relationship. Accordingly, the Court construes all of these allegations as asserting a single claim for legal malpractice consistent with South Carolina Supreme Court precedent. *See, RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 336, 732 S.E.2d 166, 173 (2012) (where a separately plead cause of action is premised on the duty inherent in the attorney-client relationship and arises out of the same factual allegations, the claim for legal malpractice will encompasses the separately plead claim).

II

Moving next to an analysis of Hutson's allegations under the framework of a legal malpractice claim, under South Carolina law, a plaintiff must establish four elements in a legal malpractice action: "(1) The existence of an attorney-client relationship; (2) A breach of duty by the attorney; (3) Damage to the client; and (4) Proximate cause of the client's damages by the breach." *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 402, 697 S.E.2d 551, 555 (2010) (quoting *Rydde v. Morris*, 381 S.C. 643, 647, 675 S.E.2d 431, 433 (2009)). Failure to establish any one of the four elements of legal malpractice renders the legal malpractice claim insufficient as a matter of law. *See, e.g., Henkel v. Winn*, 346 S.C. 14, 18, 550 S.E.2d 577, 579 (Ct. App. 2001).

Here, it is undisputed that Hutson and Wiessenstein were in an attorney-client relationship with respect to the 2011 ejectment action. Thus, Hutson has established the first element of a legal malpractice claim with respect to the 2011 ejectment action.

It is likewise undisputed that no attorney-client relationship was present between Hutson and Weissenstein with respect to the initial transaction between Hutson and the TLC Parties, including the examination of title.

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The Court finds that the undisputed facts show that Weissenstein cannot be held liable for an alleged failure to identify title defects created by the Lifetime Memberships. It is indisputable that *before* closing on the LPA, Hutson's realtor sent an email to the TLC Parties' realtor stating, *inter alia,* **"my buyer is concerned about the "life time" memberships and the impact they can have on future development of the property…will these memberships have an impact on obtaining clear title for the property."**

Hutson had knowledge that the Lifetime Memberships could potentially impact title to the subject property. Pursuant to the terms of the LPA, Hutson was required to examine the possible impact of these Lifetime Memberships within ninety days of closing on the LPA. To the extent that an error was made in failing to identify a title defect caused by the Lifetime Memberships, Weissenstein cannot be held liable for such error.

III

Hutson also alleges that Weissenstein committed malpractice by allowing him to sign the settlement agreement ending the 2011 ejectment action without litigating a counterclaim for fraudulent non-disclosure of the title defects created by the Lifetime Membership. Hutson alleges that, as a result of signing the settlement agreement instead of litigating a fraudulent non-disclosure counterclaim, he was precluded from making the same claim in the Federal class action lawsuit against the TLC Parties, on which he would have prevailed. The Court disagrees.

Integral to defeating summary judgment on a claim for legal malpractice is expert testimony expressly stating that the Plaintiff "most probably" would have obtained a better result in the underlying matter "but for" the alleged breach of an attorney's standard of care. *See, Doe v. Howe*, 367 S.C. 432, 445-46, 626 S.E.2d 25 (Ct. App. 2005)(affirming summary judgment for attorney when plaintiff's expert did not testify that plaintiff would have received a greater

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settlement "but for" the attorney's breach of the standard of care); *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 290, 701 S.E.2d 742 (2010)(affirming summary judgment for attorney when plaintiff's expert did not testify that plaintiff would have obtained a better outcome had the attorneys not breached their standard of care). The question of the success of the underlying claim is a question of law. *Holmes v. Haynsworth, Sinkler, & Boyd, P.A.*, 408 S.C. 620, 636, 760 S.E.2d 399 (2014) citing, *Howe*, 367 S.C. at 442.

Here, the Court finds that Hutson cannot establish that he would have prevailed on a claim for fraudulent nondisclosure of title defects created by the Lifetime Memberships. First, Hutson's expert does not assert that Hutson "most probably" would have achieved a better result. Thus, Hutson cannot establish this essential element.

Furthermore, while ordinarily the issue of proximate cause is a jury question, where there is no genuine issue of material fact concerning proximate cause, the Court may grant summary judgment. *Singleton v. Sherer*, 377 S.C. 203, 659 S.E.2d 196, 206 (Ct. App. 2008). The Court finds that there is no genuine issue of material fact precluding summary judgment.

Here, the evidence is capable of only one reasonable inference. Hutson was aware of the Lifetime Memberships prior to closing on the LPA. Page 5 of the LPA required Hutson to "within ninety (90) days after the Effective Date [of the LPA], investigate Seller's title to the Premises and identify any exceptions to title which are not acceptable to Purchaser." The LPA further states "if Purchaser does not notify Seller in writing of Title Exceptions within ninety days after the Effective Date, then the Purchaser shall be deemed to have accepted title to the premises with all exceptions and conditions."

Accordingly, by the time the TLC Parties initiated the 2011 ejectment action, Hutson had accepted title to the premises with all exceptions and conditions based upon the plain and

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unambiguous terms of the LPA. Thus, Hutson could not prevail on a claim alleging title defects during the 2011 ejectment, as he had already contractually agreed to accept title "with all exceptions and conditions."

Moreover, Hutson had knowledge of the Lifetime Memberships *before* he closed on the LPA, and also was on notice that the Lifetime Memberships could impact clear title to the property *before* he closed on the LPA. Thus, a fraud claim against the TLC Parties with respect to alleged concealment of title defects created by the Lifetime Memberships would necessarily fail.

To establish fraud, the following nine elements must be shown: 1) a representation or nondisclosure of a material fact, 2) its falsity, 3) its materiality, 4) either knowledge of its falsity or a reckless disregard of its truth or falsity, 5) intent that the representation be acted upon, 6) the hearer's ignorance of its falsity, 7) the hearer's reliance on its truth, 8) the hearer's right to rely thereon, and 9) the hearer's consequent and proximate injury. *Kiriakides v. Atlas Food Sys. & Servs., Inc.,* 338 S.C. 572, 586, 527 S.E.2d 371, 378 (Ct.App.2000).

Although Hutson's expert affidavit suggests that Hutson was "unaware" the Lifetime Memberships created a title defect, the documentary evidence in the record before the Court shows that Hutson was, in fact, aware that the Lifetime Memberships could impact title to the subject property. In fact, the Federal District Court made very specific factual findings that Hutson knew about the membership agreements at the time he purchased the Big Water Resort. (4-5-16 Report & Recommendation of Judge Baker at 23, note 5.). Among other things, the District Court notes that Hutson's real estate agent contacted an attorney regarding the lifetime memberships and how they would impact obtaining clear title to the property, Hutson admitted at the District Court hearing he knew there were memberships, and Hutson stated he and his original attorney "sat at the table together and went over" the membership agreements before closing. Therefore, to the

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extent that Hutson alleges the TLC Parties fraudulently concealed that the Lifetime Memberships could impact clear title to the property, the evidence establishes that Hutson was not ignorant to this fact. Accordingly, as a matter of law, Hutson cannot show that he "most probably" would have prevailed against the TLC Parties in a claim for fraudulent nondisclosure of title defects.

The Court finds that, viewing the evidence in the light most favorable to Hutson, no material facts are in dispute and Hutson cannot satisfy all four elements of a legal malpractice claim against Weissenstein.

IV

Weissenstein also argues that Hutson's legal malpractice claim is barred by the statute of limitations. The Court agrees.

The statute of limitations for a legal malpractice action is three years. S.C. Code Ann. § 15-3-530(5) (2005) (stating the statute of limitations for "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law" is three years); *see Berry v. McLeod,* 328 S.C. 435, 444–45, 492 S.E.2d 794, 799 (Ct.App.1997) (concluding that section 15–3–530(5) of the South Carolina Code provides a three-year statute of limitations for legal malpractice actions).

Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. *Burgess v. Am. Cancer Soc'y, S.C. Div., Inc.*, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct.App.1989); *see* S.C. Code Ann. § 15–3–535 (2005) ("[A]ll actions initiated under Section 15–3–530(5) must be commenced within three

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years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action."). "This standard as to when the limitations period begins to run is *objective* rather than subjective." *Burgess*, 300 S.C. at 186, 386 S.E.2d at 800. "Therefore, the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto." *Id.*

As the Court has described in detail, Hutson was aware of the Lifetime Memberships and the possibility that the Lifetime Memberships could impact clear title to the property prior to closing on the LPA. Therefore, to the extent that Hutson believes a fraud counterclaim should have been asserted by Weissenstein in the 2011 ejectment action against the TLC Parties related to nondisclosure of alleged title defects created by the Lifetime Memberships, Hutson knew or should have known of this claim prior to the conclusion of the 2011 ejectment action. The 2011 ejectment action concluded on April 13, 2012 when Judge James entered a consent order adopting the settlement agreement signed by the parties.

The Court finds that Mr. Hutson knew or should have known that Mr. Weissenstein did not assert a cause of action for fraudulent nondisclosure of alleged title defects caused by the Lifetime Memberships at that time. This action, alleging malpractice against Weissenstein was filed on September 9, 2018. The Court finds that this action was filed after the expiration of the three-year statute of limitations.

V

After consideration of the material in the record, the relevant law, the parties' memoranda, and the oral arguments of the parties, Defendant's motion for summary judgment is GRANTED.

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[Judge's Electronic Signature to Follow]

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Sumter Common Pleas

Case Caption: M B Hutson VS Paul Weissentein

Case Number: 2018CP4301583

Type: Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

E ectron ca y s gned on 2019-02-23 11:27:58 page 15 of 15

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4301583

M B Hutson
(S)

Paul Weissentein
(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** i a tion am o t out o a t ial u . i u a n t i d and a di t nd d.

☑ **DECISION BY THE COURT.** i a tion am to t ial o a in o t ou t. i u a n t i d o a d and a d i ion nd d.

☐ **ACTION DISMISSED** (*CHECK REASON*) ☐ ul 1 ( ) SC C ☐ ul 41(a) SC C (ol. on uit) ☐ ul 4 ( ) SC C (S ttl d)
☐ t

☐ **ACTION STRICKEN** (*CHECK REASON*) ☐ ul 40( ) SC C ☐ an upt
☐ indin a it ation u t to i t to to to on i m a at o modi a it ation awa d
☐ t

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*)
☐ i m d ☐ d ☐ mand d
☐ t

S S S C
S C C C C S .

IT IS ORDERED AND ADJUDGED: ☐ S atta d o d (o mal o d to ollow) ☑ Stat m nt o ud m nt t Cou t

After a motion hearing on today's date, Plaintiff's motion to reconsider is DENIED. Plaintiff has 30 days to file an appeal.

ORDER INFORMATION

i o d ☑ nd ☐ do not nd t a . ☐ S a o additional in o mation.

For Clerk of Court Office Use Only

i ud m nt wa l t oni all nt d t Cl o Cou t a l t d on t l t oni im Stamp and a op mail d i t la to an pa t not p o din in t l t oni ilin S t m on 04/22/2019 .

M B Hutson for M B Hutson
M B Hutson for M B Hutson

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Apr 22 2:11 PM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2019 Apr 22 2:11 PM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

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Sumter Common Pleas

Case Caption: M B Hutson VS Paul Weissentein

Case Number: 2018CP4301583

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

E ectron ca y s gned on 2019-04-22 12:38:32 page 3 of 3

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

MB Hutson

Plaintiff(s)

vs.

Paul Weissenstein Attorney

Defendant(s)

CIVIL ACTION COVERSHEET

RECORDED 2018 SEP -4 PM 12:41 JAMES C. CAMPBELL CLERK OF COURT SUMTER COUNTY, S.C

______-CP - ______ - ______

2018-CP-43- 1583

Submitted By: MB Hutson
Address: 1545 Biltmore St. Orangeburg, S.C. 29115

SC Bar #:
Telephone #: 8033082714
Fax #:
Other:
E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. **This form is NOT required to be filed in E-Filed Cases.**

DOCKETING INFORMATION (*Check all that apply*)

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

☑ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☑ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) ______

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☒ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case # 20____-NI-____-______
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) ______

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) ______

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

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) ______

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) ______

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Incapacitated Adult Settlement (790)
- ☐ Other (799) ______

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

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) ______
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Interpleader (690)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: MB Hutson **Date:** Sept 4, 2018

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

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

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

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

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

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

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

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

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER)

RECORDED
2018 SEP 14 PM 12:44
CLERK OF COURT
SUMTER COUNTY, S.C.

) Civil Action No. 2018-CP-__________

2018-CP-43-1583

MB Hutson a/k/a MB Hudson,

Plaintiff,

vs.

Paul Weissenstein (Attorney)/
Paul Weissenstein,

Defendant.

SUMMONS

TO: THE DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon its subscribers, at the address shown below, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Paul Weissenstein
106 Broad Street
Sumter, South Carolina
29151

[signature]

By: MB Hutson/MB Hudson, Plaintiff
Post Office Box 2755
Orangeburg, SC 29116-2755
Telephone: (803) 308-2714
E-mail: hutson4444@gmail.com

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER COUNTY

RECORDED
2018 SEP -4 PM 12:42
CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

IN THE COURT OF COMMON PLEAS

CASE NO. ________________

2018-CP-43-1583

MB HUTSON/MB HUDSON

PLAINTIFF.

VS.

PAUL WEISSENSTEIN ATTORNEY/
PAUL WEISSENSTEIN.

DEFENDANT

LEGAL MALPRACTICE

COMPLAINT FOR LEGAL MALPRACTICE

WHEREAS MB Hutson/Hudson, hereby referred to as Plaintiff, resides in Orangeburg, South Carolina, and Defendant, Paul Weissenstein, Attorney/Paul Weissenstein, hereinafter referred to as Defendant, resides in Sumter, South Carolina, and said malpractice occurred in and around Sumter County at Defendant's law office and related Planning Board Meetings shortly after the signing of the Retainer Agreement on October 25, 2011 (Exhibit 2), and until the courts were notified of a Substitution of Attorney on January 8, 2014 (Exhibit 13).

This time frame included Defendant's defense of Plaintiff against the Sellers pending Eviction Notice and the resulting recordation of the Settlement Agreement (Exhibit 10) and Consent Order (Exhibit 11). In one of Defendant's first actions on behalf of the Plaintiff, we can see in his letter to Evictors' Attorney, Tom Harper, on October 31, 2011 (Exhibit 15—from Defendant's own files/ pp3), and edited in his own handwriting, that there was no mention/defense citing the effect of the 720 long term Family Memberships upon the title of the land (Lease Purchase Agreement), nor the cloud that made on the land title, nor the inability of his client to meet the demands of the Lease Purchase Agreement and develop it into single family residences.

There is also, notably, no mention of the seventy (70) years of obligation those family memberships created and cost of approximately twenty million dollars. Rather, the Defendant informed the Plaintiff that Defendant did not think he could prevail to ward off the Plaintiff's eviction based on the evidence in hand: which included the Lease Purchase Agreement, the Membership Interest Purchase Agreement and various Retail Membership Agreements awarding member families a right to use the campground.

The Defendant/Weissenstein also failed to recognize that Big Water Resort had no legal claim, or contract securing the use of the land (Exhibit 14 – page 79-80) on which Big Water Resort was operating on in order to honor the "rights to use" which those seven hundred twenty (720) families holding Retail Membership Agreements had contracted for over one to two lifetimes. This is documented in Exhibit 14 by one of the TLC (landowners) testimony in deposition. Weissenstein/Defendant's best defense was

totally overlooked, unrecognized, and evidence of malpractice, the damages of which his client/Plaintiff is still suffering from.

Damages to the Plaintiff due to the improper advice of the Defendant/Weissenstein on the application and effect of the Settlement Agreement (release) continued throughout the Defendant's legal representation for the Plaintiff (January 8, 2014) (Exhibit 13) through the Federal Court case whereby the Sellers sued the Plaintiff, and are ongoing.

Plaintiff, not knowing the SC law 20-33-31 (Exhibit 8), which Plaintiff *now* knows requires long-term leases and/or agreements to be recorded, such as the Retail Membership Agreements, and the Plaintiff having completed a title search, prior to engaging Defendant/Weissenstein, did not realize the fraud in which the Big Water Resort Sellers had entangled him. Plaintiff depended upon the guidance of his attorney of record, Defendant/Weissenstein, for legal guidance. The Defendant in this case:

- did not advise Plaintiff of the cloud on the title (Exhibit12),
- did not protect Plaintiff from the fraud in the Lease Purchase Agreement (Exhibit 9), but rather approved and advised his client, Plaintiff, to sign the Settlement Agreement (Exhibit 10) and Consent Order (Exhibit 11) in April of 2012, that rather than protecting his client, protected the Seller's fraud in the Lease Purchase Agreement with a *res judicata*, leaving the Plaintiff with no recourse for recovery.

- when requested by the Plaintiff, Defendant REFUSED to witness on Plaintiff's behalf in the subsequent Federal Court Case. Therefore, Judge Norton ruled (5/20/16) against Plaintiff:

  1-"Hutson failed to produce an affidavit or statement from the attorney" (Weissenstein) "who represented [them] in the former litigation" (Exhibit 4-2).

  2-"Hutson has failed to provide any evidence whatsoever of fraud in the procurement of the Release." (Exhibit 4-1).

  3-"Hutson was represented by an attorney in the underlying state court action" (Weissenstein) "and was therefore presumably advised of the application and effect of the Release." (Exhibit 4-1 to 4-2)

However, Defendant/Weissenstein never did, on his own, recognize the fraud (Sellers attempting to sell land with a defective title) nor the cloud on the title (created by the 720 family's "right to use" for 1-2 lifetimes. In Weissenstein's correspondence to Sellers' attorney, Tom Harper, after the execution of the Settlement (Release) Agreement and Consent Order, (Exhibit 5), Weissenstein congratulates the Seller's Attorney stating that:

> "I believe you and I have negotiated a fair and equitable agreement for both our clients that hopefully will make both of them a lot of money over the next two years."

The Defendant/Weissenstein also thanked Seller's attorney :

> "for all of your hard work, especially over the past few days, in preparing the drafts and the final settlement agreement." (Exhibit 5)

In Federal Court, Judge Norton's presumption was in error because the Plaintiff/Hutson was NOT advised of the application and effect of the Release (Settlement Agreement) because his attorney Defendant/Weissenstein never recognized it!

The State Court was also unaware that Defendant/Weissenstein had grossly committed malpractice on the Plaintiff which the Defendant/Weissenstein apparently <u>never recognized</u>:

> that the Settlement Agreement required Plaintiff to make improvements, develop property and ultimately sell that property to the public in small lots (Exhibit 10, pp., p. 2-3, item # 5-6) even though, this property had defective title.

Therefore, the Settlement Agreement required Buyer to perform impossible actions or be found in default. He was doomed. Defendant/Weissenstein doomed the Plaintiff into default and another eviction notice.

Defendant/Weissenstein continued receiving payments from the Plaintiff and represented the Plaintiff after the Settlement Agreement (Exhibit 10) and Consent Order (Exhibit 11) in total oblivion to the fraud and clouded title. Defendant/Weissenstein,

made personal appearances and signed applications to the Clarendon County Planning Commission (Exhibit 3) to "Develop a single family subdivision at Big Water resorts" (in his own handwriting when it was completely impossible due to defective title)
The Defendant/Weissenstein apparently had NO understanding that the Settlement Agreement granted the Sellers complete release of all wrongdoing and fraud in the Lease Purchase Agreement with a res judicata protection! Furthermore, by his actions, he most assuredly did not realize the cloud on the title that prohibited development of single family homes on the land that Big Water Resort operated on.

Total incompetence as an attorney was displayed in these actions. The clouded title was authenticated to Plaintiff/Hutson on October 2, 2015, by Stewart Title Guaranty Company's counsel (Exhibit 12).

When the Plaintiff/Hutson fully grasped, during the month following the letter from Stewart Title Guaranty Company counsel and subsequent phone calls to them, that ANY attorney should have recognized the cloud on the title, he contacted Defendant/Weissenstein via phone, who replied, "I'm sorry. It just went right over my head."

Defendant/Weissenstein stated on that call that he would contact his Insurance Carrier and Plaintiff could expect a call from them. An immediate $25,000.00 offer was made by the Insurance Company to the Plaintiff/Hutson. When the Plaintiff rejected the

amount due to the extreme damages he had incurred, the Insurance representative instructed Plaintiff to "put a law suit on my desk."

The irrefutable conclusion is that Defendant/Weissenstein's lack of appropriate actions was a breach of fiduciary duty and negligence as well as breach of the duty to provide skillful and competent representation thereby damaging his client/Plaintiff.

Attached and made a part of this Malpractice Complaint are the following EXHIBITS:

1. Affidavit of Expert Witness, Mark W. Hardee, Attorney.
2. Attorney Retainer Agreement between Plaintiff Hutson and Defendant Weissenstein.
3. Clarendon County Planning Commission Application (p. 2 of 2) to "develop a single family subdivision at Big Water Resort" dated April 12, 2012, and signed by Plaintiff.
4. (Federal) Judge Norton's Order dated 5/20/16 p. 15-17.
5. Personal email from Defendant to Sellers' attorney, Tom Harper.
6. Membership Interest Purchase Agreement. Contract for the sale and purchase of BWR. This business consisted of approximately seven hundred twenty (720 Family) Retail Membership Agreements (see sample-Exhibit 7) which clouded the title (See Exhibit 12).
7. Retail Membership Agreement. "For the right to use (BWR) campground facilities and services solely for Member's recreation and enjoyment" for one and up to two lifetimes.

8. SC law section 27-33-30 requiring recordation of any lease or agreement for use or occupancy of real estate.
9. Lease Purchase Agreement dated December, 2010 (esp. p. 4) acknowledging intent to develop residential dwelling structures.
10. Settlement Agreement filed April 13, 2012.
11. Consent Order filed April 13, 2012.
12. E-mail from Stewart Title / SC/NC Underwriting Counsel
13. Notice of substitution of attorney
14. Clark (Seller) deposition: p. 79 : No lease or contractual right for BWR to use TLC land
15. Defendant/Weissenstein's hand notes on his letter to Tom Harper as his first defense against Sellers' action for eviction. 3 pp.

Plaintiff's time and fiscal damages continue from Defendant's incompetent legal advice.

Therefore, The Plaintiff hereby prays for the following:

A. This case be taken before a jury

B. Defendant be held totally liable for all damages incurred by Plaintiff totaling not less than $1.2 M.

C. Permit all actions by the Honorable Court to make the Plaintiff whole.

D. This lawsuit be permitted to be amended within 90 days of filing, if necessary.

E. Plaintiff requests a speedy trial due to on-going damages

Submitted this _____ day of August, 2018

MB Hutson

1545 Biltmore Street
Orangeburg, SC. 29115-4102
(803) 308-2714

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER) Civil Action No. 2018-CP-43-1583

RECORDED
2018 OCT -3 A 10: 23
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

MB Hutson/MB Hudson,

Plaintiff,

vs.

SUMMONS

Paul Weissenstein (Attorney)/
Paul Weissenstein, John Doe #1,
John Doe #2.
Defendants.

TO: The DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon its subscribers, at the address shown below, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Paul Weissenstein, Attorney
106 Broad Street
Sumter, South Carolina 29151

John Doe #1, Attorney
106 Broad Street
Sumter, South Carolina 29151

John Doe #2, Attorney
106 Broad Street
Sumter, South Carolina 29151

Oct 1, 2018

By: MB Hutson, Plaintiff
Post Office Box 2755
Orangeburg, SC 29116-2755
Telephone: 803.308.2714
Email: hutson4444@gmail.com

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	Civil Action No. 2018-CP-43-1583
MB Hutson/MB Hudson, Plaintiff,	
vs.	AMENDED COMPLAINT FOR LEGAL MALPRACTICE
A. Paul Weissenstein (Attorney)/ A. Paul Weissenstein Firm, John Doe #1, John Doe #2 Defendants.	

RECORDED
2018 OCT -3 A 10:23
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

I. DEFINITIONS OF MALPRACTICE

A. "malpractice *n.* negligence, misconduct, lack of ordinary skill, or a breach of duty in the performance of a professional service…resulting in injury or loss."

Merriam-Webster's Dictionary of Law, Springfield, Mass. 1996. p.301.

B. "A plaintiff in a legal malpractice action must prove four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client and (4) proximate causation of the client's damages by the breach".

The Law of Legal Malpractice in South Carolina. Gray, Jordan, Lindsay, Stepp and Watson (Sowell Gray Robinon Stepp & Laffitte, LLC), South Carolina Bar. Continuing Legal Education Division, 2017. p 3.

C. "In Wildasin vs Mathis, 2016, Dist. Lexis 31672 M.D. Tenn. Mar. 11, 2016), a federal court was called to decide whether an association of lawyers could be held vicariously liable for the malpractice of a member. The court found it could."

"ASSOCIATION OF ATTORNEYS CAN BE FOUND VICARIOUSLY LIABLE FOR THE MALPRACTICE OF MEMBERS EVEN IF NOT A FIRM" Posted May 18, 2016 by fgiannoni. Crystal Lawyers for Lawyers a cgcfirm,com

II. JURISDICTION AND VENUE

WHEREAS MB Hutson/Hudson, hereby referred to as Plaintiff, resides in Orangeburg South Carolina and Defendant, Paul Weissenstein, Attorney/Paul Weissenstein, herein Referred to as Defendant, who's Law Office is in Sumter, South Carolina and said Malpractice occurred in Sumter County at Defendant's law office, Court house, and the Planning Board Meetings in Manning, South Carolina.

III. HISTORY

A. Plaintiff retained Defendant Paul Weissenstein / Attorney to represent him in litigation involving TLC Holdings, LLC and Big Water Resort on October 25, 2011 (Exhibit "A"). Plaintiff intended to purchase and develop property on Lake Marion through a Lease Purchase Agreement (Exhibit "B") that also included an on-going business (Exhibit "C").

B. Unknown to Plaintiff was that a title defect existed on the property due to hundreds of one and two lifetime agreements for "rights use campground facilities and services solely for Member's…" which had been sold by TLC Holdings, LLC and Big Water Resort which equated to approximately 30 to 70 years. (Sample: "Retail Membership Agreement" Exhibit "D").

C. Plaintiff was unaware that these agreements constituted a title defect on the property that would prevent him from developing the property as planned. The

project was doomed from the start due to those title defects (Retail Membership Agreements) and other misrepresentations made by TLC Holdings, LLC.

D. In October 2011, TLC Holdings, LLC brought an eviction action against Plaintiff causing Plaintiff to retain Defendant Paul Weissenstein / Attorney on October 25, 2011, to defend him and prosecute valuable counterclaims against TLC Holdings, LLC. This Retainer Agreement (EXHIBIT "A") was activated with a "Confirmation of $2,950 ...deposit." (See EXHIBIT "A", page four), prepared by Defendant Paul Weissenstein.

<u>Verification of Malpractice element #1,</u> the existence of an attorney-client relationship).

E. Plaintiff was aware that Defendant had one or two additional attorneys working in the same office full time during the 2011-2012 contract period between Weissenstein and Plaintiff. During one or more visits to the Defendant's office, Plaintiff took the opportunity to speak/visit with at least one of the associate attorney(s).

"In Wildasin vs Mathis, 2016, Dist. Lexis 31672 M.D. Tenn. Mar. 11, 2016), a federal court was called to decide whether an association of lawyers could be held vicariously liable for the malpractice of a member. The court found it could." (See Definitions p. 1, I-C of this amended complaint.)

F. Defendant Weissenstein counter-claimed TLC Holdings, LLC (Exhibit "G") using all evidence that he could establish, find or research based on the contracts that Plaintiff had executed with TLC Holdings, LLC. Plaintiff had provided Defendant

with all contracts (Lease Purchase Agreement (Exhibit "B" 33pp), Membership Interest Purchase Agreement (Exhibit "C" 12pp.), sample Retail Membership Agreements (Exhibit "D" pp.2), and plats (See Exhibit "E"), and other documents to the Defendant to review and study.

G. Defendant had various meetings with Plaintiff for the purposes of reviewing all contracts and other related paper work including proposed subdivision plats since Plaintiff's only desire was to develop the property.

H. Defendant, Weissenstein, filed a Counter Claim on behalf of Plaintiff on November 9, 2011. (Exhibit "G")

I. After a short period of time, *Defendant Weissenstein advised Plaintiff that he did not have sufficient evidence to prevail in his counter claims based on all paper work that had been provided to him (by the Plaintiff) including his own research and suggested that Plaintiff consider an offered settlement agreement by TLC Holdings, LLC to prevent an eviction and loss of opportunity to develop the property into a subdivision.*

J. Having been given no other choice Plaintiff took Defendant Weissenstein's advice and executed the Settlement Agreement and Consent Order that had been prepared by the TLC Holdings LLC's attorneys, which doomed the Plaintiff.

At that point, Defendant Weissenstein became more reliant upon TLC Holdings, LLC's attorneys.

IV. COUNT ONE OF MALPRACTICE: A BREACH OF DUTY BY ATTORNEY # 1

A. Defendant Weissenstein failed to recognize the ample evidence that TLC Holdings, LLC had made numerous misrepresentations, concealing relevant and material statements of fact regarding the usefulness and ability to develop the property when factual evidence in the form of Retail Membership Agreements/Leases for multiplied decades of exclusive land use was right in front of him by way of document information which the Plaintiff had provided to Defendant / Attorney Weissenstein.

Verification of Malpractice element #2 : a breach of duty by the attorney.

B. Further evidence that Defendant Weissenstein did not recognize, nor advise Plaintiff of the title defect created by the Retail Membership Agreements is Defendant's participation in the Planning Commission of Clarendon County's process assisting Plaintiff in acquiring subdivision permission from Clarendon County's Planning Commission. (See Exhibit "J").

Verification of Malpractice element #2 : a breach of duty by the attorney.

V. COUNT TWO OF MALPRACTICE: BREACH OF DUTY BY ATTORNEY #2

A. Plaintiff was not properly advised of the application and effect of the release in the Settlement Agreement by Defendant / Attorney Weissenstein. This breach of fiduciary duty, was highlighted in Federal Court by Judge Norton's Order stating that Plaintiff's attorney should have advised him. (Exhibit # F-1 and F-2).

B. However, Plaintiff's attorney did NOT advise him properly and, consequently, Plaintiff executed the Settlement Agreement (Exhibit "H") and Consent Order (Exhibit "I") which ended up defeating Plaintiff's efforts before they had barely had an opportunity to start, while simultaneously creating a *res judicata* for the perpetrators of both the fraudulent Lease Purchase Agreement and the Settlement Agreement preventing Plaintiff from ever having another opportunity to recoup from those damages as the latter covered the perpetrators with a *res judicata*. There was more than sufficient evidence to win the Defendant's counter claim on behalf of the Plaintiff had Defendant / Attorney Weissenstein recognized the title defect preventing Plaintiff from ever developing the property, marketing said property to the public and acquiring loans for the construction of new homes. (See Exhibit "L")

<u>Verification of Malpractice element #2 </u>: a breach of duty by the attorney.

VI. COUNT THREE OF MALPRACTICE: NEGLIGENCE

A. The Attorney/Defendant's negligence demonstrated in his failing to recognize the title defect issue, resulted in the Plaintiff losing the counter claim suit in SC State Court. (See Weissenstein's Counter Claim: Exhibit "F")

Elements of Malpractice #2 : a breach of duty by the attorney.

B. This gross negligence on the part of the Defendant prevented the Plaintiff from ever being able to negotiate or sue for his damages as it facilitated the ability of the perpetrators of the fraud in the Lease Purchase Agreement to hide under State Court *res judicata* in a Federal Court case which they initiated for the purpose of collecting monies from the Plaintiff's insurance company.

Elements of Malpractice (3) damage to the client and
(4) proximate causation of the client's damages by the breach".

VII. COUNT FOUR OF MALPRACTICE: DAMAGE TO THE CLIENT/PLAINTIFF

A. Defendant / Attorney Paul Weissenstein fell below the standard of care expected of attorneys in similar situations at the time by failing to advise Plaintiff:

1. That the existence and effect of the long term (leases, contractual agreements, Family memberships) would prevent him from *ever* developing the property as the Plaintiff had intended, and
2. that THEREFORE, even his default of the Settlement Agreement was inevitable, and that

3. he would forever be barred from prosecuting and using as a defense the fraud perpetrated on him by TLC Holdings, LLC, in both the Lease Purchase Agreement and the Settlement Agreement due to the perpetrators' hiding behind *res judicata* rights embedded in the fraudulent Settlement Agreement and Consent Order.

Elements of Malpractice (3) damage to the client and
(4) proximate causation of the client's damages by the breach".

VIII. COUNT FIVE OF MALPRACTICE: PROXIMATE CAUSATION OF THE CLIENT'S DAMAGES BY THE BREACH.

A. Defendant failed to protect Plaintiff from the fraud in the Lease Purchase Agreement by not recognizing that there was no contractual agreement between TLC Holdings, LLC allowing for Big Water Resort to operate an on-going business. (See Exhibit "K"). Consequently,

B. Plaintiff owning Big Water Resort had no legal land on which to honor the hundreds of family memberships (for one and two life times) causing

C. Plaintiff to be doomed and sued at a later date in Federal Court by TLC Holdings, LLC (Sellers/Landowners). (See suit on Plaintiff by TLC Holdings, LLC in Federal Court Exhibit "N").

Elements of Malpractice (3) damage to the client, and
(4) proximate causation of the client's damages by the breach".

IX. COUNT SIX OF MALPRACTICE: FRAUDULENT COVERUP BY DEFENDANT(s)

A. After the Settlement Agreement and Consent Order was executed by the Plaintiff, TLC Holdings, LLC filed suit in Federal Court against the Plaintiff / Hutson and The Honorable Judge Norton issued an Order (Exhibit on 5/20/16 against the Plaintiff reading:

1. "Hutson failed to produce an affidavit or statement from the attorney" (Weissenstein) "who represented him in the former litigation" (See Exhibit #**F**-2)
2. "Hutson was represented by an attorney in the underlying state court action" (Weissenstein) "and was therefore presumably advised of the application and effect of the Release" (See Exhibit # F-1 to F-2)

   Verification of Malpractice element #2 : a breach of duty by the attorney.

B. Plaintiff pleaded with Defendant / Attorney Weissenstein and to his insurance attorney to make an appearance or prepare an affidavit stating that neither he nor Plaintiff were aware of 1) the defective title; and 2) the fraud in the Settlement Agreement and Consent Order.

C. Defendant Weissenstein refused to help Plaintiff and hid behind his insurance attorney thus creating a fraudulent cover-up.

D. Defendant Weissenstein was fully aware that Plaintiff was losing his counter actions in Federal Court trying to defend himself (See Exhibit "M"—e-mails

from Hutson pleading for support and responses)

E. Plaintiff lost his counter claims against TLC Holdings, LLC In Federal Court caused by Defendant Weissenstein's complete incompetence lacking the ability to advise, protect, inform, and understand the nuances and fraud in the Lease Purchase and Settlement Agreements between his client, Plaintiff, and TLC Holdings, LLC and by his refusal to appear in Federal Court while attempting to hide and cover up his gross negligence in these matters.

Elements of Malpractice (3) damage to the client, and
(4) proximate causation of the client's damages by the breach".

X: COUNT SEVEN OF MALPRACTICE: GROSS NEGLIGENCE DAMAGING PLAINTIFF

A. Due to the complete and total disregard for Plaintiff's rights and protection, Defendant / Weissenstein's legal advice to execute the Settlement Agreement and the Consent Order required Plaintiff to make improvements to and develop TLC Holdings LLC's property and ultimately sell that same property to the public in small divided lots.

B. The Honorable Judge George James was never informed that the property had a defective title and could never be developed for a public subdivision since no lending institution would participate while exception to good title existed. (exhibit "L")

C. Consequently, due to Defendant/ Attorney Weissenstein's advice to Plaintiff to accept the Fraudulent Settlement Agreement (Exhibit "H") and Consent Order (Exhibit "I"), Plaintiff had no out other than ultimately defaulting and being wrongfully evicted losing all of his equitable interest (certified appraisal attached showing worth of Nine Hundred Thousand Dollars or more ($900K+) (Exhibit "O" – 7 pp.) in said property, his ability to develop and sell lots and homes, and terminating the planned profits which would have exceeded Five Million dollars. ($5M) plus lost monthly payments to TLC Holdings of. In addition, Weissenstein's malpractice caused Plaintiff constant fighting for over four and one half years (+4.5 yrs.) trying to defend himself all to no avail due to the *res judicata* from the Settlement Agreement that Defendant Weissenstein advised Plaintiff to sign.

Elements of Malpractice: element #2 : a breach of duty by the attorney.
element #3: damage to the client and
element #4: proximate causation of the client's damages by the breach".

XI: COUNT EIGHT OF MALPRACTICE: GROSS NEGLIGENCE

A. Due to Defendant / Attorney's gross negligence and lack of prudent action, Plaintiff was wrongfully evicted on the 15th of April of 2014, for the Settlement Agreement and Consent Order clearly stated Plaintiff would be evicted if development, sales of lots and new homes, and full payment to TLC Holdings, LLC did not occur within specified time frames.

B. Meeting the criteria was legally impossible under all circumstances due to defective title. The machinery of the Court was used to cause this Plaintiff

incredible suffering, wrongful eviction and lack of being properly heard and defended before the Court while Plaintiff's attorney (Weissenstein) seemed to know little about proper representation.

Elements of Malpractice: element #2 : a breach of duty by the attorney.
element #3: damage to the client and
element #4: proximate causation of the client's damages by the breach".

XII: COUNT NINE OF MALPRACTICE: GROSS NEGLIGENCE: FAILURE TO INTRODUCE S.C. LAW 27-33-30

A. **IF** Defendant Attorney/Paul Weissenstein had not committed malpractice on the Plaintiff and Defendant had

1. recognized the fraud being masked by the Sellers **and**
2. understood the contracts and
3. Counterclaimed , specifically that:
    a) the property had defective title which the Sellers were masking,
    b) by not recording long term lease(s) in the county courthouse as required by SC law 27-33-30, TLC Holdings, LLC was not only breaking the law, but setting up their opportunity to create the contractual fraud,

B. **THEN,** Defendant would have responsibly represented his client, the Plaintiff, with one of any defenses that were available. (Exhibit "Q")

But, this scenario was never recognized by Defendant, Weissenstein.

C. **MISSING THIS,** the *fraudulent* Sellers were never put on their knees and the fraud was not halted. The outcome definitely would have been completely in the Plaintiff's favor. This was gross negligence by Defendant, Weissenstein.

D. **THEREFORE,** Due to the Defendant's gross and all encompassing malpractice insisting that Plaintiff execute the Settlement Agreement and Consent Order prepared by TLC Holdings, LLC's attorneys, Plaintiff has suffered immensely: Plaintiff has been dragged into filing an injunction, filing Chapter 11, sued in Federal and State Court, been taken before three Federal Judges and two State Judges only to end up with a 3.5 million dollar judgment against himself, Plaintiff/ Hutson.

Verification of Malpractice element #2: a breach of duty by the attorney.
#3: damage to the client and
#4: proximate causation of the client's damages by the breach.

XIII: COUNT TEN OF MALPRACTICE: NEGLIGENCE AND LACK OF CONCERN

A. Defendant was handed a copy of a prior deposition taken by William Padget, Attorney, who sued TLC Holdings, LLC a year before Plaintiff executed the Option to Purchase TLC Holdings LLC's property and the simultaneous purchase closing of the Big Water Resort back in January 2011. (Exhibit "T")

B. In that deposition, TLC Holding, LLC's owner acknowledged that the Big Water Resort was losing over $250,000 dollars each year. Plaintiff was ill

advised of this fact prior to purchasing the Big Water Resort. Defendant Weissenstein never recognized or connected that constant financial loss nor the fact that Big Water Resort owned no land nor had any legal right to operate a business where two life times of obligations existed. Another violation of SC # 27-33-30. (Exhibit "U")

C. Also, Defendant, Weissenstein, never recognized that BWR had no contractual agreement to use TLC Holdings LLC's property, essentially making it impossible to assure its ability to operate and honor those 720 Family Memberships for 70 years. The existence of this defective title prevented Plaintiff from ever purchasing said TLC Holdings, LLC's property. Consequently, Plaintiff was sued by way of Class Action or default after Plaintiff was wrongfully evicted. (Exhibit "S")

D. This entire Fiasco could have been prevented had Defendant Weissenstein not grossly over-looked and failed to recognize all the facts in the paperwork (i.e.: defective title and no land for the Big Water Resort Campground to legally use for the seventy years required to honor the Retail Family Membership Agreements, as well as other misleading "conditions" required by TLC Holdings, LLC in the Lease Purchase Option as well as the subsequent, but inclusive Settlement Agreement. This exceeds gross negligence.

E. Defendant's malpractice has caused Plaintiff to be sued three times in Federal Court (Exhibit "S") and one time in State Court (Exhibit "R"). Plaintiff

has fought for years trying to defend himself while Defendant quietly continues to practice law without a care for what he created.

Verification of Malpractice element #2: a breach of duty by the attorney.
#3: damage to the client and
#4: proximate causation of the client's damages by the breach

XIV. COUNT ELEVEN OF MALPRACTICE: ALLOWING FRAUD UPON THE COURT

A. Defendant Paul Weissenstein Attorney (being an Officer of the Court) accepted and took thousands of dollars in payment from the Plaintiff while not seriously spending the time to fully understand the documents and contracts that Plaintiff had laid in his hands.

B. Defendant, Weissenstein, sat back and allowed Fraud Upon the Court to occur by allowing TLC Holdings LLC's attorneys to draw and prepare all papers including the Settlement Agreement *and Consent Order* (Exhibit "Q'). Defendant, having the license, ability and training to know that Plaintiff would be destroyed by the Settlement Agreement and Consent Order, withheld critical Material Evidence from being admitted on Plaintiff's behalf, thereby, as an officer of the court, Defendant Weisenstein committed Fraud upon the Court, while working in concert with the opposing party. (Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985).

C. Defendant refused to make an appearance in Federal Court to support Plaintiff's

Filing for new and additional information. He was totally self-serving due to his fear of being convicted of malpractice. *Consequently,* Plaintiff was sanctioned $15,000.00 dollars (or go to jail) by the Federal Judge Norton due to Plaintiff's inability to produce new evidence. (Exhibit "M")

1. Defendant Weissenstein's new evidence being requested was simply informing the Federal Judge Norton that Plaintiff had not been advised to title defects and other concealments of which TLC Holdings LLC and their lawyers were aware of. (Exhibit "F") Weissenstein's refusal to appear in court or provide an affidavit shows: (1) the complete lack of professional ethics, (2) the complete lack of morales, and (3) shows professional egocentrism. Any officer of the court conducting him/herself as described should no longer be allowed to represent the public in the courtroom.

   Defendant Weissenstein simply allowed Plaintiff to be innocently placed on the Alter of the Court and be sacrificed, knowing full well the fraudulent Settlement Agreement and Consent Order ordained plaintiff's legal demise by fraudulent TLC Holdings, LLC's attorneys who knew Plaintiff's wrongful eviction would become mandatory causing Plaintiff to be lost in every respect. The Defendant had to be aware that he had failed as the Plaintiff's attorney, but was too concerned for his personal future to alert or assist his client.

2. Even after the Federal Judge asked for proof that Plaintiff had not been made aware or advised by his attorney of the situation regarding the Settlement Agreement and Consent Order (Exhibit "F"), the Defendant still refused to appear to merely testify that he had not advised his client of the facts. Defendant Weissenstein refused to come to the aid of his former client (Plaintiff) *even though the Federal Judge had spelled out what he wanted to hear* to be convinced that Plaintiff was telling the truth, Defendant Weissenstein continued to hide and remain outside the Courtroom in Sumter, S.C. knowing Plaintiff was being slaughtered.

> This was "intentional gross negligence" and a cruel lack of concern for another human being, a human being who had paid this Defendant thousands of dollars. It was a total lack of a sense duty to right the wrong he had created.

XV. COUNT TWELVE OF MALPRACTICE: ON-GOING DAMAGES FROM MALPRACTICE

A. The damages outlined FAR exceeds 2.5 Million Dollars ($2.5M) *subject to a full deposition and a competed audit* to also include:

1. Equitable Interest Lost: <u>$700,000-$1,4000,000</u>) *(Exhibit "O") BUT <u>does not include</u> the established new restaurant (increasing BWR income by <u>$5K per month</u>) then only operating for 3 months when report was done.*

2. Payments made to TLC Holdings, LLC for Lease Option ($162,500) *(Exhibit "P")*

3. State Court has assigned a $3.5 M (Three and one-half million dollar) JUDGMENT against Plaintiff, who has been unable to properly defend himself due to the *res judicata* allowed and advised by the malpractice and incompetence of this Defendant, Paul Weissenstein.

4. Federal Court assigned a $15,000.00 sanction

B. Plaintiff is now faced with attempting to file to set aside the fraudulent State Court Judgment regarding the Settlement and Consent Order Agreements.

Elements of Malpractice (3) damage to the client and
(4) proximate causation of the client's damages by the breach".

THEREFORE Plaintiff prays for the following:

A. This case be taken before a jury.

B. Defendant be held totally liable for all damages incurred to Plaintiff.

C. Permit all actions by the Honorable Court to make the Plaintiff whole.

D. Plaintiff requests a speedy trial due to on-going damages and suffering.

E. Plaintiff is Pro Se and diligently seeks complete justice.

F. Defendant not be allowed to sell, transfer, assign, legally hide any of his assets

or any joint ownership of any kind including business, partnerships, stocks and/or bonds, weekly income (including any agreed percentage of income caused by any attorney working in his office part time or full time) until this case has been presented to a jury.

G. Plaintiff be given special consideration as Pro Se.

H. Plaintiff be allowed to file online to send and receive all documents regarding this case due to hardship and driving distance.

I. Plaintiff asks for Punitive damages due to gross negligence.

J. Allow the Defendant to be responsible for all Plaintiff's costs for having to sue Defendant for restitution and damages.

K. Allow Plaintiff to include in this complaint any associated attorneys due to association as additional defendants (John Doe) at the time this Malpractice occurred (2011-2012) based on "Wildasin vs Mathes 2016".

All document evidences are hereby attached to this Amended Complaint.

Filed on the 1 day of October 2018

MB Hutson
803 308 2714
1545 Biltmore Street
Orangeburg, South Carolina
29115

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
)
) **AFFIDAVIT OF MARK W. HARDEE**
)

Qualifications

a. I graduated from the University of South Carolina School of Law in 1986 and began working as an Assistant Public Defender in Richland County. Approxmently November 1988, I went to work as an Associate with the law firm of Lewis Babcock Plescones and Hawkins (later Lewis, Babcock and Hawkins). Within several years I became a partner. My practice at Lewis Babcock and Hawkins concentrated on Business Litigation, Legal Malpractice and Attorney and Judicial Ethical matters. During that time I handled many legal malpractice matters and represented lawyers and Judges in disciplinary actions. I also acted as special prosecutor on an Office of Disciplinary Counsel matter. I left the firm in 2003 to start my own practice, the Hardee Law Firm, and continued to concentrate on business litigation, legal malpractice and legal ethics matters.

b. I have spoken at several CLE's on ethics matters, and I have been retained as an expert witnesses in matters regarding legal ethics, and the standard of care for practicing attorneys.

c. I was admitted to the South Carolina Bar in 1986, US District Court 1988, I was admitted to the US Court of Appeals for the Fourth Circuit in 1995, US Court of Appeals for the Fifth Circuit in 2000, US Court of Appeals for the Tenth Circuit

2002, US Court of Federal Claims in 1999 and the US Court of Appeals Federal Circuit in 2001.

d. I have appeared in court in several jurisdictions throughout the United States. Based on my background, practicing and studying law as it relates to legal ethics as it pertains to both legal malpractice issues, as well as disciplinary issues, and the fact that I have also represented small local businesses in South Carolina for over 25 years.

e. I am qualified to issue an opinion as to whether or not attorney Paul Weissenstein committed malpractice in his representation of M. B. Hutson in the TLC Holding Inc. litigation involving Big Water Resort.

f. I have reviewed numerous documents including pleadings and court orders and I have extensively interviewed M. B. Hutson.

Opinion

g. It is my opinion that M. B. Hutson retained Paul Weissenstein to represent him in litigation involving TLC Holdings LLC and Big Water Resort.

h. M. B. Hutson intended to purchase and develop property on lake Marion through a lease purchase agreement which also included an on going business.

i. Unknown to Mr. Hutson was that a title defect existed on the property due to hundreds of 70 year right to sole use agreements which had been sold by TLC Holdings LLC and Big Water Resort.

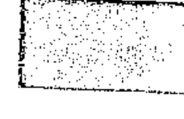
j. Mr. Hutson was unaware that these agreements constituted a title defect on the property which would keep him from developing the property as planned.

k. The project was doomed form the start due to the title defects and other misrepresentations made by TLC Holding LLC.

l. When TLC Holdings LLC brought an evictment action against M. B. Hutson, he retained Paul Weissenstein to defend him and prosecute valuable counterclaims against TLC Holdings LLC.

m. Mr. Weissenstein advised Mr. Hutson that he had no defenses to the eviction or knew of no facts supporting his counter claims. This was even though there was ample evidence that TLC Holdings LLC had made numerous misrepresentations and concealed relevant and material statements of fact regarding the usefulness and ability to develop the property.

n. Mr. Hutson was not properly advised of the application and effect of the release Mr. Hutson was offered to end the litigation. Therefore, he settled the case and signed the release.



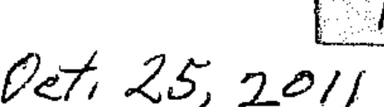
o. Mr. Weissentstein fell below the standard of care expected of attorneys in similar situations at the time, by failing to advise Mr. Hutson that the existence and effect of the long term leases would prevent him from ever developing the property as he intended, and that his default of the settlement agreement was inevitable, and that he would forever be barred from prosecuting and using as a defense the fraud perpetrated on him by TLC Holding LLC.

p. It is my opinion to a reasonable degree of certainty that Paul Weissenstein committed malpractice in his advice to, and representation of, M. B. Hutson in the above described matter.

Mark W. Hardee

SWORN TO before me
this 8 day of. August, 2018

NOTARY PUBLIC FOR SC
My Commission Expires: 3-11-21
J. MICHAEL TAYLOR



ATTORNEYS RETAINER AGREEMENT

MB Hudson (hereafter referred to as "client") does hereby employ and retain the WEISSENSTEIN LAW FIRM, LLC hereafter referred to as "Weissenstein," to represent client's interest in connection with a litigation case involving a breach of contract regarding real estate. These services are limited to representation in the above matter(s), and it is expressly understood that Weissenstein shall not be responsible for pursuing any additional matters, including appeal, beyond those stated above unless jointly agreed upon in writing.

For compensation, the Client agrees to pay to Law Firm for legal services rendered, costs and attorney's fee as follows:

Senior Partner	$290.00 per hour
Paralegal	$ 85.00 per hour

It is understood and agreed that this fee is for services rendered through any trial court proceedings and that an additional fee, and separate fee agreement, will be required for any appellate or supplemental proceedings which may arise from this matter(s).

I further authorize Weissenstein to retain any experts or assistants that he deems needed to fully represent my interests, including paralegals, investigators, court reporters, medical or forensic experts or others and **I agree to be responsible for the costs thereof.**

During the progress of the case, I agree to pay all costs advanced by Weissenstein or incurred by him in connection with the handling of my case. At the time of the execution of this agreement, I have paid a deposit to Weissenstein of Five Hundred and 00/100 ($500.00) Dollars as an advance deposit for costs and expenses incurred by him in the handling of my case. I agree to maintain a trust account balance on deposit with Weissenstein's office of at least Five Hundred and 00/100 ($500.00) Dollars. I may be provided with monthly statements reflecting account activity, funds held in trust and funds applied to costs incurred. Upon receipt of monthly statements, I will promptly forward funds necessary to maintain the agree-upon trust account balance for costs and expenses. Any unpaid balances shall be subject to a finance charge as shown on the monthly statement. At the conclusion of representation, the funds held in trust will be applied to outstanding costs and expenses due to Weissenstein Law Firm, LLC and the balance shall be refunded to me within thirty (30) days after the final billing has been fully paid.

