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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2018-CP-26-00789

Roger D. Herrington II Respondent,

v.

Roger Dale Herrington and Eunice M. Herrington Appellants,

APPENDIX

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2018-CP-26-00789

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Nov 09 2020

SC Court of Appeals

Roger D. Herrington II Respondent,

v.

Roger Dale Herrington and Eunice M. Herrington Appellants,

RECORD ON APPEAL

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2600789

Roger D Herrington, II
PLAINTIFF(S)

Roger Dale Herrington et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCF; ☐ Rule 41(a), SCRCF (Vol. Nonsuit); ☐ Rule 43(k), SCRCF (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCF; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Judgment granted in favor of the plaintiff, Roger D. Herrington, II, against the defendants, Roger Dale Herrington and Eunice M. Herrington, jointly and severable, in the amount of \$170,005.00.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/20/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL



Horry Common Pleas

Case Caption: Roger D Herrington IJ VS Roger Dale Herrington , defendant, et al
Case Number: 2018CP2600789
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2019-11-20 13:33:13 page 3 of 3

ELECTRONICALLY FILED - 2019 Nov 20 3:06 PM - HORRY - COMMON PLEAS - CASE#2018CP2600789

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.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

ROGER D. HERRINGTON, II)

PLAINTIFF)

VS.)

ROGER DALE HERRINGTON AND
EUNICE M. HERRINGTON)

DEFENDANTS)

IN THE COMMON PLEAS COURT
OF THE FIFTEENTH JUDICIAL
CIRCUIT 2015-CP-26- 1262

SUMMONS

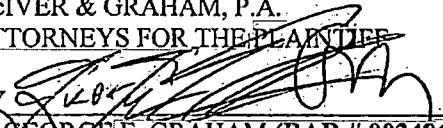
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2015 FEB 18 PM 12:59
CLERK OF COURT

TO: THE DEFENDANTS ABOVE NAMED:

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 said Complaint on the Plaintiff or Plaintiff's attorneys, McIver & Graham, P.A., at their Office, 2015 Hwy. 378, Post Office Box 915, Conway, South Carolina, within thirty (30) days of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

DATED at Conway, South Carolina on the 18 day of February 2015.

McIVER & GRAHAM, P.A.
ATTORNEYS FOR THE PLAINTIFF

BY 

GEORGE E. GRAHAM (BAR # 002486)

P.O. BOX 915

CONWAY, SC 29528

PHONE: (843) 248-4615

FAX: (843) 248-6479

EMAIL: gedg@sccoast.net

7. The Defendants continued to maintain the books, controlled the money and other administrative duties.

8. The Plaintiff allowed things to remain the way they were because the Defendants were his parents and the operations of the business were running smoothly.

9. On September 3, 2012 the Defendants decided to sell the business to someone other than the Plaintiff. They refused to pay the Plaintiff his salary, banned him from working in the business and constructively terminated his employment.

10. The parties have had numerous incidents since that time that necessitated court actions.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

11. The Plaintiff would reallege paragraphs one (1) through ten (10) as if set herein verbatim.

12. The parties' contract called for the Defendants to turn the business over to the Plaintiff after ten (10) years and they failed and refused to do so.

13. The Plaintiff has made numerous demands for the Defendants to comply with the parties' agreement but the Defendants responded by requiring the Plaintiff to leave their property.

14. The Plaintiff has performed all of his obligations under the parties' agreement.

15. The Plaintiff is informed and believes that the Defendants' breach is intentional.

16. The Plaintiff is informed and believes that he is entitled to actual, punitive damages and attorney's fees in an amount to be determined by this court for the Defendants' breach of contract or the Defendants be required to specifically perform under the parties' contract.

herein verbatim.

26. The Defendants breached their contract with the Plaintiff.

27. The Defendants fraudulently intended to keep the Plaintiff's services when they realized that the ten (10) years had passed and they told the Plaintiff they were not going through with the contract.

28. The Defendants' act of telling the Plaintiff to leave and keep his services was dishonest, unfair and unlawful appropriation of the Plaintiff's service by design.

29. The Plaintiff is informed and believes he is entitled to actual and punitive damages as a result of the Defendants' fraudulent acts in an amount to be shown at the trial of this case.

WHEREFORE, your Plaintiff prays that this Honorable Court award him judgment against the Defendants for actual damages, attorney's fees and a reasonable amount of punitive damages plus the costs and disbursements of this action as outlined below;

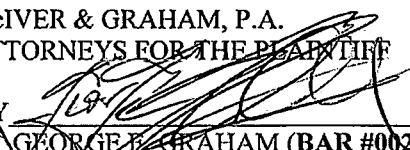
- (a) That the Defendants be required to specifically perform or the Plaintiff be awarded a judgment against the Defendants for actual, treble, damages and attorney's fees on the first cause of action in an amount to be shown at the trial of this case.
- (b) That the Plaintiff be awarded a judgment in the amount of Five Hundred Thousand (\$500,000.00) Dollars against the Defendants on his second cause of action.
- (c) That the Plaintiff be given a judgment against the Defendants on the third cause of action for actual damages in the amount to be shown at the trial of this case.
- (d) That the Plaintiff be given a judgment against the Defendants on the fourth cause of action for actual damages in an amount to be shown at the trial of this case.
- (e) For such other and further relief as this Court deems just and proper.

CONWAY, SOUTH CAROLINA

FEBRUARY 18 2015

McIVER & GRAHAM, P.A.
ATTORNEYS FOR THE PLAINTIFF

BY


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8. Defendants assert the doctrine of unclean hands as a complete or partial bar to Plaintiff's Complaint.

FOR A FOURTH DEFENSE
(Laches)

9. Defendants incorporate and reallege the paragraphs above as if fully set forth herein, verbatim.

10. Defendants assert the doctrine of Laches as a complete or partial bar to Plaintiff's Complaint.

FOR A FIFTH DEFENSE

11. Defendants incorporate and reallege the paragraphs above as if fully set forth herein, verbatim.

12. Defendants assert, upon information and belief, that any imposition of punitive damages against these Defendants would constitute a violation of their due process and equal protection rights as secured by both the United States Constitution and the Constitution of the State of South Carolina in that the judiciary's ability to correct a punitive damages award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees of both the United States Constitution and the Constitution of the State of South Carolina.

13. Defendants assert, upon information and belief, that any award of punitive damages serving a compensatory function is inconsistent with due process guarantees of both the United States Constitution and the Constitution of the State of South Carolina.

14. The Defendants alleges that the Plaintiff's claim for punitive damages violates both the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of any meaningful standard and is inconsistent with due process guarantees.

15. The Defendants allege that the Plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 3 of the South Carolina Constitution because, even if it could be argued the standard governing the imposition of punitive damages exists, the standard would be void due to vagueness.

16. The Defendants allege that the Plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendant.

17. Defendants allege that the Plaintiff's claim of punitive damages violates the doctrine of separation of powers and Article I, Section 3 of the South Carolina Constitution

28. Plaintiff further admits that he did institute this action until at least eight (8) years after the alleged breach.

29. This filing date is outside the permissible three (3) year period under the relevant statute of limitations, and the claims accordingly are barred by the statute of limitations.

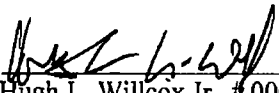
30. Defendants accordingly plead the statute of limitations as an affirmative defense to Plaintiff's Complaint.

FOR A EIGHTH DEFENSE

31. Defendants incorporate and reallege the paragraphs above as if fully set forth herein, verbatim.

32. Defendants preserve and reserve the right to rely on and assert any and all other applicable defenses either in contract, in equity, or under the law as may become evident during Discovery.

WILLCOX, BUYCK & WILLIAMS, P.A.

BY: 

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(843) 662-1342 – Fax.

JUNE 15, 2016.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Roger D. Herrington II,	)	C/A NO. 2018-CP-26-00789
	)	
Plaintiff,	)	DEFENDANTS' NOTICE AND MOTION
	)	FOR JNOV, NISI REMITTITUR OR NEW
	)	TRIAL
vs.	)	
	)	
Roger Dale Herrington and Eunice M.	)	
Herrington,	)	
	)	
Defendants.	)	

Defendants move, pursuant to Rules 50 and 59, SCRPC, for a judgment in favor of Defendants, *Nisi Remittitur* reducing the verdict, or in the alternative an Order for a new trial.

Defendants respectfully submit that the Court erred in allowing the equitable claim for quantum meruit to go to the jury. Plaintiff was paid fair wages and compensation while he was employed by the business, and the evidence did not support a finding that Defendants retained a benefit under circumstances making it inequitable for them to retain the benefit. JASDIP Props. SC, LLC v. Estate of Richardson, 395 S.C. 633, 639-40, 720 S.E.2d 485, 488-89 (Ct. App. 2011). Moreover, presumably, the jury awarded damages based on the value of equipment owned by Defendants individually and not the business. Because the business did not retain this benefit, a verdict could not have been based on the value of the equipment. In the alternative, the verdict should be reduced by the amount paid to Plaintiff while he worked for the business.

In addition, the evidence demonstrated that Plaintiff's alleged agreement to buy the business should have been completed in 2005. Yet, he continued to work for the business for 8 additional years until 2013. He brought this action 10 years after the alleged agreement should

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	OF THE FIFTEENTH JUDICIAL
COUNTY OF HORRY	)	CIRCUIT 2018-CP-26-00789
	)	
ROGER D. HERRINGTON, II	)	
	)	PLAINTIFF'S REPLY TO DEFENDANT'S
PLAINTIFF	)	NOTICE AND MOTION FOR JNOV, NISI
	)	REMITTITUR OR NEW TRIAL
ROGER DALE HERRINGTON AND	)	
EUNICE M. HERRINGTON	)	
	)	
DEFENDANTS	)	
	)	

1. The Court should deny Defendants' Motion and allow the jury's verdict to stand.
2. Actions for quantum meruit are based upon the absence of a contract. The Court dismissed the contract cause of action as unenforceable because of the violation of the statute of frauds. Plaintiff may recover under quantum meruit where the Defendants deny the existence of a contract or where a contract is unenforceable because of the statute of frauds. Riddle vs. George, 181 S.C. 360, 524 S.E. 534 (1936).
3. The Court did not err by allowing the issue of quantum meruit to go to the jury. The wages paid to the Plaintiff were not fair ones as Defendants allege. The Plaintiff also expected to receive the business as part of his compensation. The verdict was not just based on equipment as Defendants presumed but it was based upon the evidence the jury found.
4. The Plaintiff presented, by the preponderance, or greater weight, of the evidence that a benefit was conferred to the Defendants and they kept benefits under circumstances which makes it unfair for them to enjoy the benefits without compensating the Plaintiff.
5. The jury obviously found, as the Court charged in this case, that it would be unjust for the Defendants to keep these services and equipment without just compensation to the Plaintiff.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	2018-CP-26-00789
ROGER D. HERRINGTON, II,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	
	)	November 18-19, 2019
ROGER DALE HERRINGTON	)	
AND EUNICE M. HERRINGTON,	)	
	)	
Defendants.	)	

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

George E. Graham, Esquire
Attorney for Plaintiff

Hugh L. Willcox, Jr., Esquire
Attorney for Defendants

Kay H. Richardson
Circuit Court Reporter

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1 refused to follow through with that contract, is the basic
2 allegations. The contract having been entered into in 1996
3 and the business is Dale Herrington Land Cleaning and Septic
4 Tanks.

5 Now, is there any member of the jury panel that has heard
6 anything, read anything, discussed anything or knows anything
7 about this case. If so, please stand?

8 (REPORTER'S NOTE: No response.)

9 THE COURT: All right. The plaintiff in this case is
10 Roger D. Herrington, II. The defendants are Roger Dale
11 Herrington and Eunice M. Herrington. Is there any member of
12 the jury panel related by blood or marriage, have a close
13 personal relationship, business relationship, social
14 relationship, or any other type of relationship with the
15 plaintiff, Roger D. Herrington, II or the defendants, Roger
16 Dale Herrington and Eunice M. Herrington? If so, please
17 stand.

18 (REPORTER'S NOTE: No response.)

19 THE COURT: All right. In addition to the parties in
20 this case, potential witnesses are Diane Herrington, Angie
21 Davis, Jeff Thompson, Matt Brown, and Jack Barnwell. Is there
22 any member of the jury panel related by blood or marriage,
23 have a close personal relationship, business relationship,
24 social relationship, or any other type of relationship with
25 any of these potential witnesses? If so, please stand.

1 MR. WILLCOX: Your Honor, we also have an office in
2 Myrtle Beach.

3 THE COURT: Oh, you do have one? Okay.

4 Also, in Myrtle Beach?

5 (REPORTER'S NOTE: No response.)

6 THE COURT: Has any member of the jury panel ever been
7 represented by any attorneys who were employed by or partners
8 in McIver & Graham or Willcox, Buyck & Williams. If so,
9 please stand.

10 THE COURT: Has any member of the jury panel either
11 personally or had a family member that has been involved in a
12 lawsuit or a worker's compensation claim? If so, please
13 stand.

14 THE COURT: Yes, ma'am, your name and number?

15 JUROR 167: 167, Donna Hulsizer.

16 THE COURT: All right, Ms. Hulsizer, was this you or a
17 family member?

18 JUROR 167: Family member.

19 THE COURT: Okay. And was it a lawsuit or a worker's
20 compensation claim?

21 JUROR 167: Worker's compensation.

22 THE COURT: And how long ago was that?

23 JUROR 167: About three years ago.

24 THE COURT: Okay. Different people are affected by
25 different events. Would that legal action, for lack of a

1 our attention.

2 Ma'am, you'll need to stand?

3 JUROR 36: I am standing.

4 THE COURT: There was a lady here on the front row; your
5 name and number?

6 JUROR 402: Jema Madriaga, 402.

7 THE COURT: Hold for one second. Madriaga?

8 JUROR 402: Yes.

9 THE COURT: All right. Ms. Madriaga, was this you or a
10 family member?

11 JUROR 402: It's me, sir.

12 THE COURT: Okay. Was it a lawsuit or a worker's
13 compensation claim?

14 JUROR 402: Just a worker's comp.

15 THE COURT: Okay. And how long ago was that?

16 JUROR 402: This was about six, more or less 6 months
17 ago.

18 THE COURT: Okay.

19 JUROR 402: I fell and ---

20 THE COURT: Would that incident affect your ability to be
21 fair and impartial to the plaintiff and the defendants in this
22 case?

23 JUROR 402: I'm not sure, Your Honor.

24 THE COURT: Okay. All right. Ms. Madriaga, I'll excuse
25 you from this particular case, but stay with us for right now.

1 JUROR 329: Probably about eight years ago.

2 THE COURT: Would that lawsuit affect your ability to be
3 fair and impartial to the plaintiff and the defendants in this
4 case?

5 JUROR 329: It would not.

6 THE COURT: Would you able to disregard all of the facts
7 and circumstances regarding that lawsuit and base your
8 decision in this case exclusively on the testimony and
9 evidence in this case?

10 JUROR 329: Yes.

11 THE COURT: Thank you for bringing that to our attention.

12 Is there any member of the jury panel, who either
13 personally, or has a family member that has ever conducted
14 business with Dale Herrington Land Cleaning and Septic Tanks?
15 If so, please stand.

16 (REPORTER'S NOTE: No response.)

17 THE COURT: Has any member of the jury panel formed or
18 expressed an opinion about any issue or matter involved in
19 this case? If so, please stand.

20 (REPORTER'S NOTE: No response.)

21 THE COURT: Is any member of the jury panel aware of any
22 bias or prejudice towards either the plaintiff or the
23 defendants in this case? If so, please stand.

24 (REPORTER'S NOTE: No response.)

25 THE COURT: Is any member of the jury panel know of any

1 jury. So, it's a little bit more secretive than it would be in
2 General Sessions Court.

3 You've also been assigned new numbers. So, if you hear an
4 attorney strike Juror Number 5, and You're Juror Number 5,
5 that's not you, because you've got a new number. So, you
6 really don't even know if you're on the list at all unless
7 your name is called and you're selected on this jury at the
8 end of the selection process, but that's how we go through it
9 in Common Pleas Court.

10 All right. Gentlemen, we got -- on your -- have y'all
11 got the list; y'all have got the list?

12 MR. WILLCOX: Yes, sir.

13 THE COURT: So, it would be using the numbers to the left
14 of the juror's names, 1 through 20. We'll alternate. The
15 plaintiff will strike four, the defense will strike four, and
16 that will leave us with our 12 jurors.

17 Do we need an alternate?

18 MR. GRAHAM: I don't think so, Your Honor.

19 THE COURT: Can we go with less than 12, if we need -- in
20 other words, if someone falls out, can we go with less than
21 12, but not less than 10?

22 MR. GRAHAM: Yes, sir.

23 MR. WILLCOX: That's agreeable with the defense, Your
24 Honor.

25 THE COURT: Okay. All right. How long do y'all need to

1 CLERK: Plaintiff strikes Number 1.

2 MR. WILLCOX: Defendant strikes Number 19.

3 CLERK: Defense strikes Number 19.

4 MR. GRAHAM: Plaintiff strikes Number 4.

5 CLERK: Plaintiff strikes Number 4.

6 MR. WILLCOX: Defendant strikes Number 20.

7 CLERK: Defense strikes Number 20.

8 MR. GRAHAM: Plaintiff strikes Number 11.

9 CLERK: Plaintiff strikes Number 11.

10 MR. WILLCOX: Defendant strikes Number 14.

11 CLERK: Defense strikes Number 14.

12 MR. GRAHAM: Plaintiff strikes Number 8.

13 CLERK: Plaintiff strikes Number 8.

14 MR. WILLCOX: Defendant strikes Number 13.

15 CLERK: Defense strikes Number 13.

16 May we please review your strikes? Plaintiff strikes
17 Number 1, 4, 8, and 11; is that correct?

18 MR. GRAHAM: That is correct.

19 CLERK: Okay. Defense strikes Number 13, 14, 19, and 20;
20 is that correct?

21 MR. WILLCOX: That's correct.

22 CLERK: Thank you.

23 THE COURT: All right. Ladies and gentlemen, please
24 listen up. As the clerk calls your name, please come forward
25 to the jury box. Bring with you any coats, pocketbooks,

1 foreperson lets the Court know. If the jury has a need, the
2 foreperson lets the Court know. When it's time to deliberate
3 on a verdict, the foreperson will preside over the
4 deliberations and sign the verdict form. But other than that,
5 the foreperson has no more authority, no more influence, no
6 more importance than any other juror. So, if you can select
7 one, just write his or her name on a sheet of paper with the
8 jury number, give it to the bailiff, and we'll bring you back
9 into the courtroom.

10 Now, the foreperson will always occupy the first seat on
11 the front row, which is closest to the witness stand. The
12 rest of you are at liberty to sit in whatever seat you like.
13 If you want to alternate seats, you can do that; if you want
14 to sit in the same seat, you can do that as well. The only
15 requirement is that the foreperson occupies the first seat on
16 the front row.

17 All right. I'm gonna excuse you back to the jury room
18 for just a few minutes and see if you can see if you can
19 select a foreperson and we'll bring you back shortly.

20 Thank you.

21 (REPORTER'S NOTE: Jury exits courtroom @ 2:38 P.M. The
22 following takes place outside the presence of the jury.)

23 THE COURT: All right. Any challenges to the selection
24 or composition of the jury by the plaintiff?

25 MR. GRAHAM: None from the plaintiff, Your Honor.

1 the Court will work, but I just wanted to bring to the Court's
2 attention that my client as an eight-month -- year-old
3 daughter.

4 THE COURT: Okay.

5 MR. GRAHAM: That he needs to pick up in Aynor before
6 5:30.

7 THE COURT: Okay. I try to stop as close to 5:00 as I
8 can. All right? And I'll make sure today that we'll do that.
9 Particularly, I don't want to keep a jury past 5:00 if --
10 without giving them some pre-warning, if they may have some
11 commitments. However, if we're in the middle of a witness or
12 something, that might carry over. I'm not going to cut off a
13 witness' testimony in the middle of it. So, kind of keep that
14 in mind.

15 MR. GRAHAM: Yes, sir.

16 THE COURT: All right. Anything else from the plaintiff?

17 MR. GRAHAM: No, sir.

18 THE COURT: Anything from the defense?

19 MR. WILLCOX: Nothing from the defense, Your Honor.

20 THE COURT: Okay. So, I guess we'll -- well, let me ask
21 you this. Did we want to go ahead and -- I know we can get in
22 the opening charges and opening statements from the attorneys.
23 Do y'all want to go ahead and start with witnesses today? I
24 don't know how long your witnesses are or anything of that
25 nature. It's a quarter till 3:00 now. So, y'all tell me;

1 MR. GRAHAM: Yes, sir.

2 THE COURT: Okay. So, we'll probably break after that
3 first one then. Okay?

4 All right. How about let me know when they get a
5 foreperson selected. Okay?

6 THE COURT: You got it? Thank you, sir.

7 All right. Chris Olup, O-L-U-P. Juror Number 267 has
8 been selected as the foreperson. Christopher M. Olup.

9 Let me give you that and put it as Court's Exhibit 1.

10 COURT'S EXHIBIT NUMBER 1

11 MARKED FOR IDENTIFICATION

12 THE COURT: All right. Anything from the plaintiff
13 before we bring the jury in?

14 MR. GRAHAM: No, sir.

15 THE COURT: Anything from the defense?

16 MR. WILLCOX: Nothing from the defense, Your Honor.

17 THE COURT: All right. Let's bring the jury in.

18 REPORTER'S NOTE: (Jury enters courtroom).

19 THE COURT: All right. Welcome back.

20 I understand Mr. -- is it Olup?

21 JUROR 267: Olup.

22 THE COURT: Olup. I apologize, Mr. Olup. I understand
23 you've been selected as the foreperson; is that correct?

24 JUROR 267: I think so, yes.

25 THE COURT: Well, congratulations. I thank you for

1 might expect when you watch trials on T.V. or in the movies
2 for entertainment purposes. But, I hope you do find the trial
3 entertaining, I hope you do find it educational, and I want to
4 thank you from the outset for serving as jurors in this case.

