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May 05 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
The Honorable R. Scott Sprouse

Case No. 2020-CP-04-01202
Appellate Case No. 2022-001527

Moats Construction, Inc.,

Appellant,

v.

Cecil R. Dyar,

Respondent.

RECORD ON APPEAL

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I certify that this designation contains no matter which is irrelevant to this appeal.

/s/ David L. Paavola
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May 5, 2023

FORM 4

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

JUDGMENT IN A CIVIL CASE

CIVIL ACTION NO.: 2020-CP-04-01202

MOATS CONSTRUCTION, INC.
PLAINTIFF(S)

CECIL R. DYAR
DEFENDANT(S)

Submitted By: Address:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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:

After careful review of the pleadings, exhibits, memoranda filed by counsel and arguments of counsel, the Court finds that the Defendant is entitled to Summary Judgment against the Plaintiff. The Plaintiff did not reply to the Defendant's compulsory counterclaim, without good cause being demonstrated. Furthermore, the Court finds that the Defendant would be entitled to a foreclosure of the subject property even if a reply had been timely filed. The Plaintiff does not contest that foreclosure is appropriate in this case, although he seeks a set-off against the amounts claimed by the Defendant. Additional amounts due have accrued under the parties' contract since the filing of the counterclaim. Mr. Logan's statement of the amounts due appear to be correct when the total monthly payments due are calculated. However, the Court is unable to make a definite finding of the amount due after considering the allegations pled and presented by the Plaintiff.

The Court finds that a damages hearing pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure shall be held in order to determine that appropriate amount of damages due to the Defendant.

Mr. Logan is directed to prepare a formal order setting forth the procedural history, findings of facts and applicable law within fourteen (14) days, copying Mr. Hawkins with same.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court for judgment details.**

Circuit Court Judge

2752
Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: _____

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[illegible]



Anderson Common Pleas

Case Caption: Moats Construction, Inc. VS Cecil R Dyar

Case Number: 2020CP0401202

Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2021-05-04 15:30:18 page 4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CASE NO.: 2020-CP-04-01202
	)	
Moats Construction, Inc.,	)	
	)	
Plaintiff,	)	
	)	Order Granting Defendant's
v.	)	Motion for Summary Judgment
	)	
Cecil R. Dyar,	)	
	)	
Defendant.	)	

This matter is before the Court on a Motion for Summary Judgment filed by the Defendant, Cecil R. Dyar ("Dyar"). A hearing was held in this matter on April 13, 2021. Present at the hearing were Wendell Hawkins, as attorney for the Plaintiff, Moats Construction, Inc. ("Moats") and James W. Logan, Jr., attorney for Defendant, Dyar. After a careful review of the pleadings, exhibits, memoranda filed by counsel and arguments of counsel, the Court finds that Dyar is entitled to summary judgment against Moats as a matter of law.

Findings of Fact

A. Moats did not reply to the Defendant's Compulsory Counterclaim without good cause being demonstrated. However, Dyar would be entitled to summary judgment even if a reply had been timely filed by Moats.

B. Moats does not contest that foreclosure is appropriate in this case, although he disagrees as to the balance of the purchase price due and payable.

C. The real property, the subject of this action, is located at 300 – 600 West Orr Street, Anderson, South Carolina, situate in Anderson County, South Carolina and bearing Anderson County Tax Map Number 123-24-03-003 and is owned by Dyar.

D. On January 29, 2011, Dyar entered into an Agreement for Sale and Purchase of Real Property (“Agreement”) regarding the real property in question. Under the terms of that Agreement, Moats agreed to pay Dyar the sum of Two Hundred and Fifty Thousand and no/100 (\$250,000.00) Dollars (“Purchase Price”) as follows: Down Payment of \$37,500.00 and the balance of \$212,500.00, with interest at the rate of six percent (6%) per annum, payable in monthly installments of Four Thousand, One Hundred Eight and 22/100 (\$4,108.22) Dollars each beginning May 1, 2011 and continuing on the same day each month thereafter through April 1, 2016 with the principal balance due, together with accrued interest, to be paid on or before March 31, 2016. Thereafter, by agreement, the date that the balance was due was extended until March 16, 2021 with all other terms and conditions to remain the same.

E. The Agreement further provided that, upon payment of the Purchase Price, Dyar would convey to Moats title to the premises by General Warranty Deed, subject to the items referenced therein.

F. Moats has failed and neglected to pay all amounts due, when due, under the Agreement, despite demand therefore and is thus in default. Therefore, Dyar, as legal owner of the real property that is the subject of the Agreement, can elect to declare the Agreement terminated and of no further force and effect and is entitled to immediate possession of the premises and to retain all amounts paid to date by Moats as rent and liquidated damages, or, in the alternative, Dyar can elect to declare the entire balance of the purchase price due and payable and seek a sale of the property and foreclosure of all rights of Moats to said property.

G. Dyar contends that the total amount owed under the Agreement, as of April 1, 2021 is \$216,047.42 based upon the Affidavit of Joshua Pruiett-Lange filed with his Memorandum in Support of his Motion which includes the principal amount of the indebtedness under the Agreement, plus

interest at the rate of six percent (6%), together with costs and expenses incurred by Dyar, fifteen percent (15%) of the balance owed as attorney's fees along with late payment fees of five percent (5%) and insurance premiums and City of Anderson taxed paid by Dyar.

H. The Agreement in question, contains the following additional provisions:

4. CONVEYANCE OF TITLE. Upon payment of Purchase Price, the Seller shall convey to Purchaser title to the premises by General Warranty Deed, subject to the following:

- (a) Ad Valorem taxes and special assessments for the City of Anderson and County of Anderson which have accrued but are not yet due.
- (b) Rights of way and easements for public utility distribution lines.
- (c) Restrictive covenants affecting the property.
- (d) State of facts which may be revealed by a recent and accurate survey of the premises.

5. AD VALOREM TAXES AND SPECIAL ASSESSMENTS. All Ad Valorem taxes and special assessments imposed against the Premises by the County of Anderson, City of Anderson or any political subdivision thereof shall be prorated as of the date of this Contract, and thereafter the Purchaser agrees to pay all Ad Valorem taxes and special assessments against the Premises before the same becomes past due.

6. CLOSING COSTS. Upon transfer of title, Seller at its expense shall deliver the Deed of Title to Real Estate with South Carolina documentary stamps affixed thereto and Purchaser shall bear the expense of Anderson County recording taxes and all costs of recording the Deed and other documents of title.

7. DEFAULT. In the event the Purchaser defaults in making any payments provided for herein or in any other terms, provisions or covenants of this Contract, the Seller may, as its option, declare this Contract terminated and of no further force and effect, and will be entitled to immediate possession of the Premises and may retain all amounts paid by Purchaser to date of default as rent and liquidated damages. Seller may in the alternative, at its option, declare the entire balance of the Purchase Price due and payable without notice, and institute suit against the Purchaser seeking a sale of the property and foreclosure of Purchaser's rights.

8. PREPAYMENT. Purchaser may prepay the balance due in whole or in part at any time without penalty.

9. POSSESSION. Until Purchaser defaults in payment of sums to be paid hereunder or in performance of obligations to be performed hereunder, Purchaser shall be entitled to possession of the Premises, provided, the Purchaser shall not commit or suffer to exist any damage or destruction of the Premises.

10. RISK OF LOSS. Risk of loss of damage to or destruction of the Premises shall be upon the Purchaser during the term of this Agreement.

11. TIME OF ESSENCE. It is further agreed that the time of payment shall be an essential part of this Contract and all Covenants and agreements herein contained shall extent to and be obligatory upon the heirs, personal representatives and assigns of the respective parties.

12. LATE PAY PENALTY. The Purchaser agrees that if any payment is not paid when due and shall remain unpaid for more than ten (10) days from the due date, a late charge equal to five (5%) percent of the total payment shall be added to the payment due. The Purchaser agrees that the failure to pay the late charge when due shall be considered a default in this Contract and subject the Purchaser to immediate eviction.

13. ATTORNEY'S FEES. If this Contract is placed in the hands of an attorney for collection or for enforcing any of Seller's other rights hereunder, including any legal proceeding brought to sell said property, Purchaser agrees to pay all costs and expenses incurred by Seller including not less than Fifteen (15%) percent of the then balance due under this Contract as Attorney's fees.

14. INSURANCE. Purchaser agrees to keep the improvements on said real property insured against loss by fire or other casualty in a reputable fire insurance company in an amount of not less than the balance due to the Seller under this Contract and to have Seller named in said policy as an additional insured.

15. SELLER'S REMEDIES. In the event the Purchaser fails to pay the property taxes when due, or fails to pay the fire insurance premiums, the Seller may, at Seller's option, pay the same and add such to the indebtedness due to the Seller to bear interest at the same rate stated above.

17. MAINTENANCE. The Purchaser shall maintain the Premises and all improvements thereon in the same good condition as the same was delivered to the Purchaser, wear and tear exempted.

18. DISCLAIMER OF WARRANTIES. The Purchaser acknowledges that the Seller has made no representation to the Purchaser concerning the condition of the dwelling or any other improvement upon the Premises. The Seller specifically disclaims all warranties which may exist by implication of law, including the warranty of habitability. The Purchaser acknowledges that Purchaser has made an inspection of the Premises and accepts the same "AS IS, WITH ALL FAULTS."

19. SURVIVAL OF THIS AGREEMENT. This Agreement and the terms hereof shall not be merged into the documents of conveyance at closing but shall survive and remain a binding contractual agreement between the parties after closing.

20. WASTE OR DESTRUCTION. Purchaser during possession shall not commit any waste of the Premises or demolish any improvement or harvest any growing timber without the written consent of Seller. (Emphasis added).

I. In his deposition testimony, Moats offered the following defenses, none of which are legally sufficient to support his claims:

- (1) Believes he owes the real property based upon improvements and “sweat equity”;
- (2) Believes he has paid the purchase price;
- (3) The building on the property suffered damage from hurricane-related weather;
- (4) Discussions with Dyar regarding certain “issues” but denies having any letters/correspondence that memorialize those conversations, except for a letter from his attorney William Swent which clearly shows sums owed;
- (5) Claims to have paperwork that supports his disagreement with the amount Dyar claims is owed. However, no such documents/paperwork were produced;
- (6) Admits that he has never furnished Dyar with any documentation that would establish what he believes he owes Dyar under the terms of the Agreement.

Conclusions of Law

Under South Carolina law, courts have emphasized that “[c]ourts must enforce, not write, contracts, and their language must be given its plain, ordinary and popular meaning.” *Sloan Constr. Co. v. Central Nat’l Co. of Omaha*, 269 S.C. 183, 185, 236 S.E. 2d 818, 819 (1977). Further, when a contract is unambiguous, clear and explicit, it must be construed according to its terms. *BLG Enterps., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E. 2d 327, 330 (1999).

While now seeking to deny under oath that any amount of money is owed to Dyar under the Agreement, Moats previously retained attorney William B. Swent (“Swent”) of Smith Moore in Greenville, South Carolina, to determine the amount owed under the Agreement as of December

31, 2017 and to close the purchase of property in question. That analysis was memorialized in a letter from Swent dated January 5, 2018 in which it was stated that, as of December 31, 2017, the amount owed was \$83,338.98. That calculation included principal, interest, carrying costs, property taxes and insurance due pursuant to the Agreement. However, it did not include attorney's fees of fifteen (15%) percent of the then balance due. Further, while the transaction was not closed, the amount calculated to be owed by Moats' attorney did not include all amounts owed by Moats and no amount was paid by Moats, this letter constitutes an admission that, as of December 31, 2017, at least that amount was due and owed by Moats to Dyar. Finally, no payments have been paid by Moats to Dyar under the Agreement since December 31, 2017.

Accordingly, based upon the testimony of Moats, the written evidence of the amount of the unpaid indebtedness as of December 31, 2017 stated by Moats' then attorney which was never paid and the established fact that no payments have since been paid by Moats to Dyar under the Agreement since December 31, 2017 while Moats remained in possession of the property that is the subject of the Agreement, Moats is clearly in default under the Agreement. Thus, Dyar is entitled to exercise all of his rights and remedies under the Agreement.

Moats asserts that he is entitled to credits for "improvements" made, "sweat equity" and the cost of a "new roof". By the express terms of the Agreement, Moats is not entitled to any such "credits." Even if Moats made such improvements or engaged in any "sweat equity", the Agreement does not provide for any such credits. The Agreement provides, in Paragraph #10, that the "Risk of Loss" is "upon the Purchaser...." The Agreement further provides in Paragraph #18, that "the Purchaser acknowledges that Purchaser has made an inspection of the Premises and accepts the same AS IS, WITH ALL FAULT."

Accordingly, any improvements made, if any, “sweat equity”, if any, and/or the status of the roof, are totally irrelevant to the legal issues in this case, all of which are controlled by the terms of the Agreement. Moats took the building “as is” and nothing in the Agreement obligates Dyar to replace the roof, nor give any credit for any improvements or any “sweat equity.”

Additional amounts due have accrued under the Parties’ contract since the filing of the Counterclaim. While the amount claimed by Dyar appears to be correct (based upon the Affidavit of Joshua Pruiett-Lange), the Court is unable to make a definitive finding as to the amount presently due under the Contract which is necessary depending upon the remedy Dyar elects. Accordingly, a damages hearing pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure shall be promptly held in order to determine the exact amount presently due under the Agreement.

IT IS NOW THEREFORE ORDERED, ADJUDGED AND DECREED that Moats is in breach of the Agreement between Dyar and Moats and that said Agreement is thus hereby declared to be terminated and of no force and effect. Accordingly, Dyar is entitled to immediate possession of the premises and to retain all amounts paid by Moats as rent and liquidated damages or, in the alternative, and at the option of Dyar, this Court orders and decrees that the entire balance, as determined at a promptly held damages hearing pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure, is immediately due and payable entitling Dyar to seek a sale of the property and foreclosure of all rights of Moats in and to said property.

IT IS SO ORDERED this ____ day of May, 2021.

The Honorable R. Scott Sprouse
Tenth Judicial Circuit



Anderson Common Pleas

Case Caption: Moats Construction, Inc. VS Cecil R Dyar

Case Number: 2020CP0401202

Type: Order/Summary Judgment

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2021-06-10 14:56:52 page 8 of 8

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP0401202

Moats Construction, Inc.
PLAINTIFF(S)

Cecil R Dyar
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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ 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:

This matter was before the court for a damages hearing. The court, after careful consideration of the testimony presented along with the exhibits, finds that the Mr. Dyar is entitled to a judgment against Moats Construction, Inc. in the amount sought. Moats Construction, Inc. failed to establish a setoff of any amount at the damages hearing. I further find that the Mr. Dyar is entitled to an award of attorney's fees in the amount of 15% of the total judgment due, as pled in the counterclaim, and costs.

Mr. Logan is directed to prepare a formal order within ten (10) days, setting forth full findings of fact, together with the applicable law, copying Mr. Hawkins with the draft prior to submission to the court.

Mr. Hawkins made a motion to be relieved as counsel. The court directed Mr. Hawkins to remain as counsel through the hearing. Upon filing of the formal order, Mr. Hawkins is relieved as counsel for the Moats Construction, Inc.

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 04/11/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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.



Anderson Common Pleas

Case Caption: Moats Construction, Inc. VS Cecil R Dyar

Case Number: 2020CP0401202

Type: Order/Electronic Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2022-04-11 14:43:43 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP0401202

Moats Construction Inc
PLAINTIFF(S)

Cecil R Dyar
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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ 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:

After careful consideration of the able argument and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, Plaintiff's Motion to Reconsider, pursuant to Rule 52, SCRPC, is DENIED.

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 07/21/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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.



Anderson Common Pleas

Case Caption: Moats Construction Inc VS Cecil R Dyar

Case Number: 2020CP0401202

Type: Order/Electronic Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2022-07-21 13:57:47 page 3 of 3

STATE OF SOUTH CAROLIA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

CASE NO.: 2020-CP-04-01202

Moats Construction, Inc.,
Plaintiff,

Motion/Alter and/or Amend

Cecil R. Dyar,
Defendant.,

This matter was before the Court pursuant to the Plaintiff's Motion for Reconsideration under Rules 59 and 60 of the South Carolina Rules of Civil Procedure. This case has multiple issues, with the Plaintiff and the Defendant having a dispute over real property located in Anderson County, SC. The property was subject to a mortgage held by the Defendant. The Plaintiff filed suit, alleging that the Defendant was responsible for problems with insurance coverage regarding a building on the subject property. The Defendant counterclaimed for foreclosure.

The Court held its initial hearing on April 13, 2021, in which the Defendant moved for Summary Judgement. At all times, the Plaintiff did not contest the Defendant's right to foreclosure. There was a disagreement between the parties as to the correct amount owed by the Plaintiff on the subject property. The Court ordered that a damages hearing be held so that evidence could be submitted for the Court to consider regarding the issue of the amount owed to the Defendant.

A damages hearing was held on February 24, 2022, with proper notice to the parties. The Plaintiff appeared along with his previous attorney, who moved to be relieved as counsel. The Court directed that the Plaintiff's counsel remain counsel of record until the damages hearing was completed. The Court took testimony, including that of the Plaintiff, and concluded that the Defendant was entitled to a judgement in the amount of **\$250,614.04.**

The Plaintiff retained new counsel, and moved that a new damages hearing be held or that the amount of the judgement be modified. Numerous exhibits were entered into the record by the Plaintiff to show discrepancies in the amounts as set by the Defendant's expert witness. The Defendant argues that this motion is improper, since the Plaintiff had ample opportunity to challenge the amount sought by the Defendant at the damages hearing and failed to do so.

The Court carefully considered the exhibits presented by the parties, the transcripts of the hearing, arguments of counsel, and applicable law. Accordingly, the Court concludes that Plaintiff's motion for reconsideration pursuant to Rule 59(e), SCRPC be denied as there was no misunderstanding or failure to fully consider all arguments and issues at the damages hearing. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). The Court notes that, at this motion for reconsideration, Plaintiff's counsel provided the materials in an organized and understandable manner. The Court may have arrived at a different conclusion regarding the judgement amount had these materials been presented at the damages hearing. However, it appears that none of these calculations were new, or based on information that was not in the Plaintiff's possession at the time of the damages hearing. The Court notes that the Plaintiff had retained an expert at some point in the litigation, although the Plaintiff testified that he disagreed

with the expert's calculations. Plaintiff's counsel at the time informed the Court that the expert was not called to testify at the damages hearing because he "had not yet been paid."

The Court concludes that it will be improper to set aside the judgement and order a new hearing and/or modify the amount of the judgement simply because the Plaintiff has done a much better job now of preparing the evidence/records in his possession than he did at the time of the damages hearing.

Accordingly, the Plaintiff's Motion is DENIED.



Anderson Common Pleas

Case Caption: Moats Construction Inc VS Cecil R Dyar

Case Number: 2020CP0401202

Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2022-10-03 16:55:19 page 3 of 3

STATE OF SOUTH CAROLINA)

NOTICE OF SALE

CASE NUMBER: 2020-CP-04-01202

COUNTY OF ANDERSON)

Pursuant to the terms of a Decree of Foreclosure and Sale by the Honorable Scott R. Sprouse dated July 21, 2022 in the case of Moats Construction, Inc., v. Cecil R. Dyar, I will sell at public outcry in Courtroom Number Two on the Third Floor of the Courthouse for Anderson County, South Carolina on November 1, 2022, during the usual hours of public sale to the highest bidder for cash the following described real estate:

Tax Map Number 123-24-03-003 and is more particularly described as follows:

All that certain lot or parcel of land, situate, lying and being in Anderson, South Carolina, in Anderson County, more particularly described as follows: BEGINNING at a point 22.5 feet northeastwardly, measured at a right angle, from a point in the center line of the main track of Carolina and Northwestern Railway Company, 1997 feet northwestwardly, measured along said center line, from Milepost 10 on said railroad; and running thence southeastwardly, along the southerly boundary of property conveyed by Blue Ridge Railway Company to Abner J. Nagin, et al, by deed dated November 15, 1960, recorded in the Office of the Clerk of Court for Anderson County, in Book 12-N, at Page 60, a distance of 150 feet, more or less, to the southeasterly corner of said property; thence northeastwardly along the easterly boundary of the property conveyed to by said deed of November 15, 1960, a distance of 128.5 feet; thence northeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 60 feet; thence southeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 200 feet; thence southwestwardly, along a line forming an interior angle of 90 degrees with the preceding course, a distance of 231 feet, more or less, to a point 22.5 feet northwestwardly measured at right angle from the center line of the main track of Carolina and Northwestern Railway Company; thence northwestwardly parallel to and at all points 22.5 feet from the center line of said main track, a distance of 227 feet, more or less, to the point of beginning containing 0.61 of an acre, more or less, and being located substantially as shown outlined in orange on print of drawing No. 5/3434, dated September 10, 1964, and annexed to deed of Blue Ridge Railway Company to Kent Steel of South Carolina, Incorporated, recorded in the Office of the Clerk of Court for Anderson County, South Carolina in Deed Book 16-V, at Page 816; SAVING and RESERVING unto Blue Ridge Railway Company a right of way or easement for said portion of tract 20 feet in width or 10 feet on either side of the center line of said portion of track, together with such additional right of way as may be necessary to accommodate cut slopes, fill slopes and ditches for said portion of spur track; and also RESERVING unto Blue Ridge Railway Company the right to remove said track in the future if Blue Ridge Railway Company so elects.

This is the same property conveyed unto Cecil R. Dyar by deed of Alice Donnelly, Phillip Halle, Executor of Evelyn B. Nagin Estate, Beatrice Penner, Michael J. Cryne, Jr., Bernice C. Sorokach and Robert F. Cryne dated February 7, 1994 and recorded in Deed Book 1863, at Page 263, records of Anderson County, South Carolina.

AND ALSO:

All that certain piece or parcel of land situate, lying and being in Anderson, South Carolina, more particularly described as follows: BEGINNING at an point 57.8 feet northeastwardly, measured at a right angle from point in the center line of the main track now or formerly of Blue Ridge Railway Company, 1850 feet northwestwardly measured along the center line of said main track from Milepost 10; and running thence northwestwardly a distance of 150 feet, more or less, to a point 22.5 feet northeastwardly, measured at a right angle, from the center line of said main track; thence Northwestwardly a distance of 287 feet, more or less, to a point 18.1 feet northeastwardly measured at a right angle, from the center line of said main track, thence northeastwardly parallel to 1.5 feet northeastwardly from the northwesterly line of an existing building or of said line as projected, a distance of 60 feet; thence southeastwardly, at a right angle to preceding course, a distance of 430 feet; thence southwestwardly a distance of 117 feet, more or less, to the point of beginning; containing .90 acres, more or less, and being located substantially as shown in orange on print of drawing No. B-7268, dated July 20, 1960, annexed to deed of Blue Ridge Railway Company by Abner J. Nagin, et al, dated November 15, 1960, SUBJECT however to such rights as Duke Power Company may have to maintain upon said premises its existing transformer, power lines and supports thereof located. RESERVING unto Blue Ridge Railway Company the portion of Tract 11-11 located upon and within the aforesaid described premises together with a right of way or easement for said portion of tract 16 feet in width or 8 feet on either side of the center line of said portion of tract.

This is the same property conveyed unto Cecil R. Dyar by deed of Alice Donnelly, Phillip Halle, Executor of Evelyn B. Nagin Estate, Beatrice Penner, Michael J. Cryne, Jr., Bernice C. Sorokach and Robert F. Cryne dated February 7, 1994 and recorded in Deed Book 1863, at Page 263, records of Anderson County, South Carolina.

The above mentioned property shall be sold for cash to the highest bidder. The highest bidder, other than the Defendant, shall be required, at the conclusion of the bidding, to deposit five (5%) percent of the bid with the Master-in-Equity in cash or equivalent as evidence of good faith; said deposit to be applied to the purchase price in case of compliance; but to be forfeited and applied first to costs and them to Defendant's debt in the case of non-compliance.

If the highest bidder fails or refuses to make the required deposit at the time of the bid or to comply with the other terms of sale within twenty (20) days from the date of sale, then the Master-in-Equity shall resell the property at the risk and expense of the defaulting bidder upon the same terms as above set out. Purchaser shall pay extra for the preparation of the Master's Deed, for documentary stamps on the deed, recording of the deed and interest on the amount of the bid from the date of the sale to the date of compliance with the bid at the rate of five percent (5%), as designated in the Decree. The sale shall be subject to Assessments, Taxes due on the day of sale, Existing Easements, Easements and Restrictions of Record and other senior encumbrances.

Since personal or deficiency judgment being waived, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

Steven C. Kirven
Master-in-Equity

Date: _____

James W. Logan, Jr.
Logan & Jolly, LLP
864-226-1910



Anderson Common Pleas

Case Caption: Moats Construction Inc VS Cecil R Dyar

Case Number: 2020CP0401202

Type: Master/Order/Notice of Foreclosure Sale

So Ordered

Steven C. Kirven, Master in Equity

Electronically signed on 2022-10-10 15:21:23 page 4 of 4

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Moats Construction, Inc.,

Plaintiff,

v.

Cecil R. Dyar,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE TENTH JUDICIAL CIRCUIT
) C/A NO. 2020-CP-04-01202

**CONSENT ORDER AND
 SATISFACTION OF JUDGMENT**

On July 21, 2022, the Court entered an Order Granting Defendant's Motion for Damages and Judgment of Foreclosure and Sale. Plaintiff filed a Motion to Alter or Amend on July 29, 2022, which was denied by the Court on October 4, 2022. Following entry of the Order denying the motion to alter or amend, Defendant moved forward to sell the subject property, and such sale was scheduled for November 1, 2022. Plaintiff filed a Notice of Appeal on October 26, 2022.

In a foreclosure, the filing of a notice of appeal does not automatically stay a property sale. As such, Plaintiff determined to pay the judgment in full while preserving its right to appeal the same. Defendant agreed to cancel the property sale if the full amount of the proceeds were deposited into Plaintiff's attorney's trust account prior to the November 1, 2022 sale date. Such funds were placed in trust to Defendant's satisfaction and Defendant cancelled the sale. The parties closed on the transfer of subject property to Plaintiff on November 7, 2022.