MWD, Oct 25, 2011
Initial / Date

Client also agrees to pay and be responsible for all out-of-pocket expenses such as filing fees, subpoena fees, process servers, depositions or transcripts, photocopies, postage, fax charges, courier/deliver, long distance telephone charges and accounting charges paid to third parties. These charges will be detailed on the monthly statement. Weissenstein reserves the right to require advance payment of any costs to be incurred on client's behalf.

Client agrees to provide full cooperation and assistance in the handling of client's case, and failure to do so will be grounds for termination of this agreement. Mr. Weissenstein has the right to terminate representation in the above matter pursuant to Rule 1/16 of the Rules of Professional Conduct as set forth in SC Appellate Court Rule 407 should grounds for termination exist or arise. Weissenstein shall have the right to withdraw from the case if payments required by this agreement are not timely made, if client has misrepresented or failed to disclose material facts, or has failed to follow the professional advice of the law firm in connection with the matter(s) in which representation is provided. Should client fail to obtain successor counsel within a reasonable time, client understands that Weissenstein will apply to the applicable court for an order relieving it as counsel.

Client understands that Weissenstein's representation does not include rendering tax advice of any kind and that client must seek tax advice from another professional, such as an accountant or other financial advisor.

Client understands that no guarantees have been made by the firm or any agent thereof regarding the outcome of the matter(s) being handled.

If in the event of a default in the payments due hereunder to Weissenstein Law Firm, LLC, and it becomes necessary to collect same through an attorney or by legal proceedings, client agrees to pay all costs of collection, including reasonable attorney frees or the value thereof or 35% of the total payment due, whichever is greater, and statutory interest accruing thereon, including pre-judgment interest. Client agrees that any legal action for collection under this agreement shall be brought in the venue of Sumter County. Mr. Weissenstein / Weissenstein Law Firm, LLC will assert a charging lien against client's file for unpaid expenses and earned attorney fees in accordance with the applicable law.

After the conclusion of the case, at the client's request, Weissenstein will return to client any documents or items client has provided in connection with the handling of client's case, including photographs, documents, and other materials. Weissenstein will keep the relevant portions of client's file for a period of at least three (3) years after the case has concluded, but that after that time, Weissenstein reserves the right to appropriately dispose of the file in accordance with the document retention policies of that office.

[signature] / Oct 25, 2011
Initial / Date

It is specifically understood and agreed that any modifications to this agreement must be set forth in writing and signed by the parties. Failure to enforce any provision of this contract shall not result in a waiver of rights arising from this agreement. This contract shall be governed in accordance with the laws of the State of South Carolina.

Signatures on next page

Oct 25, 2011
Initial / Date

CLIENT HAS FULLY READ AND FULLY UNDERSTANDS THE ABOVE CONTRACT, AND HAS FULLY DISCUSSED THE TERMS AND CONDITIONS THEREOF AND DOES HEREBY SET HAND AND SEAL THIS ____ DAY OF OCTOBER, 2011.

SIGNED: [signature]

4238344828
Cell phone / pager

SSN: ____________________

____
Office mailing address

____
City, State, Zip

____
Office telephone, including back line

____
Office facsimile

____
Home address

____
City, State, Zip

____
Home telephone

____
E-mail address

Please designate which address ____ home or ____ office to which you want client correspondence and billing matters sent.

To assist law firm in minimizing client's postage and other delivery charges: Client is willing to accept client correspondence (which may include confidential information) via e-mail in PDF rather than by U.S. Mail. Client understands this would require a PDF reader such as Adobe Reader, which can be downloaded for free from the Adobe website (www.adobe.com).

Yes _____ No _____

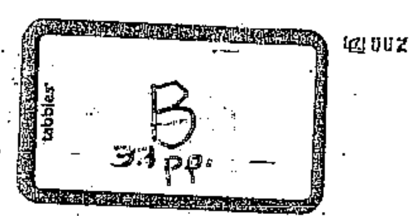
****

Confirmation of Two Thousand Nine Hundred Fifty and 00/100 ($2,950.00) Dollars deposit received and Agreement Accepted by:

October ____, 2011

____
A. Paul Weissenstein, Jr.

[initials] Oct 25, 2011
Initial / Date



LEASE PURCHASE AGREEMENT

THIS LEASE PURCHASE AGREEMENT (this "Agreement") is made as of the ____ day of December, 2010 (the "Effective Date"), by and between **TLC HOLDINGS, LLC**, a South Carolina Limited Liability Company ("TLC" or "Landlord"), **RICHARD U. CLARK, JIMMY S. LOVELL** and **JAMES C. THIGPEN** (collectively, the "Members", and together with TLC, the "Seller"), and **M. B. HUDSON, AND/OR HIS HEIRS, SUCCESSORS AND PERMITTED ASSIGNEES** ("Purchaser").

WITNESSETH:

WHEREAS, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase, (a) the following described premises in Clarendon County, South Carolina, herein sometimes called the "Premises" being more particularly described on the attached EXHIBIT "A" along with all furniture, fixtures, equipment, machinery, vehicles and other personal property that may be owned, leased, licensed or otherwise in the possession of TLC (collectively the "Property") and (b) all membership interests of the Members in TLC (hereinafter "Stock"); and

WHEREAS, from the Effective Date until such time that the sale of the Premises to Purchaser shall be consummated, Seller agrees to lease the Premises to Purchaser as provided below.

NOW, THEREFORE, for and in consideration of the premises and the covenants and agreements herein contained and for Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby mutually covenant and agree as follows:

B

SECTION 1
PURCHASE AGREEMENT

1.1. Purchaser hereby agrees to purchase the Premises, Property and Stock from Seller and Seller hereby agrees to sell the Premises, Property and Stock to Purchaser as provided herein. Such purchase transaction shall close not later than December 30, 2012 (the "Closing"), provided, however, that Purchaser may accelerate the Closing by providing Seller written notice of Purchaser's intent to close the transaction no less than (a) ten (10) days from the date of the written request by Purchaser, if all mortgages upon the Premises have previously been satisfied; or (b) ninety (90) days from the date of the written request by Purchaser, if any such mortgage encumbers the Premises.

1.2. The parties ultimately intend for this transaction to be a sale of Stock of Seller, which has all right, title and interest in Premises and Property. In such event, the Premises and Property shall remain the property of TLC at Closing, and the Purchaser shall purchase and assume, and the Members shall sell and assign, the Stock in TLC to Purchaser at Closing. The purchase price for the Premises, Property and Stock (the "Purchase Price") shall be either the Incentive Purchase Price or the Standard Purchase Price, as defined herein. In the event Purchaser closes the purchase prior on or before September 1, 2011, the Purchase Price for the Premises, Property and Stock shall be an amount equal to Six Million and 00/100 Dollars ($6,000,000.00) ("Incentive Purchase Price"). If the closing is after September 1, 2011, the Purchase Price for the Premises, Property and Stock shall be an amount equal to Seven and 00/100 Dollars ($7,000,000.00) ("Standard Purchase Price").

1.3. Purchaser shall have the exclusive right to close on any portion of the Premises, which is unimproved, in tracts of one (1) acre or more (each, a "Subparcel") at any time during the term of the Agreement for a Purchase Price of One Hundred Forty-Five Thousand and

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00/100 Dollars ($145,000.00) per acre. Such closing shall occur as soon as practical after written request is sent from Purchaser to Seller pursuant to Section 20, not to exceed ninety (90) days from the date of the written request except in the event the Seller has been unable to obtain a release on said Subparcel(s) from the Bank that currently holds a first position mortgage on the Premises within 90 days following receipt of Purchaser's written request (hereinafter the "Release Period"). If such event occurs prior to September 1, 2011, the right to purchase the Premises for the Incentive Purchase Price shall be extended for one (1) day for each day that Seller fails to obtain a release of the Premises after the expiration of the Release Period. Any such closing proceeds shall be applied to the Purchase Price for the entire Premises.

The parties acknowledge that the Purchaser intends to develop and construct condominiums or other residential dwelling structures on certain portions of the unimproved Premises. In the event Purchaser closes on any one or more unimproved Subparcel(s) as referenced in this Section 1.3, Purchaser shall pay thirty-five percent (35%) of the gross profits from the sale of any and all residential dwelling units to the Seller which shall be applied to reduce the Purchase Price for the entire Premises. As used herein, "gross profits" means the gross sales proceeds, reduced only by Purchaser's actual costs of construction of any improvements on such land. Purchaser shall be prohibited from selling such Subparcel(s), or portions thereof, except as part of the bona fide sale thereof at retail to an arm's length third party purchaser unaffiliated with Seller. If Purchaser fails to close on the entire property within the timeframes set forth in this Agreement, Seller shall have the option to repurchase any undeveloped parcel released under this Paragraph 1.3 for the price paid by Purchaser to Seller for such parcel, and an option to repurchase any improved parcel that has not been resold under the terms of this Paragraph 1.3 for the price paid by Purchaser for such parcel plus the actual costs of

Initials ____ ____

the improvement(s) undertaken thereon by Purchaser. The provisions of this section shall survive the Closing (until such time as Seller has received the entire Purchase Price owing under this Agreement in cash) and any termination of this Agreement.

1.4. At Closing, the Purchase Price due hereunder, less adjustments and expenses provided herein, will be paid to Seller, either: (i) in cash, by cashier's check, or by wire transfer; or (ii) by Purchaser executing a Promissory Note payable to the Seller for an amount up to and including the full Purchase Price, to be financed for five (5) years at six percent (6.0%) interest per annum, based on a twenty (20) year amortization. Payments on said Promissory Note shall be made monthly to the Seller, with all amounts owing thereunder to be paid not later than the maturity date five (5) years following Closing. The Promissory Note shall be secured by a first position mortgage on the Premises conveyed at said Closing, and by a first-priority, perfected security interest in the Stock.

In the event the $500,000.00 purchase price for The Big Water Resort, LLC, a South Carolina limited liability company, which has common members of the Seller herein, is financed by Promissory Note made from Purchaser to Members, the terms and conditions of which are more particularly set forth in the Membership Interest Purchase Agreement of even date herewith, then both Promissory Notes shall provide that a default under either one of the Promissory Notes will be deemed a default under the other Promissory Note, thereby permitting Seller to seek all rights and remedies available therein, including but not limited to foreclosure on the Premises and Stock.

1.5. At the Closing, in exchange for the Purchase Price, the Members shall convey to Purchaser or its designee, by assignment agreement, all of the Stock in TLC; provided that, at and as of Closing, TLC hold marketable title to the Premises, subject to (i) utility and drainage

easements of record, (ii) the rights of the public in any streets and highways, if any, adjoining the Land, (iii) zoning and building laws, ordinances, resolutions, and regulations, (iv) ad valorem real estate taxes and assessments for public improvements not due and payable as of the date of closing, and (v) any additional encumbrances subject to which Seller accepted title to the real property being conveyed. Purchaser shall, within ninety (90) days after the Effective Date, investigate Seller's title to the Premises and identify any exceptions to title which are not acceptable to Purchaser (any such exception being referred to herein as a "Title Exception"). Purchaser shall within ninety (90) days after the Effective Date provide Seller notice of any such Title Exception. If Purchaser does not notify Seller in writing of Title Exceptions within ninety (90) days after the Effective Date, then Purchaser shall be deemed to have accepted title to the Premises with all exceptions and conditions. If Purchaser timely notifies Seller of Title Exceptions (other than Title Exceptions that can be cured by the payment of money to satisfy any liens as of the Closing, which Title Exceptions shall be cured as of Closing), Seller may (but shall not be required to) cause all Title Exceptions to be deleted as exceptions from the title commitment, as the case may be, on or prior to thirty (30) days prior to Closing (the "Cure Deadline"). If Seller fails or refuses to cure any Title Exceptions prior to the Cure Deadline, then Purchaser may, as its sole and exclusive remedy for the existence of, or Seller's failure to cure, such Title Exceptions before the Cure Deadline, elect to terminate this Agreement, or waive its right to terminate this Agreement in writing and accept the title commitment with all uncured Title Exceptions. If Purchaser terminates this Agreement pursuant to this Section 1.5, then neither party shall have any further obligation under this Agreement, except for such obligations of the parties as are expressly stated to survive the termination of this Agreement.

Each party shall be responsible for and shall pay fifty percent (50%) of all other closing costs. Each party shall be responsible for the fees of its respective counsel.

1.6. Seller shall use the closing proceeds to have any lien or encumbrance on the Premises and Stock released.

1.7. Upon the completion of the purchase transaction, but not prior thereto (whether or not any delay in the completion of or the failure to complete such purchase shall be the fault of Seller), this Agreement and all obligations hereunder (including, but not limited to, the obligations to pay Rent) shall terminate with respect to any portion of the Premises being purchased, provided that neither party shall be released with respect to obligations and liabilities of Purchaser and Seller, actual or contingent, under this Agreement which arose on or prior to the date of the closing of the purchase, or which expressly survive the termination of this Agreement.

1.8. This Purchase Agreement shall not be assigned or transferred by the Purchaser without the prior written consent of Seller, which shall not be unreasonably withheld.

1.9. In the event of any default or breach of Purchaser's obligations under this Section 1, Seller shall be entitled to terminate this Agreement and retain all rent paid hereunder, and in addition, to specifically enforce Purchaser's obligations under Section 11.2 herein. In the event of any default or breach of Seller's obligations under this Section 1, Purchaser may, in the alternative, either terminate this Agreement or requiring specific performance on the part of Seller. Purchaser and Seller each hereby waive the right to money damages against the other party for matters arising out of this Agreement.

1.10. Purchaser hereby acknowledges that Seller has made no representations or warranties regarding the Premises. Purchaser has inspected the Premises to Purchaser's

complete and total satisfaction. Purchaser (i) is accepting the Premises for purposes of the lease as provided in provisions below; and (ii) at the time of Closing will be purchasing the Premises on an "AS IS" basis, that is, with all defects that may exist, if any, except as otherwise provided herein.

SECTION 2
TERM AND POSSESSION

2.1. Unless the Primary Term is extended upon the mutual agreement of the parties, the primary term of this Agreement (the "Primary Term") shall commence on January 1, 2011 and shall expire on the earlier of December 30, 2012 or the actual date of Closing.

2.2. Possession of the Premises shall pass to Purchaser on January 1, 2011, provided that Purchaser has closed on its purchase of The Big Water Resort, LLC.

SECTION 3
PREMISES

TLC leases the Premises and Property to Purchaser, and Purchaser leases the Premises and Property from TLC, on the terms and conditions set forth in this Agreement.

SECTION 4
RENT

During the Primary Term of this Agreement, including any extensions thereof, Purchaser shall pay TLC as rent (the "Rent") for the Premises the sum of Ten Thousand and 00/100 Dollars ($10,000.00) per month for the first seven (7) months of the Primary Term, and the sum of Eight Thousand and 00/100 Dollars ($8,000.00) per month for the remaining months in the Primary Term. Rent shall be paid in advance on the first day of each month during the Primary Term, without demand or deduction, to TLC at its notice address for Richard U. Clark as set forth in Section 20, or at such other place as Seller may designate by written notice to Purchaser. The

first monthly rent payment is due on or before January 1, 2011, being the date that Purchaser receives possession.

SECTION 5
TAXES; PERMITTED CONTESTS

5.1. Purchaser shall pay all real estate taxes and assessments levied against the Premises which become due and payable during the Primary Term. However, any installments of taxes and assessments relating to the periods at the commencement of the Primary Term shall be prorated between Purchaser and TLC based on the number of days during the applicable taxing period each party shall occupy the Premises. Seller shall furnish to Purchaser copies of tax bills together with statements of the amount due from Purchaser. Purchaser shall pay those amounts within 30 days after receipt of Seller's statements. Purchaser shall provide Seller a copy of the receipt from the tax collector as proof of payment within the 30 days from the date of payment. Purchaser's obligations under this Section shall survive the expiration or termination of this Agreement.

5.2. Purchaser shall not be required, nor shall Seller have the right, to pay, discharge, or remove any taxes, charges, liens or encumbrances, or to comply with any legal requirements applicable to the Premises or the Land, as long as Purchaser contests the existence, amount, or validity of the matter in question by appropriate proceedings and Purchaser provides written notice to Seller of such contest proceeding. This right of Purchaser to withhold performances while proceedings are pending shall apply only if Purchaser's proceedings effectively prevent any lien, sale, forfeiture, or loss of the Premises or Land or Seller's rights under this Agreement. Nothing contained in this Section shall be deemed to relieve Purchaser from any obligation to pay the Rent. Purchaser shall pay to Seller at least one hundred (100%) of the contested amount

as reasonable security (the "Contest Security") as may be demanded by Seller to insure ultimate payment of the amounts and compliance with the legal requirements contested, and/or any potential sale or forfeiture of the Premises or any rent or other sum required to be paid by Purchaser under this Agreement. Seller may use the Contest Security to pay any amount reasonably necessary to release any lien or prevent any sale, forfeiture, or loss of the Premises. Any portion of the Contest Security not required for such purpose shall be returned to the Purchaser.

SECTION 6
UTILITIES

During the Primary Term, Purchaser shall obtain and pay for all sewer, water, electric, heat, trash removal, and other utility services furnished to or consumed on the Premises. Seller shall not be required to provide any utility service to Purchaser and shall not be responsible for any interruption in service.

SECTION 7
INSURANCE

7.1. Immediately upon commencement of the Primary Term, Purchaser shall procure and maintain, at Purchaser's sole expense (i) employer's liability and worker's compensation insurance as prescribed by applicable law; (ii) comprehensive general liability insurance (with products, completed operations, dramshop and independent contractors coverage) and comprehensive automobile liability insurance, all on an occurrence basis, with single-limit coverage for personal and bodily injury and property damage of at lease Five Million Dollars ($5,000,000) for each occurrence, and (iii) any other insurance as required from time to time by any franchisor. In connection with all significant construction at the Premises during the Primary Term, Purchaser shall cause the general contractor to maintain with an insurer approved by Seller and Purchaser comprehensive general liability insurance (with products, completed

operations and independent contractors coverage) in at least the amount of Five Million Dollars ($5,000,000) for each occurrence with Seller named as additional insured. Purchaser shall name Seller, franchisor and any mortgagee as additional insureds under these policies.

7.2. Purchaser shall keep the Buildings insured against loss by fire and all the risks and perils usually covered by an "all risk of physical loss" endorsement to a policy of fire insurance upon property comparable to the Premises, in an amount equal to not less than the greater of the replacement cost of the Buildings or the Purchase Price, and with Seller and any other holder of any mortgage on the Premises as additional insureds as their interests may appear.

7.3. The policies required by Sections 7.1 and 7.2 shall contain an agreement by the insurer that it will not cancel the policy except after ten (10) days prior written notice to Seller and Purchaser and that any loss otherwise payable under the policy shall be payable notwithstanding any act or negligence of Seller or Purchaser that might, absent such agreement, result in a forfeiture of all or a part of the insurance payment.

7.4. At the commencement of the term of this Agreement, Purchaser shall deliver to Seller certificates of the insurance required to be maintained under this Section. Purchaser shall also deliver to Seller at least ten (10) days prior to the expiration date of any such policy (or of any renewal policy), certificates for the renewal policy of this insurance.

SECTION 8
WAIVER OF LIABILITY AND SUBROGATION

Seller and Purchaser on behalf of themselves and all others claiming under them, including any insurer, waive all claims against each other, including all rights of subrogation, for loss or damage to their respective property (including, but not limited to, the Premises) arising from fire, smoke damage, windstorm, hail, vandalism, theft, malicious mischief, and any of the

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other perils normally insured against in an "all risk of physical loss" insurance policy, regardless of whether insurance against those perils is in effect with respect to such party's property and regardless of the negligence of either party; provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage fully covered by insurance and occurring during such time. As the Purchaser's insurance policy shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the Purchaser to recover thereunder. If either party so requests, the other party shall obtain from its insurer a written waiver of all rights of subrogation that it may have against the other party. If extra costs shall be charged therefor, each party shall advise the other thereof and of the amount of the extra cost, and the other party at its election, may pay the same, but shall not be obligated to do so.

SECTION 9
INDEMNIFICATION

Purchaser shall indemnify and hold Seller harmless against any and all claims, liabilities, damages, or losses resulting from injury or death of any person or damage to property occurring on or about the Premises or in any manner in conjunction with the use and occupancy of the Premises in whole or in part, unless the death, injury, or damage was sustained as a result of any tortuous or negligent act of Seller or Seller's agents.

SECTION 10
MAINTENANCE

Seller shall have no obligation for maintenance of the Premises whatsoever. During the Primary Term, Purchaser shall, at its sole expense,: (a) maintain the Premises in good condition, including but not limited to all structural, electrical, plumbing, and HVAC, excepting only for reasonable wear and tear; (b) provide all necessary maintenance, repair, and replacements of, and keep in good operating condition, the water, gas, electrical, plumbing, heating, ventilating, air

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conditioning, and all other mechanical and utility systems and facilities serving the Premises; (c) keep the sidewalks, parking areas, and drives on or about the Premises in a clean, sightly, and sanitary condition; (d) maintain and preserve the quantity and quality of the soft goods inventory (e.g., bedding and towels) and all furniture, fixtures, and equipment such as beds, televisions, clocks, lamps, desks, chairs, etc., except for reasonable wear and tear and loss due to the ordinary course of business (collectively, the soft goods and the furniture, fixtures, and equipment shall be referred to herein as the "Personal Property"); and (e) keep all grass mowed, shrubbery trimmed, and the yards free of excessive weed growth, so that the lawns and yards shall at all times be maintained in a neat and presentable condition. Until Purchaser has consummated the purchase of the Premises, Seller shall maintain ownership of the Personal Property, including any additions thereto made in the ordinary course of the operation of the Premises as a resort and campground due to wear and tear. Purchaser shall assume Seller's existing service and maintenance contracts related to the Premises (the "Service Contracts") including, without limitation, any property management system, the pest control agreement, the fire extinguisher service agreement, and any sprinkler system service contract. If Purchaser shall terminate any Service Contracts prior to the expiration of any such contract, Purchaser shall be solely responsible for any early termination expenses. Prior to such time that title to the Premises shall be conveyed to Purchaser, Purchaser shall notify Seller of any proposed changes it intends to make to the Service Contracts. Seller shall have the right, within its reasonable discretion, to approve or reject any proposed changes to the Service Contracts.

SECTION 11
ALTERATIONS

11.1. Purchaser shall have the right to make structural modifications, alterations and improvements listed on the attached EXHIBIT "B" without the Seller's prior written approval, in

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addition to paving, installation of sewer water lines, drilling of water wells, obtaining dock permits, obtaining architectural and engineering approval as necessary. Seller may, at Seller's sole discretion, require Purchaser to provide bonds to ensure the construction and completion of any Alterations prior to commencement by Purchaser.

11.2. As part of such Alterations, Purchaser shall repave all private roads, parking lots and recreational vehicle ("RV") parking spaces on the Premises within seven (7) months following execution of this Agreement.

11.3. All modifications, alterations, and improvements shall be made in a good and workmanlike manner and shall not weaken the structure of the Buildings or materially lessen its value. All modifications, alterations, and improvements shall become the property of Seller at the expiration or earlier termination of this Agreement. Purchaser may, without Seller's consent, make nonstructural modifications, alterations, and improvements. Purchaser shall promptly pay its contractors and materialmen for all work done and performed by Purchaser, so as to prevent the assertion or imposition of liens upon or against the Premises.

11.4. Purchaser shall not remove any Personal Property from the Premises without replacing the removed Personal Property with new Personal Property of like quality. Purchaser may, without Seller's consent, install temporary partitions, shelves, bins, equipment, trade fixtures, and other personal property. Those items installed by Purchaser, other than replacement Personal Property as provided elsewhere herein, shall remain Purchaser's property and may be removed by Purchaser prior to the expiration or earlier termination of this Agreement.

11.5. Purchaser shall repair any damage to the Premises caused by that removal. Purchaser shall be solely responsible, at its own expense, for any and all improvements to the Premises required by any governmental or regulatory agency (collectively referred to as

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"Required Improvements"). No amounts spent by Purchaser for the Required Improvements shall reduce or change the Purchase Price in any manner.

SECTION 12
DAMAGE AND DESTRUCTION

If, during the Primary Term, or any extension thereof, the Premises are damaged by fire or other casualty so as to be rendered untenantable either in whole or in substantial part, Purchaser, within thirty (30) days of receipt of any insurance proceeds shall pay the Purchase Price to the Seller and Seller shall deliver a deed to the damaged Premises to Purchaser each as provided in Section 1 above.

SECTION 13
CONDEMNATION, LOSS OF ACCESS

If (i) all or part of the Premises shall be taken or condemned by a competent authority for a public or quasi-public use or purpose or if there is a negotiated purchase by such authority under threat of a taking (collectively, a "taking"), and if the loss of the part so taken substantially interferes with the use of the Premises by Purchaser, or (ii) due to any such taking, access to the Premises by motor vehicles as operated by Purchaser, its contractors, and its customers in the course of Purchaser's business as previously conducted is impaired or terminated, then Purchaser shall be entitled to all condemnation proceeds due to Seller as a result of such taking and Purchaser shall purchase the Premises from Seller as provided in Section 1 above.

SECTION 14
DEFAULT

14.1. If any of the following events ("defaults") shall occur: (i) Purchaser fails to pay the rent or any other sums payable by Purchaser under this Agreement (other than those obligations set forth in Section 1), and the failure continues for a period of fifteen (15) business days after the date due and payable; or (ii) Purchaser fails to perform any other obligations under

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this Agreement (other than those obligations set forth in Section 1) and the failure continues for thirty (30) days after written notice from Seller, or for an unreasonable period of time if thirty (30) days is not reasonably sufficient time to repair, remedy, or correct the obligation breached, and Purchaser commences cure within such thirty (30) day period and diligently pursues cure to completion, then Seller may re-enter the Premises, with or without terminating this Agreement; and if Seller so elects by giving written notice to Purchaser, Seller also may terminate this Agreement. If Seller at any time terminates this Agreement for any default other than those arising under Section 1, then, in addition to any other remedy it may have, it may recover from Purchaser all reasonable damages it may incur by reason of the default, including the cost of recovering the Premises, specific performance of Purchaser's obligation to purchase the Premises under Section 1, and the value at the time of termination of the excess, if any, of the amount of rent and charges reserved in this Agreement for the remainder of the term over the then reasonable rental value of the Premises for the remainder of the stated term, both figures being discounted to present value. Alternatively, Seller may elect to keep this Agreement in effect and recover monthly from Purchaser an amount equal to the rent and other charges due less the amount, if any, of any rentals which Seller may receive by reletting the Premises; however, nothing contained in this Section shall be deemed to impose upon Seller any duty to relet the Premises beyond the duties to mitigate, if any, imposed by law.

14.2. If Purchaser shall fail to make any payment within fifteen (15) business days after the date due, a late payment of five percent (5%) of the payment shall be due. If Purchaser shall fail to perform any act required to be made or performed under this Agreement, Seller, without waiving or releasing any obligation or default, may (but shall be under no obligation to), at any time, and upon reasonable notice to Purchaser, make the payment or perform the act for the

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account of and at the expense of Purchaser, and may enter upon the Premises for that purpose and take all actions as may be necessary to correct Purchaser's breach. No such entry shall be deemed an eviction of Purchaser. All sums so paid by Seller and all costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) so incurred, together with interest at the rate of ten percent (10%) per annum from the date of payment, shall constitute additional rent and shall be paid by Purchaser to Seller on demand.

14.3. In the event Purchaser is in default under the terms of this Agreement, other than the payment of Rent, then in any such event Seller may provide written notice of such default to Purchaser pursuant to this Section. Upon the expiration of thirty (30) days following the giving of such notice, if Purchaser (i) has failed to cure such default or (ii) in the case of a default (other than the payment of money) which by its nature cannot be completely cured within such thirty (30) day period, Purchaser does not within such period commence to cure the default, and diligently pursue and complete the cure in a reasonable period of time, then in either such event Seller may do all things necessary or desirable to remedy such default and perform the obligations of Purchaser which have not been fully or properly performed. Purchaser hereby irrevocably appoints Seller as his attorney-in-fact to enter upon the property and to complete the Building Improvements and the Purchaser Improvements and perform any other obligation of Purchaser that Purchaser has not fully and properly performed. Purchaser shall immediately upon demand reimburse for all costs and expenses incurred by Seller in connection with the foregoing plus interest to make such payment within thirty (30) days of written demand, and Seller may set off the amount of all costs and expenses incurred by Seller in connection with the foregoing, plus interest at the rate set forth in Section 14.2 against rent payment coming due under this Agreement.

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14.4. The aforementioned 30-day period of time permitted for Seller to cure its default and the periods of time permitted for Purchaser to cure defaults hereunder shall be extended if the default cannot be cured within the time period allowed herein, so long as such party is diligently and continuously attempting to cure. The cure periods shall also be extended for any period of time during which the defaulting party is delayed in, or prevented from, curing due to fire or other casualty, or acts of God, strikes, lockouts, power shortages or outages, enactment, adoption, or promulgation of new laws, or the application or enforcement of laws. Notwithstanding the foregoing, there shall be no extended period in which to cure a monetary default.

SECTION 15
USE OF PREMISES

The Premises may be used, occupied, or sublet by Purchaser for the campground, hospitality, resort, retail fuel station and store business and any other uses as may be permitted by law, ordinance and/or zoning regulations and in the ordinary course of business without Seller's prior written consent, except that Purchaser shall not be entitled to request any change in permitted use or zoning laws affecting the Premises prior to Closing absent Seller's prior consent.

SECTION 16
COMPLIANCE WITH LAWS

During the Primary Term, Purchaser, at its expense, shall comply with all present and future laws and regulations applicable to its use and occupancy of the Premises. Purchaser agrees to hold Seller harmless from any cost, expense, or liability that may be imposed or assessed against Seller in connection with Purchaser's noncompliance with any such law, regulation, or requirements.

SECTION 17
REPAIRS

Purchaser shall be obligated to make, and Seller shall have no responsibility for, any structural repairs, modifications, or additions to the Premises, including, but not limited to, any repairs, modifications or additions to the Premises required pursuant to the Americans with Disabilities Act.

SECTION 18
ASSIGNMENT AND SUBLETTING

In accordance with the campground, hospitality and resort industry, Purchaser shall have the right to sublet all or any portion of the Premises in the normal course of business without the prior written consent of Seller. Notwithstanding the foregoing, Purchaser shall be able to assign this Agreement, whether in whole or in part, with the prior written consent of Seller, which shall not unreasonably be withheld. Any such assignment shall require the Assignee to assume and become bound to perform and observe all of the covenants and agreements of Purchaser under this Agreement. No such assignment shall relieve the assignor of its obligations hereunder..

TLC currently holds a lease from South Carolina Public Service Authority ("SCPSA"). Seller will use its reasonable best effort to obtain any and all approvals for the sublease thereof to Purchaser. Any and all payments to SCPSA under this lease shall be the sole responsibility of Purchaser. Any lease payments previously made to SCPSA by Seller shall be prorated as of January 1, 2011, and on that date, Purchaser shall reimburse Seller for the unexpired portion of the prepaid lease term.

SECTION 19
SUBBORDINATION OF LEASE

Seller hereby warrants and represents that the existing lease for the portion of the Premises containing the retail fuel station and store shall be subordinate to this Agreement. Seller hereby assigns to Purchaser any and all rents and income from the retail fuel station and store lease.

SECTION 20
NOTICES

All notices to be given to either party shall be deemed given if made in writing and deposited in the United States mail, postage prepaid, return receipt requested, and addressed to the parties at the following addresses:

SELLER:

TLC HOLDINGS, LLC
James C. Thigpen
P.O. Box 1257
7860 Wash Davis Road
Summerton, South Carolina 29148

Richard U. Clark
3124 Great Wood Way
Knoxville, Tennessee 37922

Jimmy S. (Steve) Lovell
20 Ambriance Drive
Burr Ridge, Illinois 60527

PURCHASER:

M. B. HUDSON
c/o ANDREW F. TUCKER, ESQ.
385 2nd Avenue, Suite 1
Dayton, Tennessee 37321

Either party may change its notice address by giving notice of the change to the other.

SECTION 21
MORTGAGES AND LIENS

Seller currently has two (2) liens encumbering the Premises. It is clearly understood between the parties that Seller shall not allow any further or additional liens to be placed or encumber the Premises at any time during the Primary term or any extension thereof.

There are two pending actions relating to the campground property in the Court of Common Pleas for Clarendon County, South Carolina, one captioned *First Citizens Bank vs. Thigpen, et al.*, Case No. 08-CP-14-559, and the second captioned *Edwards vs. TLC Holdings, et al.*, Case No. 09-CP-14-58. Seller covenants, consents and agrees that these actions shall be dismissed or otherwise addressed on or before Closing on the entire Premises, so that said pending legal actions shall in no way encumber the Property or hinder said Closing. There is no other pending or threatened litigation, nor any legal or administrative action of any kind or character whatsoever, affecting the Property or any portion thereof.

Purchaser shall not permit any liens, whether consensual, judgment or statutory, to be placed on or encumber the Premises. Should any such lien be asserted or filed, Purchaser shall bond against or discharge the same within ten (10) days after written request by Seller. In the event Purchaser fails to remove said lien within said ten (10) days, Seller may, at its sole option, elect to satisfy and remove the lien by paying the full amount claimed or otherwise, without investigating the validity thereof. Seller's election to discharge liens as provided hereunder shall not be construed to be a waiver or cure of Purchaser's default hereunder

SECTION 22
SUCCESSORS AND ASSIGNS

Subject to the provisions of <u>Section 14</u>, this Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and permitted assigns of Seller and Purchaser.

SECTION 23
PURCHASER'S PROPERTY

All trade fixtures, furnishings, equipment, and other personal property placed or maintained on the Premises shall be at Purchaser's sole risk, and Seller shall not be liable for any loss or damage to such property from any cause whatsoever, and shall not provide any insurance on such property.

SECTION 24
QUIET ENJOYMENT

Seller covenants that, if Purchaser pays the rent and performs all of its obligations under this Agreement, Purchaser shall peaceably and quietly enjoy and possess the Premises throughout the term subject only to the conditions set forth in this Agreement.

SECTION 25
SIGNS

Any and all signs placed on the Premises by Purchaser shall be maintained in compliance with all applicable governmental laws and regulations.

SECTION 26
NONWAIVER

No waiver of any condition or covenant of this Agreement by either party shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant, and nothing contained in this Agreement shall be construed to be a waiver on the part of Seller of any right or remedy in law or otherwise.

SECTION 27
RIGHT OF ENTRY

Upon reasonable notice to Purchaser, Seller shall have the right to enter the Premises during normal business hours to examine its condition; to make any repairs Seller deems

necessary for the safety, preservation, or improvement of the Premises. Each entry by Seller in accordance with this Section 27 shall be made in such a manner as will not unreasonably interfere with Purchaser's use of the Premises.

SECTION 28
ENVIRONMENTAL MATTERS

28.1. Seller represents and warrants to Purchaser that to the best of Seller's knowledge, as of the date hereof, no "Hazardous Substances" (as hereafter defined), or any other toxic material or medical waste are present on or in the Building or Land, other than fuel sold by the convenience store, or other amounts used in the ordinary course of the businesses operated upon the Premises (and, as to those, all are in material compliance with applicable law), and Seller shall indemnify Purchaser against any and all claims, demands, liabilities, losses and expenses, including consultant fees, court costs and reasonable attorneys' fees, arising out of any breach of the foregoing warranty.

28.2. Except for Hazardous Substances or other toxic materials or medical waste brought, kept, or used in the Premises in commercial quantities similar to those quantities usually kept on similar premises by others in the same business, profession, or medical specialty, and which are used and kept in compliance with applicable public health, safety, and environmental laws, Purchaser shall not allow any Hazardous Substance or other toxic material or medical waste to be located in, on, or under the Premises or allow the Premises to be used for the manufacturing, handling, storage, distribution, or disposal of any Hazardous Substance or other toxic material.

28.3. Purchaser shall at all times and in all respects comply with all federal, state, or local laws, ordinances, regulations, and orders applicable to the Premises or the use thereof relating to industrial hygiene, the handling, storage and disposal of medical waste, environmental

protection, or the use, analysis, generation, manufacture, storage, disposal, or transportation of any Hazardous Substance, toxic material, or medical waste.

28.4. If Purchaser becomes aware of the presence of any Hazardous Substance in or on the Premises (except for those Hazardous Substances or other toxic material or medical waste brought, kept, or used in the Premises by Purchaser in commercial quantities similar to those quantities usually kept on similar premises by others in the same business, profession, or medical specialty and which are used and kept in compliance with applicable public health, safety, and environmental laws) or if Purchaser, or the Premises, becomes subject to any order of any federal, state, or local agency to repair, close, detoxify, decontaminate, or otherwise cleanup the Premises, Purchaser shall, at its own cost and expense, carry out and complete any repair, closure, detoxification, decontamination, or other cleanup of the Premises; provided that Purchaser shall not be responsible for any of the foregoing relating to any Hazardous Substance, or other toxic materials, or medical waste located on, in, or under the Premises on the date of this Agreement, all of which shall be the responsibility of Seller pursuant to Section 28.1. If Purchaser fails to implement and diligently pursue any such repair, closure, detoxification, decontamination, or other cleanup of the Premises, Seller shall have the right, but not the obligation, to carry out such action and to recover all of the costs and expenses from Purchaser.

28.5. "Hazardous Substances" as such term is used in this Agreement means any hazardous or toxic substance, material, or waste regulated or listed pursuant to any federal, state, or local environmental law, including without limitation, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conversation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, the Safe Drinking Water Act, and the Occupational Safety and

Health Act, except for any reference to petroleum or petroleum products. The parties hereby acknowledge that the Premises has a retail gasoline and diesel service station located thereon, and any reference to Hazardous Substances specifically exclude petroleum or petroleum products.

SECTION 29
PARTIAL INVALIDITY

If any provision of this Agreement or its application to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of that provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

SECTION 30
MEMORANDUM OF LEASE

In addition to the execution of this Agreement, the parties shall execute a memorandum of this agreement in recordable form, which, in addition to the matters which may be required by applicable law, shall also include a description of the Premises leased hereunder, and those provisions (other than the amount of rent and the Purchase Price) requested by any party hereto.

SECTION 31
ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and cannot be amended unless the amendment is in writing and executed by the party against whom the enforcement of the amendment is sought.

[Signatures on Next Page]

IN WITNESS WHEREOF, this Agreement has been executed as of the date and year written herein below.

SELLER:
TLC Holdings, LLC

James C. Thigpen, Member, TLC Holdings, LLC
Date: 12/15/10

Richard U. Clark, Member, TLC Holdings, LLC
Date:____________________

Jimmy S. (Steve) Lovell, Member, TLC Holdings, LLC
Date:____________________

PURCHASER:

M. B. Hudson

Date: 12/15/10

IN WITNESS WHEREOF, this Agreement has been executed as of the date and year written herein below.

SELLER:
TLC Holdings, LLC

James C. Thigpen, Member, TLC Holdings, LLC
Date:

Richard U. Clark, Member, TLC Holdings, LLC
Date: 12/15/2010

Jimmy S. (Steve) Lovell, Member, TLC Holdings, LLC
Date:

PURCHASER:

M. B. Hudson

Date: 12/16/2010

IN WITNESS WHEREOF, this Agreement has been executed as of the date and year written herein below.

SELLER:
TLC Holdings, LLC

____
James C. Thigpen, Member, TLC Holdings, LLC
Date:________________

____
Richard U. Clark, Member, TLC Holdings, LLC
Date:________________

____
Jimmy S. (Steve) Levell, Member, TLC Holdings, LLC
Date: 12/15/10

PURCHASER:

____
M. B. Hudson

Date: 12/16/10

EXHIBIT A _ A legal description of the TLC real property

{02008344.}

EXHIBIT A

A. CAMPGROUND KNOWN AS BIG WATER RESORT:
All that certain piece, parcel or tract of land lying, being and situate in School District No. 1 of Clarendon County, South Carolina, containing 30.44 acres according to plat hereinafter described and measuring and bounding as follows: beginning at an old iron found on the North bound exit ramp right of way from Interstate 95 at Exit 102, thence N 62 degrees 24'24" E for 3.66 feet along the right of way to a concrete monument, thence N 62 degrees 08'56" E for 120.09 feet along the right of way to an iron, thence N 70 degrees 36'47" E for 160.27 feet along the right of way to an iron, thence N 79 degrees 57'21" E for 93.40 feet along the right of way to a concrete monument, thence N 82 degrees 19'44" E for 190.85 feet along the right of way to a concrete monument, thence N 81 degrees 00'07" E for 82.23 feet along the right of way to an iron, thence N 74 degrees 05'12" E for 189.38 feet along the right of way to an iron, thence N 72 degrees 17'50" E for 38.91 feet along the right of way to an iron, thence S 56 degrees 09'56" E for 439.73 feet along the property line of lands being conveyed to Lee-Moore Oil Company, Inc. to an iron, thence S 56 degrees 09'26" E for 114.35 feet along the property line of land being conveyed to Lee-Moore Oil Company, Inc. to an iron, thence S 56 degrees 09'26" E for 253.97 feet along the property line of W. R. Williams to a concrete monument found on the 33 foot right of way of SC Highway S-14-390, thence S 33 degrees 10'55" W for 219.18 feet along the right of way to an iron, thence S 56 degrees 49'43" W for 1356.96 feet along the property line of Robert Malanuk to a concrete monument, thence N 25 degrees 40-07" W for 660.32 feet along the property line of the South Carolina Public Service Authority to an iron, thence N 25 degrees 42' W for 77.70 feet along the property line of the South Carolina Public Service Authority to a concrete monument, thence N 47 degrees 35' W for 248.5 feet along the property line of the South Carolina Public Service Authority to an iron, thence N 39 degrees 05'14" E for 394.98 feet along the right of way of Interstate 95 to the point of beginning. SUBJECT HOWEVER, to an easement to the Carolina Power and Light Company recorded in Deed Book A-26 at Page 165, also easement for absorption field recorded in Deed Book A-61 at Page 342, also sign lot and right of way recorded in Deed Book A-126 at page 478 and an easement from W. R. Williams, et al recorded in Deed Book A-109 at Page 551. SUBJECT to Black River Electric Coop. Power line easement as shown on plat described below. Subject to any visible and unrecorded easements and right of ways not revealed by current survey.

For a more particular description, reference may be had to a plat by H. F. Oliver, Surveyor, dated February 19, 1988, recorded in the Office of the RMC for Clarendon County in Plat Book 39 at page 123.

FOR DERIVATION, SEE BELOW.

Said tract being designated as Clarendon Tax Map No. 035-05-00-001-00.

TRACT II:
ALSO: All that piece, parcel, or tract of land lying, being and situate in School District No. 1 of Clarendon County, South Carolina, containing 3.21 acres on a plat hereinafter referred to, and bounding and measuring as follows: on the Northeast by SC Highway S-14-400 and measuring thereon 243.71 feet; on the Southeast by SC Highway S-14-390 and measuring thereon 618.30 feet; on the Southwest by lands of Lee Moore Oil Company, Inc. and measuring thereon 253.99 feet; on the Northwest by lands of Lee Moore Oil Company, Inc. and measuring thereon 755.15 feet.

For a more particular description of said tract reference may be had to a plat made by H. F. Oliver, Surveyor, dated March 15, 1988, recorded in the Office of the RMC for Clarendon County in Plat Book 44 at Page 36.

Said tract being designated as Clarendon Tax Map No. 035-06-02-007-00.
Said tracts having been conveyed to TLC Holdings, LLC by Deed of The Big Water Resort, LLC, dated 23 April, 2003, recorded on 9 May, 2003 in the Office of the RMC for Clarendon County in Deed Book A-497 at Page 00009.

Santee Cooper

TOGETHER WITH the Leasehold interest in that certain Lease between the Seller and the South Carolina Public Service Authority, pertaining to the waterfront property adjacent to the premises above described.

All buildings, fixtures, equipment used in the operation of the campground facility located on the above described premises.

SUBJECT HOWEVER to those certain Restrictive Covenants dated 3 November, 2003, recorded in the Office of the RMC for Clarendon County and any Amendments thereto and subject to certain Contracts between the Optionor and members of The Big Water Resort and others.

SUBJECT FURTHER, to all easements and rights of way of record.

B. CONVENIENCE STORE. That certain convenience store facility and the lands adjacent thereto known as "Big Water Country Store and Restaurant" described as follows:

All that piece, parcel or tract of land with buildings and improvements located thereon lying, being and situate Northwest of the Intersection of SC Highway S-14-390 and SC Highway S-14-400 in School District 1 of Clarendon County, South Carolina, containing 3.73 acres, being designated as Tract 2A on the plat

MBA

hereinafter referred to and bounding and measuring as follows: On the Northeast by Tract B on said plat and measuring thereon 439 feet; on the Southeast by the right of way of SC Highway S-14-400 and measuring thereon 318.4 feet; on the South by the intersection of SC Highway S-14-390 and SC Highway S-14-400, and measuring thereon 68.4 feet; On the Sonthwest by right-of-way of SC highway S-14-390, and measuring thereon 367.8 feet; on the Northwest by the arc of the curve of an intersection of an access strip and SC Highway S-14-390 and measuring thereon along said arc 50.58 feet and by said access strip and measuring thereon 338 feet.

For a more particular description of said tract, reference may be had to a plat made by H.F. Oliver, RLS, dated February 23, 1973, recorded in the Office of the Clerk of Court for Clarendon County in Plat Book 25 at Page 94, whereon said tract is designated as Tract 2A.

FOR DERIVATION, SEE BELOW.

Said premises being designated as Clarendon Tax Map Parcel N. 035-06-02-005-00.

ALSO:
All that certain piece, parcel, or tract of land, lying, being, and situate in School District No. 1 of the County of Clarendon, State of South Carolina, containing 2.50 acres and being designated as Tract B-1, according to plat hereinafter described and measuring and bounding, now or formerly, as follows: On the Northeast by lands of Ruby P. Levi, and measuring thereon 428.96 feet; On the Southeast by Tract B-2, and measuring thereon 304.55 feet; On the Southwest by lands of H.F. Swilley, a 50 foot access strip and lands of C&M Petroleum, and measuring thereon 281.99 feet; and on the Northwest by Highway Right-of-Way, and measuring thereon 340.64 feet.

For a more particular description, reference may be had to a plat by R.G. Mathis Land Surveying dated November 2, 1988, and recorded in the Office of the Clerk of Court of Clarendon County in Plat Book 42 at Page 86.

ALSO:
All of that certain piece, parcel, or strip of land, shown as an "Access Strip" on that certain plat prepared by H.F. Oliver, RLS, dated February 23, 1973, and recorded in the Office of the Clerk of Court in Plat Book 25 at Page 94, according to which plat, said property is bounded, now or formerly, and measures as follows: On the Northeast by Tract B on said Plat and measuring thereon a distance of 50 feet; On the Southeast by Tract 2-A and measuring thereon a distance of 338 feet; On the Southwest by the right-of-way of S.C. Highway S-14-390; and on the Northwest by Tract 1-A, and measuring thereon a distance of 338 feet.

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SUBJECT, HOWEVER, to such easements of right-of-way for utilities and roadways as shall appear upon said plats.

FOR DERIVATION, SEE BELOW.

Above Tract B-1 and Access Strip being designated as Clarendon TMP#035-06-02-008-00.

ALSO:
All that piece, parcel, or tract of land together with any improvements located thereon, lying and being situate in Clarendon County, South Carolina, being designated as Tract B-2 on the plat hereinafter referred to, containing 2.5 acres and bounding, now or formerly, and measuring as follows: On the North by lands of Ruby P. Levi and measuring thereon 357.64 feet; On the East by the right-of-way of South Carolina Highway S-14-400, and measuring thereon 304.55 feet; On the South by lands of H.F. Swilley and measuring thereon 357.64 feet; On the West by Tract B-1 on said Plat, and measuring thereon 304.55 feet.

Above tracts having been conveyed to TLC Holdings, LLC by Deed of Santee Interstate Systems, Inc., Shawn M. Reardon and Cynthia C. Reardon by Deed dated 18 September, 2003, and recorded in the Office of the RMC for Clarendon County in Deed Book A-508, at Page 310.

Said lot begin designated as Clarendon County Tax Map Parcel No. 035-06-02-002-00.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining to the above tracts.

C. ROGER'S TRACT
All that certain piece, parcel or tract of land, lying, being and situate in the County of Clarendon, State of South Carolina, containing 57.81 acres, more or less, being described as follows: Beginning at an iron new ly placed on the 33 foot right-of-way of South Carolina Highway S-14-300, thence, North 30 degrees, 50 feet, 7 inches, East for 3346.76 feet along the 33 right-of-way of South Carolina Highway S-14-390 and South Carolina Highway S-14-400 to an old concrete monument. Thence, North 77 degrees, 20 feet, 33 inches, East for 71.68 feet along a site angle created by a 90 degrees Bend in South Carolina Highway S-14-400 to an old concrete monument. Thence, South 58 degrees, 20 feet, 23 inches, East for 1555.29 feet along the right-of-way of South Carolina Highway 400 to a new iron. Thence, South 71 degrees, 39 feet, 58 inches, West for 908.20 feet along the property line of the South Carolina Public Service Authority to an old concrete monument. Thence, South 49 degrees, 33 feet, 49 inches, West for 350.86 feet along the property line of the South Carolina Public Service Authority to an old concrete monument. Thence, South 45 degrees, 50 feet, 18 inches, West for 1076.74 feet

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along the property line of the South Carolina Public Service Authority to an old concrete monument. Thence, South 64 degrees, 37 feet, 33 inches, West for 634.11 feet along the property line of the South Carolina Public Service Authority to an old concrete monument. Thence, South 56 degrees, 47 feet, 48 inches, West for 524.93 feet along the property line of the South Carolina Public Service Authority to an old concrete monument. Thence, South 57 degrees, 28 feet, 19 inches, West for 350.08 feet along the property line of Robert Malenvik to the point of beginning.

For a more particular description of said tract, reference may be had to a plat made by H. F. Oliver, RLS, dated 17 March 1988, recorded in the Office of the Clerk of Court for Clarendon County in Plat Book 39 at Page 204.

Said premises having been conveyed to TLC Holdings, LLC by deed of Rodney L. Rogers dated May 19, 2008 and recorded May 21, 2008 in the Office of the Clerk of Court for Clarendon County in Deed Book A-699 at Page 275.

Said tract being designated as Clarendon County Tax Map Parcel Number 035-00-00-013-00.

MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the ____ day of December 2010, by and among **M. B. HUDSON** (referred to herein as "Purchaser"), **RICHARD U. CLARK, JIMMY S. LOVELL and JAMES C. THIGPEN** (referred to herein collectively "Seller") and **THE BIG WATER RESORT, LLC**, a South Carolina limited liability company (referred to herein as "Company").

WITNESSETH:

WHEREAS, Seller is all the members of the Company with said membership interest subject to the terms and conditions of that certain Operating Agreement of The Big Water Resort, LLC dated December 1, 2002 and its Amendment dated June 3, 2008 ("Operating Agreement"). All capitalized terms not defined herein shall have those meanings set forth in the Operating Agreement; and

WHEREAS, Seller desires to sell all of their Membership Interest in the Company, which equals One Hundred Percent (100%) of the outstanding membership interests (referred to as the "Interest") to Purchaser, and Purchaser desires to purchase said Interest, being bound to the terms and conditions of the Operating Agreement.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant, consent and agree as follows:

1. **Sale and Purchase.** Subject to the terms and conditions hereinafter set forth, Seller hereby sells, transfers, assigns and conveys the Interest to Purchaser, and Purchaser, in reliance on the representations made by Seller herein, accepts the sale, transfer, assignment and conveyance of the Interest from Seller in consideration for the

(ii) A Certificate of Good Standing from the State of South Carolina;

(iii) A list of all debts and obligations of the Company and principal balance(s) of said debts and obligations as of the date of Closing, each of which are to be assumed by Purchaser at Closing, except only those loans made by Messrs. Clark and Lovell to the Company, which shall be repaid from the Purchase Price.