5 The attorneys appearing before you are advocates for the
6 parties they represent, but first and foremost, they are
7 officers of the court. They are sworn to uphold the integrity
8 and the fairness of our judicial system. You can expect them
9 to be professional, competent, and ethical in the
10 representation of their clients' interest. Likewise, they'll
11 expect you to be professional, reasonable, and ethical as you
12 serve on this jury.

13 Now, I remind you, if you inadvertently bought any cell
14 phones or pager devices into the courtroom, please turn them
15 off if you brought them in by mistake.

16 I want to thank you for being on time this afternoon.
17 That was a great assistance to the Court.

18 But last and certainly not least, I ask that you pay
19 close attention during the trial of this case. This trial is
20 very important to these parties and it's the only way they can
21 resolve their dispute.

22 Now, I'll let you know why you are here. As the jury in
23 this case, you are the sole judge of the facts of this case.
24 Your job is to determine what the facts of this case are. You
25 are to determine the facts only from the testimony you hear

1 decide any issue in this case until all of the evidence has
2 been presented to you. Now, when you're instructed to start
3 your deliberations, you can then discuss the case, but only in
4 the jury room with your fellow jurors.

5 Now, in just a moment, the attorneys will make their
6 opening statements. Now, these opening statements are not
7 evidence in this case. These opening statements are simply an
8 explanation by the attorneys of what they feel the issues in
9 this case are. After these opening statements, the evidence
10 in this case will be presented to you by testimony of sworn
11 witnesses from the witness stand and by any other exhibits
12 that may be introduced into evidence. As the judge of the
13 law, I determine what evidence is admissible at trial. As the
14 judge of the facts, you determine what evidence or testimony
15 is believable. Once testimony is admitted into evidence,
16 whether or not you believe it, is solely for you to determine.
17 In deciding whether to believe a witness, you have the right
18 to consider whether the witness as an interest in the result
19 of the trial, whether the witness is prejudiced towards either
20 the plaintiff or the defendants, the opportunity for the
21 witness to have seen the matters and things about which the
22 witness may testify, and the way the witness acts on the
23 witness stand. You have the right to consider anything that
24 is in the record that will help you evaluate the testimony of
25 the witnesses. That means that it is your duty to pay close

1 occur. Everybody did what they were supposed to under the
2 agreement, but at the end of the 10-year period, they would
3 not turn the business over. In fact, the evidence will
4 indicate that they sold the business to another son.

5 Now, please listen carefully, let me thank you in
6 advance, too, because I know you'd rather be somewhere else.
7 At 3 o'clock in the afternoon, you're listening to me, and I
8 appreciate that and I say thank you on behalf of my client.

9 Now, basically we perceive your job this way, every story
10 has three sides. They'll be our side, they'll be their side,
11 and they'll be another side, which would be the right side,
12 and that's the side that you would decide. We -- we ask you
13 to listen to us carefully and be reasonable in your thought
14 process when you consider what the evidence says and, as the
15 Court indicated, all of the evidence is gonna come from this
16 witness stand. Evaluate it reasonably and then the Judge will
17 give me an opportunity to come back and say something to you a
18 little bit later.

19 Again, I thank you for your service. I thank you
20 particularly for listening to us in this particular case.

21 THE COURT: All right. Mr. Willcox?

22 MR. WILLCOX: Thank you, Your Honor, may it please the
23 Court?

24 OPENING BY WILLCOX:

25 MR. WILLCOX: I'm Hugh Willcox. I'm an attorney in

1 Herrington and moved out of the house and continued to work.
2 And I think he contends that in '95 or '96, there was some
3 conversation about him taking over the business.

4 Well, don't know what happened, but after he moved out of
5 the house and was married, there was a change in his demeanor,
6 there was a change in his attitude, particularly toward his
7 parents. And it got so bad that there was verbal abuse. He
8 would get mad at quit. And so, in July of 2012, he signed an
9 agreement with his dad, agreeing to do certain things within
10 the business; take care of the equipment like he should be
11 taking care of it, to not run off and quit like he would do on
12 several occasions, he would just quit and leave, and this was
13 in January of 2012.

14 And then in January of 2013, while Dale and two of his
15 granddaughters, both of whom were pregnant at the time, they
16 were trying to get heat hooked into a mobile home and there
17 was an altercation there between Dale and Roger. And there
18 was verbal abuse, very abusive. Roger called his father a
19 gray-haired cripple, so and so. Well, that -- he fired him at
20 that point, just flat fired him in 2013. And he had been --
21 he meaning Dale, Sr. -- had been involved in an accident and
22 he had suffered some disability, but he went back to work
23 running the equipment and doing everything to keep the
24 business going.

25 And then in August of 2014, Dale physically attacked his

1 deliberations. Don't conduct any independent investigations.
2 We'll take a short break. The witness should be here soon and
3 we'll get started then. Thank you very much.

4 (REPORTER'S NOTE: Jury exits courtroom @ 3:02 P.M. The
5 following takes place outside the presence of the jury.)

6 THE COURT: All right. Mr. Graham, let me know when your
7 witness gets here and we'll get started.

8 I need to go ahead and let y'all also know, I -- I'll
9 allow direct examination, cross examination, and then redirect
10 only as to matters that were brought up on cross that you did
11 not address on direct. Okay?

12 MR. GRAHAM: Yes, sir.

13 THE COURT: I don't allow recross. So, if in redirect,
14 whoever's witness is on the stand, if in redirect they exceed
15 the scope of their cross -- I mean their redirect examination,
16 in other words, if they delve off into matters that they've
17 either already addressed or that were not addressed on cross,
18 you raise your object and we'll deal with that then. Okay?

19 All right. Let's -- anything from the plaintiff before
20 we take a short break?

21 MR. GRAHAM: No, sir.

22 THE COURT: Anything from the defense?

23 MR. WILLCOX: None, Your Honor.

24 THE COURT: All right. Let's take a break until the
25 witness gets here and then we'll get started.

1 THE COURT: All right. Mr. Graham?

2 MR. GRAHAM: Yes.

3 DIRECT EXAMINATION OF DIANA MICHELLE HERRINGTON BY MR. GRAHAM:

4 Q: Ms. Herrington, where do you live?

5 A: Conway, South Carolina.

6 Q: And how long have you lived in Horry County?

7 A: All my life.

8 Q: Okay. What do you do for a living?

9 A: I had a cleaning business and I also worked for Shoreline
10 Behavioral Health Services in accounts payable.

11 Q: Are you married?

12 A: No.

13 Q: Okay. Do you have any children?

14 A: Yes, I have two.

15 THE COURT: Ma'am, you'll need to speak up into the
16 microphone a little bit louder. Okay? Thank you.

17 BY MR. GRAHAM:

18 Q: Do you know the plaintiff in this case, Mr. Roger Dale
19 Herrington, I, the II? I'm sorry.

20 A: Yes.

21 Q: And how do you know him, ma'am?

22 A: I used to be married to him, twice.

23 Q: You were married to him twice. And do you know Mr. Roger
24 Dale Herrington, the first, seated at the table over there?

25 A: Yes.

1 A: They had originally talked that what would happen is
2 Roger would get paid \$500 a week. And the reason being, his
3 mother and father would still be in control, so therefore,
4 anything that was brought into the business, he would have --
5 he would get the \$500 and he would be able -- in 10 years, he
6 would work for them, they would basically turn over the
7 business but still be part of it to make sure that he was
8 gonna do what he was supposed to with the business.

9 Q: Was Roger supposed to get any profits during that
10 particular time during that 10-year period?

11 A: No.

12 Q: Where were the profits supposed to go?

13 A: His mother and father, to the business.

14 Q: Okay. And after the 10 years, Roger was supposed to get
15 the business?

16 A: They were talking about turning it over to him, yes.

17 Q: How many -- on how many occasions did you hear this; was
18 it one, two, or three times?

19 A: It was twice. It was right after we got married and then
20 there was another occasion, they just casually talked about
21 it.

22 Q: Okay. And there's no question in your mind that Roger
23 was to get the business per the agreement?

24 A: That's what they had said.

25 MR. WILLCOX: Objection, Your Honor.

1 them.

2 Q: I gotcha. I gotcha. So, that would be turned over to
3 Roger at a certain time?

4 A: Yes.

5 Q: Okay. Do you know whether Roger worked 10 years for them
6 or not?

7 A: He was working for them when we were married the first
8 time and the second time.

9 Q: Okay. And you came to court pursuant to a subpoena?

10 A: Yes.

11 Q: And you haven't spoken to Roger in pretty much two years?

12 A: No.

13 Q: Do y'all get along?

14 A: Not really.

15 Q: Thank you, ma'am. That's all I have. Answer any
16 questions the defendant may have for you.

17 THE COURT: All right. Mr. Willcox, cross examination?

18 MR. WILLCOX: Thank you, Your Honor.

19 CROSS EXAMINATION OF DIANA MICHELLE HERRINGTON BY MR. WILLCOX:

20 Q: Ms. Herrington?

21 A: Yes.

22 Q: You say you're here under subpoena; you really don't want
23 to be here, do you?

24 A: No.

25 Q: And you said you heard this conversation about the

1 A: Yes.

2 Q: When you first got married?

3 A: Yes.

4 Q: And there was a 10-year figure I think you said you
5 heard?

6 A: Yes.

7 Q: Was there ever anything in writing?

8 A: No, I -- if there was, I didn't see anything.

9 Q: You never saw anything?

10 A: No. But they sat there in their living room talking
11 about it.

12 Q: They were talking about it. Roger never said there was
13 anything in writing, did he?

14 A: No.

15 Q: You never saw anything in writing?

16 A: No.

17 Q: And the first time, it was '95, and there was 10 years?

18 A: Yes.

19 Q: Okay. And then you were divorced after 13 months?

20 A: And we were divorced for five years.

21 Q: Divorced for five years?

22 A: And then we finally got back together and got remarried
23 and we had our daughter in 2002.

24 Q: And then you divorced again?

25 A: Yes.

1 Q: Okay. Does he ever see his daughter?

2 A: Not in the last couple of years.

3 MR. WILLCOX: Just a minute, Your Honor?

4 THE COURT: All right.

5 BY MR. WILLCOX:

6 Q: After those verbal agreements you heard back in '95 ---

7 A: Yes.

8 Q: --- you mentioned the figure \$500 a week that was to be
9 paid ---?

10 A: Yes.

11 Q: To ---

12 A: To Roger as a paycheck per week.

13 Q: That's what Roger was gonna pay Dale and Eunice?

14 A: No, Roger was supposed to get \$500 a week just as a
15 paycheck, and then his momma and daddy got the rest.

16 Q: But at the end of 10 years, what was supposed -- what was
17 he supposed to do?

18 A: Roger was supposed to take over the business.

19 Q: I'm sorry?

20 A: Roger was supposed to take over the business.

21 Q: Okay.

22 A: But that was -- they said that was their way of basically
23 him doing everything that was supposed to be for the business.

24 Q: And were you ever present when Roger verbally abused his
25 dad?

1 informed that the next witness might be lengthy, so given the
2 time of day, I think we're gonna go ahead and break for the
3 remainder of the afternoon. I'm gonna ask that you please be
4 back at 9:15 tomorrow morning in the jury room. The bailiff
5 will tell you where to come at 9:15 tomorrow morning. That
6 will give you an opportunity to get a cup of coffee, they
7 might have a biscuit for you or something of that nature.

8 Do not discuss the case even among yourselves. Too early
9 for deliberations. Don't conduct any independent
10 investigations and I hope everybody has a good evening and
11 we'll see you back at 9:15 tomorrow morning.

12 Thank you very much.

13 (REPORTER'S NOTE: Jury exits courtroom @ 3:35 P.M. The
14 following takes place outside the presence of the jury.)

15 THE COURT: All right. Anything from the plaintiff
16 before we recess for the evening?

17 MR. GRAHAM: No, sir.

18 THE COURT: Anything from the defense?

19 MR. WILLCOX: Your Honor, our firm got attacked by
20 ransomware early morning last Thursday.

21 THE COURT: Oh gosh.

22 MR. WILLCOX: And since then, we haven't been able to do
23 anything. The phones do ring, but the reason for my saying
24 that is I have not been able to -- I did get the pretrial
25 brief done and voir dire request last Thursday, but as far as

1 THE COURT: All right. We'll be in recess until then.

2 RECESS - 3:35 P.M. - END OF DAY ONE

3 *****OFF THE RECORD*****

4 NOVEMBER 19, 2019 - DAY TWO

5 (On the Record - 9:39 A.M.)

6 (REPORTER'S NOTE: Jury enters courtroom @ 9:40 A.M.)

7 THE COURT: All right. Ladies and gentlemen, welcome
8 back. I hope everybody had a good evening. I remind you if
9 you have any cell phones or pager devices, turn those off at
10 this time. And number one, I want to thank you for being
11 prompt and on time this morning. That's a great assistance to
12 the Court and we appreciate it.

13 We're ready to resume the trial of this case. The
14 plaintiff can call your next witness.

15 MR. GRAHAM: Your Honor, we call Angie Davis to the
16 stand.

17 THE COURT: All right.

18 CLERK: If you'll raise your right hand, left hand on the
19 Bible.

20 ANGIE DAVIS, HAVING BEEN DULY SWORN
21 TESTIFIES AS FOLLOWS:

22 CLERK: You may be seated. If you'll please state your
23 first and last name for the record?

24 MS. DAVIS: Angie Davis.

25 DIRECT EXAMINATION OF ANGIE DAVIS BY MR. GRAHAM:

1 Q: Okay. And tell the jury how you know Roger?

2 A: We dated.

3 Q: How long did you date?

4 A: Probably about three years.

5 Q: Three years?

6 A: A couple of years.

7 Q: During that time, did you get to know his parents?

8 A: Yes, sir.

9 Q: Okay. And how many different times do you think you saw
10 them during the period of time y'all were dating?

11 A: Every now and again. I mean, we would ride over there
12 and Sunday dinner sometimes.

13 Q: Okay. And do you know of your own knowledge anything
14 about an agreement between Roger and his parents?

15 A: I remember hearing them, the two of them argue about an
16 agreement.

17 Q: When you say the two of them, who are you talking about?

18 A: Roger and his daddy.

19 Q: Okay. And what did they argue about?

20 A: They argued about -- basically, his father had gotten in
21 an -- I remember his father got in an accident and was wearing
22 a neck brace, and Roger was wondering why he couldn't take the
23 phone calls because he was doing all the work anyway from, you
24 know, the septic tank. His father would say, you know, it's
25 gonna be yours sooner or later but not one day before then,

1 conversation?

2 A: Awkward.

3 Q: Awkward?

4 A: Awkward.

5 Q: You didn't want to be there?

6 A: I was ready to go. Most of the time, I was ready to go
7 home.

8 Q: Thank you, ma'am. Answer any questions the defense has
9 for you?

10 CROSS EXAMINATION OF ANGIE DAVIS BY MR. WILLCOX:

11 Q: Ms. Davis?

12 A: Yes, sir.

13 Q: Say you and Roger dated for about three years?

14 A: Yes, sir.

15 Q: And what three years was that?

16 A: I know we were dating when his father got in the car
17 accident, because I remember the phone call from Roger saying
18 his daddy had gotten in the car accident. So, I'm -- it was
19 in that -- I think we dated a year, probably a year or so
20 after his daddy got in the car accident, we split up.

21 Q: Well, did you date him between his marriages to Diana --
22 I think they called her Chelley?

23 A: Yes, sir.

24 Q: Okay. And they -- Michelle Diane Herrington, they
25 married the first time in November of '95; do you agree with

1 was -- the agreement was made before the car accident and then
2 when his father got in the car accident and he basically, he
3 was in a neck brace. He basically couldn't get up and do
4 anything and Roger was like I'm doing -- I need to -- if I
5 take the phone call, then I can schedule the appointment. I
6 just remember that being ---

7 Q: But you don't know of any written agreement?

8 A: I do not know of a written agreement, no, sir. I just
9 know that verbal.

10 Q: And there's not one, is there?

11 A: I mean, I never saw it. I never asked about it. I was
12 not a part of the conversations. I just overheard the
13 conversations.

14 Q: You said, never stated out and out, most of the time they
15 were arguing?

16 A: No, I remember that he -- I remember that when it was
17 turned over, he was gonna be -- they were gonna get a
18 paycheck. He was getting a paycheck and then when it changed
19 hands, then they were gonna get the paycheck.

20 Q: Okay. Never any agreement that you ever saw?

21 A: On paper, I never saw one; no, sir.

22 Q: And through the years, haven't you gone online and I
23 think they call it, Facebook?

24 A: Yes, sir.

25 Q: And communicated with -- with Brooke Gasque?

1 BEEN DULY SWORN TESTIFIES AS FOLLOWS:

2 CLERK: Thank you. You may be seated.

3 Just state your first and last name for the record.

4 MR. HERRINGTON, II: Roger Dale Herrington, II.

5 DIRECT EXAMINATION OF ROGER DALE HERRINGTON, II BY MR. GRAHAM:

6 Q: Roger, where do you live?

7 A: I live at 2222 Joyner Swamp Road, Galivants Ferry in
8 Horry County.

9 Q: How long have you lived there?

10 A: Since 1996-97.

11 Q: Okay. How old are you?

12 A: I'm 54 years old.

13 Q: Are you married?

14 A: No, sir, I'm single.

15 Q: Do you have any children?

16 A: Yes, sir, I do; I have two.

17 Q: How old are your children?

18 A: I have one daughter, Sally, that's 17; and I have one
19 daughter, Ava, that is eight months old.

20 Q: How far did you go in school?

21 A: I graduated high school.

22 Q: And what's your health like?

23 A: I enjoy pretty good health.

24 Q: Pretty good health?

25 A: Yeah, as far as I know. I haven't been to the doctor

1 hurt?

2 A: He worked -- he owned Herrington's LLC.

3 Q: Okay. And what's Herrington LLC; what's that about?

4 A: It was a family business. It was -- Dale Herrington
5 started the business around 1985 and it was Dale Herrington's
6 septic tank and land clearing is what the name of it was. And
7 -- and ---

8 Q: And what did you do?

9 A: I mean '85.

10 Q: After high school, what did you?

11 A: I helped them some and then I went to work for Allied
12 Signal, and then I helped them a little bit throughout the
13 years.

14 Q: And did you eventually go into business by yourself?

15 A: Yes, sir, I have a business, AAA Septic Tank and Land
16 Clearing.

17 Q: Okay. So, your father had a business that did land
18 clearing and septic tank and stuff like that?

19 A: Yes, sir.

20 Q: Take a look at what's been previously marked as
21 Plaintiff's Exhibit Number 1 and I ask if you can identify
22 that, sir?

23 A: Yes, sir; that's one of my daddy's business cards.

24 Q: Okay. And that's when your dad was in the business of
25 septic tank, land clearing and doing all of that?

1 Septic Tank.

2 Q: Take a look at what's been previously marked as Plaintiff
3 Exhibit Number 2 and I ask you if you can identify that?

4 A: Yes, sir; it's one of my business cards.

5 Q: Okay. And that's the business you were in before you and
6 your dad got together?

7 A: Yes, sir.

8 MR. GRAHAM: Okay. Your Honor, I'd like to have this
9 entered into evidence as Plaintiff Exhibit Number 2?

10 THE COURT: Any objection?

11 MR. WILLCOX: No objection, Your Honor.

12 THE COURT: All right. Plaintiff's Exhibit 2 admitted
13 into evidence without objection.

14 PLAINTIFF'S EXHIBIT NUMBER 2

15 ADMITTED INTO EVIDENCE

16 BY MR. GRAHAM:

17 Q: Okay. Now, what did you do when you worked as AAA Septic
18 Tank business; what did you do?

19 A: I put in septic tanks. When I done bids, collected money
20 for jobs.

21 Q: Okay. Now, at some point in time, you and your dad got
22 together -- or you and your dad and your mom got together
23 about an agreement?

24 A: Yes, sir. We made an agreement at the end of '95.

25 Q: Where did -- where were you when the agreement was made

1 A: Me and dad together, yeah.

2 Q: Now, tell me about the terms of the agreement; what was
3 the agreement terms?

4 A: The terms of the agreement was that I was to work side by
5 side with him in the field, helping him to do whatever
6 maintenance or whatever, and at the end of the 10 years, the
7 business was mine. Mom was to run all the office, pay the
8 bills, do insurance, and do any running around, whatever
9 needed to be done, that was what her job was, and mine and
10 daddy's job was to go out and do work and bid jobs and do the
11 labor.

12 Q: Okay. And when was that?

13 A: That was in the end of 1985 -- 1995 and then it was to
14 start in '96 and run for 10 years.

15 Q: Okay. Did you guys, you, your mom, and your dad, each of
16 you get into your roles and start to work at that time?

17 A: Yes, sir. Yes, sir, we did.

18 Q: And that was the beginning of '96 or '95?

19 A: '95, that's when they sat me down and talked with me
20 about it. They talked -- that next Sunday, we had dinner at
21 my house and that's when they told Chelley what was going on,
22 my ex-wife, Diana Michelle.