The Order Granting Defendant's Motion for Damages and Judgment of Foreclosure and Sale set damages as of April 1, 2022 at the following:

(a)	Principal & Interest Due as of February 1, 2022	\$ 222,415.95
(b)	Interest due at 6% per annum thereafter through April 1, 2022 (\$1,112.08 per month)	\$ 2,224.16
(c)	Costs of Collection prior to Hearing	\$ 3,677.84
(d)	Attorney's Fees	\$ 22,296.09
	Total Debt Secured by Agreement (including interest to date)	\$250,614.04

Prior to closing, Defendant provided an updated payoff through November 7, 2022, as follows:

(a)	Principal & Interest Due	\$ 227,128.21
(b)	Interest due at 6%	\$ 8,340.60
(c)	Costs of Collection	\$ 5,616.59
(d)	Attorney's Fees	\$ 25,381.09
	Total Debt	\$266,466.49

Plaintiff paid the full adjusted payoff amount of \$266,466.49 to Defendant on November 7, 2022, in conjunction with closing on the purchase of the subject property and in full satisfaction of the judgment.

Defendant now acknowledges that the judgment entered and filed against Plaintiff on July 21, 2022, has been satisfied in full and said judgment is satisfied and forever discharged.

It is hereby ORDERED that:

(1) The judgment in this action be shown as satisfied;

AND IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]

WE SO MOVE:

Respectfully submitted,

s/ David L. Paavola

David L. Paavola (SC Bar No. 100714)

Lewis Babcock L.L.P.

1513 Hampton Street (29201)

Post Office Box 11208

Columbia, South Carolina 29211

Telephone: (803) 771-8000

Facsimile: (803) 733-3534

Email: dlp@lewisbabcock.com

Counsel for Plaintiff

Columbia, South Carolina

November 16, 2022

The E-Filer has obtained the required consent to insert the electronic signature(s) of the other Authorized E-Filer(s) to this motion.

WE CONSENT:

s/ James W. Logan, Jr.

James W. Logan, Jr. (SC Bar No. 3385)

Logan & Jolly, LLP

Post Office Box 259

Anderson, South Carolina 29622

Telephone: (864) 226-1910

Facsimile: (864) 226-1931

Email: logan@loganandjolly.com

Counsel for Defendant



Anderson Common Pleas

Case Caption: Moats Construction Inc VS Cecil R Dyar

Case Number: 2020CP0401202

Type: Order/Consent Order

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2022-11-23 12:04:04 page 4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CASE NO.: 2020-CP-04-01202
	)	
Moats Construction, Inc.,	)	
	)	
Plaintiff,	)	
	)	Order Granting Defendant's
v.	)	Motion for Damages and Judgment of
	)	Foreclosure and Sale
Cecil R. Dyar,	)	
	)	
Defendant.	)	

This matter is before the Court for a damages hearing. In the Court's Order filed June 10, 2021, the terms, provisions and rulings of this Court therein, which are incorporated herein and made a part of this Order by reference thereto, this Court found that Cecil R. Dyar ("Dyar") was entitled to Summary Judgment against Moats Construction, Inc., ("Moats") as a matter of law and, accordingly, ruled that Dyar was entitled to immediate possession of the premises and to retain all amounts paid by Moats as rent and liquidated damages or, in the alternative, and, at the option of Dyar, ordered and decreed that the entire balance, as determined at a promptly held damages hearing pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure, was immediately due and payable entitling Dyar to seek a sale of the property and foreclosure of all rights of Moats in and to the property.

A damages hearing was held before the Court on February 24, 2022. Present at the hearing was Wendell Hawkins, attorney for Moats and Russell T. Moats, and James W. Logan, attorney for Dyar. After careful consideration of all of the evidence in this matter, including the testimony taken at this hearing and the admitted Exhibits, this Court finds and concludes as follows:

FINDINGS OF FACT

1. That Dyar is entitled to a judgment of Foreclosure of the subject Agreement against Moats upon which there is owed the amount of \$222,415.95, as of February 1, 2022, plus interest at the legal rate from February 1, 2022, attorney's fees of fifteen percent (15%), pursuant to the Agreement for Sale and Purchase of Real Property ("Agreement") dated January 29, 2011 between the parties hereto, and the costs of this action.

2. Moats has admitted that foreclosure is appropriate in this case, although he disagreed as to the balance of the purchase price due and payable.

3. The real property, which is the subject of this action, is located at 300 – 600 West Orr Street, Anderson, South Carolina, situate in Anderson County, South Carolina and bearing Anderson County Tax Map Number 123-24-03-003 and is more particularly described as follows:

All that certain lot or parcel of land, situate, lying and being in Anderson, South Carolina, in Anderson County, more particularly described as follows: BEGINNING at a point 22.5 feet northeastwardly, measured at a right angle, from a point in the center line of the main track of Carolina and Northwestern Railway Company, 1997 feet northwestwardly, measured along said center line, from Milepost 10 on said railroad; and running thence southeastwardly, along the southerly boundary of property conveyed by Blue Ridge Railway Company to Abner J. Nagin, et al, by deed dated November 15, 1960, recorded in the Office of the Clerk of Court for Anderson County, in Book 12-N, at Page 60, a distance of 150 feet, more or less, to the southeasterly corner of said property; thence northeastwardly along the easterly boundary of the property conveyed to by said deed of November 15, 1960, a distance of 128.5 feet; thence northeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 60 feet; thence southeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 200 feet; thence southwestwardly, along a line forming an interior angle of 90 degrees with the preceding course, a distance of 231 feet, more or less, to a point 22.5 feet northwestwardly measured at right angle from the center line of the main track of Carolina and Northwestern Railway Company; thence northwestwardly parallel to and at all points 22.5 feet from the center line of said main track, a distance of 227 feet, more or less, to the point of beginning containing 0.61 of an acre, more or less, and being located substantially as shown outlined in orange on print of drawing No. 5/3434, dated September 10, 1964, and annexed to deed of Blue Ridge Railway Company to Kent Steel of South Carolina, Incorporated, recorded in the Office of the Clerk of Court for Anderson County, South Carolina in Deed Book 16-V, at Page 816; SAVING and RESERVING unto Blue Ridge Railway Company a right of way or easement for said portion of tract 20 feet

in width or 10 feet on either side of the center line of said portion of track, together with such additional right of way as may be necessary to accommodate cut slopes, fill slopes and ditches for said portion of spur track; and also RESERVING unto Blue Ridge Railway Company the right to remove said track in the future if Blue Ridge Railway Company so elects.

This is the same property conveyed unto Cecil R. Dyar by deed of Alice Donnelly, Phillip Halle, Executor of Evelyn B. Nagin Estate, Beatrice Penner, Michael J. Cryne, Jr., Bernice C. Sorokach and Robert F. Cryne dated February 7, 1994 and recorded in Deed Book 1863, at Page 263, records of Anderson County, South Carolina.

AND ALSO:

All that certain piece or parcel of land situate, lying and being in Anderson, South Carolina, more particularly described as follows: BEGINNING at an point 57.8 feet northeastwardly, measured at a right angle from point in the center line of the main track now or formerly of Blue Ridge Railway Company, 1850 feet northwestwardly measured along the center line of said main track from Milepost 10; and running thence northwestwardly a distance of 150 feet, more or less, to a point 22.5 feet northeastwardly, measured at a right angle, from the center line of said main track; thence Northwestwardly a distance of 287 feet, more or less, to a point 18.1 feet northeastwardly measured at a right angle, from the center line of said main track, thence northeastwardly parallel to 1.5 feet northeastwardly from the northwesterly line of an existing building or of said line as projected, a distance of 60 feet; thence southeastwardly, at a right angle to preceding course, a distance of 430 feet; thence southwestwardly a distance of 117 feet, more or less, to the point of beginning; containing .90 acres, more or less, and being located substantially as shown in orange on print of drawing No. B-7268, dated July 20, 1960, annexed to deed of Blue Ridge Railway Company by Abner J. Nagin, et al, dated November 15, 1960, SUBJECT however to such rights as Duke Power Company may have to maintain upon said premises its existing transformer, power lines and supports thereof located. RESERVING unto Blue Ridge Railway Company the portion of Tract 11-11 located upon and within the aforesaid described premises together with a right of way or easement for said portion of tract 16 feet in width or 8 feet on either side of the center line of said portion of tract.

This is the same property conveyed unto Cecil R. Dyar by deed of Alice Donnelly, Phillip Halle, Executor of Evelyn B. Nagin Estate, Beatrice Penner, Michael J. Cryne, Jr., Bernice C. Sorokach and Robert F. Cryne dated February 7, 1994 and recorded in Deed Book 1863, at Page 263, records of Anderson County, South Carolina.

4. The real property which is the subject of this action is not an owner-occupied dwelling within the Supreme Court's Administrative Order dated May 2, 2011 and, therefore, Moats is not entitled to foreclosure intervention.

5. On January 29, 2011, Dyar entered into the Agreement regarding the property in question. Under the terms of that Agreement, Moats agreed to pay Dyar the sum of Two Hundred and Fifty Thousand and no/100 (\$250,000.00) Dollars (“Purchase Price”) as follows: Down Payment of \$37,500.00 and the balance of \$212,500.00, with interest at the rate of six percent (6%) per annum, payable in monthly installments of Four Thousand, One Hundred Eight and 22/100 (\$4,108.22) Dollars each beginning May 1, 2011 and continuing on the same day each month thereafter through April 1, 2016 with principal balance due, together with accrued interest, to be paid on or before March 31, 2016. Thereafter, by agreement, the date that the balance was due was extended until March 16, 2021 with all other terms and conditions to remain the same.

6. The Agreement further provided that, upon payment of the Purchase Price, Dyar would convey to Moats title to the premises by General Warranty Deed, subject to the items referenced therein.

7. Moats is in default under the terms of said Agreement having failed and neglected to pay the installments due since December 31, 2017 and Dyar has elected, as is his right under the Agreement, to declare all sums due under the Agreement immediately due and payable entitling Dyar to seek a sale of the property and to foreclose all of Moats’ interest in and to said premises.

8. Dyar alleges that Moats has no equity in the property which is the subject of this action and that Moats has made no improvements to the subject real estate which he is entitled to be reimbursed under the plain language of the Agreement.

9. The payments made under the terms of this Agreement are representative of the fair market rental value of the subject real property.

10. At the damages hearing, Dyar presented the testimony of Joshua Pruet-Lange, a registered tax preparer with the Internal Revenue Service and a bookkeeper since 2016 employed by Electric City

Tax and Bookkeeping, formerly Shiflett Bookkeeping and Tax. Mr. Pruet-Lange examined the records of payments made under the Agreement by Moats to Dyar and testified that, in his opinion, the balance owed as of February 1, 2022 is \$222,415.95. Moats presented no expert testimony at the hearings regarding the amount owed under the Agreement nor any evidence at the hearings pertaining to any offsets/improvements, if any, to which he claims he is entitled or the value thereof. Further, Moats has failed to present at the hearings any testimony as to any equity he is entitled to and/or to receive the benefit for, other than “sweat equity.”

11. The balance due under the Agreement is the sum of \$222,415.95 as of February 1, 2022 together with attorney’s fees, any advance(s) for taxes and insurance, and the costs of this action, including Court costs.

12. The amount due and owing on the Agreement, with interest at the legal rate of 7.25% after February 1, 2022, together with 15% as attorney’s fees, advances for taxes and insurance, and the costs of this action is:

(a) Principal & Interest due as of February 1, 2022	\$222,415.95
(b) Interest due at 6% per annum thereafter through April 1, 2022 (\$1,112.08 per month)	\$ 2,224.16
(c) Costs of Collection prior to Hearing	\$ 3,677.84
(d) Attorney’s Fees (see attached Affidavit)	\$ 22,296.09
Total Debt Secured by Agreement (including interest to date)	\$ 250,614.04

CONCLUSIONS OF LAW

NOW, ON MOTION OF DYAR’S ATTORNEY, James W. Logan, Jr. of Logan & Jolly, LLP,:

IT IS ORDERED, ADJUDGED AND DECREED:

1. That there is due to Dyar on the Agreement set forth in the Complaint the sum of \$250,614.04 representing the total debt due Dyar as set out in Paragraph 12 supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

2. The amount due in the preceding Paragraph (the "Total Debt" as set forth in Paragraph 12 supra and later accrued interest on the principal) shall constitute the total debt due Dyar and shall bear interest hereafter at the rate of 6% per annum.

3. That Moats is liable for the aforesaid amount owed on the Bond for Title shall on or before the date of sale of the property hereinafter described, pay to Dyar, or Dyar's attorney the amount aforesaid, together with the costs and disbursements of this action.

4. That Moats, who is liable for the aforesaid amount owed on the Agreement, shall, on or before the date of the sale of the property hereinafter described, pay to Dyar or Dyar's attorney the amount aforesaid, together with the costs and disbursements of this action.

5. That, on default of payment at or before the time herein indicated, the subject property described in the Complaint, as hereinafter set forth, be sold by the Honorable Steven C. Kirven, Master in Equity for Anderson County, South Carolina at public auction at Courtroom Number Two on the Third Floor of the Courthouse for Anderson County, in the City of Anderson, County of Anderson, State of South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales shall be on the next Tuesday succeeding such holiday), on the following terms, that is to say:

(a) FOR CASH: The Master will require a deposit of five (5%) percent of the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance

with the bid, but in case of non-compliance within twenty (20) days same to be forfeited and applied to the costs of Dyar's debt;

(b) Interest on the balance of the bid shall be paid to the day of compliance at the rate of 6% per annum.

(c) The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

(d) Purchaser to pay for deed stamps and costs of recording the deed.

6. If Dyar be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and indebtedness of Dyar in full, Dyar may pay to the Master in Equity only the amount of costs and expenses crediting the balance of the bid on the indebtedness.

7. That the Master in Equity, will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. Dyar, or any other party to this action, may become a purchaser at such sale, and that if, upon sale being made, the Purchaser or Purchasers should fail to comply with the terms thereof within twenty (20) days after the date of sale, then the undersigned Master in Equity may advertise said premises for sale on the next or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

8. Personal or deficiency judgment being waived the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

9. That the undersigned Master do apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian ad Litem fee or fees of attorneys appointed under the Court;

NEXT: To the payment to Dyar or Dyar's attorney, of the amount owed on the Agreement and interest or so much thereof as the purchase money will pay.

NEXT: Any surplus will be held pending further Order of the Court.

10. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than Moats in possession herein, the Sheriff of Anderson County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

11. And it is further ORDERED, ADJUDGED AND DECREED that Moats, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in said premises so sold, or any part thereof.

12. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the name of Dyar who is the titleholder of the property at the time of the filing of the within action, and the name of the grantee, and the Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

13. The Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to the issuance of the Order of Ejection.

14. The following is a description of the premises herein to be sold:

All that certain lot or parcel of land, situate, lying and being in Anderson, South Carolina, in Anderson County, more particularly described as follows: BEGINNING at a point 22.5 feet northeastwardly, measured at a right angle, from a point in the center line of the main track of Carolina and Northwestern Railway Company, 1997 feet northwestwardly, measured along said center line, from Milepost 10 on said railroad; and running thence southeastwardly, along the southerly boundary of property conveyed by Blue Ridge Railway Company to Abner J. Nagin, et al, by deed dated November 15, 1960, recorded in the Office of the Clerk of Court for Anderson County, in Book 12-N, at Page 60, a distance

of 150 feet, more or less, to the southeasterly corner of said property; thence northeastwardly along the easterly boundary of the property conveyed to by said deed of November 15, 1960, a distance of 128.5 feet; thence northeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 60 feet; thence southeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 200 feet; thence southwestwardly, along a line forming an interior angle of 90 degrees with the preceding course, a distance of 231 feet, more or less, to a point 22.5 feet northwestwardly measured at right angle from the center line of the main track of Carolina and Northwestern Railway Company; thence northwestwardly parallel to and at all points 22.5 feet from the center line of said main track, a distance of 227 feet, more or less, to the point of beginning containing 0.61 of an acre, more or less, and being located substantially as shown outlined in orange on print of drawing No. 5/3434, dated September 10, 1964, and annexed to deed of Blue Ridge Railway Company to Kent Steel of South Carolina, Incorporated, recorded in the Office of the Clerk of Court for Anderson County, South Carolina in Deed Book 16-V, at Page 816; SAVING and RESERVING unto Blue Ridge Railway Company a right of way or easement for said portion of tract 20 feet in width or 10 feet on either side of the center line of said portion of track, together with such additional right of way as may be necessary to accommodate cut slopes, fill slopes and ditches for said portion of spur track; and also RESERVING unto Blue Ridge Railway Company the right to remove said track in the future if Blue Ridge Railway Company so elects.

This is the same property conveyed unto Cecil R. Dyar by deed of Alice Donnelly, Phillip Halle, Executor of Evelyn B. Nagin Estate, Beatrice Penner, Michael J. Cryne, Jr., Bernice C. Sorokach and Robert F. Cryne dated February 7, 1994 and recorded in Deed Book 1863, at Page 263, records of Anderson County, South Carolina.

AND ALSO:

All that certain piece or parcel of land situate, lying and being in Anderson, South Carolina, more particularly described as follows: BEGINNING at an point 57.8 feet northeastwardly, measured at a right angle from point in the center line of the main track now or formerly of Blue Ridge Railway Company, 1850 feet northwestwardly measured along the center line of said main track from Milepost 10; and running thence northwestwardly a distance of 150 feet, more or less, to a point 22.5 feet northeastwardly, measured at a right angle, from the center line of said main track; thence Northwestwardly a distance of 287 feet, more or less, to a point 18.1 feet northeastwardly measured at a right angle, from the center line of said main track, thence northeastwardly parallel to 1.5 feet northeastwardly from the northwesterly line of an existing building or of said line as projected, a distance of 60 feet; thence southeastwardly, at a right angle to preceding course, a distance of 430 feet; thence southwestwardly a distance of 117 feet, more or less, to the point of beginning; containing .90 acres, more or less, and being located substantially as shown in orange on print of drawing No. B-7268, dated July 20, 1960, annexed to deed of Blue Ridge Railway Company by Abner J. Nagin, et al, dated November 15, 1960, SUBJECT however to such rights as Duke Power Company may have to maintain upon said premises its existing transformer, power lines and supports thereof located. RESERVING unto Blue Ridge

Railway Company the portion of Tract 11-11 located upon and within the aforesaid described premises together with a right of way or easement for said portion of tract 16 feet in width or 8 feet on either side of the center line of said portion of tract.

This is the same property conveyed unto Cecil R. Dyar by deed of Alice Donnelly, Phillip Halle, Executor of Evelyn B. Nagin Estate, Beatrice Penner, Michael J. Cryne, Jr., Bernice C. Sorokach and Robert F. Cryne dated February 7. 1994 and recorded in Deed Book 1863, at Page 263, records of Anderson County, South Carolina.

IT IS SO ORDERED this _____ day of July. 2022.

The Honorable R. Scott Sprouse
Tenth Judicial Circuit



Anderson Common Pleas

Case Caption: Moats Construction Inc VS Cecil R Dyar

Case Number: 2020CP0401202

Type: Order/Damages

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2022-07-21 09:56:18 page 11 of 11

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
Cecil Dyar,)
)
 Plaintiff,)
vs.)
)
Moats Construction, LLC,)
)
 Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No. _____

SUMMONS

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 subscriber, James W. Logan, Jr., P.O. Box 259, Anderson, South Carolina, 29621, within thirty (30) days after the service hereof, and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs will apply to the Court for a judgment by default against you for the relief demanded in the Amended Complaint.

s/James W. Logan, Jr.
James W. Logan, Jr. (#3385)
Logan & Jolly, LLP
P.O. Box 259
Anderson, SC 29622
(864) 226-1910
(864) 226-1931 (fax)
logan@loganandjolly.com
Attorneys for Plaintiff

DATED: November 1, 2019.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	Civil Action No. _____
Cecil Dyar,	)	
	)	
Plaintiff,	)	
vs.	)	COMPLAINT
	)	
Moats Construction, LLC,	)	
	)	
Defendant.	)	
_____	)	

The Plaintiff complaining of the Defendant alleges:

1. The Plaintiff is a resident of Anderson, South Carolina.
2. The Defendant is a limited liability corporation organized and existing under the laws of the States of the United States of America, authorized to do and doing business in the State of South Carolina.
3. The real property, the subject of this action, is located at 300 – 600 West Orr Street, Anderson, South Carolina, situate in Anderson County, South Carolina and bearing Anderson County Tax Map Number 123-24-03-003.
4. On January 29, 2011, Plaintiff entered into an Agreement for Sale and Purchase of Real Property (“Agreement”) regarding the real property referenced hereinabove. Under the terms of that Agreement, the Defendant agreed to pay the Plaintiff the sum of Two Hundred and Fifty Thousand and no/100 (\$250,000.00) Dollars (“Purchase Price”) as follows: Down Payment of \$37,500.00 and the balance of \$212,500.00, with interest at the rate of six percent (6%) per annum, payable in monthly installments of Four Thousand, One Hundred Eight and 22/100 (\$4,108.22) Dollars each beginning May 1, 2011 and continuing on the same day each month thereafter through

April 1, 2016 with the principal balance due, together with accrued interest, to be paid on or before March 31, 2016. Thereafter, by agreement, the date that the principal balance was due was extended until March 16, 2021 with all other terms and conditions to remain the same.

5. The Agreement further provided that, upon payment of the Purchase Price, the Plaintiff would convey to the Defendant title to the premises by General Warranty Deed, subject to the items referenced therein.

6. The Defendant is in default under the terms of the Agreement in that the Defendant has failed and neglected to pay the installments due, when due, despite demand therefor, and the Plaintiff as legal owner of the real property that is the subject of the Agreement has elected to cause the whole amount of said indebtedness to be immediately due and payable.

7. The balance owed under said Agreement is One Hundred Twenty Thousand, Eight Five and 58/100 Dollars (\$120,085.58), as of July 5, 2018, plus interest thereafter at the rate of six percent (6%), together with all costs and expenses incurred by Plaintiff, including not less than fifteen percent of the balance due under the Agreement as attorney's fees.

WHEREFORE, Plaintiff prays:

- (a) That the Defendant be declared to be in default under the terms of the Agreement;
- (b) That the Agreement be foreclosed and that the Defendant and all persons claiming under him be forever barred and foreclosed of all right, title and equity of redemption, if any, in and to said real property which is the subject of the Agreement;
- (c) That the Court order the Plaintiff to vacate the real property that is the subject of said Agreement;
- (d) That the Court declare that the Agreement is terminated and full possession of the real

property that is the subject of the Agreement be returned to the Plaintiff; and
(c) For such other and further relief as to the Court may seem just and proper.

s/James W. Logan, Jr.
James W. Logan, Jr.
Logan & Jolly, LLP
1805 North Boulevard (29621)
Post Office Box 259 (29622)
Anderson, South Carolina
864-226-1910
864-226-1931 (fax)
logan@loganandjolly.com

Attorneys for Plaintiff

Anderson, South Carolina

Dated: 11-1-2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
Moats Construction, Inc.	)	C.A. No. 2020-CP-04-_____
	)	
Plaintiff,	)	
	)	SUMMONS
vs.	)	
	)	
Cecil R. Dyar	)	
	)	
Defendants.	)	
	)	
_____	)	

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon the subscriber at 103-C Regency Commons Drive, Greer, SC 29650 within thirty (30) days after service hereof, exclusive of the day of service. If you fail to answer the Complaint within that time, the Plaintiff(s) will apply to the court for the relief demanded in the Complaint and a Judgment by Default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

/s/ Wendell L. Hawkins, Esq.
Wendell L. Hawkins (S.C. Bar #: 13583)
Hutson W. Harmon (S.C. Bar # 104147)
Wendell L. Hawkins, PA
103-C Regency Commons Dr. Greer, SC 29650
(864) 848-9370 (Ph) (864) 848-9759 (Fax)
wlh@wlhawkinslawfirm.com
hwh@wlhawkinslawfirm.com
Attorneys for Plaintiff

Greer, South Carolina
June 2, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
Moats Construction, Inc.	)	C.A. No. 2020-CP-04-_____
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	(Jury Trial Requested)
Cecil R. Dyar	)	
	)	
Defendants.	)	
	)	
_____	)	

Plaintiff, by and through the undersigned attorney, complaining of the named Defendants herein, would respectfully show this Court the following:

JURISDICTION AND VENUE

1. Plaintiff, Moats Construction, Inc. (hereinafter referred to as "Moats"), is a South Carolina Corporation and the Grantee of a Bond for Title/Contract for Deed (the "BFT") concerning the following Real Property located in Anderson County South Carolina:

Parcel 1

All that certain lot or parcel of land, situate, lying and being at Anderson, in Anderson County, South Carolina more particularly described as follows: BEGINNING at a point 22.5 feet northeastwardly, measured at a right angle, from a point in the center line of the main track of Carolina and Northwestern Railway Company, 1997 feet northwestwardly, measured along said center line, from Milepost 10 on said railroad; and running thence Southeastwardly, along the southerly boundary of property conveyed by Blue Ridge Railway Company to Abner J. Nagin ,et al, by deed dated November 15, 1960, (recorded in the Office of the Clerk of Court for Anderson County, S.C., in Book 12-N, at page 60) a distance of 150 feet, more or less, to the southeasterly corner of said property; thence northeastwardly along the easterly boundary of the property conveyed by said deed of November 15, 1960, a distance of 117 feet to the northeasterly corner of said property; thence northwestwardly along the northerly boundary of the property conveyed by said deed of November 15, 1960, a

distance of 128.5 feet; thence northeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 60 feet; thence southeastwardly along a line forming an interior angle of 90 degrees with a preceding course, a distance of 200 feet; thence southwestwardly, along a line forming an interior angle of 90 degrees with the preceding course of 231 feet, more or less, to a point 22.5 feet northeastwardly, measured at right angle, from the center line of the main track of Carolina and Northwestern Railway Company; thence northwestwardly, parallel to and at all points 22.5 feet from the center line of said main track, a distance of 227 feet, more or less, to the point of beginning; containing 0.61 of an acre, more or less, and being located substantially as shown outlined in orange on print of drawing No. 5/3434, dated September 10, 1964, and annexed to deed of Blue Ridge Railway Company to Kent Steel of South Carolina, Incorporated, recorded in the Office of the Clerk of Court for Anderson County, South Carolina, in Deed Book 16-V, at Page 816. SAVING AND EXCEPTING the portion of spur track of Blue Ridge Railway Company located upon and within the aforescribed premises and the RESERVATION unto Blue Ridge Railway Company a right of way or easement for said portion of track 20 feet in width or 10 feet on either side of the center line of said portion of track, together with such additional right of way as may be necessary to accommodate cut slopes, fill slopes and ditches for said portion of spur track; and also the RESERVATION unto Blue Ridge Railway Company the right to remove said track in the future if Blue Ridge Railway Company so elects.