(iv) A list of all assets of the Company, including all cash on hand, all of which shall be assigned to Purchaser at Closing except for receivables/client reserve fund from Universal Guardian Acceptance (which Purchaser agrees shall remain the property of Seller, and any payments received by Purchaser after Closing shall promptly be remitted to Seller);

(v) A commitment letter to finance the balance of the Purchase Price at six percent (6%) per annum for up to five (5) years based upon a 240 month amortization schedule, with principal and interest payable monthly, upon Purchaser's closing on the purchase of the membership interests in TLC, LLC, a South Carolina limited liability company; and

(b) At the closing the Buyer and Seller shall deliver to the Seller:

(i) Ten and 00/100 Dollars ($10.00) in Cash;

(ii) A Promissory Note in the amount of $499,990.00 payable to Seller for the balance of the Purchase Price which shall be due and payable upon the Closing (as defined in the Lease Purchase Agreement of even date among Seller, Purchaser and TLC Holdings, LLC; and

(iii) An assignment, hypothecation and pledge agreement of the Interest as collateral for the Promissory Note.

5. **Representations and Warranties by Seller.** Seller represents, warrants and covenants to Purchaser as follows:

(a) **Capitalization and Interest.** The Interest represents 100% of Seller's capital and equity interest in the Company. There are no options, warrants or other rights to subscribe for or purchase any interest in the Company or securities convertible into or exchangeable for, or which otherwise confer on any holder any right to acquire, any interest in the Company, nor are the Company or Seller committed to issue any such option, warrant or other right.

(b) **Title.** Seller is the sole legal and equitable owner of the Interest, and Seller's absolute title thereto is not the subject of any claim or challenge threatened or asserted by any third party. Company has good and marketable title to all of its properties and assets. Further, there are no actions, suits or proceedings, either at law or in equity, or before any commission or administrative authority, or any kind now pending in any manner involving Company, or any of its property, or to the knowledge of Sellers, threatened.

(c) **No Liens or Restrictions.** The Interests are not subject to any security interest, lien, restriction on transfer, "buy-sell" agreement, voting agreement, redemption agreement, option, or other agreements.

(d) **Consents.** No consents, authorizations or approvals of governmental authorities are necessary in order for Seller to perform its obligations pursuant to this Agreement.

(e) **Organization and Operation of Company.** The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of South Carolina, has full corporate power to own its own property and carry on its business as and where it is now being conducted, in compliance with all laws, regulation and orders applicable to its business. The Operating Agreement of Company is in full force and effect and no amendments, modifications, changes or deletions have been made thereto. Further, Company does not control, directly or indirectly, any other corporation, association or business organization.

(f) **Taxes.** Company has filed with the appropriate governmental agencies all tax returns required to be filed by it prior to the date of this Agreement, and it has paid taxes due by it as reflected on said returns.

6. **Covenants of Seller.** Prior to or pending the closing, the Seller covenants that:

(a) Seller will cause Company to maintain itself at all times as a corporation duly organized, validly existing and in good standing under the laws of the State of South Carolina and to operate in a good and diligent manner and not engage in

any transaction or make any commitment or expenditure other than in the ordinary course of business, except such transactions, commitments and expenditures as shall be required or contemplated by this Agreement or which shall be presented to and approved by Purchaser (such approval not to be unreasonably withheld).

(b) Seller will cause Company to maintain in full force and effect all policies of insurance.

(c) Seller will cause Company to cooperate fully with Purchaser, his counsel, accountants and other representatives in connection with the closing and the consummation of the transaction herein contemplated, and make available to Purchaser, his counsel, accountants and other representatives all pertinent information with respect to the condition, business property, assets and liabilities of Company and afford Purchaser, his counsel, accountants or other representatives access during normal business hours to all the physical properties of the Company.

7. **Miscellaneous.**

(a) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, supersedes all prior understandings, commitments and agreements and may be amended only by a writing signed on behalf of each party. There are no agreements, promises, warranties, representations, inducements, covenants or undertakings other than those expressly set forth in this Agreement.

(b) **Notices.** Any notices or consents required or permitted by this Agreement shall be in writing and shall be deemed delivered if delivered in person or

if sent by certified mail, postage prepaid, return receipt requested, as following, unless such address is changed by written notice hereunder:

(i) If the Seller:

James C. Thigpen
P.O. Box 1257
7860 Wash Davis Road
Summerton, South Carolina 29148

Richard U. Clark
3124 Great Wood Way
Knoxville, Tennessee 37922

Jimmy S. (Steve) Lovell
20 Ambriance Drive
Burr Ridge, Illinois 60527

(ii) If to Purchaser:

M. B. HUDSON
c/o ANDREW F. TUCKER, ESQ.
385 2nd Avenue, Suite 1
Dayton, Tennessee 37321

(iii) If to Company:

THE BIG WATER RESORT, LLC
P.O. Box 1257
7860 Wash Davis Road
Summerton, South Carolina 29148

(c) **Assignment.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns, but neither this Agreement nor any of the rights, interest or obligations hereunder shall be assigned by either of the parties hereto without

the prior written consent of the other party, nor is this Agreement intended to confer upon any other person except the parties any rights or remedies hereunder.

(d) **Governing Law.** This Agreement shall be construed as to both validity and performance and enforced in accordance with and governed by the laws of the State of South Carolina.

(e) **Captions.** The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

(f) **Further Action.** The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

(g) **Expenses, Etc.** Except as otherwise provided in this Agreement, whether or not the transactions contemplated by this Agreement are consummated. Seller and Purchaser shall pay their own expenses and the fees and expenses of their counsel, financial advisors, accountants and other experts.

(h) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of such counterparts shall together constitute one and

the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. This Agreement may be executed and delivered by facsimile or other means of electronic communication; any original signatures that are initially delivered by electronic communication shall be physically delivered with reasonable promptness thereafter.

[Signatures on Next Page]

IN WITNESS WEREOF, the parties have set their hands hereto on the date first above written.

SELLER:

RICHARD U. CLARK

JIMMY S. LOVELL

JAMES C. THIGPEN

PURCHASER:

M. B. HUDSON

COMPANY:

THE BIG WATER RESORT, LLC, a
South Carolina limited liability company

By:
J. Steve Lovell, its Managing Member

IN WITNESS WEREOF, the parties have set their hands hereto on the date first above written.

SELLER:

____
RICHARD U. CLARK

____
JIMMY S. LOVELL

____
JAMES C. THIGPEN

PURCHASER:

____
M. B. HUDSON

COMPANY:

THE BIG WATER RESORT, LLC, a
South Carolina limited liability company

By:______________________________
J. Steve Lovell, its Managing Member

IN WITNESS WEREOF, the parties have set their hands hereto on the date first above written.

SELLER:

RICHARD U. CLARK

JIMMY S. LOVELL

JAMES C. THIGPEN

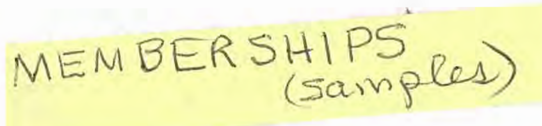
PURCHASER:

M. B. HUDSON

COMPANY:

THE BIG WATER RESORT, LLC, a
South Carolina limited liability company

By:__________________________
J. Steve Lovell, its Managing Member



Big Water Resort, LLC
5215 Dingle Pond Rd.
Summerton, SC 29148

Retail Membership Term Agreement

By this agreement, Big Water Resort (BWR), A South Carolina, LLC, sells and the undersigned purchaser(s) ("Member") purchases a membership which gives the Member the right to use all present and future BWR facilities and services subject to membership terms provided herein.

NATURE OF MEMBERSHIP

1. Purpose. This membership grants a right to use BWR facilities and services solely for Member's recreation and enjoyment. This membership is neither sold nor purchased as a financial investment. Member acquires no legal or beneficial interest in BWR or its assets and no right or interest in property, contract rights or business of BWR. Member is not entitled to any share of income, gain or distribution of or by BWR. Nor does Member acquire any voting rights in BWR pertaining to its business or any right to participate in BWR's management.
2. Campsite Availability. BWR will use its best efforts to provide Member with a place to camp.
3. Use Privileges. Member may use all of BWR's present recreation facilities on a day use basis; and on an overnight camping and cabin basis. See current Reservation & Usage System Guidelines. Member usage is subject to space availability on a first come first served basis among all Members. There are no pre-assignment of or exclusive rights to specific campsites or cabins. To properly manage services, reservations are required for overnight camping & cabin stays.
4. Family and Guest Use privileges. Membership permits full recreational use by Member's unmarried dependant children under twenty-one (21) years of age, and may from time to time be extended to other family members and guests (s) at the discretion of BWR. Children under the age of 16 must be accompanied by an adult member. Children between the ages of 16-21 are limited to two (2) guests.
5. Other Use privileges. BWR will make available to Member the use of the reciprocal usage programs. These privileges are provided through BWR's licensing agreement. Eligibility for continued and/or renewed membership is subject to BWR's maintaining its licensing agreement. BWR agrees to use its best efforts to maintain its license agreements and affiliations with such reciprocal use programs as may be accepted by BWR and a majority of members. Member is required to pay all fees; and to use these subject to separate rules established by them and participating resorts. BWR may enter into other reciprocal use programs. There is no assurance this agreement or others will remain in effect.
6. Duration of the Membership. This membership is for ~~1~~ LIFETIME years, starting on 5/31/08 and ending on LIFETIME (SEE ADDENDUM PROVISIONS).
7. Transferability of the Membership. This membership may be transferred 0 times at the cost of $500 a transfer and at a sales price determined by the current owner. In order for a membership to be transferred it must first be paid for in full to BWR and all dues must be current and the transferee is approved by BWR. When transferred only the remaining years left may be transferred. Example- If you have a 25 year membership and have used 5 years of it, then only the remaining 20 years may be transferred.
8. Ownership Limitations. Member may own only one active membership. This membership may not be assigned, rented, loaned or otherwise alienated, temporarily or permanently, in any manner other than as provided in Section 7 above. Violations of these prohibitions will constitute grounds for termination of membership.

ASSURANCE OF CONTINUED MEMBERSHIP QUALITY

9. Rules Supporting Member Satisfaction. Membership use privileges are subject to Member's observance of rules established by BWR to insure the enjoyment of all Members in their use of BWR facilities which rules are hereby incorporated as a part of this agreement. BWR may adopt, amend or repeal such rules provided that BWR deems necessary for the overall betterment of the Resort. The rules hereby incorporated are set forth in the membership Rules & Regulations.
10. BWR Management Commitment to Member. BWR will provide all management of BWR facilities. BWR, therefore, retains all management responsibility and authority to carry out this management role. This shall include but not be limited to: the administration of the membership rights provided through this agreement, the maintenance of BWR facilities in a manner that allows members the reasonable use and enjoyment of their membership; the payment of all property taxes, insurance, utilities and other ordinary and necessary expenses of BWR facility operations, BWR shall also continue to provide the Member's use of the campsites for Member's own recreation vehicle, the utility services provided to those campsites, the Members use of dump stations, recreation center buildings and swimming pools or swimming beaches and areas as may be provided.

CHARGES FOR MEMBERSHIP AND CONTRACTUAL STANDARDS

11. Initial Fee, Annual Dues and Assessments. The purchase price for this membership shall be the initiation fee, including finance charges if applicable, specified in paragraph 19 of this agreement. In consideration for paying dues, Member shall be entitled to use all facilities maintained for the benefit of BWR Members. At the signing of this agreement, member shall pay in advance N/A dues in the amount of $370.00 and thereafter Members shall pay dues in advance, annually ( ) or quarterly ( ), in the amount of $370.00 beginning on 3RD. QTR. 08. Unless otherwise authorized in writing by the BWR General Manager, the annual rate of dues can be increased each year by no more than the percentage increase in the national consumer price index for all urban consumers, as reported by the US Dept. of Labor, Bureau of Labor Statistics, for the calendar year one year prior to the year for which the increase is being made, along with a pro rata share of pass through charges mandated by governmental authorities. If any dues payment is not made in full within 20 days of its due date, the member agrees to pay BWR a delinquency charge in the amount of 5% per month of the delinquent payment or $5.00 whichever is greater. The purchaser is also responsible for any tax that might be assessed on this membership by a civil taxing authority.

* INC. RATES @ 3RD QTR. 0%

12. Use Charges. The Member agrees to pay for the following items if and when they are used by the member; rental housing; recreation vehicle storage and incidental recreation equipment usages. Published lists of the current use charges are available upon request. These use charges maybe changed at the sole discretion of BWR.
13. Rules For All Payments, Credit Reports. Member is obligated to make all payments described in this agreement as and when due, including payment of the purchase price, dues, the finance charge, if applicable, and any other charges to BWR or its assigns. No renewal, extension, or assignment by BWR of this membership agreement or any transfer of membership by Member shall release Member from any obligation of this agreement and the Member Rules, except as may be provided in writing by BWR to Member. Delinquent accounts will be reported to the appropriate credit service agency.
14. Default. Time is of the essence of this agreement and any of the following events will be "an event of default" by Member; a) Member's failure to make any payment under this agreement when due, including but not limited to the payment of initiation fees and dues or; b) any false representation made by Member in this agreement or in Member's credit application; c) a material breach by Member of any provision of this agreement or the member rules set forth in the Member Handbook.
15. Remedies. Should any "event of default" occur, BWR may immediately suspend Member's rights to use BWR resort facilities. In addition, upon the occurrence of any "event of default", BWR may, upon 30 days written notice to Member, a) declare the entire unpaid principle balance of the initiation fees, together with the finance charge and dues accrued to the date of default, immediately due and payable, with interest on the unpaid principle balance accruing from the date BWR declares the balance due at maximum contract rate allowed by law, until fully paid; and/or b) terminate this agreement and the membership. If BWR terminates this agreement and the membership because of Member's default, which BWR may but is not required to do, BWR shall have all remedies provided by law and BWR will keep all the money member has paid BWR up to the time of the default as liquidated damages and not as a penalty. Member agrees that this action as to liquidate damages is a reasonable endeavor to estimate a paid compensation for the losses which might result from Member's default. Member may not terminate this agreement or the membership if member defaults. The note holder may also be entitled any collection agency fees, late charges, interest or additional costs, fees or expenses which note holder may reasonably incur. If legal action is commenced to enforce or declare the meaning of any provision of this agreement, the prevailing party will be awarded its reasonable attorney's fees and costs, including fees and costs incurred in arbitration, trial and appellate courts, or any other adjudicatory forum.
16. BWR reserves the right to refuse membership to registered convicted felons.
17. Warranty Limitations. There are no warranties which extend beyond the description on the face hereof including, without limitation, implied warranties of merchantability of fitness for a particular purpose.

THE ABOVE MEMBERSHIP PURCHASE PRICE IS BASED ON BWR FACILITIES AS THEY PRESENTLY EXIST, AND IN NO WAY REFLECTS ADDITIONAL VALUE FOR ANY AMENTIES PLANNED IN THE FUTURE. BWR CANNOT GUARANTEE THE NATURE, QUALITY AND AVAILABILITY OF ANY INDIVIDUAL NON-BWR CAMPGROUNDS PARTICIPATING IN THE RECIPROCAL USE SYSTEMS.

18. Liability Limitations. BWR's liability for damages for breach of any warranty, or for any injury or damage to person or property shall not exceed the amounts Member has paid BWR under this agreement, except that this limitation of liability will not apply to personal injury to Member of Member's guests caused by BWR's negligence. Member agrees to indemnify BWR and hold BWR harmless against all claims, liability, loss and expense (including reasonable attorney's fees) incurred by reason of injury or damage to person or property, or both, of Member and Member's guests arising from such person's use of BWR facilities or surrounding area, except that this indemnity will not apply to personal injury caused by BWR's negligence. No action may be brought by either Member or BWR more than one year after the cause of action has occurred, except that an action for non-payment may be brought within the applicable statutes of limitation.
19. Effect of this Agreement. THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN BWR AND MEMBER AND IS A BINDING CONTRACT. Any provision of this agreement and such other provisions will remain in full force and effect. Venue is proper in any county in which this agreement is signed.

*ADDENDUM: 1 LIFETIME PREMIUM MEMBERSHIP UPON ADDITIONAL $1405.00 W/IN 2 YRS. - FEES INCREASE HELD IN CHECK BY FEDERAL GOV'T CPI - OUTDOOR CAMPING $0 (TOTAL LIFETIME JOINING FEE $7900.00) (ALL APPROVED BY MYRON)

WHEREAS: The parties have executed this membership agreement on the date and year hereby written.

[signature]
Authorized Agent for Big Water Resort, LLC

[redacted] 5/31/08
Date

5/31/08
Date of Acceptance

[redacted]
Membership Signature

5/31/08
Date

*IF $1405 NOT PAID W/IN 2 YRS FROM DATE SIGNED MEMBERSHIP W/OPTION REVERTS TO 10 YEAR MEMBERSHIP THROUGH REFERRAL UPGRADE TO INCREASE # OF MEMBERSHIP YEARS ($1000 FOR 5 MORE YEARS, $1500 FOR 10 MORE YEARS) [illegible]

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E

Club House

yellow indicates first Phase development inside the campground including the club house

Judge Norton's order F-1

argues that the Release and Settlement Agreement should be set aside for public policy reasons. Id. at 21–30.

Although Hutson contends that the alleged fraud was ongoing, he does not point to any alleged fraudulent conduct that took place after December 11, 2013.[2] There is no dispute that Hutson knew about the "life time" membership agreements when he purchased BWR. See Third-Party Def.'s Obj. 20; see also Third-Party Pls.' Reply, Ex. 3 (email from Hutson's real estate agent expressing his concerns about the effect of the life time membership agreements).[3] The Release clearly releases all claims against third-party plaintiffs that arose on or prior to December 11, 2013, the date on which third-party plaintiffs filed the Affidavit of Default.

Further, all of Hutson's claims of fraud relate to the original transaction and not the procurement of the Release. Hutson was represented by an attorney in the underlying state court action and was therefore presumably advised of the application and effect of

[2] Section 23 of the Settlement Agreement provides that in the event of Hutson's default, as of the date of the termination of the lease-purchase agreement, "Hutson shall be deemed to have released, forever discharged, and promised never to sue" third-party plaintiffs. Third-Party Pls.' Mot. Ex. 6, at 7. Judge James's order provided that, effective upon the filing of the Affidavit of Default on December 11, 2013, third-party plaintiffs remained entitled to the relief set forth in the Settlement Agreement. See Judge James's Order, Third-Party Pls.' Mot. Ex. 8, at 9; see also Consent Order, Ex. 7, at 2–3. The order also states that Hutson is deemed to have granted the Release as set forth in the Settlement Agreement. Id. at 10. Therefore, the court uses the date of the filing of the Affidavit of Default as the date of termination to trigger the Release provision.

[3] The R&R extensively outlines Hutson's allegations as set forth in his many filings with this court. See R&R 22–25. The R&R also provides the lengthy basis of Hutson's knowledge of the underlying allegations of fraud prior to signing the Release, as set forth in his own filings and representations made to the court during various hearings. Id. The court has reviewed the magistrate judge's representations of the allegations and Hutson's respective knowledge thereof and finds no error. Because the R&R provides a comprehensive outline of Hutson's allegations and his knowledge of the alleged fraud, the court does not find it necessary to regurgitate that information in this order and will refer the parties to the R&R for further discussion thereof.

F-2

Judge Norton's ORder

the Release. See House v. Aiken Cty. Nat. Bank, 956 F. Supp. 1284, 1291 (D.S.C.) ("[T]hey have failed to produce an affidavit or statement from the attorney who represented them in the former litigation, any documents to show they were not fully informed or advised as to the content of the settlement of that previous litigation, or any other evidence sufficient to raise a genuine factual dispute as to this issue. Plaintiff's conclusory allegations, without more, are insufficient to provide evidence of fraud or to defeat a properly supported motion for summary judgment."). Hutson has failed to provide any evidence whatsoever of fraud in the procurement of the Release. Therefore, there is no basis to set aside the Release. See House, 956 F. Supp. at 1292 ("Plaintiffs have failed to provide any evidence, other than their own conclusory allegations, that they were induced to enter into this release because of fraud or misrepresentation.").

Hutson also makes various public policy arguments for his assertion that the Release should be set aside, including that public policy disfavors releases procured by fraudulent conduct, there was a disparity in bargaining power, and there was no meeting of the minds between the parties. Third-Party Def.'s Obj. 21–28. Again, all of Hutson's allegations of fraud relate to the original transaction and not the procurement of the Release. Further, as stated above, Hutson was represented by counsel in the state court action. The Settlement Agreement and Release were reviewed by an impartial judge and incorporated into his order. There is absolutely no indication that Hutson held an unfair bargaining position. Further, although Hutson continues to argue that he did not have sufficient knowledge to form a binding contract, all of the evidence on the record points to the contrary. Hutson made the same allegations of third-party plaintiffs' fraudulent misrepresentations in the state court action that were thereafter released by the Settlement

Counsel fraud

Judge Norton's Order F -3

Agreement. See Third-Party Pls.' Mot. Ex. 8 at 2. Therefore, Hutson's public policy arguments also fail.

Thus, the court grants third-party plaintiffs' motion for summary judgment as to Hutson's claims for breach of contract, breach of contract accompanied by fraud, fraud and fraud in the inducement, negligent misrepresentation, constructive fraud, breach of the covenant of good faith and fair dealing, and negligence, recklessness, willfulness, and wantonness.[4]

B. Third-Party Defendant's Motion for Summary Judgment

Hutson seeks summary judgment as to third-party plaintiffs' equitable indemnity claim. ECF No. 228. The magistrate judge recommends that the court deny Hutson's motion for summary judgment because the third-party plaintiffs' alleged failure to record the membership agreements did not cause the damage of which plaintiffs complain. R&R 30–35. Hutson objects to the magistrate judge's recommendation, arguing that the magistrate judge defines plaintiffs' damages too narrowly.[5] Third-Party Def.'s Obj. 7.

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[4] The magistrate judge did not find that the Settlement Agreement and Release applied to Hutson's defamation claim because his allegations of defamation occurred after December 11, 2013. R&R 27. However, the R&R recommends that the court grant third-party plaintiffs' motion for summary judgment as to Hutson's defamation claim because "the undisputed evidence reveals that the statements of which Hutson complains were, in fact, true . . . ." R&R 30. In his objections, Hutson states that he "would not object to a dismissal without prejudice on the defamation claim as he will pursue it in state court." Third-Party Def.'s Obj. 30. After reviewing the R&R de novo, the court agrees with the magistrate judge that third-party plaintiffs are entitled to summary judgment as to Hutson's defamation claim because the alleged defamatory statements are true. Therefore, the court also grants third-party plaintiffs' motion for summary judgment as to Hutson's defamation claim.

[5] Hutson has an attorney who represents him only on the equitable indemnification claim. His attorney submitted objections on his behalf that relate only to the magistrate judge's recommendation as to the equitable indemnity claim. However, Hutson's objections to the magistrate judge's other recommendations were filed pro se.

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATES COURT
COUNTY OF CLARENDON	)	THIRD JUDICIAL CIRCUIT CASE NUMBER: 2011-CV-1410101341
TLC Holdings, LLC,	)	
Plaintiff(s),	)	ANSWER TO APPLICATION FOR EJECTMENT AND COUNTERCLAIMS
Vs.	)	
M. B. Hudson aka M. B. Hutson,	)	(Jury Trial Demanded)
Defendant,	)	

The Defendant, M. B. Hudson aka M. B. Hutson, does hereby answer the Application for Ejectment of the Plaintiff herein as follows:

FOR A FIRST DEFENSE

1. Each allegation of the Application is denied unless specifically admitted or explained.

2. The Defendant admits that the property that is the subject of the Application for Ejectment is correctly described in the Application.

3. As to the allegation that a landlord / tenant relationship existed between the Plaintiff and Defendant, the Defendant denies that allegation and would respectfully show the Court that the Defendant is in fact a Purchaser under the Lease Purchase Agreement, which was prepared by the Sellers, attached as Exhibit A to the Application for Ejectment and incorporated herein by reference. Throughout that document, Defendant is referred to only as a Purchaser, and not as a Lessee or tenant.

4. While the Defendant has not paid all of the rent payments that have become due, the Defendant denies that grounds for ejectment exist, and thus the relief sought by the Plaintiff should be denied.

FOR A SECOND DEFENSE

5. Each matter set forth above is re-alleged as fully as if set forth herein.

6. The Plaintiff has requested the ejectment of the Defendant from the premises that is the subject of a lease purchase agreement.

7. For the Court to grant the Plaintiff the relief sought would cause the Plaintiff to receive an unjust enrichment.

8. Thus the relief sought by the Plaintiff should be denied.

FOR A THIRD DEFENSE

9. Each matter set forth above is re-alleged as fully as if set forth herein.

10. The Plaintiff has requested the ejectment of the Defendant from the premises that is the subject of a lease purchase agreement.

11. For the Court to grant the Plaintiff the relief sought would cause the Defendant irreparable harm.

12. Thus the relief sought by the Plaintiff should be denied.

FOR A FOURTH DEFENSE

13. Each matter set forth above is re-alleged as fully as if set forth herein.

14. The Plaintiff has requested the ejectment of the Defendant from the premises that is the subject of a lease purchase agreement.

15. This Court has concurrent jurisdiction over the subject matter of this action with the Court of Common Pleas. Because the damages that would be suffered by either party to this action exceed the jurisdiction limits of the Court. and because the Defendant is alleging counterclaims against the Plaintiff, the damages to which exceed those jurisdictional limits, and because the Defendant has filed a Written Undertaking, the Defendant is informed and believes

purpose because the project

was already operating at capacity and because of the moratorium that existed (which was not

a. Rental payments paid to the Plaintiff by the Defendant in the amount of about Sixty Thousand and 00/100 ($60,000.00) Dollars,

b. Additional development costs incurred to date, including hiring attorneys, architects and engineers in the amount of about Thirty Eight Thousand and 00/100 ($38,000.00) Dollars, plus insurance premiums, employee salaries, and other payments.

c. Almost a year of Purchaser's own time spent on the project during which time Purchaser was unable to attempt to earn funds on any other project or from any other source.

d. In addition, Hudson should be entitled to recover punitive damages from the Seller.

36. The total of these items exceed the jurisdictional limits of the Magistrate's Court, and the case should be dismissed.

FOR A TENTH DEFENSE AND COUNTERCLAIM

37. Each matter set forth above is realledged as fully as if set forth herein.

38. The property that is the subject of this action is commonly known as the Big Water Resort. It is a resort property with about six hundred (600) members who are members of the general public, and who bring guests to the property. The development and use of the property affects the public interest. Hudson has been damaged by the acts or practices of the Seller, and those acts or practices have affected the public interest in that the conduct by the Seller is capable of repetition.

39. Hudson and the Seller entered into a Lease Purchase Agreement and Hudson relied on representations made by the Seller regarding the condition of the property at the time the agreement was negotiated and prior to and subsequent to its execution. Seller made misrepresentations to the Purchaser or otherwise concealed relevant and material statements of

facts regarding the condition, usefulness, and ability to develop the property. The concealment of those facts constitute unfair or deceptive acts or practices in the conduct of trade or commerce. Hudson has suffered damages as set forth above, and is entitled to recover for those damages as well as recover treble damages and attorney's fees, all of which exceed the jurisdictional limits of the Magistrate's Court, and the case should be dismissed.

WHEREFORE having answered the Application for Ejectment in this matter, Hudson prays that the Court deny jurisdiction and dismiss the case, on the grounds set forth above including the grounds that the title to the property is in question, that the Defendant has filed a Written Undertaking, and that counterclaims by the Defendant in the original ejection action could result in damages in excess of the jurisdictional limits of the Magistrate's Court, and that the Defendant is entitled to judgment against the Plaintiff for the amounts set forth herein, and that the Defendant is entitled to such other and further relief as may be just and proper.

A. Paul Weissenstein, Jr.
Attorney for M.B. Hudson
PO Box 2446
Sumter, SC 29151
803-418-5700
pwlaw@ftc-i.net

Sumter, SC
November 9, 2011

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	CASE NUMBER: 11-CP-14-602
TLC Holdings, LLC,	)	
Plaintiff,	)	
v.	)	
M.B. Hudson a/k/a M.B. Hutson,	)	**SETTLEMENT AGREEMENT**
Defendant.	)	
M.B. Hudson a/k/a M.B. Hutson,	)	
Defendant and Third Party Plaintiff	)	
v.	)	
Richard U. Clark, Jimmy S. Lovell and James C. Thigpen,	)	
Third Party Defendants	)	

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 4/13/12
Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

Plaintiff, TLC Holdings, LLC, ("Plaintiff", "TLC" or "Landlord"), by and through its undersigned attorneys, and Defendant, M.B. Hudson a/k/a M.B. Hutson ("Defendant", "Hudson", or "Tenant"), by and through his undersigned attorney, hereby agree to a settlement of the above-captioned litigation on the following terms, effective as of March 30, 2012:

1. Reference is made to that certain Lease Purchase Agreement (the "Lease" or the "Agreement") dated December 15, 2010, by and among Landlord, Tenant, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen for property located in Clarendon County, South Carolina commonly known as the Big Water Resort (the "Premises" or the "Property"). Capitalized terms used in this Settlement Agreement without definition have the meaning given such terms in the Lease.

2. This Settlement Agreement shall be incorporated into a Consent Order (the "Consent Order") entered in the above-referenced case (the "Litigation"). Although Richard U. Clark, Jimmy S. Lovell and James C. Thigpen are parties to this Settlement Agreement by virtue of being parties to the Agreement, and are named as Third Party Defendants in the Litigation, they have not been served with pleadings in the Litigation and shall not be deemed to have appeared in the Litigation by their execution of this Settlement Agreement. This Settlement Agreement shall be binding upon all of the

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undersigned parties even though Richard U. Clark, Jimmy S. Lovell and James C. Thigpen have not appeared in the Litigation and are not parties to the Consent Order.

3. Plaintiff and Defendant hereby agree that the arrearage due by Tenant under the Lease totals **$199,969.19** as of March 31, 2012 (the "Arrearage"). The parties acknowledge the Arrearage includes late fees but not interest or Plaintiff's legal fees, which Plaintiff agrees not to include in the Arrearage.

4. Pursuant to the Consent Order, in the event that Mr. Hudson fails to comply with the terms of this Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in this Settlement Agreement, time being of the essence, then the Plaintiff is entitled to the following immediate relief, without further order of the court or notice to Defendant or his attorney: (a) termination of the Agreement, (b) cancelation of the lis pendens filed by Hudson in this action, (c) immediate vacation of the Property by Mr. Hudson except for his personal residence, which shall be vacated within 15 days, enforceable by the Clarendon County sheriff; and (d) the provisions of Section 23 shall be effective. Prior to any such default by Hudson hereunder, the parties acknowledge that the Lease remains in full force and effect in accordance with its terms, as modified by this Settlement Agreement, and during the Primary Term (as may be extended as provided herein), Hutson shall have full possession of the Property in accordance with, and subject to, the terms of the Lease as modified by this Settlement Agreement.

5. Upon entry of the Consent Order, and the preparation of a proposed subdivision plat by Hudson of a portion of the Premises substantially as shown on **Exhibit "A"** attached hereto, Hudson shall present the proposed subdivision plat to TLC for approval, which shall not be unreasonably withheld. Within five (5) business days after receipt of the proposed Qualified Plat (as defined herein), TLC shall either approve the same or provide Hudson with specific comments thereto. A "Qualified Plat" is a proposed subdivision plat of a portion of the Premises substantially as shown on **Exhibit "A"** attached hereto, which is prepared by a registered South Carolina land surveyor, and which meets the minimum standards for the practice of land surveying under South Carolina law. The Approval Deadline (as defined below) shall be extended day-for-day for each day beyond such five (5) business day period until TLC provides Hudson with the foregoing approval or comments. Within five (5) business days following receipt of TLC's comments to a Qualified Plat, Hudson shall cause his surveyor to revise the Qualified Plat to address TLC's comments, and resubmit the revised Qualified Plat. If the revised Qualified Plat incorporates TLC's comments, then the Approval Deadline shall be extended day-for-day for each day after the revised Qualified Plat is presented to TLC until TLC either approves the same or provides additional comments thereto to Hudson, which shall be incorporated into the proposed subdivision plat; provided, however, that in no event shall the extension of the Approval Deadline pursuant to this sentence exceed thirty (30) days for any reason. Upon TLC's approval of a proposed subdivision plat, TLC would provide a letter to the Clarendon County Planning Commission, Attn: David Epperson, requesting that the Clarendon County Planning Commission approve the subdivision of the Premises into not less than two (2) adjacent and unimproved acres of the Property, and the further subdivision of such acres into

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smaller individual lots, all of which must be contiguous. In addition, by April 3, 2012, TLC's attorney shall write the Clarendon County Planning Commission, Attn: David Epperson, and advise it that, while TLC is reserving its rights under this Settlement Agreement to approve any draft subdivision plat prior to its formal submission to the Planning Commission for consideration and approval – and advising the Planning Commission that no such subdivision plat should be considered by the Planning Commission unless accompanied by a letter from TLC or its counsel approving such proposed plat – TLC requests that Mr. Hudson and his professionals be permitted to consult with Clarendon County officials in conjunction with the preparation of a proposed subdivision for consideration by TLC (and, if approved by TLC, formal submission to the Planning Commission for consideration). Hudson may present alternative proposed subdivision plats to TLC for consideration. Mr. Hudson will pay for the survey(s) and all other expenses necessary to obtain all Approvals (as herein defined). Mr. Hudson will have until July 31, 2012 (as may be extended as provided herein, the "Approval Deadline") to obtain the Approvals (as defined herein). Mr. Hudson will have the right to extend the Approval Deadline for two (2) periods of thirty (30) days each (each, an "Approval Extension") if, prior to the then-applicable Approval Deadline, Mr. Hudson delivers to TLC written notice of his exercise of an Approval Extension, together with payment, by wire transfer, of $8,000, none of which will be applied to the Purchase Price, but one one-half of which will be applied to the Arrearage, with the remainder not applicable to either the Purchase Price or the Arrearage but instead in consideration of the extension of the Approval Deadline.

6. Once the Clarendon County Planning Commission and any other governmental agency that is required to approve the development of the subdivision of the Property, including appraisals, and bonding of water and sewer installation, grants its approval of the subdivision plat in full and complete so that same can be recorded (the "Approvals"), then Mr. Hudson will have fifteen (15) days to close (the "Closing Deadline") upon his purchase of not less than two (2) acres of the Property pursuant to the approved subdivision plat (such closing being referred to herein as the "Initial Closing", with the portion of the Property being purchased by Hudson at the Initial Closing being referred to herein as the "Initial Closing Property").

7. The Purchase Price for the Initial Closing Property, which must be paid in cash, shall be **$145,000.00 per acre**, which will be applied to the Purchase Price under the Agreement.

8. THE PARTIES ACKNOWLEDGE THAT THIS SETTLEMENT AGREEMENT IS NOT CONTINGENT UPON HUDSON'S RECEIPT OF THE APPROVALS.

9. At or before the Initial Closing, Mr. Hudson will provide to TLC a written statement from the realtor (Susan Stroman) that she is cancelling her commission contract with TLC and that, in lieu thereof, she will be paid by Mr. Hudson for her commissions for the sale(s) of portions of the Property pursuant to the Agreement as modified by this Settlement Agreement, both with respect to interim sales of acreage, such as the Initial Closing, and the ultimate purchase of the entire Property (the "Stroman Evidence"). In

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other words, whatever commission Susan Stroman or her company would be entitled to under the Agreement shall be owing by Mr. Hudson, not TLC, and the Purchase Price to TLC is net of any such commissions (and the Purchase Price owing by Hudson shall be in addition to the commission owing to Stroman or her company). Absent the Stroman Evidence prior to the Initial Closing, TLC shall not be obligated to close, and Mr. Hudson shall be in default of this Settlement Agreement.

10. At the Initial Closing, in addition to the $145,000 per acre release price which will apply to the Purchase Price, Mr. Hudson will pay to TLC, in cash, the following (together, the "Additional Initial Closing Payments"): (a) the sum of **$140,000.00**, to be applied by TLC towards the Arrearage, unless the Initial Closing Property exceeds eight (8) acres, in which case the Arrearage shall be paid in full at the Initial Closing; and (b) the Arreared Additional Rent (as defined herein). The Additional Initial Closing Payments will not be applied to the Purchase Price, and are a material component of this Settlement Agreement, without which TLC shall not be obligated to close upon the sale of such acreage to Mr. Hudson, who would then be in default. However it is anticipated that the Additional Initial Closing Payments will be paid at the Initial Closing, and not prior thereto.

11. If prior to the Closing Deadline, Hudson has any unexercised Approval Extensions (i.e., if he obtained the Approvals prior to having to exercise both of the Approval Extensions), then he shall be permitted to exercise any remaining Approval Extension(s) to extend the Closing Deadline.

12. In addition to the two Approval Extensions described above, Mr. Hudson will have a third (3rd) thirty (30) day extension right, which may be used either to extend the Approval Deadline a third time, or to extend the Closing Deadline (the "Third Extension") if, prior to the then-applicable Approval Deadline (if Hudson elects to use the Third Extension to extend the Approval Deadline a third time), or prior to the Closing Deadline (if Hudson elects to use the Third Extension to extend the Closing Deadline), Mr. Hudson delivers to TLC written notice of his exercise of the Third Extension, together with payment, by wire transfer, of $8,000, none of which will be applied to the Purchase Price or the Arrearage, and is solely an extension fee. For avoidance of doubt: one-half of the Approval Extension fees are applicable to the Arrearage, but none of the Third Extension fee is applicable to the Arrearage.

13. Beginning April 1, 2012, Hudson shall pay to TLC the Rent for the Premises of $8,000 per month, in advance on or before the first day of each month during the Term, without notice, demand, deduction, or offset. Payment shall be made to TLC by wire transfer only, pursuant to wire instructions provided by TLC to Hudson. Notwithstanding the foregoing, the April, 2012 payment may be received by TLC not later than 5:00 p.m. on April 3, 2012. Rent for all future months shall be payable on or before the first of such month, even if the first day of a calendar month occurs on a weekend or day the banks are closed.

14. Beginning April 1, 2012, in addition to the monthly base rent of $8,000, Mr. Hudson will also begin to accrue the obligation to pay, each month, the "Estimated

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Additional Rent Payments", which means 1/12th of the yearly estimated amount of "Additional Rent" owing under the Lease (i.e., real estate taxes for the Property, annual insurance premiums, and the lease rent owing to the South Carolina Public Service Authority, which are the responsibility of Hudson under the Lease), in advance on or before the first day of each month during the Term, without notice, demand, deduction, or offset; provided, however, that the Estimated Additional Rent Payments shall be deferred for that period from April 1, 2012, until the Initial Closing. The amount of Estimated Additional Rent Payments owing for that period from April 1, 2012 until to the Initial Closing, and which is being deferred hereby, is referred to herein as the "Arreared Additional Rent". The Estimated Additional Rent Payments shall be based on the most recent invoices therefor (e.g., the 2011 taxes for the Property, the most recent insurance premiums, and the most recent SCPSA rent amount), but Hudson shall remain liable for the actual amount of such charges in the event the estimated Additional Rent is insufficient (and entitled to a refund in the event of overpayment). After the Initial Closing, the right to defer payment of the Estimated Additional Rent Payments shall lapse, and Hudson shall pay such amounts on or before the first day of each calendar month in addition to the Rent, all by wire transfer to TLC.

15. Having begun to receive the Additional Rent in advance (subject to the deferral thereof prior to the Initial Closing only), TLC shall be responsible for remitting payment of those items to the applicable party (e.g., the Clarendon County tax collector, the insurance company, and SCPSA), but Mr. Hudson would remain liable for them as provided in the Lease. Not less than 10 days before those payments are due, Mr. Hudson would remit the difference between those charges and the amount he had previously paid to TLC by way of the monthly Estimated Additional Rent Payments. (For example: the 2012 property taxes for the Property will be due in January, 2013, before Hudson has paid a full year's worth of Estimated Additional Rent Payments. Not later than January 5, 2013, Hudson shall pay to TLC the difference between the actual tax bill and the amount of Estimated Additional Rent Payments allocable to the property taxes, and then TLC would remit those funds to the Clarendon County tax collector.)

16. Mr. Hudson will pay all of the Arrearage not later than the earlier to occur of (a) December 31, 2012; and (b) the closing on the sale of a more than eight (8) acres of the Property pursuant to this Settlement Agreement and the Agreement, whether individually or when aggregated with land previously purchased hereunder. (In other words, at the time that Hudson buys, or causes to be bought, more than eight (8) acres of the Property, whether in a single closing or when combined with land previously purchased, all of the Arrearage must be repaid in addition to the $145,000 per acre price.)

17. Not later than May 15, 2012, Mr. Hudson will pay to TLC by wire transfer all of the amounts received from Universal Financing since the Lease was executed, which amount totals approximately $5,000.

18. In the event of any default by Hudson in the payment of amounts owing under this Settlement Agreement, he will be in default of this Settlement Agreement and the Agreement itself, with no grace period and no right to notice of default, and TLC shall be entitled to the relief set forth in Section 4 above.

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19. Provided that Mr. Hudson has fully complied with the Settlement Agreement as of December 31, 2012, including repaying the Arrearage in full, and provided that he has paid the 2012 property taxes by that date (which would otherwise be due on January 15, 2013, pursuant to South Carolina law), then, as of December 31, 2012, (a) the Primary Term of the Lease shall be automatically extended until October 31, 2013 (with Hudson entitled to possession of the Premises during such extended Primary Term, upon the terms and conditions of this Settlement Agreement and the Lease as expressly modified hereby); (b) the Purchase Price for the Property will remain \$6,000,000 through October 31, 2013, provided that: (i) the unpaid amount is paid in cash; and (ii) Hudson has provided the Stroman Evidence as provided herein; and (c) the \$500,000.00 promissory note given by Hudson with respect to the purchase of the membership interests in The Big Water Resort, LLC, shall be automatically amended to extend the maturity date thereunder to October 31, 2013. The Agreement is hereby amended to delete any right of Hudson, or obligation of TLC, to permit Hudson to finance the purchase of the Property through the delivery of a promissory note to TLC (as described in Section 1.4(ii) of the Agreement), and the entire Purchase Price shall be paid in cash.

20. Mr. Hudson shall, at his expense, commence paving all private roads, parking lots and recreational vehicle ("RV") parking spaces on the Premises by February 28, 2013, and complete such work not later than May 31, 2013.

21. Not later than April 4, 2012, Mr. Hudson shall deliver to TLC a written statement, signed by him, that neither Mr. Hudson nor any of his companies have made any commitments to anyone on behalf of TLC and/or its members (i.e., Messrs. Clark, Lovell and Thigpen) with respect to the Property, and that any agreements made by Mr. Hudson or any of his companies with respect to the Property have been on behalf of The Big Water Resort, LLC, or another Hudson-company, but not TLC or its members.

22. Provided he is in compliance with this Settlement Agreement, Hudson would continue to have the right to purchase unimproved acreage upon the Property in excess of the Initial Closing Property at the same \$145,000 per acre price as set forth above, up until December 31, 2012 (and, if he complies with the Settlement Agreement, including repaying all of the Arrearage by that date, such deadline would be extended until October 31, 2013 as provided above), but any additional acreage would have to be adjacent to the acreage already purchased unless at or before the closing upon the purchase of such additional, non-contiguous acreage, Hudson repays the Arrearage in full in addition to the \$145,000 per acre price.

23. As a material consideration of this Settlement Agreement, in the event of the termination of the Agreement pursuant to Section 4 above as a result of Hudson breach hereof, then automatically and without further action of the parties, as of the date of such termination (the "Termination Date"), Hudson shall be deemed to have released, forever discharged and promised never to sue TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, and their respective agents, attorneys, insurance companies, parent companies, subsidiaries, affiliates, predecessors, successors, or assigns (together, the "TLC Parties"), from any and all injuries, personal or property, known or unknown,

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causes of action, demands, warranty claims, damages, suits at law or in equity, of whatsoever kind and nature, or because of any matter or thing done, omitted or suffered to be done, by the TLC Parties, prior to and including the Termination Date, on account of all injuries and damages, including attorneys' fees and litigation expenses, arising from the Lease or the relationship between Hudson, on the one hand, and TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, on the other hand, and any causes of action, known or unknown, relating to the Lease, including any and all claims alleged, or which could have been alleged, in the Litigation.

24. As a material consideration of this Settlement Agreement, in the event of the termination of the Agreement pursuant to Section 4 above as a result of Hudson breach hereof, and provided that Hudson has timely vacated the Property in accordance with this Settlement Agreement and surrendered the same to Landlord in the same condition as is required under the terms of the Lease upon a termination or expiration of the Primary Term thereof, then automatically and without further action of the parties, as of the Termination Date, the TLC Parties shall be deemed to have released, forever discharged and promised never to sue Hudson and his agents, attorneys, insurance companies, parent companies, subsidiaries, affiliates, predecessors, successors, or assigns (together, the "Hudson Parties"), from any and all injuries, personal or property, known or unknown, causes of action, demands, warranty claims, damages, suits at law or in equity, of whatsoever kind and nature, or because of any matter or thing done, omitted or suffered to be done, by the Hudson Parties, prior to and including the Termination Date, on account of all injuries and damages, including attorneys' fees and litigation expenses, arising from the Lease or the relationship between Hudson, on the one hand, and TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, on the other hand, and any causes of action, known or unknown, relating to the Lease, including any and all claims alleged, or which could have been alleged, in the Litigation.

25. The foregoing terms and conditions are to be strictly enforced, and time is of the essence with regard to each and every term of this Settlement Agreement.

26. The parties further covenant and agree that this written instrument expresses the entire agreement between the said parties, and there is no other agreement oral or otherwise varying or modifying the terms of this Settlement Agreement. This Settlement Agreement will inure to the benefit of and bind the respective heirs, personal representatives, successors, and permitted assigns of the parties to it. If any clause or provision of this Settlement Agreement is determined to be illegal, invalid, or unenforceable under any present or future law by the final judgment of a court of competent jurisdiction, the remainder of this Settlement Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid, or unenforceable, there will be added in lieu thereof a provision as similar in terms to that provision as is possible and be legal, valid, and enforceable.

27. Each and every term, covenant and condition of the Lease is incorporated herein such that the Lease and this Settlement Agreement shall be read and construed as one instrument. The Lease, as hereby amended, remains in full force and effect, and except as expressly stated herein, all terms and conditions of the Lease remain

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unchanged. If there is a conflict between this Settlement Agreement and the Lease, then the provisions of this Settlement Agreement shall control.

28. This Settlement Agreement may be executed in counterpart, each of which shall be deemed an original but all of which shall constitute one document. This Settlement Agreement shall not constitute evidence of a settlement between the parties until such time as a counterpart of this document has been executed by each party hereto.

29. This Settlement Agreement and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of South Carolina.

[Remainder of Page Left Blank Intentionally]

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IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of March 30, 2012.

TLC HOLDINGS, LLC

By: ______________________
Richard U. Clark, its Member

____
Richard U. Clark

____
Jimmy S. Lovell

____
James C. Thigpen

____
M.B. Hudson a/k/a M.B. Hutson

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IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of March 30, 2012.

TLC HOLDINGS, LLC

By: ______________________
Richard U. Clark, its Member

____
Richard U. Clark

____
Jimmy S. Lovell

____
James C. Thigpen

____
M.B. Hudson a/k/a M.B. Hutson

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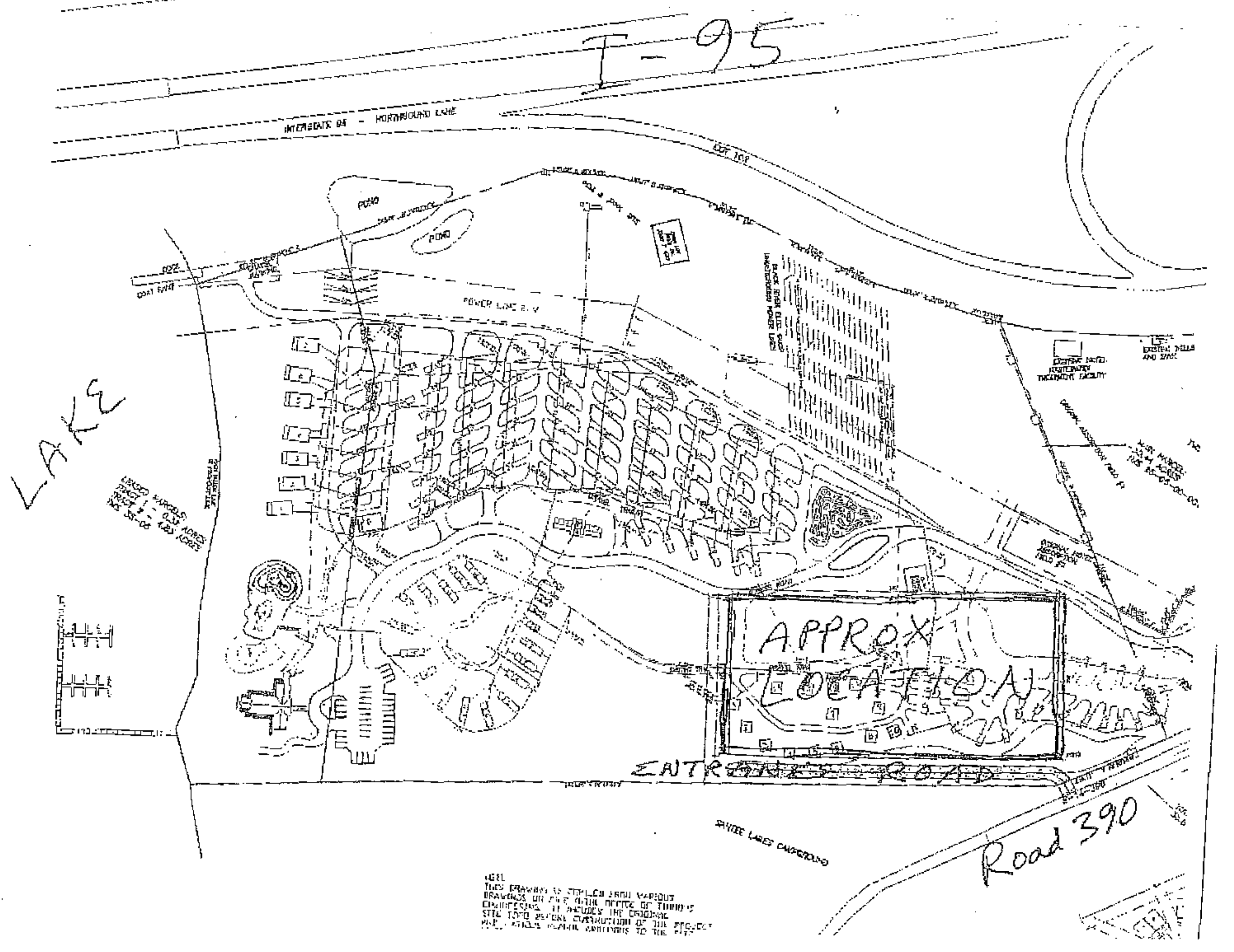
EXHIBIT A

See attached


I - 95
INTERSTATE 95 - NORTHBOUND LANE
POND
POND
POWER LINE R/W
LAKE
APPROX LOCATION
ENTRANCE ROAD
Road 390
SANTEE LAKES CAMPGROUND

page of application to Clarendon County Planning Board

J

10. Explain in detail what it is you are requesting permission to do. Attach supporting documentation and/or data if necessary or applicable.

Develop a single family subdivision at Big Water resorts

Signature of Applicant: [signature]

Sworn to and subscribed before me this 12 day of April Year 2012

[signature]

Notary Public My Commission Expires Aug 31, 2017

PERFORMANCE ZONE CERTIFICATE

Clarendon County Planning Commission Hearing Date: ______________________

Upon the basis of the above application, the statements in which are made a part thereof, The Clarendon County Planning Commission approves the proposed use, in so far as all other applicable requirements of the Clarendon County Unified Development Code, Ordinance 2011-05, are adhered to.

____

Chairman, Clarendon County Planning Commission

This certificate shall expire 365 days from the Planning Commission Hearing Date unless a Use or Building Permit has been issued for the approved use. This certificate neither implies nor authorizes the commencement of construction without the issuance of a Building Permit.