23 Q: Okay. And what did they tell Chelley, basically the
24 terms that you just told us about?

25 A: Talking about the terms of what we were -- yeah.

1 THE COURT: Any objection?

2 MR. WILLCOX: No objection, Your Honor.

3 THE COURT: All right. Plaintiff's Exhibit Number 3
4 admitted into evidence without objection.

5 PLAINTIFF'S EXHIBIT NUMBER 3

6 ADMITTED INTO EVIDENCE

7 BY MR. GRAHAM:

8 Q: So, Mr. Herrington, you and your dad started to work?

9 A: Yes, sir.

10 Q: Okay. Now, was there ever anything written down about
11 your agreement?

12 A: No, sir; there was never a written agreement, because it
13 was father and son and I had had their house and everything in
14 my name at one time, and then when they asked me to, I would
15 sign it over. I mean, they just asked me -- I mean, that's
16 the kind of relationship we had, love for mother and father,
17 and there was no reason for a written agreement because I
18 didn't think they would not honor the agreement.

19 Q: Okay. And did you honor the agreement?

20 A: Yes, sir; I honored the agreement. In 1999, dad got in a
21 wreck on 905 and wasn't able to fulfill his obligations of
22 being able to work it.

23 Q: Before -- before you get to 1999, right?

24 A: Yes, sir.

25 Q: Did you go to work for Herrington's?

1 A: Yes, sir; he got in a wreck in '99.

2 Q: What happened?

3 A: A man pulled out in front of him and he T-boned him and
4 he was permanently disabled after that and unable to fulfill
5 any field work. He was paralyzed from the neck down for a
6 little while and then he can't feel anything hot or cold and
7 he can't tell what he's stepping on, so he couldn't go out in
8 the field. And they said one more fall and he could -- he had
9 a spinal injury and he could be permanently disabled and
10 paralyzed from the neck down.

11 Q: Okay. And has Mr. Herrington done any work in the
12 business since then in terms of the labor that you guys were
13 supposed to be doing?

14 A: The time I was there, he done no physical labor at that
15 time afterwards.

16 Q: Okay. Now, you were to work in the business for 10
17 years?

18 A: Yes, sir.

19 Q: And then the business would be turned over to you?

20 A: Yes, sir, at the end of 2006, the business was supposed
21 to be turned over to me and I was to give them \$500 a week
22 until the day they die. If Dad died first, it would go to
23 Mom; if Mom died first, it would still go to Dad.

24 Q: So, you were to work for 10 years and the business was to
25 become yours ---

1 I knew we were making money, and during the 10 years, it was
2 none of my business. The books were not mine to be into for
3 10 years. The books -- that was their business.

4 Q: Did you disturb them in any way whatsoever with respect
5 to what was paid or what was not paid or anything of that
6 nature?

7 A: No, sir; I did not.

8 Q: What did you do?

9 A: I done everything in the field. I done -- done the jobs,
10 bid the jobs, collected the jobs, and turned the money over to
11 Mom.

12 Q: When -- whenever you ---

13 A: And I done some ordering.

14 Q: I'm sorry?

15 A: I done maintenance, repair bills, and some ordering.

16 Q: And when your dad got sick, was he side by side helping
17 you then?

18 A: No, sir; he was unable to.

19 Q: And how long was your dad out of commission from the
20 automobile wreck?

21 A: He has been permanently disabled since 1999.

22 Q: Okay. Well, was he in the hospital like a certain period
23 of time?

24 A: Yeah, he was in the hospital for a while. I don't -- I
25 can't remember exactly how long. It was down in Charleston.

1 purposes, if you don't mind. And I told her, I said that's
2 fine with me, because, I mean, basically I'd taken -- I'd
3 worked side by side with my mom and dad and made sure they
4 were taken care of all my adult life up until 2013.

5 Q: Now, when the agreement started out, you were getting
6 \$500 a week?

7 A: Yes, sir.

8 Q: Did that change?

9 A: Yes, sir, it went up to a total of \$800 due to the fact
10 that I was doing all the work and I was using my personal
11 vehicle to go bid jobs, do jobs, and was letting people drive
12 it on the job site -- on the job site, I was just using my
13 vehicle and stuff and that's what I got raised to \$800 a week.

14 Q: Okay. What do you mean when you said I was doing all the
15 work?

16 A: I was doing all the physical labor. Dad was unable to
17 fulfill his obligations under the terms of the agreement that
18 -- he couldn't do any physical labor; he was permanently
19 disabled. It took him a while to be able to learn to write
20 his name and stuff and learn how to walk. But he -- like I
21 said, he has no feelings in his hands, hot or cold, and no
22 feelings on his feet to be able to tell you if he's stepping
23 on solid ground or unlevel ground, he would fall -- he would
24 fall if he steps on unlevel ground and it was a danger to his
25 health because he could fall and, with his damage to his neck

1 Q: Okay. And you had nothing else to do with the money
2 after that?

3 A: No, sir, nothing.

4 Q: Okay. Now, in 2006, did you go to your mom or did she
5 come to you?

6 A: She came to me.

7 Q: Okay. And what was her request of you?

8 A: To leave the business alone because she needed to put --
9 pay more social security so she could draw more at the end of
10 the time. So, she needed to put a few more years into it.

11 Q: Okay. And you agreed to do that?

12 A: Yes, sir; I did.

13 Q: Okay.

14 A: I told her that was fine; just leave it in her name and I
15 would just -- the business was a total -- the business was
16 mine and the only thing that was different other than is it
17 just was not signed over to me. I done all the work still and
18 I even borrowed money for the business and made sure
19 everything was solvent.

20 Q: Okay. Were there arguments by you and your mom about the
21 business?

22 A: Me and Mom never argued about the business. More or
23 less, Dad, because Dad had a way of things he wanted things to
24 be done and everything -- he thought everything ought to be
25 done his way, and there's only one way and that was Dale's

1 spending money and they were telling me it was for business,
2 but they were also handing out to my nieces and buying mobile
3 homes and stuff for them and that's what really sealed the
4 thing. When I wasn't getting a paycheck, they were buying
5 mobile homes for my sister -- for my niece to live instead of
6 -- and I told them, I want to see the books. This was on
7 Friday in January 2013, and I think it was that following
8 Monday I come there, I said we'll just discuss this Monday and
9 you would've thought that I had stolen from them. But anyway
10 ---

11 Q: Was that the first time you had ever requested to see the
12 books or talk about the profits?

13 A: Yes, sir, that was the first time I'd ever asked about
14 the books and seen the profits, talking about the profits.

15 Q: Okay. And what happened that Monday?

16 A: That Monday morning, I come to work like I normally do
17 and went in the office to get a check to go get something and
18 the door on the house had been changed -- the locks on the
19 door of the house had been changed, and he opened the door and
20 told me to wait outside. Dale Herrington opened the door and
21 told me to wait outside.

22 Q: Did you wait?

23 A: Yes, I did. Well, I went uptown to get some parts and I
24 waited outside for him outside.

25 Q: Okay. And what happened after that?

1 A: He got mad and walked off. And then later on, he had
2 another discussion, he said I want you to split the business,
3 the land clearing business with your brother.

4 Q: I'm sorry, say that again.

5 A: He got mad and walked off. A few weeks later, he told me
6 he wanted to give half the business to my brother, the land
7 clearing, the trackhoe, and dump truck, the triaxle dump
8 trunk; he wanted to give him that. And I told him I'm not
9 giving him my business. That's just crazy. He was just
10 making every -- just acting totally out of the norm for that.

11 Q: Okay. Just, just to clarify things, you and your dad
12 were doing septic tank and land clearing, right?

13 A: Yes, sir.

14 Q: And what was your brother doing?

15 A: He's got Herrington's Mobile Home Service, and that's
16 what he done the whole time.

17 Q: What would he do in that business?

18 A: He set up mobile homes and transported mobile homes.

19 Q: Okay. And that's the same person that your dad wanted to
20 sell the business to for \$250,000?

21 A: Yes, sir. Yes, sir.

22 Q: And is that the same person that your dad wanted you to
23 give half of the business to?

24 A: Yes, it is.

25 Q: And you refused to do that?

1 A: Yes, sir, I ---

2 Q: Who put those values on it?

3 A: The John Deere place, the Chevrolet place.

4 MR. WILLCOX: Object, Your Honor. I don't think he can
5 testify to that. I believe that's hearsay, Your Honor.

6 THE COURT: He can testify as to what he thinks the
7 values are, but he can't testify as to what somebody else told
8 him.

9 BY MR. GRAHAM:

10 Q: Okay. Who placed those values on it?

11 A: At the time of the separation, I looked up what the price
12 of equipment was. I looked at each one of the pieces of
13 equipment and I went with the lowest ---

14 MR. WILLCOX: Your Honor, objection, on hearsay grounds.

15 THE COURT: Overruled. Go ahead.

16 A: I looked it up and these were the prices that were listed
17 on the vehicles: 200 Hitachi LLC was worth \$50,000; the 70-
18 tank Kodiak Chevrolet truck to haul tanks was worth 18,000;
19 the New Holland bulldozer DC100, with the amount of hours on
20 it and all, is worth 45,000; the Hudson 10-ton trailer that we
21 pulled the equipment on was worth \$6,000; the Chevrolet dump
22 truck C85 triaxle was worth \$14,000; the Bethlehem septic tank
23 forms, eight septic tank forms, were worth a total of \$16,000;
24 a New Holland backhoe LB75-2 was worth 45,500. Then we bought
25 an International dump truck, the International dump truck was

1 tools out of the triaxle dump truck and went back to my house
2 to work on my -- my truck. At that time, the Horry County
3 Police came to my house and handcuffed me and was going to
4 arrest me for stealing tools out of the triaxle dump truck.
5 And, Archie Mack stepped up and told them that he watched me
6 ---

7 MR. WILLCOX: Objection, Your Honor, to what somebody
8 said.

9 THE COURT: Okay. Sustained. You can't get into what
10 somebody else said unless they're here to be cross examined.

11 A: Well, he's in heaven right now, so he ain't gonna be able
12 to be cross examined. Okay. Well, the police officer had me
13 in handcuff and then an eyewitness came there and said
14 something that got me released.

15 MR. WILLCOX: Objection again, Your Honor.

16 THE COURT: No, I'll allow him to say that.

17 BY MR. GRAHAM:

18 Q: Now, you mentioned earlier that you were supposed to be
19 paid \$800 a week and you got \$800 a month?

20 A: Yes, sir. In 2012, I got a total 12 payments that whole
21 year.

22 Q: Okay. Was that the last -- your last year with the
23 business?

24 A: Yes, sir; it was.

25 Q: Okay. Do you know how much money you are owed based on

1 A: The only thing after 2006 was, I was to leave it --
2 things was not signed over to me. Momma could use it for
3 social security purposes to file taxes, and that's the only
4 thing that didn't get signed over. But the business was mine
5 in 2006, because I did honor them -- done above and beyond and
6 honored the agreement we had.

7 Q: Okay. With respect to the equipment, did the equipment
8 have titles or anything like that?

9 A: The trucks had titles. Some of the equipment didn't have
10 -- the backhoe doesn't have a title. I mean, you just have a
11 bill of sale or something like that for, but that's the way it
12 was.

13 Q: And whose names -- whose name were those titles in?

14 A: They were R. Dale Herrington's. Everything was always in
15 Dad's name from day one, from the start -- from start to
16 finish.

17 Q: And at some point in time, did you expect everything to
18 be in your name?

19 A: Yes, sir, that was -- that was the agreement that
20 everything was supposed to be in my name.

21 Q: Okay. Take a look at what's been previously marked as
22 Plaintiff Exhibit Number 5 and I ask you if you can identify
23 that?

24 A: Yes, it's a loan I had at Anderson Brothers Bank. It's
25 another loan that I had at Anderson Brothers Bank. Here's

1 mean it's already -- it's been paid for; it was mine and paid
2 for already. I'm not asking for that back.

3 MR. GRAHAM: Your Honor, I'd like to have this entered
4 into evidence as Plaintiff Exhibit Number 5?

5 THE COURT: Any objection?

6 MR. WILLCOX: No objection, Your Honor.

7 THE COURT: All right. Plaintiff's Exhibit 5 admitted
8 into evidence without objection.

9 PLAINTIFF'S EXHIBIT NUMBER 5

10 ADMITTED INTO EVIDENCE

11 BY MR. GRAHAM:

12 Q: Okay. Mr. Herrington, after -- after you were made or
13 required to leave your dad's property ---

14 A: Yes, sir.

15 Q: --- did you write him a letter asking that the contract
16 be honored?

17 A: I had a verbal agreement and I asked him to and then I
18 wrote him a letter, and he told me that I didn't have a leg
19 ---

20 Q: Mr. Herrington, take a look at Plaintiff -- what's been
21 previously marked as Plaintiff's Exhibit Number 6, and I ask
22 you, sir, if you can identify that?

23 A: It's a letter I wrote telling him to honor the agreement,
24 since he wouldn't honor the agreement.

25 Q: Well, now I don't think they can understand you, sir.

1 agreement you had with your parents, is there anything that
2 you know of that you did not do?

3 A: No, sir. I did everything I was supposed to and then
4 some.

5 Q: Do you know of anything that your parents agreed to do
6 that they did not do?

7 A: Other than Dad being physically unable to do his part,
8 no.

9 Q: Okay. Did they turn the business over to you as agreed?

10 A: No, they never did.

11 Q: Okay. Do you know what happened to the business?

12 A: It was sold to my brother.

13 Q: Sold to your brother?

14 A: Yes.

15 Q: Okay. Did you have an occasion to search the records to
16 determine what happened to Herrington?

17 A: Yes, sir. I searched the records and it said that
18 Herrington's LLC was never incorporated.

19 MR. WILLCOX: Objection, Your Honor, I don't believe
20 that's proper. I think that's hearsay.

21 THE COURT: Overruled. He said he searched the records;
22 I'll allow it. Go ahead.

23 A: Yes, sir, I searched the records and it was never
24 incorporated.

25 BY MR. GRAHAM:

1 Q: Where did 1986 come from?

2 A: I have no idea, because he wasn't in business in 1986; it
3 had to come from Dale Herrington, because he wasn't in
4 business in 1986. He was working for either the state or the
5 county at that time.

6 Q: Your brother was?

7 A: My brother was.

8 Q: So, you think the 1986 was associated with your dad?

9 A: Yes, sir; I know it was.

10 Q: Herrington's LLC?

11 A: Yes, sir.

12 Q: And that's been incorporated?

13 A: Yes, sir.

14 MR. GRAHAM: Your Honor, I'd like to have this entered
15 into evidence as Plaintiff's Exhibit Number 7?

16 THE COURT: All right. Any objection?

17 MR. WILLCOX: No objection.

18 THE COURT: All right. Plaintiff's Exhibit 7 admitted
19 into evidence without objection

20 PLAINTIFF'S EXHIBIT NUMBER 7

21 ADMITTED INTO EVIDENCE

22 BY MR. GRAHAM:

23 Q: Mr. Herrington, you think your mom and dad did not live
24 up to the agreement that you guys had?

25 A: Yes, sir. They did not honor the agreement we had.

1 integrity rate. The business -- the assets were worth more
2 than what I'm asking, and the business was worth more than
3 what I'm asking. It's not fair to me but I'm trying to be as
4 fair as I can and a son to my father and mother, because I
5 always took care of them. That was what I tried to do when I
6 worked the whole time and done everything I done. I didn't do
7 anything -- there was no -- there's still no malice in my
8 heart toward them. I just done what I was supposed to do and
9 I just wish they had done the same thing.

10 Q: So, what are you asking this Court for?

11 A: I'm asking for the Court for \$250,000 for the price of
12 the equipment, and that ain't even all of it. I mean, the
13 land and all that just ---

14 Q: How old were you when you went to work in this business?

15 A: I was 30 years old.

16 Q: And how old are you now, sir?

17 A: I'm 54 years old. I worked 16 years for that business
18 and walked away and was run away at knife point with nothing.
19 A paycheck that I did not get a whole paycheck that whole year
20 and walked away with nothing; no equipment, no retirement, no
21 nothing.

22 Q: Thank you, sir. That's all the questions I have of this
23 witness.

24 THE COURT: All right.

25 Cross examination?

1 1995?

2 A: At the end of '95; yes, sir.

3 Q: And in 10 years, the business was gonna be yours?

4 A: Yes, sir.

5 Q: And in 10 years, that didn't happen, did it?

6 A: No, sir; it didn't.

7 Q: Okay.

8 A: Because I let -- my mother come to me and she asked me to
9 let it stay in her name and that's love for a mother, I did
10 it.

11 Q: How did it have anything to do with social security?

12 A: Because she said out of her own mouth, sir, that she
13 needed the business to stay in her name and to be able to pay
14 social security so she could pay the max, so she could get the
15 max when she got retired.

16 Q: Well, how did whoever owned the business have anything to
17 do with her getting wages and social security paid? Explain
18 that to me.

19 A: Well, at that time, I was making money and didn't want --
20 at that time, I was working and didn't care about it being put
21 in my name right then because everything was good. As long as
22 they were taken care of, it didn't make any difference. I had
23 a decent -- I had a good salary and I was happy and content
24 with letting them live out the business and taking care of my
25 momma and daddy, because my momma also had to take care of my

1 Q: 1995 forward?

2 A: Well, there's a lot of years between 1995 and forward.
3 You got a specific date that you're asking me, sir? I mean,
4 that's a broad spectrum right there.

5 Q: Well, during the first marriage with you and Diane ---

6 A: Uh-huh, (affirmative response).

7 Q: --- did you become verbally abusive and physically
8 abusive with Diane, as she testified to yesterday?

9 A: Yes, sir.

10 Q: Okay. Did that aggression carry over to your
11 relationship with your parents and how to run the business as
12 far as your father is concerned?

13 A: I had nothing to say to my mom and dad about how the
14 business was run until 2006. It was their business.

15 Q: In 2000 ---

16 A: In 2006, that was their business and I had nothing to say
17 about how it was run; it was theirs. Other than, when Dad
18 became unable to fulfill his obligation of work and I had to
19 step up and take over the whole business, there was arguments
20 about coming in and about what time and stuff like that right
21 there, but other than that, nothing.

22 Q: Are you saying in 2006, it was their business?

23 A: Until 2006, I had worked the 10 years and the business
24 was mine.

25 Q: But nothing was done other than you said it's my

1 Q: Okay.

2 A: 2012, like I said, it was not his business. It was mine
3 and I had no agreement with Dale Herrington. I fulfilled my
4 obligation with Dale Herrington in 2006.

5 Q: Let's go to January of 2013?

6 A: Yes, sir.

7 Q: You were with your dad, working on getting heat going in
8 a mobile home for your niece?

9 A: I had -- he come out the house working on heat to get
10 heat for a trailer that Dale and Eunice Herrington bought for
11 my niece.

12 Q: Which niece was that?

13 A: Lacy Falon.

14 Q: And she was pregnant at that time, I believe?

15 A: Yes, sir.

16 Q: And ---

17 A: And I did ---

18 Q: --- I'm sorry, go ahead.

19 A: --- and I did not do any work that day. I went by to go
20 get a part, and then he come -- like I said, he come out the
21 house that day. That's the day that I was supposed to go in
22 there and we were supposed to see what was going on with the
23 bookwork, and I went and got the key -- went to put a key in
24 the door and he wouldn't -- it did not work and he told me to
25 wait outside. And I went uptown and got a part and I come

1 point at his office property.

2 Q: Prior to January 2013, on more than one occasion,
3 wouldn't you get in an argument and quit?

4 A: Quit what?

5 Q: Quit working?

6 A: That day. I'd be back the next day. I mean, I weren't
7 gonna sit right there and keep arguing with him.

8 Q: I'm not talking about January 2013. I'm talking about
9 times, periods, arguments leading up to January 2013, when you
10 would quit and leave?

11 A: I would leave the situation to keep it from escalating.
12 I'm not gonna sit right there and argue with my dad right on
13 and on and on. I've never physically hit my dad -- I've never
14 done that. Has he physically hit me? Yes, over and over.
15 Even when I was adult, yes, that's just the type person how he
16 was raised.

17 Q: Are you telling me you never physically assaulted your
18 dad?

19 A: No, sir, I've never physically assaulted my dad.

20 Q: And you weren't charged with assault and battery in the
21 third degree in the Magistrate's Court?

22 A: Sir?

23 Q: In Aynor?

24 A: Yes, sir; I was.

25 Q: Back in August of 2014?

1 Look at my record. And I pled guilty to that. This says
2 nothing -- this has nothing to do with Dale Herrington in it.
3 Do you see his name on there?

4 Q: I sure do.

5 A: You see Dale Herrington's name on there? No, I see Roger
6 Dale Herrington, II. I don't see Dale Herrington on there.
7 The only time I've been charged with anything was with Brooke
8 Gasque.

9 Q: You were charged with assaulting and battering her and
10 you pled guilty and paid a \$250 fine?

11 A: Yes, sir, I did, for spitting on her.

12 Q: Subsequent to that, restraining orders had to be issued
13 against you, were they not?

14 A: Yes, sir, because Brooke Gasque went on Facebook saying
15 that I was drug head, drug dealer, stealing, went down -- as
16 much as went down the property -- of all my property and my
17 trucks listed all because me and Dad had an -- we went to
18 Court over a piece of -- a root rake. So, that's what
19 happened, but that right there had nothing to do with me and
20 Daddy. I've never been charged with assaulting my father.
21 I've never took my fist and hit my father.

22 Q: Now, let's go to this equipment, the equipment list.

23 COURT REPORTER: Mr. Willcox, can you bring all those
24 exhibits back up here, please?

25 MR. WILLCOX: Okay. I'm sorry.

1 not do his part by signing over the equipment.

2 Q: Now, your house, didn't one of your houses -- didn't your
3 parents give you that land and -- and move the house over
4 there?

5 A: That land, the business land, yeah, we cut of three-
6 tenths of an acre and he sold it to me for \$5, love and
7 affection. And as far as moving the house on it, I guess I
8 did -- yes, we -- yes, I did have a house moved on there. I
9 had a building moved on there that I bought and paid for.

10 Q: Didn't you have a house that burned?

11 A: The house burned on there and I purchased another house
12 that they had bought that they had needed to get rid of and
13 put it on that property there and I purchased it from them for
14 \$15,000, and then I paid Lee Brothers to move it. They bought
15 off of 544 when they widened 544.