Parcel 2

Also, all that certain lot or parcel of land situate, lying and being at Anderson, South Carolina, more particularly described as follows: BEGINNING at a point 57.5 feet northeastwardly, measured at a right angle, from point in the center line of the main track now or formerly of Blue Ridge Railway Company, 1850 feet northwestwardly, measured along the center line of said main track, from Milepost 10; and running thence northwestwardly a distance of 150 feet, more or less, to a point 22.5 feet northeastwardly, measured at a right angle, from the center line of said main track; thence Northwestwardly a distance of 287 feet, more or less, to a point 18.1 feet northeastwardly, measured at a right angle, from the center line of said main track; thence northeastwardly parallel to and 1.5 feet northwestwardly from the northwesterly line of an existing building or of said line as projected, a distance of 60 feet; thence southeastwardly, at a right angle to preceding course, a distance of 430 feet; thence southwestwardly, a distance of 117 feet, more or less, to the point of beginning; containing 0.98 acres, more or less, and being located substantially as shown outlined in orange in print of Drawing No. B-7268, dated July 20, 1960, annexed to deed of Blue Ridge Railway Company Abner J. Nagin, et al, dated November 15, 1960, SUBJECT, however, to

such rights as Duke Power Company may have to maintain upon said premises its existing transformer, power lines, and supports thereof located thereon;

And also SUBJECT to the RESERVATION, unto Blue Ridge Railway Company the portion of Tract 11-11 located upon and within the aforescribed premises, together with a right of way or easement for said portion of tract 16 feet in width or 8 feet on either side of the center line of said portion of track.

TMS# 123-24-030.00

This being the same property conveyed to Cecil R. Dyar by deed of Alice Donnelly et al. dated February 7th, 1994 and recorded at the Anderson County Register of Deeds Office on April 28, 1994 in Deed Book 1863, Page 263 et seq..

(the "Property")

2. Defendant, Cecil R. Dyar ("Dyar"), is the fee simple owner of the Property and Grantor of the BFT unto the Moats concerning real property in Anderson County, South Carolina.
3. For the forgoing reasons jurisdiction and venue are proper with this Court.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract-Breach of Covenant of Good Faith and Fair Dealing)

4. Plaintiff reiterates and re-states the allegations of its Complaint as if repeated herein verbatim.
5. The BFT ("**Exhibit A**") between Moats and Dyar is a contract between Moats and Dyar. Dyar or his agent drafted the BFT.
6. Paragraph 3(c) of the BFT required, *inter alia*, that Moats pay a monthly escrow payment to Dyar so that Dyar could pay for casualty insurance and ad valorem taxes on the Property. Paragraph 5 of the BFT, however, required Moats to pay all ad valorem taxes and special assessments directly as they came due. The parties modified these provisions of the BFT such

that Dyar was directly responsible for keeping casualty insurance on the Property and paying ad valorem taxes with Moats reimbursing Dyar which Moats did. Sometime in the year 2017 a storm blew off a section of the roof and Dyar made a claim on the policy. The insurer tendered \$3.31 for the claim and Dyar settled for that payment. The cost to repair that section of the roof is estimated to range from \$125,000.00-\$150,000.00. Dyar then allowed the policy to lapse and Moats has not been able to repair the roof because of the cost. The building is now uninsurable.

7. Implied in the contract is that Dyar as the owner of the insurance policy would use good faith and fair dealing in handling claims on the policy which he did not. As a result, Dyar breached the covenant of good faith and fair dealing and therefore the contract itself and Dyar is liable to Moats in the amount of money to repair the roof, subsequent damages to the building and the loss of use of the building.

8. Furthermore, the BFT entitled Moats to exclusive possession of the Property. Dyar breached the contract in that he left numerous pieces of equipment on the Property interfering with Moats' exclusive possession of the Property. These actions constitute a breach of contract and Dyar is liable to Moats for the fair market rental value of the Property in an amount to be determined by the trier of fact.

FOR A SECOND CAUSE OF ACTION
(Negligence)

9. Plaintiff reiterates and re-states the allegations of its Complaint as if repeated herein verbatim.

10. Dyar undertook and owed Moats a duty of care to insure the building with casualty insurance and pursue claims for damage to the building for the benefit of Moats.

11. Dyar breached his duty of care to Moats by settling the insurance claim for Three and

31/100 Dollars (\$3.31).

12. As a result of Dyar's negligence, Moats has suffered actual damages in an amount to be determined by the trier of fact for the sum of money required to repair the roof, subsequent damages to the building and the loss of use of the building.

FOR A THIRD CAUSE OF ACTION
(Accounting & Set-Off)

13. Plaintiff reiterates and re-states the allegations of its Complaint as if repeated herein verbatim.

14. By letter dated January 5, 2018, Moats requested a payoff from Dyar which Dyar failed to provide.

15. Moats and Dyar disagree on the amount owed under the BFT to satisfy Moats' obligations thereunder and Moats requests an accounting of the sums due and an offset against such amounts due by any liability Dyar has to Moats under the previous allegations of this Complaint.

FOR A FOURTH CAUSE OF ACTION
(Specific Performance)

16. Plaintiff reiterates and re-states the allegations of its Complaint as if repeated herein verbatim.

17. The BFT is an obligation to transfer fee simple title to Moats upon payment of the debt, the balance of which is disputed.

18. Upon a determination of the debt, Moats is entitled to the transfer of fee simple ownership to Moats.

19. Moats prays this Court make a determination of the amount owed, and upon payment of such debt, the transfer of fee simple ownership unto Moats by Dyar or an order directing the Clerk

of Court to execute a deed to Moats.

WHEREFORE, the Plaintiff would pray unto this Court as follows, to wit:

1. That the Court protect the interest of the Plaintiff in this matter consistent with the pleadings herein;
2. With respect to the Plaintiff's cause of action for Breach of Contract, an entry of judgment against Dyar in favor of the Plaintiff for actual damages in an amount to be determined by the trier of fact along with pre-judgment and post judgment interest thereon at the legal rate;
3. With respect to the Plaintiff's cause of action for Negligence, an entry of judgment against Dyar in favor of the Plaintiff for damages an amount to be determined by the trier of fact along with pre-judgment and post judgment interest thereon at the legal rate;
4. With respect to Plaintiff's cause of action for Accounting & Setoff, a determination of any amount due to Dyar under the BFT as offset by any sums determined to be owed to Moats by Dyar;
5. With respect to Plaintiff's cause of action for Specific Performance, an entry of an Order directing Dyar or the Clerk of Court to convey fee simple title to the Property to Moats;
6. For a jury trial; and
7. For such other relief as the Court deems just and equitable.

Respectfully submitted,

/s/ Wendell L. Hawkins

Wendell L. Hawkins (S.C. Bar #: 13583)

Hutson W. Harmon (S.C. Bar # 104147)

Wendell L. Hawkins, PA

103-C Regency Commons Dr. Greer, SC 29650

(864) 848-9370 (Ph) (864) 848-9759 (Fax)

wlh@wlhawkinslawfirm.com

hwh@wlhawkinslawfirm.com

Attorneys for Plaintiff

Greer, South Carolina
June 2, 2020

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

AGREEMENT FOR SALE AND PURCHASE OF REAL PROPERTY

THIS AGREEMENT made effective January 29, 2011 between Cecil Dyar (hereinafter referred to as the "Seller") and Moats Construction, LLC (hereinafter referred to as "Purchaser")

1. PREMISES. The Seller agrees to sell and Purchaser agrees to purchase upon the terms and conditions and for the price set forth hereinafter the real property and improvements thereon located at 300-600 W. Orr Street, Anderson, South Carolina, 29625 and shown as Tax Map #123-24-03-003.
2. PURCHASE PRICE. The Purchase Price for the premises is Two Hundred Fifty Thousand and no/100 (\$250,000.00) dollars.
3. PAYMENT OF PURCHASE PRICE. The Purchase Price shall be paid in the following manner:
 - (a) Down-Payment. Purchaser has paid with the execution of these presents the sum of Thirty-Seven Thousand Five Hundred and no/100 (\$37,500.00) dollars, the receipt of which is hereby acknowledged.
 - (b) Balance Due. The balance due in the amount of Two hundred Twelve thousand five hundred and no/100 (\$212,500.00) Dollars with interest at the rate of six (6%) percent per annum shall be paid as follows: The principal balance shall be paid in sixty (60) successive monthly installments of Four thousand One hundred Eight and 22/100 (\$4,108.22) dollars each month beginning May 1, 2011 and continuing on the same day of each month thereafter through April 1, 2016 with the principal balance due together with accrued interest to be paid in full on or before March 31, 2016.
 - (c) Escrow Payments. Upon request of Seller, Purchaser shall pay along with each monthly installment of principal and interest 1/12th of annual estimated amount of ad valorem taxes and casualty insurance. It is agreed that Four Hundred Five and no/100ths (\$405.00) Dollars per month is the amount estimated to pay such annual costs but the Seller shall have the right to make reasonable adjustments to cover increased costs.
4. CONVEYANCE OF TITLE. Upon payment of the Purchase Price, the Seller shall convey to Purchaser title to the premises by General Warranty Deed, subject to the following:
 - (a) Ad Valorem taxes and special assessments for the City of Anderson and County of Anderson which have accrued but are not yet due.
 - (b) Rights of way and easements for public utility distribution lines.
 - (c) Restrictive covenants affecting the property.
 - (d) State of facts which may be revealed by a recent and accurate survey of the premises.

5. AD VALOREM TAXES AND SPECIAL ASSESSMENTS. All Ad Valorem taxes and special assessments imposed against the Premises by the County of Anderson, City of Anderson or any political subdivision thereof shall be prorated as of the date of this Contract, and thereafter the Purchaser agrees to pay all Ad Valorem taxes and special assessments against the Premises before the same becomes past due.

6. CLOSING COSTS. Upon transfer of title, Seller at its expense shall deliver the Deed of Title to Real Estate with South Carolina documentary stamps affixed thereto and Purchaser shall bear the expense of Anderson County recording taxes and all costs of recording the Deed and other documents of title.

7. DEFAULT. In the event the Purchaser defaults in making any payments provided for herein or in any other terms, provisions or covenants of this Contract, the Seller may, at its option, declare this Contract terminated and of no further force and effect, and will be entitled to immediate possession of the Premises and may retain all amounts paid by Purchaser to date of default as rent and liquidated damages. Seller may in the alternative, at its option, declare the entire balance of the Purchase Price due and payable without notice, and institute suit against the Purchaser seeking a sale of the property and foreclosure of Purchaser's rights.

8. PREPAYMENT. Purchaser may prepay the balance due in whole or in part at any time without penalty.

9. POSSESSION. Until Purchaser defaults in payment of sums to be paid hereunder or in performance of obligations to be performed hereunder, Purchaser shall be entitled to possession of the Premises, provided, the Purchaser shall not commit or suffer to exist any damage or destruction of the Premises.

10. RISK OF LOSS. Risk of loss by damage to or destruction of the Premises shall be upon the Purchaser during the term of this Agreement.

11. TIME OF ESSENCE. It is further agreed that the time of payment shall be an essential part of this Contract and all Covenants and agreements herein contained shall extend to and be obligatory upon the heirs, personal representatives and assigns of the respective parties.

12. LATE PAY PENALTY. The Purchaser agrees that if any payment is not paid when due and shall remain unpaid for more than ten (10) days from the due date, a late charge equal to five (5%) percent of the total payment shall be added to the payment due. The Purchaser agrees that the failure to pay the late charge when due shall be considered a default in this Contract and subject the Purchaser to immediate eviction.

13. ATTORNEY'S FEES. If this Contract is placed in the hands of an attorney for collection or for enforcing any of Seller's other rights hereunder, including any legal proceeding brought to sell said property, Purchaser agrees to pay all costs and expenses incurred by Seller including not less than Fifteen (15%) percent of the then balance due under this Contract as Attorney's fees.

14. INSURANCE. Purchaser agrees to keep the improvements on said real property insured against loss by fire or other casualty in a reputable fire insurance company in an amount of not less than the balance due to the Seller under this Contract and to have Seller named in said policy as an additional insured.

15. SELLER'S REMEDIES. In the event the Purchaser fails to pay the property taxes when due, or fails to pay the fire insurance premiums, the Seller may, at Seller's option, pay the same and add such amount to the indebtedness due to the Seller to bear interest at the same rate stated above.

16. ASSIGNMENT. The Purchaser shall have no right to assign this Contract or sublet the premises without prior written consent of Seller and any attempt to do so shall constitute a default in the terms and provisions of this Contract.

17. MAINTENANCE. The Purchaser shall maintain the Premises and all improvements thereon in the same good condition as the same was delivered to Purchaser, wear and tear excepted.

18. DISCLAIMER OF WARRANTIES. The Purchaser acknowledges that the Seller has made no representation to the Purchaser concerning the condition of the dwelling or any improvement upon the Premises. The Seller specifically disclaims all warranties which may exist by implication of law, including the warranty of habitability. The Purchaser acknowledges that Purchaser has made an inspection of the Premises and accepts the same "AS IS, WITH ALL FAULTS."

19. SURVIVAL OF THIS AGREEMENT. This Agreement and the terms hereof shall not be merged into the documents of conveyance at closing but shall survive and remain a binding contractual agreement between the parties after closing.

20. WASTE OR DESTRUCTION. Purchaser during possession shall not commit any waste of the premises or demolish any improvement or harvest any growing timber without the written consent of the Seller.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year above written.

IN THE PRESENCE OF:

Nancy M. Wright

Gerry Hayes

Cecil R. Dyar
Cecil Dyar, Seller

Moats Construction, LLC
Moats Construction, LLC, Buyer

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s) he saw the within named Cecil Dyar, as Seller, sign, seal and as their act and deed deliver the within Contract, and that (s) he with the other witness whose name is subscribed above witnessed the execution thereof.

Nancy M. Wright

Sworn to before me this 11
 day of March, 2011

Thomas S. Kintner (SEAL)
 Notary Public for South Carolina
 My Commission Expires 12-10-2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Moats Construction, LLC, as Purchaser, sign, seal and as their act and deed deliver the within Contract, and that (s)he with the other witness whose name is subscribed above witnessed the execution thereof.

Gerry Hayes

Sworn to before me this 11
 day of March, 2011

Thomas S. Kintner (SEAL)
 Notary Public for South Carolina
 My Commission Expires 12-10-2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CASE NO.: 2020-CP-04-01202
Moats Construction, Inc.,	)	
	)	
Plaintiff,	)	
	)	Answer and Counterclaim
v.	)	(Jury Trial Demanded)
	)	
Cecil R. Dyar,	)	
	)	
<u>Defendant.</u>	)	

The Defendant herein, answering and counterclaiming to the Complaint of the Plaintiff herein, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. The Defendant would show that the Plaintiff's Complaint fails to state facts sufficient to constitute causes of action against the Defendant and that the alleged causes of action so stated in said Complaint fail to state claims on which relief can be granted and, therefore, said Complaint should be dismissed as to the Defendant.

FOR A SECOND DEFENSE

2. The allegations contained in the first defense hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

3. The Defendant denies each and every allegation contained in the Plaintiff's Complaint not hereinafter specifically admitted, modified or explained.

4. The Defendant denies so much of the allegations contained in Paragraph 1 of the Plaintiff's Complaint regarding the TMS #123-24-030.00. Defendant would show that the correct tax map number for said property is #123-24-03-003. Defendant also denies that the Contract that is the subject of this action is a "BFT" and would show that the Contract is entitled "Agreement for Sale

and Purchase of Real Property” and will hereinafter be referred to as “Agreement”. The remaining allegations contained in said Paragraph 1 are admitted.

5. The Defendant admits the allegations contained in Paragraphs 2 and 3 of the Plaintiff’s Complaint as to the Agreement but denies said allegations as to a BFT.

6. In response to the allegations contained in Paragraph 4 of the Plaintiff’s Complaint, the Defendant incorporates herein by reference thereto his responses to Paragraphs 1 through 3 of the Plaintiff’s Complaint set forth above.

7. The Defendant admits so much of the allegations contained in Paragraph 5 of the Plaintiff’s Complaint that alleges that the Agreement is a contract between Moats & Dyar drafted by Dyar or his agent. All other allegations contained in Paragraph 5 of the Plaintiff’s Complaint are denied and strict proof is demanded.

8. The Defendant admits so much of the allegations contained in Paragraph 6 of the Plaintiff’s Complaint that reference Paragraph 3(c) and Paragraph 5 of the Agreement and prays reference to the terms and provisions contained therein. The Defendant denies all other allegations contained in Paragraph 6 of the Plaintiff’s Complaint and demands strict proof thereof. Further answering said allegations, the Defendant would show that a claim for roof damage in excess of \$30,000.00 was paid to the Defendant by the insurer in 2017 and, thereafter, delivered to the Plaintiff by the Defendant.

9. The Defendant denies the allegations contained in Paragraphs 7 and 8 of the Plaintiff’s Complaint and demands strict proof thereof.

10. In response to the allegations contained in Paragraph 9 of the Plaintiff’s Complaint, the Defendant incorporates herein by reference thereto his responses to Paragraphs 1 through 8 of the Plaintiff’s Complaint set forth above.

11. In answering the allegations contained in Paragraph 10 of the Plaintiff's Complaint, the Defendant would pray reference to the terms and provisions of the Agreement and would show that the Defendant has fully complied with all of his obligations thereunder. The remaining allegations contained in Paragraph 10 of the Plaintiff's Complaint are denied and strict proof is demanded.

12. The Defendant denies the allegations contained in Paragraphs 11 and 12 of the Plaintiff's Complaint and demands strict proof thereof.

13. In response to the allegations contained in Paragraph 13 of the Plaintiff's Complaint, the Defendant incorporates herein by reference thereto his responses to Paragraphs 1 through 12 of the Plaintiff's Complaint set forth above.

14. The Defendant denies the allegations contained in Paragraphs 14 and 15 of the Plaintiff's Complaint and demands strict proof thereof. Further answering said allegations, the Defendant would show that he has repeatedly asked the Plaintiff to furnish him with information regarding or support for any disagreement the Plaintiff may have to the payoff the Defendant has previously provided to the Plaintiff and, to date, the Plaintiff has refused to provide any such information/support.

15. In response to the allegations contained in Paragraph 16 of the Plaintiff's Complaint, the Defendant incorporates herein by reference thereto his responses to Paragraphs 1 through 15 of the Plaintiff's Complaint set forth above.

16. The Defendant denies the allegations contained in Paragraph 17 of the Plaintiff's Complaint and demands strict proof thereof. In further answering the allegations contained in said Paragraph 17 of the Plaintiff's Complaint, the Defendant would show that any such obligation to transfer fee simple title to the Plaintiff is conditioned upon the full payment by the Plaintiff to the

Defendant of the indebtedness and/or balance owed to the Defendant due under the terms and provisions of the Agreement. The Defendant would further show that prior to the filing of the present action by the Plaintiff, the Defendant attempted to serve the Plaintiff with a Summons and Complaint filed on November 1, 2019 (copy attached – Exhibit 1) to foreclose the Agreement in question. Service by Certified Mail was then attempted on the Plaintiff based upon information available through the Office of the Secretary of State for South Carolina, but that service was declined. Thereafter, personal service of said Summons and Complaint was attempted by a duly authorized process server. However, when personal service was attempted, the Plaintiff pulled a weapon (gun) on the process server and refused to accept service, after which the Anderson County Sheriff's Office was contacted and an incident report was filed with the Sheriff's Office. In view of these events, it is the position of the Defendant that this case must proceed to trial as if the Defendant was the first to file as he clearly was.

17. The Defendant denies the allegations contained in Paragraphs 18 and 19 of the Plaintiff's Complaint and demands strict proof thereof.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM

18. The allegations contained in this Answer as set forth above are incorporated herein and made a part of this Counterclaim by reference thereto.

19. The real property, the subject of this action, is located at 300 – 600 West Orr Street, Anderson, South Carolina, situate in Anderson County, South Carolina and bearing Anderson County Tax Map Number 123-24-03-003.

20. On January 29, 2011, Defendant entered into an Agreement for Sale and Purchase of Real Property ("Agreement") regarding the real property referenced hereinabove. Under the terms of that Agreement, the Plaintiff agreed to pay the Defendant the sum of Two Hundred and Fifty Thousand

and no/100 (\$250,000.00) Dollars ("Purchase Price") as follows: Down Payment of \$37,500.00 and the balance of \$212,500.00, with interest at the rate of six percent (6%) per annum, payable in monthly installments of Four Thousand, One Hundred Eight and 22/100 (\$4,108.22) Dollars each beginning May 1, 2011 and continuing on the same day each month thereafter through April 1, 2016 with the principal balance due, together with accrued interest, to be paid on or before March 31, 2016. Thereafter, by agreement, the date that the principal balance was due was extended until March 16, 2021 with all other terms and conditions to remain the same.

21. The Agreement further provided that, upon payment of the Purchase Price, the Defendant would convey to the Plaintiff title to the premises by General Warranty Deed, subject to the items referenced therein.

22. The Plaintiff is in default under the terms of the Agreement in that the Plaintiff has failed and neglected to pay the installments due, when due, despite demand therefore, and the Defendant as legal owner of the real property that is the subject of the Agreement has elected to cause the whole amount of said indebtedness to be immediately due and payable.

23. The balance owed under said Agreement is One Hundred Twenty Thousand, Eight Five and 58/100 Dollars (\$120,085.58), as of July 5, 2018, plus interest thereafter at the rate of six percent (6%), together with all costs and expenses incurred by Defendant, including not less than fifteen percent of the balance due under the Agreement as attorney's fees.

WHEREFORE, Defendant prays:

- (a) That the Plaintiff's Complaint be dismissed with prejudice;
- (b) That the Plaintiff be declared to be in default under the terms of the Agreement;

- (c) That the Agreement be foreclosed and that the Plaintiff and all persons claiming under him be forever barred and foreclosed of all right, title and equity of redemption, if any, in and to said real property which is the subject of the Agreement;
- (d) That the Court order the Plaintiff to vacate the real property that is the subject of said Agreement;
- (e) That the Court declare that the Agreement is terminated and full possession of the real property that is the subject of the Agreement be returned to the Defendant; and
- (f) For such other and further relief as to the Court may seem just and proper.

LOGAN & JOLLY, LLP

s/James W. Logan, Jr.

James W. Logan, Jr.

Post Office Box 259 (29622)

Anderson, South Carolina

864-226-1910

864-226-1931 (fax)

logan@loganandjolly.com

Attorneys for Defendant

June 23, 2020

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

Civil Action No. _____

Cecil Dyar,)

Plaintiff,)

vs.)

SUMMONS

Moats Construction, LLC,)

Defendant.)

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 subscriber, James W. Logan, Jr., P.O. Box 259, Anderson, South Carolina, 29621, within thirty (30) days after the service hereof, and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs will apply to the Court for a judgment by default against you for the relief demanded in the Amended Complaint.

s/James W. Logan, Jr.

James W. Logan, Jr. (#3385)

Logan & Jolly, LLP

P.O. Box 259

Anderson, SC 29622

(864) 226-1910

(864) 226-1931 (fax)

logan@loganandjolly.com

Attorneys for Plaintiff

DATED: November 1, 2019.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	Civil Action No. _____
Cecil Dyar,	)	
	)	
Plaintiff,	)	
vs.	)	COMPLAINT
	)	
Moats Construction, LLC,	)	
	)	
Defendant.	)	
_____	)	

The Plaintiff complaining of the Defendant alleges:

1. The Plaintiff is a resident of Anderson, South Carolina.
2. The Defendant is a limited liability corporation organized and existing under the laws of the States of the United States of America, authorized to do and doing business in the State of South Carolina.
3. The real property, the subject of this action, is located at 300 – 600 West Orr Street, Anderson, South Carolina, situate in Anderson County, South Carolina and bearing Anderson County Tax Map Number 123-24-03-003.
4. On January 29, 2011, Plaintiff entered into an Agreement for Sale and Purchase of Real Property (“Agreement”) regarding the real property referenced hereinabove. Under the terms of that Agreement, the Defendant agreed to pay the Plaintiff the sum of Two Hundred and Fifty Thousand and no/100 (\$250,000.00) Dollars (“Purchase Price”) as follows: Down Payment of \$37,500.00 and the balance of \$212,500.00, with interest at the rate of six percent (6%) per annum, payable in monthly installments of Four Thousand, One Hundred Eight and 22/100 (\$4,108.22) Dollars each beginning May 1, 2011 and continuing on the same day each month thereafter through

April 1, 2016 with the principal balance due, together with accrued interest, to be paid on or before March 31, 2016. Thereafter, by agreement, the date that the principal balance was due was extended until March 16, 2021 with all other terms and conditions to remain the same.

5. The Agreement further provided that, upon payment of the Purchase Price, the Plaintiff would convey to the Defendant title to the premises by General Warranty Deed, subject to the items referenced therein.

6. The Defendant is in default under the terms of the Agreement in that the Defendant has failed and neglected to pay the installments due, when due, despite demand therefor, and the Plaintiff as legal owner of the real property that is the subject of the Agreement has elected to cause the whole amount of said indebtedness to be immediately due and payable.

7. The balance owed under said Agreement is One Hundred Twenty Thousand, Eight Five and 58/100 Dollars (\$120,085.58), as of July 5, 2018, plus interest thereafter at the rate of six percent (6%), together with all costs and expenses incurred by Plaintiff, including not less than fifteen percent of the balance due under the Agreement as attorney's fees.

WHEREFORE, Plaintiff prays:

- (a) That the Defendant be declared to be in default under the terms of the Agreement;
- (b) That the Agreement be foreclosed and that the Defendant and all persons claiming under him be forever barred and foreclosed of all right, title and equity of redemption, if any, in and to said real property which is the subject of the Agreement;
- (c) That the Court order the Plaintiff to vacate the real property that is the subject of said Agreement;
- (d) That the Court declare that the Agreement is terminated and full possession of the real

property that is the subject of the Agreement be returned to the Plaintiff; and

(c) For such other and further relief as to the Court may seem just and proper.

s/James W. Logan, Jr.
James W. Logan, Jr.
Logan & Jolly, LLP
1805 North Boulevard (29621)
Post Office Box 259 (29622)
Anderson, South Carolina
864-226-1910
864-226-1931 (fax)
logan@loganandjolly.com

Attorneys for Plaintiff

Anderson, South Carolina

Dated: 11-1-2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CASE NO.: 2020-CP-04-01202
Moats Construction, Inc.,	)	
	)	
Plaintiff,	)	
	)	Affidavit of Default
v.	)	
	)	
Cecil R. Dyar,	)	
	)	
Defendant.	)	

Personally appeared before me, the undersigned, who being duly sworn, deposes and says that more than thirty (30) days, exclusive of the day of service, have elapsed since service of the Answer and Counterclaim upon Plaintiff, Moats Construction, Inc., and that he has received no Reply to the Defendant's Counterclaims or other pleadings in this action and the Plaintiff is now in default. A copy of the filed and served Answer and Counterclaim is attached to this Affidavit as Exhibit A.

