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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM SUMTER COUTY

Court of Common Pleas

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Kristi Curtis, Circuit Court Judge

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Case No.: 2018-CP-43-01583 A

Appellate Case No. 2019-000873

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

v.

A. Paul Weissenstein ..... Respondent.

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# AMENDED FINAL BRIEF OF APPELLANT

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## TABLE OF CONTENTS

## STATEMENT OF CASE

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,) as Buyer and Sellers (respectively) of a campground Business and parcels of land in Clarendon County contractually described (R. p. 160-170 and p. 134 - 159) between Buyer and Sellers as specifically for the purpose of development and subsequent sale of single family residences (R. p. 136, lines 10-15).

Respondent, Paul Weissenstein, Esq., represented Buyer/Appellant (R. p. 130-133) in respective lawsuits and negotiations with the Sellers, and also in the execution of a Settlement Agreement (R. pp. 181-192) and Consent Order (R. pp. 1-7) and the filing of a counter-suit against the TLC (Sellers) in behalf of his client (R. pp. 177 - 180), causing this Appellant extreme financial damages and losses and an ultimate judgment of $3.5M. Respondent was engaged by this Appellant from October, 2011, (R. p. 130-133) until January 6, 2014.

## STATEMENT OF FACTS

In the fall of 2010, Plaintiff and the TLC Parties began discussing a potential real property and business transaction wherein Hutson would buy and take-over a campground known as "Big Water Resort" (BWR) along with the real property on which BWR was conducting business. On December 10, 2010, Appellant simultaneously executed the Membership Interest Purchase Agreement (MIPA) (R. p. 160 - 170) for that campground business and the Lease Purchase Agreement ( LPA ) (R. p. 134 - 159) for the land on which BWR operated, from the same Sellers. The MIPA was a limited liability company that was responsible to honor 740 family memberships, many of which were for one and two life time terms (R. p. 171, items #6-#7), equaling, conservatively, up to seventy (70) years each. The moneys pre-collected for the sales of those Retail Membership Agreements (RMAs), or being collected through a finance company, were and

would remain the property of the Sellers/TLC (R. p. 161, lines 7 - 12), as established prior to Respondent entering into the picture. The LPA (R. p. 136, lines 10 - 16) clearly defined that the purpose of the land was for single family residences, as both Sellers and the Buyer /Appellant were fully aware of the intent of the purchase: a subdivision on the water front (R. p. 136, lines 10-12). Appellant was aware of the family memberships which *renewed annually* in January of each year (R. p. 171, # 11, lines 1 - 6) with the payment of renewal fees (R. p. 172 # 14, lines 1 - 5 and # 15, lines 1-6), but had no concept of their having any impact on the land title. Operating prudently, Appellant had a formal title search completed by Williamson Research Services (lower court Exhibit "Z") (R. p. 286 & 287) through Ron Nester, Esq. of Santee, S. C. within ninety days of executing the LPA and the MIPA (R. p. 135, lines 6-8). This title search did not reveal any title defects, due to non-recordation by Sellers in defiance of SC statutes.

In 2011, Sellers sued Buyer for breach of contract. Buyer / Appellant located and engaged Weissenstein, who advertised himself as a real estate attorney, and also who handled closings of land and property. Buyer/Appellant took all contracts ( MIPA (R. p. 160-170), LPA (R. p. 134 – 159), RMAs (example: 171-172)) to A. Paul Weissenstein, Esq. of Sumter, who agreed to represent the Buyer (R. p. 130-133) and to handle individual home closings birthing from the development. Respondent's ATTORNEY RETAINER AGREEMENT with Appellant, (filed with lower court as Exhibit A), executed on October 25, 2011, reads as follows:

> *"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.* (R. p. 130, lines 1 - 3).