16 Q: And I believe there are some American Express cards that
17 you used for your own purpose, were there not, they were
18 business cards, paid through the business, but you used them
19 for your own personal benefit?

20 A: In what year are you talking about, sir?

21 Q: Whatever years that you had the American Express cards?

22 A: 2006, they were my business cards; was my name not on the
23 business card?

24 Q: Before then?

25 A: Sir?

1 -- she's a junior in college now and she does what she wants.
2 But I guess she did hang around -- I seen where she started
3 hanging around Brooke and them a few times. But up until
4 then, if Chelley was here, she'd tell you this right here, she
5 wanted her child to have nothing to do with my family because
6 they were toxic, even me.

7 Q: But before then, you very seldom saw her?

8 A: Huh?

9 Q: Before 2015, you very seldom saw your daughter?

10 A: 2015? I had my daughter every weekend except the third
11 weekend of the month and every Wednesday night up till 2015,
12 when she decided that she -- going to -- hanging out at the
13 college after -- after when she got out was more important
14 than come to daddy's. Which I can understand a 15-year-old --
15 a child being -- but I've had my daughter every weekend except
16 the third weekend of the month and every other week during the
17 summertime and two weeks on the -- for vacation during the
18 summertime since she was been born, other than like I said,
19 2015.

20 Q: When was the business sold to Keith?

21 A: I think 2015. I don't know exactly what date it was,
22 because I've not been privileged to know exactly, but 2015,
23 2016.

24 Q: But it was after you assaulted -- physically assaulted
25 your dad?

1 bidding or doing -- or maintenance or whatever, all these
2 years.

3 Q: So, are you telling this Court that you and Chelley had
4 problems but those problems didn't manifest its way over to
5 your parents?

6 A: In what way would it manifest over to my parents? I went
7 to work every day and done my job every day. I never laid
8 out.

9 Q: Did you ever lay hands on your dad or your mom?

10 A: No, sir. I've never put my hands on my mom or my dad.

11 Q: Now, please explain what happened regarding the guilty
12 plea in Magistrate Court?

13 A: In 2015, I had a argument with my niece, where she put it
14 on Facebook, like I said, saying I was a drug dealer, thief
15 and stealing.

16 Q: Is your niece in court today?

17 A: Yes, sir; she is.

18 Q: Where is she?

19 A: She's the third person back there on the ---

20 Q: Okay. You had an argument with her about something you
21 saw on Facebook?

22 A: Yes, sir. I hadn't talked with her since 2013, and in
23 2015 she come there on Facebook and somebody told me, hey, she
24 had blasted me for being a drug dealer, stealing, and telling
25 I was selling drugs to kids and stuff and she didn't even know

1 regarding your dad?

2 A: Not for any -- not for any assault charges.

3 Q: Okay. Some other charges?

4 A: No charge other than I had a root rake that he had --
5 that I had bought and paid for and he wouldn't give me, and I
6 had the cancelled check out of my personal account that goes
7 on my bulldozer.

8 Q: And you took your dad to court?

9 A: Yes, sir; I did.

10 Q: Okay. Now, was that after you and he had the altercation
11 at the end?

12 A: After 2013, yes, sir.

13 Q: So, all that occurred after?

14 A: Yes, sir.

15 Q: Okay. And what happened there?

16 A: I was paid \$1,000 out of \$2500 and he told the Magistrate
17 that he didn't know where it was or anything and that's when
18 he sold the business to my brother. And then that very next
19 -- two weeks later, here it comes, I seen it being loaded out
20 of my dad's back pasture and it come by my house and went to
21 my brothers.

22 Q: Thank you, sir.

23 THE COURT: All right. You may step down.

24 MR. WILLCOX: Your Honor, I have ---

25 THE COURT: No. No, recross. I told y'all that at the

1 MR. GRAHAM: Yes, sir.

2 THE COURT: All right. So, let's go ahead and take a
3 break. We'll come back, I'll let you rest on the record and
4 I'll let you rest in front of the jury when the jury comes
5 back in, but before they come in, I'll address any motions
6 that we need to address. All right?

7 All right. Thank you very much. Let's take about a 15-
8 minute break.

9 **RECESS - 11:00 A.M.**

10 *****OFF THE RECORD*****

11 **(On the Record - 11:19 A.M.)**

12 THE COURT: Thank you very much. Please be seated.
13 All right, Mr. Graham, I understand the plaintiff rests?

14 MR. GRAHAM: The plaintiff rests, Your Honor.

15 THE COURT: All right. I'll give you an opportunity to
16 rest on the record in front of the jury, but rather than
17 bringing them in, having you rest and sending them right back
18 out.

19 Any motions at this time?

20 **MOTIONS:**

21 MR. WILLCOX: Yes, sir, Your Honor, the defendant would
22 make a motion for a directed verdict. I think that taken in
23 the light most favorable to the plaintiff, I think it's very
24 clear that he claims that in 1995, there was some agreement,
25 never reduced to writing, the business would be his in 10

1 decision in this case.

2 THE COURT: All right. Anything in reply?

3 MR. WILLCOX: Your Honor, as far as the statute of
4 limitations is concerned, he claims that the agreement was
5 made in 1995. Ten years from that is 2005. Obviously, he --
6 what he thinks he was supposed to get would've gotten into
7 2005, and I think the statute probably starts to run from
8 2005.

9 THE COURT: All right.

10 MR. WILLCOX: So, that's my reply as to the statute of
11 limitations issue. And again, I think the statute of fraud is
12 very clear. The purported agreement that he's relying on
13 definitely needs to be in writing.

14 THE COURT: All right. Hold on for a second.

15 All right. As to the defendants' motion for a directed
16 verdict, a violation of the statute of frauds, I'm gonna grant
17 it as to the breach of contract -- breach of contract
18 accompanied by fraudulent act, because the statute of frauds
19 says, if it's a contract that cannot be performed within a
20 year, it has to be in writing. The terms of the contract,
21 even in the pleadings says it was to be performed over a 10-
22 year period. So, it had to be in writing. So, I'm gonna
23 grant your motion for directed verdict as to -- that would
24 only apply as to the breach of contract and the breach of
25 contract accompanied by fraud. It does not apply to the

1 meant the statute of frauds. I'm granting their motion on the
2 statute of frauds.

3 MR. GRAHAM: And as I understand the Court's ruling, part
4 performance does not take us out of the statute of frauds?

5 THE COURT: Not part performance by your client alone.
6 If you had had part performance by your client and then part
7 performance by the defendants, then that would've taken it out
8 of the statute of frauds. But I don't see any part
9 performance at all by the defendants in this case. They never
10 -- I mean, as I understand it, their sole obligation was to
11 turn the business over to your client and they never did it.
12 So, had there been a part performance, had they transferred
13 some of the equipment, had they done something that would have
14 verified the existence of the contract, then you're right and
15 I would've agreed with you. But, where all of the performance
16 is by your client, that doesn't take it outside the statute of
17 frauds, since he's the one seeking to enforce the contract.
18 There has to be a part performance by the defendants, because
19 my understanding or the way I understand the case laws that
20 deal with that. Statute of frauds says, if you have a
21 contract, the performance of which cannot be completed within
22 one year, then it has to be writing. Now, there are
23 exceptions to that, as you state. Exceptions where you have
24 part performance, then that is evidence that a contract
25 existed, but you don't have that here.

1 MR. WILLCOX: Nothing from the defense, Your Honor.

2 THE COURT: All right. Let's go ahead and bring the jury
3 in.

4 (REPORTER'S NOTE: Jury enters courtroom @ 11:35 A.M.)

5 BY THE COURT:

6 THE COURT: All right. Ladies and gentlemen, welcome
7 back. We're ready to proceed with the trial of the case. Mr.
8 Graham, the plaintiff can call your next witness?

9 MR. GRAHAM: Your Honor, that is the plaintiff's showing.

10 THE COURT: All right. Ladies and gentlemen, the
11 plaintiff has rested their case and now is the time of the
12 trial where the defense can present their case.

13 Mr. Willcox, defense can call your first witness?

14 MR. WILLCOX: Your Honor, at this time, we would call
15 Roger Dale Herrington.

16 THE COURT: All right.

17 CLERK: If you'll raise your right hand; left hand on the
18 Bible.

19 ROGER DALE HERRINGTON, HAVING BEEN
20 DULY SWORN TESTIFIES AS FOLLOWS:

21 CLERK: If you'll please state your first and last name
22 for the record.

23 MR. HERRINGTON: Roger Dale Herrington. I go by Dale.

24 DIRECT EXAMINATION OF ROGER DALE HERRINGTON BY MR. WILLCOX:

25 Q: Mr. Herrington, how long have you lived in Horry County?

1 MR. KEITH HERRINGTON: '88.

2 THE COURT: All right, sir, you cannot give answers.

3 He's the one testifying.

4 MR. KEITH HERRINGTON: I'm sorry, sir.

5 THE COURT: All right, sir. Go ahead, Mr. Willcox.

6 A: I'm not positive.

7 THE COURT: First, for the court reporter, we need to get
8 your name to create the record to show that you spoke out of
9 turn?

10 MR. KEITH HERRINGTON: I'm sorry, John Keith Herrington.

11 THE COURT: All right.

12 All right. Go ahead, Mr. Willcox.

13 A: I didn't hear that, but I weren't looking at him.

14 BY MR. WILLCOX:

15 Q: When did you start the land clearing and septic tank
16 business?

17 A: It was sometime in the 80s, after '87, but I don't
18 remember exactly.

19 Q: And did you also have another business?

20 A: Yeah, when I moved back to Horry County, I bought the old
21 Riverside Cricket Farm in Aynor and we were in the bait and
22 tackle business from '81 to '93, and then we started in the
23 construction business and it was doing better than that, so I
24 sold that and just run the construction from then on.

25 Q: And when you say the construction business?

1 for it.

2 Q: And the loan would be secured by the equipment?

3 A: Yes, sir.

4 Q: And where would you get it?

5 A: I bought it from -- generally, if I was dealing with a
6 bank, I would deal with Anderson Brothers or either Conway.
7 But sometimes, I would buy from New Holland and I don't
8 remember where I financed it with New Holland or through New
9 Holland, but it was one or the other. But it was, yeah, like
10 that.

11 Q: And about what geographical area would you cover with
12 your business?

13 A: We'd cover all of Horry, part of Marion and parts of
14 Georgetown mainly. That was -- that was probably, excuse me,
15 90 percent of the business.

16 Q: And how did you grow your business, in other words, how
17 would you attract your customers?

18 A: Well, we did advertise it in paper; we did some
19 advertising on the radio. Basically, word of mouth. If you
20 -- if you -- if you do -- if you do a person a good job, it'll
21 get out, slowly. If you do a bad job, it will go like fire
22 and was a fanatic over if I'm doing something for you, you
23 might not know what I'm doing but I know what I'm doing and,
24 if ain't done like I want it that -- he was right, I mean, I
25 ain't happy. I mean, because that's the same way I was

1 it's your decision. I says you can go back to Allied Signal
2 or you can come to work with us. And when I say us, I imagine
3 that me and his momma and, you know what I'm saying, was
4 mainly in the business, and he made the decision to come.

5 Q: Was it you and your wife, Eunice, that ran the business?

6 A: Yes.

7 Q: Both of you worked in the business?

8 A: Yes.

9 Q: You had employees that would do the labor?

10 A: Yes.

11 Q: Okay. In '95, was that when Roger married Michelle Diane
12 Herrington?

13 A: Sir, I can't tell you. I think you've got their license,
14 but I -- I can't tell you. This old white head can't remember
15 numbers.

16 Q: Okay. And you wanted things done the right way?

17 A: Yes, sir, I'm a -- if you want to call me a fanatic, I
18 was a fanatic.

19 Q: All right. And at some point in time, from '95 forward,
20 was there a change of attitude in your son toward you and the
21 work?

22 A: Well, no, not in the 90s. It didn't happen -- oh, don't
23 get me wrong, me and him didn't agree on everything. I don't
24 agree with my wife on everything; she don't agree with me, of
25 course, she's always wrong. But, but, you know, we disagreed,

1 Diane's last divorce. It didn't deteriorate suddenly; it was
2 just over a period of time. I can remember when we went to --
3 I can't remember the lawyer -- but I went with him when he
4 went and filed for a divorce. And I don't know why we done it
5 and I don't know who -- who originated it, but there was a DNA
6 done on his daughter; I remember that.

7 Q: And I'm sorry, go ahead.

8 A: Go ahead.

9 Q: And after the second divorce, you're saying that's when
10 ---

11 A: Yeah, that's when it started changing a little bit. But
12 prior to that, it did change.

13 Q: Did he become argumentative?

14 A: Yeah, he got -- just a -- just a little to start, a
15 little bit, little bit, little bit. But it kept growing, you
16 know what I'm saying? Like there was something eating at him.
17 I don't know what it was, but it just kept going and going.
18 Now, there was good times, too, they weren't -- they weren't
19 -- very little bad times, because he went to the mountains
20 with us and, I mean, we spent a lot of time together as a
21 family.

22 Q: Would he, at some point, began to just quit and say I
23 quit?

24 A: Yeah, he would -- okay. One thing, time in particular I
25 can remember, out here out of Conway there's a mobile home

1 A: Yeah, we had a number of conversations that came up, you
2 know, over the years, but that's the way I was -- when I used
3 to work with them other companies, that's the way we did
4 things. When you had an employee and you was having a problem
5 with them, you sit down with them and you talk with them and
6 then you put it in writing and you have him to sign it. You
7 know, and give them a copy of it. So, the best thing in the
8 world is a piece of paper. I can sit here and talk to y'all,
9 but if I put it to you in writing, you can go back tomorrow
10 and look at it or whatever, and that's the way we did it and
11 that's the way -- me and his mother were there and him and we
12 did it.

13 Q: On July the 1st, 2012?

14 A: Right.

15 Q: Did your wife, Eunice, draft this agreement we've marked
16 as Defendant's Exhibit Number 1?

17 A: Yes, sir. I signed it and he signed it.

18 Q: He being your son?

19 A: Roger, yeah.

20 Q: Roger. And your wife prepared it?

21 A: Yes, she wrote it out.

22 MR. WILLCOX: I'd offer this in evidence, Your Honor.

23 THE COURT: How is it identified?

24 MR. WILLCOX: Sir?

25 THE COURT: How is it identified?

1 didn't have no hard word, there was no temper, there was no
2 animosity or nothing. It was just a conversation about things
3 that he needed to improve, you know, with the -- for a
4 relationship with us as him as an employee and us as an
5 employer.

6 Q: Then in January of 2013, I believe your granddaughter,
7 Brooke, was moving into a mobile home trailer?

8 A: Not Brooke, Fallon.

9 Q: Fallon. And the trailer needed heat?

10 A: Yes, sir. It was a mobile home that we had bought for
11 her. Let me back up a little bit. She was pregnant. I
12 didn't like it, but I had the means to provide a home for her
13 and them twins. I'd hate to have to look the Lord in the eye
14 one day and say no, I didn't do it, I turned my back on them,
15 or do it. He didn't like it. He thought we were wasting
16 money. If you wasting money on your family, you ain't wasting
17 money.

18 Now, you want me to tell what happened on that day?

19 Q: Please.

20 A: All right. I asked him on Friday afternoon, I said we
21 got a small gas heater. I said, I want you to come pick it up
22 -- hook it up in the morning; he didn't say a word. The next
23 morning, got up, went out there, me and Fallon got in the
24 truck, rode up right in front the building. It's about three
25 times as far from my backyard as from here to that door and he

1 Q: He never came back to work?

2 A: No.

3 Q: And did you start running the business as far as getting
4 up on the equipment?

5 A: Yes, on Monday, I started doing what -- well, I didn't do
6 what he had been doing because I couldn't do what he had been
7 doing -- but Archie had to help me up on the backhoe, but when
8 I got up on the backhoe, all you got to do to run a backhoe is
9 you got two levers there. You either run them back and forth
10 or do them like that; it's just that simple. And then you got
11 two levers that pulls up the forks, and I did that. I weren't
12 able to do it, but it was necessary that I do it.

13 Q: Then you continued to 2013 ---

14 A: Yeah.

15 Q: --- to run the business, run the equipment in the
16 business and into 2014?

17 A: Yes, sir.

18 Q: In August of 2014, were you physically assaulted ---

19 A: Yes, sir.

20 Q: --- by your son, Dale?

21 A: Yes, sir.

22 Q: And tell us ---

23 A: All right. Where he lived at, we had two acres of land
24 that we had bought from a neighbor. I'd say we had probably
25 owned eight or nine years, seven, like that. And we give him

1 did, and I took off over there and when I hit the highway, I
2 dialed 911 -- and I can't remember that fellow's name; it's on
3 that piece of paper -- he came out to the house.

4 Q: Well, as a result of that incident, was he charged with
5 assault and battery third degree in Magistrate's Court?

6 A: Yes, sir, he was charged and pleaded guilty and paid a
7 fine.

8 Q: Were you there when he pled guilty and paid the fine?

9 A: Yes, I was there, Eunice was there, and Brooke was there.

10 Q: And it arose out of his physical assault ---

11 A: Yeah.

12 Q: --- in August of 2014?

13 A: Yeah.

14 MR. WILLCOX: Your Honor, we'd offer into evidence
15 Defendant's Exhibit Number 2?

16 THE COURT: Any objection?

17 MR. GRAHAM: No, sir.

18 THE COURT: All right. Defendant's Exhibit Number 2
19 admitted into evidence without objection.

20 DEFENDANT'S EXHIBIT NUMBER 2

21 ADMITTED INTO EVIDENCE

22 BY MR. WILLCOX:

23 Q: In January 2015, did you sell the business to Keith?

24 A: Yes, sir.

25 Q: At that point, what did the business consist of?

1 -- is that a 4?

2 COURT REPORTER: Yes, sir.

3 BY MR. WILLCOX:

4 Q: --- Plaintiff's Exhibit Number 4 and that's got a list of
5 equipment on there. Is that the list that you just alluded
6 to?

7 A: When you talking about this, are you talking about I
8 owned this when he left, but I purchased some more equipment
9 before I sold it to Keith.

10 Q: Okay. So, that's what you owned when he left?

11 A: Yeah, that's what I owned.

12 Q: And was there any debt on that equipment?

13 A: Some of it, the Hitachi excavator had some debt on it,
14 and I think the little dump truck might have. I know -- I
15 know the excavator had it, but I hadn't bought it -- purchased
16 it for every long.

17 Q: And when Keith acquired the business, he acquired these
18 pieces?

19 A: Yes, sir.

20 Q: And I believe -- at that time, did he value the
21 equipment?

22 A: No, we didn't value it.

23 Q: Did Keith subsequently value it?

24 A: No, not that I'm aware of.

25 Q: Okay.

1 Q: The business paid it back?

2 A: Yes, sir.

3 Q: He didn't pay it back individually?

4 A: No, sir.

5 Q: Okay. And the reason why that this was done in his name
6 instead of ours, instead of mine, which all -- about ever --
7 all the other loans ---

8 MR. GRAHAM: Your Honor, I'm gonna ask again that he
9 respond to a question.

10 THE COURT: All right. I'm gonna allow him to explain
11 his answer. I'll allow that.

12 A: Is I had bought 20-some acres of land and we had moved
13 out there on it, and Keith had bought some land and we had
14 developed it and we had made some money off of it. And I told
15 him, at his age, he needed -- and his mom, both of us -- that
16 he needed to do something other than just work for a salary
17 each week. If he wanted to, you know, to build some credit
18 and then go buy something and develop it and he could make
19 some money off of it, and he liked that idea. He was in favor
20 of it. And I -- that's when he said that he would go get the
21 loan and we would pay it back, the company would pay it back,
22 but it would build him credit.

23 Q: Was there another one?

24 A: Yes, sir; I think there's two of them.

25 Q: I believe that's the second loan attached to ---

1 excuse me, the mobile home part and we'd do sometimes
2 landscaping, sometimes septic tanks, sometimes driveways, but
3 we worked together, and if I needed him to help me, he did.
4 Like when I got in the wreck, he stepped in and helped.

5 Q: That's been marked as Plaintiff's Exhibit Number 1, 2,
6 and 3. Let me hand you Plaintiff's Exhibit Number 1 first and
7 what does that business card indicate?

8 A: It says Dale Herrington Septic Tank, Land Clearing,
9 Backhoe, Dump Truck Service, Septic Tank Repair, Field Dirt,
10 all that, and it's got the office number, it's got my home
11 number, and it's got my beeper number.

12 Q: Do you know about what year that credit card was used?

13 A: You talking about this business card?

14 Q: Yeah, I meant business card.

15 A: I believe, based on a beeper, if y'all -- most of you
16 might can't remember beepers before cell phones come along --
17 I'd say this was early 90s, late 80s.

18 Q: Now, let me hand you Plaintiff's Exhibit Number 2, AAA
19 Septic Tank?

20 A: Yeah, AAA Septic Tank, that's -- that's got Roger's name
21 and Roger's house number on it.

22 Q: And that was his business?

23 A: Well, if you can call it a business. The way this came
24 about was when I went to DHEC in Conway, you go down and take
25 a test and then you become a septic tank licensee, with the

1 he in competition with Keith?

2 A: Yeah.

3 Q: Okay. The Herrington Since 1896 LLC, that I think it's
4 Keith's, what's the significance of -- 1986, not 1886; what's
5 the significance of 1986?

6 A: I can't -- I tell you what I think it is. I think it's
7 when Keith first started a business, he used to have a
8 business on the side when he was working with the county and I
9 -- but I don't believe exactly when it came about.