LOGAN & JOLLY, LLP

BY

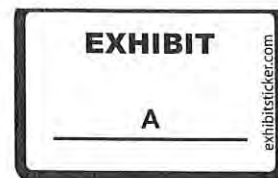
James W. Logan, Jr.
 SC Bar No. 3385
 P.O. Box 259
 Anderson, South Carolina 29622
 (864) 226-1910

SWORN to before me this

15th day of February, 2021.

Kimberly R. Maaluy
 Notary Public for South Carolina

My Commission expires: 3/26/2028



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) CASE NO.: 2020-CP-04-01202
Moats Construction, Inc.,)
Plaintiff,)
v.) **Answer and Counterclaim**
Cecil R. Dyar,) (Jury Trial Demanded)
Defendant.)

The Defendant herein, answering and counterclaiming to the Complaint of the Plaintiff herein, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. The Defendant would show that the Plaintiff's Complaint fails to state facts sufficient to constitute causes of action against the Defendant and that the alleged causes of action so stated in said Complaint fail to state claims on which relief can be granted and, therefore, said Complaint should be dismissed as to the Defendant.

FOR A SECOND DEFENSE

2. The allegations contained in the first defense hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

3. The Defendant denies each and every allegation contained in the Plaintiff's Complaint not hereinafter specifically admitted, modified or explained.

4. The Defendant denies so much of the allegations contained in Paragraph 1 of the Plaintiff's Complaint regarding the TMS #123-24-030.00. Defendant would show that the correct tax map number for said property is #123-24-03-003. Defendant also denies that the Contract that is the subject of this action is a "BFT" and would show that the Contract is entitled "Agreement for Sale

and Purchase of Real Property” and will hereinafter be referred to as “Agreement”. The remaining allegations contained in said Paragraph 1 are admitted.

5. The Defendant admits the allegations contained in Paragraphs 2 and 3 of the Plaintiff’s Complaint as to the Agreement but denies said allegations as to a BFT.

6. In response to the allegations contained in Paragraph 4 of the Plaintiff’s Complaint, the Defendant incorporates herein by reference thereto his responses to Paragraphs 1 through 3 of the Plaintiff’s Complaint set forth above.

7. The Defendant admits so much of the allegations contained in Paragraph 5 of the Plaintiff’s Complaint that alleges that the Agreement is a contract between Moats & Dyar drafted by Dyar or his agent. All other allegations contained in Paragraph 5 of the Plaintiff’s Complaint are denied and strict proof is demanded.

8. The Defendant admits so much of the allegations contained in Paragraph 6 of the Plaintiff’s Complaint that reference Paragraph 3(c) and Paragraph 5 of the Agreement and prays reference to the terms and provisions contained therein. The Defendant denies all other allegations contained in Paragraph 6 of the Plaintiff’s Complaint and demands strict proof thereof. Further answering said allegations, the Defendant would show that a claim for roof damage in excess of \$30,000.00 was paid to the Defendant by the insurer in 2017 and, thereafter, delivered to the Plaintiff by the Defendant.

9. The Defendant denies the allegations contained in Paragraphs 7 and 8 of the Plaintiff’s Complaint and demands strict proof thereof.

10. In response to the allegations contained in Paragraph 9 of the Plaintiff’s Complaint, the Defendant incorporates herein by reference thereto his responses to Paragraphs 1 through 8 of the Plaintiff’s Complaint set forth above.

11. In answering the allegations contained in Paragraph 10 of the Plaintiff's Complaint, the Defendant would pray reference to the terms and provisions of the Agreement and would show that the Defendant has fully complied with all of his obligations thereunder. The remaining allegations contained in Paragraph 10 of the Plaintiff's Complaint are denied and strict proof is demanded.

12. The Defendant denies the allegations contained in Paragraphs 11 and 12 of the Plaintiff's Complaint and demands strict proof thereof.

13. In response to the allegations contained in Paragraph 13 of the Plaintiff's Complaint, the Defendant incorporates herein by reference thereto his responses to Paragraphs 1 through 12 of the Plaintiff's Complaint set forth above.

14. The Defendant denies the allegations contained in Paragraphs 14 and 15 of the Plaintiff's Complaint and demands strict proof thereof. Further answering said allegations, the Defendant would show that he has repeatedly asked the Plaintiff to furnish him with information regarding or support for any disagreement the Plaintiff may have to the payoff the Defendant has previously provided to the Plaintiff and, to date, the Plaintiff has refused to provide any such information/support.

15. In response to the allegations contained in Paragraph 16 of the Plaintiff's Complaint, the Defendant incorporates herein by reference thereto his responses to Paragraphs 1 through 15 of the Plaintiff's Complaint set forth above.

16. The Defendant denies the allegations contained in Paragraph 17 of the Plaintiff's Complaint and demands strict proof thereof. In further answering the allegations contained in said Paragraph 17 of the Plaintiff's Complaint, the Defendant would show that any such obligation to transfer fee simple title to the Plaintiff is conditioned upon the full payment by the Plaintiff to the

Defendant of the indebtedness and/or balance owed to the Defendant due under the terms and provisions of the Agreement. The Defendant would further show that prior to the filing of the present action by the Plaintiff, the Defendant attempted to serve the Plaintiff with a Summons and Complaint filed on November 1, 2019 (copy attached – Exhibit 1) to foreclose the Agreement in question. Service by Certified Mail was then attempted on the Plaintiff based upon information available through the Office of the Secretary of State for South Carolina, but that service was declined. Thereafter, personal service of said Summons and Complaint was attempted by a duly authorized process server. However, when personal service was attempted, the Plaintiff pulled a weapon (gun) on the process server and refused to accept service, after which the Anderson County Sheriff's Office was contacted and an incident report was filed with the Sheriff's Office. In view of these events, it is the position of the Defendant that this case must proceed to trial as if the Defendant was the first to file as he clearly was.

17. The Defendant denies the allegations contained in Paragraphs 18 and 19 of the Plaintiff's Complaint and demands strict proof thereof.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM

18. The allegations contained in this Answer as set forth above are incorporated herein and made a part of this Counterclaim by reference thereto.

19. The real property, the subject of this action, is located at 300 – 600 West Orr Street, Anderson, South Carolina, situate in Anderson County, South Carolina and bearing Anderson County Tax Map Number 123-24-03-003.

20. On January 29, 2011, Defendant entered into an Agreement for Sale and Purchase of Real Property ("Agreement") regarding the real property referenced hereinabove. Under the terms of that Agreement, the Plaintiff agreed to pay the Defendant the sum of Two Hundred and Fifty Thousand

and no/100 (\$250,000.00) Dollars (“Purchase Price”) as follows: Down Payment of \$37,500.00 and the balance of \$212,500.00, with interest at the rate of six percent (6%) per annum, payable in monthly installments of Four Thousand, One Hundred Eight and 22/100 (\$4,108.22) Dollars each beginning May 1, 2011 and continuing on the same day each month thereafter through April 1, 2016 with the principal balance due, together with accrued interest, to be paid on or before March 31, 2016. Thereafter, by agreement, the date that the principal balance was due was extended until March 16, 2021 with all other terms and conditions to remain the same.

21. The Agreement further provided that, upon payment of the Purchase Price, the Defendant would convey to the Plaintiff title to the premises by General Warranty Deed, subject to the items referenced therein.

22. The Plaintiff is in default under the terms of the Agreement in that the Plaintiff has failed and neglected to pay the installments due, when due, despite demand therefore, and the Defendant as legal owner of the real property that is the subject of the Agreement has elected to cause the whole amount of said indebtedness to be immediately due and payable.

23. The balance owed under said Agreement is One Hundred Twenty Thousand, Eight Five and 58/100 Dollars (\$120,085.58), as of July 5, 2018, plus interest thereafter at the rate of six percent (6%), together with all costs and expenses incurred by Defendant, including not less than fifteen percent of the balance due under the Agreement as attorney’s fees.

WHEREFORE, Defendant prays:

- (a) That the Plaintiff’s Complaint be dismissed with prejudice;
- (b) That the Plaintiff be declared to be in default under the terms of the Agreement;

- (c) That the Agreement be foreclosed and that the Plaintiff and all persons claiming under him be forever barred and foreclosed of all right, title and equity of redemption, if any, in and to said real property which is the subject of the Agreement;
- (d) That the Court order the Plaintiff to vacate the real property that is the subject of said Agreement;
- (e) That the Court declare that the Agreement is terminated and full possession of the real property that is the subject of the Agreement be returned to the Defendant; and
- (f) For such other and further relief as to the Court may seem just and proper.

LOGAN & JOLLY, LLP

s/James W. Logan, Jr.

James W. Logan, Jr.
Post Office Box 259 (29622)
Anderson, South Carolina
864-226-1910
864-226-1931 (fax)
logan@loganandjolly.com
Attorneys for Defendant

June 23, 2020



Common Pleas

Case Caption: Moats Construction, Inc. VS Cecil R Dyar

Case Number: 2020CP0401202

Type: Affidavit/Default

So Ordered

s/Richard A. Shirley, Anderson County Clerk of
Court

Electronically signed on 2021-02-17 09:38:54 page 8 of 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CASE NO.: 2020-CP-04-01202
	)	
Moats Construction, Inc.,	)	
	)	
Plaintiff,	)	
	)	Motion for Judgment on the Pleadings or, in
v.	)	the alternative, Motion for Summary
	)	Judgment
Cecil R. Dyar,	)	
	)	
Defendant.	)	

TO: Wendell Hawkins, Esquire, Counsel for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Defendant, Cecil R. Dyar, by and through its undersigned counsel, hereby moves the Court, pursuant to Rule 12(c) and Rule 56 of the South Carolina Rules of Civil Procedure, for an order granting Defendant's Motion for Judgment on the Pleadings or, in the alternative, granting Summary Judgment in favor of this Defendant based upon the following:

(1) This Plaintiff's failure to Reply to Defendant's Counterclaim in this matter which places Plaintiff in default per the Affidavit of Default filed herewith (Exhibit A). The Defendant's Answer and Counterclaim was filed on June 23, 2020 which would have made Plaintiff's due date to Reply July 23, 2020. No timely response was ever served or filed. Therefore, the Defendant is entitled to judgment against the Plaintiff as set forth in Defendant's counterclaim.

(2) The pleadings, depositions, Answers to Interrogatories and Admissions on file, together with affidavits, if any, and the deposition of Russell Moats of Moats Construction, Inc., taken on January 28, 2021 show that there is no genuine issue as to any material fact as to the Plaintiff's claims, and that, therefore, the Defendant is entitled to judgment as a matter of law as to the Plaintiff's claims and judgment for the Defendant on his claims set forth in his Answer and Counterclaim.

This Motion is further based upon such authority as will be set forth in the Memorandum that will be filed in support of the Motion with exhibit(s)/affidavit(s) attached hereto.

LOGAN & JOLLY, LLP

s/James W. Logan, Jr.

James W. Logan, Jr.
Post Office Box 259 (29622)
Anderson, South Carolina
864-226-1910
864-226-1931 (fax)
logan@loganandjolly.com
Attorneys for Defendant

February 18, 2021

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF ANDERSON)

CASE NO.: 2020-CP-04-01202

Moats Construction, Inc.,)

Plaintiff,)

Affidavit of Default

v.)

Cecil R. Dyar,)

Defendant.)

Personally appeared before me, the undersigned, who being duly sworn, deposes and says that more than thirty (30) days, exclusive of the day of service, have elapsed since service of the Answer and Counterclaim upon Plaintiff, Moats Construction, Inc., and that he has received no Reply to the Defendant's Counterclaims or other pleadings in this action and the Plaintiff is now in default. A copy of the filed and served Answer and Counterclaim is attached to this Affidavit as Exhibit A.

LOGAN & JOLLY, LLP

BY

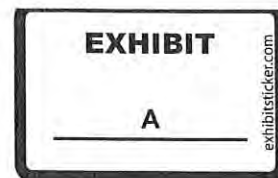
James W. Logan, Jr.
 SC Bar No. 3385
 P.O. Box 259
 Anderson, South Carolina 29622
 (864) 226-1910

SWORN to before me this

15th day of February, 2021.

Kimberly R. Maaluy
 Notary Public for South Carolina

My Commission expires: 3/26/2028



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) CASE NO.: 2020-CP-04-01202
Moats Construction, Inc.,)
Plaintiff,)
v.) **Answer and Counterclaim**
Cecil R. Dyar,) (Jury Trial Demanded)
Defendant.)

The Defendant herein, answering and counterclaiming to the Complaint of the Plaintiff herein, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. The Defendant would show that the Plaintiff's Complaint fails to state facts sufficient to constitute causes of action against the Defendant and that the alleged causes of action so stated in said Complaint fail to state claims on which relief can be granted and, therefore, said Complaint should be dismissed as to the Defendant.

FOR A SECOND DEFENSE

2. The allegations contained in the first defense hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

3. The Defendant denies each and every allegation contained in the Plaintiff's Complaint not hereinafter specifically admitted, modified or explained.

4. The Defendant denies so much of the allegations contained in Paragraph 1 of the Plaintiff's Complaint regarding the TMS #123-24-030.00. Defendant would show that the correct tax map number for said property is #123-24-03-003. Defendant also denies that the Contract that is the subject of this action is a "BFT" and would show that the Contract is entitled "Agreement for Sale

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23. The balance owed under said Agreement is One Hundred Twenty Thousand, Eight Five and 58/100 Dollars (\$120,085.58), as of July 5, 2018, plus interest thereafter at the rate of six percent (6%), together with all costs and expenses incurred by Defendant, including not less than fifteen percent of the balance due under the Agreement as attorney’s fees.

WHEREFORE, Defendant prays:

- (a) That the Plaintiff’s Complaint be dismissed with prejudice;
- (b) That the Plaintiff be declared to be in default under the terms of the Agreement;

- (c) That the Agreement be foreclosed and that the Plaintiff and all persons claiming under him be forever barred and foreclosed of all right, title and equity of redemption, if any, in and to said real property which is the subject of the Agreement;
- (d) That the Court order the Plaintiff to vacate the real property that is the subject of said Agreement;
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- (f) For such other and further relief as to the Court may seem just and proper.

LOGAN & JOLLY, LLP

s/James W. Logan, Jr.

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Anderson, South Carolina
864-226-1910
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logan@loganandjolly.com
Attorneys for Defendant

June 23, 2020



Common Pleas

Case Caption: Moats Construction, Inc. VS Cecil R Dyar

Case Number: 2020CP0401202

Type: Affidavit/Default

So Ordered

s/Richard A. Shirley, Anderson County Clerk of
Court

Electronically signed on 2021-02-17 09:38:54 page 8 of 8

ELECTRONICALLY FILED - 2021 Feb 15 3:49 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401202
ELECTRONICALLY FILED - 2021 Feb 18 2:01 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401202

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
Moats Construction, Inc.	)	C.A. No. 2020-CP-04-01202
	)	
Plaintiff,	)	
	)	MOTION FOR ENLARGEMENT OF TIME
vs.	)	TO REPLY TO COUNTERCLAIM
	)	
Cecil R. Dyar	)	
	)	
Defendants.	)	
	)	
_____	)	

TO: JAMES W. LOGAN, JR., ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Plaintiff, Moats Construction, Inc., (hereinafter "Plaintiff" or "Moats") will appear on the tenth (10th) day after service hereof, or as soon after counsel may be heard, before the presiding Judge, and move for an Order granting Defendant an enlargement of time to enter a Reply to Defendant's Counterclaims or otherwise plead in the above captioned matter.

YOU WILL FURTHER TAKE NOTICE that the Plaintiff, Moats, hereby moves upon this Court to issue an Order granting it the Plaintiff leave to enlarge time pursuant to SCRCF, Rule 6(b)(2) to file a Reply the above captioned matter for the following reasons to wit:

1. Moats, in its Complaint, pled that it had an agreement with Defendant to purchase real property under a Bond for Title which was incorporated in the Complaint as "Exhibit A", but that it was entitled to relief on the balance due under the legal theories of Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, Negligence, Accounting and Set-Off and Specific Performance.

2. The Defendant has pled nothing new in its Counterclaims that have not been addressed in the Plaintiff's Complaint and Defendant's Counterclaim does not involve liquidated damages so the Plaintiff is entitled to dispute the sums due and introduce evidence at trial.

3. Plaintiff has a meritorious defense to the only Counterclaim asserted by Defendant.

4. A copy of the proposed Reply is submitted as "**EXHIBIT A.**"

5. Moats has good cause for the relief sought herein and even if the Court were to enter default on the Defendant's sole Counterclaim, Plaintiff would be entitled to relief from the default under SCRCP, Rule 60(b)(1) due to mistake, inadvertence or excusable neglect.

6. The Defendant never gave notice to Plaintiff that it had failed to Reply to the Counterclaim and later propounded discovery upon Plaintiff which Plaintiff robustly complied with and Plaintiff's deposition was taken on January 28, 2021. Defendant's Motion for Default was filed shortly thereafter.

7. Such relief is under the sound discretion of the Court (SCRCP, Rule 55(c)) and denial of the Defendant's motion and the granting of Plaintiff's Motion to Enlarge Time would serve the interest of justice, the filing of this motion is timely, the Plaintiff has a meritorious defense to the amounts due to satisfy its payment requirement under the Bond for Title and Defendant would be prejudiced in no way if relief from default were granted. (*Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 383 S.C. 601 (2009); 681 S.E. 2d 885). Furthermore, the "good cause" standard is much lower in pre-entry relief than post-entry of an entry of default. *Id.* at 888. Quite simply, Plaintiff's counsel was pre-occupied with providing meaningful discovery responses and inadvertently and mistakenly failed to file a Reply to the Counterclaim.

Respectfully submitted,

s/ Wendell L. Hawkins, Esq.
Wendell L. Hawkins, PA

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Attorney for Plaintiff

February 22d, 2021
Greer, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
Moats Construction, Inc.	)	C.A. No. 2020-CP-04-01202
	)	
Plaintiff,	)	
	)	REPLY TO COUNTERCLAIM
vs.	)	
	)	
Cecil R. Dyar	)	
	)	
Defendants.	)	
	)	
	)	

Plaintiff herein submits its Reply to Defendant's Counterclaim consistent with the assertions herein.

1. Paragraph 18 of the Defendants Counterclaim are recitals of defenses and to such extent do not require a response, but to the extent such allegations require a reply, such allegations are denied and Plaintiff demands strict proof thereof.

2. Plaintiff admits the allegations of Paragraph 19 of the Defendant's Counterclaim.

3. Plaintiff admits the allegations of Paragraph 20 of the Defendant's Counterclaim.

4. Plaintiff admits the allegations of Paragraph 21 of the Defendant's Counterclaim.

5. Plaintiff denies the allegations of Paragraph 22 of the Defendant's Counterclaim in that there was an agreement between the Plaintiff and Defendant, but that at some time, the written agreement was altered by the conduct of the parties with respect to the payment terms and further that, the Defendant breeched the agreement first and therefore, Plaintiff was excused from performance on the agreement and is entitled to relief as pled in its Complaint.

6. Plaintiff denies and disputes the allegations of any amount due under the agreement

EXHIBIT A

or the attorney's fees and cost requested.

Respectfully submitted,

s/ Wendell L. Hawkins, Esq.
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Attorney for Plaintiff

February 22d, 2021
Greer, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CASE NO.: 2020-CP-04-01202
	)	
Moats Construction, Inc.,	)	
	)	
Plaintiff,	)	Memorandum in Support of Defendant's
	)	Motion for Judgment on the Pleadings or, in
v.	)	the alternative, Motion for Summary
	)	Judgment
Cecil R. Dyar,	)	
	)	
<u>Defendant.</u>	)	

This matter is before the Court on a Motion for Summary Judgment filed by Cecil R. Dyar ("Dyar") on February 18, 2021. This Memorandum is submitted in support of that Motion.

BACKGROUND

A. Dyar previously filed a Summons and Complaint against Moats Construction, LLC ("Moats") (Exhibit 1) on November 1, 2019 to foreclose the Agreement for Sale and Purchase of Real Property ("Agreement") regarding the real property that is the subject of this action located at 300-600 West Orr Street, Anderson, South Carolina (Anderson County Tax Map Number 123-24-03-003) (Exhibit 2). Service of Process by certified mail was attempted on the agent for service of process, Russell T. Moats ("RTM"), identified in the documents on file with the Secretary of State for the State of South Carolina (Exhibit 3). Service was declined by RTM (Exhibit 4). Thereafter, personal service of said Summons and Complaint was attempted on several occasions by a retained authorized process server at the address likewise identified on Exhibit 3. On the last attempt, the process server reported that when service was attempted, RTM pulled a weapon (gun) on the process server, "put gun to my head" and refused to accept service. (Exhibit 5). The Sheriff's Office was then contacted to serve RTM without success. (Exhibit 6).

In view of these events, it is Dyar's position that he was the first to file and that this case should proceed with Dyar as the Plaintiff. RTM's conduct surrounding the service of process was improper and unconscionable and clearly constitutes attempts to avoid being served with the Summons and Complaint originally filed on November 1, 2019.

B. The allegations contained in the lawsuit filed by Dyar on November 1, 2019 (Exhibit 1) are the identical allegations that are set forth in the Answer and Counterclaim filed by Dyar on June 23, 2020 to the Complaint by the Plaintiff herein. In the original Complaint and in the Answer and Counterclaim filed in response to the present action, Dyar asserted his entitlement to the balance owed under the Agreement (Exhibit 2) as of July 5, 2015 plus interest, costs and expenses, including attorney's fees. Moats failed to respond to that Counterclaim which, as addressed below, entitles Dyar to summary judgment as to the Counterclaim as a matter of law. The total amount owed by the Plaintiff to Dyar as of April 1, 2021 is \$216,047.42, plus attorney's fees of \$32,407.11 (15%) for a total due of \$248,454.53. A copy of an Affidavit prepared by Joshua Pruiett-Lange is attached as Exhibit 7.

In response to the failure to comply with the South Carolina Rules of Civil Procedure that requires a Reply to a Counterclaim to be filed and served, Moats filed a Motion for Enlargement of Time to Reply to the Counterclaim. It is respectfully submitted that that Motion should be denied outright. The Answer and Counterclaim were filed and served on June 23, 2020. Moats' Motion for Enlargement of Time was not filed until eight (8) months later on February 22, 2021 with no legal excuses asserted for the delay. The Motion was filed by Moats only after notification to Plaintiff's attorney by the undersigned that his client was in default.

As an example of the absurdity of the Motion for Enlargement of Time, Moats asserts that Dyar never gave notice to Moats "that it had failed to reply to the counterclaim!" No such notice

is required under the South Carolina Rules of Civil Procedure. In addition, Moats has not produced any evidence that the failure to Reply to the Counterclaim was due to any alleged mistake, inadvertence or excusable neglect. Finally, Moats has failed to articulate any legally sufficient defenses as to the debt owed based upon the terms and provisions of the Agreement. Accordingly, the only issue remaining in this case is the amount of money damages to be paid to Dyar under the terms and provisions of the Contract of Sale which will be discussed hereinafter and receiving a deed to the property or the Plaintiff pay the sums owed and vacate the property which is the subject of the Agreement.

FACTS

The following facts are admitted by Moats, not only based upon its failure to file a reply, but also based upon the deposition testimony of Moats.

1. The real property, the subject of this action, is located at 300 – 600 West Orr Street, Anderson, South Carolina, situate in Anderson County, South Carolina and bearing Anderson County Tax Map Number 123-24-03-003 and is owned by Dyar.

2. On January 29, 2011, Dyar entered into an Agreement for Sale and Purchase of Real Property (“Agreement”) regarding the real property referenced hereinabove. Under the terms of that Agreement, Moats agreed to pay the Plaintiff the sum of Two Hundred and Fifty Thousand and no/100 (\$250,000.00) Dollars (“Purchase Price”) as follows: Down Payment of \$37,500.00 and the balance of \$212,500.00, with interest at the rate of six percent (6%) per annum, payable in monthly installments of Four Thousand, One Hundred Eight and 22/100 (\$4,108.22) Dollars each beginning May 1, 2011 and continuing on the same day each month thereafter through April 1, 2016 with the principal balance due, together with accrued interest, to be paid on or before March 31, 2016.

Thereafter, by agreement, the date that the balance was due was extended until March 16, 2021 with all other terms and conditions to remain the same.

3. The Agreement further provided that, upon payment of the Purchase Price, Dyar would convey to Moats title to the premises by General Warranty Deed, subject to the items referenced therein.

4. Moats is in default under the terms of the Agreement in that Moats has failed and neglected to pay the installments due, when due, despite demand therefor, and Dyar, as legal owner of the real property that is the subject of the Agreement, has elected to cause the whole amount of said indebtedness to be immediately due and payable.

5. The balance owed under said Agreement, plus interest thereafter at the rate of six percent (6%), together with all costs and expenses incurred by Dyar, including not less than fifteen percent of the balance due under the Agreement as attorney's fees. (See Exhibit 2).

6. The Agreement in question, attached as Exhibit 2, contains the following additional provisions:

4. CONVEYANCE OF TITLE. Upon payment of Purchase Price, the Seller shall convey to Purchaser title to the premises by General Warranty Deed, subject to the following:

- (a) Ad Valorem taxes and special assessments for the City of Anderson and County of Anderson which have accrued but are not yet due.
- (b) Rights of way and easements for public utility distribution lines.
- (c) Restrictive covenants affecting the property.
- (d) State of facts which may be revealed by a recent and accurate survey of the premises.

5. AD VALOREM TAXES AND SPECIAL ASSESSMENTS. All Ad Valorem taxes and special assessments imposed against the Premises by the County of Anderson, City of Anderson or any political subdivision thereof shall be prorated as of the date of this Contract, and thereafter the Purchaser agrees to pay all Ad Valorem taxes and special assessments against the Premises before the same becomes past due.

6. CLOSING COSTS. Upon transfer of title, Seller at its expense shall deliver the Deed of Title to Real Estate with South Carolina documentary stamps affixed thereto and Purchaser shall bear the expense of Anderson County recording taxes and all costs of recording the Deed and other documents of title.