Respondent was unable to properly defend and represent the Appellant, his client, as *he failed to recognize and defend his client regarding the following:*

I. Respondent's failure to recognize that the Sellers failed to record the memberships as required pursuant to Sections 27-32-10 through 27-32-250 or the 1976 Code designated as Article 1 of Chapter 32, Title 27, and entitled vacation Time Sharing Plans intentionally to mask the title defect;

II. Respondent's failure to recognize the true conditions of the business and properties at issue in the Agreements and putting them into the stream of commerce:

A. Respondent's *failure to research and recognize* Sellers false representations as to the condition of the business and properties at issue in the Agreements when evidence was available to him:

1. Thomas Harper, Esq., with whom this Respondent was dealing with in behalf of this Appellant, also represented Sellers/Defendants in another case involving the same property in early 2011.

2. Respondent had direct access to Sellers' attorney, Harper, and as an officer of the court, the court records. ***IF HE HAD*** researched, Respondent would have discovered a sworn affidavit by Seller, Jimmy Steve Lovell, of 2/16/2011, by Southeastern Transcript's Lynda Bousquet (001-369-759-3178) where on page 113, lines 3-14, Lovell clearly states, under oath, the following: (R. p. 223)

***"We were motivated, in large part because I told you we were losing 200, $250,000 a year, plus..."*** (filed in lower court #2018-cp-430-1583 as Exhibit "T"/"U") (R. p. 223, (Transcript. p. 111, line(s) 10-12).

B. By not researching and discovering "A" (above), Respondent failed to recognize the hidden $22 Million of debt over the length of the RMAs to upkeep facilities in order to honor the RMAs stemming from the "$250,000 plus" in annual losses (R. p. 223, Tp. 111, lines 11-12).

C. By not researching and discovering "A" (above), Respondent failed to identify and advise his client, Appellant, that the lack of preserved reserves for maintenance and operation of the business – to cover any/all of those annual losses, was non-existent.

III. Respondent's failure to recognize that the Sellers' authored (through their attorney) the Settlement Agreement and Consent Order (which Respondent advised his client to sign) which were both vehicles of Extrinsic Fraud upon the court, as they excluded the rights of the holders of the RMAs from having a voice to which they were legally entitled based on their contractual "rights to use" the land. (R. p. 171, lines 1 – 3 ).

All of this evidence was submitted to the Court in Sumter, however, the court, presiding Judge Kristi Curtis, chose to ignore it. Therefore, this Appellant comes before this Court of Appeals seeking a new trial.

## ARGUMENT

**STATUTE:** ***Appellant filed his lawsuit/or Malpractice against Respondent in Sumter County on September 4, 2018 (Exhibit "U") (R. p. 94 - 105).*** This is notably and clearly within the thirty-six month statute (SC #15-3-545) of Appellant learning that there were *some* "title defect" issues from Medlock, Esq. on *October 2, 2015 (Exhibit "L")* (R. p. 195, lines 1-9). In the December 10, 2018 hearing, which is referred to by the Honorable Judge K. Curtis in her letter of February 4, 2019 (R. p. 75, lines 3-5). Respondent repeatedly, ***and in error,*** put before the Sumter Circuit Court and the Honorable Judge Curtis that the filing was on October 3, 2018. Respondent was deceitfully and repeatedly using the date that the Amended Complaint was filed *expressly* to deceive the Court and to suit his own purposes. His success in doing so is evidenced by Judge K. Curtis' statements and rulings as follows:

1. "I find that this action is outside of the applicable statute of limitations," and "Mr. Kropski, please prepare a proposed order to that effect within the next 30 days."(Judge Curtis' letter to Appellant of 2/4/19, par. 1, ll. 3-4 and par. 2, line 1.) Exhibit "EE" (R. p. 75, lines 3 - 7.)

2. " ... /believe that you are well outside the statute of limitations, and I don't, frankly, see any grounds to reconsider my previous order." (Transcript of April 22, 2019, p. 22, ll.3- 5.) Exhibit "FF" (R. p. 363, lines 3 -5). Steven Kropski, Esq., counsel for the Respondent (then defendant) wrote Judge Curtis' Order. Attempting to shroud his error on the date creates the foundation for the "out of statute" allegation, he writes that the date(s) are hinged on Appellant "knowing the impact of the 'Lifetime Memberships' on the land" with multiple accusations of "knew or should have known" allegations that had not been presented in the hearing. Judge Curtis signs the order. (R. p. 76-90)

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 *an 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 the Appellant'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 Appellant was an attorney licensed in SC, which would have placed him under the higher attorney standard.