10 Q: Was that when he graduated from high school?

11 A: It was shortly after; yes, sir.

12 Q: Okay. Your Honor, we have nothing further.

13 Answer any questions Mr. Graham might have for you
14 please, sir.

15 THE COURT: All right. Cross examination?

16 CROSS EXAMINATION OF ROGER DALE HERRINGTON BY MR. GRAHAM:

17 Q: Mr. Herrington?

18 A: Yes, sir.

19 Q: You've had a good relationship with both of your sons
20 over the years, haven't you?

21 A: I thought as close as any parent could be.

22 Q: Okay. And are you saying that AA was not a viable
23 company?

24 A: Well, the only thing it was, it was a septic tank
25 license. It was an advertisement. He had no equipment, he

1 together.

2 Q: Okay. Okay. You guys learned together and he went out
3 and got a license and -- and had a business. So, tell me what
4 could he not have done? You didn't train -- y'all didn't
5 train together well?

6 A: Well, if you -- if you don't have anything to do it with
7 -- he owned a shovel and a rake, but he didn't own nothing to
8 install a septic tank with. He had the means to do it, he had
9 the talent to do it, but he did not have the means to do it.

10 Q: And that's equipment. And that's equipment; is that
11 right?

12 A: What's the equipment?

13 Q: Not having the means to do it means he didn't have the
14 equipment?

15 A: To do it, right.

16 Q: Right?

17 A: Yeah.

18 Q: Okay. Did he borrow equipment from you?

19 A: No.

20 Q: He never borrowed any equipment from you?

21 A: Well, he didn't have to borrow it; he -- it was there for
22 him to use but he didn't never use none working. I'll put it
23 to you like this, he never done a job with my equipment that
24 it was his job, never.

25 Q: Never?

1 Q: Okay.

2 A: The only time I ever met Angie in my life, she came to my
3 house one night, her and Roger, and he had bought -- I believe
4 the name of it was a -- I had bought a computer and he bought
5 a Quicken tax thing where you could put your books and keep
6 your books in it, and she put that on a new computer I had.
7 That was after I had that wreck and I couldn't get up. I
8 stayed in the den in the recliner and she went and installed
9 it, brought Terry over to show her how to do it, and that's
10 the only time I was ever in her presence.

11 Q: So, for 10 years, your job got done based on, on, on
12 Dale's work -- I'm sorry -- Roger's work?

13 A: Not no more than it did mine.

14 Q: Well, you got sick, didn't you?

15 A: Not in that 10 years he's talking about.

16 Q: Okay. Well, tell me when you got sick.

17 A: I had open heart sick -- excuse me -- open heart surgery
18 in June of '97.

19 Q: Okay. And that was prior to the accident?

20 A: Yeah.

21 Q: So, you were out of commission in '97?

22 A: Yeah, for about six weeks.

23 Q: Six weeks. Okay. And then you got in an accident in
24 '99?

25 A: Yeah, '99.

1 what we needed to do that day because I couldn't sleep. I was
2 up and down.

3 Q: Was that after or before you ---

4 A: That was about three or four weeks after the accident.

5 Q: After the accident?

6 A: I was up at 3 o'clock in the morning figuring a contract
7 and called him. And the next day, he told his momma, said,
8 you believe Daddy called me at 3 o'clock this morning? She
9 said, he was up, said I grant you he didn't realize what time
10 of the day it was.

11 Q: So, how many times did you go out and get on a backhoe
12 after -- after ---

13 A: I didn't get on the backhoe no more. I just told you, I
14 managed it.

15 Q: Oh, you managed it?

16 A: Ten percent of what I done before. Before I done
17 probably 90 percent work, 10 percent management, and that's
18 what I done. I could still manage it.

19 Q: But, but you couldn't do any physical work?

20 A: No, sir; I didn't do physical work.

21 Q: Okay. And who did the physical work?

22 A: Him and the other people I hired.

23 Q: And who was in charge out in -- out in the ---

24 A: Well, he was. He was.

25 Q: He was?

1 Q: And that was a part of the business?
2 A: Yeah, but I didn't get no money.
3 Q: You didn't get any money?
4 A: No, didn't get no money.
5 Q: You sold the business and didn't get any money?
6 A: No, I didn't get a penny.
7 Q: How did you sell the business and not get any money?
8 A: I'll get some eventually.
9 Q: Oh, you're gonna get some eventually?
10 A: Right.
11 Q: So, money is owed to you on the business?
12 A: Yeah.
13 Q: How much money is owed to you, sir?
14 A: No certain amount.
15 Q: No certain amount? What do you mean by that, no certain
16 amount?
17 A: Well ---
18 Q: You sold -- now, from what I'm seeing, you are very,
19 very, astute young man?
20 A: Now, I ain't young, look at my head and you can tell I
21 ain't young. I don't know about the astute part; I don't know
22 the definition of that.
23 Q: Anyway, how much money is you expecting to get from your
24 business eventually?
25 A: Well, if he has a good week this week, I expect to get

1 zero.

2 Q: What's a good week?

3 A: Well, a good week is when the weather is fair and it's
4 all that, we might make a -- now, you're talking when you say
5 me, he's talking about paying me and his momma, both of us,
6 not one, both of us.

7 Q: I understand. How much is ---

8 A: It might be \$1,000.

9 Q: A \$1,000 is a good week?

10 A: Yeah, but that's not ever week now.

11 Q: Okay.

12 A: And that's both of us.

13 Q: And what's a bad week?

14 A: Zero.

15 Q: And how long will you expect this money?

16 A: As long as me and her lives.

17 Q: And that's part of the deal of the sale; is that right?

18 A: He's supposed to pay us accordingly to what he makes,
19 yeah.

20 Q: For turning this equipment over, for turning the business
21 over, for turning the land over ---

22 A: What land?

23 Q: --- you didn't sell land?

24 A: Yeah, but I got paid for that. That ain't got nothing to
25 do with the business now. The land was my land in my name.

1 Q: --- Keith's wife?

2 A: I think. I wouldn't be positive. I think it was -- I'm
3 almost sure it was the both of them.

4 Q: About the same time you sold the business, right?

5 A: Yeah, I believe he bought it a little bit before, but in
6 the neighborhood.

7 Q: A little bit before?

8 A: Yeah.

9 Q: Didn't you sign the, the equipment, especially the
10 vehicle, over to Keith?

11 A: I'm pretty sure I did. I can't remember right off.
12 Whatever you would do in a sale, I done it with him. Whatever
13 you -- because you've got to have it in your name to be able
14 to license it and to insure it and all that.

15 Q: Okay. You couldn't do that through the business?

16 A: I don't understand what you're saying.

17 Q: Well, when it was Herringtons, you and Roger, right; it
18 was in your name?

19 A: Me and Roger? There ain't no me and Roger in it.

20 Q: You and Roger never had a business?

21 A: Never, absolutely never.

22 Q: I'm sorry. Y'all never had a business?

23 A: Never had. He was an employee. And matter of fact, a
24 year or two before he left, he done his income taxes as a
25 contractor, a subcontractor to Herrington's LLC.

1 Q: No, just give me an overall price?
2 A: I ain't got a -- I ain't got one -- I ain't got a
3 calculator and I sure can't add in my head.
4 Q: Okay. So, so how much over exaggerated is this?
5 A: Well, I was fixing to give you an example of that if
6 you'll give me a second.
7 Q: I don't want an example; I want you to give me a figure?
8 A: I'm going to give you a figure. That's the example.
9 Q: Okay.
10 A: Okay. This here Hitachi that he bought. He paid -- he's
11 got down here \$50,000. All right. I had bought it
12 approximately two years prior to that, and I give \$40,000 for
13 it.
14 Q: Okay. \$40,000.
15 A: So, you know good and well it ain't still worth -- it
16 don't go up in value, folks.
17 Q: Okay.
18 A: It's just like a used car.
19 Q: Sir, \$40,000. Give me another one.
20 A: Okay. All right. Here's a Hudson trailer. I bought it
21 in 1996 and I give \$4,000 for it.
22 Q: Okay.
23 A: And he's got it valued at \$6,000.
24 Q: Okay.
25 A: And I ain't never seen a used trailer that's '96 to

1 \$10,000 for it.

2 Q: Okay.

3 A: That's the way he exaggerates.

4 Q: Okay. Now, you're above 60,000. Go to the next one.

5 A: I ain't got no idea about these things.

6 Q: You don't have any idea about ---

7 A: Most of them, I ain't -- I don't.

8 Q: Well, but they were worth something?

9 A: Oh, yeah.

10 Q: Did Keith sell the others?

11 A: Yeah, he sold some of them because they were -- the
12 maintenance keep -- upkeep was costing more than a payment. I
13 assume that was his -- that was always my rationale. If it
14 cost me more to repair it than I could make payments, I'd get
15 another one.

16 Q: Okay. You said that earlier during your direct testimony
17 that there was a debt on something. What was the debt on?

18 A: The excavator and International truck.

19 Q: And how much debt was on it?

20 A: I ain't -- I ain't got a clue.

21 Q: You don't have any clue?

22 A: Not -- sir, no, I ain't. I'll just leave it at that. I
23 don't have a clue.

24 Q: Was it more than 10,000?

25 A: I don't know.

1 equipment list.

2 Q: Yeah. I'm looking for -- and you said you saw him sign
3 this, right, you and your wife?

4 A: Yes, sir.

5 Q: Take a look, sir?

6 A: I can tell you exactly where he was standing, as close as
7 I can tell you're standing to that microphone. Like I said
8 before, you come right inside our door of our den, there's a
9 little table there about 12 inches square on the top. He
10 stood there, his feet was dirty so he didn't come in and he --
11 I don't know, we probably had a 30 to 45-minute conversation.

12 Q: Take a look at Plaintiff's Exhibit Number 5; is that ---

13 A: I thought you wanted you to tell me about this.

14 Q: --- is that his signature there?

15 A: To my knowledge it is.

16 Q: Okay. Now, he -- he -- he gave one to the bank and you
17 said he signed the other, which he denied. Do those
18 signatures look alike to you, sir?

19 A: Sir, I'm gonna tell you, between me and my savior, he
20 stood there -- after that conversation, he was a little bit,
21 excuse my expression, pissed off and he signed it.

22 Q: I thought your testimony was that there was no drama,
23 everything was fine?

24 A: I didn't say -- I didn't say -- there still weren't no
25 drama, but I know him good enough to know when he's peed off

1 this is where he pled guilty to assaulting you.

2 A: Yes, sir.

3 Q: Is that right?

4 A: Yes, sir.

5 Q: Okay. Take a look at it, sir.

6 A: I done looked at it.

7 Q: You've looked at the exhibit. Is his name on the
8 exhibit?

9 A: His name, yeah.

10 Q: Is your name on the exhibit?

11 A: I don't -- no.

12 Q: Okay. Do you have any witnesses here -- are you gonna
13 call any witness to show that he assaulted you?

14 A: I kind of think we can call two to three.

15 Q: That was there when you were assaulted?

16 A: That's absolutely right.

17 Q: Okay. Would you give us those names, please, sir?

18 A: I think one of them is Scott -- I don't want to get his
19 name wrong. All I can tell you is he went by Scott and I've
20 been knowing him about 30 some years. Samuel, I believe it's
21 Scott Samuel.

22 Q: Okay.

23 A: And Keith Herrington.

24 Q: Keith?

25 A: Yes, sir.

1 there.

2 Q: When you said there, you mean in court?

3 A: I mean in court with him and that arresting officer
4 there, he was there. He came out the day of the assault. He
5 seen the blood all over me. He went back to the magistrate's
6 place, parked in the parking lot and he knew Roger's truck and
7 he waited for him to come, but he didn't see the truck, he
8 drove a car and went in and talked with the magistrate.

9 Q: Okay. According to my notes and I could be wrong, I just
10 want your comment on it.

11 A: Okay.

12 Q: You said there were very, very few bad times between the
13 two of you; is that right?

14 A: I'm talking about ---

15 Q: Over the period?

16 A: --- earlier, early days. Yes, sir.

17 Q: Okay. The early days, there was nothing going down ---

18 A: The 90s -- you talking about the 90s or when you talking
19 about?

20 Q: Well, I want to know when you're talking about that very
21 little went down between you two?

22 A: When I talked about when me and him -- when we were the
23 only two working in the business, we never had, that I recall
24 right now, I don't remember us having disagreements then, no.
25 The biggest part of his anger came after his second divorce.

1 Q: But you're testifying that he did?

2 A: Yeah. Hey, and three or of them over there can testify
3 to me coming home bloody, and the law, you got him on there,
4 why don't you call him and see what his -- she what he'd tell
5 you, the man that arrested him for it.

6 Q: Well, why you don't have him here to tell me what you ---

7 A: Well, to start with ---

8 MR. WILLCOX: Objection, Your Honor.

9 A: --- I didn't think he'd lie about it.

10 THE COURT: Hold on a minute, we've got an objection.
11 What?

12 MR. WILLCOX: I don't think that's a proper question.

13 THE COURT: Overruled. I'll allow it. Go ahead.

14 A: Me and -- they know it's true and he stood up in front of
15 the judge and the judge said how do you plea and he said I
16 plead guilty.

17 BY MR. GRAHAM:

18 Q: For assaulting you?

19 A: Right.

20 Q: Thank you, sir.

21 Your Honor, I believe that's all I have of this witness.

22 THE COURT: All right. Redirect?

23 REDIRECT EXAMINATION OF ROGER DALE HERRINGTON BY MR. WILLCOX:

24 Q: When you were not able, physically able, to get on a
25 backhoe when you were recovering from the heart attack, would

1 lunch on your own today. It's about a quarter to 1:00. I'm
2 going to ask that you be back at 2:15. Don't discuss the case
3 even among yourselves. Don't conduct any independent
4 investigation. I hope everybody has a good lunch and we'll
5 see you back at 2:15.

6 Thank you very much.

7 (REPORTER'S NOTE: Jury exits courtroom @ 12:44 P.M. The
8 following takes place outside the presence of the jury.)

9 THE COURT: All right. Anything from the plaintiff
10 before we recess for lunch?

11 MR. GRAHAM: No, sir.

12 THE COURT: Anything from the defense?

13 MR. WILLCOX: No, Your Honor.

14 THE COURT: All right. We'll be in recess till 2:15.

15 **RECESS - 12:45 P.M.**

16 *******OFF THE RECORD*******

17 **(On the Record - 2:26 P.M.)**

18 THE COURT: Thank you very much. Please be seated.

19 All right. Mr. Graham, anything from the plaintiff
20 before we bring the jury in?

21 MR. GRAHAM: Nothing from the plaintiff, Your Honor.

22 THE COURT: Anything from the defense?

23 MR. WILLCOX: Nothing from the defense, Your Honor.

24 THE COURT: All right. Let's go ahead and bring the jury
25 in.

1 Herringtons at one time or another?

2 A: Yes, sir.

3 Q: Okay. Back in 2015, when you and Keith got the equipment
4 from Mr. Herrington; do you remember that happening?

5 A: Yes, sir.

6 Q: Did you have to do a lot of work to the equipment to get
7 it up and running?

8 A: Yes, sir.

9 Q: What did you have to do?

10 A: Put a lot of oil.

11 Q: Hydraulics?

12 A: Yes, sir. Hoses.

13 Q: Before that, back in 2014, were you present when Roger
14 Herrington jumped on his father?

15 A: Yes, sir.

16 Q: Where did that happen?

17 A: Close to the septic tanks.

18 Q: Where?

19 A: Close to the septic tanks.

20 Q: I couldn't understand you?

21 A: Drums.

22 Q: Where did it happen?

23 A: Close to the septic tank drums, where you put the septic
24 tanks together.

25 Q: Oh, where you build the septic tanks?

1 CROSS EXAMINATION OF SAMUEL JEROME SCOTT BY MR. GRAHAM:

2 Q: You worked for all three of the Herringtons?

3 A: Yes, sir.

4 Q: Who are they?

5 A: Keith Herrington, Mr. Dale Herrington, and me and Roger
6 used to work together for Keith setting up trailer houses.

7 Q: When did you work for Roger?

8 A: We was working together.

9 Q: So, you were incorrect when you said you worked for all
10 three; you worked with all of them, not for them?

11 A: Okay. All right.

12 Q: Sir, I'm asking you a question.

13 A: Yes, sir.

14 Q: So, you worked for -- you worked for these Herringtons?

15 A: Yes, sir.

16 Q: And you worked with this Herrington?

17 A: Yes, sir.

18 Q: Right, I'm just trying to ---

19 A: Gotcha.

20 Q: Now, you saw him jump on his father and hit him through
21 the passenger ---

22 A: Window.

23 Q: --- window?

24 A: Yes, sir.

25 Q: Was there anyone else in the vehicle?

1 A: Yes, sir.

2 Q: Okay. In 2015, was Roger Herrington working for his dad
3 at that time?

4 A: Yes, sir.

5 Q: He was employed by his dad at that time?

6 A: Yes, sir.

7 Q: Okay. So, it occurred while he was employed?

8 A: Yes, sir.

9 Q: Okay. And the only time you worked with Roger Herrington
10 was when he was employed by his brother, Keith?

11 A: His daddy. He was employed by his daddy.

12 Q: At the time you worked with him?

13 A: Yes, sir.

14 Q: Okay. And how long did you work for his dad?

15 A: Off and on, sir. Still do when they need some help?

16 Q: How long?

17 A: About 23 years now.

18 Q: Twenty-three years.

19 A: July will make 23 years.

20 Q: Okay. Do you recall when his dad -- do you recall when
21 his dad got in an auto accident?

22 A: No, sir, not right offhand.

23 Q: You don't remember when Mr. Herrington got in an
24 automobile wreck?

25 A: No, sir.

1 A: You're welcome.

2 THE COURT: All right. Redirect?

3 MR. WILLCOX: No, Your Honor.

4 THE COURT: All right. You may step down.

5 MR. WILLCOX: Might this witness be excused, Your Honor?

6 THE COURT: Any objection?

7 MR. WILLCOX: He's not under subpoena.

8 MR. GRAHAM: No, sir.

9 THE COURT: All right. He's free to go. Thank you.

10 MR. COX: You're welcome.

11 THE COURT: Defendants can call your next witness.

12 MR. WILLCOX: Thank you, Your Honor.

13 Your Honor, we would call Fallon Gasque.

14 THE COURT: All right.

15 CLERK: If you'll raise your right hand, left hand on the
16 Bible

17 LACY FALLON GASQUE, HAVING BEEN DULY
18 SWORN TESTIFIES AS FOLLOWS:

19 CLERK: You may be seated. Please state your first and
20 last name for the record.

21 MS. GASQUE: Lacy Fallon Gasque.

22 DIRECT EXAMINATION OF LACY FALLON GASQUE BY MR. WILLCOX:

23 Q: Fallon, your mother is ---

24 A: Teresa.

25 Q: Okay. And are Dale and Eunice your grandparents?

1 Roger got mad and he threw the thing inside the truck where it
2 hit me in the stomach, and that's when he cussed my granddaddy
3 for a white-haired, crippled S-O-B.

4 Q: And did you subsequently move into the mobile home?

5 A: I did not move into the mobile home until the end of May.

6 Q: Okay. At that time, did you hear your grandfather tell
7 Roger he was fired?

8 A: And he -- yes, sir, he did, and he said, you can't fire
9 me because I quit.

10 Q: Okay. Answer any questions that Mr. Graham might have
11 for you.

12 MR. GRAHAM: I have no questions, Your Honor.

13 THE COURT: All right. You may step down.

14 Defendants can call your next witness.

15 MR. WILLCOX: Your Honor, we would call Brooke Gasque.

16 CLERK: If you'll raise your right hand and left hand on
17 the Bible.

18 MARYLAND BROOKE GASQUE, HAVING BEEN
19 DULY SWORN TESTIFIES AS FOLLOWS:

20 CLERK: Thank you. If you'll be seated and state your
21 first and last name for the record.

22 MS. BROOKE GASQUE: Maryland Brooke Gasque.

23 COURT REPORTER: I'm sorry, your first name?

24 MS. BROOKE GASQUE: Maryland Brooke Gasque.

25 DIRECT EXAMINATION OF MARYLAND BROOKE GASQUE BY MR. WILLCOX:

1 I'll come back in. And in the process of me walking out the
2 store, we got into it in between the doors of the store and
3 the gas pumps. And he said a few hurtful things and called me
4 a bitch, a fat bitch, and my best friend was with me, and he
5 shoved me and spit on me. And the spit that he spit on me did
6 not just come out of his mouth because it landed in the back
7 of my hair and I continued to walk away from him and he
8 continued to follow me, and I called 911 and the officers come
9 out to where we were at and the lady in the store gave them
10 her testimony of what happened and so did my best friend. And
11 for three weeks, he evaded police and went as far as going to
12 Florence and renting a vehicle to keep from being arrested,
13 because they issued a warrant for his arrest. And they
14 finally -- it finally caught up with him and they arrested him
15 for assault and battery and booked him into J. Reuben. And I
16 went into J. Reuben the day that they arrested him and set his
17 bond. I think he was let out on a PR bond and maybe charged
18 \$100. And we went to court in Aynor Magistrate's Court and I
19 think he was fined again there and they gave me a restraining
20 order because we -- I had two -- a prior incident that also
21 happened with him and they issued a restraining order that was
22 good for a year that also pertained to my minor child.

23 Q: Okay. Now, as a result of the spitting incident, were
24 you in court when he pled guilty and paid a fine?

25 A: Yes, sir. I was in bond court and magistrate's court.

1 into evidence without objection.