Application Denied*

Reason for Denial:

____

Chairman, Clarendon County Planning Commission

***Applicant may not reapply for the same use with 365 days of the above Planning Commission Hearing Date.**

Clark depo. 3-18-15 No lease

1 say.
2 A. I can wait. Whatever you want me to do.
3 Q. Okay. Let's go back to this long-term
4 contractual obligations that Big Water Resort has
5 with these campground members for in some cases two
6 lifetimes. Okay?
7 Can you tell me today what the current ages
8 of the members of the LLC, that are now the powers
9 of attorney for the LLC, what your ages are, Mr.
10 Lovell's and Mr. Thigpen's?
11 MR. WILKERSON: Object to the form.
12 A. I can tell you mine.
13 Q. That's fair.
14 A. It's 69.
15 Q. Okay. And Mr. Lovell, and I don't need an
16 exact date or time, roughly how old is he? Is he
17 in his 60s too?
18 A. I'm looking at him now. 67.
19 Q. Okay. Fair enough. And Mr. Thigpen?
20 A. I'm guessing 65.
21 Q. Okay. So you're all in your 60s?
22 A. Yes.
23 Q. And some closer to 70 than others; is that
24 fair?
25 A. I'm close.

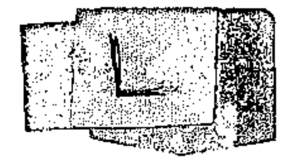
Sellers ages

1 Q. Okay. What is the long-term plan for
2 meeting any operational shortfalls for Big Water
3 Resort, LLC, in the event of any of your deaths?
4 MR. WILKERSON: Object to the form.
5 A. I suppose that will be the responsibility of
6 my heirs.
7 Q. Is there any --
8 A. And Mr. Lovell's heirs, and Mr. Thigpen's
9 heirs.
10 Q. Is there any contract, guarantee, any legal
11 document in place whatsoever between Big Water
12 Resort, LLC, and yourself, Mr. Thigpen and Mr.
13 Lovell requiring your estates to fulfill those
14 contractual obligations?
15 A. No.
16 Q. Did Big Water Resort, LLC, ever communicate
17 with any third parties, consultants, anyone else to
18 evaluate these long-term contractual liabilities,
19 or to pnt in place provisions to ensure that they
20 could be fulfilled?
21 A. No.
22 Q. Change directions again. Let's talk about
23 the real property that the campground is situated
24 on. Would you agree on behalf of the LLC that
25 access to the campground property would be integral

1 for the LLC to be able to fulfill its contractual
2 obligations?
3 A. That's correct.
4 Q. What legal right today does Big Water
5 Resort, LLC, have to access the real property?
6 A. Are you talking about Big Water Resort, LLC?
7 Q. Yes.
8 A. Or the members of the Big Water Resort, LLC?
9 Q. I'm talking about the LLC that bas the
10 contractual obligations to the campground members.
11 A. It has the right as a third-party
12 beneficiary to the lease that TLC Holdings, LLC,
13 bas with Sandy Sbores, LLC.
14 Q. Was there ever a written lease agreement
15 between TLC Holdings, LLC, and Big Water Resort,
16 LLC, from 2003 to 2010?
17 A. Yes.
18 Q. Where is that lease?
19 A. I don't know.
20 Q. What efforts have been made to locate the
21 lease?
22 MR. WILKERSON: That's L.
23 A. We contacted the following individuals.
24 Q. Okay.
25 A. John Usry, be was CPA handling the books,

no Lease ever exist between TLC + BWR

1 and asked him did he have a copy of the lease and
2 he said no. But he said that if he had been given
3 that lease prior to 2004 he wouldn't have it
4 because his office burned in late 2003.
5 Q. Okay.
6 A. Kathy Clark who did the books -- or not the
7 books, but the tax accountant for TLC Holdings,
8 LLC, does not have a copy.
9 Lisa Baxley, who was the office manager, she
10 does not have a copy. She says she remembers the
11 lease and she used the lease to book those payments
12 on the Big Water Resort, the ones you say that
13 never were booked, she used those to book those
14 payments. And she says it would have been filed,
15 that lease would have been filed in the filing
16 offices of Big Water Resort, LLC, along with the
17 other files.
18 There was a search conducted in the personal
19 files of myself, Mr. Thigpen, Mr. Lovell. We
20 didn't find the files in any of those files -- we
21 didn't find the lease in any of those files.
22 And we searched -- you've got to understand
23 Mr. Hutson had stewardship of this lease from
24 December 30th, 2010, until sometime late March when
25 he said he took those files to you. So he had



From: hutson4444@gmail.com
Date: October 2, 2015 at 10:35:45 AM EDT
To: OFFICE MAX OB <ODS06535CPC@officedepot.com>, cindy exum <cindy.exum@gmail.com>
Subject: Fwd: 5215 Dingle Pond Rd, Summterton SC

Hutson
803.308.2714

Begin forwarded message:

From: Michael Medlock <Michael.Medlock@stewart.com>
Date: October 2, 2015 at 10:32:36 AM EDT
To: "hutson4444@gmail.com" <hutson4444@gmail.com>
Subject: 5215 Dingle Pond Rd, Summterton SC

108 Acres
Clarendon County

To Whom it May Concern:

I have been advised that the property mentioned above in encumbered by several hundred private membership and use agreements. These agreements do not appear in the public record; however, any title policy will contain exceptions to these interests once known to the company regardless of recording status.

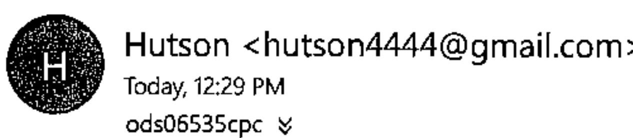
If there are hundreds of membership agreements for exclusive use of portions of the property for 2 lifetimes, that is a cloud on title that would be excepted to in any title insurance policy.

My opinion is that no lending institution would lend on this as they would require a subordination and non-disturbance agreement from each interested party in order to obtain a clear title policy

Michael S. Medlock
South Carolina Underwriting Counsel
North Carolina State Counsel / Underwriting Counsel
Stewart Title Guaranty Company

South Carolina Office
4406-B Forest Drive, Suite 102
Columbia, SC 29206
O (803) 765-1631 | M (803) 414-6272 | F (866) 811-2066

North Carolina Office
831 E. Moorehead Street, Suite 355
Charlotte, NC 28202
O (704) 912-3542 | M (803) 414-6272



Fwd: Hutson vs. Weissenstein. Me requesting help from Paul

H Hutson <hutson4444@gmail.com>
Today, 12:29 PM
ods06535cpc

Reply all |

Inbox

This item will expire in 30 days. To keep this item longer, apply a different label.

Label: 30 days Delete CPC mailbox (1 month) Expires: 9/19/2018 12:29 PM

Begin forwarded message:

> **From:** Hutson <hutson4444@gmail.com>
> **Date:** August 7, 2018 at 6:19:09 AM EDT
> To: OFFICE MAX OB <ODS06535CPC@officedepot.com>
> **Subject:** Fwd: **Hutson vs. Weissenstein. Me requesting help from Paul**
>
> Begin forwarded message:
>
> > **From:** Hutson <hutson4444@gmail.com>
> > **Date:** August 7, 2018 at 6:18:01 AM EDT
> > **To:** Steve Kropski <steve.kropski@earhartoverstreet.com>
> > Cc: steve@earhartoverstreet.com
> > **Subject: Re: Hutson vs. Weissenstein. Me requesting help from Paul**
> >
> > On Feb 10, 2017, at 2:13 PM, Steve Kropski <steve.kropski@earhartoverstreet.com> wrote:
> >
> > Good afternoon Mr. Hutson,

Reply all | Delete Junk | ...

I do not have an offer to present at this time. I have relayed your

request to our folks, and will present an offer to you if I am authorized

to do so.

Steven R. Kropski

Attorney

Direct 843 972 9404

PO Box 22528, Charleston, SC 29413

-----Original Message-----

From: hutson4444@gmail.com [mailto:hutson4444@gmail.com]

Sent: Friday, February 10, 2017 8:52 AM

To: steve@earhartoverstreet.com

Subject: Hutson vs. Weissenstein

Good morning Steve. I wish to remind you that I have stressed the

importance of Paul Weissenstein (my attorney who I paid) come to my aid

since he was honest enough to admit that he had simply over looked the

real situation and what he had caused.

Paul was honest enough to apologize for his conduct. Your intentional

continuous blocking my ability to have conversation with my prior attorney

M 3

Reply all | Delete Junk | •••

I again ask and stress the need to resolve this situation immediately
for

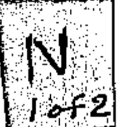
the future of Paul is merely going to become far more complex if you
don't

resolve this. Please call me to work out something now.

Respectfully,

Hutson

803.308.2714



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

WILLIAM REED, ET AL., PLAINTIFFS VS. BIG WATER RESORT, LLC,ET AL., DEFENDANTS	C/A NO.: 2:14-1583-DCN-WWD
TLC HOLDINGS, LLC, ET, AL., THIRD-PARTY PLAINTIFFS, VS. M.B. HUTSON, A/K/A M.B. HUDSON THIRD-PARTY DEFENDANT	**MOTION TO HAVE THIRD PARTY DEFENDANT'S DEPOSITION TAKEN IN FEBRUARY 2014 OR SOONER SUPPRESSED**

COMES NOW THIRD PARTY DEFENDANT WHO STATES THE FOLLOWING: On or about February, 2014 the Third Party Defendants took my deposition regarding the matters that are the subject of this law suite. [handwritten correction: suit] At the time my deposition was taken I was not aware of the serious breach of ethics and fraud to which Third Party Defendant had been subjected. My answers to questions at that deposition were based upon a limited and inaccurate set of facts. This was due to the non-disclosure and false disclosure of third-party defendant and their attorneys. Since obtaining discovery in this case my responses to most if not all of the questions Third Party Defendant was asked would be changed by my now fuller and more accurate understanding of the situation. Fairness requires that the previous deposition be stricken from the record. The prejudice that Third Party Defendant would experience should the use of the deposition be

N2

allowed would far outweigh any probative value to a fair understanding of the facts and circumstances of this case. There have been many filings demonstrating the newly discovered evidence that has greatly impacted my awareness of the activities that were hidden from me that limited my ability to defend this case. In the interest of justice and fair play my prior deposition must not be a part of this case going forward.

An earlier version of the same type of Motion was filed months ago by Third Party Defendant but Defendant did not have all evidence as has been submitted by depositions and production of documents recently proofing fraud, deception, conspiracy and wrongful actions taken by TLC, Richard Clark, James Lovell, James Thigpen and their attorneys. The earlier motion was ruled by a short term third Honorable Judge being neither the Honorable Judge Norton nor the Honorable Judge Baker and denied this motion based on " having to do with another case " therefore was denied. TLC and it's owners and attorneys fully understood the fraud involved in that 2014 deposition.

Turner Padget and TLC plan to use and have used this fraudulent 2014 deposition taken from another case to use against Third Party Defendant which is and has been unfair as they well know. Third Party Defendant would like to remind the Honorable Court that 99 percent of all evidence and proof comes from Richard Clark, James Lovell and Jim Thigpen's depositions and or documentation prepared by TLC or their attorneys and is solid proof.

THEREFORE, Third Party Defendant prays to the Honorable Court that the entire 2014 deposition taken in late January or February be permanently suppressed and not useable for any reason.

Respectfully filed on this 12th day of February 2016

MB Hutson Pro Se
803.308.2714

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF CLARENDON)

AFFIDAVIT OF BONHAM K. GARDNER

1. My name is Bonham K. Gardner. I am a licensed real estate agent and a certified residential appraisal. A copy of my resume is attached to this Affidavit.

2. I was hired by M.B. Hutson to determine whether he has added value to the Big Water Resort development.

3. I considered the following information in developing my opinions:

    a. Interview of Mr. Hutson.
    b. Review of public records.
    c. Telephone interviews with county officials and former members of the Big Water Resort development.
    d. Review of letters from government offices.
    e. Review of the engineering plans for the development.
    f. Site visit and inspection.

4. My opinions are also based on my knowledge, experience, and training.

5. In my professional opinion, Mr. Hutson has added significant value to the Big Water Resort development. Specifically,

    a. He was able to lift the water and sewer moratorium that had been in place on the system that services this development. The development value of the Big Water Resort is non-existence without it. However, with the water and sewer moratorium lifted, the development value is substantial.

    b. He was able to bring a viable restaurant to the development.

    c. He was able to change the membership structure for the development, which provides a revenue stream that was not in existence before his arrival.

6. I have prepared a written report dated February 27, 2014. It is attached to this Affidavit and I am incorporating everything stated therein into this Affdavit.

7. I am a member of the Clarendon County Planning Commission Board of Appeals. I have served in that capacity for approximately ten years.

8. Based on my education, training, and experience, combined with my knowledge of the local residential market, the Big Water Resort development is a viable project that would be a successful venture once the necessary approvals are in place.

Bonham K. Gardner

SWORN TO AND SUBSCRIBED BEFORE ME

This 3rd day of March, 2014

Notary Public for South Carolina

My Commission Expires: 7/10/22

BONHAM K. GARDNER

P.O. Box 303
Manning, SC 29102
Phone (803) 435 8679

February 27, 2014

Mr. Mr. M.B. Hudson
Big Water Resort, LLC
5215 Dingle Pond Rd.
Summerton, South Carolina 29149

Re: Real Estate Consultation of proposed & existing development.

Dear Mr. Hudson:

At your request, have prepared a report for you explaining the existing development and proposed developments for the purpose determining the economic impact and equitable interest of said property. I am a SC Certified Residential Appraiser and SC Licensed Real Estate Agent. This is not an appraisal and I am not representing myself as an appraiser. I am representing this report as a Real Estate Professional with knowledge of the subjects market with respect to residential development.

I was engaged by Mr. M.B. Hudson to examine all aspects pertinent to this developments new creation of economic growth and market development since Mr. Hudson took control in December of 2010. I was asked to do this to assist Mr. Hudson and his Legal Council to determine if an Equitable Interest exist for the property with Mr. Hudson as the owner which is the subject of this report. I have been informed that my findings are to be used as evidence for a legal proceeding set for March of 2014.

The opinion of my findings have been developed by reviewing a purchase agreement for the membership of Big Water Resort, LLC. I inspected a development in Summerton, SC 29148, known as Big Water Resort. I reviewed the current tax assessments and recorded records available via Clarendon County public records pertaining to TLC Holdings, LLC and Big Water Resort, LLC. I have reviewed engineered plans of proposed development of the existing Big Water Resort. I have talked with local planning and municipal councils to get an understanding of the what is involved to reach a final approval of said development. I have researched data of surrounding properties and talked with collogues with knowledge of similar developments. Results of my findings are as follows;

Upon reviewing all of the documentation that was provided to me and the additional data I gathered via public records. I have reached to conclusion that in order for Mr. Hudson to have an Equitable Interest in this property, in my opinion there would have to be several elements to take place after the execution of the contract. Mr. Hudson needs to show evidence that fee simple estate can be obtained unencumbered. Approvals for the proposed improvements can be obtained based on his involvement. Clear evidence that he has increased cash flow as a result of his direct management and business practices that were not part of the original business when purchase agreement was entered.

Based on the documents that I have reviewed one key factor to the approval of the proposed development was that water and sewer must be available to this property. Allthough water and sewer runs adjacent the property it is not available to property owners due to a moratorium that is in place by the Town of Summerton. As a direct result of Mr. Hudson's efforts the moratorium has been lifted for Big Water Resort, subject to 4 items that will have to be done to get final approval from Clarendon County for the subdivision of the planed development. It is my opinion that the fact that water and sewer is available to this development creates stability to the project and has increased the marketability of Big Water Resort, as well given the project another source of significant income to be derived as a result the sale of these proposed lots and cabins. How can one value the equity this aspect of the approval process creates? The project would not move to any further with out water and sewer being available, therefore the project would not exist.

Hypothetically, to determine the value of this development based on the proposed plans you would have to set an existing land value. For this Hypothetical example take the land values of the current assessments of the two parcels to be included in the proposed development. Clarendon County 2013 assessment records indicate $29,000 per acre as if vacant. Now take the number proposed lots that will be part of the planed development, based on Clarendon County tax assessors 2013 assessed values of similar sized lots on similar areas of Lake Marion, assessed values range from $20,000 per lot to $54,000 per lot. So put a conservative assessment of $30,000 per lot for the proposed development. Then 90 to 100 lots would have an assessed range of $2,700,000 to $3,000,000. So then take 15.5 acres are to be used with Phase I of the Big Water Resort project. Just Phase I of the planed development has increased the assessed value of the project to $160,000 to $190,000 per acre. Now subtract the cost of completing the project so that these lots and cabins can be marketed. Based on current estimates of construction of similar projects, $1,000,000 to 1,500,000 would be needed to bring Phase I to completion. Now an assessed value of $75,000 to 120,000 per acre as a completed project. So subtract the original assessed value of $29,000 per acre from a completed projects assessed values of $75,000 to 120,000 per acre. A hypothetical Equitable Interest could be $46,000 to $90,000 per acre. 15.5 acres proposed Phase I would create an Equitable Interest of $700,000 to $1,400,000 based on Clarendon County Assessment Values and if the project is brought to completion. I have not made any value conclusions, the values used in this hypothetical scenario are base upon current Clarendon County Assessment values of the current property and assessments of similar lots with respect to size and location.

Upon execution of the purchase agreement the building located waterfront of the property, know as a community center or club house and was available for the resorts members and guest was getting little or no use. Mr. Hudson was able to get the required approvals to couvert this building to a functional restaurant. This building is now leased to a Chef/Owner for $3,000 per month and the lease agreement is performance based. There restaurant is open on Thursday thru Saturday 5:00pm to 10:00pm. It receives 300 to 500 customers per week. I feel the conversion of the restaurant has created additional income for the resort that did not exist when the purchase agreement was executed. To say what amount of Equitable Interest has been created due to the conversion of the building is inconclusive due to the fact that the restaurant has not been open long enough to give creditable income data. However it is my opinion that the restaurant has created value that did not exist previously.

Big Water Resort when established was advertised as a RV/Waterfront resort. Memberships to the resort were sold to individuals for a set fee. Each membership was had a lifetime value to the purchaser and could be transferred. The members were allowed to use the facilities for the life time of the member. Each member was required an annual maintenance fee. This fee was intended to maintain the property. If the members did not pay the annual fee then the membership canceled. At one point it is documented that 700 memberships were sold. The resort was only open to members. Therefore the only income derived was from members dues because the project could uot handle additional members. It is my understanding that Mr. Hudson made the necessary business decisions to reduce the membership to the point that he could open the resort to the public. This decision by Mr. Hudson has resulted in additional cash flow that did not exist when he executed the purchase agreement. The opinions I have made as to the memberships is based on verbal data that has been provided by Mr. Hudson and data from past members.

In conclusion it's my opinion that an Equitable Interest does exist for Mr. Hudson based on the findings mentioned above. I give these opinions based on my professional experience as a Licensed Real Estate service provider serving Clarendon County and Lake Marion for the past 18 years. I also recommend that if Mr. Hudson would like a more accurate indication of the true value of the properties mentioned in this report, that he have a appraisal completed of the entire Resort "As Is" and a second appraisal completed subject to completion of proposed development. I have created a file and I have all of the data used to develop my opinions and findings iu this file. I'm more that happy to produce these documents upon request.

I certify that I have no interest, present nor contemplated, in this property and that neither the employment to prepare the analysis, nor the compensation is contingent upon the findings of this report. I also certify that the opinions based on the properties that are subject of this report to be uncontaminated, or have any adverse effect, due to hazardous conditions unobserved by the physical inspection of the property.

Respectfully Submitted,

Bonham K. Gardner

PD via CK or WIRE

P

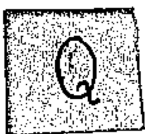
2012

Date	Check	Amount
March ~~31~~ 12	CK # 1066	$ 8000
March 19	CK # 1123	$ 4000
March 23	# 1123	3,000
Feb. 8	CK # 1062	$ 2000
17	CK # 1063	$ 3000
2	CK # 1061	$ 2200
24	CK # 1064	$ 2600
Jan. 6	CK # 1035	$ 4500
13	CK 1038	$ 1600
25	# 277530	$ 1300
18	# 277531	$ 1300

Record
Check or Wire
Transfers to TLC
Holdings from
Hutson for the
Lease – Purchase
Agreement.

Copies of Wire Transfers Showing Recipient / #

Date	#	Amount
4/2	# 000853	$ 8,000
5/15	# 000728	$ 5,000
5/31	# 000821	$ 8,000
7/2	# 000016	$ 8,000
8/1	# 000162	$ 8,000
9/4	# 000193	$ 8,000
10/3	# 000387	$ 8,000
11/8	# 000547	$ 8,000
12/18	000 429	$ 4,000
1/7	000 190	$ 4,000
1/29	000 290	$ 8,000
3/26	000 755	$ 8,000
4/30	000 429	$ 8,000
6/4	000 224	$ 8,000
7/8	000 136	$ 5,000
7/17	000 056	$ 3,000
8/8	000 308	$ 8,000
9/17	000 190	$ 4,000



INBOX Compose Addresses Folders Options **FTC WEBMAIL**

Current Folder: **Sent**

Message List Delete Edit Message as New Forward Forward as Attachment Reply Reply All

Subject: RE: Big Water Resort
From: pwlaw@ftc-i.net
Date: Sat, March 31, 2012 5:57 pm
To: THarper@wcsr.com
Priority: Normal
Options: View Full Header | View Printable Version | Download this as a file | View Message details | View as HTML

13 days before Settlement Agreement signed

Dear Tom,
Mr. Hudson has signed the agreement and same is attached hereto. Please provide us a copy signed by your clients as soon as possible.

I have also attached a proposed letter to be signed by Mr. Hudson per the agreement. I will provide it once I have received the signed agreement from your clients.

Please provide the wiring instructions so that we can send the initial $8000 payment.

I look forward to receiving the proposed consent order from you soon which I understand will be signed by me and Mr. Hudson as well as by you and your clients.

I trust that this resolves the court hearing scheduled for Wednesday, and I am taking it off my calendar.

Thank you for all of your hard work, especially over the past few days, in preparing the drafts and the final settlement agreement.

I believe that you and I have negotiated a fair and equitable agreement for both our clients that hopefully will make both of them a lot of money over the next two years.

I hope that you have a good rest of the weekend.

Yours very truly,
A. Paul Weissenstein, Jr.
APWjr/lle

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER)

RECORDED
2018 DEC 12 AM 9:49
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

) Civil Action No. 2018-CP-43-1583

MB Hutson/MB Hudson,

Plaintiff

vs.

A. Paul Weissenstein, Esq.

Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

Even though Plaintiff has filed within the Court much evidence as to the malpractice by Defendant Paul Weissenstein, and Defendant's attorney filed on December 10, 2018, *during the hearing* yesterday his "DEFENDANT PAUL WEISSENSTIEN'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR FOR SUMMARY JUDGMENT," Plaintiff files to clear up some of the intentional confusion that Defendant's attorney attempted to displace in the Court yesterday.

1. Plaintiff did enter into the LPA (Lease Purchase Agreement and the MIPA (Membership Interest Purchase Agreement) for the business in December of 2010.

2. Plaintiff took extraordinary steps to follow up on the property title:

   a) Plaintiff did email asking the Sellers' Realtors if the memberships were a problem. The Realtors responded that they did not know.

   b) Plaintiff telephoned Billy Coffee, Esq. of Manning, S.C. in November of 2010, whose name the Plaintiff acquired from the Sellers'

Realtor to see if the memberships at the campground would be a problem for development. Coffee would not return the call.

c) As a follow-up, Plaintiff asked the Realtor to contact Coffee concerning this issue, but she stated that Coffee was not returning her phone calls either. (NOTE: Plaintiff later found out that TLC Holdings, LLC, the landowners/Sellers, were involved in litigation against Billy Coffee, Esq., which was the supposed reason by Plaintiff that the phone calls were not being returned regarding the land owned by TLC Holdings, LLC.)

d) Also, Plaintiff, as an extra step, had Andrew Tucker, Esq. come from Tennessee and review the Retail Family Membership Agreements. Tucker indicated that they appeared to be contingent upon annual renewal fees for the use of the front acreage, i.e. developed, acreage (pools, bathhouse, docks, loading ramp, game rooms, etc. This was substantiated in referring to the Lease Purchase Agreement (LPA) under the property description (Exhibit A of the LPA: which cited[1]
"A. CAMPGROUND KNOWN AS BIG WATER RESORT….containing 30.44 acres…."

e) Subsequently, within the 90 days of due diligence, Plaintiff engaged Ron Nester, Esq. of Santee, S.C., to do a title search on the property. It came back clear; nothing showed up reflecting a defective title. In

[1] Exhibit A of the Lease Purchase Agreement delineates three (3) parcels/tracts of land, with A) being "CAMPGROUND KNOWN AS BIG WATER RESORT" "containing 30.44 acres." (line 2). Exhibit "B".

retrospect, it is now known that the Sellers, TLC Holdings, LLC had failed to follow state law[2] *on purpose* which requires the recordation of such long-term title encumbrances (leases / agreements). They did this so that even ***a reasonable 'Buyer" would NOT be able to discover the title issues of the property without a competent real estate attorney that should know the law and so advise his/her client.*** Even, at that, ***only 30.44 acres were identified as "campground."***

5. Paul Weissenstein could have easily won the counter claims had all material facts been included in his counter claim, but they were due to his failure to investigate, learn, and advise thus committing on-going grand malpractice. Defendant's breach of duty due to neglect and unprofessional representation caused him to fail to protect his client:

a) when he had the opportunity to investigate, learn, and advise his client on the important facts noted above, and

b) when, in the counterclaim that Defendant filed in behalf of his client, the Plaintiff, Defendant Weissenstein did not include the facts and expose the fraud within the documents.

6. STATUTE: Due to Paul Weissenstein's failure to investigate, learn, and advise his client, Plaintiff only learned the full scope of his breach of duty in early

---

[2] S.C. Code 1976 § 27-33-30 : *In order to give notice to third persons any lease or agreement for the use or occupancy of real estate shall be recorded in the same manner as a deed of real estate.*

October of 2015, which is well within the statute of 36 months, with this filing being originally made in September of 2018:

7. Plaintiff discovered on October 2, 2015, in a conversation with Michael Medlock, Esq., South Carolina Underwriting Counselor for Stewart Title Company, that the title was defective. This was the first time Plaintiff learned of the defective title. Plaintiff asked Medlock if he would send that in writing, and Medlock did so the same day.[3]

8. Mid-stream in a Federal lawsuit whereby TLC Holdings, LLC sued Plaintiff (then as a Third Party Defendant in the Class Action Lawsuit where the Plaintiffs were owners of the Retail Membership Agreements), Plaintiff, still not knowing that **NONE** of the property was developable, became puzzled by some of the questions and comments in depositions and began even more inquiries. This included sending documents to Tommy Robertson of the S.C. State Law Enforcement Division[4] (SLED). As Plaintiff mentioned in the Hearing of December 10th, 2018, in Sumter, SLED's legal department confirmed "civil fraud" but would take no action due to their assessment that it was 'civil fraud' explaining that they only got involved in 'criminal fraud.' When documents were returned to Plaintiff by SLED, these documents, which had been sent to SLED, were kept in place in the mailing folder[5] until the writing of this paper including the list of documents sent to SLED.[6]

[3] Exhibit "L".
[4] Envelope exhibit "X".
[5] Pictures of dated stamped envelope sent by Hutson to SLED, which they returned. Exhibit "X"
[6] Copy of "Attachments to Letter to SLED". Exhibit "Y".

3. Plaintiff was noticed that he was going to be evicted in 2011 due to non-compliance of the contract and hired Defendant Paul Weissenstein to represent him regarding the eviction and counter claims on October 3, 2011. Defendant reviewed carefully all contracts and filed a counter claim in favor of Plaintiff[7]. *At that time* neither the Plaintiff, nor his counsel, Paul Weissenstein, Esq., recognized the title defect whereby development cited in the LPA.[8]

4. THEREFORE, the Defendant, Paul Weissenstein, failed to include crucial facts in the counter claim due to his inability to recognize the fraud and corruption within the contracts. Plaintiff hereby lists the counter claim facts that should have been named but were not, due to Defendant Weissenstein's defense, which constitutes a grossly negligent breach of duty, that caused his client damages in excess of $2M. They are as follows:

a. Paul Weissenstein failed to include defective title caused by the memberships.

b. Paul Weissenstein failed to ask, investigate, identify, nor include that TLC had never given nor provided a contractual agreement allowing the Big

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[7] Exhibit G.
[8] Exhibit B.

Water Resort "BWR" to have a right to use the property in order to honor the memberships.

c. Paul Weissenstein failed to investigate, learn, and advise his client that *none* of the property could be developed.

d. Paul Weissenstein failed to investigate, learn, and advise his client that the defective title would last for 70 years.

e. Paul Weissenstein failed to investigate, learn, and advise his client that BWR could never honor the 740 family memberships due to no land and no contract for any land.

f. Paul Weissenstein failed to investigate, learn, and advise his client that BWR was losing $300 thousand per year and there was no way the business could sustain itself even though Defendant had a deposition sheet that Plaintiff brought to him in 2012.

g. Paul Weissenstein failed to investigate, learn, and advise his client, Plaintiff, that he was caught in a $20M obligation to maintain the memberships for 70 years (two life times) due to BWR losing $300K/year.

h. Paul Weissenstein failed to identify the demands in the Settlement Agreement and Consent Order that required Plaintiff to develop property that could not be developed.

9. Defendant's attorney, Steve Kropski, Esq. contacted Stewart Title asking that he not work with Plaintiff for Plaintiff was attempting to get an sworn affidavit as to the defective title.

10. In addition, it should be noted that Steve Kropski, Esq., attorney for the Defendant, also has attempted to run interference preventing Paul from testifying in behalf of Plaintiff when Plaintiff was sued in Federal Court and needed Paul Weissenstein's testimony. Kropski and Defendant both knew that had Defendant testified in Plaintiff's behalf, he would be admitting to malpractice and therefore, refused.

11. Paul Weissenstein encouraged Plaintiff to execute the Settlement Agreement and Consent Order knowing full well that Plaimtiff would be locked into:

A. a *res judicata* legal box that would prevent Plaintiff from ever recouping from the fraud within the initial LPA and MIPA.

B. Selling divided lots to the public that could not legally be done.

The many lawsuits afterwards, the years of suffering, damages, and financial losses struggling with his own defense are a direct result of the Defendant's failure to perform his duty to investigate, disclose, and inform his client.

The execution of the Settlement Agreement and Consent Order doomed the Plaintiff. Paul Weissenstein, Defendant, and professed expert in real estate law, could have prevented that had he not failed to investigate, recognize, and disclose what plainly was before him in the contracts.

12. Defendant's attorney attempts to show that Andrew Tucker caused Plaintiff's grief. Andrew Tucker, Esq. was only engaged for three weeks for the initial contract signing and had no input or connection with the defense on eviction nor the Settlement Agreement and Consent Order.

13. Paul Weissenstein has caused Plaintiff enormous damage, even losing his equitable interest verified in Exhibit "O".

14. Plaintiff hired an expert attorney to provide a sworn affidavit after reviewing the extensive documents. His affidavit[9] clearly states that Paul Weissenstein had committed malpractice on the Plaintiff and never mentions Andrew Tucker for it was Paul Weissenstein who had every opportunity to properly file the right counter claim that would have caused Plaintiff to prevail and would have prevented years of work and lost equitable interest.

15. Defendant's attorney is simply trying to dance around the subjects throwing blame on Andrew Tucker when Defendant, Paul Wessenstein is the responsible counsel.

---

[9] Mark Hardee, Esq. Affidavit. Exhibit 1 and W.

16. Defendant admitted to Plaintiff that he had malpracticed Plaintiff and apologized on the telephone, yet hides behind his insurance attorney. Defendant was too ashamed to appear at yesterday's hearing for guilt reasons.

17. It would be a great injustice to blame Andrew Tucker for one small missed action that could have been fixed when Paul Weissenstein made more than 8 major neglectful unfixable mistakes that prevented Plaintiff from being successful and has led to lawsuits. This case for malpractice must go to jury trial and if not, there is no justice. Even in the sworn expert witness affidavit, Paul Weissenstein is the only person blamed. Additionally, Federal Judge Norton pin-points Paul Weissenstein in his order[10] as having been responsible for giving counsel.

THEREFORE, Plaintiff pleads and Prays

The Honorable Judge deny Defendants motion for Summary Judgment or Dismissal and send this case to a Jury as soon as possible based on the scintilla and hard evidence.

Respectfully Submitted on this 11th day of December, 2018 with typing corrections on the twelfth.

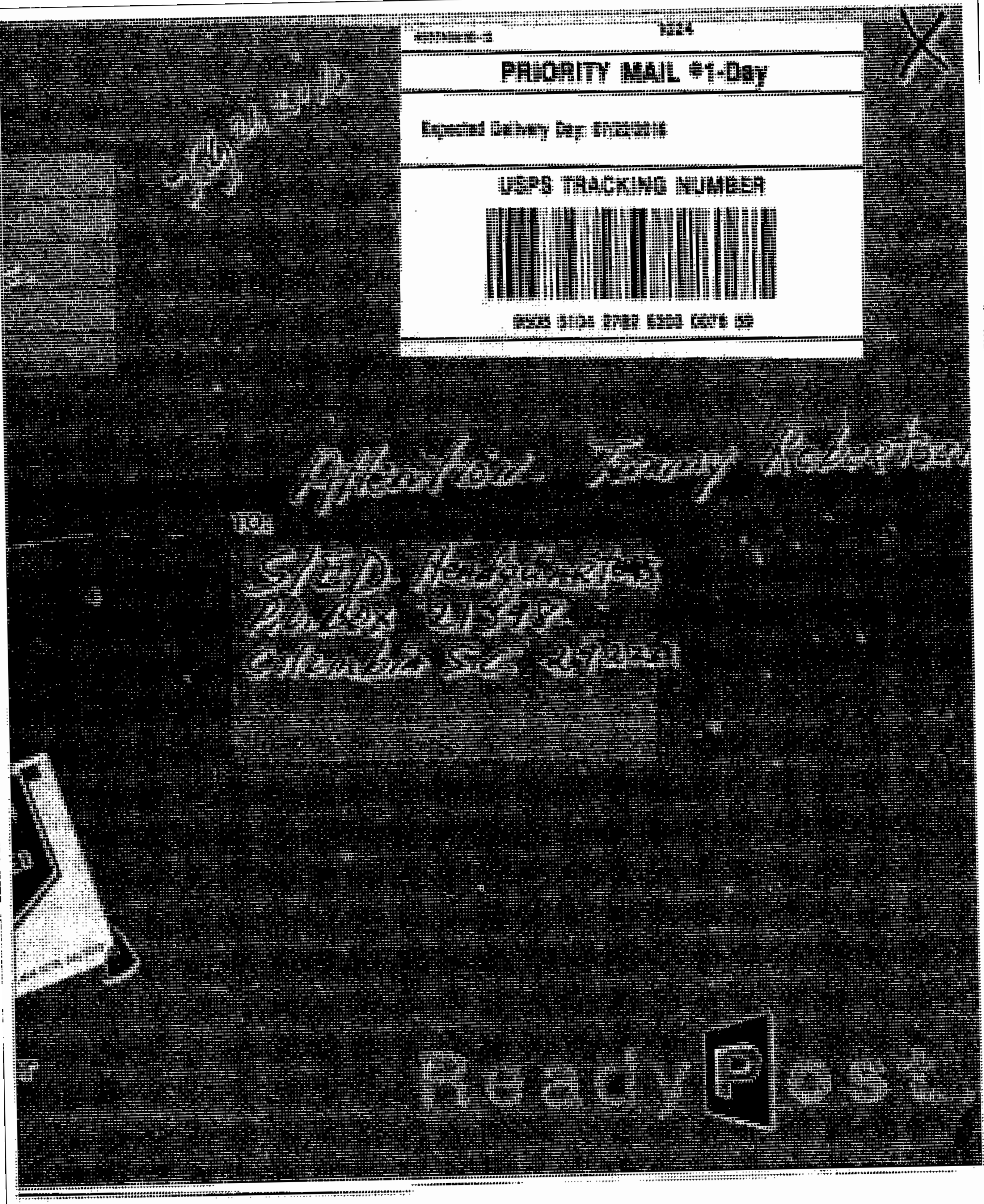
MB Hutson

P.O. Box 2755
Orangeburg, South Carolina 29116-2755
Tel: 803 308 2714

A Copy has been placed in the USPS to:

[10] Exhibit "F"

Steven Kropski, Attorney for the Defendant
P.O. Box 22528
Charleston, South Carolina 29413
Tel: 843.972.9400


USPS TRACKING NUMBER
ReadyPost

Attachments to Letter to SLED:

Title	Pages	Description	Date, if applicable
The Fraud Trial	18	Pub. of *Association of Certified Fraud Examiners* 716 West Ave., Austin, TX 78701-2727	
Lovell Deposition	1	Page # 113-116	February 16, 2011
Big Water Resort LLC Members Meeting	3	Minutes of BWR, LLC and TLC Holdings, LLC held concurrently	January 16, 2009
Lovell Deposition	1	Lovell states two legal entities held concurrent business meetings	September 25, 2014
Lease Purchase Agreement	25 plus Exhibits	Agreement written by Seller's attorney for the purchase of the land in Clarendon County	Executed December, 2010
Membership Interest Purchase Agreement	10	Agreement written by Seller's attorney for the purchase of the Big Water Resort, LLC (campground business)	Executed December, 2010
BWR, LLC Financial Status documents	5	furnished by Seller with contract to sell.	December, 2010
Richard U. Clark deposition	5	pp 77-96 of deposition describing: 1. ages of Sellers (sixties); 2. lack of long term plan (escrow) to ensure protection of business's sales contracts by BWR, LLC 3. lack of lease granting BWR, LLC (business)"right to use land and amenities" for one and two lifetimes/as sold to member families	March 18, 2015
Jimmy Steve Lovell	1	Deposition (p. 77) Lovell description of Sellers as "experienced"/ "sophisticated" businessmen	February 16, 2011
Sewer Moratorium correspondence	9	Correspondence to/from Sellers and governmental agencies regarding the existence of sewer moratorium issues as related to property owned by TLC Holdings, LLC in Clarendon County	2003-2011
Retail Membership Sales Agreement (sample)	2	Sample of one of the -/+ 1,200, 1-2 lifetime(s) of years "right to use" the land & amenities at BWR, LLC	Dates varied from about 2003-2008

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

WILLIAM REED, et al,	)	
PLAINTIFFS	)	No.: 2:14-cv-01583-DCN
VS.	)	The Honorable Judge Norton
BIG WATER RESORT, LLC, et al,	)	
DEFENDANTS	)	MEMORANDUM TO SUPPORT
	)	MOTION BASED ON NEW EVIDENCE
TLC HOLDINGS, LLC, et al,	)	
THIRD-PARTY PLAINTIFFS,	)	
VS.	)	RULE 60 b,c,d
M.B. HUTSON, A/K/A M.B. HUDSON	)	
THIRD-PARTY DEFENDANT	)	

DEFENDANT'S MOTION FOR RECONSIDERATION

Third Party Defendant, M B Hutson, Pro Se, respectfully moves this court under Rule 60 b, c, and d of the Federal Rules to alter or amend its judgment entered on May 20, 2016. In support of this motion, Hutson, Pro Se, relies on the accompanying Memorandum and Affidavit. As explained in the accompanying Memorandum, the SC State Court's decision was based on a clear error of fact in that newly discovered evidence (in 2015) which, even with reasonable diligence, could not have been discovered in time to move for a new trial in state court under Rule 59(b/c) which would have resulted in a different defense and outcome at the SC (2012) case that dealt with the Settlement Agreement and subsequent Consent Order by the Honorable Judge George James. For this reason, Defendant Hutson respectfully requests that this motion be granted, and

Prays to the Honorable Court and the Honorable Judge Norton the following:

Allow this motion to be heard in open Court.

S2

Grant Third Party Defendant permission to subpoena Paul Weissenstein with a date since he holds a wealth of information supporting the new evidence, as justice could not be served without his full testimony.

Set aside the State Court Judgment for the reasons outlined herein.

Invalidate the Settlement Agreement and subsequent actions on the grounds of fraud.

Rule in favor of Third Party Defendant's Summary Judgment and allow this counterclaim to be heard by a jury as soon as possible.

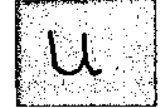
Grant special consideration to Pro Se, Third Party Defendant, who has been masterfully defrauded and robbed of both time and assets by the shrewdness of Third Party Plaintiffs, as he has no where else to turn for justice.

Respectfully submitted this ______ day of April, 2017

MB Hutson, Pro Se
803 308 2714

cc: John Wilkerson, Atty., Turner Padget

Frank Gordon, Atty.



1 Q Was there any sort of due diligence process
2 done by anyone?
3 A We were told by our real estate agent that
4 Mr. Hudson had been working with another agent out
5 there who I know. I should say I know of. And that
6 that agent had had him checked out and he was for
7 real. Richard and I met with Mr. Hudson. He came
8 across as very, very knowledgeable. Very
9 knowledgeable not only about the property but about
10 real estate development and financing and so on. And
11 we were motivated, in large part because I told you
12 we were losing 200, $250,000 a year, plus, I
13 personally am involved with numerous businesses that
14 I just don't have time to handle. And we were -- we
15 were very willing to work with good terms in order to
16 have someone else take control and manage the
17 property and suffer those losses or turn it around
18 and make those profits.
19 Q I didn't ask you this earlier, Mr. Lovell.
20 Where do you currently reside?
21 A I have a home in Chicago. Well, Burr Ridge,
22 Illinois, and I have a condo in Florida. I split my
23 time.
24 Q Do you consider yourself a citizen of any
25 one of those states?

1 A Florida.
2 Q Florida. All right.
3 A I have a home in Williamsburg, Virginia, to,
4 in case you're in the market.
5 MR. PADGET: I believe that's all I've
6 got for you, Mr. Lovell. Thank you for your
7 time today.
8 THE WITNESS: You bet.
9 EXAMINATION BY MR. WOODWARD:
10 Q One more question. Did I hear you correctly
11 that you and Mr. Clark offered one bank or the other
12 a million dollars to be done with this?
13 A We did.
14 Q At one point?
15 A We did.
16 Q Tell me about that.
17 A This was after the discovery of this debt
18 that we didn't know we had, and we got our attorneys
19 involved.
20 Q These guys here?
21 A These guys here. And it was somewhere
22 around, I don't know, August or September of 2008.
23 Is that when this began?
24 Q They can't answer you.
25 A Well, I'm sorry.

1 Q Do the best you can.
2 A I think it was around I think it was August
3 or so of 2008. Mr. Glasner, I think, had gotten
4 involved on the bank's end. And it could have been
5 maybe somewhere -- it was in the last part of 2008.
6 I can't remember if it was before or after the actual
7 foreclosure action was filed, but I think it was
8 before. So it would have put it in that time frame,
9 September or so. And we offered -- the bank came
10 back and said, look, we got this $200,000 note
11 satisfied, so we recognize that you don't really owe
12 that.
13 Q Who is talking here now?
14 A Glasner. And this is hearsay. You can get
15 these guys to confirm it.
16 Q We have to put Tom on the stand.
17 A It wasn't really Tom. We told Morris to see
18 if they'll take the million dollars that we
19 authorized originally, and he said no.
20 Q Who said no?
21 A Glasner.
22 Q And this was in the latter half of 2008?
23 A This was at the very beginning of all this
24 foreclosure activity. It was, I think, prior to the
25 filing.

1 Q Prior to the actual foreclosure being --
2 A Prior to the actual foreclosure filing if my
3 memory is right.
4 Q Any writings communicating this offer or was
5 it all telephonic or do you know?
6 A You would have to ask Morris. Our
7 instructions to Morris were verbal.
8 Q To offer a million?
9 A Right.
10 MR. WOODWARD: Thank you.
11 MR. HARPER: I'm done.
12 (The deposition concluded at 2:32 p.m.)
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Electronically signed by Lynda Bousquet (001-369-759-3178)
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STATE OF SOUTH CAROLINA COUNTY OF SUMTER MB HUTSON A/K/A MB HUTSON, Plaintiffs, vs. PAUL WEISSENSTEIN (Attorney)/) PAUL WEISSENSTEIN, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE THIRD JUDICIAL CIRCUIT CASE NO.: 2018-CP-43-1583 **DEFENDANT PAUL WEISSENSTIEN'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT**

ELECTRONICALLY FILED - 2018 Oct 03 4:16 PM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

TO: MB HUTSON/MB HUDSON, PRO SE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that Defendant Paul Weissenstein, by and through his undersigned attorneys, hereby moves for an Order dismissing Plaintiff's Amended Complaint in its entirety or for an Order granting Summary Judgment dismissing Plaintiff's Amended Complaint with prejudice. This Motion is brought pursuant to Rules 12(b)(6) and 56, SCRCP, and such other law and argument as is appropriate. Defendants' motion is based on the pleadings, supporting memoranda to be submitted prior to a hearing on this motion, and arguments of counsel. The particular grounds for this motion are as follows:

1. Plaintiff's Amended Complaint fails to allege allegations that would support a claim of Legal Malpractice. In particular, Plaintiff fails to identify specific alleged negligence by the Defendant and instead seeks to improperly impute alleged negligence of Plaintiff's prior attorney on this Defendant with any allegations supporting such liability;

2. Plaintiff was aware of all alleged "title defects" to the subject property prior to the underlying litigation that is the alleged subject of this malpractice claim, and thus, had no recourse for alleged title defects in the underlying litigation;

3. Plaintiff's claims are expressly and wholly barred by the terms of the contracts and agreements related to Plaintiff's attempt to lease and purchase the subject property in 2010, during which Defendant did not represent the Plaintiff;

4. Plaintiff was aware of each and every allegation that he alleges constitutes malpractice on the part of this Defendant prior to September 4, 2015, and thus, Plaintiff's claims are time-barred in their entirety.

WHEREFORE, Defendant respectfully requests an order dismissing Plaintiff's Amended Complaint in its entirety pursuant to Rule 56, SCRCP or in the alternative pursuant to Rule 12(b)(6), SCRCP for failure to state an actionable claim against this Defendant, for the costs of this action, and for such other and further relief as this court deems just and proper.

This 3 day of October, 2018.

Respectfully submitted,

EARHART OVERSTREET LLC

By: s/Steven R. Kropski
DAVID W. OVERSTREET
State Bar No.: 16965

STEVEN R. KROPSKI
State Bar No.:101441

Attorneys for Defendant Paul Weissenstein

PO Box 22528
Charleston, SC 29413
843-972-9400

ELECTRONICALLY FILED - 2018 Oct 03 4:16 PM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

MB HUTSON A/K/A MB HUTSON,

Plaintiffs,

vs.

PAUL WEISSENSTEIN (Attorney)/)
PAUL WEISSENSTEIN,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

CASE NO.: 2018-CP-43-1583

DEFENDANT PAUL WEISSENSTIEN'S ANSWER TO AMENDED COMPLAINT

Defendant Paul Weissenstein ("Defendant" or "Weissenstein") hereby answers Plaintiff's Amended Complaint in the above-captioned civil action as follows:

1. The allegations in Plaintiff's "definitions of malpractice" purport to recite definitions and caselaw to which Defendant need not respond. To the extent that these allegations imply any liability on behalf of Defendant, the allegations are expressly denied.

2. Defendant lacks sufficient information and knowledge to form a belief as to the veracity as to Plaintiff's current residence.

3. Defendant admits that he is a resident of Sumter County, South Carolina, and denies that any malpractice was committed by him during any time-period referenced by the Plaintiff.

4. The allegations in Paragraph A of the History section of Plaintiff's Amended Complaint refer to certain alleged documents and alleged exhibits. Accordingly, Defendant refers the parties and the Court to the subject documents and craves reference to the same. To the extent that the second full paragraph alleges any liability on behalf of the Defendant, the allegations are expressly denied.

ELECTRONICALLY FILED - 2018 Oct 03 4:18 PM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

5. Responding to Paragraphs B and C of the History section of Plaintiff's Amended Complaint, Defendant denies Plaintiff's construction of the exhibit referred to therein and Plaintiff's allegation of the impact of the exhibit. Further responding, these allegations refer to certain alleged documents and alleged exhibits. Accordingly, Defendant refers the parties and the Court to the subject documents and craves reference to the same. To the extent that the second full paragraph alleges any liability on behalf of the Defendant, the allegations are expressly denied.

6. Responding to Paragraph D of the History Section of Plaintiff's Amended Complaint, these allegations refer to certain court filings and exhibits. Accordingly, Defendant refers the parties and the Court to the subject documents and craves reference to the same. To the extent that the second full paragraph alleges any liability on behalf of the Defendant, the allegations are expressly denied.

7. Responding to paragraph E of the History Section of Plaintiff's Amended Complaint, Defendant lacks information and knowledge to form a belief as to the veracity of these allegations and, therefore, denies the same.

8. Responding to Paragraph F of the History Section of Plaintiff's Amended Complaint, these allegations refer to certain exhibits. Accordingly, Defendant refers the parties and the Court to the subject documents and craves reference to the same. To the extent that the second full paragraph alleges any liability on behalf of the Defendant, the allegations are expressly denied.

9. Responding to Paragraph G of the History Section of Plaintiff's Amended Complaint, Defendant admits that he has multiple meeting with Plaintiff, and lacks information or knowledge to form a belief as to the veracity of the remaining allegations and, therefore, denies the same.

ELECTRONICALLY FILED - 2018 Oct 03 4:18 PM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

10. Responding to Paragraph H of the History Section of Plaintiff's Amended Complaint, these allegations refer to certain exhibits. Accordingly, Defendant refers the parties and the Court to the subject documents and craves reference to the same. To the extent that the second full paragraph alleges any liability on behalf of the Defendant, the allegations are expressly denied.

11. Responding to Paragraph G of the History Section of Plaintiff's Amended Complaint, Defendant denies, as stated, these allegations.

12. Defendant denies the allegations contained in Paragraph J of the History Section of Plaintiff's Amended Complaint.

13. Defendant denies the allegations contained in Paragraphs A and B of Plaintiff's Count One of Malpractice.

14. Defendant denies the allegations contained in Paragraphs A and B of Plaintiff's Count Two of Malpractice.

15. Defendant denies the allegations contained in Paragraphs A and B of Plaintiff's Count Three of Malpractice.

16. Defendant denies the allegations contained in Paragraphs A(1-3) of Plaintiff's Count Four of Malpractice.

17. Defendant denies the allegations contained in Paragraphs A through C of Plaintiff's Count Five of Malpractice.

18. Defendant denies the allegations contained in Paragraphs A(1-2) through E of Plaintiff's Count Six of Malpractice.

19. Defendant denies the allegations contained in Paragraphs A through C of Plaintiff's Count Seven of Malpractice.

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20. Defendant denies the allegations contained in Paragraphs A and B of Plaintiff's Count Eight of Malpractice.

21. Defendant denies the allegations contained in Paragraphs A through D, including all subparts, of Plaintiff's Count Nine of Malpractice.

22. Responding to Paragraphs A and B of Plaintiff's Count Ten of Malpractice, this paragraph refers to exhibits. Accordingly, Defendant refers the parties and the Court to the subject documents and craves reference to the same. To the extent that the second full paragraph alleges any liability on behalf of the Defendant, the allegations are expressly denied.

23. Defendant denies the allegations in Paragraphs C through E of Plaintiff's Count Ten of Malpractice.

24. Defendant denies the allegations in Paragraphs A through C, including all subparts, of Plaintiff's Count Eleven of Malpractice.

25. Defendant denies the allegations in Paragraphs A and B, including all subparts, of Plaintiff's Count Twelve of Malpractice.

26. Defendant denies that he is liable to the Plaintiff for any amount of damages.

27. Defendant denies each and every allegation that is not specifically admitted herein.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO:

Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action for which relief may be granted and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO:

Plaintiff's claims are or may be barred by the doctrine of res judicata or collateral estoppel.