Significant evidence, even more than a scintilla, exists in favor of the reasonableness of Appellant's knowledge and what Appellant should have known AND when; it is supported by a paper trail as follows:

1. The Buyer/Appellant: having inquired-with NO response-from the Sellers' attorney on any possible title impact of the RMAs, and given that an annual fee stipulation was required to be paid to keep the RMAs active (namely failure to pay the fee each year voided the RMA) (R. p. 171, # 11, lines 1-6) *and* ( R. p. 172, # 14, lines 1 — 5 *and* # 15 lines 1 - 6.) Appellant took an additional step and executed a Title Search.

    A. Appellant paid for and received a title opinion on the property in question. A thorough review of the land records from 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. The first two pages of the Title Search is attached as Exhibit "Z" for verification. (R. p. 286-287) The full Title Search will be produced as an

Attachment. The Title Search was completed on or about March 15, 2011, and during the ninety day due diligence period as outlined in the Lease Purchase Agreement (R. p. 135, lines 5 – 9). No title defects were on file in the county courthouse, and therefore no title defects by those RMAs were discoverable by the Pro Se Appellant.

B. Therefore, Appellant's belief that he could develop the property was reasonable. Appellant did what he knew to do in that situation. Although Respondent's attorneys purport that knowing about the RMAs (some of which were for one year, five years, ten years, or a "lifetime" or two) indicates that the Appellant KNEW they created a title defect, which is not valid. The Appellant's actions (securing a Title Search) demonstrate Appellant's efforts to discover.

***IF* THE SELLERS RECORDED THOSE RMAs THAT HAD LONG TERMS (over one year) IN COMPLIANCE WITH THE SC #27-33-30, Appellant's TITLE SEARCH would have discovered the title defect.**

*2.* As a real estate attorney, *RESPONDENT SHOULD HAVE KNOWN:*

A) that those RMA's with more than one year of a "right to use" should have been recorded (SC# 27-33-30). (Apparently, that thought, in planning the defense of the Appellant, never even crossed the Respondent's mind!)

B) Respondent, as an attorney in real estate, definitely SHOULD HAVE KNOWN and SHOULD HAVE ADVISED his client when he reviewed those contracts furnished ... AND ... PRIOR to moving forward with any Settlement Agreement and Consent Order.

C) ***Therefore, Respondent failed in his fudiciary duty to investigate and defend the Appellant.***

(R. p. 128, "k" through "o"...Hardee, Esq. Affidavit)

3. Appellant ran into some issues and the Sellers filed an action to evict Appellant from the property. Appellant hired an attorney, Respondent, to defend Appellant in that action. Respondent, Weissenstein, was to fully investigate the situation, define the issues, defend Appellant against the eviction, and to file any counterclaims available to Appellant, and advise Appellant how to proceed. Appellant now knows that all issues were caused intentionally by Sellers, as follows:

A. Sellers failed to accurately disclose the fiscal health of the business (deposition record for the Federal Class Action Suit and shared with this Appellant after eviction: Lovell (Seller) (2/16/11 testimony) (R. p. 216, Deposition p. 113, lines 10-12). This would have been available to Respondent if researched):

"*We were losing 200-$250,000 a year plus"* (R. p. 216, ll. 10 – 12 of transcript page 113—top left), and by

B. Sellers failure to comply with SC 27-33-30 to record in the courthouse any binding long-term contracts on the property. (Should have been an immediate flag to a real estate attorney to investigate.)

4. Appellant provided Respondent, Weissenstein, with all the contracts relative to this property acquisition. Included in those documents were Exhibits B, C, and D: (Lease Purchase Option (R. p. 134-159), Membership Interest Purchase Agreement (R. p. 160-170), and RMAs (R. (example. p. 171-172). The latter, granted the "sole use" of the

campground properties to RMAs' holders (R. p. 171, lines 5-7).