7. DEFAULT. In the event the Purchaser defaults in making any payments provided for herein or in any other terms, provisions or covenants of this Contract, the Seller may, as its option, declare this Contract terminated and of no further force and effect, and will be entitled to immediate possession of the Premises and may retain all amounts paid by Purchaser to date of default as rent and liquidated damages. Seller may in the alternative, at its option, declare the entire balance of the Purchase Price due and payable without notice, and institute suit against the Purchaser seeking a sale of the property and foreclosure of Purchaser's rights.

8. PREPAYMENT. Purchaser may prepay the balance due in whole or in part at any time without penalty.

9. POSSESSION. Until Purchaser defaults in payment of sums to be paid hereunder or in performance of obligations to be performed hereunder, Purchaser shall be entitled to possession of the Premises, provided, the Purchaser shall not commit or suffer to exist any damage or destruction of the Premises.

10. RISK OF LOSS. Risk of loss of damage to or destruction of the Premises shall be upon the Purchaser during the term of this Agreement.

11. TIME OF ESSENCE. It is further agreed that the time of payment shall be an essential part of this Contract and all Covenants and agreements herein contained shall extent to and be obligatory upon the heirs, personal representatives and assigns of the respective parties.

12. LATE PAY PENALTY. The Purchaser agrees that if any payment is not paid when due and shall remain unpaid for more than ten (10) days from the due date, a late charge equal to five (5%) percent of the total payment shall be added to the payment due. The Purchaser agrees that the failure to pay the late charge when due shall be considered a default in this Contract and subject the Purchaser to immediate eviction.

13. ATTORNEY'S FEES. If this Contract is placed in the hands of an attorney for collection or for enforcing any of Seller's other rights hereunder, including any legal proceeding brought to sell said property, Purchaser agrees to pay all costs and expenses incurred by Seller including not less than Fifteen (15%) percent of the then balance due under this Contract as Attorney's fees.

14. INSURANCE. Purchaser agrees to keep the improvements on said real property insured against loss by fire or other casualty in a reputable fire insurance company in an amount of not less than the balance due to the Seller under this Contract and to have Seller named in said policy as an additional insured.

15. SELLER'S REMEDIES. In the event the Purchaser fails to pay the property taxes when due, or fails to pay the fire insurance premiums, the Seller may, at Seller's option, pay the same and add such to the indebtedness due to the Seller to bear interest at the same rate stated above.

16. ASSIGNMENT. The Purchaser shall have no right to assign this Contract or sublet the Premises without prior written consent of Seller and any attempt to do so shall constitute a default in the terms and provisions of this Contract.

17. MAINTENANCE. The Purchaser shall maintain the Premises and all improvements thereon in the same good condition as the same was delivered to the Purchaser, wear and tear exempted.

18. DISCLAIMER OF WARRANTIES. The Purchaser acknowledges that the Seller has made no representation to the Purchaser concerning the condition of the dwelling or any other improvement upon the Premises. The Seller specifically disclaims all warranties which may exist by implication of law, including the warranty of habitability. The Purchaser acknowledges that Purchaser has made an inspection of the Premises and accepts the same "AS IS, WITH ALL FAULTS."

19. SURVIVAL OF THIS AGREEMENT. This Agreement and the terms hereof shall not be merged into the documents of conveyance at closing but shall survive and remain a binding contractual agreement between the parties after closing.

20. WASTE OR DESTRUCTION. Purchaser during possession shall not commit any waste of the Premises or demolish any improvement or harvest any growing timber without the written consent of Seller. (Emphasis added).

7. In his deposition testimony, Moats asserts the following excuses, none of which are in any way legally sufficient to support his claims nor are part of the Agreement:

- (a) Believes he owes the real property (pp. 34-35; pp. 65-66) based upon improvements and "sweat equity";
- (b) Believes he has paid the purchase price (pp. 34-35);
- (c) The building on the property suffered damage from hurricane-related weather (pp. 42-44);
- (d) Discussions with Dyar regarding "issues" but denies having any letters/correspondence that memorialize those conversations, except for a letter from his attorney (William Swent)(pp. 48-49). A copy of that letter is attached and clearly shows sums owed (Exhibit 8);

- (e) Claims to have paperwork that supports his disagreement with amount Dyar claims is owed (pp. 55-56). However, no such documents/paperwork has been produced!
- (f) Moats admits that he has never furnished Dyar with any documentation that would establish what he believes he owes Dyar under the terms of the Agreement (pp. 72-74). (Emphasis added).

STANDARD OF REVIEW

1. Summary Judgment

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Fleming v. Rose*, 350 S.C. 488, 567 S.E. 2d 857 (2002); *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271, 573 S.E. 2d 830 (Ct. App. 2002). A court should grant summary judgment when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. *Etheredge v. Richland School Dist. One*, 341 S.C. 307, 311, 534 S.E. 2d 275, 277 (2000). "The plain language of Rule 56(c), SCRCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." *Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing & Regulation*, 337 S.C. 476, 485, 523 S.E. 2d 795, 800 (Ct. App. 1999). "In such a situation, there can be no genuine issue as to any material fact since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E. 2d 537, 546 (1991)."

2. Contract Construction

Under South Carolina law, courts have emphasized that "[c]ourts must enforce, not write, contracts, and their language must be given its plain, ordinary and popular meaning." *Sloan*

Constr. Co. v. Central Nat'l Co. of Omaha, 269 S.C. 183, 185, 236 S.E. 2d 818, 819 (1977).

Further, when a contract is unambiguous, clear and explicit, it must be construed according to its terms. *BLG Enterps., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E. 2d 327, 330 (1999).

LEGAL ANALYSIS

A. While now seeking to deny under oath that any amount of money is owed to Dyar under the Agreement, Moats previously retained attorney William B. Swent of Smith Moore in Greenville, South Carolina, to determine the amount owed under the Agreement. That analysis was memorialized in a letter from Swent (Exhibit 8) dated January 5, 2018 in which it was stated that, as of December 31, 2017, the amount owed was \$83,338.98. That calculation included principal, interest, carrying costs, property taxes and insurance pursuant to the Agreement. However, it did not include attorney's fees of fifteen (15%) percent of the then balance due. No payments have been paid by Moats since December 31, 2017. While the balance calculated by Swent is somewhat inaccurate, this letter constitutes an admission that, as of December 31, 2017, at least that amount stated as due was owed by Moats to Dyar.

B. Based upon the Plaintiff's own testimony, he has no legally sufficient basis for any of his claim/defenses in his Complaint. While Dyar disagrees with the numbers contained in the Swent letter, his then attorney (Swent) established that money was owed. Further, that Moats is clearly in default and the only issue is "how much." That question is answered by the Affidavit of Joshua Pruiett-Lange (Exhibit 7).

Moats asserts that he is entitled to credits for "improvements" made, "sweat equity" and the cost of a "new roof" which is not in place. By the express terms of the Agreement, Moats is not entitled to any such "credits." Even if Moats made such improvements or engaged in any "sweat equity", which remains unproven, the Agreement does not provide for any such credits.

The Agreement provides, in Paragraph #10, that the “Risk of Loss” is “upon the Purchaser....” The Agreement further provides in Paragraph #18, that “the Purchaser acknowledges that Purchaser has made an inspection of the Premises and accepts the same AS IS, WITH ALL FAULT.” The Purchaser has remained in possession of the Premises since January 21, 2011 to the present.

Improvements made, if any, “sweat equity”, if any, and/or the status of the roof, are totally irrelevant to the legal issues in this case, all of which are controlled by the terms of the Agreement and does not address nor include any of those claims by Moats. Moats took the building “as is” and nothing in the Agreement obligates Dyar to replace the roof, give credit for improvements or “sweat equity.” The legal obligations are all on Moats to pay the balance owed in full and receive title to the property or pay the balance in full and vacate the property. HIS CHOICE! Under either scenario, he owes Dyar the sums due under the Agreement and set forth in Exhibit 7.

CONCLUSION

Based upon the above reasoning and authorities, it is respectfully requested that Dyar be granted Summary Judgment in this case for all amounts and relief requested.

Respectfully submitted,

LOGAN & JOLLY, LLP

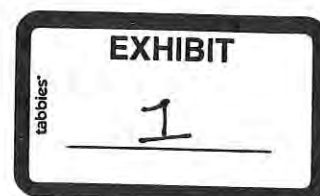
s/James W. Logan, Jr.
James W. Logan, Jr.
Post Office Box 259 (29622)
Anderson, South Carolina
864-226-1910
864-226-1931 (fax)
logan@loganandjolly.com
Attorneys for Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	Civil Action No. _____
Cecil Dyar,	)	
	)	
Plaintiff,	)	
vs.	)	SUMMONS
	)	
Moats Construction, LLC,	)	
	)	
Defendant.	)	
_____	)	

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 subscriber, James W. Logan, Jr., P.O. Box 259, Anderson, South Carolina, 29621, within thirty (30) days after the service hereof, and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs will apply to the Court for a judgment by default against you for the relief demanded in the Amended Complaint.

s/James W. Logan, Jr.
James W. Logan, Jr. (#3385)
Logan & Jolly, LLP
P.O. Box 259
Anderson, SC 29622
(864) 226-1910
(864) 226-1931 (fax)
logan@loganandjolly.com
Attorneys for Plaintiff

DATED: November 1, 2019.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	Civil Action No. _____
Cecil Dyar,	)	
	)	
Plaintiff,	)	
vs.	)	COMPLAINT
	)	
Moats Construction, LLC,	)	
	)	
Defendant.	)	
_____	)	

The Plaintiff complaining of the Defendant alleges:

1. The Plaintiff is a resident of Anderson, South Carolina.

2. The Defendant is a limited liability corporation organized and existing under the laws of the States of the United States of America, authorized to do and doing business in the State of South Carolina.

3. The real property, the subject of this action, is located at 300 – 600 West Orr Street, Anderson, South Carolina, situate in Anderson County, South Carolina and bearing Anderson County Tax Map Number 123-24-03-003.

4. On January 29, 2011, Plaintiff entered into an Agreement for Sale and Purchase of Real Property (“Agreement”) regarding the real property referenced hereinabove. Under the terms of that Agreement, the Defendant agreed to pay the Plaintiff the sum of Two Hundred and Fifty Thousand and no/100 (\$250,000.00) Dollars (“Purchase Price”) as follows: Down Payment of \$37,500.00 and the balance of \$212,500.00, with interest at the rate of six percent (6%) per annum, payable in monthly installments of Four Thousand, One Hundred Eight and 22/100 (\$4,108.22) Dollars each beginning May 1, 2011 and continuing on the same day each month thereafter through

April 1, 2016 with the principal balance due, together with accrued interest, to be paid on or before March 31, 2016. Thereafter, by agreement, the date that the principal balance was due was extended until March 16, 2021 with all other terms and conditions to remain the same.

5. The Agreement further provided that, upon payment of the Purchase Price, the Plaintiff would convey to the Defendant title to the premises by General Warranty Deed, subject to the items referenced therein.

6. The Defendant is in default under the terms of the Agreement in that the Defendant has failed and neglected to pay the installments due, when due, despite demand therefor, and the Plaintiff as legal owner of the real property that is the subject of the Agreement has elected to cause the whole amount of said indebtedness to be immediately due and payable.

7. The balance owed under said Agreement is One Hundred Twenty Thousand, Eight Five and 58/100 Dollars (\$120,085.58), as of July 5, 2018, plus interest thereafter at the rate of six percent (6%), together with all costs and expenses incurred by Plaintiff, including not less than fifteen percent of the balance due under the Agreement as attorney's fees.

WHEREFORE, Plaintiff prays:

- (a) That the Defendant be declared to be in default under the terms of the Agreement;
- (b) That the Agreement be foreclosed and that the Defendant and all persons claiming under him be forever barred and foreclosed of all right, title and equity of redemption, if any, in and to said real property which is the subject of the Agreement;
- (c) That the Court order the Plaintiff to vacate the real property that is the subject of said Agreement;
- (d) That the Court declare that the Agreement is terminated and full possession of the real

property that is the subject of the Agreement be returned to the Plaintiff; and

(c) For such other and further relief as to the Court may seem just and proper.

s/James W. Logan, Jr.

James W. Logan, Jr.
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Post Office Box 259 (29622)
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864-226-1910
864-226-1931 (fax)
logan@loganandjolly.com

Attorneys for Plaintiff

Anderson, South Carolina

Dated: 11-1-2019

5. AD VALOREM TAXES AND SPECIAL ASSESSMENTS. All Ad Valorem taxes and special assessments imposed against the Premises by the County of Anderson, City of Anderson or any political subdivision thereof shall be prorated as of the date of this Contract, and thereafter the Purchaser agrees to pay all Ad Valorem taxes and special assessments against the Premises before the same becomes past due.

6. CLOSING COSTS. Upon transfer of title, Seller at its expense shall deliver the Deed of Title to Real Estate with South Carolina documentary stamps affixed thereto and Purchaser shall bear the expense of Anderson County recording taxes and all costs of recording the Deed and other documents of title.

7. DEFAULT. In the event the Purchaser defaults in making any payments provided for herein or in any other terms, provisions or covenants of this Contract, the Seller may, at its option, declare this Contract terminated and of no further force and effect, and will be entitled to immediate possession of the Premises and may retain all amounts paid by Purchaser to date of default as rent and liquidated damages. Seller may in the alternative, at its option, declare the entire balance of the Purchase Price due and payable without notice, and institute suit against the Purchaser seeking a sale of the property and foreclosure of Purchaser's rights.

8. PREPAYMENT. Purchaser may prepay the balance due in whole or in part at any time without penalty.

9. POSSESSION. Until Purchaser defaults in payment of sums to be paid hereunder or in performance of obligations to be performed hereunder, Purchaser shall be entitled to possession of the Premises, provided, the Purchaser shall not commit or suffer to exist any damage or destruction of the Premises.

10. RISK OF LOSS. Risk of loss by damage to or destruction of the Premises shall be upon the Purchaser during the term of this Agreement.

11. TIME OF ESSENCE. It is further agreed that the time of payment shall be an essential part of this Contract and all Covenants and agreements herein contained shall extend to and be obligatory upon the heirs, personal representatives and assigns of the respective parties.

12. LATE PAY PENALTY. The Purchaser agrees that if any payment is not paid when due and shall remain unpaid for more than ten (10) days from the due date, a late charge equal to five (5%) percent of the total payment shall be added to the payment due. The Purchaser agrees that the failure to pay the late charge when due shall be considered a default in this Contract and subject the Purchaser to immediate eviction.

13. ATTORNEY'S FEES. If this Contract is placed in the hands of an attorney for collection or for enforcing any of Seller's other rights hereunder, including any legal proceeding brought to sell said property, Purchaser agrees to pay all costs and expenses incurred by Seller including not less than Fifteen (15%) percent of the then balance due under this Contract as Attorney's fees.

14. INSURANCE. Purchaser agrees to keep the improvements on said real property insured against loss by fire or other casualty in a reputable fire insurance company in an amount of not less than the balance due to the Seller under this Contract and to have Seller named in said policy as an additional insured.

15. SELLER'S REMEDIES. In the event the Purchaser fails to pay the property taxes when due, or fails to pay the fire insurance premiums, the Seller may, at Seller's option, pay the same and add such amount to the indebtedness due to the Seller to bear interest at the same rate stated above.

16. ASSIGNMENT. The Purchaser shall have no right to assign this Contract or sublet the premises without prior written consent of Seller and any attempt to do so shall constitute a default in the terms and provisions of this Contract.

17. MAINTENANCE. The Purchaser shall maintain the Premises and all improvements thereon in the same good condition as the same was delivered to Purchaser, wear and tear excepted.

18. DISCLAIMER OF WARRANTIES. The Purchaser acknowledges that the Seller has made no representation to the Purchaser concerning the condition of the dwelling or any improvement upon the Premises. The Seller specifically disclaims all warranties which may exist by implication of law, including the warranty of habitability. The Purchaser acknowledges that Purchaser has made an inspection of the Premises and accepts the same "AS IS, WITH ALL FAULTS."

19. SURVIVAL OF THIS AGREEMENT. This Agreement and the terms hereof shall not be merged into the documents of conveyance at closing but shall survive and remain a binding contractual agreement between the parties after closing.

20. WASTE OR DESTRUCTION. Purchaser during possession shall not commit any waste of the premises or demolish any improvement or harvest any growing timber without the written consent of the Seller.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year above written.

IN THE PRESENCE OF:

Nancy M. Wright

Gerry Hayes

Cecil R. Dyar
Cecil Dyar, Seller

Moats Construction, LLC
Moats Construction, LLC, Buyer

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s) he saw the within named Cecil Dyar, as Seller, sign, seal and as their act and deed deliver the within Contract, and that (s) he with the other witness whose name is subscribed above witnessed the execution thereof.

Sworn to before me this 11
 day of March, 2011

Nancy M. Wright

Thomas S. Knott (SEAL)
 Notary Public for South Carolina
 My Commission Expires 12-10-2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s) he saw the within named Moats Construction, LLC, as Purchaser, sign, seal and as their act and deed deliver the within Contract, and that (s) he with the other witness whose name is subscribed above witnessed the execution thereof.

Sworn to before me this 11
 day of March, 2011

Gary Hayes

Thomas S. Knott (SEAL)
 Notary Public for South Carolina
 My Commission Expires 12-10-2011



ADDENDUM/AMENDMENT TO

☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☐ COUNTEROFFER] OR

☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____

COVERING THE ☒ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as:

Address _____ 300-600 West Orr Street _____ Unit # _____

City _____ Anderson _____ State of South Carolina

Other _____ TMS _____ 123-24-03-003

The undersigned Parties hereby agree as follows: This agreement shall be extended until March 16, 2021.
All other terms and conditions shall remain the same. This is a legally binding agreement,
both Buyer and Seller shall seek further assistance if the contents are not understood.
Both Buyer and Seller acknowledge receipt of a copy of this agreement. Both Buyer and
Seller acknowledge receiving, reading and understanding the South Carolina Agency
Disclosure Form.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at _____ ☐ AM ☐ PM on _____ unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: _____ Date: _____ Time: _____

BUYER: _____ Date: _____ Time: _____

_____ Date: _____ Time: _____

_____ Date: _____ Time: _____

SELLER: Carol R. Ryan Date: 7-1-16 Time: 10:30

SELLER: _____ Date: _____ Time: _____

_____ Date: _____ Time: _____

_____ Date: _____ Time: _____

REALTOR® is the registered collective membership mark which may be used only by those real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its strict professional Code of Ethics. The South Carolina Association of REALTORS® (SCR) owns copyright to the content of this form and expressly prohibits the display, distribution, duplication, transmission, alteration, or reproduction of any part of SCR copyright content as well as the use of the name "South Carolina Association of REALTORS®" in connection with any written or electronic format without the prior written consent of SCR. SCR makes no representation as to the legal adequacy of this form or the information added for a specific transaction and recommends that Parties consult a SC attorney prior to signing to ensure the completed form meets your legal need.

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[] BUYER [] BUYER [] SELLER [] SELLER HAVE READ THIS PAGE

Business Entities Online

File, Search, and Retrieve Documents Electronically

MOATS CONSTRUCTION INC.

Corporate Information

Entity Type: Corporation

Status: Forfeited

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 02/06/2004

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: 08/08/2019

Registered Agent

Agent: RUSSEL T MOATS

Address: 1523 OLD ROBERTS CHURCH RD
ANDERSON, South Carolina 29626

Official Documents On File

Filing Type	Filing Date
Administrative Dissolution	08/08/2019
Administrative dissolution in error	10/28/2015
Forfeiture	08/18/2015
Amendment	07/17/2014
Change of Agent or Office	05/05/2008
Resignation of Agent or Office	05/02/2008
Amendment	05/02/2008
Organization	02/06/2004

Former Names

Name	Filing Date
MOATS CONSTRUCTION, LLC	N/A



LOGAN & JOLLY, LLP.
— ATTORNEYS AT LAW —

James W. Logan, Jr., Esquire
Email: logan@loganandjolly.com

1805 North Boulevard
Anderson, SC 29621
Telephone: 864-226-1910
Facsimile: 864-226-1931

Mailing Address
Post Office Box 259
Anderson, SC 29622

www.loganandjolly.com

November 8, 2019

Moats Construction, LLC
Mr. Russel T. Moats
1523 Old Roberts Church Road
Anderson, SC 29626

Re: Cecil Dyar v. Moats Construction, LLC

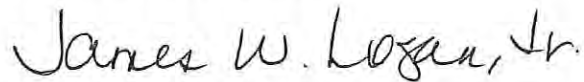
Dear Sir:

I enclose herein the Summons and Complaint in the above referenced matter.

If you have any questions or if further information is needed, please give me a call.

Yours Very Truly,

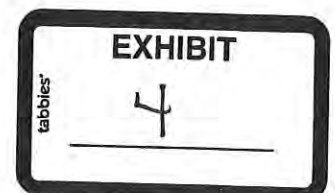
LOGAN & JOLLY, LLP



James W. Logan, Jr.

JWLjr:krm
Enclosures

ELECTRONICALLY FILED - 2021 Apr 01 3:05 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401202



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	Civil Action No. _____
Cecil Dyar,	)	
	)	
Plaintiff,	)	
vs.	)	SUMMONS
	)	
Moats Construction, LLC,	)	
	)	
Defendant.	)	
_____	)	

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 subscriber, James W. Logan, Jr., P.O. Box 259, Anderson, South Carolina, 29621, within thirty (30) days after the service hereof, and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs will apply to the Court for a judgment by default against you for the relief demanded in the Amended Complaint.

s/James W. Logan, Jr.
James W. Logan, Jr. (#3385)
Logan & Jolly, LLP
P.O. Box 259
Anderson, SC 29622
(864) 226-1910
(864) 226-1931 (fax)
logan@loganandjolly.com
Attorneys for Plaintiff

DATED: November 1, 2019.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	Civil Action No. _____
Cecil Dyar,	)	
	)	
Plaintiff,	)	
vs.	)	COMPLAINT
	)	
Moats Construction, LLC,	)	
	)	
Defendant.	)	
_____	)	

The Plaintiff complaining of the Defendant alleges:

1. The Plaintiff is a resident of Anderson, South Carolina.
2. The Defendant is a limited liability corporation organized and existing under the laws of the States of the United States of America, authorized to do and doing business in the State of South Carolina.
3. The real property, the subject of this action, is located at 300 – 600 West Orr Street, Anderson, South Carolina, situate in Anderson County, South Carolina and bearing Anderson County Tax Map Number 123-24-03-003.
4. On January 29, 2011, Plaintiff entered into an Agreement for Sale and Purchase of Real Property (“Agreement”) regarding the real property referenced hereinabove. Under the terms of that Agreement, the Defendant agreed to pay the Plaintiff the sum of Two Hundred and Fifty Thousand and no/100 (\$250,000.00) Dollars (“Purchase Price”) as follows: Down Payment of \$37,500.00 and the balance of \$212,500.00, with interest at the rate of six percent (6%) per annum, payable in monthly installments of Four Thousand, One Hundred Eight and 22/100 (\$4,108.22) Dollars each beginning May 1, 2011 and continuing on the same day each month thereafter through

April 1, 2016 with the principal balance due, together with accrued interest, to be paid on or before March 31, 2016. Thereafter, by agreement, the date that the principal balance was due was extended until March 16, 2021 with all other terms and conditions to remain the same.

5. The Agreement further provided that, upon payment of the Purchase Price, the Plaintiff would convey to the Defendant title to the premises by General Warranty Deed, subject to the items referenced therein.

6. The Defendant is in default under the terms of the Agreement in that the Defendant has failed and neglected to pay the installments due, when due, despite demand therefor, and the Plaintiff as legal owner of the real property that is the subject of the Agreement has elected to cause the whole amount of said indebtedness to be immediately due and payable.

7. The balance owed under said Agreement is One Hundred Twenty Thousand, Eight Five and 58/100 Dollars (\$120,085.58), as of July 5, 2018, plus interest thereafter at the rate of six percent (6%), together with all costs and expenses incurred by Plaintiff, including not less than fifteen percent of the balance due under the Agreement as attorney's fees.

WHEREFORE, Plaintiff prays:

- (a) That the Defendant be declared to be in default under the terms of the Agreement;
- (b) That the Agreement be foreclosed and that the Defendant and all persons claiming under him be forever barred and foreclosed of all right, title and equity of redemption, if any, in and to said real property which is the subject of the Agreement;
- (c) That the Court order the Plaintiff to vacate the real property that is the subject of said Agreement;
- (d) That the Court declare that the Agreement is terminated and full possession of the real

property that is the subject of the Agreement be returned to the Plaintiff; and

(c) For such other and further relief as to the Court may seem just and proper.

s/James W. Logan, Jr.

James W. Logan, Jr.
Logan & Jolly, LLP
1805 North Boulevard (29621)
Post Office Box 259 (29622)
Anderson, South Carolina
864-226-1910
864-226-1931 (fax)
logan@loganandjolly.com

Attorneys for Plaintiff

Anderson, South Carolina

Dated: 11-1-2019

LOGAN & JOLLY, LLP.

ATTORNEYS AT LAW

Post Office Box 259

Anderson, SC 29622



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FIRST-CLASS MAIL

41/08/2013

11/06/2013
US POSTAGE
\$006.95



ZIP 29621
041L10400632

Moats Construction, LLC
Mr. Russel T. Moats
1523 Old Road
Anderson, SC 29625
704.255.1111

[illegible]

Mr. Russel T. Moats

1523 Old Ro

Anderson, S

Figure 1. Schematic representation of the experimental design. The first part of the study was a pretest in which the effect of the number of items on the number of items was investigated. The second part of the study was a main experiment in which the effect of the number of items on the number of items was investigated. The third part of the study was a posttest in which the effect of the number of items on the number of items was investigated.

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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Moats Construction, LLC
Russel Moats
1523 Old Roberts Church Rd
Anderson, SC 29626
9590 9402 4420 8248 2026 88



2. Article Number (Transfer from service label)

7019 2280 0000 8151 5818

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?
If YES, enter delivery address below: ☐ Yes
☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail®
☐ Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☒ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

AFFIDAVIT OF SERVICE

State of South Carolina

County of Anderson

Common Pleas Court

Case Number: 2019-CP-04-02232

Plaintiff:

Cecil Dyar

vs.