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ELECTRONICALLY FILED - 2018 Oct 03 4:18 PM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO:

Plaintiff's claims are or may be barred by applicable statutes of limitations.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO:

Plaintiff's claims are or may be barred by the doctrine of laches.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO:

Plaintiff's claims are or may be barred by the doctrines of judicial and/or equitable estoppel.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO:

Plaintiff's claims are or may be barred by the doctrine of consent and/or ratification.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO:

At all relevant times, Defendant exercised the necessary degree of care and skill maintained by other attorneys under similar conditions and in like circumstances.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO:

No act or omission of Defendant was the cause of any damages to Plaintiff.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO:

Plaintiff's claims are or may be barred by the doctrines of release and/or accord and satisfaction.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO:

Plaintiff's claims are or may be barred by the doctrine of waiver.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

Plaintiff's claims against Defendant are barred to the extent relief is obtainable through other avenues and/or to the extent Plaintiff failed to pursue, waived or failed to exhaust available remedies.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

Plaintiff has or may have failed to mitigate his damages as required by law, and Plaintiff's recovery, if any, should be barred or reduced as provided by law.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

The damages sustained by Plaintiff, if any, were due to and caused by and were the direct and proximate result of Plaintiff's own negligence and/or the intervening and superseding negligence or other wrongful conduct of others, and Plaintiff's recovery, if any, should be barred or reduced as provided by law.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

Defendant is or may be entitled to such offsets that may be revealed by information obtained during the course of investigation and discovery as consistent with applicable law.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

Plaintiff's Complaint fails to state a claim upon which attorney's fees can be awarded or allege facts which, if proven, would entitle Plaintiff to an award of attorney's fees.

ELECTRONICALLY FILED - 2018 Oct 03 4:18 PM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

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FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

Plaintiff's Complaint fails to state a claim upon which punitive damages can be awarded or allege facts which, if proven, would entitle Plaintiff to an award of punitive damages.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

Any award of punitive or exemplary damages in this action would be in violation of the rights of Defendant under the United States Constitution and the Constitution of the State of South Carolina.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

Defendant reserves any additional and further defenses that may be revealed by information obtained during the course of investigation and discovery as consistent with the South Carolina Rules of Civil Procedure.

This 3rd day of October, 2018.

Respectfully submitted,

EARHART OVERSTREET LLC

By: s/Steven R. Kropski
DAVID W. OVERSTREET
State Bar No.: 16965

STEVEN R. KROPSKI
State Bar No.:101441

Attorneys for Defendant Paul Weissenstein

PO Box 22528
Charleston, SC 29413
843-972-9400

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

RECORDED
2018 OCT 18 PM 2 40
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Civil Action No. 2018-CP-43-1583

MB Hutson/MB Hudson,

Plaintiff,

vs.

Paul Weissenstein (Attorney)/
Paul Weissenstein, John Doe 1, John Doe 2

Defendant.

PLAINTIFFS RESPONSE TO DEFENDANTS MOTION TO DISMISS OR SUMMARY JUDGEMENT

CLARIFICATIONS

DEFENDANTS # 1. Plaintiff clearly defines the definition of Malpractice where a Jury will fully understand the term "Legal Malpractice". In addition, Defendant's malpractice created *res judicata* due to his inability to read and understand contracts, thereby causing Plaintiff multiple damages and long-term suffering. Plaintiff's attorney in Tennessee, as Defendant alleges, was not and did not cause the *res judicata* and did not recommend Plaintiff to execute the Fraudulent Settlement Agreement and Consent Order, and was not Plaintiff's attorney after January 2011. Plaintiff engaged defendant on October 25th of 2011. Should Defendant have a problem with Plaintiff's first attorney who has an office in the State of Tennessee and resides in the same State, Defendant has the right to bring such person into the legal circle.

DEFENDANTS # 2. Defendant alleges that Plaintiff was aware of the "title defects". Plaintiff disputes this claim therefore this becomes a question of facts requiring this case be forwarded to a providence of a jury, as Plaintiff has demanded.

DEFENDANTS # 3. Had Defendant not grossly malpractice Plaintiff by not understanding the contracts and other evidence in hand, justice could have been properly rendered by way of the court and jury in 2011 or 2012 resulting in a positive verdict in favor of Plaintiff. A Jury can

only decide this #3 dispute. Again, this is a factional decision and it requires a Jury's providence to make those decisions and not the Honorable Judge for Plaintiff has demanded a Jury Trial.

DEFENDANTS #4.

Defendant makes a disputed allegation. Therefore, the Court must allow a Jury's providence to make that decision. Plaintiff has demanded a Jury Trial. Plaintiff was not aware of every allegation alleged in this suit prior to September 4, 2015. To the contrary, Plaintiff *began* to understand the malpractice as outlined in Plaintiff's Notice to Defendant of November 9th, 2015, (Exhibit "V"). Given the three year statue to file a complaint after giving Notice, the statue would have expired on November 9, 2018, to file a suit based on the Notice of November 9th, 2015. A suit was filed on September 4, 2018, (well within the statue) and an Ammended Suit was filed on October 3, 2018, also within the statue of 30 days to amend a Complaint. At the time of the Notice (11/9/2015) Plaintiff had not yet learned of the *res judicata* created by the Settlement Agreement. The full understanding of the *res judicata* created by that Settlement Agreement and Consent Order was not realized until Plaintiff's Federal Court, Third Party Defendant role, during 2016. Therefore this suit contains those additional allegations, as substantiated by Federal Court Rulings and the Expert Witness Affadavit.

This process of figuring out what all had transpired was like putting a puzzle together piece by piece as Defendant Paul Weissenstein never brought to Plaintiff's attention anything: mistakes, clues of wrong doing, statements confessions of malpractice. Since this subject is apparently disputed, this becomes a question for a Jury. Therefore, the statue was in place until middle of November 9, 2018, but the clock stopped when the suit was filed September 4, 2018.

Rule 56 SCRCP states as follows:

"Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

> *(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations*

(including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence."

Amended Complaint contains evidence to refute a Rule 56 challenge, as follows:

1. Attorney Mark Hardee's sworn affidavit clearly indicates malpractice by Defendant, (Exhibit 1 of Ammended Complaint), and
2. Plaintiff has outlined numerous occurrences of malpractice by the Defendant, with evidence(s) attached to the Amended Complaint, including, but not limited to:
   a. Defendant's failure to recognize: i.) defective title, ii.) failure to recognize TLC Holdings LLC's fraud, iii.) suggesting and recommending Plaintiff's execution of the Fraudulent Settlement Agreement and Consent Order.

   b. Defendant's failure to recognize TLC's attorneys committing fraud upon the Court.

   c. Defendant's failure to recognize Plaintiff's Big Water Resort business had no long-term lease on any property on which to operate and honor some 740 family memberships.

   d. Defendant's failure to recognize that said property could not be developed as planned by Plaintiff and sub-divided into private family residences due to the cloud on the TLC Holdings, LLC's title by Retail Membership Agreements.

   e. Defendant's failure to recognize (even after Plaintiff's execution of the Fraudulent Settlement Agreement and Consent Order) that TLC Holdings, LLC's property could only be developed after 70+ years, due to Retail Family Memberships (RFM). Yet, Defendant continued to represent Plaintiff by attending Clarendon Planning Board Meetings to acquire necessary permits for Plaintiff to develop. Defendant did not recognize that TLC Holdings' property could never be developed due to RFM's "right to use" all the property creating defective title and preventing any construction loans or lot loans.

   f. Plaintiff paid thousands of dollars to Defendant for skill and knowledgeable representation. Plaintiff relied upon Defendant as a seasoned, skillful and experienced attorney.

g. Plaintiff's attorney, Paul Weissenstein violated the "breach of fiduciary duty."

h. Plaintiff's attorney, Paul Weissenstein violated "breach of the duty to provide skillful and competent representation to Plaintiff" and "gross negligence."

i. When TLC Holdings LLC brought an eviction action against Plaintiff, Hutson retained Defendant to defend and prosecute valuable counterclaims against TLC Holdings, LLC. Defendant, instead, waltzed Plaintiff into a *res judicata*" noose.

j. Plaintiff was not properly advised of the application and effect of the release, consequently, Plaintiff offered to end the litigation by settling and ended up being wrongfully evicted and sued by TLC Holdings, LLC in both state and federal courts without any recourse.

Plaintiff hired Defendant Paul Weissenstein to represent him since Weissenstein advertised he handled "Real Estate" issues including closings and the Plaintiff did not understand hidden issues that the contracts might hold. HOWEVER, Defendant fell far below the standard of care expected of attorneys in similar situations at the time, including failing to advise Plaintiff that the existence and effect of the long term leases would prevent him from *ever* developing ANY of the property in his lifetime as Plaintiff intended. Defendant also failed to inform the Plaintiff that his ultimate default of the Settlement Agreement and Consent Order was inevitable, and he would forever be barred from prosecuting and using as a defense the fraud perpetrated on Plaintiff by TLC Holdings, LLC and their attorneys (who committed "Fraud Upon the Court") due to the imbedded *res judicata* which was not fully disclosed to Plaintiff until Federal Court proceedings of 2016.

WHEREFORE, Plaintiff, having

- a sworn Expert Witness Affidavit (attached) which provides evidence that Defendant is guilty of Malpractice, and

in addition to pure evidence, has filed multiple pieces of scintilla evidence (filed in the Amended Complaint), which requires this complaint to be heard by a jury,

RESPECTFULLY PRAYS to the Honorable Judge asking that Defendant's Motion filed on October 3, 2018, by Defendant's attorney for Dismissal or for Summary Judgment be emphatically DENIED.

Respectfully Submitted on this 15th day of October, 2018.

MB Hutson, Plaintiff

803 308 2714
P.O. Box 2755
Orangeburg, South Carolina 29116

A Copy of this Motion has been placed in the United States Post Office and mailed on the 15th day of October, 2018 to:

Attorney for the Defendant, Steven Kropski,
P.O. Box 22528
Charleston, South Carolina 29413.
843 972 9400.

"V"

November 9, 2015

ATTENTION: Paul A Weissenstein, Attorney NOTICE
106 Broad Street
Sumter, SC 29150

Dear Mr. Weissenstein:

I retained your services approximately two and a half years ago to represent me from being evicted from my Big Water Resort and the Plaintiff was TLC Holdings, LLC, as well as for legal advise regarding obtaining all necessary approval permits from Clarendon County in order to develop, subdivide and sell to the public those divided lots to home owners wanting to build and borrow money for construction with permanent financing at the BIG Water Resort Property.

I provided you with all contracts and information regarding my relationship with TLC and asked that you defend me from being evicted. I have a copy of your brief that you prepared and filed with the court and I know that you did everything that you could think of.

Unfortunately, you overlooked a very major but simple defense that could have saved me from being evicted and could have prevented me from loosing nearly two (2) million dollars as well as preventing me from spending thousands of dollars and hard work going through the approval process for the subdivision. As you recall, you accompanied me on several of the town hall meetings helping speed up the approval process in order that I close concurrently with TLC and my home buyers. I will list the simple items that you over looked:

1. In the Lease Purchase Agreement, it clearly states that for each day that TLC continues to have bad title due to liens on said property to be purchased, I would be entitled to one day extension for each day that any defect remains against the title. You totally ignored and missed that as a defense.

2. In addition, you had a copy of the Membership Interest Purchase Agreement of the BWR Business and fully understood that there were memberships for a right to use that property, which was, in fact, a campground. Those memberships should have been recognized by you, as an attorney, as long term leases and as title defects as they were for one and/or two lifetimes for the sole use of the property. That "sole use" was nothing more than hundreds of long-term leases for one to two life times which amounts to approximately fifty-five (55) years of a **title defect, which you should have known.** This title defect was recently discovered in a document received by me from a title insurance company. Acting on this knowledge would have been your perfect defense to the eviction attempt. As a licensed attorney, you should have quickly recognized TLC's default.

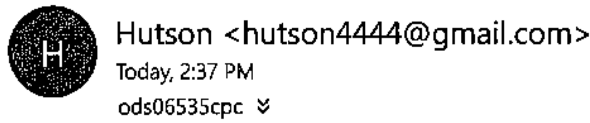
If you had recognized these issues and advised me accordingly, which is that I would never be able to have a clear title to close in the next fifty (50) years or more, it would have saved me from loosing approximately two million dollars and the direct costs and embarrassment of the eviction process. The defect caused by the memberships was caused by TLC, but it was THE PRECISE way to have defended me from the evection, since their not being able to provide clear title, made TLC initially the party guilty of default. In addition, if you had recognized the long term defect in being able to acquire good title, which you admitted you did not earlier this month in our phone conversation, all my work and expenses for two years or more that I put into getting approvals, engineering work, and paying TLC, as well as yourself, could have been prevented... if you had just paid attention.

Consequently, I have spoken to the Commission on Attorney Misconduct (SC) and prefer to settle this issue with you and your malpractice insurance carrier. I will hold off from filing a complaint with the State Bar (part of the Supreme Court) while you send me the name and contact information of your insurance company. I will wait until November 11, 2015, for you to email me that information. Time is of the essence regarding this matter.

If I do not hear from you, I plan to file appropriate complaints with the Commission on Attorney Misconduct and a civil suit in the Court of Common Pleas by the first of next week for damages.

Respectfully Submitted on this 9th day of November, 2015

MB Hutson Pro Se
803 308 2714



PRINT JOB

Hutson <hutson4444@gmail.com>
Today, 2:37 PM
ods06535cpc

Reply all

Inbox

This item will expire in 30 days. To keep this item longer, apply a different label.

Label: 30 days Delete CPC mailbox (1 month) Expires: 11/15/2018 1:37 PM

Statue expires in December 2015

Begin forwarded message:

From: pwlaw@ftc-i.net
Date: December 3, 2015 at 4:19:47 PM EST
To: hutson4444@gmail.com
Subject: Re: Proof and final Request to Settle this mess caused by you. 5:00 deadline today.

Dear Mr. Hutson,

I received your email from this morning. My recollection of the telephone conversation that we had last month is different than as set forth in your email.

I believe that I provided you with competent legal representation in your efforts to retain Big Water Resort. I do not believe that I have any liability to you as a result of my efforts on your behalf.

As a result of your email I am contacting my malpractice carrier and request that you give me until Tuesday, December 8th to provide additional response.

Yours very truly,

A. Paul Weissenstein, Jr.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER)

RECORDED
2018 OCT 29
CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C

) Civil Action No. 2018-CP-43-1583

MB Hutson/MB Hudson,)

Plaintiff,) PLAINTIFF'S MOTION FOR

v.) PRODUCTION OF DOCUMENTS

(A.)Paul Weissenstein (Attorney)/
(A.)Paul Weissenstein, John Doe #1,
John Doe # 2

Defendant.

COMES NOW, Plaintiff who demands production of documents as listed below:

1. Income tax returns from January, 2011 to present.
2. List of all assets, stocks, investments.
3. List of all bank accounts, saving accounts.
4. List of any and all real estate holdings that Defendant holds, owns or controls.
5. List of all IRAs and all Retirement Income Accounts (eg.: IRA, Roth IRA,, etc.)
6. List of pay-stubs from today's date from January, 2011 to present.
7. List of any joint ventures with income, potential income, and/or expected income from any such joint-venture.
8. List of licensed attorneys who practiced law at 106 Broad Street, Sumter, S.C. 29151 starting in 2011 through 2013 in addition to A. Paul Weissenstein.
9. List any other complaints filed against Defendant within the last 10 years.
10. Defendant's Badge Number as Officer of the Court.
11. List the names of all insurance (malpractice, life, and liability) held at any time by Defendant, his firm, individually and/or corporately between January 1, 2011 to present, and list the names, phone numbers, contact persons, addresses, account numbers and limits of each.
12. List any assets that Defendant holds jointly between January 1, 2011, through present, including any assignments thereof.
13. List the full address of your primary and secondary residences and any rental or leased property. Give the name of the title holder of each.

14. List any other homes or retirement and trust accounts that are in your name or jointly held with another party and the value of each.
15. List any assets that your wife or any other persons or entities hold in your behalf including your daughter who practices law.
16. List all automobiles you own and provide serial numbers for the same.
17. List any automobiles that you rent or lease and the monthly cost of the same.
18. List any financial obligations that you have including jointly with any one else including any entities.
19. List any notes "promise to pay" notes you hold in your favor.
20. List all phone numbers that you have in your name or your law firm's name.
21. List any assets or holdings of any items that your law firm holds including accounts receivables, properties, etc.
22. List any credit cards held with an open balance.
23. List what your credit score is at the present time.
24. List any assets, properties, personal items, joint ventures that you have or have transferred out of your name or assigned since January 2011 in detail.
25. List any and all your assets, accounts or property held singularly or jointly not mentioned above including any held outside of Sumter, SC including other states or countries.
26. Name any outstanding or pending contracts to purchase or lease for any real estate.

Submitted on this 25th of October 2018.

MB Hutson
803 308 2714
P.O. Box 2755
Orangeburg, South Carolina 29116

A copy of this motion was mailed on the 25th day of October 2018 in the USPO:

Clerk of Court, Common Pleas for the Third Judicial Circuit Court,
215 North Harvin Street
Sumter South Carolina 29150

Steven R. Kropski, Attorney for the Defendant
P.O. Box 22528
Charleston, South Carolina, 29413.
Phone: 843.972.9400

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER)

RECORDED 2018 OCT 29 PM 1:13 CLERK OF COURT SUMTER COUNTY, S.C

) Civil Action No. 2018-CP-43-1583

MB Hutson/MB Hudson,

Plaintiff

vs.

A. Paul Weissenstein (Attorney)/ (A.) Paul Weissenstein, John Doe #1, John Doe #2

Defendant.

MOTION FOR HEARING BEFORE THE HONORABLE JUDGE FOR RULING ON DEFENDANTS MOTION TO DISMISS OR SUMMARY JUDGEMENT AGAINST PLAINTIFF'S MALPRACTICE COMPLAINT.

COMES NOW, Plaintiff who filed a Malpractice Complaint on September 4, 2018, and an Amended Complaint on October 3, 2018, which included an Expert Witness's Sworn Affadavit by attorney Mark Hardee (as Exhibit 1) which clearly points out the various malpractice of Attorney (A.) Paul Weissenstein regarding his representation of Plaintiff and *which is attached again for your convenience to this motion as Exhibit "W"*. Also attached to Plaintiff's Amended Complaint are multiple attachments of evidence as to the malpractice.

Plaintiff hereby reminds the court that Plaintiff's first letter to Defendant as NOTICE is dated November 9, 2015, (SEE EXHIBIT "V"). The statue expiration date, although questioned by the Defendant's attorney, will not be until November 9, 2018, which has not yet arrived. For your convenience, Exhibit "V" has been attached to this motion. Plaintiff would have filed sooner, but did not have the funds to pay for the expert affidavit until recently.

THEREFORE, Plaintiff prays that the Honorable Court set this hearing down as soon as possible and allow this legitimate complaint to move forward to a Jury trial based on substantial financial stress and damages to Plaintiff that exceeds $2.5M.

Submitted on this 25th of October 2018.

MB Hutson
803 308 2714
P.O. Box 2755
Orangeburg, South Carolina 29116

A copy of this motion was mailed on the 25th day of October 2018 in the USPO:

Clerk of Court, Common Pleas for the Third Judicial Circuit Court,
215 North Harvin Street
Sumter SC 29150

Steven R. Kropski, Attorney for the Defendant
P.O. Box 22528
Charleston, South Carolina 29413.
Phone: 843.972.9400

ELECTRONICALLY FILED - 2018 Dec 07 9:44 AM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

STATE OF SOUTH CAROLINA COUNTY OF SUMTER MB HUTSON A/K/A MB HUTSON, Plaintiff, vs. PAUL WEISSENSTEIN (Attorney)/ PAUL WEISSENSTEIN, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE THIRD JUDICIAL CIRCUIT CASE NO.: 2018-CP-43-1583 **DEFENDANT PAUL WEISSENSTIEN'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR FOR SUMMARY JUDGMENT**

BACKGROUND

A. Purchase of Campground Business and Lease Purchase Agreement

On December 15, 2010, Plaintiff M.B. Hutson ("Hutson") entered into a lease purchase agreement ("LPA") related to approximately thirty (30) acres of real property in Clarendon County, South Carolina ("Property"). (Exhibit A, also attached to Amended Complaint as Exhibit 9, "LPA"). At the time of execution of the LPA, the owners of the Property operated a campground known as Big Water Resorts. In connection with the LPA, Plaintiff also agreed to purchase the stock of the Big Water Resorts operating company ("BWR, LLC"). (See, LPA pg. 4). Hutson was represented by an attorney, Andrew F. Tucker, Esq., with respect to the LPA and purchase of BWR, LLC. (LPA pg. 19).

Prior to entering into the LPA and agreement to purchase BWR, LLC, BWR, LLC sold lifetime retail membership agreements to the individuals and families who became members of the Big Water Resorts campground. (Ex. 7 to Amended Complaint). These agreements, between BWR, LLC and the campground members gave the members exclusive access to the campground. (Id.).

In connection with the LPA, the parties acknowledged that Hutson wished to develop residential structures on certain portions of the unimproved Property. (LPA pg. 3). In this respect, the LPA provided Hutson an opportunity to examine marketable title to the Property. In particular, page 5 of the LPA states:

> Purchaser shall, within ninety (90) days after the Effective Date (of the LPA), investigate Seller's title to the Premises and identify any exceptions to title which are not acceptable to Purchaser. Purchaser shall within ninety (90) days after the Effective Date provide Seller notice of any such Title Exception. If Purchaser does not notify Seller in writing of Title Exceptions within ninety days after the Effective Date, then the Purchaser shall be deemed to have accepted title to the premises with all exceptions and conditions. If Purchaser timely notifies Seller of Title Exceptions (other than the Title Exceptions that can be cured by the payment of money to satisfy any liens as of the Closing, which Title Exceptions shall be cured as of the Closing), Seller may (but shall not required to) cause all Title Exceptions to be deleted as Exceptions from the Title Commitment, as the case may be, on or prior to 30 days prior to closing (the "Cure Deadline"). If Seller fails or refuses to cure any Title Exceptions prior to the Cured Deadline, then Purchaser may, as its sole and exclusive remedy for the existence of, or Seller's failure to cure, such Title Exceptions before the Cured Deadline, elect to terminate this Agreement, or waive its right to terminate this Agreement in writing and accept the Title Commitment with all uncured Title Exceptions.

(LPA pg. 5).

In other words, the LPA expressly states that Seller had ninety (90) days from December 15, 2010 to identify any problems with title to the property, and if those title defects were not cured, he could terminate the LPA. (Id.). On November 11, 2010, Hutson's realtor wrote to the realtor for the owners of the Property:

> Attached is Susan's lifetime membership info. (sic) regarding Big Water camp ground. ***<u>My buyer is concerned about the "life time" members and the impact they can have on the future development of the property</u>***. In other words, in your opinion, what is the easiest, legal way to terminate the lifetime memberships of Big Water? Will

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> these memberships have an impact on obtaining clear title for the property.?

(Exhibit B, "Realtor Email")(emphasis added).

Thus, no later than November 11, 2010, Hutson had concerns about the impact on title to the Property and the ability to develop the Property. Pursuant to the terms of the LPA, that he signed on December 15, 2010, he then had ninety (90) days to investigate the impact of the lifetime membership agreements on title to the property (and any other defects). (LPA pg. 5). It appears that neither Hutson, nor his lawyer, identified the memberships as a title defect or sought to terminate the LPA based upon the membership agreements.

B. <u>Hutson Defaults on LPA</u>

By November 29, 2011, Hutson had defaulted on his monthly payment obligations under the LPA and the owners of the Property sought to eject him. (Exhibit C, "Ejectment Action"). The Ejectment Action resulted in litigation between Hutson and the owners of the Property. ("2011 LPA Default Litigation"). Defendant Weissenstein represented Hutson in the 2011 LPA Default Litigation, which ultimately resulted in a settlement agreement providing Hutson additional time to attempt to gain the funds necessary to comply with the LPA. (Exhibit D, Settlement Agreement).

Defendant Weissenstein did not represent Hutson with respect to the LPA itself, nor did he have any part of the dealings that resulted in Hutson purchasing BWR, LLC. Instead, Mr. Weissentein represented Hutson only after Hutson had defaulted on his obligations required by the LPA.

LEGAL STANDARD

"It is elementary that the principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial." *Shirley's Iron Works,*

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Inc. v. City of Union, 403 S.C. 560, 547, 743 S.E.2d 778, 785 (2013). In considering a motion to dismiss a complaint based on failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007). “However, on a 12(b)(6) motion, the court is required to presume all well pled *facts,* not propositions of law, to be true.” *HHHunt Corporation v. Town of Lexington*, 389 S.C. 623, 235, 699 S.E.2d 699, 705 (Ct. App. 2010) “The circuit court may dismiss a claim when the defendant demonstrated the Plaintiff’s failure to state facts sufficient to constitute a cause of action in the pleadings filed with the court.” *Hambrick v. GMAC Mortgage Corp.*, 370 S.C. 118, 634 S.E.2d 5 (Ct. App. 2006).

"Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Rule 56, SCRCP; *South Carolina Prop. & Cas. Guar. Ass'n. v. Yensen,* 345 S.C. 512, 528, 518, 548 S.E.2d 880, 883 (Ct.App.2001). “When ruling on a motion for summary judgment, the trial judge must consider all of the documents and evidence within the record, including the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits.” *Anthony v. Padmar, Inc.,* 307 S.C. 503, 415 S.E.2d 828 (Ct. App. 1992); *Gilmore v. Ivey,* 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986). “Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Bradley v. Doe*, 374 S.C. 622, 626, 649 S.E.2d 153 (Ct. App. 2007). “Factual statements, whether made during argument or in written briefs or memoranda, ordinarily may not be considered by the court in determining whether a genuine issue of material fact exists.” *Gilmore,* 290 S.C. 53, 348 S.E.2d 180.

ARGUMENT

I. Hutson's Amended Complaint Should Be Dismissed as it Fails to Plead A Cause of Action for Legal Malpractice

Under South Carolina law, a plaintiff must establish four elements in a legal malpractice action: "(1) The existence of an attorney-client relationship; (2) A breach of duty by the attorney; (3) Damage to the client; and (4) Proximate cause of the client's damages by the breach." *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 402, 697 S.E.2d 551, 555 (2010) (quoting *Rydde v. Morris*, 381 S.C. 643, 647, 675 S.E.2d 431, 433 (2009))[1]. Failure to establish any one of the four elements of a legal malpractice renders the legal malpractice claim insufficient as a matter of law. *See, e.g., Henkel v. Winn*, 346 S.C. 14, 18, 550 S.E.2d 577, 579 (Ct. App. 2001).

Here, Hutson fails to plead the essential elements of a claim for legal malpractice. In its entirety, Hutson's Amended Complaint alleges that he was "doomed from the beginning" as the lifetime memberships would prohibit him from ever developing the property. He alleges that due to the failure to discover that the lifetime memberships allegedly operated as a title defect, he was

[1] Although Plaintiff asserts separate causes of action; all three arise out of the same underlying facts and are premised on the same alleged professional negligence. Therefore, regardless of how they are styled, the causes of action simply allege one claim for legal malpractice. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 336, 732 S.E.2d 166, 173 (2012) (where a "claim for breach of fiduciary duty ar[ises] out of the duty inherent in the attorney-client relationship and it ar[ises] out of the same factual allegations," the "claim for legal malpractice necessarily encompasse[s] a breach of the fiduciary duty an attorney has to his or her client").

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never able to generate enough revenue to meet his obligations under the LPA[2]. Hutson blames Defendant Weissenstein for this error.

Mr. Hutson, however, misses the point and fails to plead an attorney-client relationship between Weissenstein and Hutson with respect to the LPA. It is indisputable, and clear based on the four corners of the pleading and its exhibits that the failure to discover the alleged title defect created by the lifetime memberships was an error made within the ninety (90) days following execution of the LPA. Mr. Weissenstein was not Hutson's attorney at that time, nor at any time prior to the execution of the LPA. At all times relevant to this alleged error, Hutson was represented by a different attorney.

Accordingly, as Weissenstein was not Hutson's attorney with respect to the alleged negligence, Hutson cannot maintain a legal malpractice action against Weissenstein.

II. Defendant is entitled to Summary Judgment

As an initial matter, as there are no circumstances under which Hutson can ever establish an attorney-client relationship between Hutson and Weissenstein as it relates to the LPA, Weissenstein is entitled to summary judgment dismissing the Amended Complaint with prejudice.

Moreover, the facts show beyond any scintilla of evidence that additional grounds compel a grant of summary judgment for Weissenstein.

A. Hutson's Action is Barred by the Statute of Limitations

First, it is indisputable that Hutson was aware of the membership interests, and the possibility of a title defect no later than November 11, 2010. The 2011 LPA Default Litigation

[2] Defendant does not agree or concede that the lifetime memberships did in fact create a title defect. Rather, for purposes of this motion merely accepts the allegations as true as required under Rule 12(b)(6).

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concluded via settlement on March 30, 2012 when Hutson signed the Settlement Agreement. (Ex. D). To the extent that Hutson alleges Weissenstein was negligent in not asserting fraud counterclaims alleging concealment of the alleged membership agreement title defect, Hutson knew or should have known of this alleged negligence no later than the date he agreed to discontinue the subject litigation—i.e. March 30, 2012.

The statute of limitations for a legal malpractice action is three years. S.C. Code Ann. § 15-3-530(5) (2005) (stating the statute of limitations for "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law" is three years); *see Berry v. McLeod,* 328 S.C. 435, 444–45, 492 S.E.2d 794, 799 (Ct.App.1997) (concluding that section 15–3–530(5) of the South Carolina Code provides a three-year statute of limitations for legal malpractice actions). Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. *Burgess v. Am. Cancer Soc'y, S.C. Div., Inc.*, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct.App.1989); *see* S.C. Code Ann. § 15–3–535 (2005) ("[A]ll actions initiated under Section 15–3–530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action."). "This standard as to when the limitations period begins to run is *objective* rather than subjective." *Burgess*, 300 S.C. at 186, 386 S.E.2d at 800. "Therefore, the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto." *Id.*

As March 30, 2012 is over six years before this legal malpractice action was commenced, Hutson's legal malpractice action is time barred. Accordingly, Defendant is entitled to Summary Judgment on statute of limitations grounds.

B. Defendant Cannot Show A Likelihood of Success on the Merits of the Underlying Litigation

Integral to defeating summary judgment on a claim for legal malpractice is expert testimony explicitly stating that the Plaintiff "most probably" would have obtained a better result in the underlying matter "but for" the alleged breach of an attorney's standard of care. *See, Doe v. Howe*, 367 S.C. 432, 445-46, 626 S.E.2d 25 (Ct. App. 2005)(affirming summary judgment for attorney when plaintiff's expert did not testify that plaintiff would have received a greater settlement "but for" the attorney's breach of the standard of care); *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 290, 701 S.E.2d 742 (2010)(affirming summary judgment for attorney when plaintiff's expert did not testify that plaintiff would have obtained a better outcome had the attorneys not breached their standard of care). The question of the success of the underlying claim is a question of law. *Holmes v. Haynsworth, Sinkler, & Boyd, P.A.*, 408 S.C. 620, 636, 760 S.E.2d 399 (2014) citing, *Howe*, 367 S.C. at 442.

Here, to the extent that Hutson alleges that Weissenstein was negligent by not interposing a counterclaim alleging fraudulent concealment of a title defect created by the lifetime membership agreement, it is beyond any factual dispute that this claim had no merit as a matter of law, and would not have been successful in the underlying litigation.

It is indisputable, based upon the documentary evidence that Hutson was aware of the lifetime memberships prior to executing the LPA, and was aware that the lifetime memberships could impact title to the property and his ability to develop the property, yet did not raise an

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objection to this title defect within the ninety (90) day title investigation period contained within the LPA.

In order to prove fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *King v. Oxford,* 282 S.C. 307, 318 S.E.2d 125 (Ct.App.1984).

Here, as Hutson unquestionably knew about the lifetime memberships, and had already been alerted to a possible problem with title to the Property or the ability to develop the property *before* he signed the LPA, Hutson could never maintain a fraud cause of action seeking to undo the LPA as a matter of law. Simply put, although the owners of the Property made no false statement to Hutson concerning the title impact of the membership agreements, Hutson was indisputably *not* ignorant to the possibility of a title defect even before he entered into the LPA which he now alleges that he wanted to rescind.

Accordingly, as a matter of law, a fraud counterclaim in the 2011 LPA Default Litigation would have been unsuccessful and likely frivolous. Therefore, Weissenstein is entitled to summary judgment on Hutson's legal malpractice claims, and the Amended Complaint should be dismissed with prejudice.

CONCLUSION

For the reasons stated herein, the Amended Complaint should be dismissed with prejudice.

[SIGNATURE PAGE TO FOLLOW]

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This 6 day of December, 2018.

Respectfully submitted,

EARHART OVERSTREET LLC

By: s/Steven R. Kropski

DAVID W. OVERSTREET
State Bar No.: 16965

STEVEN R. KROPSKI
State Bar No.:101441

Attorneys for Defendant Paul Weissenstein

PO Box 22528
Charleston, SC 29413
843-972-9400

ELECTRONICALLY FILED - 2018 Dec 07 9:44 AM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

EXHIBIT 3

ELECTRONICALLY FILED - 2018 Dec 07 9:44 AM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

Print Close

Big Water life time membership info.

From: **Renee Roark** (reneeroark@hotmail.com)
Sent: Thu 11/11/10 10:52 AM
To: Claudia (claudia@coffeychandlerkent.com)
1 attachment
Big Water membership.pdf (920.9 KB)

Mr. Coffey,

Attached is Susan's lifetime membership info. regarding Big Water camp ground. My buyer is concerned about the "life time" members and the impact they can have on the future development of the property. In other words, in your opinion, what is the easiest, legal way to terminate the lifetime memberships of Big Water? Will these memberships have an impact on obtaining clear title for the property?

Would it be better for you to call him and talk to him OR draft an email to him? PLease let me know your thoughts. I can also give him your number if you would rather him call you.

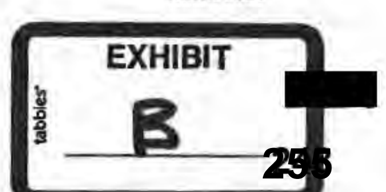
Thanks,

Renee Roark, Realtor
Multi-Million Dollar Producer
Re/Max by the Lake
Manning, South Carolina

803-460-4373-cell
803-433-7355 ext.104 -office
803-236-0871-home

www.reneeroark.lakemarionproperty.com
reneeroark@hotmail.com

Roark 0025



ELECTRONICALLY FILED - 2018 Dec 07 9:44 AM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

Exhibit 28

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	CASE NO.: 11-CP-14-602
TLC HOLDINGS, LLC,	)	
Plaintiff,	)	APPLICATION FOR EJECTMENT
vs.	)	
M.B. HUDSON A/K/A M.B. HUTSON,	)	
Defendant.	)	

CERTIFIED TRUE COPY OF ORIGINAL FILED IN THIS OFFICE
DATE 11/29/11
Beulah G. Roberts
CLERK OF COURT CLARENDON COUNTY, SC

BEULAH G. ROBERTS CLERK OF COURT CLARENDON COUNTY, SC

Plaintiff, TLC Holdings, LLC ("Plaintiff" or "Landlord"), by and through its undersigned counsel, states that Plaintiff is the landlord-lessor of the premises herein described. The premises are within the jurisdiction of Clarendon County and are located at **5215 Dingle Pond Road, Summerton, SC 29148, generally known as the "Big Water Resort"**.

Plaintiff further states that, with regard to the above-describes premises, a landlord - tenant relationship exists between the Plaintiff and the Defendant M.B. Hudson a/k/a M.B. Hutson ("Tenant" or "Defendant"), the tenant-lessee, as is evidenced by that certain Lease Purchase Agreement between Plaintiff and Defendant dated December 16, 2010, a copy of which is attached to this application (the "Lease").

Grounds for this ejectment are (1) that Tenant fails or refuses to pay the rent when due and when demanded; and (2) the terms and conditions of the lease have been violated by Tenant as set forth herein. Tenant has failed to pay rent owing for the period of July, 2011, through the date hereof (a total of five (5) months). Tenant has failed to maintain insurance as required by the Lease. Tenant has failed to pay the rental owing to the South Carolina Public Service Authority as required by the Lease. In addition, upon

EXHIBIT 7 256

ELECTRONICALLY FILED - 2018 Dec 07 9:44 AM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

information and belief, Tenant did knowingly and intentionally misrepresent his identity to Plaintiff by executing the Lease, and identifying himself during the negotiations thereof, as "M.B. Hudson", when his correct name is M.B. Hutson.

The total amount owing by Tenant as of November 22, 2011, equals $78,186.44, plus default interest, late charges, and Plaintiff's reasonable attorneys' fees, all as are due and owing to Plaintiff pursuant to the terms of the Lease.

WOMBLE, CARLYLE, SANDRIDGE & RICE, LLP

Thomas L. Harper, Jr. (ID No. 11553)
Five Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
November 22, 2011

SWORN to and Subscribed before me,
this 22nd day of November, 2011.

Notary Public for South Carolina
My commission expires: 6-18-19

WCSR 7040971v1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER)

RECORDED
2018 DEC 12
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

) Civil Action No. 2018-CP-43-1583

MB Hutson/MB Hudson,)

Plaintiff)

vs.)

A. Paul Weissenstein, Esq.)

Defendant.)

PLAINTIFF'S RESPONSE TO DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

Even though Plaintiff has filed within the Court much evidence as to the malpractice by Defendant Paul Weissenstein, and Defendant's attorney filed on December 10, 2018, *during the hearing* yesterday his "DEFENDANT PAUL WEISSENSTIEN'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR FOR SUMMARY JUDGMENT," Plaintiff files to clear up some of the intentional confusion that Defendant's attorney attempted to displace in the Court yesterday.

1. Plaintiff did enter into the LPA (Lease Purchase Agreement and the MIPA (Membership Interest Purchase Agreement) for the business in December of 2010.

2. Plaintiff took extraordinary steps to follow up on the property title:

   a) Plaintiff did email asking the Sellers' Realtors if the memberships were a problem. The Realtors responded that they did not know.

   b) Plaintiff telephoned Billy Coffee, Esq. of Manning, S.C. in November of 2010, whose name the Plaintiff acquired from the Sellers'

Realtor to see if the memberships at the campground would be a problem for development. Coffee would not return the call.

c) As a follow-up, Plaintiff asked the Realtor to contact Coffee concerning this issue, but she stated that Coffee was not returning her phone calls either. (NOTE: Plaintiff later found out that TLC Holdings, LLC, the landowners/Sellers, were involved in litigation against Billy Coffee, Esq., which was the supposed reason by Plaintiff that the phone calls were not being returned regarding the land owned by TLC Holdings, LLC.)

d) Also, Plaintiff, as an extra step, had Andrew Tucker, Esq. come from Tennessee and review the Retail Family Membership Agreements. Tucker indicated that they appeared to be contingent upon annual renewal fees for the use of the front acreage, i.e. developed, acreage (pools, bathhouse, docks, loading ramp, game rooms, etc. This was substantiated in referring to the Lease Purchase Agreement (LPA) under the property description (Exhibit A of the LPA: which cited[1]
"A. CAMPGROUND KNOWN AS BIG WATER RESORT....containing 30.44 acres...."

e) Subsequently, within the 90 days of due diligence, Plaintiff engaged Ron Nester, Esq. of Santee, S.C., to do a title search on the property. It came back clear; nothing showed up reflecting a defective title. In

[1] Exhibit A of the Lease Purchase Agreement delineates three (3) parcels/tracts of land, with A) being "CAMPGROUND KNOWN AS BIG WATER RESORT" "containing 30.44 acres." (line 2). Exhibit "B".

retrospect, it is now known that the Sellers, TLC Holdings, LLC had failed to follow state law[2] *on purpose* which requires the recordation of such long-term title encumbrances (leases / agreements). They did this so that even ***a reasonable 'Buyer" would NOT be able to discover the title issues of the property without a competent real estate attorney that should know the law and so advise his/her client.*** Even, at that, ***only 30.44 acres were identified as "campground."***

5. Paul Weissenstein could have easily won the counter claims had all material facts been included in his counter claim, but they were due to his failure to investigate, learn, and advise thus committing on-going grand malpractice. Defendant's breach of duty due to neglect and unprofessional representation caused him to fail to protect his client:

a) when he had the opportunity to investigate, learn, and advise his client on the important facts noted above, and

b) when, in the counterclaim that Defendant filed in behalf of his client, the Plaintiff, Defendant Weissenstein did not include the facts and expose the fraud within the documents.

6. STATUTE: Due to Paul Weissenstein's failure to investigate, learn, and advise his client, Plaintiff only learned the full scope of his breach of duty in early

[2] S.C. Code 1976 § 27-33-30 : *In order to give notice to third persons any lease or agreement for the use or occupancy of real estate shall be recorded in the same manner as a deed of real estate.*

October of 2015, which is well within the statute of 36 months, with this filing being originally made in September of 2018:

7. Plaintiff discovered on October 2, 2015, in a conversation with Michael Medlock, Esq., South Carolina Underwriting Counselor for Stewart Title Company, that the title was defective. This was the first time Plaintiff learned of the defective title. Plaintiff asked Medlock if he would send that in writing, and Medlock did so the same day.[3]

8. Mid-stream in a Federal lawsuit whereby TLC Holdings, LLC sued Plaintiff (then as a Third Party Defendant in the Class Action Lawsuit where the Plaintiffs were owners of the Retail Membership Agreements), Plaintiff, still not knowing that **NONE** of the property was developable, became puzzled by some of the questions and comments in depositions and began even more inquiries. This included sending documents to Tommy Robertson of the S.C. State Law Enforcement Division[4] (SLED). As Plaintiff mentioned in the Hearing of December 10th, 2018, in Sumter, SLED's legal department confirmed "civil fraud" but would take no action due to their assessment that it was 'civil fraud' explaining that they only got involved in 'criminal fraud.' When documents were returned to Plaintiff by SLED, these documents, which had been sent to SLED, were kept in place in the mailing folder[5] until the writing of this paper including the list of documents sent to SLED.[6]

---

[3] Exhibit "L".
[4] Envelope exhibit "X".
[5] Pictures of dated stamped envelope sent by Hutson to SLED, which they returned. Exhibit "X"
[6] Copy of "Attachments to Letter to SLED". Exhibit "Y".

3. Plaintiff was noticed that he was going to be evicted in 2011 due to non-compliance of the contract and hired Defendant Paul Weissenstein to represent him regarding the eviction and counter claims on October 3, 2011. Defendant reviewed carefully all contracts and filed a counter claim in favor of Plaintiff[7]. *At that time* neither the Plaintiff, nor his counsel, Paul Weissenstein, Esq., recognized the title defect whereby development cited in the LPA.[8]

4. THEREFORE, the Defendant, Paul Weissenstein, failed to include crucial facts in the counter claim due to his inability to recognize the fraud and corruption within the contracts. Plaintiff hereby lists the counter claim facts that should have been named but were not, due to Defendant Weissenstein's defense, which constitutes a grossly negligent breach of duty, that caused his client damages in excess of $2M. They are as follows:

a. Paul Weissenstein failed to include defective title caused by the memberships.

b. Paul Weissenstein failed to ask, investigate, identify, nor include that TLC had never given nor provided a contractual agreement allowing the Big

[7] Exhibit G.
[8] Exhibit B.

Water Resort "BWR" to have a right to use the property in order to honor the memberships.

c. Paul Weissenstein failed to investigate, learn, and advise his client that *none* of the property could be developed.

d. Paul Weissenstein failed to investigate, learn, and advise his client that the defective title would last for 70 years.

e. Paul Weissenstein failed to investigate, learn, and advise his client that BWR could never honor the 740 family memberships due to no land and no contract for any land.

f. Paul Weissenstein failed to investigate, learn, and advise his client that BWR was losing $300 thousand per year and there was no way the business could sustain itself even though Defendant had a deposition sheet that Plaintiff brought to him in 2012.

g. Paul Weissenstein failed to investigate, learn, and advise his client, Plaintiff, that he was caught in a $20M obligation to maintain the memberships for 70 years (two life times) due to BWR losing $300K/year.

h. Paul Weissenstein failed to identify the demands in the Settlement Agreement and Consent Order that required Plaintiff to develop property that could not be developed.

9. Defendant's attorney, Steve Kropski, Esq. contacted Stewart Title asking that he not work with Plaintiff for Plaintiff was attempting to get an sworn affidavit as to the defective title.

10. In addition, it should be noted that Steve Kropski, Esq., attorney for the Defendant, also has attempted to run interference preventing Paul from testifying in behalf of Plaintiff when Plaintiff was sued in Federal Court and needed Paul Weissenstein's testimony. Kropski and Defendant both knew that had Defendant testified in Plaintiff's behalf, he would be admitting to malpractice and therefore, refused.

11. Paul Weissenstein encouraged Plaintiff to execute the Settlement Agreement and Consent Order knowing full well that Plaimtiff would be locked into:

A. a *res judicata* legal box that would prevent Plaintiff from ever recouping from the fraud within the initial LPA and MIPA.

B. Selling divided lots to the public that could not legally be done.

The many lawsuits afterwards, the years of suffering, damages, and financial losses struggling with his own defense are a direct result of the Defendant's failure to perform his duty to investigate, disclose, and inform his client.

The execution of the Settlement Agreement and Consent Order doomed the Plaintiff. Paul Weissenstein, Defendant, and professed expert in real estate law, could have prevented that had he not failed to investigate, recognize, and disclose what plainly was before him in the contracts.

12. Defendant's attorney attempts to show that Andrew Tucker caused Plaintiff's grief. Andrew Tucker, Esq. was only engaged for three weeks for the initial contract signing and had no input or connection with the defense on eviction nor the Settlement Agreement and Consent Order.

13. Paul Weissenstein has caused Plaintiff enormous damage, even losing his equitable interest verified in Exhibit "O".

14. Plaintiff hired an expert attorney to provide a sworn affidavit after reviewing the extensive documents. His affidavit[9] clearly states that Paul Weissenstein had committed malpractice on the Plaintiff and never mentions Andrew Tucker for it was Paul Weissenstein who had every opportunity to properly file the right counter claim that would have caused Plaintiff to prevail and would have prevented years of work and lost equitable interest.

15. Defendant's attorney is simply trying to dance around the subjects throwing blame on Andrew Tucker when Defendant, Paul Wessenstein is the responsible counsel.

---

[9] Mark Hardee, Esq. Affidavit. Exhibit 1 and W.

16. Defendant admitted to Plaintiff that he had malpracticed Plaintiff and apologized on the telephone, yet hides behind his insurance attorney. Defendant was too ashamed to appear at yesterday's hearing for guilt reasons.

17. It would be a great injustice to blame Andrew Tucker for one small missed action that could have been fixed when Paul Weissenstein made more than 8 major neglectful unfixable mistakes that prevented Plaintiff from being successful and has led to lawsuits. This case for malpractice must go to jury trial and if not, there is no justice. Even in the sworn expert witness affidavit, Paul Weissenstein is the only person blamed. Additionally, Federal Judge Norton pin-points Paul Weissenstein in his order[10] as having been responsible for giving counsel.

THEREFORE, Plaintiff pleads and Prays

The Honorable Judge deny Defendants motion for Summary Judgment or Dismissal and send this case to a Jury as soon as possible based on the scintilla and hard evidence.

Respectfully Submitted on this 11th day of December, 2018 with typing corrections on the twelfth.

MB Hutson

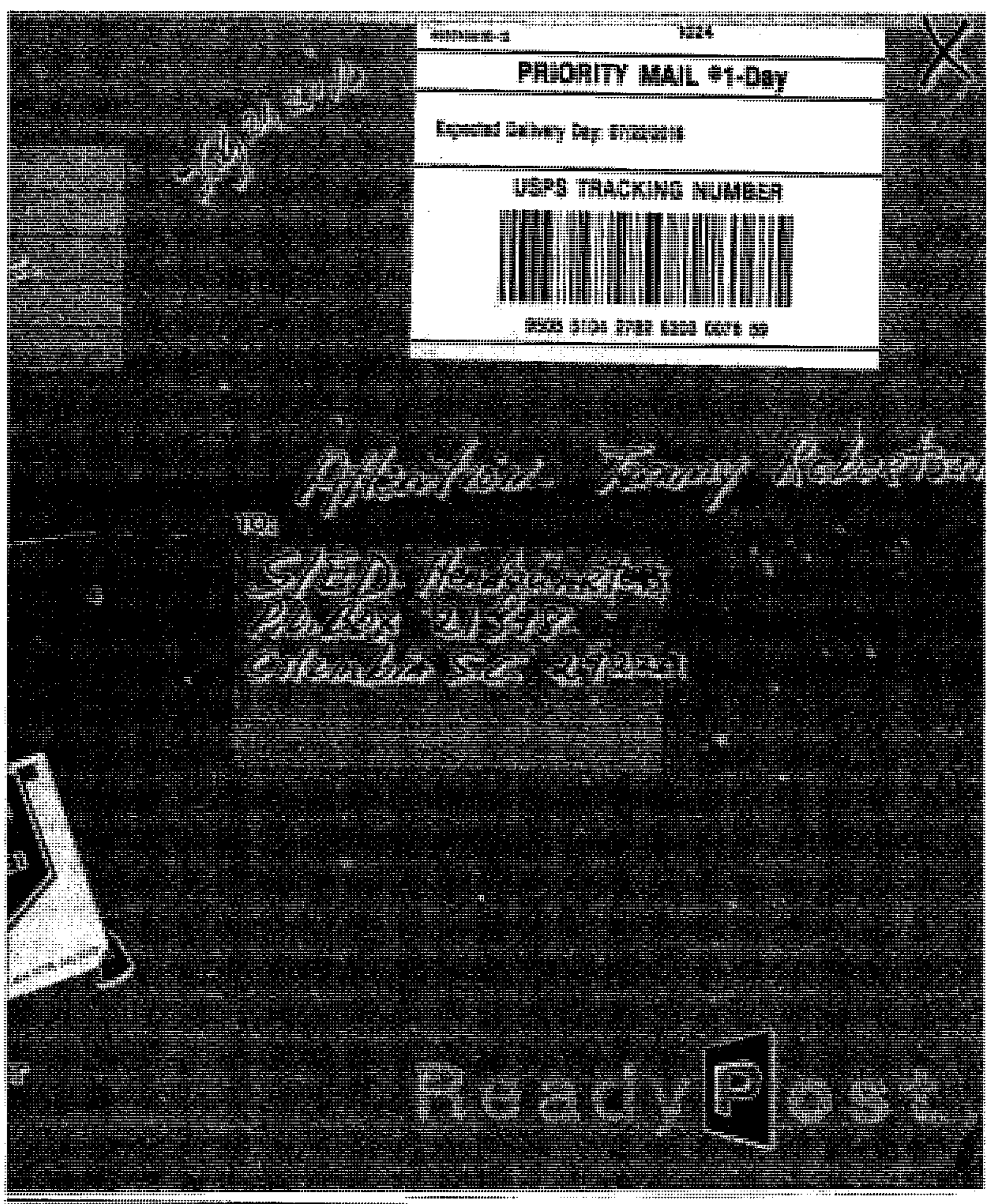
P.O. Box 2755
Orangeburg, South Carolina 29116-2755
Tel: 803 308 2714

A Copy has been placed in the USPS to:

---

[10] Exhibit "F"

Steven Kropski, Attorney for the Defendant
P.O. Box 22528
Charleston, South Carolina 29413
Tel: 843.972.9400


PRIORITY MAIL
USPS TRACKING NUMBER
ReadyPost

Attachments to Letter to SLED:

Title	Pages	Description	Date, if applicable
The Fraud Trial	18	Pub. of *Association of Certified Fraud Examiners* 716 West Ave., Austin, TX 78701-2727	
Lovell Deposition	1	Page # 113-116	February 16, 2011
Big Water Resort LLC Members Meeting	3	Minutes of BWR, LLC and TLC Holdings, LLC held concurrently	January 16, 2009
Lovell Deposition	1	Lovell states two legal entities held concurrent business meetings	September 25, 2014
Lease Purchase Agreement	25 plus Exhibits	Agreement written by Seller's attorney for the purchase of the land in Clarendon County	Executed December, 2010
Membership Interest Purchase Agreement	10	Agreement written by Seller's attorney for the purchase of the Big Water Resort, LLC (campground business)	Executed December, 2010
BWR, LLC Financial Status documents	5	furnished by Seller with contract to sell.	December, 2010
Richard U. Clark deposition	5	pp 77-96 of deposition describing: 1. ages of Sellers (sixties); 2. lack of long term plan (escrow) to ensure protection of business's sales contracts by BWR, LLC 3. lack of lease granting BWR, LLC (business)"right to use land and amenities" for one and two lifetimes/as sold to member families	March 18, 2015
Jimmy Steve Lovell	1	Deposition (p. 77) Lovell description of Sellers as "experienced"/ "sophisticated" businessmen	February 16, 2011
Sewer Moratorium correspondence	9	Correspondence to/from Sellers and governmental agencies regarding the existence of sewer moratorium issues as related to property owned by TLC Holdings, LLC in Clarendon County	2003-2011
Retail Membership Sales Agreement (sample)	2	Sample of one of the -/+ 1,200, 1-2 lifetime(s) of years "right to use" the land & amenities at BWR, LLC	Dates varied from about 2003-2008

STATE OF SOUTH CAROLINA)
COUNTY OF Sumter S.C.)