5. Respondent Weissenstein is an attorney licensed to practice law in the state of South Carolina. He further advertised that he was a real estate attorney and purported himself out as an expert in real estate law in South Carolina.

6. Despite Respondent's claims, Respondent did not ascertain the "legal significance" of the RMAs Example: (R. p. 171-172) to the title of the property that Plaintiff had contracted.

7. Respondent, Weissenstein, by his actions, demonstrated to Appellant that Appellant could legally develop the property in question. Those actions are verified by Respondent's correspondences and signatures in the exhibits outlined below, leading to Appellant's reasonable belief that he could legally purchase and develop the property in question:

PRIOR TO CONSENT ORDER:

**a) March 31, 2012:** Exhibit **"Q"(R. p. 285, lines 19-21.):** Respondent corresponded with Sellers attorney regarding drafting "final settlement agreement" (par. 6) and "consent order" (par. 4) and further 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 (par. 7).

**b) April 3, 2012:** Ex. "**AA"(R. p. 288, lines 1-5 of Respondent's email at bottom of page**.)**:** 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 even though the property had title defects/not developable.

**c) April 12, 2012:** Exhibit"J " (**R. p. 284)**: Defendant signed *Clarendon County Planning Board Commission's Application/or Development* to "develop a single family subdivision at Big Water Resort." When in fact the title defects prevented Appellant from legally developing the Big Water Resort property.

**d) April 12, 2012:** Exhibit **"BB" (R. pp. 289-290):** 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 terms set forth herein conform to the agreement an requirements of Wells Fargo Home Mortgage for the development of this project." Pages 1 & 2.

AFTER CONSENT ORDER

**e) June 18, 2012:** Exhibit **"CC" (R. p. 291, lines 1, 4-5)** 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... she (Rose) said that she would really like to have your letter before 5:00 tomorrow." –APW/ Respondent.

**f) June 29, 2012:** Exhibit **"DD": (R. p. 292, lines 31-32**). 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 his 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."* (ll. 31-32)

When sued by Sellers, making this Appellant a third party defendant to a Federal Law Suit (2: 14-CV-01583-DCN-MGB), in which those owners of the RMAs (who were denied a voice at the Settlement Agreement and Consent Order hearing by the Sellers and this Respondent)--and notably NOT included by Respondent Weissenstein either intentionally or via non-recognition of their right to appear, Appellant became exposed to the depth of the deception that was woven by the Sellers. Appellant pleaded for this Respondent to come and testify, but his attorney, Steven Kropski, wrote the court and blocked it.

Hearing the claims of the Class Action, this Appellant started researching, and after a phone conversation, received a written e-mail response on October 2, 2015, from Michael Medlock, Esq. of Stewart Title Company (Exhibit "L") (R. p. 195, paragraph 1-3.) This was the first time the Appellant was informed that the RMAs would have some impact on the land title, but which "portions"? Appellant was unclear about *which portions* of the land were defective, despite his inquiries and efforts, until years later. He did not know until the final ruling of the Class Action Lawsuit, **December 15, 2015.**

Nevertheless, on the fourth of September, 2015, Appellant filed a Complaint for Malpractice against Respondent (R. p. 94 — 105). Appellant had every right, and it was reasonable, for him to rely upon the legal advice of his lawyer, Respondent Weissenstein.

*Respondent's failure to recognize the "legal significance" of the membership agreements was legal malpractice on his part,* as attorneys are held at a higher standard.