Defendant:

Moats Construction, LLC

For: Logan & Jolly, LLP

Received by FALCON EXPRESS SERVICES, LLC to be served on **Moats Construction, LLC, 1523 Old Roberts Church Road, Anderson, SC 29626**. I, Gilberto Gonzalez, being duly sworn, depose and say that on the 4 day of February, 2020 at 4:07p.m., executed service by delivering a true copy of the **SUMMONS and COMPLAINT** in accordance with state statutes in the manner marked below:

() CORPORATE SERVICE: By serving _____ as _____

() GOVERNMENT AGENCY: By serving _____ as _____ of the within named agency.

☒ NON SERVICE: For the reason detailed in the Comments below.

COMMENTS: Attempted 1-6-2020 @ 3:28pm Gates locked. 1-12-2020 @ 6:39pm Gates locked Could see people walking in front of windows. 1-15-2020 @ 7:50am gates locked. Did surveillance 1-22-2020 From 4:15-7pm. No luck. Did surveillance 11/23/2020 @ 5:30am-8am once gate was open I attempted service. Mr. Moats came out + put gun to my head. I was unable to serve the papers. His son was inside the truck. I made a police report but no action was taken. I also videoed the incident.

Age _____ Sex M F Race _____ Height _____ Weight _____ Hair _____ Glasses Y N

Is the place of service the dwelling house or usual place of abode for the party being served? () Yes () No

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 4 day of February, 2020 by the affiant who is personally known to me.

NOTARY PUBLIC

My Commission Expires: 1/29/2029

Henry Jolly

PROCESS SERVER # _____
Appointed in accordance with State Statutes .

FALCON EXPRESS SERVICES, LLC
P.O. Box 874
Charleston, SC 29402-0874
(843) 577-9696

Our Job Serial Number: 2020000025



AGENCY I.D.
SC0040000

INCIDENT REPORT

CASE NUMBER

2,0,2,0,-,0,1,1,3,9,

NCIC

INQ. N
END. N

EVENT	INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
	1. POINTING AND PRESENTING A FIREARM (13A)				☒ YES ☐ NO	☐ YES ☐ NO	Residence/Home (		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
	2.				☐ YES ☐ NO	☐ YES ☐ NO			
	3.				☐ YES ☐ NO	☐ YES ☐ NO			
VICTIM NO. 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE	WEAPON TYPE	
	1523 OLD ROBERTS CHURCH RD, ANDERSON						29626	12S,,	
	INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK	LOCATION NO.		
	01/23/2020	07:40		01/23/2020	08:00	DISP. DATE DISP. TIME TIME ARRIVED DEPART. TIME	6		
SUBJECT NO. 1	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
	GONZALEZ, GILBERTO, DE LUNA				#1 OK #2 #3	☒ S ☐ O ☐ U	W	M	55
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	
	210 PEARMAN ST				ANDERSON	SC	29624	6	
SUBJECT NO. 1	VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
	GONZALEZ, GILBERTO, DE LUNA				#1 OK #2 #3	☒ S ☐ O ☐ U	W	M	55
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	
	210 PEARMAN ST				ANDERSON	SC	29624	6	
NARRATIVE	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				
	510	210	BLK	BRO					
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	
	210 PEARMAN ST				ANDERSON	SC	29624	6	
PROPERTY EST.	VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO ☐ EXPLAIN —				COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☒ NO				
	VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK ☐ DRUGS: ☐ YES ☒ NO ☐ UNK ☐ TYPE:								
	TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐				*J—This Jurisdiction. S—State. O—Out of State. U—Unknown				
ADMINISTRATIVE	☐ SUSPECT	NAME, (LAST, FIRST, MIDDLE)				RACE	SEX	AGE	ETH.
	☐ RUNAWAY	MOTES, RUSSELL,				W	M	42	N
	☐ WANTED	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ WARRANT	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.
ADMINISTRATIVE	☐ ARREST	1523 OLD ROBERTS CHURCH RD				ANDERSON	SC	29626	6
	☐ JAIL	SUBJECT (NO. 1) USING: ALCOHOL: ☐ YES ☒ NO ☐ UNK ☐ DRUGS: ☐ YES ☒ NO ☐ UNK ☐ TYPE:				ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO ☐ DATE/TIME OF OFFENSE DATE/TIME OF ARREST			
	☐ SUMMONS	TOTAL # ARRESTED							
ADMINISTRATIVE	Master Deputy Dixon responded to Dobbins Bridge Rd @ Huitt Rd in reference to a pointing and presenting call that occurred at 1523 Old Roberts Church Rd. When Dixon arrived on scene he spoke with the complainant/victim Gilberto De Luna Gonzalez. He said that the suspect, Russell Tyson Moats pointed or presented a firearm towards the victim. This incident occurred during a civil service process and the victim stated it was not done in self-defense. There were not witnesses to this incident. The incident was captured on video. A video statement was obtained at the time of the report.								
ADMINISTRATIVE	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY				
ADMINISTRATIVE	TYPE (GROUP)					TOTAL VALUE			
	STOLEN								
	DAMAGED								
	BURNED								
ADMINISTRATIVE	RECOVERED								
	SEIZED								
ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☒ ADM. CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18
	☒ YES ☐ NO		☒ YES ☐ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY								
	REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER	
DIXON, C M		01/23/20	1145	SGT. HYSLOP, A. R.		01/23/20	248		
				FOLLOW-UP INVESTIGATION ☐ YES ☒ NO ☐ OFFICER					

AGENCY I.D.
SC0040000

SUPPLEMENTARY REPORT

CASE NUMBER

2,0,2,0,-,0,1,1,3,9,

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☐ ORIGINAL REPORT	☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	PAGE <u>1</u> of <u> </u> PAGES.
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	

NARRATIVE	2020-01139						
	Investigative Narrative						
	Master Deputy Dixon responded to Dobbins Bridge Rd @ Huitt Rd in reference to a pointing and presenting call that occurred at 1523 Old Roberts Church Rd. When Dixon arrived on scene he spoke with the complainant/victim Gilberto De Luna Gonzalez. He said that the suspect, Russell Tyson Moats pointed or presented a firearm towards the victim. This incident occurred during a civil service process and the victim stated it was not done in self-defense. Gonzalez stated that he was attempting to serve Moats with a civil paper during the incident. Gonzalez stated he captured the incident on camera. Gonzalez did not have the footage available at the time of the report. Gonzalez further stated that Moats pointed the gun at him, while yelling profanities, instructing him to leave. Dixon obtained Gonzalez's statement on his agency issued camera. There were no witnesses to this incident. Dixon then responded to the incident location. Dixon was able to make contact with Moats in his yard. Moats stated that he was getting ready to leave his residence and saw a brown man outside his residence. Moats' son was in an unlocked truck that was running outside. Moats stated he was in fear for his son's safety and grabbed his gun to see who was outside. Moats stated that he did point the firearm and did cuss at the male to leave. Moats was concerned that the male was on his property. Dixon informed Moats that Gonzalez was a licensed process server and was on the property legally. Sgt. Villegas was made aware of the incident. There is nothing further to report at this time.						
	ADMINISTRATIVE	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☒ ADM. CLOSED ☐ UNFOUNDED	
		REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH.		2. ☐ NO PROSECUTION.		3. ☐ EXTRADITION DENIED.	
4. ☐ VICTIM DECLINES COOPERATION.		5. ☐ JUVENILE - NO CUSTODY		6. ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER			
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER	
DIXON, C M	01/23/20			01/23/20	248		
FOLLOW-UP INVESTIGATION ☐ YES ☒ NO		OFFICER					



ANDERSON COUNTY SHERIFF'S OFFICE

Affidavit of Service or Non - Service

Plaintiff: Cecil Dyar

Document Number: 2019CP0402232

vs.

Defendant: Moats Construction LLC

Personally appeared before me _____, who being duly sworn, says
That he/she served the;

- ☐ Cross Complaint
☐ Summons
☒ Summons & Complaint
☐ Complaint
☐ Motion
☐ Answer
☐ Petition & Summons
☐ Notice of Hearing

- ☐ Subpoena
☐ Notice of Mechanic's Lien
☐ Order & Rule to Show Cause
☐ Writ of Assistance
☐ Order of Default Judgment
☐ Mechanic's Lien
☐ _____

in this action on the defendant Moats Construction LLC

- ☐ By delivering to him/her personally at: _____
☐ By delivering to _____ a person of discretion residing at the residence of the defendant and being a said residence at the time of service.
☐ By delivering to _____ personally, the _____ of the defendant corporation; and leaving with him/her copies of the same at: _____

☒ Non - Service:

at: _____ (Circle One) am/pm on the _____ day of _____, _____
and the deponent is not a party to this action, and has no interest therein or connection therewith.

Brian L. Lewis W 35
Deputy Sheriff / Process Server Anderson County

Attempts	Date	Time	Initials
1	2-18-2020	1039	UPW
2	2-19-2020	0800	BLU
2	2-20-2020	1130 AM	SLU

Left voice mail

Sworn to and subscribed to before me

this 21 day of February, 2020

[Signature]
Notary Public for South Carolina

My Commission Expires 12/31/2029

Affidavit of Service or Non - Service

EXHIBIT

Revised 5-21-18

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CASE NO.: 2020-CP-04-01202
	)	
Moats Construction, Inc.,	)	
	)	
Plaintiff,	)	
	)	Affidavit of Joshua Pruiett-Lange
v.	)	
	)	
Cecil R. Dyar,	)	
	)	
Defendant.	)	

PERSONALLY appeared before me, **Joshua Pruiett-Lange**, who, being duly sworn, deposes and says:

1. I am a registered tax preparer with the Internal Revenue Service.
2. I have been a bookkeeper since 2016 and am employed by Electric City Tax and Bookkeeping, formerly Shiflette Bookkeeping and Tax.
3. I have worked with Mr. Cecil Dyar for many years and have reviewed payments made by Moats Construction, Inc. to Cecil Dyar for the property that is the subject of this lawsuit.
4. Based upon my review and analysis, it is my professional opinion that the balance owed to date by Moats Construction, Inc. to Cecil Dyar is \$216,047.42.

FURTHER AFFIANT SAYETH NOT.

Print Name: Joshua Pruiett-Lange
Joshua Pruiett-Lange

Signature: *Joshua Pruiett-Lange*

Sworn to before me this 1st
day of April, 2021.

Heather Reed
Notary Public for South Carolina
My Commission Expires: 10/31/30



46	February 1, 2015	\$	5,000.00	Late	\$	3,866.15	\$	908.19	\$	225.66			\$	177,772.83
47	March 1, 2015	\$	-	Late	\$	(1,114.52)	\$	888.86	\$	225.66			\$	178,887.36
48	April 1, 2015	\$	-	Late	\$	(1,120.10)	\$	894.44	\$	225.66			\$	180,007.45
49	May 1, 2015	\$	-	Late	\$	(1,125.70)	\$	900.04	\$	225.66			\$	181,133.15
50	June 1, 2015	\$	10,000.00	Late	\$	8,868.67	\$	905.67	\$	225.66			\$	172,264.48
51	July 1, 2015	\$	-	Late	\$	(1,086.98)	\$	861.32	\$	225.66			\$	173,351.46
52	August 1, 2015	\$	-	Late	\$	(1,092.42)	\$	866.76	\$	225.66			\$	174,443.88
53	September 1, 2015	\$	-	Late	\$	(1,097.88)	\$	872.22	\$	225.66			\$	175,541.76
54	October 1, 2015	\$	-	Late	\$	(1,103.37)	\$	877.71	\$	225.66	\$	3,329.58	\$	179,974.70
55	November 1, 2015	\$	-	Late	\$	(1,125.53)	\$	899.87	\$	225.66			\$	181,100.24
56	December 1, 2015	\$	20,000.00	Late	\$	18,868.84	\$	905.50	\$	225.66			\$	164,496.71
57	January 1, 2016	\$	-	Late	\$	(1,048.14)	\$	822.48	\$	225.66			\$	165,544.85
58	February 1, 2016	\$	-	Late	\$	(1,053.38)	\$	827.72	\$	225.66			\$	166,598.24
59	March 1, 2016	\$	-	Late	\$	(1,058.65)	\$	832.99	\$	225.66			\$	167,656.89
60	April 1, 2016	\$	10,000.00	Late	\$	8,936.06	\$	838.28	\$	225.66			\$	158,720.83
61	May 1, 2016	\$	-	Late	\$	(1,019.26)	\$	793.60	\$	225.66			\$	159,740.10
62	June 1, 2016	\$	-	Late	\$	(1,024.36)	\$	798.70	\$	225.66			\$	160,764.46
63	July 1, 2016	\$	-	Late	\$	(1,029.48)	\$	803.82	\$	225.66			\$	161,793.94
64	August 1, 2016	\$	15,000.00	Late	\$	13,965.37	\$	808.97	\$	225.66			\$	147,828.57
65	September 1, 2016	\$	-	Late	\$	(964.80)	\$	739.14	\$	225.66			\$	148,793.37
66	October 1, 2016	\$	-	Late	\$	(969.63)	\$	743.97	\$	225.66	\$	3,329.58	\$	153,092.58
67	November 1, 2016	\$	-	Late	\$	(991.12)	\$	765.46	\$	225.66			\$	154,083.70
68	December 1, 2016	\$	-	Late	\$	(996.08)	\$	770.42	\$	225.66			\$	157,344.99
69	January 1, 2017	\$	-	Late	\$	(1,012.38)	\$	786.72	\$	225.66			\$	158,357.37
70	February 1, 2017	\$	-	Late	\$	(1,017.45)	\$	791.79	\$	225.66			\$	159,374.86
71	March 1, 2017	\$	10,000.00	Late	\$	8,977.47	\$	796.87	\$	225.66			\$	150,397.36
72	April 1, 2017	\$	-	Late	\$	(977.65)	\$	751.99	\$	225.66			\$	151,375.00
73	May 1, 2017	\$	-	Late	\$	(982.54)	\$	756.88	\$	225.66			\$	152,357.54
74	June 1, 2017	\$	-	Late	\$	(987.45)	\$	761.79	\$	225.66			\$	153,344.99
75	July 1, 2017	\$	-	Late	\$	(992.38)	\$	766.72	\$	225.66			\$	154,337.37
76	August 1, 2017	\$	-	Late	\$	(997.35)	\$	771.69	\$	225.66			\$	155,334.72
77	September 1, 2017	\$	-	Late	\$	(1,002.33)	\$	776.67	\$	225.66			\$	156,337.05
78	October 1, 2017	\$	-	Late	\$	(1,007.35)	\$	781.69	\$	225.66			\$	157,344.40
79	November 1, 2017	\$	-	Late	\$	(1,012.38)	\$	786.72	\$	225.66			\$	158,356.78
80	December 1, 2017	\$	-	Late	\$	(1,017.44)	\$	791.78	\$	225.66			\$	161,639.43
81	January 1, 2018	\$	-	Late	\$	(1,033.86)	\$	808.20	\$	225.66			\$	162,673.29
82	February 1, 2018	\$	5,000.00	Late	\$	3,960.97	\$	813.37	\$	225.66			\$	158,712.32
83	March 1, 2018	\$	-	Late	\$	(1,019.22)	\$	793.56	\$	225.66			\$	159,731.54
84	April 1, 2018	\$	-	Late	\$	(1,024.32)	\$	798.66	\$	225.66			\$	160,755.85
85	May 1, 2018	\$	5,000.00	Late	\$	3,970.56	\$	803.78	\$	225.66			\$	156,785.29
86	June 1, 2018	\$	-	Late	\$	(1,009.59)	\$	783.93	\$	225.66			\$	157,794.88
87	July 1, 2018	\$	-	Late	\$	(1,014.63)	\$	788.97	\$	225.66			\$	158,809.51
88	August 1, 2018	\$	-	Late	\$	(1,019.71)	\$	794.05	\$	225.66			\$	159,829.22
89	September 1, 2018	\$	-	Late	\$	(1,024.81)	\$	799.15	\$	225.66			\$	160,854.03
90	October 1, 2018	\$	-	Late	\$	(1,029.93)	\$	804.27	\$	225.66	\$	3,329.58	\$	165,213.54
91	November 1, 2018	\$	-	Late	\$	(1,051.73)	\$	826.07	\$	225.66			\$	166,265.27
92	December 1, 2018	\$	-	Late	\$	(1,056.99)	\$	831.33	\$	225.66			\$	169,587.46
93	January 1, 2019	\$	-	Late	\$	(1,073.60)	\$	847.94	\$	225.66			\$	170,661.06
94	February 1, 2019	\$	-	Late	\$	(1,078.97)	\$	853.31	\$	225.66			\$	171,740.03
95	March 1, 2019	\$	-	Late	\$	(1,084.36)	\$	858.70	\$	225.66			\$	172,824.39

96	April 1, 2019	\$	-	Late	\$	(1,089.78)	\$	864.12	\$	225.66			\$	173,914.17		
97	May 1, 2019	\$	-	Late	\$	(1,095.23)	\$	869.57	\$	225.66			\$	175,009.40		
98	June 1, 2019	\$	-	Late	\$	(1,100.71)	\$	875.05	\$	225.66			\$	176,110.10		
99	July 1, 2019	\$	-	Late	\$	(1,106.21)	\$	880.55	\$	225.66			\$	177,216.32		
100	August 1, 2019	\$	-	Late	\$	(1,111.74)	\$	886.08	\$	225.66			\$	178,328.06		
101	September 1, 2019	\$	-	Late	\$	(1,117.30)	\$	891.64	\$	225.66			\$	179,445.36		
102	October 1, 2019	\$	-	Late	\$	(1,122.89)	\$	897.23	\$	225.66		4,498.15		\$	185,066.39	
103	November 1, 2019	\$	-	Late	\$	(1,150.99)	\$	925.33	\$	225.66				\$	186,217.39	
104	December 1, 2019	\$	-	Late	\$	(1,156.75)	\$	931.09	\$	225.66			\$	2,265.21	\$	189,639.34
105	January 1, 2020	\$	-	Late	\$	(1,173.86)	\$	948.20	\$	225.66				\$	190,813.20	
106	February 1, 2020	\$	-	Late	\$	(1,179.73)	\$	954.07	\$	225.66				\$	191,992.93	
107	March 1, 2020	\$	-	Late	\$	(1,185.62)	\$	959.96	\$	225.66				\$	193,178.55	
108	April 1, 2020	\$	-	Late	\$	(1,191.55)	\$	965.89	\$	225.66				\$	194,370.10	
109	May 1, 2020	\$	-	Late	\$	(1,197.51)	\$	971.85	\$	225.66				\$	195,567.61	
110	June 1, 2020	\$	-	Late	\$	(1,203.50)	\$	977.84	\$	225.66				\$	196,771.11	
111	July 1, 2020	\$	-	Late	\$	(1,209.52)	\$	983.86	\$	225.66				\$	197,980.63	
112	August 1, 2020	\$	-	Late	\$	(1,215.56)	\$	989.90	\$	225.66				\$	199,196.19	
113	September 1, 2020	\$	-	Late	\$	(1,221.64)	\$	995.98	\$	225.66				\$	200,417.83	
114	October 1, 2020	\$	-	Late	\$	(1,227.75)	\$	1,002.09	\$	225.66		4,459.04		\$	206,104.62	
115	November 1, 2020	\$	-	Late	\$	(1,256.18)	\$	1,030.52	\$	225.66				\$	207,360.80	
116	December 1, 2020	\$	-	Late	\$	(1,262.46)	\$	1,036.80	\$	225.66			\$	2,265.21	\$	210,888.48
117	January 1, 2021	\$	-	Late	\$	(1,280.10)	\$	1,054.44	\$	225.66				\$	212,168.58	
118	February 1, 2021	\$	-	Late	\$	(1,286.50)	\$	1,060.84	\$	225.66				\$	213,455.08	
119	March 1, 2021	\$	-	Late	\$	(1,292.94)	\$	1,067.28	\$	225.66				\$	214,748.02	
120	April 1, 2021	\$	-	Late	\$	(1,299.40)	\$	1,073.74	\$	225.66				\$	216,047.42	
		\$	184,398.30				\$	108,589.90	\$	26,176.56	\$	31,438.91	\$	21,740.35		

Suite 1100
2 West Washington Street
Greenville, SC 29601

January 5, 2018

Mr. Cecil T. Dyar
P.O. Box 2442
Anderson, SC 29622

Re: Prepayment and Closing of Purchase-Money Debt Secured by Mortgage Interest in Orr Street Property in Anderson, SC and Bearing Tax Map Number 123-24-03-003 (the "Property")

Mr. Dyar:

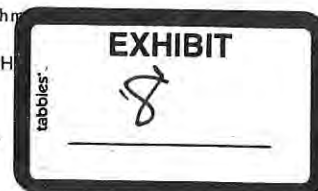
My firm has the privilege of representing Moats Construction, LLC and its principal, Russell T. Moats. In this capacity, I have reviewed that certain *Commercial Purchase Agreement and Deposit Receipt* dated January 29, 2011 (the "General Sales Agreement") between you and Moats Construction, LLC. As you are likely aware, Section 6 of the General Sales Agreement contemplates delivery of a deed upon payment of "the remaining balance financed by Seller according to the terms [thereof] and a separate Articles of Agreement for Deed executed by Buyer and Seller." I have also reviewed an instrument captioned as an *Agreement for Sale and Purchase of Real Property* dated January 29, 2011 (the "Bond for Title" or sometimes simply the "Bond") between you and Moats Construction, LLC, and I have some confidence that the Bond for Title is one and the same as the Articles of Agreement for Deed referenced in Section 6 of the General Sales Agreement. In any case, the purpose of this letter is to declare Moats Construction, LLC's intention to make a final payment on the Bond and simultaneously to obtain title as contemplated therein (see Bond Sections 4 and 8).

In arranging for a closing, my first question is whether you will be represented by counsel? If the answer be yes, please provide to me your attorney's contact information, so that I may transmit proposed documents and otherwise coordinate the transaction. Regardless of representation, my proposed logistic for closing is outlined as follows:

1. Confirmation of Accounting Details/Payoff Amount. I hereby present a statement of account reflecting the final payment amount due on the Bond in the amount of **\$83,338.98 (as of December 31, 2017)**. The calculations leading to this balance are detailed on the attached spreadsheet (titled "Moats from Dyar Bond Payoff Calculations). With interest accruing against principal at 6% per annum, the per-day interest accrual on the principal balance (\$82,255.69) is **\$13.71**. I hereby request your confirmation of the total balance due and per diem figure. Ultimately, the closing statement will stipulate the confirmed payoff amount, together with buyer costs and credits (including, without limitation, title insurance premiums, recording expenses,

Direct: 864.751.7605 | Fax: 864.751.7801 | william.swent@smithmoorelaw.com | www.smithmoorelaw.com

ATLANTA | CHARLESTON | CHARLOTTE | GREENSBORO | GREENVILLE | RALEIGH



Cecil T. Dyar
January 5, 2018
Page 2

and attorney fees) and seller costs and credits (including, without limitation, loan payoff, monetary liens satisfactions, transfer taxes [a.k.a. deed stamps] and seller attorney fees/document prep charges).

2. Document Preparation. I will prepare a General Warranty Deed as contemplated in Section 4 of the Bond for Title. A South Carolina Withholding Tax Affidavit and a Federal FIRPTA Affidavit will be required, as contemplated in Sections 38 and 39 of the General Sales Agreement. Further, the transaction will require completion and reporting of IRS Form 1099 and an Affidavit as to Title Matters. My firm will prepare these instruments and submit them to you or your counsel for review.

3. Deposits into, and Break of, Escrow. Once all the documents and the accountings are resolved, I will solicit signatures from both Purchaser and Seller, and I will solicit funds from Purchaser. A formal escrow arrangement will dictate that WHEN a) all requisite documents bearing original signatures and any required witnessing and notaries, AND b) all funds necessary to close in accordance with the settlement statement are in escrow, THEN c) the escrow deposits will be released, so that funds can be disbursed (including payment of the final amount due on the Bond) and documents can be recorded.

In closing, I ask that you please contact my office at your first convenience, or have your counsel do so. I would like to address any initial questions you may have and discuss timing for completion of the transaction. I have attached various reference documents to enable your review and confirmations. With kindest regards I remain

Yours very truly,

William B. Swent

cc: Cecil T. Dyar [alternate address]
1407 Old Denver School Road
Anderson, SC 29625
AND
Russell T. Moats

GREENVILLE 1500575

Moats from Dyar Bond Payoff Calculations

I. Original Contract Terms:

Gross Purchase Price	\$250,000.00
Less Down Payment	\$37,500.00
<u>Outstanding Bond:</u>	<u>\$212,500.00</u>

II. Additional Debits (for Interest and Carry Costs) Less Payments--through original Maturity Date, 3/31/2016:A. Summary of Interest and Carry Costs (through original maturity):

INTEREST (closing to original maturity 3/31/16):	\$33,993.00

Note: This figure comes from the print-out of an amortization calculator supplied by Moats. It appears that this figure has been accepted by the parties as part of an August 2016 reconciliation and extension of Bond maturity.

Reimbursement for PROPERTY TAXES paid by Seller:	\$15,822.58

Note: This sum has not been verified by review of historical tax notices. The assumption is that Seller paid the taxes and sent notices to Moats Construction for confirmation. In any case, the Bond and Original Contract require Moats Construction to pay the property taxes.

Reimbursement for INSURANCE paid by Seller:	\$10,648.30

Note: This sum has not been verified by review of insurance invoicing. The assumption is that Seller paid the premiums and sent invoices to Moats Construction for reimbursement.

LATE FEES:	\$10,886.74

Note: This sum has not been verified, and based on the missed payment noted below is likely overstated.

<u>Total Interest and Carry Costs:</u>	<u>\$71,350.62</u>

B. Summary of Payments on Bond (through original maturity):

Payment Date	Check #	Amount	Comments:
4/28/2011	10451	\$5,213.22	
6/2/2011	10477	\$4,513.22	
7/1/2011	10491	\$4,513.22	
8/4/2011	10512	\$4,513.22	
9/5/2011	10525	\$4,513.22	Note: This payment does not appear on the handwritten payment accounting.
9/28/2011	10534	\$4,513.22	
11/8/2011	10542	\$4,513.22	
1/6/2012	10549	\$9,026.44	
9/28/2012	10636	\$9,026.44	
2/20/2013	CASH	\$3,000.00	
3/29/2013	10683	\$5,000.00	
6/7/2013	10701	\$4,500.00	
8/28/2013	10737	\$2,500.00	
9/10/2013	10742	\$2,013.22	
11/22/2013	10783	\$22,566.10	
4/10/2014	10819	\$5,000.00	
7/2/2014	10870	\$10,000.00	
11/24/2014	CASH	\$5,000.00	
1/15/2015	11100	\$5,000.00	
2/20/2015	10893	\$5,000.00	
6/23/2015	11000	\$10,000.00	
12/21/2015	11082	\$20,000.00	
4/11/2016	11298	\$10,000.00	
<u>Total Payments Prior to 2016 Maturity and Reconciliation:</u>		<u>\$160,924.74</u>	Note: This sum differs from the 2016 payment accounting by virtue of the missed check number 10525 dated 9/5/2011.