IN THE COURT OF COMMON PLEAS

RECORDED
2019 FEB 13 PM 2:09
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

MB Hutson/MB Hudson
Plaintiff(s)

vs.

A. Paul Weissenstein Law Firm, John Doe #1
Defendant(s)

CIVIL ACTION COVERSHEET

2018 - CP - 430 - 1583

(Please Print)
Submitted By: MB Hutson
Address:

SC Bar #:
Telephone #: 803 308 2714
Fax #:
Other:
E-mail: Hutson4444@gmail.com

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

DOCKETING INFORMATION (*Check all that apply*)

If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (*Check One Box Below*)

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

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- ☐ Other (299) X motion for Reconsideration

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

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

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

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

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

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

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

Submitting Party Signature: [signature] **Date:** Feb 15, 2019

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

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

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

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

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

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

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

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

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

RECORDED
2019 FEB 13 PM 4:15
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY S.C.

COUNTY OF SUMTER) Civil Action No. **2018-CP-430-1583**

MB Hutson/MB Hudson,
Plaintiff

vs.

A. Paul Weissenstein, Esq., Weissenstein Law Firm, John Doe #2 ,

Defendant(s).

MOTION TO RECONSIDER JUDGE CURTIS' RULING DATED FEBRUARY 4, 2019, RE: HUTSON v. WEISSENSTEIN

PURSUANT TO RULE 59 (e), PLAINTIFF IS ASKING AND MOVES THE HONORABLE COURT TO RECONSIDER ITS FINDINGS OF FEBRUARY 4, 2019, WHICH WERE FOR THE DEFENDANT AND TO RULE IN FAVOR OF THE PLAINTIFF SINCE THE HONORABLE COURT ERRED IN ITS RULING BECAUSE THERE ARE ISSUES OF MATERIAL FACT THAT MUST BE DETERMINED BY A JURY.

1. The date that Plaintiff "knew or reasonably should have known" the "legal significance" of the Retail Membership Agreements (hereinafter referred to as RMAs) with respect to the land that Plaintiff was to develop is the issue in question with respect to when the time for the statute of limitations began. Legally that question is a question of fact to be determined by a jury after a hearing of all the facts surrounding the purchase of the property in question by Plaintiff. Of importance in answering that question is what is the standard by which Plaintiff's knowledge and capability will be measured, by that of a layman or that of an attorney. Those are two different standards. There is no evidence that Plaintiff was an attorney licensed in SC, which would have placed him under the higher standard.

2. Significant evidence which raises more than a scintilla of evidence in favor of the reasonableness of Plaintiff's knowledge and what Plaintiff should have known when, follows:

3. Plaintiff paid for and received a title opinion on the property in question. A thorough review of the land records for Clarendon County, SC executed by the experienced Williamson Research Services and reviewed by Nester and Jackson Law Firm revealed that there were no conditions of record that would prohibit the property from being developed. Therefore, Plaintiff's belief that he, Plaintiff, could develop the property was reasonable. Plaintiff did what Plaintiff knew to do in that situation. The first two pages of the Title Search is attached as Exhibit "Z" for verification. The full Title Search will be produced during Discovery. The Title Search was completed March 15, 2011, during the 90 day due diligence period as outlined in the Lease Purchase Agreement (Exhibit "B"). Plaintiff swears and will demonstrate during Discovery to the Honorable Court that no title defects caused by RMAs were on file in the county courthouse, and therefore no title defects by those RMAs were discoverable via Title Search by the Pro Se Plaintiff.

4. Plaintiff then ran into some issues and the sellers filed an action to evict Plaintiff from the property.

5. Plaintiff hired attorney, Defendant, to defend an action filed by the sellers to evict Plaintiff from the property.

6. Defendant, Weissenstein, was to fully investigate the situation, define the issues, defend Plaintiff against the eviction, and to file any counterclaims available to Plaintiff, and advise Plaintiff how to proceed.

7. Plaintiff provided Defendant, Weissenstein, with all the documents necessary for this purpose. Included in those documents were Exhibits B, C, and D (Lease Purchase Option, Membership Interest Purchase Agreement, and RMAs. The latter, granted the "sole use" of the campground properties to RMAs' holders.

8. Defendant Weissenstein held himself out as an attorney licensed to practice law in the state of South Carolina. Weissenstein advertised that he was a real estate attorney. Defendant Weissenstein held himself out as an expert in real estate law in South Carolina.

9. Despite Defendant's claims, Defendant Weissenstein did not ascertain the "legal significance" of the RMAs to the title of the property that Plaintiff had contracted to purchase and develop.

10. Defendant Weissenstein, by his actions, demonstrated to Plaintiff that Plaintiff could legally develop the property in question. Those actions are verified by Defendant's correspondences and signatures in the exhibits attached, leading to Plaintiff's reasonable belief that he could legally develop the property in question:

A) **March 31, 2012:** Exhibit "**Q**": Defendant corresponded with Sellers attorney regarding drafting "final settlement agreement" (¶ 6) and "consent order" (¶ 4) and stating "I believe that you and I have negotiated a fair and equitable agreement for both our clients that hopefully will make both of them a lot of money over the next two years." ¶ 7).

B) **April 3, 2012:** Exhibit "**AA**": Defendant works collaboratively with Plaintiff for development approval presentations to County Planning Commission, and informs Plaintiff of upcoming Planning Commission meetings, submission due dates for subsequent four months.

C) **April 12, 2012**: Exhibit "**J**": Defendant signed *Clarendon County Planning Board Commission's Application for Development* to "develop a single family subdivision at Big Water Resort."

D) **April 12, 2012:** Exhibit "**BB**": Defendant corresponds with Terry Barrett, Regional Sales Manager for Wells Fargo Home Mortgage in Raleigh, NC regarding "development of which is being coordinated by M. B. Hutson....intends to develop... The Big Water Resort...construction of...cabins on individual lots...seller will enter into contracts with individual lot purchasers...would apply for a construction perm loan with you...Please confirm that the terns set forth herein conform to the agreement an requirements of Wells Fargo Home Mortgage for the development of this project." Pages one and two.

E) **June 18, 2012:** Exhibit "**CC**": Defendant corresponds with Sellers attorney regarding the progress toward approvals and noting: "Ms. Rose at Clarendon County said this submission did not have your consent. I told her that I did not think your consent was required for each stage, but she and David Epperson (County Attorney) believe that it does...if you agree with me that your approval of each step of the proposed development is not required, please let her know....please try to approve this ASAP...(Rose) she said that she would really like to have your letter before 5:00 tomorrow."

F) **June 29, 2012:** Exhibit "**DD**": Defendant corresponds with Sellers attorney, citing construction commencing target dates, citing delays and resulting effects on the construction commencement, challenges incurred in obtaining DHEC approval, and that impact on the project dates, and requesting that seller's attorney

> "*Please contact your clients and let us know what they may be willing to do as far as additional extensions.*"

11. Until Plaintiff was told by Michael Medlock, Esq. of the Stewart Title Guarantee Company in October 2, 2015, that the membership agreements would be a cloud on the title of **some** "portions of the property" in question, Plaintiff had had no reason to question his ability to legally develop the property that Plaintiff contracted to purchase, nor did Plaintiff have enough information to file a malpractice complaint. Plaintiff became shocked and confused over

the fact that he could not understand *which* portions of the land were defective. It took at least two months later for Plaintiff to understand which portions of the 109 acres were defective. That question was answered by the Federal Class Action on December 15, 2015.

> Providing the court an example: Should an individual receive a letter from the Internal Revenue Service that simply states "Dear Sir/Madam, You owe a portion of your taxes from last year that you have not paid." Should a person get out their checkbook, sign a blank check, mail it into the Internal Revenue Service…prior to investigating what part of their taxes were not been paid?

Please note that the Stewart Title Insurance attorney instantly saw that the RMAs would be a cloud on some "portions of the property" in question. Even with that information, Plaintiff did not know *which* portions of the property title were clouded until a court ruled in a later litigation the extent of that cloud. (December 15, 2015: Federal Judge Norton's Order. *2:14-CV-01583-DCN-MGB*). This is clearly within the thirty-six month statute.

12. The only evidence that Plaintiff could have known that the membership agreements could be a problem was that Plaintiff knew of their existence. Knowing of their existence does not equate to understanding their impact on title. Defendant Weissenstein is proof of that. A non-lawyer who has secured a title opinion with respect to the property he purchased has done all that he can and what is reasonable in order to protect himself with respect to the purchase of a piece of property.

13. Plaintiff had every right, and it was reasonable for Plaintiff, to rely upon the legal advice of his lawyer, Defendant, Weissenstein. Defendant's failure to recognize the "legal significance" of the membership agreements was legal malpractice on *his* part. Plaintiff has an affidavit from an attorney that states that opinion which puts that issue to a jury, and it is also

proof that Plaintiff was reasonable in Plaintiff's belief that Plaintiff could legally develop the property in question until such time as a legal professional advised Plaintiff otherwise.

14. On **October 2, 2015,** Stewart Title Company advised Plaintiff that portions of the property had title defects due to the Family Memberships. Once Plaintiff had that information he searched over two months trying to figure out which portions of the property were defective, but could not. Plaintiff became confused and in utter disbelief. Plaintiff continued for the next two months trying to figure out which "portions of the property[1]" were the portions that had title defects. Since Plaintiff had already been wrongfully evicted off the property on April 15, 2014, he did not have the ability to re-enter the property and certainly no way to figure out what parcel(s) of the property was/were defective.

15. **On December 15, 2015, Plaintiff first learned that ALL of the property was defective by way of the Class-Action lawsuit:** After the Class discovery, depositions and Settlement Agreement was filed in Federal Court, and the Honorable Judge Norton signed off and approved the settlement, did news of that filter down to this Plaintiff.

16. Shortly afterwards and for the first time, Plaintiff learned and fully understood that ALL of the property had title defects preventing ANY type of development, even though NO membership agreements were ever properly recorded in the Clarendon County Courthouse. Since the Title Search Plaintiff had secured during his due diligence period in early 2011 showed no type of title defect from the RMAs, Plaintiff reasonably believed that both *he and* the RMAs families could use the property. Plaintiff

[1] Michael Medlock, Esq., S.C. Underwriting Counsel, Stewart Title Guaranty Company correspondence via e-mail.

could construct new cabins for there were many family members who had interest in purchasing the same while still being able to use the facilities including the lake, 3 swimming pools, club house, existing cabins, boat launch, camper/motorhome storage and other amenities offered by the campground.

17. **Once Plaintiff was evicted he then lost all monies including his documented equitable interest[2] and hundreds of thousands of dollars that Plaintiff had paid/invested and consequently lost due to the wrongful eviction of which Defendant could have stopped by recognizing and filing a defense for the Plaintiff exposing the clouded title and fraud within the Settlement Agreement and Consent Order which Defendant had formerly supported.**

18. **Noted again, not until December 15, 2015 did, or could the Plaintiff learn that ALL the property was defective, even though *no* memberships were ever legally recorded. Plaintiff filed his Malpractice suit against the Defendant on November 8, 2018. That filing date was, in fact, within the 36 month requirement as to the statute limits.**

19. Plaintiff's intention with respect to the property was clearly articulated in the Lease Purchase Agreement. The property Plaintiff was to develop was also displayed on drawings that were submitted to the Clarendon County Planning Commission for the purpose of obtaining permits to allow the development of the property in question. It was clear to both the Plaintiff and Defendant Weissenstein, who was actively in contact with the Plaintiff, the county,

[2] Exhibit "O". Affidavit and Equitable Interest by Bonham Gardner.

and Wells Fargo on behalf of the Plaintiff and perspective buyers as to what property and what activity Plaintiff intended with the property.

20. We know that Defendant supported his client, Plaintiff, to sign a Consent Order and Settlement Agreement to develop property that could not legally be developed due to the prior (700+) RMAs to use that exact property in question for time periods of up to 70 years.

21. The Lease Purchase Agreement required Plaintiff to not only develop the property but to also to *pay for the property by the sales of individual lots within 2 years of signing the agreement*. Those are mutually exclusive alternatives. The membership agreements were prior in time, which legally precluded the development of the property by Plaintiff, or anyone else. Therefore, the documents Defendant had his client, Plaintiff, sign could *not be* legally valid. If either Defendant or Plaintiff had understood that legal situation, these documents (Settlement Agreement and Consent Order) would not have been signed.

22. It was reasonable for Plaintiff to have not understood the legal implication of the membership agreements. It was *not* reasonable for Defendant Weissenstein to have not understood the legal implication of the membership agreements. As a licensed attorney and an expert in real estate, Defendant should not have advised Plaintiff to sign the Settlement Agreement and Consent Order. Instead, Defendant should have advised Plaintiff to file a counter-claim seeking damages from the sellers relative to the defective title.

23. The greater weight of the evidence, as to the reasonableness of Plaintiff's belief and Plaintiff's ability to understand the legal implication of the membership agreements, is in

favor of Plaintiff. Therefore, the date that triggers the statute of limitations is not when Plaintiff knew of the existence of the membership agreements, but when the legal implication of the membership agreements upon the title to ALL the property in question raised the issue of a cloud not on "portions" but upon ALL of the title. **That did not happen until December 15, 2015,** when the Federal Court action and Settlement Agreement between the owners of the RMAs and the owners of the land resolved that ALL the land was covered under the RMAs. Plaintiff had no method of knowing nor understanding that all 109 acres of said property was defective until **DECEMBER 15, 2015** which places him within the 36 month statute for he filed the malpractice on **NOVEMBER 8, 2018.**

24. A conclusion that knowledge of the memberships alone elevates Plaintiff's responsibility of knowing to the status of an attorney is not reasonable, and, it is ***not*** supported by any evidence period. Plaintiff is not an attorney and cannot be required to possess the legal acumen of an attorney. It would be injustice for any court to rule in such a manner. This is especially true when the very attorney that the Plaintiff hired, Defendant Weissenstein, failed *himself* to understand the significance of these agreements.

25. Plaintiff/Pro Se is concerned about justice and fairness and therefore wishes to speak of the following concerns, in light of the Honorable Judge Curtis' ruling:

a. Judge Curtis refers in the open hearing to Defendant's attorney, Steve Kropski, Esq., several times as "Steve" (by first name only), which indicates more than a strictly professional association.

b. The Defendant, Weissenstein, his daughter, and Steve Kropski practice law in the Honorable Judge Curtis's Courtroom.

c. Plaintiff / Pro Se is not a officer of the Court and even though Plaintiff has submitted concrete evidence that should send this case to a Jury, the Judge ruled from the bench to deny Plaintiff his right for a jury trial.

Therefore, Plaintiff Prays for the following:

a. The Honorable Judge rule to deny Defendant's motion to dismiss this case.
b. Plaintiff be given a open hearing for this reconsideration before the Honorable Judge Curtis rules in favor of Defendant's motion for dismissal.
c. Due to the overwhelming evidence that demands this case be sent to a Jury, Plaintiff prays to be given a speedy Jury trial.
d. Plaintiff provided an expert affidavit from Mark Hardee, Esq. which seems to have been ignored by this court. Plaintiff has been damaged in excess of $2.5M by Defendant.

Respectfully Submitted on this 13th day of February, 2019,

MB Hutson, Pro Se

P.O. Box 2755
Orangeburg, South Carolina 29116-2755
Telephone: (803) 308-2714

A Copy has been e-mailed and has been placed in the mail on February 13, 2019, to:

Steven Kropski, Attorney for the Defendant
P.O. Box 22528
Charleston, South Carolina 29413
Telephone: (843) 972-9400

Commission on Judicial Conduct
1220 Senate St., Suite 309
Columbia, SC 29201

Commission on Lawyer Conduct
1220 Senate St., Suite 309
Columbia, SC 29201

EXHIBITS: Hutson v A Paul Weissenstein CIVIL CASE **2018-CP-43-1583**

1	EXPERT WITNESS AFFADAVIT: MARK **HARDEE**, ATTORNEY
A	ATTORNEY **RETAINER AGREEMENT**: HUTSON: WEISSENSTEIN
B	**LPA** -LEASE PURCHASE AGREEMENT
C	**MIPA** -MEMBRSHIP INTEREST PURCHASE AGREEMENT
D	**REAIL MEMBERSHIP AGREEMENT**
E	**PLAT**
F	FEDERAL **JUDGE NORTON'S ORDER** PP. 15-20
G	A PAUL WEISSENSTEIN'S ANSWER TO APPLICATION FOR EVICTMENT 11-9-11
H	**SA** -SETTLEMENT AGREEMENT WITH PLAT
I	**CO** -CONSENT ORDER (SC JUDGE GEORGE JAMES)
J	**PAUL SIGNED** CLARENDON COUNTY PLANNING COMMISSION APPLICATION
K	**CLARK DEPOSITION** (3-18-15): BWR HAD NO LEASE TO OPERATE
L	**STEWART TITLE** LETTER 10-2-15
M	EMAIL HUTSON TO KROPSKI 3PP
N	MOTION FOR THIRD PARTY DEFENDANT DEPOSITION TAKEN IN FEB 2PP
O	**EQUITABLE INTEREST** AFFADAVIT: BON GARDNER, EXPERT
P	**PAYMENTS TO TLC** VIA CHECK AND WIRE TRANSFER
Q	**EMAIL FROM APW TO TOM HARPER** 3-31-12
R	SC COMMON PLEAS: MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JDGEMENT
S	**RULE 60 b, c, d**
T	**LOVELL DEPOSITION** 2/16/11 BWR LOSSES
U	" " " (ANOTHER COPY OF "T")
V	**NOV. 9, 2015: NOTICE LETTER FROM MBH TO APW**
W	**MARK HARDEE AFFADAVIT RE-SUBMITTED**
X	**ENVELOPE:** *Sent papers to* **SLED (July 21, 2016)**
Y	**Attachments to SLED letter sent July 21, 2016**
Z	**TITLE SEARCH PP. 1 & 2**
AA	**APW email to MBH re: County Planning Meetings and deadlines**
BB	**APW email to Wells Fargo for project financing – 2pp**
CC	**APW email to Tom Harper, Esq. re: lack of approval letter from seller**
DD	**APW email to Tom Harper, Esq. re: approval delays and request for additional extensions**

YELLOW Highlighted accompanied Reconsideration Request.

page of Application to Clarendon County Planning Board

J

10. Explain in detail what it is you are requesting permission to do. Attach supporting documentation and/or data if necessary or applicable.

Develop a single family subdivision at Big Water resorts

Signature of Applicant: [signature]

Sworn to and subscribed before me this 12 day of April Year 2012

[signature]

Notary Public My Commission Expires Aug 31, 2017

PERFORMANCE ZONE CERTIFICATE

Clarendon County Planning Commission Hearing Date: ____________________

Upon the basis of the above application, the statements in which are made a part thereof, The Clarendon County Planning Commission approves the proposed use, in so far as all other applicable requirements of the Clarendon County Unified Development Code, Ordinance 2011-05, are adhered to.

____
Chairman, Clarendon County Planning Commission

This certificate shall expire 365 days from the Planning Commission Hearing Date unless a Use or Building Permit has been issued for the approved use. This certificate neither implies nor authorizes the commencement of construction without the issuance of a Building Permit.

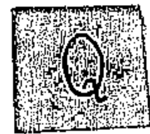
Application Denied*

Reason for Denial:

____
Chairman, Clarendon County Planning Commission

***Applicant may not reapply for the same use with 365 days of the above Planning Commission Hearing Date.**

***Revised September 2011



INBOX Compose Addresses Folders Options FTC WEBMAIL

Current Folder: **Sent**

Message List Delete Edit Message as New Forward Forward as Attachment Reply Reply All

Subject: RE: Big Water Resort
From: pwlaw@ftc-i.net
Date: Sat, March 31, 2012 5:57 pm
To: THarper@wcsr.com
Priority: Normal
Options: View Full Header | View Printable Version | Download this as a file | View Message details | View as HTML

13 days before Settlement Agreement signed

Dear Tom,
Mr. Hudson has signed the agreement and same is attached hereto. Please provide us a copy signed by your clients as soon as possible.

I have also attached a proposed letter to be signed by Mr. Hudson per the agreement. I will provide it once I have received the signed agreement from your clients.

Please provide the wiring instructions so that we can send the initial $8000 payment.

I look forward to receiving the proposed consent order from you soon which I understand will be signed by me and Mr. Hudson as well as by you and your clients.

I trust that this resolves the court hearing scheduled for Wednesday, and I am taking it off my calendar.

Thank you for all of your hard work, especially over the past few days, in preparing the drafts and the final settlement agreement.

I believe that you and I have negotiated a fair and equitable agreement for both our clients that hopefully will make both of them a lot of money over the next two years.

I hope that you have a good rest of the weekend.

Yours very truly,
A. Paul Weissenstein, Jr.
APWjr/lle

Number: E104

Fed. ID #57-1077425

Date: March 15, 2011

Bill To:

Nester & Jackson
P O Box 349
Santee, SC 29142

Title search

Your File Number	Tax Map Parcel Number	Service Rep.	Owner/Client
	035-05-00-001, et al	SLE	TLC Holdings, LLC

Description	Amount
60 year search - 035-05-00-001 ✓ 30.44 AC	160.00
60 year search - 035-06-02-007 ✓ 3.21 AC	160.00
✓ > 10yr update - 035-06-02-005	90.00
✓ > 10 yr update - 035-06-02-008 (w/add'l chain for access strip)	120.00
✓ > 10 yr update - 035-06-02-002	90.00
60 year search - 035-00-00-013 ✓ 57.8 AC	160.00
SCPSA - Leased Portion TRACTS A & B = 5.27 AC ✓	90.00
Copies	15.00

NESTER & JACKSON / OPERATING ACCOUNT 3373

Williamson Research Services 3/16/2011

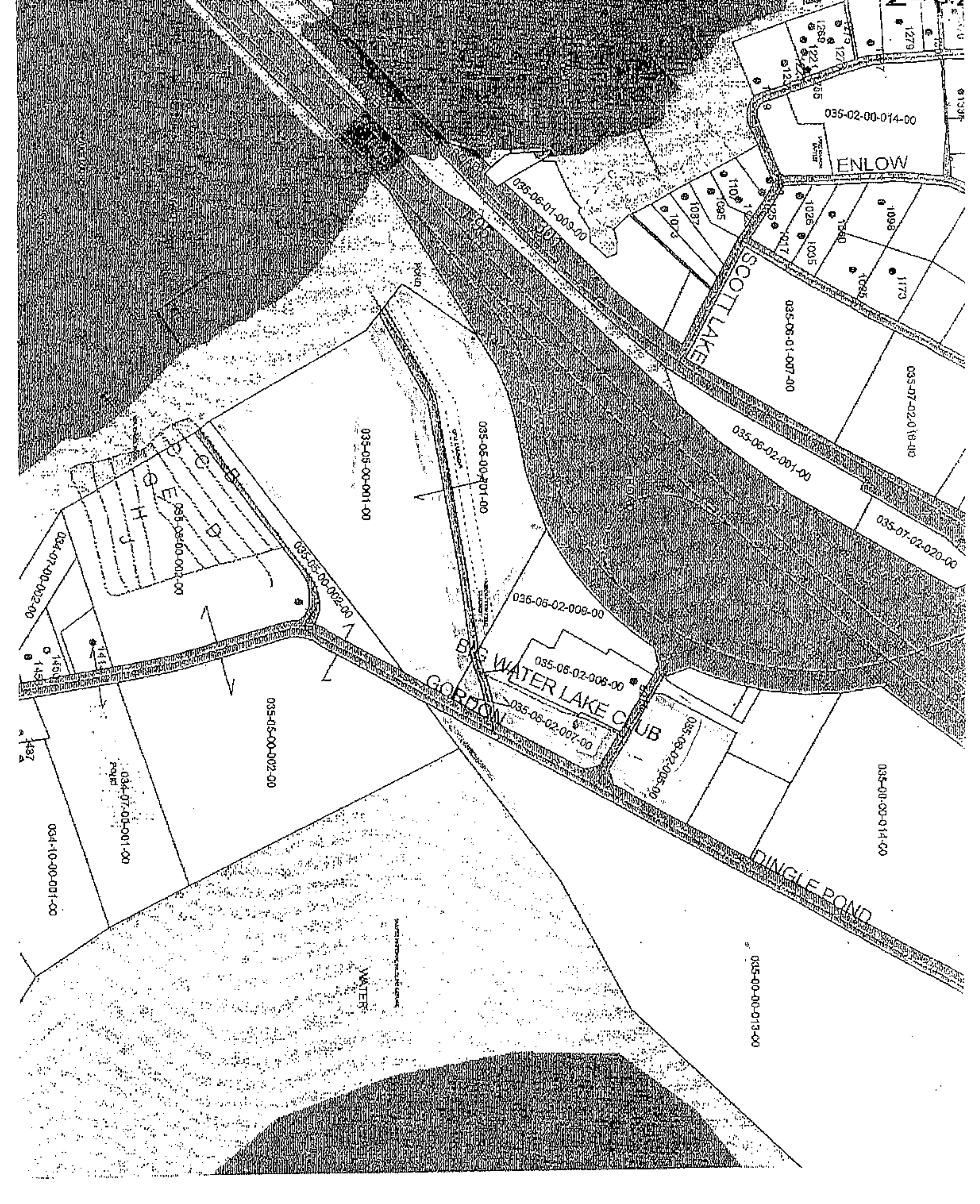
Big Water Resort 885.00

803 4355064 SONIA

PAYMENT RECORD

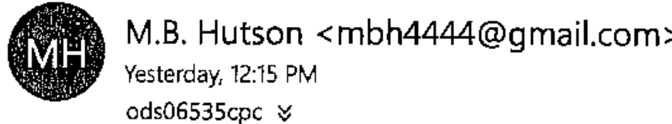
Operating Account - SCB title work 885.00

723243 (6/10)


ENLOW
035-02-00-014-00
SCOTT LAKE
035-06-01-009-00
035-06-01-007-00
035-07-02-018-00
035-06-02-001-00
035-07-02-020-00
035-05-00-001-00
035-05-00-701-00
035-05-00-002-00
034-07-00-002-00
036-06-02-008-00
035-06-02-006-00
BIG WATER LAKE CLUB
GORDON
035-06-02-007-00
035-05-00-002-00
034-07-00-001-00
034-10-00-001-00
035-00-00-014-00
DINGLE POND
035-00-00-013-00
WATER

Reply all | Delete Junk | ...

Fwd: Meetings and deadlines



M.B. Hutson <mbh4444@gmail.com>
Yesterday, 12:15 PM
ods06535cpc

Reply all |

Inbox

This item will expire in 30 days. To keep this item longer, apply a different label.

Label: 30 days Delete CPC mailbox (1 month) Expires: 9/13/2018 12:15 PM

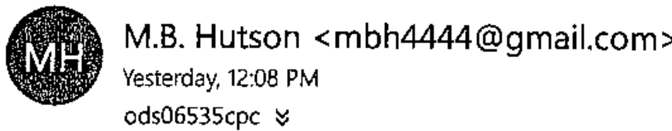
MBH
"Great minds discuss ideas;
Average minds discuss events;
Small minds discuss people, "
- Eleanor Roosevelt

---------- Forwarded message ----------
From: **MB Hutson** <mbh4444@gmail.com>
Date: Thu, Apr 5, 2012 at 6:52 PM
Subject: Fwd: Meetings and deadlines
To: Wireless Printer <mbh4444@hpeprint.com>

MBH
Sent from my iPhone

Begin forwarded message:

> **From:** pwlaw@ftc-i.net
> **Date:** April 3, 2012 2:44:35 PM EDT
> **To:** mbh4444@gmail.com
> **Subject: Meetings and deadlines**
>
> The schedule for the Planning Commission times is as follows: the Planning Commission meetings are on the third Tuesday of each. The next available one is May 16. You will need to submit everything by Friday, April 13, 2012. The meeting after that is June 19 with a May 18 deadline. The meeting after that is July 17 with a June 15 deadline. The meeting after that is August 21 with a July 20 deadline.



Fwd: Letter Terry Barrett

M.B. Hutson <mbh4444@gmail.com>
Yesterday, 12:08 PM
ods06535cpc

Reply all

Inbox

This item will expire in 30 days. To keep this item longer, apply a different label.

Label: 30 days Delete CPC mailbox (1 month) Expires: 9/13/2018 12:08 PM

MBH
"Great minds discuss ideas;
Average minds discuss events;
Small minds discuss people, "
- Eleanor Roosevelt

Well Fargo Home mort. letter Paul wrote

---------- Forwarded message ----------
From: <pwlaw@ftc-i.net>
Date: Thu, Apr 12, 2012 at 4:41 PM
Subject: Re: Letter Terry Barrett
To: mbh4444@gmail.com

Mr. Hudson,

Below is the proposed letter to Terry Barrett at Wells Fargo Home Mortgage (we intend to send via email to him) for your review.

Yours very truly,
Laura L. Emrich
Paralegal

Terry Barrett, Regional Sales Manager
Wells Fargo Home Mortgage
7721 Six Forks Road, Suite 116
Raleigh, NC 27615

Dear Mr. Barrett,

I attempted to call you to discuss with you The Big Water Resort near Summerton, South Carolina, the development of which is being coordinated by M. B. Hudson. Mr. Hudson tells me that he has talked to you a couple of times regarding this, including yesterday April 11, 2012.

Exhibit BB (p. 2/2)

Reply all | Delete Junk | •••

In order to be sure as to the development and funding of this project, I am writing you this letter and request that you confirm that this is the understanding of Wells Fargo Home Mortgage, as well.

Mr. Hudson intends to develop a portion of The Big Water Resort Campground by construction of numerous cabins over the next year. He anticipates that the first phase will involve the construction of probably 54 and as many as 72 cabins on individual lots.

Mr. Hudson anticipates that the seller will enter into contracts with individual lot purchasers and that each lot purchaser will at that time make a small down payment and then would apply for a construction perm loan with you. At the time of closing, and Mr. Hudson hopes to have a mass closing of most of these cabins more or less simultaneously, the clients would pay to me the balance of the required down payment percentage. Mr. Hudson anticipates that the amount will be set by you at between 15 and 20% of the ultimate purchase price of each cabin based on each individual applicant's credit worthiness.

Each lot will have developed on it a 2 bedroom 2 bath cabin on deeded lots with an anticipated sales price of between $130,000.00 and $148,000.00, depending on lot location.

At each closing, Wells Fargo will disburse to the property seller the difference between the down payment and the lot purchase price. The seller/developer will use those funds to complete the installation of infrastructure (roads, sewer, and water) simultaneously while the cabins are being constructed, and to obtain releases of the property from the existing indebtedness on the property.

The infrastructure contractor will be required to post bond with the county for the work to be done and, if you so desire, will provide his credentials to you for approval. From the lot purchase price, the cost of the infrastructure improvements will be escrowed to ensure payment to the contractor for services rendered in constructing those improvements.

After the balance for lot purchase has been paid at the initial closing draw by Wells Fargo for each cabin, additional draws will be made by the cabin contractor from the construction loan funds, in the usual manner. Mr. Hudson understands from his discussions with you that when Wells Fargo gives approval for the loan, it locks in that approval for six months, from the date of approval to the date of the construction perm lot closing.

Please confirm that the terms set forth herein conform to the agreement and requirements of Wells Fargo Home Mortgage for the development of this project.

If you require anything further, or if anything in this letter is not accurate, please do not hesitate to let me know.

Yours very truly,

A. Paul Weissenstein, Jr.

APWjr/lle

Reply all | Delete Junk | ...

I'm generally around – if you can get the materials to me, I will do my best to make the Tuesday at 5:00 deadline.

CC

Thanks.

Tom

From: pwlaw@FTC-I.NET [mailto:pwlaw@FTC-I.NET]
Sent: Monday, June 18, 2012 3:34 PM
To: Harper, Thomas
Cc: MB Hudson
Subject: Approval

Dear Tom,

Mr. Hudson has submitted additional designs to Clarendon county planning. Ms. Rose at Clarendon County said this submission did not have your consent. I told her that I did not think your consent was required for each stage, but she and David Epperson (County Attorney) believe that it does.

I have suggested to Hudson that he try to get copies to you (I don't have copies), but if you agree with me that your approval of each step of the proposed development is not required, please let her know. If I am wrong (I have not reviewed the settlement) please accept my apology but also please try to approve this ASAP. Ms. Rose said that she would really like to have your letter before 5:00 tomorrow.

Yours very truly,

A. Paul Weissenstein, Jr.

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any

Reply all | Delete Junk | ••• Paul

From: pwlaw@FTC-I.NET
Date: Fri, June 29, 2012 10:38 am
To: "T Harper" <THarper@wcsr.com>

Dear Tom,
I talked to Maria Rose last week and Mr. Hudson and I
talked to her again to try to make sure that we understood the time frame
for approval for this subdivision development.
At the time that we
entered into the contract, we thought that the subdivision could be
approved for construction to commence by mid-July, we figured with a
couple of delays it should be ready to begin by mid-September. However, we
now understand that instead the earliest it is likely to be ready would be
mid-November. The documentation that is submitted and will be considered
at the July meeting is a revised sketch plan. If they approve the revised
sketch plan, then he will then attempt to obtain all of the approvals, etc
from DHEC and Mrs. Rose says that the quickest that DHEC will turn around
an approval request is 30 days, and that would be lucky. But she does not
anticipate that the preliminary plan approval could be considered by
planning before the September 18 planning commission meeting. Because the
deadline to submit documentation for the October meeting is September 14,
we would be unable to submit any documentation in time for an October
meeting. We cannot submit a prepared final plat until the preliminary plan
is approved (which we hoped would be in September). Construction cannot
begin nor can properties be offered for sale until the final plat is
approved by the planning commission. I asked if the plat could be approved
administratively by her, and she said that because that it is a
subdivision plat it would require approval by the actual planning
commission when they meet in mid-November.
The contract and consent
order that has been signed by the parties anticipated a faster timeline
than this. You will recall when we first began negotiation we had hoped
that the timeline would possibly allow development to begin in June. Now
it does not appear that development can even begin until November at the
earliest. Mr. Hudson anticipates that he would have trouble making
$8,000.00 per month payments continuing into the fall. Please contact your
clients and let us know what they may be willing to do as far as
additional extensions. Mr. Hudson has incurred a lot of expense in trying
to get the development to an approval stage, and before additional
expenses incurred, wants some assurance that TLC is willing to work with
him through these delays.

Yours very truly,

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER) Civil Action No. 2018-CP-43-1583

RECORDED
2019 FEB 19 P 12 25
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

MB Hutson/MB Hudson,

Plaintiff

vs.

A. Paul Weissenstein, Esq., Weissenstein Law Firm, John Doe #1

Defendant(s).

RESPONSE OBJECTING TO THE ORDER OF THE COURT

The Plaintiff, Hutson, hereby objects to the form and content of the order of the Court drafted by Defendant's Attorney, "Steve," in this cause.

The reasons for the objection are that there are numerous misstatements of facts, conclusory findings that are not supported by the law, these so called facts that are supposed to present the case in the light most favorable to the plaintiff but they in no way present this case in the light most favorable to the plaintiff. In reality, "Steve," has presented the evidence that "Steve" has found most favorable to his mal-practicing client, Mr. Weissenstein.

In support of the Plaintiff's statement please find the following presentation:

1. There numerous dates "Steve" has given that are incorrect. He also fails to mention, in his citing of the inquiry of title through the realtor to the landowner's attorney at that time, Bill Coffey, Esq., that he, Hutson, never received a response from either of those

two parties, even after multiple attempts. (There exists NO evidence that would indicate otherwise.) Therefore, Plaintiff, as a responsible purchaser, had a professional Title Search executed through attorney Ron Nester, Esq. in Santee, S.C. The Title Search did not show any defects related to the Membership Agreements. Therefore, Plaintiff, Hutson, as a layperson, moved forward, believing that there was no impact on the land from the Retail Membership Agreements.

2. Steve drew a conclusion that plaintiff could not sustain an action against the "TLC parties". This is not true. TLC parties, the LLC through its members and TLC's various attorneys conspired to perpetrate a fraud on an innocent purchaser. It just happened to be the plaintiff, Hutson. They did this in the structuring of the campground business and a separate holding company to protect the real estate. If you read the business minutes of January 16, 2009, for TLC and Big Water Resort (attached) you see multiple layers of conspiracy to defraud a purchaser. This includes hiding (by not recording the membership agreements at the register of deeds as required by law) the impact of the membership agreements which are a cloud on the title to the real estate. Plaintiff, Hutson, was induced to enter the contract to purchase Big Water Resort business by the fraud that Hutson could develop the real estate which he could not. Weissenstein did not recognize this and take action to remove Hutson from a contract to purchase a property that was losing $200,000.00 plus each year.

3. The Lease/Purchase Agreement, EXHIBIT "B," itself was invalid for two reasons. First, it was impossible. Hutson was required to develop the property and sell individual lots in order to pay for the property. That is the method specifically set forth in the

contract. Since there was a cloud on the title (even though it was hidden from the public record) Hutson could not develop the property within the time frame specifically set forth in the contract. Second, there was no consideration in the contract (lease/purchase agreement) in favor of Hutson. Hutson's goal was defined in the contract and was the basis making for making the purchase possible. Since Hutson could not legally perform the contract it lacked consideration and was not a valid contract.

4. TLC parties and their various attorneys understood this, and they failed to disclose this fact to the court that signed off on the consent order. This is Extrinsic Fraud upon the Court. This is one of the most grievous and dilatory things that can be done in our court system. TLC and its attorneys had a duty, at the time this Settlement Agreement and Consent Order was signed, to disclose this fact. TLC and its attorneys had gained the upper hand in this situation by violating the law (they refused to record the membership agreements against the land they restricted, which created, to the public, the false impression that the land was free from encumbrances, when, in fact, the land was encumbered for up to 70 years in some cases (2 lifetimes). When TLC parties and its attorneys failed to make this disclosure it caused the court to sign an order requiring Hutson to perform a contract Hutson could not possibly perform and took from Hutson the right to pursue the valid claims Hutson had against TLC parties and their attorneys. The court unknowing gave TLC parties and its attorneys the sword of *res judicata* to slay Hutson at every turn for the future.

5. There may be other valid bases for defeating TLC Parties and its attorneys, but these are sufficient to demonstrate "Steve's" failure to present Plaintiff, Hutson's, case in the light most favorable to Hutson.

In conclusion, Plaintiff would quote Martin Luther King, Jr., "injustice anywhere is a threat to justice everywhere." This could not be truer than when injustice prevails in our court system. If honest law-abiding citizens cannot receive a just result in our court system what are they to do? The effect of the court's order, as "Steve" has drafted it, basically says that Hutson, a private citizen without a law degree, is to be held to the standard of an attorney while Mr. Weissenstein, who has a law degree and is licensed by the state of South Carolina to practice law in its state, is not held to any standard. No mind, that is capable of reason, can draw such a conclusion.

Hutson hereby requests that this court set aside its erroneous judgment in favor of Weissenstein, grant Hutson the jury trial to which Hutson is entitled.

Respectfully Submitted on this 19th day of February, 2019.

MB Hutson

P.O. Box 2755
Orangeburg, South Carolina 29116-2755
Tel: 803 308 2714

A Copy has been placed in the USPS on the 2/19/2019, to:

Steven Kropski, Attorney for the Defendant
P.O. Box 22528
Charleston, South Carolina 29413
Tel: 843.972.9400

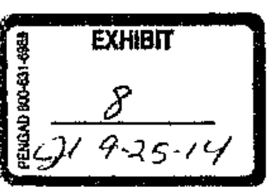
Big Water Resort LLC
Members Meeting
January 16, 2009

A meeting of the Members of Big Water Resort LLC was held on January 16, 2009 in Cabin 18 on The Big Water location at Summertown, SC. The meeting was called to order by Steve Lovell, Managing Member. All three members -Steve Lovell, Jim Thigpen, and Richard Clark - were present.

Primary objectives of the meeting were to review fiscal results for calendar year 2008 and establish action plans for calendar year 2009. Big Water Resort LLC books were not officially closed by the meeting date, but it was established that because of the poor conditions of the United States economy and local economy that 2008 was a very poor year. Serious negative cash flows were experienced in the last half of the year and the LLC was only able to operate because of Capital Calls on the members and, once again, by not making any payments to TLC,LLC who owns the property. It was pointed out to member Thigpen that he had not participated in any of the Capital Calls and that he was significantly behind the other members in his Capital Account on the LLC's books. Thigpen provided no answer as to why he did not participate other than that he did not have the funds and he didn't anticipate have any funds any time soon.

Based on the financial review of 2008 and the projected economy of 2009 and beyond, it was determined that the company could not generate cash to continue the operations under the current business model. Discussion was held concerning possible actions the LLC could take to remain viable. Below are the main points of that discussion:

1. Complete shutdown of operations
   a. <u>Immediate shutdown</u>
      <u>Pros</u>
      Immediate cash savings
      <u>Cons</u>
      Backlash from those who owned use memberships in Big Water facilities
      Negative impact on employees
      Negative impact on possible sale of the company
      Long term cost could be greater
      Negative perception
   b. <u>Phased shutdown</u>
      <u>Pros</u>
      Minimize cons listed above
      Reduce membership risk problem
      <u>Cons</u>
      Difficult to administer
      More costly short term
      Requires more strategy and implementation



<u>Cons continued:</u>
Could result in worse condition by continuing memberships but with smaller base
Could have deterioration of assets
Would create negative perception

2. Combination sale of Big Water LLC and TLC LLC
<u>Pros</u>
Cease operational responsibility at closing
Minimize any lingering liabilities

<u>Cons</u>
Difficult to find buyer in current economic environment
Impedes implementation of alternate strategies

3. Sale Big Water LLC/Lease TLC assets to Buyer
<u>Pros</u>
Eliminate responsibility of operations quickly
Reduce expenses
Receive lease income and ability to sell TLC property not leased
Continue to sell memberships in interim

<u>Cons</u>
Can expect little or no cash income at beginning
Risk of failure on part of tenant
Potential of inheriting membership backlash
Cannot sell leased real estate for extended period of time
Can expect deterioration of assets during period of lease

<u>Implementation options discussed if this option were deployed</u>
Base sales price on potential revenues from operations
Base sales price on value of membership notes
Base sales price on equity of name
Retain buy-out option for a period of time if buyer for company is found

Possibility of leasing TLC assets to membership if no buyer is located

4. Develop viable model
<u>Major topics discussed were:</u>
Cut unnecessary expenses
Precisely define cost of each product marketed and assure that it is sold above cost
Develop compensation plan that promotes profitability
1. Commission schedule that is based on cash sales
2. Key management compensation based on profitability
3. Utilize current resources and assets to minimize cost
Assure that all fee schedules for facilities use cover cost of that facility

Major topics discussed continued:

Develop marketing plan that achieves financial objectives
Remove some assets now currently used for sale of memberships (example-Sales
Office) and generate income thru other uses
Create and plan events for off-season uses to generate fees during off-season

5. Explore selling to local or state government entity

6. Explore tax benefits if assets were given away

After discussing the above alternatives, the members unanimously decided that a
continuing effort to sell the LLC to an outside source should be made; but that action
should be taken immediately to exercise option 3 maintaining a buy-back option should a
buyer be found. It was agreed that the sale of Big Water LLC should first be offered to
Myron Smith who is presently Sales Manager for Big Water, who has vast experience in
business of this type, and who has been instrumental in campground operations. The
members felt this would be the best way to accomplish option 3 with the least amount of
disruption to present employees and Mr. Smith. A Heads of Agreement (copy attached)
to accomplish this task was drafted and was to be presented to Mr. Smith the following
day to determine if he had interest and if so, could he obtain the resources to make the
acquisition.

The members also unanimously agreed to cease sales efforts immediately until the LLC
decided which direction it would take.

The meeting was then adjourned.

ELECTRONICALLY FILED - 2019 Apr 12 4:41 PM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	CASE NO.: 2018-CP-43-1583
MB HUTSON A/K/A MB HUTSON, Plaintiff,	
vs.	**DEFENDANT PAUL WEISSENSTIEN'S MEMORANDUM IN OPPOSITION TO PURPORTED MOTION TO RECONSIDER**
PAUL WEISSENSTEIN (Attorney)/ PAUL WEISSENSTEIN, Defendant.	

Via order entered February 25, 2019, this Court granted summary judgment for the Defendant. On February 26, 2019, the undersigned emailed the entered order granting summary judgment to Plaintiff. (Exhibit A).

Prior to entry of the order granting summary judgment, on February 13, 2019, Plaintiff filed a document entitled "motion to reconsider." On April 12, 2019 the undersigned received a hearing notice related to the subject motion to reconsider, setting a hearing on the motion for April 22, 2019. Defendant respectfully requests that the motion be dismissed without oral argument as defective, as no proper or valid motion to reconsider pursuant to Rule 59(e) was filed.

"A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP. "A motion under Rule 59(e) is timely if it is served not later than 10 days after receipt of written notice of the entry of the order.'" *Coward Hund Constr. Co. v. Ball Corp.*, 336 S.C. 1, 3, 518 S.E.2d 56, 57 (Ct. App. 1999)(emphasis added).

Here, no Rule 59(e) motion was filed within 10 days of the entry of the order granting summary judgment. Moreover, the undersigned expressly advised the Plaintiff that he need not

wait until entry of the order to file a motion to reconsider. (Exhibit B). Thus, there is no pending motion to reconsider.

Similar facts were recently discussed by the South Carolina Supreme Court in *Overland, Inc. v. Nance*, 423 S.C. 253, 256, 815 S.E.2d 431, 432-433 (2018). In *Overland*, the Supreme Court reiterated that the time limitations of Rule 59(e) cannot be altered by the trial court or agreement of the parties. *Id.*

Specifically, the Supreme Court identified that the Circuit Court loses jurisdiction over the matter after the time period for filing post-judgment motions lapses. *Id.*, (citing, *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006)("Generally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed."); *Doran v. Doran*, 288 S.C. 477, 343 S.E.2d 618 (1986) (on appeal from an order entered just before the effective date of the Rules of Civil Procedure, holding the trial court lost the power to modify the final order after end of the term of court, and noted that under Rule 59(e) the trial court would have the power to alter or amend such an order for a ten-day period after entry of judgment)).

In summarizing their clarification of the rule, the Supreme Court held "the failure to serve a Rule 59(e) motion within ten days of receipt of notice of entry of the order converts the order into a final judgment, and the aggrieved party's only recourse is to file a notice of intent to appeal." *Overland*, 423 S.C. at 257, 815 S.E.2d 431, 433 (emphasis added).

Here, when Plaintiff filed the current motion purporting to be a motion to reconsider, there were no orders entered that could be reconsidered. On February 25, 2019, the order granting summary judgment was entered. Thereafter, Plaintiff did not file a Rule 59(e) motion. Accordingly, there is no valid motion to reconsider pending.

ELECTRONICALLY FILED - 2019 Apr 12 4:41 PM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

Furthermore, as no Rule 59(e) motion was filed within 10 days of entry of the order granting summary judgment, the order granting summary judgment is a final order and the Court lacks jurisdiction to alter or amend the subject order. Thus, the purported motion to reconsider should be dismissed without oral argument.

To the extent that the Court decides to hear the purported motion to reconsider on the merits, the motion fails to identify any grounds for reconsideration.

A party may request that a trial court reconsider its prior ruling where the party believes the trial court misunderstood, failed to fully consider, or overlooked an argument or issue. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772, 780 (2004). As the purported motion to reconsider was filed prior to entry of the order, it necessarily does not identify any specific error of law or material argument or issue. Moreover, the purported motion to reconsider simply reiterates the same arguments made at the hearing on the motion for summary judgment.

Thus, to the extent that the Court decides to hear Plaintiff's motion to reconsider on the merits, the motion should be denied.

CONCLUSION

For the reasons stated herein, the purported motion to reconsider should be dismissed as the order granting summary judgment has become final, and the Court lacks jurisdiction to alter or amend the subject order. Defendant respectfully requests an order dismissing the purported motion to reconsider without a hearing.

Further, to the extent the Court decides to hear the motion on its merits, Plaintiff identifies no grounds for reconsideration and the motion should be denied.

[SIGNATURE PAGE TO FOLLOW]

ELECTRONICALLY FILED - 2019 Apr 12 4:41 PM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

This 12 day of April, 2019.

Respectfully submitted,

EARHART OVERSTREET LLC

By: s/Steven R. Kropski

STEVEN R. KROPSKI
State Bar No.:101441

Attorneys for Defendant Paul Weissenstein

PO Box 22528
Charleston, SC 29413
843-972-9400

ELECTRONICALLY FILED - 2019 Apr 12 4:41 PM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

Steve Kropski

From: Steve Kropski
Sent: Monday, February 11, 2019 1:10 PM
To: 'H Hutson'
Subject: RE: evidence

Good afternoon Mr. Hutson:

I received your email from this weekend and this email. I will have a proposed order completed soon. As far as a motion to reconsider, I am not providing you legal advice but generally that would need to wait until Judge Curtis signs the summary judgment order.

Steven R. Kropski
Attorney
Direct 843 972 9404
PO Box 22528, Charleston, SC 29413

From: H Hutson <hutson4444@gmail.com>
Sent: Monday, February 11, 2019 12:50 PM
To: Steve Kropski <steve.kropski@earhartoverstreet.com>
Subject: evidence

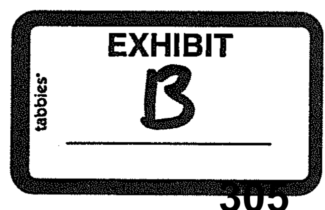
Good morning Steve. I was reading a letter this morning that Paul (your client) wrote to Wells Fargo Mortgage Department confirming WFM would make construction and permanent loans on the BWR property.

This will be used in front of a Jury. Paul is so guilty. I don't understand why Paul's insurance company would put so much work in trying to avoid responsibility against me knowing full well I was extremely damaged by Paul's malpractice.

Respectfully,

MB Hutson

ELECTRONICALLY FILED - 2019 Apr 12 4:41 PM - SUMTER - COMMON PLEAS - CASE#2018CP4301583



Steve Kropski

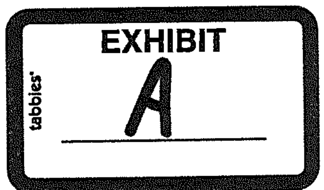
From: Steve Kropski
Sent: Tuesday, February 26, 2019 12:19 PM
To: 'H Hutson'
Subject: Hutson v. Weissenstein
Attachments: Order Granting Summary Judgment (signed).pdf

Good afternoon Mr. Hutson:

I told you I would email you the signed order when it was filed. Please find attached the filed order granting summary judgment in favor of Weissenstein. I believe the Court likely mailed a copy to you as well, however, please let me know if you are unable to open the attachment.

Steven R. Kropski
Attorney
Direct 843 972 9404
PO Box 22528, Charleston, SC 29413

ELECTRONICALLY FILED - 2019 Apr 12 4:41 PM - SUMTER - COMMON PLEAS - CASE#2018CP4301583



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER)

RECORDED
2018 DEC 12
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Civil Action No. 2018-CP-43-1583

MB Hutson/MB Hudson,

Plaintiff

vs.

A. Paul Weissenstein, Esq.

Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

Even though Plaintiff has filed within the Court much evidence as to the malpractice by Defendant Paul Weissenstein, and Defendant's attorney filed on December 10, 2018, *during the hearing* yesterday his "DEFENDANT PAUL WEISSENSTIEN'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR FOR SUMMARY JUDGMENT," Plaintiff files to clear up some of the intentional confusion that Defendant's attorney attempted to displace in the Court yesterday.