2 DEFENDANTS EXHIBIT NUMBER 5

3 ADMITTED INTO EVIDENCE

4 BY MR. WILLCOX:

5 Q: Ms. Gasque, were you in court when Roger pled guilty to
6 assaulting his father?

7 A: Yes, sir.

8 Q: Did he plead guilty?

9 A: Yes, sir.

10 Q: You heard him plead guilty?

11 A: Yes, sir.

12 Q: Did he pay a fine?

13 A: Yes, sir.

14 Q: And did those charges arise out of the incident that Ms.
15 Fallon just testified to?

16 A: Yes, sir.

17 Q: Answer any questions Mr. Graham might have for you.

18 THE COURT: All right. Cross examination?

19 CROSS EXAMINATION OF MARYLAND BROOKE GASQUE BY MR. GRAHAM:

20 Q: You've been in court all day?

21 A: Yes, sir.

22 Q: What are you trying to tell us, ma'am, by showing us a
23 restraining order and showing us or testifying about what
24 happened between you -- you know what the issues are in this
25 court? Do you know what we've been talking about in this

1 A: Yes, sir.

2 Q: And what about the other incident that occurred?

3 A: The one where he spit on me?

4 Q: Uh-huh, (affirmative response)?

5 A: The same year.

6 Q: Same year?

7 A: Yes, sir.

8 Q: Okay. And you were in court earlier when your

9 grandfather testified that, basically, he in essence fired him

10 in 2012?

11 A: Excuse me?

12 Q: You were in court earlier when your grandfather said he

13 fired him in 2000 -- he fired Roger in 2012?

14 A: Right.

15 Q: Is that right?

16 A: Right.

17 Q: This, you remember seeing that?

18 A: I wasn't there when that was wrote.

19 Q: Will you take a look at it, please? That's what your

20 grandfather used to say he fired him in 2012, right, and told

21 him not to come back to the property?

22 A: I've never seen this.

23 Q: You've never seen this?

24 A: I wasn't there when this was wrote.

25 Q: Okay. What -- what's the date on that, ma'am?

1 Herrington?

2 A: Yes, sir.

3 Q: And Roger is your brother?

4 A: Yes, sir.

5 Q: You have a sister, Terry?

6 A: Yes, sir.

7 Q: Tell me again, who is the oldest? Give us the pecking
8 order.

9 A: I'm the baby.

10 Q: You're the baby?

11 A: Yeah.

12 Q: And when did you graduate from high school?

13 A: 1986.

14 Q: And was that the source of the Herringtons Since 1986,
15 LLC?

16 A: I think it had a lot to do with it.

17 Q: Okay.

18 A: I was proud to graduate.

19 Q: Tell me your work history with your dad.

20 A: Back prior to '81, us moving down here, we worked as a
21 family selling produce, odds and ends, wood and different
22 things. And in 1980, we moved down here and opened up the
23 cricket farm. Sometime after '87, we started the construction
24 business together, Dad and Mom, did, and we worked as a
25 family, always have up until the last couple of years.

1 Q: And could you describe that for us?

2 A: It was very abusive to a certain point that I couldn't be
3 around it. When he got to talking about my mom and dad, I had
4 to leave.

5 Q: And were you aware or did you have any knowledge of the
6 existence of this Defendants' Exhibit Number 1?

7 A: No, sir; I did not know anything about it.

8 Q: All right, sir. When did you learn of the January 2013
9 incident when your father fired Roger?

10 A: I had heard that through the family. He had came to me
11 -- he lives up on the front corner of the six-and-a-half acres
12 that -- I've got a shop in the back and him and I talked about
13 what was going on. And that's the first knowledge that I
14 knowed about what was going on as far as him getting fired and
15 him living the business, the family business.

16 Q: Backing up a little bit till when your father had his
17 heart attack, did you pitch in and help with the business?

18 A: Yes, sir.

19 Q: Now, this was on your own accord, this using your own
20 equipment to get things done?

21 A: We always worked as a family. If I had a septic -- if I
22 had a house that we moved and if I could get the septic tank
23 and land clearing, we did it as a group, as a loving family
24 that was proud of the name, and we did that up until this
25 occurred. Now, I took -- for instance, when he got in his

1 name.

2 Q: I hand you what's been marked as Plaintiff's Exhibit
3 Number 4 and ask you to take a look at it. Is that the
4 equipment that came from your mother and daddy? It was titled
5 in your daddy's name, not your mother's, I would assume?

6 A: Correct.

7 Q: Okay. Is that the equipment that came from your father?

8 A: All except two pieces.

9 Q: Okay. And did you take a look at what those figures were
10 and compare the figures on that Plaintiff's Exhibit Number 4
11 to the values of the equipment that you thought they should
12 be, the actual value?

13 A: I'm gonna take three pieces off this list, which will be
14 the tri-axle, the Chevrolet dump truck; the New Holland
15 backhoe; and the trailer. I had those -- tried to get rid of
16 those. They were in such poor shape, I got \$25,000 for all
17 three pieces, all three pieces. They were wore slap out. And
18 I went down the list and originally got rid of everything
19 except the septic tank truck and the forms, and I've still got
20 the International. I think it's an '03, not an '05. But they
21 are very inflated. That excavator, I traded it in on a new
22 CAT that allowed me \$10,000. I traded the New Holland
23 bulldozer at CAT for a new CAT; they allowed me \$8,000.

24 Q: And when you got the equipment, what kind of shape was it
25 in?

1 having to call the police or the sheriff?

2 A: You mean Roger?

3 Q: I'm sorry.

4 A: That's okay.

5 Q: Roger.

6 A: Yes, sir.

7 Q: And how often was that or was it more than once?

8 A: I had purchased a piece of property that is adjacent to
9 four and a half that was out of the Geneva Graham Estate.

10 That's the one that I bought from Mom and Dad that originally
11 was supposed to go to me anyhow, because they bought it for me
12 and my wife. Needless to say, my brother ended up with a
13 corner of it. I had to put up no trespassing signs because of
14 some -- well, the law told me to. And every time I would put
15 them up, he would tear them down. So, I called the law twice.
16 I didn't press any charges.

17 Q: Going back to the incident of 2014 that Mr. Scott
18 testified to, were you there when that happened?

19 A: I was walking across the -- leaving my house going back
20 to the septic tank forms.

21 Q: Did you see ---

22 A: Excuse me, Archie Mack was calling me -- which he's dead
23 and gone now -- and I see my brother inside of the -- Dad's
24 red truck and then when I got to him, he was covered in blood,
25 and he left and went home.

1 this ends, they'll get it.

2 Q: Answer any questions Mr. Graham might have for you.

3 THE COURT: All right. Cross examination?

4 MR. GRAHAM: Thank you, Your Honor.

5 CROSS EXAMINATION OF JOHN KEITH HERRINGTON BY MR. GRAHAM:

6 Q: Just let me make a correction if I can or a
7 clarification?

8 A: Yes, sir.

9 Q: Scott was the young guy who just testified earlier this
10 afternoon?

11 A: Yes, sir.

12 Q: He said it was in 2015 and you said '14; is it '15 or
13 '14?

14 A: Sir, I'm not good with dates; Scott's not good with
15 dates. All I can tell you is that man right there crawled in
16 the truck on that man right there and he commenced to beating
17 him and him crippled.

18 Q: And you can't tell us when that was?

19 A: Sir, listen to me, it don't make no difference what I
20 say. You got the paperwork.

21 THE COURT: Sir, listen to the question, then answer the
22 question.

23 BY MR. GRAHAM:

24 Q: Do you know whether it was 2014 or '15?

25 A: I'm gonna say '14, because I hadn't bought the business.

1 Q: Is that a yes or no, sir?

2 A: No, my dad didn't have to tell me.

3 Q: Okay. You heard your dad testify earlier and said there
4 was little -- very little going on between him and his son
5 other than he had his way of doing things and the son had his
6 way of doing things, right, you heard that?

7 A: I heard that, yes, sir. I've been here the whole time.

8 Q: And did you disagree with your dad when he said that,
9 mentally?

10 A: Sir, I'm going to tell you this -- can I be blunt with
11 you?

12 Q: Uh-huh, (affirmative response).

13 A: You don't talk to your parents like they a dog.

14 Q: Okay. Okay. Now, you finished?

15 A: Yes, sir.

16 Q: Okay. Let me ask you this. You said you valued the
17 equipment where you were in the hole with it when everything
18 was said and done?

19 A: I'll tell you this, every piece of equipment that I sold,
20 ain't even close to what them numbers is that y'all got on
21 them papers.

22 Q: Did you keep any of it; do you have any of it now?

23 A: I've got three.

24 Q: Okay. And what is your -- how have you valued those
25 three pieces?

1 A: I said the equipment is not worth what you've got it
2 appraised for or valued on this sheet.

3 Q: I understand that. I understand that.

4 A: Of course, everything is worth something to somebody.

5 Q: Okay.

6 A: Your suit may be worth more to you than it is to me.

7 Q: I understand that. My question is, when you purchased
8 the business, right?

9 A: Uh-huh, (affirmative response).

10 Q: You said that nothing matters except you taking care of
11 your mom and your dad?

12 A: Yeah.

13 Q: You're gonna take care of your mom and your dad?

14 A: Yes.

15 Q: Okay.

16 A: I did before I purchased the business.

17 Q: You did that before you purchased the business?

18 A: Yes.

19 Q: Sir, isn't what you're doing now the same thing that your
20 brother was doing before with them with one exception, you got
21 it in writing and he didn't; isn't that the same thing?

22 A: We did it together the whole time and neither one of us
23 had it in writing.

24 Q: Sir, I'm sorry?

25 A: We did it together and neither one of us had it in

1 A: Since 1981 when we moved back down here and we bought the
2 cricket farm, we've always helped one another as a family.

3 Q: I understand that. My question ---

4 A: And we all worked for the construction business, the
5 restaurant, everything that they've ever been involved in.

6 Q: Understand.

7 A: The only thing different is he drew a check and I
8 didn't.

9 Q: My question is, did you work elbow-to-elbow with Roger
10 after your dad got sick?

11 A: Yes, sir.

12 Q: You did?

13 A: I helped him.

14 Q: You stopped your business ---

15 A: No, sir. We worked together. I helped him. I had
16 employees and we went and done septic tanks, land clearing,
17 the whole nine yards and helped him.

18 Q: Along with Roger?

19 A: Yes, sir.

20 Q: Okay.

21 A: You heard him state, correct me if I'm wrong, that Dad
22 split the business up when he had the accident in '99. He
23 give me the excavator, the dump truck, and the bulldozer; the
24 land clearing part.

25 Q: So, all of -- all of the business was your dad's and he

1 A: I weren't here yesterday.

2 Q: This morning?

3 A: He worked, yes, sir; he worked just like we did and got a
4 check because he needed money.

5 Q: Okay. And you quit your business to go help him, right?

6 A: I sent my guys to go help them do whatever they needed to
7 do and I went and helped run trackhoes, bulldozers, put in
8 septic tanks, run dump trucks, the whole nine yards; whatever
9 they needed, whenever they needed, and still do.

10 Q: Did you buy a piece of land from your parents?

11 A: Yes, I did.

12 Q: How much did you pay them for the land?

13 A: It was 12 or either \$15,000; one of the two, I can't --
14 I'm not gonna ---

15 Q: Okay. And that piece of land was used by the business
16 before you purchased it?

17 A: It was adjacent to my property and we all used it.

18 Q: Okay. What did you use it for?

19 A: To come in and out with my equipment, their equipment,
20 Daddy's equipment.

21 Q: How about storage; was it used for storage?

22 A: The septic tank forms are on it.

23 Q: Okay. What -- is that the only thing that was on it?

24 A: There's some rubber on it, where you put your septic tank
25 material.

1 you; it was owned already?

2 A: Yes.

3 Q: I'm talking about the piece of property that you got when
4 you purchased the business?

5 A: No, no, no. I bought the property before I bought the
6 business.

7 Q: Okay. When did you buy the property?

8 A: You got the record right there; I can't tell you.

9 Q: Okay. When did you buy the business?

10 A: In '15.

11 Q: You remember when you bought the business, but you don't
12 remember when you bought the property?

13 A: Just because I've heard y'all. I don't have any
14 paperwork, sir, other than what I done at the land.

15 Q: I gotcha.

16 A: I mean, you've got all the records, I hope. You're the
17 lawyer, tell me when I bought it. I don't want to lie under
18 oath.

19 Q: Oh, I understand it. You know, I understand. Take a
20 look at that, sir, and I ask if that refreshes your
21 recollection?

22 A: Yeah.

23 Q: Okay.

24 A: That's when it was recorded.

25 Q: When did you buy it?

1 county adjacent to this county.

2 Q: Sir, that's not an answer to my question. My question
3 was, you said ---

4 A: That Momma and Daddy had shafted him.

5 THE COURT: Sir, you need to listen to the question and
6 then answer the question.

7 A: Okay.

8 BY MR. GRAHAM:

9 Q: You said that you knew what he was claiming all the time
10 and my question was, what was he claiming when you bought the
11 business?

12 A: Poor little Roger had got shafted in his whole life.

13 Q: How did poor old Roger get shafted in your opinion or
14 that's what you said he was claiming? How?

15 A: Well, he's been divorced twice; he just ain't got what
16 everybody else in life has got, undoubtedly.

17 Q: Sir, honestly, you knew about this lawsuit and what he
18 claimed in the lawsuit whenever you purchased the business,
19 did you not?

20 A: Again, I did, because I know he didn't own the business.
21 It's just like I'm a son, he's a son. I'm just as much
22 entitled as he is to anything that they leave.

23 Q: So, the lawsuit was filed, you had an opportunity to see
24 the lawsuit ---

25 A: No.

1 A: I don't know.

2 Q: You don't know?

3 A: That he got the -- I stole the business from him.

4 Q: Okay. That's what he was claiming?

5 A: That's what he told me ---

6 Q: Thank you, sir.

7 A: --- that I stole the business.

8 THE COURT: Redirect?

9 MR. WILLCOX: Yes, Your Honor.

10 REDIRECT EXAMINATION OF JOHN KEITH HERRINGTON BY MR. WILLCOX:

11 Q: What did you mean when you said Roger got a check and you
12 did not?

13 A: Back when my dad got in a wreck and he asked Roger to
14 take care of the septic tank part and me take care of the land
15 clearing, that was right after he got in a wreck until
16 November, Thanksgiving. I run that part of the business and
17 brought them all the money and the proceeds out of it.

18 Q: So, anytime you made money on the land clearing side ---

19 A: I never drewed a check off of it. I lived out of my own
20 business.

21 Q: But on the other hand, Roger was drawing a check?

22 A: Yes, sir.

23 Q: He was getting paid on the septic tank side?

24 A: Yes, sir; I didn't need a check from their business. I
25 was successful on my own.

1 Herrington.

2 CLERK: If you'll raise your right hand.

3 EUNICE M. HERRINGTON, HAVING BEEN

4 DULY SWORN TESTIFIES AS FOLLOWS:

5 CLERK: Thank you. If you'll please state your first and
6 last name for the record and speak into the microphone.

7 MS. EUNICE M. HERRINGTON: My name is Eunice M.

8 Herrington.

9 DIRECT EXAMINATION OF EUNICE M. HERRINGTON BY MR. WILLCOX:

10 Q: Ms. Herrington, Roger is your son, Keith is your son,
11 Terry is your daughter?

12 A: Correct.

13 Q: And Dale is your husband?

14 A: Right.

15 Q: And in the business, you have been the bookkeeper and ran
16 the office of the building -- of the business?

17 A: Yes, I have.

18 Q: What, I mean, could give you us a little more detail of
19 what you would do on a day-to-day basis?

20 A: I kept up with everything that was shipped in, every bill
21 that was paid, and ordered; I helped with that. Dale also
22 helped with that. And we -- I would answer the telephone and
23 I would drive him to look at the jobs when he weren't able and
24 so he could see if the equipment could go in where it was
25 supposed to. And then lots of times, he figured the septic

1 changed so much until it was unreal. I didn't understand it
2 because I had once before tried to get help when he carried us
3 to court another time and I asked the -- the magistrate could
4 help me get Roger some help because he wasn't getting angry
5 and more angry and, not so much to me, but to his dad. And
6 so, he said that there was nothing that he could do because he
7 was of age and I couldn't do anything. But he needed help.
8 He needed anger management because he was really fierce,
9 because he would get mad and he would hit the dash of the
10 truck. The truck was busted. He'd slam the door and broke my
11 big painting on the wall, on the floor. He would throw things
12 at his daddy and hit the screen, back porch screen; it had to
13 be replaced. Just throwing things, just being angry and you
14 don't do that if there's not something wrong with you.

15 Q: Are you aware that the business, most of the equipment
16 went to your son, Keith, in the early part of 2015?

17 A: Yes.

18 Q: Do you love your son, Roger?

19 A: He had quit. He was no longer there and he told me that
20 he did not want to do anything else with the equipment; that
21 he was gonna go out and get another job that had benefits,
22 because he was tired of that junk and messing in that septic
23 tank mess, and that's what he did. And then he come back and
24 -- we were doing a job at the Promised Land and the man bogged
25 our bulldozer down all the way to the seat on the bulldozer.

1 finish this?

2 THE COURT: Yes, ma'am.

3 A: He would come in at night or in the daytime at the house
4 because -- and he would go through the office and just
5 plunder. He would go in there and get in Dale's chair,
6 recliner, and sit back like it was his. I'm in the bed
7 asleep. I don't want people in my house, not even my
8 youngins. If you don't know somebody is in there, you might
9 accidentally shoot somebody. I mean, you know, you just don't
10 know. So, I had them changed because he said that we better
11 watch our back. And so, the locks were changed.

12 Q: Did you and your husband, Dale, ever agree to give him
13 the business?

14 A: It was a possibility. I didn't own the business, but
15 Roger, he just changed so and was just so mean to us and all
16 and he started doing things that just wasn't right at all.
17 Like when he was on the job, he didn't finish grading the
18 yards and all like he was supposed to, and two or three times
19 we had to go to court because they would come back on us, the
20 customer would come back on us and so, I've been in court a
21 few times with him. And that last, you've got to have
22 everything leveled and make it look good, and Dale is a
23 fanatic over everything being right before you leave, even if
24 it takes 30 minutes longer or an hour longer, just fix it
25 right to start with. It's better than having to go back.

1 sick and -- no, not at that time. And the reason he's sitting
2 there like he is -- we give Roger a house and the land, Dale
3 did, and he had paid for somebody to help him fix that house
4 up. It was his soil. It was an old schoolhouse that his
5 grandma and everybody went to school in, and he -- two and a
6 half years after he had it, it burned, but he would have never
7 had anything but a single-wide trailer if it'd been left to
8 him, if it hadn't been for us.

9 Q: What did you mean when you said there was a possibility
10 that you were gonna give him the business?

11 A: If he hadn't of changed and -- and been so mean and all,
12 he just -- it was just unreal.

13 Q: You were the bookkeeper for the business?

14 A: I was the bookkeeper, yeah.

15 Q: How did you pay him; did you pay him with a check?

16 A: No, he got cash. That's what he wanted because he said
17 he was an individual contractor. That's what he wanted to go
18 as.

19 Q: You paid him with cash every year?

20 A: What?

21 Q: Every year?

22 A: Every week.

23 Q: You paid him with cash?

24 A: Yeah.

25 Q: Did you ever take any taxes out?

1 Q: Okay.

2 A: He just -- no, he would sit and write like his daddy
3 because he would say he was Dale. I'm Dale.

4 Q: And that signature there is Roger's?

5 A: Yeah.

6 Q: Okay. And you recognize that; is that right?

7 A: Yeah, and I made payments and paid it back.

8 Q: You made payments and paid this back?

9 A: Yeah, I've made payments on quite a few. Even things
10 that belonged to him, I would make payments because he didn't
11 only get a check, but if there was any money made, he got his
12 part, but he also got two houses and land. So ---

13 Q: Did you split the profits of the business with Roger?

14 A: There was no profit.

15 Q: There was no profits. Okay.

16 A: No, and he knew it weren't nothing.

17 Q: Okay.

18 A: He got paid when me and his daddy didn't even have
19 nothing that week, he would still get paid.

20 Q: Take a look at Defendant's Exhibit Number 1, and I ask
21 you if that signature there is the same that you said was
22 Roger's?

23 A: That's -- Roger signed that standing right there in my
24 den.

25 Q: That's -- that's the same signature is your testimony,

1 A: No, he was -- let me put it this way, I worked for
2 several people. Because I worked for them and got a check, I
3 didn't own that business and I didn't say -- how can you --
4 when you work for somebody, you don't own it, you just work;
5 you are a worker. He would've probably gotten the business if
6 he had done what he should've done. But when he went and beat
7 up on his daddy and the things he done, and the pain that I
8 watch him do every day and every night, no, he got two houses
9 and all that. When I die, that's when we used to get our
10 stuff.

11 Q: When did he beat up on his dad? What year?

12 A: I want to think it was '14.

13 Q: In 2014?

14 A: Yeah.

15 Q: Okay. And you're familiar with this because you drafted
16 it, right?

17 A: Yeah.

18 Q: And that was after -- that was 2012, wasn't it?

19 A: Yeah. See, that's how far back it was, he had started
20 being the way he was and I -- I -- the Lord is my witness, I
21 done my best to get help for him but I didn't get it, and I
22 still think he needs help.

23 Q: Did you ever see Roger beat his dad?

24 A: No, just throw things at him. I weren't there the day
25 that he was whipped and beat on at ---

1 THE COURT: All right. Let me see the attorneys for a
2 second.

3 (REPORTER'S NOTE: Bench conference is held off the record in
4 the presence of but outside the hearing of the jury.)

5 BY THE COURT:

6 THE COURT: All right. Ladies and gentlemen, the defense
7 has rested their case and given the time of day, I think we're
8 gonna go ahead and break for the day. I'm gonna ask that you
9 be back again tomorrow morning at 9:15. We'll give you an
10 opportunity to get a cup of coffee, get you something to eat,
11 whatever the case may be.

12 I caution you again, do not discuss the case even among
13 yourselves. Don't conduct any independent investigations. I
14 hope everybody has a good evening and we'll see you back at
15 9:15 tomorrow morning.