<u>RECONCILED BALANCE AS OF AUGUST 2016:</u>	<u>\$122,925.88</u>

Note: This amount derives from original Bond Balance plus Total Interest and Carry Costs less Total Payments made prior to 2016 Reconciliation. The working papers of the parties show this figure as \$128,176.74. The difference is due to a failure to account for payment by check 10525.

III. Additional Debits (for Interest and Carry Costs) Less Payments--During Bond Extension:A. Summary of Interest and Carry Costs (during Bond extension):

INTEREST (3/31/16 to 12/31/17):	\$8,525.08

Note: This figure from an amortization calculator allowing for Interim payments (see attached). With the last interim payment in March of 2017, the per day interest rate (\$13.71) is used for determination of all additional interest.

PROPERTY TAXES	Paid by Purchaser
INSURANCE	Paid by Purchaser
<u>Total Interest and Carry Costs:</u>	<u>\$8,525.08</u>

B. Summary of Payments on Bond (during Extension):

8/12/2016	11427	\$15,000.00
2/3/2017	11649	\$20,000.00
3/9/2017	11668	\$10,000.00
Stormwater Liens	n/a	\$3,111.98
<u>Total Payments During Ext:</u>		<u>\$48,111.98</u>

<u>BALANCE DUE TO CLOSE (as of 12/31):</u>	<u>\$83,338.98</u>

Note: Additional Interest at the per-day rate must be added for every day in 2018 prior to Closing.

doc 1505702

Moats - 0086

Loan Amortization Schedule

For 2016 Reconciliation

Enter values	
Loan amount	\$ 212,500.00
Annual interest rate	6.00 %
Loan period in years	5
Number of payments per year	12
Start date of loan	04/01/2011
Optional extra payments	\$ -

Loan summary	
Scheduled payment	\$ 4,108.22
Scheduled number of payments	60
Actual number of payments	60
Total early payments	-
Total interest	\$ 33,993.22

Lender name: _____

Pmt No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
1	05/01/2011	\$ 212,500.00	\$ 4,108.22	-	\$ 4,108.22	\$ 3,045.72	\$ 1,062.50	\$ 209,454.28	\$ 1,062.50
2	06/01/2011	209,454.28	4,108.22	-	4,108.22	3,060.95	1,047.27	206,393.33	2,109.77
3	07/01/2011	206,393.33	4,108.22	-	4,108.22	3,076.25	1,031.97	203,317.08	3,141.74
4	08/01/2011	203,317.08	4,108.22	-	4,108.22	3,091.63	1,016.59	200,225.44	4,158.32
5	09/01/2011	200,225.44	4,108.22	-	4,108.22	3,107.09	1,001.13	197,118.35	5,159.45
6	10/01/2011	197,118.35	4,108.22	-	4,108.22	3,122.63	985.59	193,995.72	6,145.04
7	11/01/2011	193,995.72	4,108.22	-	4,108.22	3,138.24	969.98	190,857.48	7,115.02
8	12/01/2011	190,857.48	4,108.22	-	4,108.22	3,153.93	954.29	187,703.55	8,069.31
9	01/01/2012	187,703.55	4,108.22	-	4,108.22	3,169.70	938.52	184,533.84	9,007.83
10	02/01/2012	184,533.84	4,108.22	-	4,108.22	3,185.55	922.67	181,348.29	9,930.50
11	03/01/2012	181,348.29	4,108.22	-	4,108.22	3,201.48	906.74	178,146.81	10,837.24
12	04/01/2012	178,146.81	4,108.22	-	4,108.22	3,217.49	890.73	174,929.33	11,727.97
13	05/01/2012	174,929.33	4,108.22	-	4,108.22	3,233.57	874.65	171,695.75	12,602.62
14	06/01/2012	171,695.75	4,108.22	-	4,108.22	3,249.74	858.48	168,446.01	13,461.10
15	07/01/2012	168,446.01	4,108.22	-	4,108.22	3,265.99	842.23	165,180.02	14,303.33
16	08/01/2012	165,180.02	4,108.22	-	4,108.22	3,282.32	825.90	161,897.70	15,129.23
17	09/01/2012	161,897.70	4,108.22	-	4,108.22	3,298.73	809.49	158,598.97	15,938.71
18	10/01/2012	158,598.97	4,108.22	-	4,108.22	3,315.23	792.99	155,283.74	16,731.71
19	11/01/2012	155,283.74	4,108.22	-	4,108.22	3,331.80	776.42	151,951.94	17,508.13
20	12/01/2012	151,951.94	4,108.22	-	4,108.22	3,348.46	759.76	148,603.48	18,267.89
21	01/01/2013	148,603.48	4,108.22	-	4,108.22	3,365.20	743.02	145,238.28	19,010.91
22	02/01/2013	145,238.28	4,108.22	-	4,108.22	3,382.03	726.19	141,856.25	19,737.10
23	03/01/2013	141,856.25	4,108.22	-	4,108.22	3,398.94	709.28	138,457.31	20,446.38
24	04/01/2013	138,457.31	4,108.22	-	4,108.22	3,415.93	692.29	135,041.38	21,138.66
25	05/01/2013	135,041.38	4,108.22	-	4,108.22	3,433.01	675.21	131,608.36	21,813.87
26	06/01/2013	131,608.36	4,108.22	-	4,108.22	3,450.18	658.04	128,158.19	22,471.91
27	07/01/2013	128,158.19	4,108.22	-	4,108.22	3,467.43	640.79	124,690.76	23,112.70
28	08/01/2013	124,690.76	4,108.22	-	4,108.22	3,484.77	623.45	121,205.99	23,736.16
29	09/01/2013	121,205.99	4,108.22	-	4,108.22	3,502.19	606.03	117,703.80	24,342.19
30	10/01/2013	117,703.80	4,108.22	-	4,108.22	3,519.70	588.52	114,184.10	24,930.71
31	11/01/2013	114,184.10	4,108.22	-	4,108.22	3,537.30	570.92	110,646.80	25,501.63
32	12/01/2013	110,646.80	4,108.22	-	4,108.22	3,554.99	553.23	107,091.81	26,054.86
33	01/01/2014	107,091.81	4,108.22	-	4,108.22	3,572.76	535.46	103,519.05	26,590.32
34	02/01/2014	103,519.05	4,108.22	-	4,108.22	3,590.63	517.60	99,928.42	27,107.92
35	03/01/2014	99,928.42	4,108.22	-	4,108.22	3,608.58	499.64	96,319.85	27,607.56
36	04/01/2014	96,319.85	4,108.22	-	4,108.22	3,626.62	481.60	92,693.23	28,089.16
37	05/01/2014	92,693.23	4,108.22	-	4,108.22	3,644.75	463.47	89,048.47	28,552.62

Loan Amortization Schedule

Enter values	
Loan amount	\$ 212,500.00
Annual interest rate	6.00 %
Loan period in years	5
Number of payments per year	12
Start date of loan	04/01/2011
Optional extra payments	\$ -

Lender name: _____

Loan summary	
Scheduled payment	\$ 4,108.22
Scheduled number of payments	60
Actual number of payments	60
Total early payments	\$ -
Total interest	\$ 33,993.22

Pmt No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
38	06/01/2014	89,048.47	4,108.22	-	4,108.22	3,662.98	445.24	85,385.49	28,997.87
39	07/01/2014	85,385.49	4,108.22	-	4,108.22	3,681.29	426.93	81,704.20	29,424.79
40	08/01/2014	81,704.20	4,108.22	-	4,108.22	3,699.70	408.52	78,004.50	29,833.31
41	09/01/2014	78,004.50	4,108.22	-	4,108.22	3,718.20	390.02	74,286.30	30,223.34
42	10/01/2014	74,286.30	4,108.22	-	4,108.22	3,736.79	371.43	70,549.51	30,594.77
43	11/01/2014	70,549.51	4,108.22	-	4,108.22	3,755.47	352.75	66,794.04	30,947.52
44	12/01/2014	66,794.04	4,108.22	-	4,108.22	3,774.25	333.97	63,019.79	31,281.49
45	01/01/2015	63,019.79	4,108.22	-	4,108.22	3,793.12	315.10	59,226.67	31,596.59
46	02/01/2015	59,226.67	4,108.22	-	4,108.22	3,812.09	296.13	55,414.58	31,892.72
47	03/01/2015	55,414.58	4,108.22	-	4,108.22	3,831.15	277.07	51,583.44	32,169.79
48	04/01/2015	51,583.44	4,108.22	-	4,108.22	3,850.30	257.92	47,733.13	32,427.71
49	05/01/2015	47,733.13	4,108.22	-	4,108.22	3,869.55	238.67	43,863.58	32,666.37
50	06/01/2015	43,863.58	4,108.22	-	4,108.22	3,888.90	219.32	39,974.68	32,885.69
51	07/01/2015	39,974.68	4,108.22	-	4,108.22	3,908.35	199.87	36,066.33	33,085.57
52	08/01/2015	36,066.33	4,108.22	-	4,108.22	3,927.89	180.33	32,138.44	33,265.90
53	09/01/2015	32,138.44	4,108.22	-	4,108.22	3,947.53	160.69	28,190.91	33,426.59
54	10/01/2015	28,190.91	4,108.22	-	4,108.22	3,967.27	140.95	24,223.65	33,567.54
55	11/01/2015	24,223.65	4,108.22	-	4,108.22	3,987.10	121.12	20,236.54	33,688.66
56	12/01/2015	20,236.54	4,108.22	-	4,108.22	4,007.04	101.18	16,229.51	33,789.84
57	01/01/2016	16,229.51	4,108.22	-	4,108.22	4,027.07	81.15	12,202.43	33,870.99
58	02/01/2016	12,202.43	4,108.22	-	4,108.22	4,047.21	61.01	8,155.23	33,932.00
59	03/01/2016	8,155.23	4,108.22	-	4,108.22	4,067.44	40.78	4,087.78	33,972.78
60	04/01/2016	4,087.78	4,108.22	-	4,087.78	4,067.34	20.44	0.00	33,993.22

Loan Calculator with Extra Payments

	Enter Values	Instructions
Loan Amount	\$122,925.88	
Annual Interest Rate	6.000%	
Loan Period in Years	5	Must be between 1 and 30 years.
Start Date of Loan	8/1/2016	
Optional Extra Payments	\$0.00	If your extra payments vary, enter them in the table below.

Scheduled Monthly Payment	\$	2,376.50
Scheduled Number of Payments		60
Actual Number of Payments		9
Total Early Payments	\$	37,870.50
Total Interest	\$	4,329.82

No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance
1	8/1/2016	\$ 122,925.88	\$ 2,376.50	\$ 12,623.50	\$ 15,000.00	\$ 14,385.37	\$ 614.63	\$ 108,540.51
2	9/1/2016	108,540.51	2,376.50		0.00	(542.70)	542.70	109,083.21
3	10/1/2016	109,083.21	2,376.50		0.00	(542.70)	542.70	109,625.91
4	11/1/2016	109,625.91	2,376.50		0.00	(542.70)	542.70	110,168.61
5	12/1/2016	110,168.61	2,376.50		0.00	(542.70)	542.70	110,711.31
6	1/1/2017	110,711.31	2,376.50		0.00	(542.70)	542.70	111,254.01
7	2/1/2017	111,254.01	2,376.50	17,623.50	20,000.00	19,457.30	542.70	91,796.71
8	3/1/2017	91,796.71	2,376.50	7,623.50	10,000.00	9,541.02	458.98	82,255.69

INTEREST ACCRUING AFTER 3/1/17:

PRIN: \$82,255.69

x .6% APR

= \$49,353.41

÷ 360

\$13.71 PER DAY

x ~~APRIL~~ MARCH THROUGH DEC => 306 days

\$4,195.26

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON
	)	
COUNTY OF ANDERSON	)	PLEAS
	)	
Moats Construction, Inc.	)	TENTH JUDICIAL CIRCUIT
	)	
Plaintiff,	)	C.A. No. 2020-CP-04-01202
	)	
vs.	)	
	)	
Cecil R. Dyar	)	MEMORANDUM IN
	)	OPPOSITION TO MOTION FOR
Defendants.	)	DEFAULT JUDGMENT AND
	)	MOTION FOR SUMMARY
	)	JUDGMENT

Plaintiffs, Moats Construction, Inc. (hereinafter "Moats") presents the following Memorandum in Opposition to Defendant's Motion for Default Judgment and Summary Judgment in the above captioned matter.

BACKGROUND

Defendant, Cecil R. Dyar (hereinafter "Dyar"), provides an extensive background regarding a lawsuit he filed against the Plaintiff (the "Dyar Action") for the same purposes that Moats filed the instant action which was to determine amounts due under an Agreement for Sale and Purchase of Real Property which is in essence a Bond for Title which conveyed Moats equitable title in the property which is the subject of this action and wherein Dyar retained legal title. The fact of the matter is that the Dyar Action was never served on Moats and the remedy for that is to file a motion for service by publication so any reference to the Dyar Action is beyond the purview of this Court and irrelevant. What is relevant in this pending motion is (1) is the Plaintiff entitled to an enlargement of time to file a Reply to the Counterclaim and (2) is the Defendant entitled to Summary Judgment.

ARGUMENT & LAW

I. MOTIN FOR ENLAGEMENT OF TIME AND MOTION FOR DEFAULT JUDGMENT

Moats has good cause for the relief sought herein and even if the Court were to enter default on the Defendant's sole Counterclaim, Plaintiff would be entitled to relief from the default under SCRCP, Rule 60(b)(1) due to mistake, inadvertence or excusable neglect. Although Plaintiff's counsel agrees with Defendant's counsel that Defendant's counsel is not required to give notice to Plaintiff's counsel that he had failed to Reply to the Counterclaim, even after Plaintiff was technically in default, Defendant's counsel propounded discovery on Plaintiff which Plaintiff robustly complied with. Plaintiff's deposition was taken on January 28, 2021. Defendant's Motion for Default was filed shortly thereafter. Such relief is under the sound discretion of the Court (SCRCP, Rule 55(c)) and denial of the Defendant's motion and the granting of Plaintiff's Motion to Enlarge Time would serve the interest of justice. The filing of this motion is timely, the Plaintiff has a meritorious defense to the amounts due to satisfy its payment requirement under the Bond for Title and Defendant would not be prejudiced in any way if relief from default were granted. *See e.g., Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 383 S.C. 601 (2009); 681 S.E. 2d 885. Furthermore, the "good cause" standard is much lower in pre-entry relief than post-entry of an entry of default. *Id.* at 888. Quite simply, Plaintiff's counsel was pre-occupied with providing meaningful discovery responses and inadvertently and mistakenly failed to file a Reply to the Counterclaim.

Even though Defendant states that there is no evidence to support Plaintiff's position of mistake, inadvertence or excusable neglect, that evidence falls squarely onto

the shoulders of Plaintiff's counsel. While a failure to respond to a properly served Complaint served upon a Defendant falls squarely upon the shoulders of a Defendant, the failure to respond to pleadings served upon counsel of record falls squarely upon the shoulders of counsel. In the environment that existed at the time of the filing of the Answer and Counterclaim, the entire world was under a developing pandemic of the COVID-19 virus. This was recognized sometime in March of 2020 and even earlier. *See e.g., 2020-04-03-01 (Amended by Order 2020-04-14-01)*, The Supreme Court of South Carolina, RE: Operation of the Trial Courts During the Coronavirus Emergency Appellate Case No. 2020-000447. At that time, the Order stated,

“[t]he purpose of this order is to provide guidance on the continued operation of the trial courts during the current coronavirus (COVID-19) emergency. The measures contained in this order are intended to allow essential operations to continue while minimizing the risk to the public, litigants, lawyers and court employees. In the past, the South Carolina Judicial Branch has shown great resilience in responding to hurricanes, floods, and other major disasters, and this Court is confident that the same will be true in this emergency. This emergency, however, differs from these prior emergencies in many aspects. The current emergency will significantly impact every community in South Carolina while the prior emergencies, although potentially horrific for the individuals and communities directly impacted, did not. The impact of the prior emergencies could be minimized or avoided by traveling away from the site of the disaster; this is not the case for the current emergency. Further, in the prior emergencies, the circumstances giving rise to the emergency involved a single event with a beginning and a predictable end. This is not the case for the coronavirus, and even conservative estimates indicate the direct impacts of this pandemic will continue for many months.

In light of the extraordinary challenges presented by the current emergency, this Court finds it necessary to supplement and, in some situations, to alter significantly, the current practices regarding the operation of the trial courts. In the event of a conflict between this order and the South Carolina Rules of Civil Procedure (SCRCP), the South Carolina Rules of Criminal Procedure

(SCRCrimP), the South Carolina Rules of Family Court (SCRFC), the South Carolina Rules of Probate Court (SCRPC), the South Carolina Rules of Magistrates Court (SCRMCMC), the South Carolina Court-Annexed Alternative Dispute Resolution Rules (SCADR), South Carolina Rules of Evidence (SCRE) or any other rule or administrative order regarding the operation of a trial court, this order shall control.

(b) Terminology. The following terminology is used in this order.

(1) Judge: a judge of the circuit court, family court, probate court, magistrate court and municipal court, including masters-in-equity and special referees.

(2) Remote Communication Technology: technology such as video conferencing and teleconferencing which allows audio and/or video to be shared at differing locations in real time.

(3) Summary Court: the magistrate and municipal courts.

(4) Trial Court: the circuit court (including masters-in-equity court), family court, probate court, magistrate court and municipal court.

(c) General Guidance. This section provides general guidance applicable to all trial courts or to several court types, and later sections will provide guidance that is limited to one court type. While this order remains in effect, the following general guidance shall apply:

(1) Jury Trials. *All jury selections and jury trials in all criminal and civil cases are continued until further notice. (emphasis added).*”

While Plaintiff’s counsel cannot say when he was actually aware of the circumstances that existed at the time, it appeared that the courts were in a state of total shutdown at some time after the filing of the Complaint and Answer and Counterclaim. Plaintiff’s counsel also believed that all cases and matters involving filings were in a state of continuance. However, Plaintiff’s counsel continued to engage in meaningful discovery responses and after the December, 2021 surge of COVID-19 somewhat subsided, produced his client for depositions, agreed to the continuance of depositions for discovery of materials that Defendant’s counsel thought were germane to the case and awaits the outcome of these motions to gather discovery from Defendants and make proper findings

of amounts due on the theories of accounting, setoff, negligence, and breach of the duty of good faith and fair dealing under the Agreement. The Plaintiff does not deny that Defendant is entitled to foreclosure, but this action was filed to force the hand on an accounting and other causes pertinent in the totality of the circumstances. Plaintiff believes that given the totality of unprecedented circumstances, it should be granted the enlargement of time to enter the Reply to Defendant's Counterclaim and that the Defendant's Motion for Default should be denied.

II. MOTION FOR SUMMARY JUDGMENT

Rule 56(c) of the South Carolina Rules of Civil Procedure states a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000). *Catawba Indian Nation v. State*, 407 S.C. 526, 535–36, 756 S.E.2d 900, 905–06 (2014).

Secondly, it is improper to grant summary judgment until such time as discovery is complete. "Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Id.* at 112, 410 S.E.2d at 543. Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is "not merely engaged in a 'fishing expedition.' " *Id.* at 112, 410 S.E.2d at 544."

Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (citing) *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

Defendant's Motion for Summary Judgment is based on its only Counterclaim of foreclosure. Plaintiff agrees that Defendant is entitled to foreclosure, but disputes the amounts due based on Plaintiff's causes of action of Breach of Contract and Breach of Covenant of Good Faith and Fair Dealing, Negligence, Accounting and Set-Off, and Specific Performance. There is nothing in the Defendant's Motion that overcomes or provides evidence that those causes of action are not viable. Defendant argues that, "Moats failed to articulate any legally sufficient defenses as to the debt owed based upon the terms and provisions of the Agreement," but that is not true. In fact, Defendant notes the letter of previous counsel, William Swent, who has calculated the amount due of \$83,338.98 as of December 31, 2017. This letter is dated January, 5, 2018. (See, Defendant's Memo in Support, EXHIBIT 8). It is obvious the debt was in dispute at that time and that Dyar has done nothing to refute the true debt owed other than an affidavit of his accountant filed with its Memorandum in Support. Furthermore, Plaintiff has pled that it was excused from performance based on the Defendant's breach first. "[A] defendant, having first failed to perform his part, cannot resist the recovery, because the whole work was not finished within the time; and, having accepted and used a considerable portion of the plaintiff's work, he cannot deny the plaintiff's right to recover *pro tanto*." *Summer v. Dewalt*, 28 S.C.L. 135, 138 (S.C. App. L. 1842). Furthermore, with respect to payment, Plaintiff takes the position that the parties altered the payment schedule and that such alteration was evidenced by the doctrine of part performance. "Courts of equity will decree specific performance of oral agreement for acquisition of interest in land, despite statute of frauds,

where sufficient part performance has occurred. *Gibson v. Hrysikos*, 293 S.C. 8, 358 S.E.2d 173 (Ct. App. 1987). “A written contract may be modified by the parties thereto in any manner they choose, notwithstanding agreement prohibiting its alteration except in a particular manner.” 13 C.J., page 593, § 609; page 594, § 611.” Evatt v. Campbell, 234 S.C. 1, 6–7, 106 S.E.2d 447, 450 (1959). There is evidence in the deposition of Russell Moats that the parties engaged in a payment system of abbreviated payments wherein Moats paid sporadic payments of sums of money that were different than the payment scheme of the Agreement. (See, **Exhibit A**; Deposition of Russell Moats pp. 100-104). Mr. Moats also testified that he felt Mr. Dyar may owe him money for the Negligence involved in the failure to process the negligence claim. (*Id* at p. 104). Mr. Moats also testified that Mr. Dyar kept the insurance on the building which was contrary to the Agreement. (See, **Exhibit B**; Deposition of Russell Moats, p. 40, line 9-14). The Defendant’s Memorandum in Support (Exhibit 7) says that Joshua Pruiette-Lange has been Mr. Dyar’s accountant since 2016, yet Mr. Moats has been making payments since the inception of the Agreement so Mr. Pruiette-Lang’s Affidavit testimony is obviously based on hearsay for the periods preceding that time because the Plaintiff began making payments on May 1 of 2011 some five (5) years prior. Therefore, the grant of summary judgement on default in specific payments, the insurance obligations, and Plaintiff’s causes of action would be improper and should be decided by the trier of fact and warrant further discovery.

CONCLUSION

For the reasons stated herein, Plaintiffs prays that the Court deny Defendant’s Motion for Summary Judgment and Motion for Default Judgment and grant the Plaintiff’s Motion for an Enlargement of time to respond to Defendant’s Counterclaim.

Respectfully submitted,

s/ Wendell L. Hawkins
Wendell L. Hawkins (S.C. Bar #: 13583)
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Attorneys for Plaintiffs

April 11, 2021
Greer, South Carolina

EXHIBIT A

Deposition of Russell Tyson Moats

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1 And we have a good relationship with -- or have with
2 all of them. Donnie Sims was the guy with Pickens.
3 He came down there. Anyway, they wanted to have a
4 meeting down there with us. So we had a meeting down
5 there with them, and we just kind of went back and
6 forth about access to the property. And they made
7 their claim that they were the railroad and if they
8 wanted to shut that down, then they could. So, you
9 know, at that point is when I hired Mr. Swent to deal
10 with the issues with the railroad --
11 Q. Okay.
12 A. -- 'cause I had to have -- we had to have
13 legal access to the property.
14 Q. Do you now have access? Do you still have
15 access?
16 A. I mean, we have access when they don't
17 block it off.
18 Q. Okay. And how often do they block it off?
19 A. It's only when they make repairs to the
20 line.
21 Q. And how often do they make repairs?
22 A. A couple of times a year.
23 Q. And what time period are we talking about
24 that these issues came up?
25 A. You know, it's going to be prior to

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1 whenever that letter was that Mr. Swent had drafted.
2 Q. Oh, are you talking about the January 2018
3 letter?
4 A. Yeah. So I'm guessing it was in 2017
5 sometime.
6 Q. So did you ever resolve those issues to
7 your satisfaction?
8 A. We have not because we found out -- in
9 hiring Mr. Swent, he made us aware of the other
10 issues that we had that related to the property, and
11 that was the issues with the purchase agreement and
12 -- that we had -- we were not aware of up until that
13 point.
14 Q. What issues with the purchase agreement?
15 A. Well, that the property was never recorded,
16 nothing was ever recorded like we had thought it was.
17 Nothing was ever recorded with the register of deeds
18 office in Anderson, or the probate wasn't recorded
19 like Mr. Wright, John Wright told us that it was
20 going to be, showing that we were -- we were
21 incurring an equity interest, I guess, in the
22 property by making payments on the note. And we had
23 not been made aware. We didn't know that before,
24 before he started -- I guess they performed their own
25 abstract of the title, and then they -- at that

100

1 point, they made us aware of that.
2 Q. Okay. Have you retained another attorney
3 to deal with that issue?
4 A. I have.
5 Q. Okay. Is that the gentleman sitting right
6 next to you?
7 A. It is.
8 Q. Okay. And what are you proposing to do
9 about the railroad?
10 A. Well, we were hoping to get the issues
11 resolved, one way or the other, with Mr. Dyar and
12 then at that point deal with the railroad. That was
13 the advice of Mr. Swent, and so that's why we were
14 trying to work out exactly what the amount was that
15 we owed to Mr. Dyar so that we could move forward,
16 you know, more in that direction.
17 MR. LOGAN: Okay. All right. Thank you.
18 Appreciate it.
19 EXAMINATION
20 BY MR. HAWKINS:
21 Q. Just a few questions. Mr. Moats, if you'll
22 look at Exhibit 3.
23 A. One second.
24 Q. Looking at what looks like a ledger here
25 that is computer generated, attached to Exhibit 3,

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1 there seemed to be some irregularities in payment.
2 Did Mr. Dyar ever object to these irregularities?
3 A. No, sir.
4 Q. Did he ever send you anything in writing
5 regarding the irregularities?
6 A. No, sir.
7 Q. Did he ever object to the 22,566 payment on
8 November of 2013? Do you see what I'm talking about?
9 A. No, sir.
10 Q. If you look to November 22nd of 2013, I see
11 a payment of \$22,566. Are we looking at the same --
12 A. I mean, I see that on this sheet.
13 Q. Did Mr. Dyar ever object to receiving that
14 much money?
15 A. No.
16 Q. And your payment amount was the 4513.22; is
17 that what the agreement said?
18 A. Yes, I believe so.
19 Q. So I see a payment in February of 2013 for
20 3,000 cash. Do you see that?
21 A. I see it.
22 Q. Did he object to that?
23 A. No.
24 Q. March 29, 2013, a \$6,000 payment, did he
25 object to that?