On **December 15, 2015,** when a ruling was received on the Federal Class Action Lawsuit against the Sellers: Federal Judge Norton's Order, *(2: 14-CV-01583- DCN-MGB),* **Appellant then learned** *that* ALL 108 acres were encumbered by the RMAs. In fact, NONE of the land could have been developed, and

**--the LPA** (Exhibit "B") **(R. p. 134- 159);**

**--the Settlement Agreement (Exhibit "H") (R. p. 181 — 192); and**

**--Consent Order (Exhibit "I") (R. p. 1 — 7)**

**...were all fraudulent**!

The Settlement Agreement (SA) **(R. p. 181-192)** and Consent Order (CO) **(R. p. 1-7)** were **collaboratively written by Tom Harper, Esq., attorney for the Sellers *and this Respondent***. Respondent Weissenstein's signature appears on the Consent Order ( Exhibit "1," page 5) (R. p. 5). The Honorable George James, Jr. was not made aware that the Settlement Agreement and Consent Order were full of extrinsic fraud upon the court since the attorneys for the Sellers intentionally failed to disclose all of the negative issues regarding the property and prevented the holders of the RMAs from being heard.

Additionally, Plaintiff had and submitted to the Sumter Circuit Court (Exhibit "W") an **Expert Witness Affidavit** from an attorney reflecting Weissenstein's failure to perform. **(R. p. 126 - 129).**

**DAMAGES:**

Once Appellant was wrongfully evicted (due to the Respondent's not recognizing the fraud being perpetrated upon the court), Appellant lost all monies including his documented equitable interest (Exhibit "O"), (R. p. 201 - 206), lost monthly payments (R. p. 207), and hundreds of thousands of dollars that Appellant had paid to the utilities, invested in surveys and moratorium corrections, attorney fees etc. which were consequently lost due to the wrongful eviction. **These losses exceed $ 2.4 Million Dollars.**

**Respondent could have stopped the fraudulent actions of the Sellers by recognizing and filing a counter claim alleging a defective title defense for the Plaintiff thereby exposing the clouded title and fraud within the contracts that this Respondent had formerly supported.**

Judge Curtis totally disregarded these facts or disputed facts and made a bench ruling knowing full well that the Appellant/(Plaintiff in Circuit Court) demanded a jury trial, and fully overlooking:

1. Appellant's intention with respect to the property was clearly articulated in the Lease Purchase Agreement **( R. p. 143, lines 10-15)**. The property Appellant 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. This was clear to both the Appellant and Respondent, who was actively in contact with both the Appellant and the county. **(R. pp. 193; 284; 288 - 290.).**

2. Respondent supported his client, Appellant, to sign the Consent Order and Settlement Agreement, even while Extrinsic Fraud was being perpetrated upon the Court by not allowing the holders of the RMAs to have a voice. **An Order to develop property that could not legally be developed due to the RMAs was perpetrated through this fraud. (R. pp. 1-5).**

3. The Lease Purchase Agreement required Appellant to not only develop the property, but to also *pay for the property by the sales of those individual lots within 2 years of signing the agreement.* **(R. p. 135, Sec. 1.1, line 3)**. Those acts are mutually exclusive! The RMAs were executed at a earlier date, which legally precluded the development of the property by Appellant, or anyone else.

**4. Therefore, the documents Respondent had his client (Appellant) sign could *not be* legally valid. If either the Respondent or the Appellant had understood that legal situation, these documents (Settlement Agreement and Consent Order) would not have been signed.**

a) It was reasonable for the Appellant to have not understood the legal implication of the membership agreements. It was *not* reasonable for the Respondant, a licensed attorney, to have not understood the legal implications of those RMAs. As an expert in real estate, the **Respondent should not have advised Appellant to sign the Settlement Agreement and Consent Order. Instead, Respondent should have advised the Appellant to file a counter-claim seeking damages from the Sellers relative to the defective title.**

b) The greater weight of the evidence, as to the reasonableness of Appellant's ability or the Respondent's ability to understand the legal implication of the membership agreements, is totally upon the

Respondent, which he failed to recognize and act upon. Therefore, the true date that should trigger the statute of limitations is not when Appellant knew of the existence of the RMAs, 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 would also place him within the 36 month statute for he filed the malpractice on **September 4, 2018, (R. p. 94).**

5. A conclusion that knowledge of the RMAs alone elevates Appellant's responsibility of knowing to the status of an attorney is not reasonable, and, it is *pure conjecture.* Appellant is not an attorney and cannot be required or expected 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 Appellant hired, Respondent Weissenstein, failed *himself* to understand the significance of these agreements.