16 Thank you very much.

17 (REPORTER'S NOTE: Jury exits courtroom @ 3:44 P.M. The
18 following takes place outside the presence of the jury.)

19 THE COURT: All right. Any motions at this time?

20 MR. GRAHAM: No, Your Honor.

21 THE COURT: All right. Anything further from the
22 defense?

23 MOTIONS:

24 MR. WILLCOX: Your Honor, we would move for a directed
25 verdict as to the remaining causes of action, quantum meruit

1 under a legal theory called quantum meruit. Quantum meruit
2 simply means as much as deserved or as much as it is worth. A
3 person who accepts the services of another must pay the
4 reasonable value of the services unless it was agreed by both
5 parties that the services would be performed for free or as a
6 favor. In order for the plaintiff to recover on a claim of
7 quantum meruit, the plaintiff must show, by a preponderance or
8 greater weight of the evidence that the plaintiff conferred a
9 benefit on the defendants. Next, the defendant must show that
10 the defendants did benefit. Finally, the plaintiff must show
11 that the defendants kept the benefit under circumstances,
12 which make it unfair for the defendant to keep the benefit
13 without paying for it. The plaintiff does not have to show an
14 actual verbal or written contract or that the parties agreed
15 on a specific price for the services. If the tasks for which
16 the plaintiff seeks payment under the claim of quantum meruit
17 are included in the terms of an express contract, which has
18 not been abandoned, excuse me, abandoned or rescinded, the
19 plaintiff may not recover under quantum meruit. The amount
20 the plaintiff may recover under quantum meruit is the amount
21 you find the defendants were unjustly enriched at the
22 plaintiff's expense.

23 And that's from -- that's from the judges' charge book on
24 that cause of action.

25 MR. WILLCOX: Thank you, Your Honor.

1 materials, because this deals exclusively with services. If
2 the person accepts the services of another, they must pay a
3 reasonable value for the services unless it was agreed by both
4 parties that the services would be performed for a fee or a
5 favor. So, if you find something that shows that that goes
6 ---

7 MR. GRAHAM: Yes, sir.

8 THE COURT: Of course, I mean, what are the materials
9 you're claiming. I don't know that there were any materials
10 provided or that the evidence showed. My understanding is his
11 claim is I worked for you for 10 years under the assumption I
12 was gonna get the business. I gave you that benefit; you gave
13 me that -- you recognized that benefit and then you didn't pay
14 me anything for it.

15 MR. GRAHAM: I think the reason I'm saying materials is
16 because of the question of the equipment that was provided
17 here.

18 THE COURT: Yeah, but that's -- there was nothing ever
19 that said he provided the equipment. As I understand the
20 posture of this case, you've got a business and the business
21 has equipment, and his argument is I was to work 10 years and
22 then I was to get this business, the business name, the
23 equipment, all of everything that constitutes the business,
24 which includes the equipment. I did my part; I didn't get
25 anything for it. I gave you that benefit, you realized the

1 THE COURT: Thank you very much. Please be seated. All
2 right. Have y'all had a chance to look over the proposed
3 charges? I'll give you two opportunities to raise any
4 objections or request any additional charges. Number one is,
5 now, the second time is after I charge the jury because it
6 does sound different sometimes when you hear it read versus
7 just reading it on paper. But any challenges from the
8 plaintiff at this time?

9 MR. GRAHAM: Not at this time, Your Honor, from the
10 plaintiff.

11 THE COURT: Any by the defense?

12 MR. WILLCOX: One, Your Honor, and I just wanted to
13 confirm, and the charge to me confirms it, but yesterday when
14 struck the breach of contract cause of action and the breach
15 of contract accompanied by a fraudulent act, I went back and
16 looked at the pleadings and the only cause of action in which
17 the plaintiff was requesting punitive damages was in the
18 breach of contract accompanied by a fraudulent act. So, I
19 assume there wasn't gonna be any charge on punitive damages
20 and in looking at your charge, that's -- that's been
21 confirmed.

22 THE COURT: Yeah, I don't -- I don't think that there is
23 -- that this is a punitive damages case.

24 MR. WILLCOX: Thank you, Your Honor.

25 THE COURT: All right. Anything further?

1 facts as you find them to be, or references the law that it is
2 different from the law as I will charge you at the end of
3 their closing arguments, then you're to disregard that portion
4 of their closing arguments because this is not evidence on the
5 facts and it is not a charge on the law. It is just their
6 contention as to what they think the evidence has shown in
7 this case.

8 All right. Mr. Graham?

9 MR. GRAHAM: Thank you, Your Honor.

10 CLOSING BY GRAHAM:

11 MR. GRAHAM: Mr. Chairman, ladies and gentlemen of the
12 jury, let me say thank you. I first thank you on behalf of my
13 client, Roger Herrington. Secondly, on behalf of our judicial
14 system, I say thank you. This controversy could not be
15 resolved with these parties and our system allows them to
16 bring the controversy to you and ask you to decide.

17 Monday afternoon when I stood up, the first thing I said
18 was, every controversy as three sides; our side, their side,
19 and the right side that's gonna be decided by you. Now, we
20 ask you to do that from the evidence that came from that
21 witness stand. We ask nothing but a reasonable, thoughtful
22 evaluation of the evidence.

23 We presented to you three witnesses to prove our side of
24 the case. The first witness we presented was Ms. Chelley
25 Herrington. The first thing she said was, I'm here based on a

1 There's no disagreement that Roger worked for this business
2 from 2005 to -- I'm sorry -- from 1995 to 2006. That's not a
3 controversy. He worked for 10 years. In fact, Mr. -- Mr.
4 Herrington said that he fired Roger in 2012. Roger worked
5 with the expectation that the business would be turned over to
6 him. By himself, he provided all of the technical stuff and
7 the labor stuff, that was out there.

8 Now, Mr. Herrington, said, well, I wasn't sick that --
9 very long; I helped. Roger's big mistake in all of this was
10 what? Not getting this agreement in writing. And even though
11 he didn't get it in writing, he is still entitled to the
12 services that was provided, that he provided to this business
13 that he didn't get paid for. Now, the reason for that is
14 simply unjust for the company to keep the business. So, in
15 this case, the parents could keep the business with all he
16 provided. He provided -- he named them for you. He provided
17 equipment. What did Mr. Herrington say? Mr. Herrington said,
18 yeah, all the stuff on this list was owned by the business
19 whenever he got fired. The only problem was the amount. We
20 disagree with the amount that you've assigned here and he told
21 you -- he gave you reasons why.

22 All right. How about the reputation of the business?
23 How about the services Roger provided, the labor he provided
24 that wasn't paid for under the agreement? What did Roger tell
25 y'all he wanted? Roger says I simply want the value of the

1 Mr. Dale Herrington, he said, Dale said, it's my way or no
2 way. That's what he said, it's my way or no way. And because
3 it's my way or no way, and Roger and I are like each other, we
4 always have disagreements about business. There's very --
5 nothing personal. It was all about business as far as Mr.
6 Dale was concerned. All right. Then he said something that
7 was very, very important, and that was that the list of
8 equipment here was owned by us at the time Roger left in 2012,
9 no matter what. So, Roger's effort for 10 years produced that
10 equipment. How do we know? Produced the equipment because
11 Mr. Herrington could not work. He could not work. He said, I
12 was the supervisor. The work that he did he was the
13 supervisor. All right.

14 Now, let's look at Scott. They brought Scott in here to
15 say two things. The equipment was bad, first; that's what
16 Scott said. The equipment was bad, and Roger abused his
17 father. I asked Scott specifically, when did that occur?
18 What did he tell us? 2017, 2016, I cannot remember.
19 Remember what Mr. Willcox asked Scott about the equipment?
20 Was the equipment in good shape? Scott said, no. When he
21 asked him what the equipment needed, what was Scott's
22 response? Oil and hydraulic fluid. That make the equipment
23 not in bad shape, oil and hydraulic fluid? Now, what they
24 don't say or tell you is that, that Roger left in 2012, right,
25 and Keith got the business two or three years later. What

1 evaluated the evidence, based on the law as the Judge gives it
2 to you, right, no one can argue with you, absolutely no one.
3 You would've done what our system of justice indicated that
4 you ought to do. I am saying, a reasonable and thoughtful
5 evaluation of the evidence as it comes from that witness stand
6 will allow you to bring a verdict back that speaks the truth.
7 And what's the truth in this case? The truth in this case is
8 it is unjust for Roger Herrington to be treated like he was
9 treated in this case and the law allows him a remedy here for
10 his services and for the materials that he provided this
11 business and wasn't paid for. Now, Roger expected that the
12 business would be turned over to him or he never would've
13 stuck around for 10 years.

14 In closing, I say this to you. Here's what happened
15 overall. Mr. Dale Herrington, the first, and Ms. Eunice
16 Herrington, what they did was they roped Roger into a deal
17 here that would take care of them. And what happened later?
18 They found a better deal. That deal is where Keith will take
19 care of them. The biggest difference between Keith's
20 agreement with them and Roger's agreement with them was Keith
21 was smart enough to put it in writing and Roger didn't get it
22 in writing. I say to you, return the verdict for us that is
23 honest, fair, and reasonable.

24 Thank you again.

25 THE COURT: Mr. Willcox?

1 I've done here. '95, Roger and Diane were married. Thirteen
2 months later, they divorced. They were remarried in 2001, and
3 subsequently divorced again. And when she came and testified,
4 I said, and about during that first marriage, the first 13
5 months, did he become physically and verbally abusive? Yes.
6 So, it started then, it just didn't all of a sudden happen and
7 -- as Mr. Graham might want you to think. And then through
8 the years, up until when this agreement was signed in 2012, it
9 had gotten so bad that his mother had to draft that agreement
10 and denied he signed it. I -- but anyway, you've got the
11 document in front of you. She says that was his writing, his
12 signature and he signed it.

13 Then the incident in January of 2013, when Dale was with
14 his granddaughter, Lacy, trying to get heat going in a mobile
15 home and she pregnant with twins. He came up, had a fit,
16 threw a gas coupling and Dale just said, I can't take it
17 anymore and fired him. And according to Dale, Roger said
18 you're not firing me, I quit, and he had quit numerous times
19 before. He would throw a fit and quit, and then would come
20 back after a couple of weeks.

21 And then, on August the 1st, was the assault and battery,
22 of 2014 by Roger on Brooke. No, I'm sorry, that was the
23 assault and battery on Dale on August the 1st, 2014, which he
24 denied occurred. Even though, you'll have the documents
25 before you from the Magistrate's Court, when he went and pled

1 by Roger. I submit to you, the only thing he ever conferred
2 on his parents was a broken heart with his mother and a bloody
3 face and a threat on his father. I ask that you return a
4 verdict for his parents and find for the defendants.

5 Thank you.

6 THE COURT: Mr. Graham, anything in reply?

7 MR. GRAHAM: No, sir.

8 CHARGE TO JURY:

9 THE COURT: All right. All right. Ladies and gentlemen,
10 all the evidence has been presented to you in this case. The
11 attorneys have made their closing arguments and now is the
12 time of the trial when I charge you with the law to be applied
13 in this case.

14 I remind you that during this trial, you and I have
15 certain duties to perform. As the Trial Judge, my
16 responsibility is preside over the trial of this case. I also
17 have the duty to rule on the admissibility of the evidence
18 offered during this trial. You are to consider only the
19 evidence before you. If any testimony was ordered stricken
20 from the record during this trial, you must disregard that
21 testimony. You are to consider only the testimony, which has
22 been presented from the witness stand, any exhibits which have
23 been made a part of the record in this case, and any
24 stipulations of counsel.

25 I have the additional duty to charge you the law

1 or that the facts supporting the defendants are more likely
2 true than not true, or are equally as true as the facts
3 supporting the plaintiff, then the plaintiff has failed to
4 prove his case by a preponderance of the evidence and your
5 verdict should be in favor of the defendants.

6 The preponderance of the evidence is not determined by
7 the number of witnesses testifying on behalf of a party.
8 Instead, a preponderance of the evidence must be determined by
9 the greater weight of all of the evidence. Necessarily, you
10 must determine the credibility of witnesses who have testified
11 in this case. Credibility simply means believability. Your
12 duty as jurors is to evaluate the evidence and determine which
13 evidence convinces you it is true. In determining the
14 believability of witnesses who have testified in this case,
15 you may believe one witness over several witnesses, or several
16 witnesses over one witness. You may believe a part of the
17 testimony of a witness and reject the remaining part of the
18 testimony of that same witness. You may believe the testimony
19 of a witness in its entirety or reject the testimony of a
20 witness in its entirety. You may consider whether the witness
21 has an interest in the result of the trial, whether the
22 witness is prejudiced towards either the plaintiff or the
23 defendants, the opportunity for the witness to have seen the
24 matters and things about which the witness may testify, and
25 the way the witness acts on the witness stand.

1 with a general denial. This means that the defendants deny
2 each and every claim that would make the defendant liable to
3 the plaintiff. Because of this general denial, the plaintiff
4 has the burden of proving each and every element of his cause
5 of action.

6 Now there are two possible verdicts that you may find in
7 this case. No significance should be given to the order in
8 which I state these possible verdicts to you; I simply have to
9 state one first and one second. The possible verdicts in this
10 case are, one, we, the jury, find in favor of the plaintiff
11 and grant the plaintiff judgment against the defendants in the
12 amount of, and then you determine the amount of damages. Or
13 the second possible verdict is, we, the jury, find in favor of
14 the defendants.

15 All 12 of you must agree on the verdict. Your decision
16 cannot be based on sympathy, passion, prejudice, emotion or
17 any other consideration not in evidence in this case.

18 Mr. Olup, as foreperson, when the jury agrees on a
19 verdict, you'll check the appropriate verdict form -- verdict
20 on this verdict form, fill in any necessary information, and
21 then sign your name as foreperson. And then, knock on the
22 door and let the bailiff know that the jury had reached a
23 verdict and we'll bring you back into the court at that time.

24 Now, I'm going to excuse you to the jury room but please
25 do not begin your deliberations at this time. I need to check

1 but never ID'd or entered.

2 So, what I'm holding out is Defendant's 3 and Court's
3 Exhibit 1 do not go to the jury, and the verdict form.

4 THE COURT: All right. We ready?

5 All right. We'll stand in recess until we hear from the
6 jury. Okay?

7 (REPORTER'S NOTE: Deliberations commence at 10:10 A.M.)

8 **RECESS - 10:11 A.M.**

9 *****OFF THE RECORD*****

10 **(On the Record - 11:14 A.M.)**

11 THE COURT: Thanks very much. Please be seated.

12 All right. We've gotten some questions from the jury.
13 What equipment did Roger bring to the company when they
14 merged? Did Roger purchase any equipment after the merger?
15 What is the year of the equipment?

16 I propose, I just write on here these are fact issues --
17 these are facts to be determined by the jury, because that's
18 what they are. They're facts and the jury has to decide that
19 based upon the evidence.

20 What's the plaintiff's position?

21 MR. GRAHAM: I agree, Your Honor.

22 THE COURT: Defense?

23 MR. WILLCOX: I'm in agreement, Your Honor.

24 THE COURT: All right. I'm just gonna handwrite that on
25 this note. All right. Y'all want to come take a look at this

1 THE COURT: All right. Ladies and gentlemen, welcome
2 back.

3 Mr. Olup, I understand the jury has reached a verdict; is
4 that correct?

5 JUROR 267: We have, Your Honor.

6 THE COURT: All right. Have you completed and signed the
7 verdict form?

8 JUROR 267: Yes, sir.

9 THE COURT: All right. If you would please hand it to
10 the bailiff.

11 Thank you, sir. All right. I'll ask the clerk if she
12 would please publish the verdict.

13 CLERK: State of South Carolina, County of Horry, Roger
14 D. Herrington, II, Plaintiff versus Roger Dale Herrington and
15 Eunice M. Herrington, Defendants. Court of Common Pleas, 15th
16 Judicial Circuit, Case Number 2018-CP-26-00789. Verdict, We,
17 the jury, find in favor of the plaintiff and award the
18 plaintiff judgment against the defendants in the amount of
19 \$170,005. Signed by the foreperson, Christopher M. Olup,
20 dated November 20th, 2019.

21 THE COURT: All right. Ladies and gentlemen, if this is
22 your verdict, please signify by raising your right hand.

23 All right. Let the record reflect that all jurors raised
24 their right hand.

25 Any polling of the jury by the defense?

1 what they say but, whatever time they give you, that's what
2 you got. Okay?

3 MR. WILLCOX: Thank you, Your Honor.

4 THE COURT: All right. Thank you very much.

5 MR. GRAHAM: Thank you, Your Honor.

6 THE COURT: Thank you.

7 All right. That does it for us for the week.

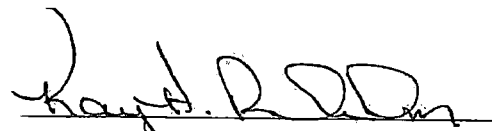
8 **ADJOURNED - 1:24 P.M.**

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Roger D. Herrington, II v. Roger D. Herrington, I, and Eunice M. Herrington, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on November 18-20, 2019.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

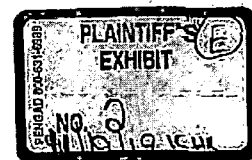
Official Court Reporter

May 5, 2020.

AAA Septic Tank @ Repair

Owner
Roger
Herrington

843-358-0888



List of Equipment

<u>Name</u>	<u>mfg#</u>	<u>Price</u>
1. Hitachi Ex 200 LC-2 model (Excavator)	147-3901	\$50,000.00
2. Septic Tank Truck (Kodiak Chevrolet)	1GBM7H1M6TJ101835	\$18,000.00
3. New Holland Bulldozer DC 100LGP	13150704BTA390	\$45,000.00
4. Hudson 10-Ton Trailer	10HHTD1D0V100302	\$6,000.00
5. Chevrolet Dump Truck C85	DT-H46XYJ509941	\$14,000.00
6. Bethel Steele Septic Tank Forms	8 Septic Tank Forms	\$16,000.00
7. New Holland Backhoe LB75-2	LB75B-699300701 SN#031035823	\$41,500.00
8. International 4300 2005(yr)		\$28,000.00
9. 12Ton Interstate Trailer		\$28,000.00
10. Low Boy Trailer BIRMINGHAM Co.ALA.grossweight-59600	LIS#13883	\$3,800.00 ✓



II

Disussing Herrington Bussiness in the Public
Will Be Grounds for Being Fired!

The veci will Be washed & cleaned Monthly
The Entertainment, Tank Truck Dump Truck
Backhoe.

Entertainment cleaned way 1st Sat. of month or before
Tank Truck cleaned 2nd Sat of month or before
Dump Truck cleaned 3rd Sat of month or before
It is up to you to see Archie Keep is cleaned
This washing & cleaning will Take place at
Oak Trees.

You getting Mad & Quitting Next Time there
Is No Coming Back, or you get Mad & have a fit
you will Be Fired you have until 11

AND as far as you being off the job & somewhere
else you must let me & your Mom know
until I notice all equipment will
Be parked at our Home. So you check tires
& use Air compressor. But Be Sure to cut
Air Compressor off



Aynor Magistrate Court
CASE HISTORY FOR CASE 10055GX

FILED DATE: 8/15/2014
INDICTMENT NUMBER:

The State of South Carolina VS Roger Dale Herrington II

CASE TYPE: CR/Criminal

STATUS: Disposed

ASSIGNED JUDGE: Allen, Benjamin Charles

DISPOSITION JUDGE: Allen, Benjamin Charles

ARRESTING AGENCY: Horry County Police Department

CASE PARTIES:

Defendant Herrington, Roger Dale II

2222 Joyner Swamp Rd, Galivants Ferry, SC 29544-6500

Officer: Wells, Doug E

2560 North Main Street, Conway, SC 29526

CASE HISTORY FOR CASE 10055GX

Herrington, Roger Dale II

Age: 54

DOB: [REDACTED]

DL#: [REDACTED]

SSN: [REDACTED]

Galivants Ferry, SC 29544-6500

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
3414 Assault / Assault & Battery 3rd degree	8/1/2014	Pled Guilty	8/26/2014

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Assault / Assault & Battery 3rd degree				
Fine to General Fund	\$93.97	\$0.00	\$93.97	999
Victim Services Asm 38.0013% / 5.783	11.28	0.00	11.28	999
Victim Conviction Surcharge \$100 / \$21	25.00	0.00	25.00	999
Law Enforcement Funding Surcharge \$	25.00	0.00	25.00	999
SC Criminal Justice Academy Training	5.00	0.00	5.00	999
State Assessment	89.75	0.00	89.75	999
Total:	\$250.00	\$0.00	\$250.00	

DATE	TIME	EVENT DESCRIPTION
8/26/2014	10:00 AM	Court event: Criminal/Traffic Court
8/26/2014	10:32 AM	Received payment of \$250 from Roger Dale Herrington II for Roger Dale Herrington II. Printed receipt #238175.

X

Print Date: 08/09/2019
Print Time: 10:01:44AM
Requested By: C26EOLSEN

CaseHistory.rpt V6.1

Page 1 of 1

Law Enforcement Funding Surcharge \$25	LEFSUR	\$25.00		\$25.00
Victim Conviction Surcharge \$100 / \$25	CVSRCH	\$25.00		\$25.00
Victim Services Asm 38.0013% / 5.7831%	ASMVIC	\$11.28		\$11.28
Fine to General Fund	AFNEGF	\$93.97		\$93.97
Payments				
Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
08/26/2014	238175	C26JJORDAN	PY	\$250.00

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February 18, 2020

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SC Court of Appeals

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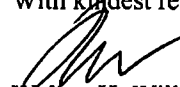
HONORABLE JENNY ABBOTT KITCHINGS
CLERK OF COURT
SOUTH CAROLINA COURT OF APPEALS
PO BOX 11629
COLUMBIA, SC 29211

Re: Roger D. Herrington II v. Roger Dale Herrington and Eunice M. Herrington
Civil Case No: 2018-CP-26-00789
Our File No.