1. Plaintiff did enter into the LPA (Lease Purchase Agreement and the MIPA (Membership Interest Purchase Agreement) for the business in December of 2010.

2. Plaintiff took extraordinary steps to follow up on the property title:

   a) Plaintiff did email asking the Sellers' Realtors if the memberships were a problem. The Realtors responded that they did not know.

   b) Plaintiff telephoned Billy Coffee, Esq. of Manning, S.C. in November of 2010, whose name the Plaintiff acquired from the Sellers'

Realtor to see if the memberships at the campground would be a problem for development. Coffee would not return the call.

c) As a follow-up, Plaintiff asked the Realtor to contact Coffee concerning this issue, but she stated that Coffee was not returning her phone calls either. (NOTE: Plaintiff later found out that TLC Holdings, LLC, the landowners/Sellers, were involved in litigation against Billy Coffee, Esq., which was the supposed reason by Plaintiff that the phone calls were not being returned regarding the land owned by TLC Holdings, LLC.)

d) Also, Plaintiff, as an extra step, had Andrew Tucker, Esq. come from Tennessee and review the Retail Family Membership Agreements. Tucker indicated that they appeared to be contingent upon annual renewal fees for the use of the front acreage, i.e. developed, acreage (pools, bathhouse, docks, loading ramp, game rooms, etc. This was substantiated in referring to the Lease Purchase Agreement (LPA) under the property description (Exhibit A of the LPA: which cited[1]
"A. CAMPGROUND KNOWN AS BIG WATER RESORT….containing 30.44 acres…."

e) Subsequently, within the 90 days of due diligence, Plaintiff engaged Ron Nester, Esq. of Santee, S.C., to do a title search on the property. It came back clear; nothing showed up reflecting a defective title. In

[1] Exhibit A of the Lease Purchase Agreement delineates three (3) parcels/tracts of land, with A) being "CAMPGROUND KNOWN AS BIG WATER RESORT" "containing 30.44 acres." (line 2). Exhibit "B".

retrospect, it is now known that the Sellers, TLC Holdings, LLC had failed to follow state law[2] *on purpose* which requires the recordation of such long-term title encumbrances (leases / agreements). They did this so that even ***a reasonable 'Buyer" would NOT be able to discover the title issues of the property without a competent real estate attorney that should know the law and so advise his/her client.*** Even, at that, ***only 30.44 acres were identified as "campground."***

5. Paul Weissenstein could have easily won the counter claims had all material facts been included in his counter claim, but they were due to his failure to investigate, learn, and advise thus committing on-going grand malpractice. Defendant's breach of duty due to neglect and unprofessional representation caused him to fail to protect his client:

a) when he had the opportunity to investigate, learn, and advise his client on the important facts noted above, and

b) when, in the counterclaim that Defendant filed in behalf of his client, the Plaintiff, Defendant Weissenstein did not include the facts and expose the fraud within the documents.

6. STATUTE: Due to Paul Weissenstein's failure to investigate, learn, and advise his client, Plaintiff only learned the full scope of his breach of duty in early

[2] S.C. Code 1976 § 27-33-30 : *In order to give notice to third persons any lease or agreement for the use or occupancy of real estate shall be recorded in the same manner as a deed of real estate.*

October of 2015, which is well within the statute of 36 months, with this filing being originally made in September of 2018:

7. Plaintiff discovered on October 2, 2015, in a conversation with Michael Medlock, Esq., South Carolina Underwriting Counselor for Stewart Title Company, that the title was defective. This was the first time Plaintiff learned of the defective title. Plaintiff asked Medlock if he would send that in writing, and Medlock did so the same day.[3]

8. Mid-stream in a Federal lawsuit whereby TLC Holdings, LLC sued Plaintiff (then as a Third Party Defendant in the Class Action Lawsuit where the Plaintiffs were owners of the Retail Membership Agreements), Plaintiff, still not knowing that **NONE** of the property was developable, became puzzled by some of the questions and comments in depositions and began even more inquiries. This included sending documents to Tommy Robertson of the S.C. State Law Enforcement Division[4] (SLED). As Plaintiff mentioned in the Hearing of December 10th, 2018, in Sumter, SLED's legal department confirmed "civil fraud" but would take no action due to their assessment that it was 'civil fraud' explaining that they only got involved in 'criminal fraud.' When documents were returned to Plaintiff by SLED, these documents, which had been sent to SLED, were kept in place in the mailing folder[5] until the writing of this paper including the list of documents sent to SLED.[6]

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[3] Exhibit "L".
[4] Envelope exhibit "X".
[5] Pictures of dated stamped envelope sent by Hutson to SLED, which they returned. Exhibit "X"
[6] Copy of "Attachments to Letter to SLED". Exhibit "Y".

3. Plaintiff was noticed that he was going to be evicted in 2011 due to non-compliance of the contract and hired Defendant Paul Weissenstein to represent him regarding the eviction and counter claims on October 3, 2011. Defendant reviewed carefully all contracts and filed a counter claim in favor of Plaintiff[7]. *At that time* neither the Plaintiff, nor his counsel, Paul Weissenstein, Esq., recognized the title defect whereby development cited in the LPA.[8]

4. THEREFORE, the Defendant, Paul Weissenstein, failed to include crucial facts in the counter claim due to his inability to recognize the fraud and corruption within the contracts. Plaintiff hereby lists the counter claim facts that should have been named but were not, due to Defendant Weissenstein's defense, which constitutes a grossly negligent breach of duty, that caused his client damages in excess of $2M. They are as follows:

a. Paul Weissenstein failed to include defective title caused by the memberships.

b. Paul Weissenstein failed to ask, investigate, identify, nor include that TLC had never given nor provided a contractual agreement allowing the Big

[7] Exhibit G.
[8] Exhibit B.

Water Resort "BWR" to have a right to use the property in order to honor the memberships.

c. Paul Weissenstein failed to investigate, learn, and advise his client that *none* of the property could be developed.

d. Paul Weissenstein failed to investigate, learn, and advise his client that the defective title would last for 70 years.

e. Paul Weissenstein failed to investigate, learn, and advise his client that BWR could never honor the 740 family memberships due to no land and no contract for any land.

f. Paul Weissenstein failed to investigate, learn, and advise his client that BWR was losing $300 thousand per year and there was no way the business could sustain itself even though Defendant had a deposition sheet that Plaintiff brought to him in 2012.

g. Paul Weissenstein failed to investigate, learn, and advise his client, Plaintiff, that he was caught in a $20M obligation to maintain the memberships for 70 years (two life times) due to BWR losing $300K/year.

h. Paul Weissenstein failed to identify the demands in the Settlement Agreement and Consent Order that required Plaintiff to develop property that could not be developed.

9. Defendant's attorney, Steve Kropski, Esq. contacted Stewart Title asking that he not work with Plaintiff for Plaintiff was attempting to get an sworn affidavit as to the defective title.

10. In addition, it should be noted that Steve Kropski, Esq., attorney for the Defendant, also has attempted to run interference preventing Paul from testifying in behalf of Plaintiff when Plaintiff was sued in Federal Court and needed Paul Weissenstein's testimony. Kropski and Defendant both knew that had Defendant testified in Plaintiff's behalf, he would be admitting to malpractice and therefore, refused.

11. Paul Weissenstein encouraged Plaintiff to execute the Settlement Agreement and Consent Order knowing full well that Plaimtiff would be locked into:

A. a *res judicata* legal box that would prevent Plaintiff from ever recouping from the fraud within the initial LPA and MIPA.

B. Selling divided lots to the public that could not legally be done.

The many lawsuits afterwards, the years of suffering, damages, and financial losses struggling with his own defense are a direct result of the Defendant's failure to perform his duty to investigate, disclose, and inform his client.

The execution of the Settlement Agreement and Consent Order doomed the Plaintiff. Paul Weissenstein, Defendant, and professed expert in real estate law, could have prevented that had he not failed to investigate, recognize, and disclose what plainly was before him in the contracts.

12. Defendant's attorney attempts to show that Andrew Tucker caused Plaintiff's grief. Andrew Tucker, Esq. was only engaged for three weeks for the initial contract signing and had no input or connection with the defense on eviction nor the Settlement Agreement and Consent Order.

13. Paul Weissenstein has caused Plaintiff enormous damage, even losing his equitable interest verified in Exhibit "O".

14. Plaintiff hired an expert attorney to provide a sworn affidavit after reviewing the extensive documents. His affidavit[9] clearly states that Paul Weissenstein had committed malpractice on the Plaintiff and never mentions Andrew Tucker for it was Paul Weissenstein who had every opportunity to properly file the right counter claim that would have caused Plaintiff to prevail and would have prevented years of work and lost equitable interest.

15. Defendant's attorney is simply trying to dance around the subjects throwing blame on Andrew Tucker when Defendant, Paul Wessenstein is the responsible counsel.

---

[9] Mark Hardee, Esq. Affidavit. Exhibit 1 and W.

16. Defendant admitted to Plaintiff that he had malpracticed Plaintiff and apologized on the telephone, yet hides behind his insurance attorney. Defendant was too ashamed to appear at yesterday's hearing for guilt reasons.

17. It would be a great injustice to blame Andrew Tucker for one small missed action that could have been fixed when Paul Weissenstein made more than 8 major neglectful unfixable mistakes that prevented Plaintiff from being successful and has led to lawsuits. This case for malpractice must go to jury trial and if not, there is no justice. Even in the sworn expert witness affidavit, Paul Weissenstein is the only person blamed. Additionally, Federal Judge Norton pin-points Paul Weissenstein in his order[10] as having been responsible for giving counsel.

THEREFORE, Plaintiff pleads and Prays

The Honorable Judge deny Defendants motion for Summary Judgment or Dismissal and send this case to a Jury as soon as possible based on the scintilla and hard evidence.

Respectfully Submitted on this 11th day of December, 2018 with typing corrections on the twelfth.

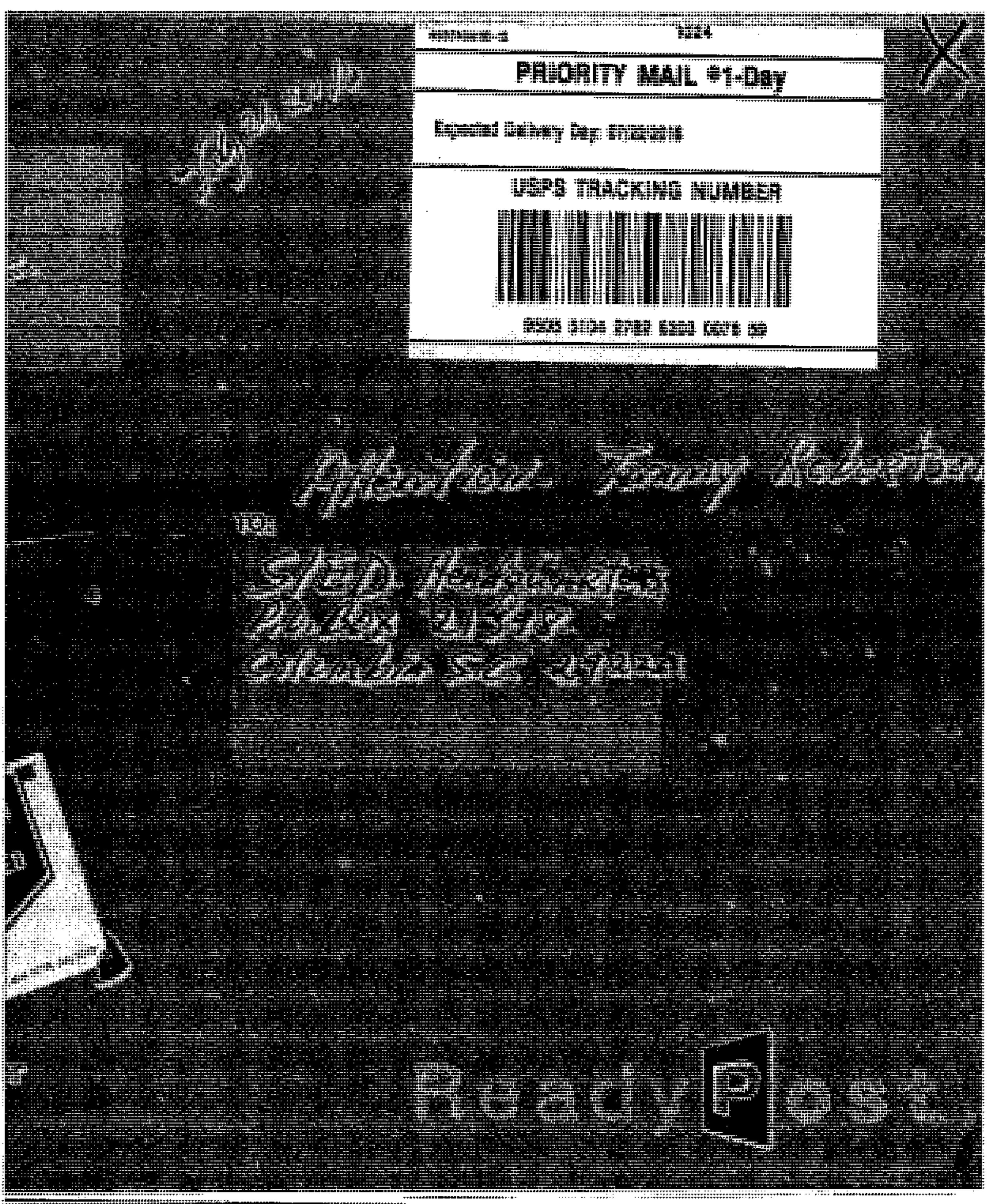
MB Hutson

P.O. Box 2755
Orangeburg, South Carolina 29116-2755
Tel: 803 308 2714

A Copy has been placed in the USPS to:

[10] Exhibit "F"

Steven Kropski, Attorney for the Defendant
P.O. Box 22528
Charleston, South Carolina 29413
Tel: 843.972.9400


PRIORITY MAIL 1-Day
USPS TRACKING NUMBER
ReadyPost

Attachments to Letter to SLED:

Title	Pages	Description	Date, if applicable
The Fraud Trial	18	Pub. of *Association of Certified Fraud Examiners* 716 West Ave., Austin, TX 78701-2727	
Lovell Deposition	1	Page # 113-116	February 16, 2011
Big Water Resort LLC Members Meeting	3	Minutes of BWR, LLC and TLC Holdings, LLC held concurrently	January 16, 2009
Lovell Deposition	1	Lovell states two legal entities held concurrent business meetings	September 25, 2014
Lease Purchase Agreement	25 plus Exhibits	Agreement written by Seller's attorney for the purchase of the land in Clarendon County	Executed December, 2010
Membership Interest Purchase Agreement	10	Agreement written by Seller's attorney for the purchase of the Big Water Resort, LLC (campground business)	Executed December, 2010
BWR, LLC Financial Status documents	5	furnished by Seller with contract to sell.	December, 2010
Richard U. Clark deposition	5	pp 77-96 of deposition describing: 1. ages of Sellers (sixties); 2. lack of long term plan (escrow) to ensure protection of business's sales contracts by BWR, LLC 3. lack of lease granting BWR, LLC (business)"right to use land and amenities" for one and two lifetimes/as sold to member families	March 18, 2015
Jimmy Steve Lovell	1	Deposition (p. 77) Lovell description of Sellers as "experienced"/ "sophisticated" businessmen	February 16, 2011
Sewer Moratorium correspondence	9	Correspondence to/from Sellers and governmental agencies regarding the existence of sewer moratorium issues as related to property owned by TLC Holdings, LLC in Clarendon County	2003-2011
Retail Membership Sales Agreement (sample)	2	Sample of one of the -/+ 1,200, 1-2 lifetime(s) of years "right to use" the land & amenities at BWR, LLC	Dates varied from about 2003-2008

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

RECORDED
2019 APR 16 PM 4:41
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

) Civil Action No. 2018-CP-43-1583

MB Hutson/MB Hudson,

Plaintiff,

vs.

A. Paul Weissenstein, Esq., Weissenstein Law Firm, John Doe #1

Defendant(s)

PLAINTIFF'S RESPONSE TO DEFENDANT'S MEMORANDUM IN OPPOSITION TO PURPORTED MOTION TO RECONSIDER

(scheduled for Monday, April 22, 2019)

Comes now Plaintiff, to respond to Defendants Memorandum in Opposition to Plaintiff's Request for Reconsideration, to give rationale for Plaintiff's Right for Denial of the Summary Judgment, and present the misrepresentations cited in the Order, as follows:

PLAINTIFF'S RIGHT FOR DENIAL OF THE SUMMARY JUDGMENT

1. Defendants **Legal Standard** states: *"Summary Judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law."*

2. **Material Facts in genuine issue** are:

   A. The expert witness' sworn affidavit states that:

      i. Defendant committed malpractice by not recognizing the permanent title defects.

      ii. TLC Holdings, LLC was defrauding Plaintiff. Defendant did *nothing* about it.

   B. The fact that Plaintiff was completely ***unaware*** of the Title issues is evidenced by:

i) Plaintiff spent two (2) years working on getting his subdivision approved including consulting with a S.C. Senator/Attorney in Manning to assist in getting the moratorium for city sewer and water lifted/removed, costing Plaintiff thousands of dollars.

ii) Plaintiff paid Defendant, Weissenstein, thousands of dollars to help acquire county sub-division approvals, which included Defendant appearing and presenting at County Planning Board Meetings.

iii) Plaintiff hired surveyors, engineers, and spent months consulting with various contractors in planning out the development.

iv) Plaintiff has $1M in equitable interest (validated with appraisal and surveyor affidavit as to the real value of the Plaintiff's equitable interest and loss of the same due to Defendants malpractice.

3. How could ANY Honorable Judge:

A. form "her own opinion" deducing that a Plaintiff carried out all this work and expense if Plaintiff was aware of a defected title?!

B. take it upon berself to rule using her "personal opinion" that Plaintiff *knew* ahead of time about the title defects in light of all this evidence that he did NOT?!

4. THEREFORE:

A. Defendant's Counsel, "Steve" *knows* that his legal standard assessment is fraudulently stated.

B. The Honorable Judge Curtis is required to move this case to a Jury Trial to make a fair decision based on ALL the facts and not merely ber personal opinion.

C. Defendant(s) and Defendants' Counsel, "Steve" deserve nothing less than a Jury Trial where all sworn facts can be presented. This would take at least a week.

D. Plaintiff deserves nothing less than a Jury Trial. Plaintiff is a victim with monumental financial and personal damages due to stress and trauma directly caused by Defendants' failure to execute his fiduciary duties.

E. Plaintiff deserves the opportunity to substantiate through Discovery, his sound belief that, Counsel for the Defendant contacted some of Plaintiff's potential witnesses (which will remain unnamed at this time) to solicit their lack of cooperation with the Plaintiff. This would prove to be a direct violation of the SC Rules of Conduct.

F. The Plaintiff had to have knowledge of the adverse ruling of the court to know he needed to request a re-hearing, the court notified the Plaintiff in writing and by statute the Plaintiff requested a rehearing by motion within 10 days as required by statute (Rule 59).

MISREPRESENTATIONS IN ORDER

4. Defendant's Counsel was asked hy the Judge to prepare the Order for the Judge (of which Plaintiff read and objected to based on stated reasons which the Honorable Court has apparently failed to recognize, and mis-statements made by same Defendant's Counsel.) (Example: On page two of "Steve's" Order states,

"On November 11, 2010, Hutson's realtor wrote to the realtor for the TLC Parties: ***Attached is Susan's lifetime membership info. (sic) regarding Big Water camp ground. My buyer is concerned about the "life time" members and the impact they can have on the future development of the property. In other words, in your opinion, what is the***

easiest, legal way to terminate the lifetime memberships of Big Water? Will the memberships have an impact on obtaining clear title for the property.?"

5. Defendant's Counsel ("Steve") makes this letter conversation with the realtor *sound as if* the title issue was learned about and made clear to Plaintiff/Hutson. The fact of the matter is that neither the realtor, nor the attorney whom the realtors wrote to, ever answered with any response that would cause the Plaintiff to have a correct answer to that question. Therefore, Plaintiff, himself, placed several unanswered telephone calls directly to the office of the attorney for the Sellers at the time, Mr. Coffee, and left messages pleading for an answer in follow-up, to the title question. To this day, Plaintiff never got any response from Attorney Bill Coffee.

6. This Honorable Court does not have one shred of evidence, nor does any exist, indicating that the Plaintiff was aware of ANY defective title prior to when it was alleged:

a) by Stewart Title Company that (unnamed) "portions of the property" (Details specified in Plaintiff's Motion for Reconsideration) had title defects (October 2, 2015) as clearly stated in the recently filed Motion for Reconsideration, and

b) by Federal Court Judge Norton, defining "ALL" of the property being effected in his Order in December of 2015.

c) NOTE: Remember that in Due Diligence, Plaintiff paid Attorney Ron Nester $1,000.00 dollars to run title on said property and NO title defects were disclosed within the title report (Exhibit "Z"). It is thereby evidenced that Plaintiff found out about the title defects EXACTLY as Plaintiff has testified to the Honorable Judge Curtis.

7. Plaintiff has far exceeded the amount of evidence required to show that Paul Weissenstein's malpractice of this Plaintiff caused severe financial damages to this Plaintiff in excess of $2.2 M.

8. Counsel "Steve" filed a memorandum in opposition to the upcoming oral hearing set for April 22, 2019, based on stating "facts" <u>that were untrue,</u> as follows: Defendant's Counsel sites on page one "A motion to alter or amend the judgment shall be served not later that 10 days after <u>*receipt* of written notice</u> of the entry of the order". ***However,*** **the rule (CR59) reads** <u>"the motion must be brought within 10 days of the judgment, order or decision."</u> NOTE:

a) Judge Curtis's decision was dated **February 4, 2019** (attached).

b) Decision was mailed (USPS) to Plaintiff & received **February 7, 2019.**

c) Plaintiff filed a "Motion to Reconsider," on **February 13th, 2019,**

Plaintiff's motion was clearly filed within the ten (10) day period. This motion **must be heard** on the scheduled date of April 22, 2019. To not allow this hearing would be in violation of Plaintiff's rights based on faulty orders and assumptions made by the Honorable Court. This original ruling must be reversed and this case must be sent to a jury.

9. In addition, Plaintiff asks that Judge Curtis provide a recording for transcripts of every statement that is made at the hearings including, but not limited to, the Plaintiff, the Honorable Judge, and Defendant's counsel, Mr. Kropski, whom this judge addresses in court as "Steve."

10. Plaintiff can prove that the statue is good with evidence. The Honorable Court erred in making an interpretive, opinion decision without evidence. There is no evidence to support the Honorable Judge Curtis' "opinion" that Plaintiff "knew" about the title...only that Plaintiff was inquiring. Those inquiries were satisfied to Plaintiff through his professionally acquired "Title Search" (EXHIBIT "Z"), performed soon thereafter. ALSO, this is further

supported by the expert witness affidavit (Exhibit "W") whereby all Plaintiff's evidence was carefully scrutinized. Tberefore, this case should be immediately awarded a Jury Trial as requested. A Bench Trial WAS NEVER REQUESTED. NOTE: Plaintiff is additionally offended that the Defendant's Counsel, S. Kropski, Esq., is referred to repeatedly, and familiarly during court proceedings, as "Steve," by this Honorable Judge. Plaintiff has met the requirements for going forward with a Jury Trial and this Court is obligated, therefore, to send this case to a Jury. Plaintiff pleads with the Honorable Judge Curtis to fully, and carefully, and completely read Plaintiff's Reconsideration Request.

PLAINTIFF PRAYS that

--since the court's decision cannot allow the Defendant to use a legal theory that the defendant did not hold or espouse at the time Defendant gave Plaintiff legal advice. That would give the Defendant the benefit of hindsight at the expense of the Plaintiff. That is not justice.

--as neither the Plaintiff nor the Defendant understood the impact of the membership agreements upon the title to the property to be developed, as was attested to by the expert witness, it is therefore for a jury to determine whether the actions of the parties were reasonable based upon their knowledge at the time. Also, it is for the jury to determine whether the defendant violated the standard of care for an attoruey.

--as another attorney has given the opinion that the Defendant did violate the standard of care in an affidavit, that creates a jury question that the court cannot answer. To do so invalidates the jury systems and is an attack on the entire court system of justice and in this case the court is holding the Plaintiff to a higher standard than the attoruey whom the Plaintiff hired to give him advice.

--then Plaintiff prays that the Honorable Judge Curtis:

- --awards Plaintiff the appropriate audience, a jury,

- orders a speedy jury trial,
- denies defendant's motion for a Summary Judgment,
- makes certain that she *carefully* reads the Reconsideration Motion and this

  document,
- allows Discovery to provide more detailed evidence against the Defendant(s)
- allow without hesitation the hearing to proceed on April 22nd as set down,
- allows all Prayers from all filings from the Plaintiff to be combined.

Respectfully Submitted on this 16th day of April, 2019.

MB Hutson

P.O. Box 2755
Orangeburg, South Carolina 29116-2755
Tel: 803 308 2714

cc: Commission on Judicial Conduct
1220 Senate Street, Suite 309
Columbia, SC 29201

Commission on Lawyer Conduct
1220 Senate Street, Suite 309
Columbia, SC 29201

A Copy has been placed in the USPS, to:

Steven Kropski, Attorney for the Defendant
P.O. Box 22528
Charleston, South Carolina 29413
Tel: 843.972.9400

LETTER TO CLERK OF LOWER COURT
FILING NOTICE OF APPEAL

RECORDED
2019 MAY 22 PM 2:32
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C

May 17, 2019

The Honorable James C. Campbell
Clerk of Court for Sumter County
215 North Hardin Street
Sumter, South Carolina 29150

RE: A. Paul Weissenstein, Esq., Respondent, v. MB Hutson, Appellant, Case No. 2018-CP-430-1583

Dear Mr. Campbell:

Enclosed for filing is a notice of appeal in the above case.

Sincerely,

s/ MB Hutson
MB Hutson, PRO SE
Post Office Box 2755
Orangeburg, South Carolina 29116-2755
(803) 308 - 2714

cc: Steven Kropski, Esq.
Earhart Overstreet, LLC
Post Office Box 22528
Charleston, South Carolina 29413
Attorney for Respondent
(843) 972 - 9400

NOTICE OF APPEAL IN A CIVIL CASE RECORDED

2019 MAY 22 PM 2:32

THE STATE OF SOUTH CAROLINA JAMES C. CAMPBELL
In The Court of Appeals CLERK OF COURT
SUMTER COUNTY, S.C.

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi Curtis, Circuit Court Judge

Case No. 2018-CP-430-1583

A. Paul Weissenstewin, Esq.,

Respondent,

v.

M B Hutson, Appellant.

NOTICE OF APPEAL

M B Hutson appeals the order [judgment] of the Honorable Kristi Curtis dated April 22, 2019. Appellant received written notice of entry of this order [judgment] on April 24, 2019.

May 17, 2019

s/ M B Hutson
M B Hutson
Post Office Box 2755
Orangeburg, South Carolina 29116-2755
(803) 308 - 2714
Pro Se Appellant

Other Counsel of Record:

Steven Kropski, Esq.
Earhart Overstreet, LLC
Post Office Box 22528
Charleston, South Carolina 29413
Attorney for Respondent
(843) 972 - 9400

RECORDED
2019 MAY 22 PM 2:32
JAMES B. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi Curtis, Circuit Court Judge

Case No. 2018-CP-430-1583
Appellate Case No. UNKNOWN

A. Paul Weissenstewin, Esq.,

Respondent,

v.

M B Hutson, Appellant.

PROOF OF SERVICE

I certify that I have served the NOTICE OF APPEAL on the respondents by depositing a copy of it in the United States Mail, postage paid, on May 17, 2019, addressed to their attorney of record, Steven Kropski, Earhart Overstreet, LLC, Post Office Box 22528, Charleston, South Carolina, 29413.

May 17, 2019

s/ M B Hutson
M B Hutson
Post Office Box 2755
Orangeburg, South Carolina 29116-2755
(803) 308 - 2714
Pro Se Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
COURT OF COMMON PLEAS

M.B. HUTSON)
PLAINTIFF,)
v.)
PAUL WEISSENSTEIN,)
DEFENDANT.)

TRANSCRIPT OF RECORD
18-CP-43-01583

December 10, 2018
Sumter, South Carolina

BEFORE:

THE HONORABLE KRISTI F. CURTIS, JUDGE

APPEARANCES:

M.B. HUTSON
Pro Se Plaintiff

STEVEN R. KROPSKI, ESQ.
Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 MR. KROPSKI: Steve Kropski for defendant
2 Paul Weissenstein. It's our motion Mr. to
3 Mr. Hutson who is representing himself pro se.
4 THE COURT: Good morning, Mr. Hutson.
5 MR. HUTSON: Good morning, ma'am.
6 MR. KROPSKI: I believe that there's two
7 other motions on the roster. One of them was a
8 motion that Mr. Hutson filed to have this hearing,
9 and the other one, I believe, is motion to produce
10 documents which is the discovery requests. We will
11 produce those as long as it's fine with him. I
12 don't think we have a motion to compel or anything
13 to argue today on that. That was just documented
14
15 THE COURT: Okay. Give me just one minute
16 to pull these up here. I've got it in front of me.
17 So I'm gonna hear from Mr. Kropski first and then
18 Mr. Hutson, I'll be glad to hear from you as well,
19 sir.
20 MR. HUTSON: Thank you, ma'am.
21 MR. KROPSKI: Thank you, Your Honor. We
22 have, I think you probably have electronically
23 what's been filed. I have hard copies. There's
24 motion and memorandum and Mr. Hutson's response.
25 THE COURT: I do.

1 MR. KROPSKI: Your Honor, this is a motion
2 to dismiss or for summary judgment. Mr. Hutson
3 filed an amended complaint which has quite a few
4 attachments to it, exhibits I think maybe 13 or 14
5 exhibits. It might be more than that. And in
6 addition to some of those exhibits I have attached a
7 couple of documents to our memorandum which as a
8 matter of law I think we show that this is outside
9 the statute of limitations for legal malpractice
10 claim. I don't want to go too far. We've had
11 colorful argument and I'm sure this will be
12 colorful, but this is a pretty tortured history as
13 far as this property that is the subject of
14 Mr. Hutson's grievances. In about 2010 he entered
15 into a lease/purchase agreement with a company
16 called TLC Holdings to put ten dollars down, pay
17 about six million dollars over a period of time, and
18 take possession of property which is being used as
19 Big Water Resort which is was a campground family
20 resort. What they did was they would sell lifetime
21 memberships to members at this resort. This is TLC
22 Holdings and their company Big Water Resort. These
23 would be lifetime memberships to use. They will be
24 exclusive. They'd bring the RV. They could use
25 cottages, there's pools, there's family recreational

1 types of things. In 2010 Mr. Hutson entered
2 negotiations. He was represented by a lawyer that
3 is from Tennessee. Mr. Weissenstein did not
4 represent him in this transaction. With the
5 lease/purchase which is attached to the complaint I
6 believe is exhibit B and is exhibit A to our
7 memorandum of law. The lifetime membership
8 agreements were specifically identified within this
9 purchase agreement. Within the purchase agreement
10 Mr. Hutson was assuming all the lifetime memberships
11 that were part of Big Water Resorts. What is
12 Mr. Hutson's dispute now is that he says that these
13 lifetime memberships, I think there's about 700 of
14 them sold, were actually defects entitled to the
15 property which would prohibit him from being able to
16 develop the property. Again, Mr. Hutson was
17 represented by a different lawyer with respect to
18 the lease purchase in these transactional documents.
19 In 2011, about a year, a little bit less
20 than a year later, Mr. Hutson defaulted on the
21 lease/purchase agreement and the owners of the
22 property began an eviction proceeding in Clarendon
23 County, I believe it was, to have Mr. Hutson evicted
24 from the property, lease/purchase agreement default,
25 and they wanted to take back possession.

1 Mr. Weissenstein represented Mr. Hutson with respect
2 to this eviction action. Counterclaims were
3 introduced related to nondisclosures concerning
4 sewers, difficulty developing the infrastructure
5 that would prevent Mr. Hutson from being able to
6 convert this into a single family home development.
7 This is about 30 acres so it's a good amount of
8 property.
9 Ultimately, the 2011 litigation ended up
10 in a settlement agreement that was signed by Mr.
11 Hutson and signed by the members of TLC Holdings and
12 the owners and what essentially did give him another
13 year to try to get the approvals that needed to be
14 done to develop the property. The settlement
15 agreement was attached to a consent order which was
16 signed by Judge James. After that point
17 Mr. Weissenstein assisted trying to get some of the
18 approvals from the town, from the zoning board; but
19 what ultimately happened was, again, there's a
20 default under the settlement agreement and TLC
21 Holdings, the owners, again sued Mr. Hutson and
22 asked for him to be evicted from the property.
23 Mr. Weissenstein didn't represent in the second
24 eviction action.
25 THE COURT: He did not?

1 MR. HUTSON: He did not.
2 MR. KROPSKI: He did not. So it was just
3 this one 2011 lease/purchase agreement default
4 action.
5 THE COURT: That was a 2011 action filed
6 in Clarendon County?
7 MR. KROPSKI: That's correct, and it
8 resulted in a settlement which was attached to Judge
9 James consent order. Thereafter, the members, these
10 folks who had purchased the lifetime memberships
11 filed a class action lawsuit against the TLC
12 Holdings and the owners of Big Water Resort in
13 federal court and that ended up in front of Judge
14 Horton in Charleston and Mr. Hutson was brought into
15 that as a third party defendant by the owners who
16 said during the period of time that you ran the Big
17 Water Resorts Park you were, you did a terrible job
18 and it ruined it, you let the people from the public
19 in, the members got mad and their lifetime
20 memberships were no longer exclusive and the
21 property went to waste so it's not our fault, it's
22 your fault. That all has been worked out. There's
23 been settlement in the class action lawsuit, and I,
24 I don't know if the third party complaint against
25 Mr. Hutson is completely concluded. I think it

1 probably has. I believe that resulted — and
2 Mr. Hutson will tell you perhaps — some sort of
3 settlement, some sort of agreement. Throughout the
4 course of that litigation, however, Mr. Hutson had
5 introduced a bunch of counterclaims against TLC
6 Holdings. Those were dismissed by Judge Norton
7 saying that back in — you've already been through
8 this, you've had multiple lawsuits with these TLC
9 Holdings folks, you brought counterclaims before for
10 fraud, for various different things, and you, they
11 resulted in either an adverse decision or in favor
12 of TLC Holdings or a settlement agreement that we
13 had in 2012. Then in the course of third party
14 lawsuit in federal court TLC Holdings, those
15 individuals filed a defamation claim against Mr.
16 Hutson Clarendon County — and this is all public
17 record, I just wanted to go through it — in
18 Clarendon County and that recently resulted in a
19 3.5 million dollar defamation judgment against Mr.
20 Hutson. During that period of time he has, I
21 believe, Mr. Weissenstein, several other lawyers. I
22 think a lawsuit for the same allegations that was
23 filed up in either Lexington or Richland County — I
24 think it was a different attorney — shortly after
25 this was filed against Mr. Weissenstein. These

1 allegations relay exclusively to these lifetime
2 membership agreements. And what Mr. Hutson says is
3 that Mr. Weissenstein made a mistake in the 2011
4 litigation by not introducing a fraud counterclaim
5 that tries to set aside the lease/purchase agreement
6 based on nondisclosure that the lifetime memberships
7 represented a title defect. And I hope that was at
8 least I can restate it, but that's what the theory
9 is in this Complaint.
10 Our motion is brought on three grounds.
11 First, from a motion to dismiss perspective that the
12 allegations of the Complaint failed to state a claim
13 is simply that to bring a legal malpractice cause of
14 action an attorney-client relationship is something
15 that is a necessary. What we're looking at in these
16 allegations is a failure to identify title defects
17 during the period of time that the lease/purchase
18 was going on. Once a lease/purchase was entered
19 into and there's default litigation, there's nothing
20 that Mr. Weissenstein could do to try to walk back
21 the title defects that were not noticed during the
22 course of the lease/purchase agreement. So what
23 these allegations really are is an allegation saying
24 we screwed up when we were negotiating the
25 lease/purchase agreement and Mr. Weissenstein is not

1 Mr. Hutson's client or lawyer at that time so there
2 was no attorney-client relationship.
3 The second and third grounds are that in
4 2010 when this was being negotiated — and this is
5 on page 2 of our memorandum of law, and it's page 5
6 of the lease/purchase agreement. But it simply
7 said, purchaser shall within 90 days after the
8 effective date of lease/purchase investigate
9 seller's title to the premises and identify any
10 exceptions to title which are not acceptable to
11 purchaser. It gives the entire 90 days to identify
12 any issues with title and if the seller does not
13 cure those defects or does not fix them within 30
14 days of notice, then Mr. Hutson was able to
15 terminate the agreement. That wasn't done. And
16 this is all during 2010 when the lease/purchase is
17 being negotiated.
18 Attached as exhibit B to our memorandum is
19 an email dated November 11, 2010. This is a month
20 before the lease/purchase agreement was actually
21 signed and entered into between the parties. It's
22 an email from Mr. Hutson's realtor, and it says,
23 "Attached is Susan's lifetime membership interest
24 regarding Big Water Campground. My buyer is
25 concerned about the lifetime members and the impact

1 they can have on the future development of the
2 property. In other words, in your opinion what is
3 the easiest legal way to terminate the lifetime
4 memberships of Big Water. Will these memberships
5 have any impact on obtaining clear title for the
6 property." So this is a month before the
7 lease/purchase is executed. In the lease/purchase
8 there's this 90 day grace period where you can look
9 at the title and figure out what's wrong so this
10 means November 10th, November 11th, 2010, Mr.
11 Hutson's aware that these lifetime memberships may
12 create some problem with title. Yet, 90 days after
13 lease/purchase there's no objection, there's no
14 investigation, there's nothing that goes on in terms
15 of whether or not these lease/purchases do create a
16 problem for title. So that's the third ground of
17 our summary judgment motion, second and third, that
18 if he thought that the title shouldn't or there's
19 title issues and that should have been introduced,s
20 you knew about it in 2010. That should have been
21 introduced in 2012. At least by the time the
22 settlement agreement was signed he knew there was
23 some sort of error by not bringing up the fraud
24 counterclaim based on these title defects. That
25 would be in 2012. Three year statute of limitations

1 were well beyond that now. The third part is that
2 as an element of a legal malpractice claim there's
3 also a requirement that you show that you most
4 probably would have been successful on the
5 underlying claim. Here, since the contract
6 forecloses litigating title defects after the 90 day
7 period and we know Mr. Hutson was aware of the title
8 defect prior to that, prior to even entering into
9 the agreement, there is no chance that the most
10 probably standard could be met as far as success in
11 the underlying litigation.
12 So that's the grounds for our motion. It
13 is early in the litigation. However, given the
14 documents that we have attached here and the
15 documentary evidence concerning knowledge and
16 notice, we feel that there's sufficient time to
17 bring a summary judgment motion.
18 THE COURT: Thank you.
19 Mr. Hutson, sir, I'm glad to hear from
20 you.
21 MR. HUTSON: Yes, ma'am. Good to be here
22 in your court this morning, if it's still morning.
23 I appreciate what Mr. Kropski said, but I think what
24 he did, he painted a little bit of a picture that
25 give some of the facts but certainly not all of the

1 facts so this involves over two million dollars in
2 damages and it involves extrinsic fraud, which is
3 being taken into consideration because there's no
4 statute on extrinsic fraud. And so, not only was --
5 and I have an expert affidavit from Mark Hardy that
6 you have probably read, attached to this Complaint,
7 and it reads that TLC was committing fraud upon me
8 and Mr. Weissenstein did not catch it. Now had he
9 caught it, it would have made a world of difference.
10 What Mr. Kropski said a minute ago was he named one
11 complaint and that possibly could have made a
12 difference that Paul Weissenstein overlooked and
13 that was defective title. Now he really should have
14 looked at that because when I went and met with Paul
15 Weissenstein, number one, I paid him a deposit and
16 I got a retainer agreement with him. Number two, I
17 gave him a copy of the purchase agreement. I gave
18 him a copy of the purchase of the business
19 agreement. I gave him copy of my plat. And he
20 himself represented me in getting all of my
21 approvals done through the Clarendon County planning
22 board. That was part of his job and
23 responsibilities.
24 Now Mr. Kropski has mentioned one thing
25 that, that is that the title was not, was

1 overlooked. Well, he said it so it must be true;
2 but likewise, his client overlooked it also, the
3 same as Tucker did. Now the only difference between
4 Tucker and Weissenstein is Weissenstein malpracticed
5 me on about 11 additional counts and these counts
6 are serious and because of it and the consequences s
7 of his unbelievable malpractice which I'm gonna lay
8 out to you in just a moment. I wound up in federal
9 bankrupt court. I wound up being sued in two
10 federal cases in federal court and sued in common
11 pleas and acquired a three-and-a-half million
12 dollars judgment which my insurance company I think
13 has paid. But I'd like to start off, I want to
14 first just kind of respond to a little bit of what
15 he was talking about. But I hired Paul Weissenstein
16 on October 25th, 2011, to represent me and he did do
17 real estate. He was supposedly a trained expert in
18 real estate and I trusted him. I relied upon him.
19 I gave him all my contracts, including a plat to
20 develop the property, and his job was to oversee,
21 handle the closing on the property which was to be
22 some divided lots being sold to the general public,
23 as well as getting my approvals through Clarendon
24 County. So he had a pretty good size job to do and
25 I worked with him as close as I could. So number

1 one, I was not aware that there was a defective
2 title because of the memberships. Now he just
3 mentioned that there was so obviously there was and
4 his client missed it too; but it could have been a
5 situation on this title defect where some of the
6 members who had prepaid could have been shifted
7 around because he mentioned 30 acres of land, but in
8 fact, it was 108 acres of land so that might have
9 been able to have been worked out. That's not my
10 biggest problem. My biggest problem are the major
11 malpractices that Paul Weisssenstein did to me and I
12 want to name just a few of them. And keep in mind
13 please, Your Honor, he was totally representing me
14 in getting my approvals, helping me negotiate with
15 the power company, helping me negotiate with the
16 banks, knowing full well I was going to have to get
17 construction loans, there he is a seasoned real
18 estate lawyer so what better person could I have
19 gone to. But Paul Weissenstein failed to recognize
20 that the campground memberships did have a sole
21 right to use for recreational purposes, but it did
22 not distinguish how much of the property could be
23 used. Okay, now, he didn't bring that up, but. So
24 there was, there was a possibility that we could
25 have gotten that resolved; but the fact of the

1 matter is, it wasn't brought to my attention because
2 my attorney who I paid about 18,000-dollars to never
3 caught that. Now can you imagine, he knows about
4 the membership members and we're talking about 740
5 families that have prepaid to occupy the property
6 for 70 years.
7 THE COURT: Mr. Hutson, weren't you aware
8 of that at the time you entered into the
9 lease/purchase agreement?
10 MR. HUTSON: I was, I was aware of the
11 fact that there was memberships, but like
12 THE COURT: And you had an attorney
13 representing you when you entered into that
14 lease/purchase.
15 MR. HUTSON: Judge Norton says for him and
16 his paper — and I want to read that. He's talking
17 about Paul Weissenstein.
18 THE COURT: I understand, but when you
19 initially entered into the lease/purchase agreement
20 with TLC and Big Water, you had a Tennessee attorney
21 representing you in that transaction; is that
22 correct?
23 MR. HUTSON: That's correct. And I had an
24 attorney that was actually, his purpose was to go
25 over the membership agreements. Now, I had a 90 day

1 time period to run title on the property and I did
2 that. I hired a lawyer to do that. But the problem
3 was, South Carolina law requires that any property
4 and that is leased or contracted for use by a third
5 party for more than year has to be recorded as if
6 it's a deed, okay, so, and that 20-33-31. So what
7 happened, TLC never recorded one of those — it was
8 a total of 1200 and some memberships, but they never
9 recorded one of them and it did that because that
10 began the fraud. That began the extrinsic fraud.
11 The lawyers worked with TLC as well as TLC. There
12 was a plan. The reason I know that is because I
13 happened to acquire later on two years, three years
14 later, a copy of minutes of a meeting and in that
15 minutes of the meeting that TLC was having, they
16 were making this plotted plan. And what they
17 wanted — and this is another terrible thing that
18 this gentleman's client failed to overlook. When I,
19 the moment I bought, Your Honor, the moment I signed
20 the contract to lease/purchase the 108 acres, TLC
21 required me to buy, to buy and close the business.
22 All right, so Paul Weissenstein has all of this in
23 his hands. He fails to recognize by me buying that
24 I just obligated myself for 20 million-dollars to
25 keep the gates open for 70 years, one.

1 THE COURT: Again, Mr. Weissenstein wasn't
2 a party to the actual closing on the lease/purchase
3 agreement.
4 MR. HUTSON: He did not prepare the papers
5 on the closing agreement; but what he did do, he
6 prepared and he oversaw and he insisted that I sign
7 and execute the settlement agreement and the consent
8 order so I've not named the malpractice yet, but
9 I'll step over to what he did do. Because of many
10 reasons which was held from me from knowing and the
11 lawyers have handled, represented TLC as well as
12 TLC, they were aware of these items. But the whole
13 plan, Your Honor, was they were never gonna sell me
14 that property. They just wanted me to sign an
15 option to buy the property but buy the business.
16 Why? Because the business is losing three hundred
17 thousand dollars a year and the business had a
18 20 million-dollar obligation and the business was
19 nothing but an empty shell. Because what they had
20 done, they had taken money out of Big Water Resort
21 and put it into TLC, and they made all their
22 improvements on property owned by TLC. So the
23 bottom line is, the business who had a 70 year
24 obligation to honor these memberships of which they
25 required me to buy, I had no land to honor the

1 memberships so it was an impossible task. Now
2 Tucker didn't do that. Paul, Paul was part of this.
3 So what Paul does, Paul Weissenstein negotiates with
4 TLC's lawyers and he allows TLC lawyers to draw the
5 contracts and the contracts read that I am required
6 under court order, in essence, to develop the
7 property within two years, all right. Number one,
8 there was a moratorium sewer which I had been misled
9 on. I had to get that fixed. That took almost two
10 years. DHEC would not allow anybody title on city
11 sewer; I had to have city sewer. Number two, I had
12 water issues there with drinking water and a fire
13 protection system. Number three, the mere fact that
14 the contract settlement agreement stated that I
15 would develop the property because that's how I was
16 gonna pay TLC six million dollars for the purchase
17 price. When they got me to sign that paper and they
18 got the judge to sign off on it, Judge George James
19 never read the contract, the order; it was prepared
20 by TLC's people. So Judge James just signed it
21 because everybody else had their signature on it and
22 Paul had not identified the fact that this whole
23 thing was fraudulent so when I signed the fraudulent
24 settlement agreement of which I was asked to sign by
25 my lawyer Paul Weissenstein, what I did, I signed

1 that I would develop property which I could not
2 legally develop. So consequently, I obviously went
3 into default. Once I went into default I got sued
4 by the sellers. It was a plot. The whole plot was
5 never to sell me the 108 acres. It was just to get
6 a scapegoat that would sign up to buy Big Water
7 Resort and take a twenty million dollar hit, plus
8 not have no land to operate the business on. So all
9 the time for two years, for two years, Andrew Tucker
10 represented me for maybe three weeks, but over two
11 years Paul Weissenstein saw, went, looked, we drove
12 out, looked at the property. He looked at the
13 plats. He went with me to planning board. And all
14 during that time, number one, like I mentioned, he
15 failed to recognize that I couldn't build like the
16 court order ordered me to do; yet, he insisted that
17 I sign that contract, that settlement agreement.
18 Number two, the entire acreage could never
19 be developed. I didn't know that at the time.
20 Tucker looked at the contract. There was no way to
21 know that. But as time progressed and as
22 depositions mounted we discovered that we could not
23 develop any of the property. Number three, Paul had
24
25 THE COURT: What did you discover during

1 the course of depositions that you wouldn't have
2 known at the time that you entered into the
3 lease/purchase agreement?
4 MR. HUTSON: That's correct, yes, ma'am.
5 THE COURT: I'm asking, what is it that
6 you learned during depositions that you didn't know
7 at the time you went into the lease/purchase
8 agreement.
9 MR. HUTSON: I learned that the sellers
10 said that they had an obligation to allow the
11 memberships to use all the property; but in fact,
12 when I was given the contract to buy the business
13 they had a legal description showing 30 acres of
14 land like he just mentioned, not the whole
15 108 acres. But in fact, the 30 acres was never part
16 of the Big Water Resort Company so when I bought it,
17 I thought I was buying the land or there would be a
18 contractual agreement between TLC and Big Water
19 Resort. But as we go down the road and as Paul has
20 controls, Paul misses the fact and never, and never
21 crossed his mind that what about if TLC owns all the
22 property and he knew that, then the Big Water Resort
23 property, how is it gonna use property, it needs a
24 contractual agreement. He couldn't find it. Well,
25 he never investigated any further and he never

1 brought it to my attention so there I am stuck with
2 a business that I can't
3 THE COURT: Let me just ask you, Mr.
4 Hutson, wouldn't those facts have been known to the
5 attorney who represented you at the time that you
6 entered into these documents?
7 MR. HUTSON: Ma'am?
8 THE COURT: The original documents.
9 MR. HUTSON: If this gentleman wishes to
10 go after Andrew Tucker who is in Tennessee, that's
11 fine. He only got involved. He didn't draw the
12 contracts; TLC's people did.
13 THE COURT: And I guess that's what I'm
14 asking. At the time you entered into the contracts
15 weren't all these facts known?
16 MR. HUTSON: No, ma'am.
17 THE COURT: I mean, you knew who you were
18 contracting with. You knew what the deed said with
19 respect to what property you were purchasing. You
20 knew about the lifetime memberships.
21 THE PLAINTIFF: Ma'am, the only thing I
22 knew was the lifetime memberships.
23 THE COURT: Well, but I mean, you knew
24 what property you were
25 MR. HUTSON: Yes, ma'am.