6. Appellant/Pro Se is concerned about justice and fairness and therefore wishes to speak to the following concerns, in light of the Honorable Judge Curtis' ruling:

**i.** Judge Curtis refers in the open hearing to Respondent's attorney, Steve Kropski, Esq., several times as "Steve" (by first name only), which indicates more than a strictly professional association.

**ii.** The Respondent, Weissenstein, his daughter, and Steve Kropski all have and/or do currently practice law in Judge Curtis' courtroom.

**iii.** Appellant/ Pro Se is not an officer of the Court and even though Appellant has submitted concrete evidence that should send this case to a Jury, the Judge ruled from the bench to deny.

Plaintiff has a right for a jury trial.

The only evidence that Appellant could have known that the membership agreements could be a problem was that Appellant knew of their existence. Knowing of their existence does not equate to understanding their impact on title. Respondent 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.

Appellant had every right, and it was reasonable for Appellant, to rely upon the legal advice of his lawyer, Respondent Weissenstein. Respondent's failure to recognize the "legal significance" of the membership agreements was legal malpractice on *his* part. Appellant has an affidavit from an Expert Witness (R. p. 126 -129) that states that opinion which puts that issue to a jury, and it is also proof that Appellant was reasonable in Appellant's belief that Appellant could legally develop the property in question until such time as a legal professional advised Appellant otherwise.

Shortly afterwards, and for the first time, **Appellant** 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 that **Appellant** had secured during his due diligence period in early 2011 showed no type of title defect from the RMAs, **Appellant** reasonably believed that both *he and* the RMA families could use the property. Appellant 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.

The Lease Purchase Agreement required Appellant 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. (R. p. 134, section 1.1).* Those are mutually exclusive alternatives. The membership agreements were prior in time, which legally precluded the development of the property by Appellant, or anyone else. Therefore, the documents Respondent had his client, Appellant, sign could *not be* legally valid. If either Respondent or Appellant had understood that legal situation, these documents (Settlement Agreement and Consent Order) would not have been signed.

A conclusion that knowledge of the RMAs alone elevates Appellant's responsibility of knowing to the status of an attorney is not reasonable, and, it is *not* supported by any evidence. Appellant 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 Appellant hired, Respondent Weissenstein, failed *himself* to understand the significance of these RMAs.

## CONCLUSION -- MOTION FOR A NEW TRIAL

**Legal Standard: RULE 59 (a) of the South Carolina Rules of Civil Procedure provided in part as follows:**

*"a new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a bench trial" (even though Appellant demanded a Jury trial) "for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State. . ."*

**Historically, trial courts have granted motions for new trial in order to correct trial errors such as evidentiary rulings and jury charges that are preserved by timely trial objections. (See, e.g. Winters, et al v. Fiddle, et al, 394 s.c. 629, 716 SE 2d 316 (Ct.App. 2011)).**

### DAMAGES

As explained above, Appellant presented substantial evidence as to damages suffered by Appellant and documentation appears in the Exhibits entitled "Designation of Matter to be included in the Record on Appeal. " That analysis does not need repeating here.

A sworn affidavit by the expert, Mark Hardee, Esq. **(R. p. 126-129)** was presented and the statute requires that such affidavit be part of the filing of the complaint-- and it was. Issues within the affidavit are issues of dispute & *must* go before a jury. Appellant is entitled to a jury trial as a constitutional issue and this case was, and is, full of evidence, disputed evidence, issues of facts all to be held by a Jury at trial. Judge Curtis simply elected to ignore much of the evidence, and erred, or misstated intentionally, to prevent this case from going to a jury. Appellant pleads for a new trial and jury trial for the overall evidence is beyond a reasonable doubt, and Judge Curtis had an obligation to send this case to a jury, but failed to do so. This case includes obtaining restitution monies and Rule 38 Jury Trial of Right should certainly apply in behalf of this Appellant.

Respectfully Submitted,

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