Dear Ms. Kitchings:

Enclosed please find an original and one copy of our Notice of Appeal and Proof of Service in connection with the above referenced action. Enclosed is a check in the amount of \$250.00 for the filing of this Notice of Appeal. Kindly return a clocked copy to our office in the enclosed postage paid envelope. Thank you for your assistance in this matter.

With kindest regards,


Walker H. Willcox
Email: wwillcox@willcoxlaw.com

WHW/asm
Enclosures
Cc: George E. Graham

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2018-CP-26-00789

RECEIVED

Nov 09 2020

SC Court of Appeals

Roger D. Herrington II Respondent,

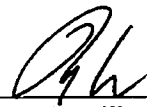
v.

Roger Dale Herrington and Eunice M. Herrington Appellants,

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains only material proposed to be included by any of the parties and not any other material.

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STATEMENT OF THE CASE

On February 18, 2015, Plaintiff commenced this action against his parents Roger Dale Herrington ("Dale") and Eunice M. Herrington ("Defendants"). Plaintiff raised claims for breach of contract, unjust enrichment, quantum meruit and breach of contract accompanied by fraudulent act. Defendants answered and raised several defenses including statute of frauds, statute of limitations, laches and other equitable defenses. The case was stricken from the docket pursuant to Rule 40(j), SCRCP, and on February 6, 2018 it was restored to the active docket under the current 2018 case number.

On November 18 through 20, 2019, the Honorable Benjamin H. Culbertson ("Trial Court") presided over the jury trial for the action. After the close of Plaintiff's case, Defendants moved for a directed verdict to dismiss Plaintiff's claims. The Trial Court granted in part and denied in part the motion. It dismissed the claims for breach of contract and breach of contract accompanied by a fraudulent act based on the statute of frauds. It allowed the claim for unjust enrichment or quantum meruit to go to the jury. The jury returned a verdict in favor of Plaintiff in the amount of \$170,005.00 against Defendants jointly and severally. On November 27, 2019, Defendants filed a motion for JNOV, NISI Remittitur or New Trial pursuant to Rules 50 and 59, SCRCP. The Court denied the motion on January 22, 2020 without a hearing. This appeal followed.

termination. (Id. at p. 124, l. 23-p. 126, l. 5; R. p. 144-146 and Defendants' Exhibit 1; R. p. 274).

The agreement was admitted into evidence. (Id.)

In January 2013, Dale was helping his pregnant granddaughter install a heater into her mobile home. (Trial Transcript, p. 127, l. 6-p. 128, l. 13; R. p. 147-148). Dale asked Plaintiff about a pipe fitting, and Plaintiff suddenly erupted into anger and threw a pipe at Dale and his pregnant granddaughter. (Id.) Plaintiff began cussing at his father, and Dale told him he was fired. (Id.) Plaintiff responded that he quit. (Id.) Plaintiff never returned to work for Defendants. (Id.) Instead, Plaintiff opened a competing business. (Id. at p. 138, l. 12-p. 139, l. 2; R. p. 158-159).

Plaintiff and Dale had another violent confrontation in 2014 when Plaintiff punched Dale through an open truck window. (Id. at p. 130, ll. 5-16; R. p. 150 and Defendant's Exhibit 2; R. p. 277). In 2015, Defendants sold the business to their son, Keith Herrington. (Id. at p. 131, ll. 23-25; R. p. 151). Plaintiff commenced this action in February 2015, almost 10 years after he was allegedly supposed to have the business.

A jury trial began on November 18, 2019. After the close of Plaintiff's case, Defendants moved for a directed verdict to dismiss the case. (Trial Transcript, p. 111, l. 15-112, l. 9; R. p. 131-132). The Trial Court granted Defendants motion for directed verdict to dismiss the legal claims for breach of contract and breach of contract accompanied by a fraudulent act. (Id.) However, it denied the motion as to the equitable claims of quantum meruit and unjust enrichment (hereinafter the claims are collectively referred to as "unjust enrichment"), which the Trial Court consolidated into one claim. (Id.) After the close of the evidence, Defendant renewed its motion for directed verdict as to the remaining unjust enrichment claim, which the Trial Court denied. (Id. at p. 219, l. 24-p. 220, l. 25; R. p. 239-240).

upon skills and wisdom acquired through years of study, training and experience which are not susceptible of adequate transmission through instructions to a lay jury.

Hoopes v. Dolan, 168 Cal. App. 4th 146, 155-56, 85 Cal. Rptr. 3d 337, 343-44 (2008).

When the Trial Court dismissed the legal claims, it should have either excused the jury and decided the unjust enrichment claim itself or retained the jury and accepted the jury's verdict as advisory only. Instead, the Trial Court delegated its equitable power to the jury and accepted its judgment as correct. This was error and denied Defendants of the Trial Court's experience in analyzing and deciding claims that involve fairness. Defendants are entitled to a new trial decided by the Trial Court and not a jury.

II. LACHES BAR PLAINTIFF'S CLAIM FOR UNJUST ENRICHMENT THAT ACCRUED NEARLY TEN YEARS BEFORE HE FILED THIS ACTION.

The equitable doctrine of laches is "the neglect for an unreasonable length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.

Robinson v. Estate of Harris, 391 S.C. 114, 118, 705 S.E.2d 41, 43 (2011). To establish laches, a defendant must show: (1) delay, (2) unreasonable delay, and (3) prejudice. Hallums v. Hallums, 296 S.C. 195, 199, 371 S.E.2d 525, 528 (1988).

1. Unreasonable delay

Plaintiff alleges in 1995 or 1996 that his father verbally agreed to sell him the business in 10 years. 10 years expired in 2005 or 2006 with no sale, and at that point Plaintiff was on notice that the alleged contract had been breached. Despite this notice, Plaintiff continued to work for his father for another seven years before Plaintiff quit. Nine or ten years passed from the time that Plaintiff knew he had a claim against his father and the time he brought this action. Plaintiff

evidence of prejudice. Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 432-33, 673 S.E.2d 448, 456 (2009). Defendants sold the business in 2015, 10 years after the expiration of the alleged agreement with Plaintiff. Defendants only received the promise of weekly payments as consideration for the sale. They sold the business reasonably believing that they owned it and did not receive any type of lump sum cash payment for the equipment. Defendants' circumstances changed significantly since the time that Plaintiff's claim accrued, and they reasonably relied on the 10 year delay as evidence that Plaintiff would not assert a claim against the business when Defendants decided the terms of the sale.

Defendants were prejudiced by Plaintiff's unreasonable delay in bringing this action. Consequently, the doctrine of laches bars Plaintiff's unjust enrichment claim.

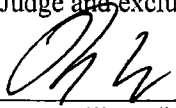
III. THE TRIAL COURT SHOULD HAVE DISMISSED OR SET ASIDE THE JURY VERDICT OF UNJUST ENRICHMENT

To recover on a theory of unjust enrichment, a plaintiff must prove: (1) a benefit conferred by the plaintiff upon the defendant; (2) the realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value. Swanson v. Stratos, 350 S.C. 116, 121, 564 S.E.2d 117, 119-20 (Ct. App. 2002). The jury awarded a verdict based on the value of equipment that Defendants owned in 2012.

The business gradually acquired equipment over the years usually through loans paid back by the business, and Plaintiff did not donate or contribute the equipment to the business. (Trial Transcript, p. 76, ll. 11-17; R. p. 96 and p. 118, l. 12-p. 119, l. 10; R. p. 138-139). Plaintiff never legally held title to the equipment. (Id. at p. 100, ll. 2-24; R. p. 120). Moreover, Plaintiff

The doctrine of laches barred Plaintiff's unjust enrichment claim and the evidence did not permit a verdict in favor of Plaintiff on the claim. The Trial Court should have set aside the judgment and dismissed the unjust enrichment claim. Defendants request that the Court of Appeals reverse the Trial Court's refusal to do so and enter judgment for Defendants. In addition, the Trial Court improperly delegated its equitable power to the jury, and it improperly admitted the evidence of the equipment value. In the alternative, Defendants request that the Court of Appeals order a new trial conducted by a Judge and excluding the improper evidence.

November 9, 2020



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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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SC Court of Appeals

Case No. 2018-CP-26-00789

Roger D. Herrington, II Respondent,

V.

Roger Dale Herrington and Eunice M. Herrington.....Appellants.

FINAL BRIEF OF RESPONDENT

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Roger Dale Herrington and Eunice M. Herrington

TABLE OF AUTHORITIES

CASES

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STATEMENT OF THE CASE

On February 18, 2015, Respondent, Dale Herrington, II, commenced this action against his parents, Roger Dale Herrington and Eunice M. Herrington, Appellants. Respondent raised claims for breach of contract, unjust enrichment, quantum meruit and breach of contract accompanied by fraudulent act. Appellants answered and raised several defenses including statute of frauds, statute of limitation, laches and other equitable defenses. The case was stricken on February 21, 2017 from the docket pursuant to Rule 40(j), SCRCF, and on February 6, 2018 it was restored to the active docket under the current 2018 case number.

On November 18 through 20, 2018 the Honorable Benjamin H. Culbertson ("Trial Judge") presided over the jury trial for the action. After the close of Respondent's case, Appellants moved for a directed verdict to dismiss Respondent's claims. The Trial Judge granted in part and denied in part the motion. He dismissed the claims for breach of contract and breach of contract accompanied by a fraudulent act based on the statute of frauds. The Trial Judge allowed the claim for unjust enrichment or quantum meruit to go to the jury. The jury returned a verdict in favor of Respondent in the amount of \$170,005.00 against Appellants jointly and severally. On November 27, 2019, Appellants filed a motion for JNOV, NISI Remittitur or New Trial pursuant to Rules 50 and 59, SCRCF. The Trial Judge denied the motion on January 22, 2020 without a hearing. This appeal followed.

R. p. 089, lines 1-14; R. p. 090). In 2006 the business was not turned over because Eunice asked Roger to wait a few years and leave the business as it was until she could get the Social Security resolved. (R. p. 088, line 21-p. 091). Roger considered the business to be his then until Dale and Eunice sold it to another son, John Keith Herrington (R. p. 094, lines 1-24; p. 151, lines 23-24; p. 206, lines 13-14).

Roger became concerned when Dale and Eunice started using funds from the business to buy a mobile home and set it up for their pregnant granddaughter. Roger, at that time was no longer receiving a check from the business. (R. p. 093, lines 1-9; p. 147). When Roger questioned Dale about it he claimed Roger was fired. (R. p. 148).

Dale and Eunice denied that there was an agreement between the parties. (R. p. 012, ¶4; T. p. 062). They claimed Roger had emotional and rage issues which resulted in his firing. (R. pp. 140-143). The existence of an agreement between the parties was corroborated by persons who had grave dislikes for Roger and nothing to gain from the trial, his ex-wife and ex-girlfriend. (R. pp. 054-059; pp. 062-064; pp. 067-070). Both testified, each at different times that they heard Dale, Eunice and Roger discuss the agreement; its terms of ten (10) years and the business would be turned over to Roger. (R. p. 056, lines 3-p. 059, lines 1-15; pp. 069-074).

A jury trial began on November 18, 2019 and the jury returned a verdict for Roger on November 20, 2019 in the amount of One Hundred Seventy Thousand & Five

reserve an issue for appellate review, a matter may not be raised for the first time on an appeal but must have been both raised and ruled upon by the court. Hill v. S.C. Dept. of Health & Environmental Control, 389 S.C. 21, 698 S.E. 2d 612, 613, (2010). Accordingly, this issue is not preserved for review by this court.

II. LACHES DID NOT BAR RESPONDENT'S CLAIM FOR UNJUST ENRICHMENT IN THIS CASE.

The doctrine of Laches does not bar Respondent's claim for unjust enrichment under the legal theory of quantum meruit. The judge properly charged the jury on the elements of quantum meruit and they returned a verdict for the Respondent. (R. pp. 260-265).

Appellants claimed Laches as a defense based upon unreasonable delay and prejudice. The evidence is clear that Roger was to take over the business in 2006. (R. p. 081, lines 2-13). Eunice, then asked Roger to leave the business as it was so she could continue to pay into her Social Security. (R. p. 088, lines 21-p. 091). Things were good business-wise and Respondent desired to continue to help his parents, so he said okay. Therefore, six years of the delay to which Appellants refer was induced by Eunice. Another year was consented to by the Appellants and their counsel when the Motion for 40(j) was filed in this case. Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice or disadvantage to the other party, delay alone does not constitute laches. Hallums v. Hallums, S.C. 195, 371, S.E 2d 525 (1988).

Appellants claimed they were prejudiced by the death of a key witness, Archie Mack. Mr. Mack's testimony would have been about what Appellants view as Roger's rage. Additional, Persons, Keith Herrington and Samuel Scott were present with Mr. Mack and testified at the trial

The Defendants retained profits from the business, its equipment, and a good reputation, and for them to keep anything under the promises presented in this case gave the jury a basis to award damages for unjust enrichment.

IV. THE TRIAL JUDGE DID NOT ERR IN ALLOWING RESPONDENT TO TESTIFY AS TO VALUE OF COMMERCIAL EQUIPMENT IN THIS CASE.

Respondent submitted a list of equipment acquired by the business during the 15 years he worked for the business. Appellants are correct that it was to be held to demonstrate the value of services conferred on the Appellants. The Respondent was the owner of this equipment as owner of the business. It should be noted that the equipment was acquired at different times; Respondent worked with it, had repairs done to it and was familiar with their general values, therefore his view of the values were rationally based on his perception. Lay people can give testimony as to the value of property owned by them. SCRC Rule 701.

(R. p. 273).

Appellants claim that the list was the measure of damages used by the jury for its damages award. Appellants miss two things with that assertion. First, the list of equipment's total value was more than Two Hundred Fifty Thousand (\$250,000.00) Dollars and the Appellants were offered Two Hundred Fifty Thousand (\$250,000.0) Dollars for the business. (R. p. 094, lines 18-24; p. 095, lines 19-21).

CERTIFICATE OF COUNSEL

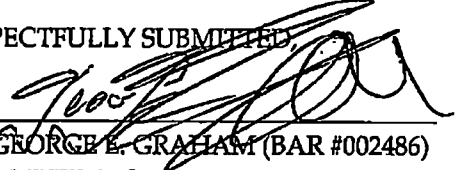
The undersigned certify that the Final Brief complies with Rule 210 (b) and 211 SCACR.

CONWAY, SOUTH CAROLINA

OCTOBER 30, 2020

RESPECTFULLY SUBMITTED

BY


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ATTORNEY FOR RESPONDENT

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SC Court of Appeals

~ . ~

Walker H. Willcox, Esquire
Hugh L. Willcox, Jr., Esquire
George E. Graham, Esquire

for a judgment notwithstanding the verdict (JNOV) or, in the alternative, a new trial absolute or *nisi remittitur*, after a jury found in favor of Roger Herrington, II (Roger) and awarded him \$170,000 on his claims for unjust enrichment and *quantum meruit*. On appeal, the Herringtons argue the trial court erred in denying their motion because (1) the trial court should not have submitted these claims to the jury because they were equitable causes of action; (2) the doctrine of laches barred the claims; (3) the evidence did not support the jury's findings; and (4) the trial court allowed improper lay witness testimony. We affirm.

1. We hold the Herringtons' argument that the trial court erred in submitting the claims to the jury is not preserved for appellate review because the Herringtons raised it for the first time in their post-trial motion for JNOV or for a new trial. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review."); *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) ("It is well settled that an issue may not be raised for the first time in a post-trial motion.").

2. We hold the trial court did not err in rejecting the Herringtons' argument that the claims were barred by the doctrine of laches because the evidence, when viewed in the light most favorable to Roger, showed the Herringtons failed to demonstrate laches barred Roger's claims. *See Burns v. Universal Health Servs., Inc.*, 361 S.C. 221, 232, 603 S.E.2d 605, 611 (Ct. App. 2004) ("The appellate court will reverse the trial court's ruling on a JNOV motion only when there is no evidence to support the ruling or where the ruling is controlled by an error of law."); *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002) ("Upon review, a trial [court's] order granting or denying a new trial will be upheld unless the order is 'wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law.'" (quoting *Folkens v. Hunt*, 300 S.C. 251, 255, 387 S.E.2d 265, 267 (1990))); *Umhoefer v. Bollinger*, 298 S.C. 221, 224, 379 S.E.2d 296, 297 (Ct. App. 1989) (directing that in reviewing the trial court's denial of a new trial motion, an appellate court "must consider the testimony and reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party"); *Hallums v. Hallums*, 296 S.C. 195, 199, 371 S.E.2d 525, 528 (1988) (explaining the elements of laches are "(1) delay, (2) unreasonable delay, [and] (3) prejudice"); *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 297, 519 S.E.2d 583, 599 (Ct. App. 1999) ("The party asserting laches must satisfactorily show negligence, the opportunity to have acted sooner, and material prejudice."). Specifically, Roger testified that although he and the Herringtons agreed the Herringtons would turn the family business over to him

497 S.E.2d at 733 ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review."); *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Ct. App. 1996) ("The same ground argued on appeal must have been argued to the trial [court].").

AFFIRMED.²

GEATHERS and HILL, JJ., and LOCKEMY, A.J., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

Pursuant to Rule 221(a), SCACR, the Appellants respectfully petition the Court for rehearing based on points overlooked or misapprehended by the Court. The Opinion of the Court was filed on July 6, 2022. In particular, the Appellants respectfully contend that the Court incorrectly decided the issue of whether laches barred the Respondent's claim and whether the Trial Court incorrectly allowed expert testimony as to damages.

I. Laches Bars the Respondents' Claims

The equitable doctrine of laches is "the neglect for an unreasonable length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Robinson v. Estate of Harris, 391 S.C. 114, 118, 705 S.E.2d 41, 43 (2011). To establish laches, a defendant must show: (1) delay, (2) unreasonable delay, and (3) prejudice. Hallums v. Hallums, 296 S.C. 195, 199, 371 S.E.2d 525, 528 (1988).

The Court held that the Appellants failed to show unreasonable delay and material prejudice. However, no dispute exists that the alleged contract which forms the basis of the Respondent's claim would have been breached no later than 2005 or 2006. (R. p. 79, l. 24-p. 80, l. 11). At this point, the Respondent knew the contract was breached.

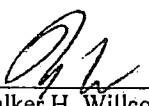
Even assuming the Respondent's version of the facts are true, the Respondent does not point to any alleged time frame Eunice gave to him to keep the business in her name in 2006. R. p. 88, l. 24-p. 89, l. 4. The legal statute of limitations would have expired in 2009 and the Respondent did not provide any clear or definite terms to indicate that the Appellants either extended the agreement or the Respondent reasonably believed they did not breach the agreement.

Moreover, the Respondent's damages were based on the alleged benefit he provided the business from 1995 to 2005. The passage of time required speculation as to the benefit provided,

CONCLUSION

The Appellants request that the Court grant a rehearing.

WILLCOX, BUYCK & WILLIAMS, P.A.

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Attorneys for Appellants

July 20, 2022

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Roger D. Herrington, II, Respondent,

v.

Roger Dale Herrington and Eunice M. Herrington,
Appellants.

Appellate Case No. 2020-000267

Appeal From Horry County
Benjamin H. Culbertson, Circuit Court Judge

Unpublished Opinion No. 2022-UP-282
Submitted June 1, 2022 – Filed July 6, 2022

AFFIRMED

Hugh L. Willcox, Jr. and Walker H. Willcox, both of
Willcox Buyck & Williams, PA, of Florence, for
Appellants.

George E. Graham, of McIver & Graham, PA, of
Conway, for Respondent.

PER CURIAM: Roger Dale Herrington (Dale) and Eunice Herrington
(collectively, the Herringtons), appeal the trial court's order denying their motion
for a judgment notwithstanding the verdict (JNOV) or, in the alternative, a new

agreed to allow Eunice—his mother—to keep the business in her name. Thereafter, he worked for the business for another six years under the assumption he was the owner. Roger stated Dale—Roger's father—fired him in 2013, and Dale sold the business to Roger's brother in 2015. Although the Herringtons point to the death of a "key witness" as evidence they were prejudiced by Roger's delay in filing the suit, this witness was present at the scene of an assault that Dale acknowledged occurred in 2014—after Roger left the business—and several other individuals testified they saw either the assault or its aftermath. Therefore, we hold the Herringtons failed to show unreasonable delay in filing suit or material prejudice.

3. We hold the trial court did not err in denying the Herringtons' motion for JNOV or for a new trial absolute or *nisi remittitur* because there was evidence that Roger conferred a benefit upon the Herringtons, the Herringtons realized the benefit, and retaining the benefit without compensating Roger would have been unjust. See *Columbia Wholesale Co. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994) (explaining South Carolina law "has recognized quantum meruit as an equitable doctrine to allow recovery for unjust enrichment" and identifying the elements of *quantum meruit* as "(1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value"). Roger testified he merged his existing business with Dale's business in 1995 and thereafter worked for \$500—and later, \$800—a week for approximately sixteen years. During this time, he testified, he worked six or seven days per week for at least ten hours per day. Further, Roger testified he was paid only \$9,600 in 2012—\$31,000 less than he was owed pursuant to the alleged agreement, and he stated the Herringtons collected all of the profits from the business. We find these facts supported the trial court's denial of the Herringtons' motion for JNOV or for a new trial absolute or *nisi remittitur*.

4. We hold the Herringtons' argument that the trial court allowed improper lay witness testimony is not preserved for appellate review. At trial, the Herringtons objected to this testimony on hearsay grounds; however, on appeal, they posited this issue as improper lay witness testimony. See *Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733 ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review."); *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Ct. App. 1996) ("The same ground argued on appeal must have been argued to the trial [court].").