1 THE COURT: —-entering into a
2 purchase/lease agreement.
3 MR. HUTSON: I didn't know. Let me just
4 give you some examples. I did not know that the
5 business was losing 300,000-dollars a year. So I
6 happened to go to another lawyer's office and he
7 gives me a copy of a deposition where TLC had been
8 sued and in that suit they acknowledge that they're
9 losing 300,000-dollars a year. So, I take that to
10 Paul so it never registers to Paul if the company
11 has been losing for years and years three hundred
12 thousand dollars a year and I've got to keep the
13 case open for 70 years, I'm doomed, not to mention
14 I'm gonna be obligated for twenty million dollars
15 and the members are gonna sue me.
16 THE COURT: Well, and again, that's what
17 I'm trying to get at is what it sounds like to me is
18 that you discovered that you entered into a bad
19 bargain, in signing that original lease/purchase
20 agreement that that was a terrible bargain.
21 MR. HUTSON: Ma'am, if I had been able, if
22 I had not signed because of Paul Weissenstein, if I
23 had not signed the settlement agreement and the
24 consent order, when I signed that all of a sudden I
25 had a thing called res judicata. I couldn't go

1 after them once I found out all the facts.
2 THE COURT: So you're, the malpractice
3 you're pointing to is Paul's not counterclaiming
4 against them in the 2011 action for fraud and any
5 other defenses that you might have.
6 MR. HUTSON: Ma'am, what he did was this,
7 he did file a counter action and I have provided a
8 copy to the Court. But if you will read it, nowhere
9 in there does he show these things that I'm getting
10 ready to name to you and they're major malpractice
11 issues that he had a duty to recognize. The same is
12 my expert witness plainly states that Paul
13 Weissenstein malpracticed me because he did not
14 recognize the issues that were involved, and he
15 acted beyond what is expected from an attorney to
16 act, so therefore, he didn't — please, if you'll
17 let, allow me, I'd like to name all the things that
18 he missed because they're violent. The settlement
19 agreement, consent order, he was part of that.
20 Ma'am, please try to understand this. I have a
21 letter from Paul. You have it in your file. And
22 Paul is complimenting himself after the settlement
23 agreement is signed that he had — he's
24 complimenting himself to TLC's lawyer Tom Harper.
25 And he says, Dear Tom, thank you for your help. I

1 think that we have done a good job for both of our
2 clients, consequently, my client will be able to
3 make a lot of money in the next couple of years
4 when, in fact, he didn't even — even when I called
5 him back at almost beginning of 2016 and brought
6 some of this to his attention, his response was —
7 and this is a verbatim quote, I'm sorry, I'm sorry,
8 Mr. Hutson, that whole thing just went right over my
9 head, I didn't catch it, I didn't see it, I'm so
10 sorry. Now if I had that on tape recording it'd
11 have been great 'cause I could play it right here
12 for you. But these are the things that he
13 malpracticed me on. He malpracticed me on the fact
14 that he didn't bring to my attention that I would
15 have a twenty million dollar obligation with the
16 business. Now if he had done that, ma'am, he would
17 have put that in his counter claim and I would have
18 won it. If he had put it in his counterclaim that
19 the title was defective, I would have one, I would
20 have prevailed. I would have been in a great
21 negotiating position because I had about a million
22 dollars out and I'd worked three years and it would
23 have been great. I could have, I could have
24 prevailed, and they wouldn't even had tried to fight
25 it. In addition, I relied upon him as a

1 professional attorney, he had in his files all of my
2 contracts and I talked to him almost on a daily
3 basis and at no time did he ever bring to my
4 attention, nor his own attention, that this was the
5 situation. He didn't know it; he didn't recognize
6 it. And that's why when he filed his motion to
7 protect me in the counterclaim, he doesn't name any
8 of those. He doesn't name it because he didn't see
9 it. If he had named it I would have — I wouldn't
10 be in this court today; I'd be well off financially.
11 In addition, because of signing what Paul
12 Weissenstein had asked me to sign and recommended, I
13 got sued three times, had to file bankrupt, and
14 wound up with a 3.5 million dollar judgment. None
15 of that, Your Honor, can be blamed on Andrew Tucker.
16 Mr. Kropski is simply trying to get his client off
17 the hook by trying to stick it on Tucker and that's
18 not gonna work. It can't work because I have not
19 only an abundance of evidence that I have provided
20 to you about his malpractices. I'm told that if
21 there is a scintilla bit of evidence it has to be
22 sent to a jury trial, and ma'am, there is an
23 abundance of scintilla of evidence and I have listed
24 it plainly there for you to see. So what he's
25 trying to do is simply to get his client off the

1 hook. It wasn't Tucker that created all these
2 lawsuits with me. It was the fact that Paul
3 Weissenstein, Your Honor, encouraged me to sign the
4 agreement and he believed it to be a good agreement
5 because you have a copy of what he wrote and what he
6 wrote was simple. It said he had done a good job
7 and his client was gonna make a lot of money off of
8 the Big Water Resort when, in fact, the only thing
9 that was gonna happen was his client was gonna get
10 sued three or four times and get a three-and-a-half
11 million dollar judgment against him and get
12 wrongfully evicted off the property. And I say
13 wrongly evicted off the property because let me say
14 why. Number one, just imagine this 'cause I don't
15 know how often the Court hears about this. When the
16 jury trial happened a while back — and the
17 gentleman right back here is one of the lawyers, he
18 knew about the extrinsic fraud and he had a duty the
19 same as all of the other TLC lawyers and there were
20 about six of them or eight of them. They all knew,
21 one, it had no title; two, they never could sell it;
22 three, they just dumped twenty million dollars of
23 obligation on me; four, they knew that there was no
24 way I could escape; five, they knew that I had five
25 million dollars worth of insurance. And after they

1 had beaten me down really bad really, then they
2 contacted my insurance company. So in essence, the
3 whole thing was fraudulent. Now extrinsic,
4 extrinsic fraud is something that has a one year
5 statute; but the extrinsic fraud, extrinsic with a
6 ex, does not have a statute and I plan to go after
7 this gentleman sitting right back here and the other
8 people, the lawyers who represented TLC, because if
9 you look at the, if you look at the minutes of the
10 meeting back one year before I was introduced to the
11 property, what they do, they planned to get rid of
12 the business and then sell the land or lease it.
13 Now how can they get rid of the land if the business
14 has to function on that property. They didn't want
15 the business. They — if you look in the minutes of
16 the meeting, ma'am, it states that they wanted to
17 give away the property; yet, they sell them to me
18 for six million dollars and they only took ten
19 dollars down. So it was nothing but a ploy of
20 the — it was, it was a total plot developed by TLC
21 and their lawyers, and they must have paid nearly
22 two million dollars to their lawyers. And Paul
23 Weisssenstein, had he not malpracticed me I would
24 have never been involved in these lawsuits. I would
25 have never been involved in any wrongfully evicted.

1 I would never have been involved in disobeying a
2 court order and that was to develop property that
3 couldn't be developed, and I would have never lost
4 my res judicata. Now all these are, they point
5 directly to Paul Weissenstein. And if you will,
6 this is a letter — not a letter, a book, and I'm
7 gonna read, it's very short. It's from the South
8 Carolina State Bar Association and they produced
9 this book and I bought it. It reads: A plaintiff
10 in a malpractice action must prove four elements.
11 One, the existence of an attorney-client
12 relationship." Your Honor, I had that with Paul
13 Weissenstein. "Two, a breach of duty by the
14 attorney." I've just named about six or seven that
15 were breaches, disgraceful breaches. Three, I have
16 to show that damages to the client. I've got about
17 two million dollars worth of damages to the client,
18 and it's not because of Andrew Tucker, it's because
19 of Paul Weissenstein. And by the way, I still like
20 him so I'm not being disrespectful when I call him
21 Paul because I've always called him Paul. My point
22 is he totally let me down. And number four,
23 proximate causation of the client's damages by the
24 breach. Well, ma'am, he clearly, he clearly
25 un-mistakenly caused that. And this gentleman here

1 couldn't say enough to convince anybody otherwise
2 because when I left Andrew Tucker I didn't have any
3 lawsuits against me. When I left Paul Weissenstein,
4 Weissenstein was still over there trying to get my
5 approvals for a subdivision that could never be
6 built and then he acknowledges in writing that he's
7 done a good job for me and I'm gonna make a lot of
8 money out of this. Then he acknowledges to me that
9 while all this went right over his head he didn't
10 president see it, and it's obvious because none
11 of — think what great defenses this would have
12 been, Your Honor, if Paul had put this in the
13 counterclaim. He didn't because he didn't know. He
14 didn't know. And if you don't know that's
15 malpractice; he should have known. Even the bar
16 association thinks, when I went over this with them
17 they wouldn't believe it. They said, I'd have to
18 see this in writing, you're telling me that the
19 attorney never recognized this and that. I said,
20 that's right, I've got it in writing. They said,
21 well, I don't believe you, Mr. Hutson, you're gonna
22 have to show it to me to writing. Well, I do have
23 it and I do have it in writing. All, my whole case
24 is based upon evidence of Paul Weissenstein's
25 handwriting by type and his personal signatures. He

1 did it. He signed on the consent order knowing.
2 Either he was part of the extrinsic fraud or either
3 he didn't have enough sense to be an attorney; but
4 one or the other, the bottom line is, when he told
5 me to sign that consent order and settlement
6 agreement he ne— if he had said, judge, if you sign
7 this, you know you can't do this, you know you can't
8 build this, you know you're gonna be in default with
9 the judge because you can't build, it's illegal to
10 build, you can't do it, you're gonna be sued. Do
11 you really think that I, do you think anybody would
12 sign an agreement like that? Of course not. And I
13 would have never signed it. So my point is that
14 Paul Weissenstein is the bad guy. He's the guy
15 that's done the malpracticing and I'd like to
16 mention just a couple more things. This is, I mean,
17 this is, you know what, this is involved five years
18 of my life and I've spent over eight thousand hours
19 trying to defend and to think that the lawyers,
20 lawyers took two million dollars from my insurance
21 company when they defrauded my insurance company.
22 And I'm having to sue my insurance company for them
23 to go back and get that money back from TLC because
24 it was fraud.
25 But I'd like to mention this also, the

1 things that Paul certainly did not advise me on,
2 should have known and should have advised me on, one
3 was the extrinsic fraud. He should have known that
4 contract was defective. He had a copy of the legal
5 description of all the property. He should have
6 been able to figure out that it couldn't work and if
7 it couldn't work, why was he overcharging me money
8 to get the approvals from the board of Clarendon to
9 build a subdivision when none of that could ever
10 happen. Why would he be there? He went many times.
11 He went after the agreements were signed.
12 He never recognized the fact that once I
13 signed that settlement agreement and the consent
14 order that because of res judicata, if I found out
15 within one year I could have sued to set aside the
16 judgment; but only because the lawyers were involved
17 in it and only because the court and those lawyers
18 are officers of the court, they do not put a statute
19 on extrinsic fraud. And the definition of extrinsic
20 fraud, Your Honor, one of the first things that
21 reads is that you have to be an officer of the
22 court. There are four items. I don't think I have
23 them with me at the moment, but they're easy to look
24 up. You got to be an officer of the court. One or
25 two, you got to be an attorney. And then you got

1 two other. But they purposely took what TLC wanted
2 and they carried it all the way through court. Just
3 think about it. On this 3.5 million-dollars. What
4 if when they got ready to start the trial -- and I
5 was there. What if they said, oh, Your Honor, we
6 know, we recognize because the bar association
7 requires it, we recognize that we have a duty, a
8 duty to no longer conceal, number one, that Mr.
9 Hudson we knew when he signed those agreements he
10 never could do anything with it. We knew that when
11 he bought the business we dumped twenty million
12 dollars on him. We knew that we were gonna sue him.
13 We knew we were — we can't, we required him to keep
14 five million dollars worth of insurance where we
15 could go collect that, and that's exactly what they
16 did. And we knew that we were gonna get the consent
17 orders 'cause we prepared them and, I mean, this
18 sounds like a horror story, but it's true. I'm
19 getting ready to take them all into federal court
20 and I've evening got proof that they committed it.
21 And any lawyer sitting here in this room today
22 clearly understands the definition, including this
23 gentlemen, of extrinsic fraud. Extrinsic fraud is
24 when the lawyers themselves, Your Honor, get
25 involved and they make it where the defendant has a

1 disadvantage over the material facts and their
2 plaintiff has the advantage over material facts. So
3 what they do, they use the court and the machinery
4 of the court, Your Honor, to lie and be deceitful to
5 the judge, to three federal judges, Your Honor, as
6 well as two state judges. And if they were here
7 today talking to you, they'd still be doing it. But
8 my point was, if they had made that disclosure your
9 that morning of that trial where they won
10 3.5 million dollars — and just before sitting here
11 I will tell you why they made that money. But if
12 they had said that, you know what? The judge would
13 have dismissed that case and thrown it out 'cause
14 that would have been the same thing as somebody
15 walking in and then admitting to murder. You know,
16 there's no statute, Judge, on murder and there's no
17 statute on extrinsic fraud because the judges
18 represent and the court system relies — and this is
19 why every one of these lawyers have a badge and they
20 are a — they are a member of the court, and they
21 are officer of the court. And any lawyer that
22 learns about information that an attorney is
23 committing fraud upon the court has a duty according
24 to the bar association and some other laws, to
25 report that duty, to report that fraud to the court.

1 How can a judge possibly make a rational decision
2 when he or she is being lied to. How can the court
3 be fair to this person if I'm over here with an
4 advantage that this person is not aware of. So this
5 person never gets heard so this person is gonna lose
6 no matter what. I'm gonna win every time because
7 I'm paying two million dollars to my lawyer, Your
8 Honor, to be dishonest and lie. So for these
9 reasons, and this gentleman just gave me a copy of
10 what he just put in your hands so I haven't read it;
11 but for these multiple reasons, I pray that the last
12 thing in this world that you do is overlook all that
13 I've said which is provable, much of which I've got
14 right here, much of which you've got right there in
15 your file, and do not rule, please, I'm begging you.
16 I've lost millions of dollars of this. Please don't
17 dismiss this case because it has no relevance or
18 evidence. It's bloody colored in evidence. And
19 Andrew Tucker is just a tiny small player in this
20 thing and he's out of state.
21 And another thing I would like to ask.
22 Mr. Steve stated that he represented Paul
23 Weissenstein, but he did not state which insurance
24 company he represents. I've asked him this
25 question, he won't answer it, so I'm asking in front

1 of the Court what insurance company because I've
2 sent interrogatories and he's not responding to
3 them. He's waiting to see if the court is gonna
4 kick my claim out. I paid five thousand dollars for
5 that expert witness. I've never paid that. Had I
6 not been right, 've got Paul Weissenstein's
7 handwriting over and over on what he did and what he
8 suggested. He represented me for over two years and
9 then he writes this letter that he's done me a good
10 job when he's ruined me. And then, Judge, lastly,
11 and I'm finished. When I went into federal court I
12 applied for new evidence and I contacted this
13 gentleman, the counsel, and I contacted Paul, and I
14 begged them to come to court. Paul, come to court,
15 tell Judge Norton, the federal senior judge, tell
16 him that you didn't know this stuff because it
17 reads — I'm gonna read you one sentence from the
18 federal judge. "Furthermore", they stated, "as
19 stated above Hutson was represented by counsel in
20 the State court action. The settlement agreement
21 and release were reviewed by an impartial judge and
22 incorporated into this order. There's no indication
23 Hutson had an unfair advantage." Is that not a sad
24 situation, Judge? I mean, I had every — I don't
25 know what worse could happen to me unless somebody

1 blew my brains out. I got screwed every way
2 possible on this thing. When I met these people
3 they had already plotted this plan. It was all
4 written in that and they never knew that they were
5 gonna have to turn that paper over; but in 2009,
6 they give an outline of what they plan to do in the
7 next year. And guess what, I fall right into that
8 category. And then their lawyers take it and
9 prepare the contracts to compensate their plan, and
10 those lawyers knew all along the facts. They knew
11 that they were lying to the courts and to the judges
12 and nobody did a thing about it. Nobody, nobody did
13 a thing. And they were just — I didn't know it. I
14 didn't know it so I couldn't do anything. So now
15 I'm in this horrible position, great disadvantage
16 versus a great advantage. That's why I lost and
17 that's why I had a 3.5 million dollar judgment
18 against me that I've had to wrestle with for over a
19 year and that's why I've made big insurance payments
20 in order to have this coverage. And it was all done
21 for no other reason, just to give you another little
22 clue to this little secret thing, when TLC attorneys
23 first sued me they were supposed to notify my
24 insurance company, but they didn't do that, Your
25 Honor. They waited until they had all put together

1 from start to finish, they waited until I got
2 whipped in every direction possible. Then they pick
3 up the phone and they call my insurance company. By
4 the time my insurance company gets involved, it's
5 too late, it's just too late. And now they go over
6 there and pick up a fat check for two million
7 dollars. That's not a big difference, Your Honor,
8 than me filling out an insurance policy for two
9 million dollars while when I know it's fraudulent
10 and then go and collect the money when I know it's
11 fraudulent. The insurance company, if they found
12 out about it would definitely take action against
13 me. But the problem we have in this society is
14 lawyers do not like to go after lawyers; that's the
15 problem we've got. It's hard to find a lawyer that
16 will report a lawyer committing extrinsic fraud.
17 That's why the rules are so difficult and hard.
18 There's no statute on that. You know what my
19 insurance lawyer told me, Timothy Newton from Pan
20 America? I said, why don't you please go after
21 these lawyers. You know you got to prove, you can
22 prove this, you can prove this, this is so easy.
23 You know what he says? I have a quote. I don't
24 have it with me 'cause I don't have his file, but I
25 raise my right hand and I swear to you. He said, we

1 don't do that to one another because that could land
2 some of the lawyers, our peers, in jail. And so
3 this whole thing, it's not about Andrew Tucker,
4 Judge. It's about Paul Weissenstein. Paul — if
5 I'd never met Paul Weissenstein I would never have
6 had all these problems; I'd be been in great shape.
7 He harmed and hurt me in the worse in the world and
8 this gentleman has given me a copy of what he put in
9 your hand so I don't have time to reply but. I ask
10 you from the bottom of my heart, please don't throw
11 out a based on a summary judgment meaning that
12 there's no evidence, it's frivolous, when in fact,
13 this is so outrageously serious and accurate and
14 honest and truthful. How could, how could a court
15 do a victim like this. This man is being paid by
16 the hour for sitting here.
17 THE COURT: Okay, Mr. Hutson, thank you,
18 sir.
19 Mr. Kropski, what about this affidavit by
20 Mark Hardy that Mr. Weissenstein should have
21 counterclaimed for fraud?
22 MR. KROPSKI: Your Honor, the affidavit
23 from Mr. Hardy identifies — if I can find it here.
24 I'm happy to address Mr. Hardy's affidavit further.
25 MR. HUTSON: I have it, Your Honor.

1 MR. KROPSKI: Through — it says, page 2
2 of the affidavit paragraph I, "Unknown to Mr. Hutson
3 was that a title defect existed on the property due
4 to hundreds of 70 year rights to sole use agreements
5 which had been sold by TLC Holdings, LLC, and Big
6 Water Resort. Mr. Hutson was unaware that these
7 agreements constituted a title defect on the
8 property which would keep him from developing the
9 property as planned. And then K, the project was
10 doomed from the start due to the title defects and
11 other misrepresentations made by TLC Holdings."
12 Your Honor, that's really the point of what our
13 motion is. Mr. Hardy's affidavit claims that
14 Mr. Hutson was unaware of title defects, unaware of
15 what these lifetime memberships could constitute.
16 The reason that I bring up the original transaction
17 action is because that's when that needs to be
18 worked out. We knew that they were aware that these
19 lifetime memberships could possibly be a title
20 defect. You get 90 days from the lease/purchase
21 agreement to figure out. You know, if there is a
22 title defect you've got a lawyer. Conceivably they
23 can go find an abstractor, title, sewer title,
24 whoever it is, and get an opinion.
25 Mr. Weissenstein, by the time he came involved that

1 was not a situation he could remedy and that's the
2 purpose of the summary judgment motion. I don't
3 know what Mr. Hardy received in terms of materials
4 to write this; but I know that on the face of this
5 affidavit, it's contradicted by the documentary
6 evidence we have attached. So, Your Honor, that
7 would be our response to Mr. Hardy's affidavit. And
8
9 THE COURT: How about Mr. Hutson's claim
10 that none of these lifetime memberships were
11 recorded and so then would not have appeared on any
12 chain of title.
13 MR. KROPSKI: Your Honor, I agree with
14 you, or I agree with Mr. Hutson that the statute
15 says that these lifetime of that leases, leases need
16 to be recorded that are for more about that one
17 year. The, first, the effect of a lease that's not
18 recorded would be that the lease is not considered
19 notice to a subsequent purchaser that doesn't know
20 about the leases, doesn't know about the
21 memberships. It would mean that the leaseholder,
22 the tenant, the lessee can't enforce it against the
23 subsequent purchaser who didn't know about those
24 leases. We know, first of all, that Mr. Hutson knew
25 about these lifetime memberships so it was no

1 surprise. The purpose of that is to give notice to
2 somebody looking at the property to say, oh, this is
3 encumbered by a lease. These were disclosed in the
4 negotiations and we know that. The only thing in
5 that statute is meant to protect is the subsequent
6 purchaser who might not know about leases and then
7 they get wrapped up in litigation by a tenant who
8 says, hey, I have a right to possession of this
9 property. For this purpose Mr. Hutson was the
10 subsequent purchaser, but these were disclosed to
11 him so I don't think the effect of the statute
12 simply because it wasn't filed or worked to
13 Mr. Hutson's advantage after the fact even though he
14 knew that these leases or these quote/unquote leases
15 existed. For the record and as a footnote, we don't
16 have any sort of indication that these membership
17 agreements actually were title defects. We're just
18 construing complaints giving all favorable
19 inferences. Even if they were, that statute would
20 not protect someone who already knew about the
21 membership agreements from doing due diligence. The
22 purpose of this is, well, the Big Water Resorts
23 transaction, buying the business, that's part of the
24 lease purchase. That's part of that original
25 transaction. Mr. Weissenstein was not involved in

1 any of those circumstances. He wasn't involved in
2 purchasing the business, operating the business. He
3 was involved when TLC tried to evict Mr. Hutson.
4 Mr. Hutson did not want to be evicted so they worked
5 out settlement. He got an extra year to try to
6 develop the property. If Mr. Hutson said, hey, this
7 isn't a worthwhile cause, then there's no reason to
8 fight the eviction. There was another eviction
9 proceeding afterwards. These are the result of
10 non-payments.
11 And the last point I want to reference is
12 you heard about a lot of litigation and you've heard
13 about wanting to sue a lot of lawyers and I really
14 am empathetic to being in a bad business big and
15 what's come after that; but I don't think the
16 response is to sue every lawyer that you've ever
17 worked with or was on the other side. And the
18 3.5 million dollar judgment is a defamation, Judge,
19 and that has nothing to do with Mr. Weissenstein.
20 That was solely related to comments made and
21 publicized by Mr. Hutson. Your Honor, I think it's
22 clear that these issues and what has put Mr. Hutson
23 in a difficult situation and have a really rough go
24 is a result of a bad deal and it's unfortunate, but
25 Mr. Weissenstein wasn't the lawyer when that deal

1 was entered into and anything that came afterwards
2 was a result of nonpayment on a bad deal, being
3 involved in that.
4 THE COURT: And I do note that the
5 lease/purchase agreement does say that TLC holds
6 marketable title subject to any additional
7 encumbrances subject to which seller accepted title
8 to the real estate being conveyed and gives the
9 purchaser 90 days to investigate sole title and
10 identifying exceptions to the title which are not
11 acceptable and if the purchaser does not do that in
12 90 days, doesn't provide notice of any title
13 exceptions, then purchaser shall be deemed to accept
14 title to the premises with all exceptions and
15 additions. I see that was part of the original
16 purchase agreement.
17 Yes, sir.
18 MR. HUTSON: Your Honor, on that very page
19 you're reading, think how strange this is. It
20 reads, and this — that contract was prepared by
21 TLC. It reads 15 times, exception to title. They
22 knew this property had exception to title. They
23 knew they couldn't sell it. They were trying to
24 bring this to my attention. They just couldn't tell
25 me the fact because I would have ran. It says 15

1 times that I have a right to 90 days to check title.
2 But they also knew, Your Honor, they didn't record
3 like the state law requires, not one out of those
4 1200 long term years and years, the sellers would
5 have been long deceased, so would I. It would have
6 been impossible for it to happen. They testified in
7 court that they had no trust set up. They had no
8 way to guarantee anything from the people. They
9 wanted rid of the memberships. They wanted to give
10 away the business. Judge, the whole thing is
11 nothing more than a scam, and I took it to SLED. I
12 took it to the sheriff's department. And both
13 entities said you have definitely been scammed, but
14 this is what's called a civil fraud so therefore we
15 can't make an arrest. And so my point is, from the
16 word go it turned out bad, but if I had not gotten
17 with Paul Weisssenstein I would not have had a
18 three-and-a-half million dollar judgment. If Paul
19 had recognized my issues, the issues in the
20 contracts, Judge, the issues that he had right in
21 his hand. If he just sat and read them he could
22 have easily figured out, gosh, okay, LTC owns all
23 the property, it says here that Big Water Resort got
24 has 30 acres of land, where is that 30 acres of the
25 land? Well, wait a minute, if they don't have

1 30 acres of the land and they got an obligation for
2 70 years on that land and there's no contractual
3 agreement.
4 THE COURT: Well, Mr. Hutson, I think
5 you're kind of making Mr. Kropski's argument for him
6 that all of those facts were known to you at the
7 time you entered into the agreement, and I think
8 what he's arguing is that you entered into a bad
9 argument and so if I want to sell you swamp land for
10 a million dollars and you agree to buy it, it's a
11 terrible deal, but if you agree to that and it's
12 also set forth in the documents, then you're —
13 that's a bad agreement, no doubt about it, but
14 there's nothing illegal about it.
15 MR. HUTSON: Ma'am.
16 THE COURT: And Mr. Hutson, I understand
17 your argument, sir, and I'm gonna look at all of
18 these documents very carefully. And again, you know
19 what our standard is for summary judgment so I will
20 be looking at all these with that standard in mind,
21 okay, that, you know, this isn't a trial on the
22 merits. This is just a motion for summary judgment.
23 So I appreciate all of you. I'll take this under
24 advisement and I will read these documents very
25 closely. Thank you, sir.

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 19th day of September, 2019.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2018-CP-43-01583

COUNTY OF SUMTER

MB HUTSON A/K/A MB HUTSON,
PLAINTIFF,

vs

TRANSCRIPT OF RECORD

PAUL WEISSENSTEIN (Attorney)/
PAUL WEISSENSTEIN,
DEFENDANT

April 22, 2019
Sumter, South Carolina

B E F O R E:

THE HONORABLE KRISTI F. CURTIS, JUDGE

A P P E A R A N C E S

MB HUTSON
Pro Se Plaintiff

DAVID W. OVERSTREET, ESQ.
Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

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EXHIBITS

NO	DESCRIPTION	ID	EVD

There were no exhibits introduced.

1 P R O C E E D I N G S
2
3 MR. OVERSTREET: Good morning, Your Honor.
4 THE COURT: Good morning And I'm sorry. Tell me
5 your name again? I know you re not Mr Kropski.
6 MR. OVERSTREET: Yes, Your Honor David Overstreet
7 of Earhart Overstreet. I'm his boss.
8 THE COURT: Okay.
9 MR. OVERSTREET: He got married on Saturday night, so
10 I'm pitch-hitting for him.
11 THE COURT: Well, that s good of you.
12 Okay. If y'all will bear with me just one moment,
13 I'm going to pull up your case here.
14 Okay. Mr. Hutson, this is your motion, sir, so I'm
15 glad to hear from you.
16 MR. HUTSON: Yes, ma am. Your Honor, I'd like to try
17 to speed this up, refer back to the ruling that you made
18 on February 4, 2019. And I d like to read two areas that
19 you differ or the Court erred in, and I'd like to address
20 that first.
21 THE COURT: Yes, sir.
22 MR. HUTSON: I'd like to read. "I find that this
23 action is outside of the applicable statute of limitations
24 and that all of the issues currently being raised, and
25 specifically the issues of the existence of the lifetime

1 memberships were known to the plaintiff at the time he
2 entered into a settlement agreement of March 2012 "
3 Now, with that being said, I would like to offer
4 this gentleman some notes
5 And may I approach the bench, ma am?
6 THE COURT: Sure.
7 MR. HUTSON: Your Honor, I'm going to try to address
8 one thing, and it might automatically clear up the other
9 one.
10 THE COURT: Okay.
11 MR. HUTSON: Steve Kropski prepared an order that you
12 had asked that he prepare
13 THE COURT Yes, sir
14 MR. HUTSON: And in that order, there are some things
15 that are not said on purpose. It leads one to believe one
16 thing when, in fact, it s exactly the opposite. And I'd
17 like to address that first, if you will
18 This goes back just prior to my purchasing of the
19 property. Attached is Susan -- Susan s lifetime
20 membership. Susan was the Realtor involved. "Membership
21 information regarding Big Water Resort Campground. My
22 buyer is concerned" that s me. "My buyer is concerned
23 about the lifetime members and the impact they could have
24 on the future development of the property. In other
25 words, in your opinion, what is the easiest legal way to

1 terminate the lifetime memberships of Big Water Resort?
2 Will these members have an impact on obtaining clear title
3 for the property?"
4 Mr Kropski addresses that in his objection to my
5 reconsideration And he does insert what I've just
6 written, what I just read to you. The problem is I asked
7 the Realtor, because I had a concern before I signed up to
8 buy the property, were the members going to be a problem
9 for me as far as title? They didn't know. So they wrote
10 a letter to Mr Coffee, which Mr. Kropski has a copy of
11 that But the problem is, Mr. Kropski was being sued by
12 TLC. Consequently, Mr. Kropski -- or rather Mr. Coffee
13 would not return my phone call, nor would he return or
14 respond to the Realtor So as I speak to you today,
15 Mr Coffee, who actually prepared that agreement with the
16 memberships, never contacted the Realtor nor me, and
17 there's not a shred of evidence that the Court has or
18 Mr. Kropski has that would indicate anything different
19 than that
20 So what he s done, he s alleged that the Realtor -- I
21 wrote the Realtor, and it looks like the Realtor had it
22 all fixed up and it appears that perhaps the Realtor gave
23 me an answer. There was never an answer.
24 Your Honor, after I purchased the property, I had a
25 length of time to do a title search on the property. I

1 hired Ron Nester, and Mr Nester is an attorney in Santee.
2 He ran a title search on the entire property. He charged
3 me $1,000 to do that In addition to that, he subbed out
4 that title work to someone in the Manning area. It came
5 back. The title was fine. There was no negative aspects
6 as far as the memberships versus the title.
7 So with me not getting an answer from Mr. Coffee ever
8 -- and I called him probably 89 times I wrote several
9 letters to him. He never responded back. And then after
10 the title search was completed and it came by positive and
11 there was not an issue, I proceed to proceed with my
12 development. That development took me two years to get
13 all of the approvals in it
14 Now, I would like for just a moment to read, if I
15 may, I'm just going to read, ma am, the first paragraph of
16 the membership agreement. It reads, "By this agreement,
17 Big Water Resort, BWR, a South Carolina LLC, sells and the
18 undersigned purchases a membership which gives the member
19 the right to use all present and future BWR campground
20 facilities and services subject to the membership terms
21 provided herein.
22 "Nature of membership" -- and this will be the last
23 little paragraph I read. "Purpose: The membership grants
24 a right to use campground facilities and services solely
25 for members recreational and enjoyment. The membership is

1 neither sold nor purchased as a financial investment.
2 Member acquires no legal or benefit interest in BWR, and
3 no right of interest in the property, no right in the
4 interest in the property. Member acquire any -- nor does
5 the members acquire any voting rights in BWR pertaining to
6 its business or any rights to participate in the
7 management."
8 Now, reading that, and I had an attorney to review
9 that, then I had an attorney to do the title search on the
10 property. Everything looked fine.
11 So in the ruling where you say that you were
12 concerned about the lifetime memberships, I have provided
13 you, ma am, and counsel here with a copy of -- let me stop
14 for a moment and say this After that, about six months
15 later, I hired Paul Weissenstein, and I've paid
16 Weissenstein I don t know how much, maybe $20,000, I guess
17 or a little less to represent me in putting together and
18 getting the approvals of the subdivision as well as
19 handling some of the legal aspects and drawing the
20 contracts between myself and the purchases of the lots
21 that were going to be developed on that property and sold.
22 Now, the sellers, in their contract with me, talk
23 about the fact that this is a property for me to develop.
24 as a matter fact, they require me to develop. They've got
25 an order in the settlement agreement that states that I'm

1 required to develop.
2 Now, in that settlement agreement, what it states is
3 that I am to develop, I am responsible for getting all of
4 the approvals It talks about a release. And, Your
5 Honor, you have a copy of that in your file. And the
6 property is supposed to close at a certain length of time,
7 and the sellers will assist me in getting letters over to
8 the county, and that was in Manning, for the necessary
9 approvals in order for me to get ready to develop and
10 close.
11 All right Now, with that being said, I'd like to
12 refer to what I just gave you, and that is and to
13 counsel, and that is the list of -- just bear with me for
14 just a moment, please. I ve given you about four or five
15 or six letters, and all of those letters are written by
16 the defendant Weissenstein. And all of these letters are
17 dated, Your Honor, after the execution of the settlement
18 agreement.
19 So at the time that I signed and you allege in your
20 ruling that I had to be familiar with the memberships, and
21 therefore, I should, I guess, understand that by having
22 memberships, there was defective property. But keep in
23 mind, ma am, that I had a title search done on the
24 property, and I never got any response back from
25 Mr. Coffee, and I hired an expert lawyer who represented

1 himself as a lawyer who handled real estate closings, and
2 he did. And so I relied upon him to give me the guidance
3 and to look at my contracts and to know what was going on.
4 And he assured me that he did. So there was nothing that
5 I could do as a layman to be any more certain about
6 whether I had good title, so I did not know anything about
7 a defective title when I bought the property, one.
8 Two, when I had the title search done, it showed
9 nothing that would create a title defect, and I was under
10 the impression that the memberships were to be renewed at
11 the end of each year. So -- and even if you had members
12 that did not wish to terminate their membership, there was
13 enough land to allow a compatible working relationship
14 between myself as a developer and the memberships, because
15 I felt, based on what I was told by the sellers, that the
16 membership had dropped from 1,200 down to about 700, and
17 they estimated that another three or four years, that it
18 would be down to zero. So there was no issue about the
19 title, ma am. None.
20 Now, true, I knew about the members, but there was
21 nothing that associated defective title when you talk
22 about the members. It was nothing.
23 So when I hired Paul Weissenstein, I carried my
24 membership agreement, I carried my purchase agreement and
25 the purchase of the business to Paul with some plats that

1 my engineers were preparing for me. Paul had ample
2 opportunity to read the contracts because of the many
3 times that I sat with him while he went over the
4 contracts, because we were plotting a plan.
5 There is a letter, I believe, that you have there
6 that I've just given you that he even writes to the Wells
7 Fargo who had an interest in financing all of the
8 construction loans on that property. And he s talking
9 about that he would like to get more acquainted with them
10 because there s a development getting ready to happen.
11 There s another letter there that after the
12 settlement agreement was signed and I was doomed and
13 didn't know it, because he didn't know that there was
14 defective title, I would have had to wait over 75 years in
15 order to develop that property. And the sellers were in
16 their 60s and 70s, so they would have been deceased, so it
17 was impossible, yet they got an order from a judge. And
18 that settlement agreement and consent order state, Your
19 Honor, that I am required to develop that property, which
20 was an impossibility.
21 Now, what really happened here was the lawyers who
22 represented TLC committed extrinsic fraud, and therefore,
23 they knew all along that they were never going to sell me
24 that property. Your Honor, I'm referring now to and I
25 think you've got a copy of this. Listen carefully to

1 this, please.
2 Back in January 16, before I was ever in the picture,
3 2009, the three sellers had a meeting, a minutes of the
4 meeting. And they typed it out. And they had no idea
5 that one day, because of a great big lawsuit, I would have
6 a copy of this I'm sure they would have never printed
7 this
8 But if you look on page 2 of this agreement, what s
9 happening, they're losing $300,000 a year with the
10 memberships So you will notice that they talk about
11 perhaps giving away the property and get a tax credit
12 because they were tired of paying $300,000 a year, and
13 they paid that for nearly nine years consecutively.
14 So down here under -- let s see. I guess it would be
15 one -- well, from the bottom it would be one, two, three,
16 four paragraphs from the bottom reads, "Cons can expect
17 little or no cash income." That is before I entered the
18 picture, Judge "Risk of failure on part of Internet
19 tenants, rather. Potential of inheriting a membership
20 backlash." They were afraid that they were going to get
21 sued if they sent it down by the members.
22 And, ma am, I might remind you, they were sued. They
23 were sued by class action And the sellers that sold
24 those memberships paid almost $2 million in federal court
25 in front of Judge Norton.

1 But it says here, "Cannot sell leased real estate."
2 They're really talking about the membership agreements.
3 They cannot sell the leased real estate for an extended
4 period of time.
5 Your Honor, there was only one extended lease on that
6 property, and that was with the -- right on the
7 beachfront. And the power company, whoever operates that
8 part of that lake, I forget the name of the company now,
9 but they had a lease. So about 200 feet of the property
10 was leased by the year, and TLC kept renewing that lease.
11 So it says that they can t sell it And then below
12 that, they say you can t expect deterioration of assets
13 during the period of the lease They're talking about
14 because at that time, they had to let these people use
15 this property for 70 years Well, obviously, the cabins
16 and all of the facilities would have deteriorated, just
17 what they say in here.
18 All right. So then they talk about selling the
19 business Well, I ve got to tell you why they're selling
20 the business. They propose in here on page 3 or right
21 here on page 2 that they're going to sell the business and
22 keep the land.
23 Now, let me explain to you, and please, I hope the
24 Court pays close attention to this, the reason they wanted
25 to sell the business is because the business was losing,

1 number one, $300,000 a year. Number two, the business was
2 nothing but an empty shell Number three, the business
3 had an obligation of 70 years, which equates to $23
4 million to keep the gates open for 70 years They didn t
5 tell me anything about any of that, and Paul never
6 recognized it. And if Paul had examined the contracts
7 like he should have, he would have seen that
8 Now let me give you another example.
9 THE COURT Well, Mr. Hutson, again, the issue that
10 I ve had with this from the beginning is if your original
11 attorney had done any due diligence, he could have
12 discovered any of what you've just told me. So it s --
13 the issue is whether you knew or should have known of
14 these lifetime memberships. That s what starts the
15 running of the statute of limitations And of course your
16 own what the federal district referee found, what the
17 federal district judge found, what you yourself have
18 testified to, what you've just told me now is that you
19 knew about the lifetime memberships, you read the lifetime
20 memberships and what it actually said. You brought it to
21 the attention of Billy Coffee and asked for an opinion
22 about it, and whether or not he gave you an opinion, gave
23 you a good opinion or a bad opinion, you were aware of it
24 and aware that it presented a possible issue with title to
25 the property prior to even closing on the property. So

1 all of this could have been discovered. There s no doubt
2 in my mind this was a bad deal. But the fact that it was
3 a bad deal doesn t necessarily equate to you now having a
4 cause of action against Mr. Weissenstein.
5 What I have trouble getting past is that all of what
6 you re telling me was apparent in the original transaction
7 where you made the purchase, where you entered into that
8 original agreement.
9 MR. HUTSON: Your Honor, may I continue?
10 THE COURT: Sure
11 MR. HUTSON And I appreciate what you just said.
12 Your Honor, if Paul Weissenstein had realized what
13 was in front of him, all he would have had to have done
14 was to have filed a motion requiring the sellers to clear
15 the title. They could not have cleared the title,
16 therefore, I would have been in a position to have gotten
17 back money and
18 THE COURT: But, sir, that was after you had already
19 closed.
20 MR. HUTSON: No, ma am.
21 THE COURT: When your your closing
22 MR. HUTSON: No, ma am. I had not closed.
23 THE COURT: Okay. Well, let me let me just stop
24 you. Your closing document states your retail lease
25 agreement basically gives you a period of time of due

1 diligence and says you've got X amount of time to bring
2 anything to their attention, and that thereafter, you
3 basically take the property subject to as is And I don't
4 have it in front of me, but
5 MR. HUTSON: That s exactly what it says.
6 THE COURT: And you thereafter had a closing on the
7 property.
8 MR. HUTSON: Right Ma am, the problem with that is
9 I had a title search done The title search came back
10 satisfactory, one. So what reason would I have to walk
11 away? I never wanted a campground. I wanted to develop
12 the property, so I went to Paul Weissenstein.
13 Now, this can't be blamed on anybody other than
14 THE COURT: Well, I mean, you went to Paul after the
15 closing had already taken place.
16 MR. HUTSON No, ma am. That s not correct.
17 And it was a lease to buy the property. And I was to
18 got my approvals and then we were to close. I spent two
19 years getting my approvals because there was no there
20 was a moratorium on sewer. And I got
21 THE COURT: Okay. Well, I guess you signed a lease
22 agreement, and then they brought you to state court in
23 Manning thereafter for default on the lease agreements.
24 But at that point, you had already signed those documents
25 MR. HUTSON: They required me to sign to buy the

1 business when I signed the lease to buy the property.
2 Okay. They tricked me. They tricked me. For
3 $22 million, they tricked me. All right. But they still
4 owned the TLC property.
5 So when I went to Paul, I said, "I want you to handle
6 this transaction." He gives me a receipt showing that
7 it s a real estate transaction. He looks at all the
8 contracts All he would have had to have done, Your
9 Honor, was to have looked at the land that was under the
10 lease to purchase and then take the other contract of a
11 business and look and find that there was no land for the
12 business to operate on. It was right there clear as day.
13 He should have seen it Judge
14 THE COURT: Again, Mr. Hutson, if it was right there
15 clear as day, then
16 MR. HUTSON: He malpracticed me.
17 THE COURT: how was your original attorney not
18 able to recognize that?
19 MR. HUTSON: Ma am, I don't -- I don t understand
20 where you re coming from about that Let me let me
21 let me say something to you about the original contractor,
22 the original attorney. The attorney reviewed the
23 membership agreement. Okay. Nowhere in that membership
24 agreement did he find that it would prevent me from
25 developing the property.

1 THE COURT: But that s the same membership agreement
2 that we're talking about now, right? It s the exact same
3 documents
4 MR. HUTSON: Ma'am
5 THE COURT: I mean, he may have given you bad advice,
6 but, again, that was the original attorney.
7 MR. HUTSON: Judge Curtis, Paul Weissenstein was
8 hired to protect me. Paul Weissenstein should have known
9 that it was defective title. Paul Weissenstein didn't
10 know it. Paul Weissenstein encouraged me to sign the
11 settlement agreement Paul signed it himself He had --
12 all he had to do was find my -- my expert witness has
13 given you sworn testimony that Paul Weissenstein failed
14 his duty. He malpracticed me because he did not recognize
15 the title defects I mean, I have -- I have everything
16 that is required for this court to send this to a jury.
17 Now, it s my understanding, Your Honor, that the
18 sitting judge, since I have demanded a jury trial, does
19 not have the right to question or make personal decisions
20 and rulings that are decisions that a jury should make.
21 I'm not asking for a bench trial.
22 THE COURT: No, sir. The standard for summary
23 judgment is when there is no issue -- there is no genuine
24 issue of material fact and the other party is entitled to
25 judgment as a matter of law. That s correct.

1 MR. HUTSON: All right. Now let me read the from
2 the legal -- the legal paper that I want to think it s
3 right here. It could be page 2 Where is it? I'm
4 looking for it. Steve Kropski s letter that he filed
5 all right I think I just found it. I apologize for the
6 delay.
7 THE COURT: No problem.
8 MR. HUTSON: Judge, I ve lost nearly two -- over
9 $2 million on this thing. And for the Court to ignore the
10 fine that
11 THE COURT: Mr Hutson, sir, I'm not ignoring
12 anything I have a standard that I have to go by the law,
13 and I there's
14 MR. HUTSON That s that s what I'm asking you to
15 do.
16 THE COURT: I'm talking now, Mr Hutson.
17 The fact that you made a bad business decision does
18 not mean that I can ignore the applicable law. I am bound
19 to go by what the law says and not guided by any passion,
20 prejudice, sympathy. So I'm not ignoring anything about
21 the law, sir I'm required to go by the applicable law.
22 MR. HUTSON: Judge, I was required and paid $5,000
23 for an expert witness, and that witness states that Paul
24 Weissenstein malpracticed me, and he did not identify the
25 title defects It doesn t matter about somebody else that

1 only spent a few hours on it. Paul spent six months,
2 eight months on it.
3 In the affidavit, which is required by law, I filed
4 it with your court, and it plainly reads that Paul
5 Weissenstein, not the other lawyer, Paul Weissenstein
6 malpracticed me. Paul Weissenstein is the guy that got me
7 to sign the settlement agreement. I would have never had
8 signed the settlement agreement, Your Honor, if Paul had
9 simply recognized the title defect. Because he would have
10 said whoa, whoa, whoa. We don t want to do this. No.
11 Because the business doesn't have any land to operate, so
12 it can't honor its obligation to the members. So it would
13 have been such a simple thing.
14 He admitted to me that he overlooked it when I told
15 him on the telephone about it He refused to go and
16 testify on my behalf and before Judge Norton because he
17 felt that he would be -- he would incriminate himself into
18 malpractice So he refused to do that I tried my best
19 to get him to do it, and Mr. Kropski did his very best to
20 prevent his client from going down there. And it cost me
21 $15,000, because they cited me $15,000 because Paul didn t
22 show up.
23 Now, he was my lawyer. I paid him nearly $20,000,
24 Judge, to do this I spent about $50- to $70,000 trying
25 to get my approvals. I don t understand what part of this

1 doesn t ring true to the to the this case should be
2 sent to a jury, and a jury needs to make these decisions
3 This Paul -- I've got a sworn affidavit How can
4 you overlook that?
5 THE COURT: Mr Hutson, here s what this comes down
6 to, in my opinion. When you signed the lease purchase
7 agreement, you had a period of time to uncover any title
8 exceptions You were aware of the lifetime memberships at
9 the time you entered into the lease purchase agreement.
10 It may be that you got bad advice at the time you entered
11 into the lease purchase agreement, but you knew about them
12 at the time you signed the lease purchase agreement, you
13 knew about it at the time you signed the settlement
14 agreements in the following state court action. The
15 federal court found that you were well aware of it, both
16 the magistrate and as accepted by the federal district
17 court judge
18 Let me hear from Mr. Overstreet, and then I ll give
19 you a chance to respond, sir.
20 MR. OVERSTREET: Thank you, Your Honor. May it
21 please the Court I ll be very brief
22 Your Honor, we believe this court issued a very well
23 reasoned 13 page opinion. As noted earlier, this is a
24 59(e) motion designed to address any issues in Your
25 Honor's order

1 Candidly, I think a little bit of this is rehash of
2 the same arguments presented before with no real arguments
3 about any problems with Your Honor's order There s a
4 couple bases for the order, separate ones including now we
5 have this timing issue as to whether or not Mr. Hutson
6 actually filed his motion to reconsider in time. Setting
7 that aside, there's still no real 59(e) grounds that have
8 been presented, and we would ask that Your Honor deny
9 Mr. Hutson s motion.
10 This new material that was handed today, I'm not sure
11 exactly what this is It appears to be a compilation with
12 some handwriting and some highlights from some 2012
13 emails, which, of course, we're talking about the statute
14 of limitations in a 2018 filing doesn t change anything
15 anyway
16 So that s really what I have to say. I appreciate
17 it
18 THE COURT: Mr. Hutson, I understand, sir, that
19 you re frustrated, and I understand that you don't agree
20 with my ruling
21 THE BAILIFF: Stand up, sir
22 THE COURT: No. You re fine
23 I understand that you re frustrated, sir, and I
24 understand that you disagree with my ruling. And I heard
25 you in full at the original hearing, and honestly, what

1 I'm hearing today is much of that is the same argument
2 from previously. I think that you made a bad business
3 decision But again, I believe that you are well outside
4 the statute of limitations, and I don't, frankly, see any
5 grounds to reconsider my previous order. Now
6 MR. HUTSON: Ma am, I would like to respond to the
7 statute of limitations
8 THE COURT: Sure
9 MR. HUTSON: The Realtor's letter was written just
10 prior to my buying the property. I never accomplished
11 anything with any kind of response back from the Realtor
12 The first time that I learned about there was a title
13 defect was from Stewart Title Company, because I contacted
14 them about giving me issuing title insurance to the
15 cabins I was building I got that on October 2, 2015.
16 Ma am, you have a copy of that in your hand.
17 All right. Now, with that being said, I would like
18 to read an example Let s just say that I learned about
19 it in October 2, 2015. It said that portions of the
20 property were defective. That s the first time in my life
21 that I'd ever heard that. All right. The problem with
22 that was I couldn t go and file a suit for malpractice
23 because I wasn t sure that I could win it and I might get
24 countersued.
25 So I'd like to give an example, if I may, to the

1 Court What if the Internal Revenue contacted you, Your
2 Honor, in writing and they say, "Dear, ma am, we find that
3 you owe us $26,000 that wasn't paid last year. We expect
4 that to be paid shortly. Thank you. So you pick up your
5 phone and you call, and they don't give you any
6 rationality about that. You have two options One, you
7 can take a check, blank, and sign it, put it in the mail
8 and send it to them, or, two, you could try to investigate
9 something before you sign that blank check and send it to
10 them. So what I did, I tried to investigate it
11 Now, since Paul couldn t find which properties was
12 defective and wasn t, I tried to find out. And I could
13 not until the federal court had made its ruling when there
14 were enough testimonies that stated that all the property
15 was under the defective title issue. And ma am, that was
16 in the latter part of December 2015 Now, If you add and
17 subtract, I got that notice on October 2nd, the first
18 notice in my life, I got that notice on 2015, and I found
19 out about it in December Your Honor, that s 33 months.
20 The statute is 36 months. I immediately started taking
21 legal action. I didn't -- I'm not out of my statute. I'm
22 within the statute. That s just in stealth that counsel
23 tried to bring up to muddy up the air here
24 What if -- what if a person in this room decided to
25 buy a house and he hired a title company to run title, and

1 he went ahead and bought the house and four years later
2 they discovered that title was defective on the property?
3 Don t they have a right to go to court over this? Don t
4 they have a -- don t they have a right to recover? Don't
5 they have a right -- what if they lost $2 2 million like I
6 am? Don t they have a right? Why would the -- why would
7 the Court want to throw me out because they have an
8 assumption that I knew about the members? I admit I knew
9 about the members, but there was no more as a layman that
10 I could do, Your Honor, to prove to myself, not to mention
11 anybody else, that there was -- that title was going to be
12 a problem on this property.
13 Consequently, I hired engineers, surveyors, I applied
14 through the planning board in Sumter, in Manning, and I
15 began to get my approvals I even hired a senator lawyer
16 that lived in Manning I forget his name now. John
17 something
18 THE COURT: Land.
19 MR. HUTSON: Right He represented me. He helped me
20 get DHEC to release the moratorium on the sewer. I spent
21 a couple of hundred thousand dollars trying to get my
22 approvals. Here's Paul still working with me, I'm still
23 paying him, we've already signed the settlement agreement,
24 and he s yet to recognize it s proof You ve got it right
25 there in your hand, Your Honor.

1 After the settlement agreement was signed, he still
2 does not recognize that he's made a terrible mistake, a
3 mistake that I've got to eat over $2 million, which has
4 made me indigent. This is not -- this is not just a
5 little minor divorce here where somebody's going to lose a
6 car and somebody gets to keep one. I've lost all the
7 money that I had. I'm broke I live on $663 a month.
8 Judge, that s my entire income. I am below poverty. All
9 I'm asking is this court be -- this court send this thing
10 to a jury.
11 This is not a complicated case. I had no reason,
12 there was nothing else that I could do to prove that that
13 property was not feasible to develop. The sellers were
14 pushing me to develop it, the contract said that I could
15 pay for it out of the closing of what I sold to purchase
16 the land. They knew all along I could not do that because
17 they knew they didn't have good title
18 But Paul Weissenstein spent almost a year or a year
19 and a quarter on this very thing He reviewed these
20 contracts multiple times. I just can't, in my wildest
21 imagination, possibly understand how the Court would not
22 rule in my favor on the fact that I was malpracticed. It
23 could be I've got a sworn affidavit to that effect
24 THE COURT: Thank you, Mr. Hutson. I've heard your
25 argument, sir.

1 Mr. Overstreet, I ll give you one last chance if
2 there s anything else you want to tell me.
3 MR. OVERSTREET: Nothing further Thank you, Your
4 Honor
5 THE COURT Thank you. I will take it under
6 advisement
7 Mr. Hutson, once you get the Court s ruling, you have
8 30 days from that date if you want to appeal it to the
9 Court of Appeals That 30 day deadline is akin to a
10 statute of limitations No court can expand that 30 days.
11 It s jurisdictional So just be aware that that s a
12 hard-and-fast deadline.
13 Thank you.
14 MR. HUTSON I plan to appeal it, Your Honor. And I
15 need a copy, and I 11 ask a copy of the hearing today,
16 because I believe I will certainly win.
17 THE COURT: That s fine. You re certainly welcome to
18 it
19 MR. HUTSON Thank you.
20 MR. OVERSTREET: Thank you, Your Honor.
21 (End of transcript of record.)
22
23
24
25

1 CERTIFICATE OF REPORTER
2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF SUMTER)
5
6
7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 digitally recorded proceedings had and evidence introduced
12 in the trial of the captioned case, relative to appeal, in
13 the Court of Common Pleas for Sumter County, South
14 Carolina, on the 22nd day of April, 2019.
15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17
18 July 11, 2019
19
20
21
22 Cheryl A. Smith, CVR-M
23 Court Reporter
24
25

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM SUMTER COUTY
Court of Common Pleas
Kristi Curtis, Circuit Court Judge

Case No.: 2018-CP-43-01583
Appellate Case No. 2019-000873

M. B. Hutson ....Appellant,
v.
A. Paul Weissenstein..............................Respondent

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material, nor any material believed to be immaterial to this Record on Appeal, to the best of my knowledge.

Submitted this 29th day of Aprtl, 2021, by:

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