26 (Pages 98 to 101)

LEGAL EAGLE
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Deposition of Russell Tyson Moats

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102 1 A. March 29, two thousand -- 2 Q. '13. 3 A. No. 4 Q. July 2, 2014, \$10,000, did he ever object 5 to that? 6 A. No, sir. 7 Q. Did he ever object - and when I say object, 8 either orally or in writing - to the cash payment of 9 November 15, 2014? 10 A. No, sir. 11 Q. Did he give you a receipt? 12 A. He did not. 13 Q. June 23, 2015, \$10,000, did he object to 14 that? 15 A. No. 16 Q. The \$20,000 payment, 12/21/15, did he ever 17 object to that? 18 A. No. 19 Q. March 30, 2016, \$10,000, did he ever object 20 to that? 21 A. No. 22 Q. August 12, 2016, \$15,000, did he ever 23 object to that? 24 A. No. 25 Q. And if you'll turn the page, this is the	104 1 sometime in 2020, I guess, whatever the exhibit says? 2 A. Whenever they filed their action, I guess. 3 I'm not sure what the date was. 4 Q. But when you consulted me, that's when we 5 actually sued Mr. Dyar, correct? 6 A. Correct. 7 Q. Do you know what a lis pendens is? 8 A. Yes. 9 Q. What's your -- 10 A. Well, I've got an idea of what it is. 11 Q. We sued Mr. Dyar for negligence on the 12 insurance claim, correct? 13 A. Correct. 14 Q. Okay. And it was your feeling that you had 15 an extensive repair that he did not properly process, 16 correct? 17 A. Correct. 18 Q. And so, as in your summons and complaint, 19 you felt like that he may owe you money, correct? 20 A. I did. 21 Q. And that's why you hired a lawyer -- 22 A. Correct. 23 Q. -- correct? 24 MR. HAWKINS: I don't have any other 25 questions.
103 1 handwritten ledger. The first payment I see is a 2 \$5,000 payment in February of 2018. Did he ever 3 object to that? 4 A. No. 5 Q. And \$50,000 made about three months 6 thereafter, it says 5/20/2018? 7 MR. LOGAN: Did you just say 50? 8 THE DEPONENT: I believe it's -- I believe 9 it's 5,000. 10 MR. LOGAN: 5,000. 11 MR. HAWKINS: I don't -- I can't read it. 12 It didn't have any decimals. 13 Q. [By Mr. Hawkins] He never objected to that? 14 A. No, sir. 15 Q. So obviously between -- is it fair to say 16 between 2011 and 2018, you all just changed whatever 17 the payment requirements were? 18 MR. LOGAN: Object to the form. 19 Q. [By Mr. Hawkins] I mean, he never 20 objected, right? 21 A. No, he never objected -- 22 Q. He never sent you a letter -- 23 A. -- to the payments. 24 MRS. DYAR: That we begged for. 25 Q. [By Mr. Hawkins] And then you got sued	105 1 MR. LOGAN: I have none either. 2 THE REPORTER: Mr. Hawkins, did you want 3 him to read or waive signature? 4 MR. HAWKINS: We'll probably read. 5 THE REPORTER: Okay. Did you want a copy 6 of the deposition? 7 MR. HAWKINS: Yeah, I want an E-tran and a 8 hard copy with exhibits and a condensed version. 9 [Whereupon, at 12:43 p.m., the taking of 10 the deposition was concluded.] 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

27 (Pages 102 to 105)

LEGAL EAGLE
864-467-1373

EXHIBIT B

Deposition of Russell Tyson Moats

ELECTRONICALLY FILED - 2021 Apr 11 12:39 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401202

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1 then there was actually a payment that was completely
2 missed.
3 Q. And what was the amount of that payment?
4 A. I believe it was the -- whatever the
5 payment amount in the contract was.
6 Q. All right. \$4,513.22 is what it started
7 off as. Was it a payment?
8 A. I believe it was that amount.
9 Q. Okay. Did you present any evidence to
10 either Mr. Dyar or Mrs. Dyar to establish the cash
11 payment and the missed payment?
12 A. I discussed this with Mr. Dyar in person
13 and, I believe, on the telephone, that we needed to
14 get together with his accountant and go over
15 everything so that we could figure out what exactly
16 the balance was owed and, you know, pay the balance
17 in full. I believe all this was at the end of the
18 term, the original term.
19 Q. Sometime in 2016?
20 A. I believe so.
21 Q. Okay. Because this was a five-year deal,
22 right?
23 A. Yes, sir.
24 Q. Okay. All right. So these two items you
25 contend were discussed toward the end of that six --

39

1 or that five-year period with Mr. Dyar; is that
2 correct?
3 A. That's correct.
4 Q. Okay. And do you have anything that you
5 presented to him that you recall that -- to support
6 that there was a cash payment of \$3,000 and a missed
7 payment of \$4,513.22?
8 A. I don't recall that I ever -- I mean --
9 Q. I haven't seen it if you have.
10 A. I don't believe I have. I didn't --
11 usually we have e-mail addresses. The way we
12 communicate things to people like that, we would scan
13 it and e-mail it or something. I never have had
14 Mr. Dyar's e-mail address. I have a home address for
15 them, and then I believe they had moved, at one point
16 in time during all of this, to another address. We
17 really didn't have much communication between us,
18 aside from him stopping by and delivering letters
19 from the City of Anderson and from the insurance
20 company.
21 Q. And why would he be delivering letters from
22 the City of Anderson and the insurance company to
23 you?
24 A. Because he expected me to pay them, pay the
25 bills.

40

1 Q. And wasn't that a part of your contract?
2 A. Was what a part of the contract?
3 Q. Taxes and insurance, utilities, wasn't that
4 a part of the contract?
5 A. No, I don't believe it was. I mean, the
6 insurance -- the insurance was what -- whatever the
7 language in that section C3 or 3(c) is.
8 Q. Okay. Well, let's flip back to that.
9 A. That we were required to keep insurance on
10 the building, that was impossible. And the only
11 reason why Mr. Dyar kept the policy in his name was
12 because nobody else, no other insurance company was
13 going to insure that property, and he knew that prior
14 to the sale.
15 Q. All right. Let's look at our -- let's look
16 at what we've established as the agreement between
17 you all. Okay. Under 3(c), Escrow Payments,
18 Purchaser shall pay, along with each monthly
19 installment of principal and interest, 1/12th of the
20 annual estimated amount of ad valorem taxes and
21 casualty insurance. It is agreed that \$405 per month
22 is the amount estimated to pay such annual costs, but
23 the seller shall have the right to make reasonable
24 adjustments to cover increased costs.
25 Did I read that correctly?

41

1 A. If you're reading it verbatim. I'm not
2 looking at it, but --
3 Q. You see where I'm reading from, right?
4 That's the purchaser's responsibility?
5 A. Yeah, 3(c), I see it.
6 Q. Okay. And under paragraph 5 on the next
7 page, labeled, Ad Valorem Taxes and Special
8 Assessments, it also creates an obligation on the
9 part of the purchaser to pay those items; does it
10 not?
11 A. Correct. Which we always have.
12 Q. Always have what?
13 A. We have always paid those, the ad valorem
14 taxes.
15 Q. You've always paid the taxes and the
16 insurance amounts?
17 A. We have always paid the taxes and the
18 insurance on the property, until we cancelled the
19 policy because --
20 Q. When was the policy cancelled?
21 A. The last hurricane we had.
22 Q. 2018?
23 A. Two thousand -- I'm not really sure exactly
24 when it was, if it was '16 -- we had one in '16,
25 Matthew, that ripped half the roof off the building.

11 (Pages 38 to 41)

LEGAL EAGLE
864-467-1373

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
Moats Construction, Inc.	)	C.A. No. 2020-CP-04-01202
	)	
Plaintiff,	)	
	)	MOTION TO RECONSIDER & AMEND
vs.	)	JUDGMENT
	)	
Cecil R. Dyar	)	
	)	
Defendants.	)	
	)	
_____	)	

TO: JAMES W. LOGAN, JR., ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Plaintiff, Moats Construction, Inc., (hereinafter "Plaintiff" or "Moats") will appear on the tenth (10th) day after service hereof, or as soon after counsel may be heard, before the presiding Judge, and move for an Amended Order after reconsideration or otherwise amend its Form-4 Order entered on May 4, 2021(the "Order") in a manner the establishes the procedural posture with respect to ongoing discovery and pursuit of Plaintiff's legal claims prior to the completion of the foreclosure case in the above captioned matter.

YOU WILL FURTHER TAKE NOTICE that the Plaintiff, Moats, hereby moves upon this Court to reconsider the issues and issue an Amended Order granting Plaintiff the ability to try its legal claims prior to the completion of the foreclosure action pursuant to SCRCF, Rule 52(b) and SCRCF, Rule 59(e) for the following reasons to wit:

1. Moats, in its Complaint, pled that it had an agreement with Defendant to purchase real property under a Bond for Title which was incorporated in the Complaint as "Exhibit A", but

that it was entitled to relief on the balance due under the legal theories of Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, Negligence, Accounting and Set-Off and Specific Performance. An unchallenged or unappealed Order will turn into the law of the case. As the Order is written, it appears that the Court is allowing the Defendant to bifurcate the case and move forward with its foreclosure action prior to a jury trial on the Plaintiff's causes of action. There certainly exists common factual issues that warrant the Plaintiff's legal claims to be tried first.

"When a defendant in an equitable action asserts a compulsory counterclaim that alleges actions at law, both the plaintiff and the defendant have a right to have a jury trial on the issues raised by the compulsory legal counterclaim. *Johnson v. S.C. Nat'l Bank*, 292 S.C. 51, 54, 354 S.E.2d 895, 896 (1987). If there are factual issues common to both the legal and equitable claims, the legal claim, "absent the most imperative circumstances," must be tried, that is, disposed of, first. *Id.* at 56, 354 S.E.2d at 897 (internal quotation marks omitted). In such cases, the United States Supreme Court has cautioned that the discretion to try an equitable claim first "is very narrowly limited and must, whenever possible, be exercised to preserve jury trial." *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 510, 79 S.Ct. 948, 3 L.Ed.2d 988 (1959). Accordingly, the Court indicated that such discretion should only be exercised in the face of "irreparable harm" to the plaintiff if the legal claims were to be tried first. *Id.* "If there are no common factual issues, it is within the trial judge's discretion which claim will be tried first." *Johnson*, 292 S.C. at 56, 354 S.E.2d at 897."

Plantation Fed. Bank v. Gray, 401 S.C. 507, 510, 737 S.E.2d 515, 517 (Ct. App. 2013)

2. Secondly, while the Plaintiff has agreed that the Defendant is entitled to foreclose as a proper remedy, the order to immediately proceed to a damages hearing seems to foreclose on the Plaintiff's ability to conduct discovery. "Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Id.* at 112, 410 S.E.2d at 543. Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is "not merely engaged in a 'fishing expedition.' " *Id.* at 112, 410 S.E.2d at 544."

Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (citing) *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

The Defendant only presented the affidavit of an accountant on the debt owed, but the Plaintiff has had no opportunity to depose that witness or the Defendant for that matter and his methodology in the calculations. The Defendant, in his own brief, produced a letter from Plaintiff's former counsel calculating an amount due that was over \$100,000.00 less than what the Defendant's accountant says the debt now is.

For the foregoing reasons, Plaintiff believes the Order should be reconsidered and the damages hearing delayed until such time as discovery is complete and that the Plaintiff should be entitled to try its legal claims prior to Defendant moving forward with the foreclosure action.

Respectfully submitted,

s/ Wendell L. Hawkins, Esq.
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Attorney for Plaintiff

May 6, 2021
Greer, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
Moats Construction, Inc.	)	C.A. No. 2020-CP-04-01202
	)	
Plaintiff,	)	
	)	AMENDED MOTION TO RECONSIDER &
vs.	)	AMEND JUDGMENT
	)	
Cecil R. Dyar	)	
	)	
Defendants.	)	
	)	
	)	

TO: JAMES W. LOGAN, JR., ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Plaintiff, Moats Construction, Inc., (hereinafter "Plaintiff" or "Moats") will appear on the tenth (10th) day after service hereof, or as soon after counsel may be heard, before the presiding Judge, and move for an Amended Order after reconsideration or otherwise amend its Order entered on June 10, 2021 (the "Order") in a manner that establishes the procedural posture with respect to ongoing discovery, the alternative request for liquidated damages, any claims for forfeiture and pursuit of Plaintiff's legal claims prior to the completion of the foreclosure case in the above captioned matter.

YOU WILL FURTHER TAKE NOTICE that the Plaintiff, Moats, hereby moves upon this Court to reconsider the issues and issue an Amended Order granting Plaintiff the ability to try its legal claims and remove any requirement that allows liquidated damages and immediate possession prior to the completion of the foreclosure action pursuant to SCRCF, Rule 52(b) and SCRCF, Rule 59(e) and which would allow further discovery for the following reasons to wit:

1. Moats, in its Complaint, pled that it had an agreement with Defendant to purchase

real property under a Bond for Title which was incorporated in the Complaint as “Exhibit A”., but that it was entitled to relief on the balance due under the legal theories of Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, Negligence, Accounting and Set-Off and Specific Performance. An unchallenged or un-appealed Order will turn into the law of the case. As the Order is written, it appears that the Court is allowing the Defendant to bifurcate the case and move forward with its foreclosure action prior to a jury trial on the Plaintiff's causes of action and that gives the Defendant the option the claim immediate possession and forfeiture of payments previously made. There certainly exists common factual issues that warrant the Plaintiff's legal claims to be tried first.

"When a defendant in an equitable action asserts a compulsory counterclaim that alleges actions at law, both the plaintiff and the defendant have a right to have a jury trial on the issues raised by the compulsory legal counterclaim. *Johnson v. S.C. Nat'l Bank*, 292 S.C. 51, 54, 354 S.E.2d 895, 896 (1987). If there are factual issues common to both the legal and equitable claims, the legal claim, “absent the most imperative circumstances,” must be tried, that is, disposed of, first. *Id.* at 56, 354 S.E.2d at 897 (internal quotation marks omitted). In such cases, the United States Supreme Court has cautioned that the discretion to try an equitable claim first “is very narrowly limited and must, whenever possible, be exercised to preserve jury trial.” *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 510, 79 S.Ct. 948, 3 L.Ed.2d 988 (1959). Accordingly, the Court indicated that such discretion should only be exercised in the face of “irreparable harm” to the plaintiff if the legal claims were to be tried first. *Id.* “If there are no common factual issues, it is within the trial judge's discretion which claim will be tried first.” *Johnson*, 292 S.C. at 56, 354 S.E.2d at 897."

Plantation Fed. Bank v. Gray, 401 S.C. 507, 510, 737 S.E.2d 515, 517 (Ct. App. 2013)

2. Secondly, while the Plaintiff has agreed that the Defendant is entitled to foreclose as a proper remedy, the order to immediately proceed to a damages hearing seems to foreclose on the Plaintiff's ability to conduct discovery. “Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Id.* at 112,

410 S.E.2d at 543. Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is “not merely engaged in a ‘fishing expedition.’” *Id.* at 112, 410 S.E.2d at 544.”

Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (citing) *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

The Defendant only presented the affidavit of an accountant on the debt owed, but the Plaintiff has had no opportunity to depose that witness or the Defendant for that matter and his methodology in the calculations. The Defendant, in his own brief, produced a letter from Plaintiff's former counsel calculating an amount due that was over \$100,000.00 less than what the Defendant's accountant says the debt now is.

Furthermore, an Order that gives the Defendant the right to immediately possess the Property denies the Plaintiff the rights afforded by the well established law of law of foreclosure and ignores the equitable interest of title in the Property of the Plaintiff. "A mortgage foreclosure is an action in equity." *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011). "One of equity's most important aspects is the principle of right and fair dealing between parties to a particular transaction." *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 746 S.E.2d 35 (2013). "[An] appellate court reviews factual findings and legal conclusions in an equitable action de novo." *Lewis v. Lewis*, 392 S.C. 381, 388–89, 709 S.E.2d 650, 653–54 (2011). *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 248, 715 S.E.2d 348, 352 (Ct. App. 2011). "Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible. The notion that equity looks to substance rather than form evolved out of judicial regard for that which ought to be done; this maxim applies by dispensing with pure formalities which would otherwise defeat the equity." *Regions*

Bank v. Wingard Properties, Inc., 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011). "When applying principle that equity looks to substance rather than form, court looks to the substance and intent of the parties, and give a construction consistent with such intent. After a party establishes an equitable right, the court may dispense with pure formalities which would otherwise defeat the equity. The court's equitable powers must yield in the face of an unambiguously worded statute." *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011). Because of these principles, the Defendant's arguments regarding "re-writing contracts" is improper because the foreclosure action is not legal, but one in equity and should be judged in principles of equity.

Also, the Order of the Court gives the Defendant the option to immediate possession and liquidated damages in the form of rents previously paid. Since immediate possession and liquidated damages contained in the Order deprives the Plaintiff of the rights it has under foreclosure laws including but not limited to the right to surplus funds, appraisal rights, the equity of redemption, and competitive bidding at foreclosure sale, the option of such remedies under the Order amounts to a forfeiture. "A court of equity abhors forfeitures, and will not lend its aid to enforce them." *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011). "He who seeks equity must do equity." *Provident Life & Accident Ins. Co. v. Driver*, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (1994). "This principle applies to one who affirmatively seeks equitable relief." *City of Columbus v. Mercantile Trust & Deposit Co.*, 218 U.S. 645, 662, 31 S.Ct. 105, 54 L.Ed. 1193 (1910). "In order for justice to be done between parties, a party is required to do equity when asking the court to invoke the aid of equity." (*Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000)) (declining to grant a plaintiff's request for specific performance where the plaintiff misled the defendants); *Anderson*

v. Marion, 274 S.C. 40, 43, 260 S.E.2d 715, 716 (1979) (finding defendants who sought equity against the plaintiffs for specific performance were required to do equity and pay plaintiffs money they asserted they were willing and able to pay); *Shumaker v. Shumaker*, 234 S.C. 421, 427, 108 S.E.2d 682, 686 (1959) (“Plaintiffs who come into Court invoking the aid of equity should be required to do equity in order that justice might be done between the parties.”); *Anderson v. Purvis*, 211 S.C. 255, 266, 44 S.E.2d 611, 616 (1947) (discussing the maxim that he who seeks equity should do equity).

For the foregoing reasons, Plaintiff believes the Order should be reconsidered and the damages hearing delayed until such time as discovery is complete and that the Plaintiff should be entitled to try its legal claims prior to Defendant moving forward with the foreclosure action. Furthermore, any Order of immediate possession and liquidated damages should be stricken from the Order.

Respectfully submitted,

s/ Wendell L. Hawkins, Esq.
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Attorney for Plaintiff

June 17, 2021
Greer, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
Moats Construction, Inc.	)	C.A. No. 2020-CP-04-01202
	)	
Plaintiff,	)	
	)	MOTION TO BE RELIEVED AS COUNSEL
vs.	)	
	)	
Cecil R. Dyar	)	
	)	
Defendants.	)	
	)	
_____	)	

TO: JAMES W. LOGAN, JR., ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Plaintiff, Moats Construction, Inc., (hereinafter "Plaintiff" or "Moats") will appear on the tenth (10th) day after service hereof, or as soon after counsel may be heard, before the presiding Judge, and move for an Order to be relieved as Counsel in the above captioned matter.

YOU WILL FURTHER TAKE NOTICE that current counsel for the Plaintiff, Moats, hereby moves upon this Court to be relieved for the following reasons to wit:

1. Moats, is making unusual demands upon counsel to provide more detailed billing prior to paying bills incurred by counsel for experts in this matter and counsel's bills as well in this case and another case in which motions are pending and substantial legal invoices remain unpaid.
2. Counsel believes that there has grown a distrust between the client and counsel and that the attorney-client relationship is strained to the point where counsel no longer wishes to represent the client and feels that there is some sort of mounting animosity.
3. Counsel does not wish to continue under these circumstances.

Respectfully submitted,

s/ Wendell L. Hawkins, Esq.
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wlh@wlhawkinslawfirm.com
Attorney for Plaintiff

February 4th, 2022
Greer, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
Moats Construction, Inc.	)	C.A. No. 2020-CP-04-01202
	)	
Plaintiff,	)	
	)	MOTION FOR CONTINUANCE
vs.	)	
	)	
Cecil R. Dyar	)	
	)	
Defendants.	)	
	)	
	)	

TO: JAMES W. LOGAN, JR., ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Plaintiff, Moats Construction, Inc., (hereinafter "Plaintiff" or "Moats") will appear on the tenth (10th) day after service hereof, or as soon after counsel may be heard, before the presiding Judge, and move for an Order granting a Continuance in the above captioned matter.

YOU WILL FURTHER TAKE NOTICE that the Plaintiff, Moats, hereby moves upon this Court to issue an Order granting a continuance with respect to that certain Damages Hearing scheduled on February 24, 2022 before the Honorable R. Scott Sprouse, Judge for Anderson County at 9:30 am at 2404 North Main Street Anderson, SC 29621 for the following reasons to wit

1. Plaintiff has filed a Motion to be relieved as counsel.

Respectfully submitted,

s/ Wendell L. Hawkins, Esq.
Wendell L. Hawkins, PA
Wendell L. Hawkins (S.C Bar# 13583)

310 The Parkway
Greer, SC 29650
(864) 848-9370 phone
(864) 848-9759 fax
Attorney for Plaintiff

February 7th, 2022
Greer, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CASE NO.: 2020-CP-04-01202
	)	
Moats Construction, Inc.,	)	
	)	
Plaintiff,	)	
	)	Defendant's Response to Plaintiff's Motion
v.	)	For Continuance
	)	
Cecil R. Dyar,	)	
	)	
Defendant.	)	

The Defendant herein responds to the Motion filed by the attorney for the Plaintiff for a continuance based upon the reasons contained in his recently filed Motion to Be Relieved as Counsel in the above captioned matter. This Response is filed in opposition to that Motion for Continuance.

This Court filed its Form 4 Order on May 4, 2021 following a hearing on Defendant's Motion for Summary Judgment against the Plaintiff. A copy of said Form 4 Order is attached as Exhibit 1. Thereafter, at the Court's direction, a Formal Order was prepared by Defendant's counsel, was signed by the Court and was filed in the Office of the Clerk of Court on June 10, 2021. A copy of the Formal Order is attached as Exhibit 2.

Since the filing of the Orders, defense counsel has attempted to schedule on numerous occasions a damages hearing before the Court pursuant to the Court's direction in the Formal Order pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure. Numerous impediments have arisen regarding the Defendant's attempt to schedule a damages hearing. During the interim time period, the Plaintiff, through his attorney, has had the opportunity to schedule whatever depositions he wanted to take and, in fact, the deposition of the Defendant was taken by the Plaintiff's

attorney on November 23, 2021. This is the only deposition that Plaintiff's counsel sought to take prior to the damages hearing.

Defendant views this latest Motion as another, in a long list of delay tactics, to avoid the damages hearing directed by the Court. In the meantime, the Plaintiff has remained in possession of the premises and apparently is continuing to operate his business in/on said premises.

The Defendant and his wife are retired and are in their later years. They were relying on payments that were due under the Contract in question to supplement their social security income and/or their ability to sell said real property described in the Contract or lease said property to someone else for the same reasons. Accordingly, all of these delays regarding the final disposition of this case have been and are very harmful to the Defendant and his wife. While Plaintiff's counsel seems to have legitimate reasons to be relieved as counsel, these reasons have arisen because of the conduct of his client which appears to be his client's method of operation as he continues to occupy the premises despite the Court's Order granting the Defendant immediate possession of the premises.

Accordingly, the Defendant opposes Plaintiff's Motion for Continuance of the hearing presently scheduled for February 24, 2022 at 9:30am before the Honorable R. Scott Sprouse who conducted the earlier hearing and signed the Form 4 Order and Formal Order in this matter. In addition, the Defendant also requests that the Plaintiff post a bond with appropriate surety or sureties in the amount of one and one-half (1 1/2) times the amount of the indebtedness as determined by the Court pursuant to the provisions of §15-1-10, *et seq.*, South Carolina Code of Laws, 1976, as amended. Finally, the Defendant requests that the Court order the Plaintiff to immediately

vacate the premises since the Court has already declared the Plaintiff in breach of the lease and that said lease is of no force and effect.

Respectfully submitted,

LOGAN & JOLLY, LLP

s/James W. Logan, Jr.

James W. Logan, Jr.

Post Office Box 259 (29622)

Anderson, South Carolina

864-226-1910

864-226-1931 (fax)

logan@loganandjolly.com

Attorneys for Defendant

February 8, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CASE NO.: 2020-CP-04-01202
	)	
Moats Construction, Inc.,	)	
	)	
Plaintiff,	)	
	)	Order Granting Defendant's
v.	)	Motion for Summary Judgment
	)	
Cecil R. Dyar,	)	
	)	
Defendant.	)	

This matter is before the Court on a Motion for Summary Judgment filed by the Defendant, Cecil R. Dyar ("Dyar"). A hearing was held in this matter on April 13, 2021. Present at the hearing were Wendell Hawkins, as attorney for the Plaintiff, Moats Construction, Inc. ("Moats") and James W. Logan, Jr., attorney for Defendant, Dyar. After a careful review of the pleadings, exhibits, memoranda filed by counsel and arguments of counsel, the Court finds that Dyar is entitled to summary judgment against Moats as a matter of law.

Findings of Fact

A. Moats did not reply to the Defendant's Compulsory Counterclaim without good cause being demonstrated. However, Dyar would be entitled to summary judgment even if a reply had been timely filed by Moats.

B. Moats does not contest that foreclosure is appropriate in this case, although he disagrees as to the balance of the purchase price due and payable.

C. The real property, the subject of this action, is located at 300 – 600 West Orr Street, Anderson, South Carolina, situate in Anderson County, South Carolina and bearing Anderson County Tax Map Number 123-24-03-003 and is owned by Dyar.



D. On January 29, 2011, Dyar entered into an Agreement for Sale and Purchase of Real Property (“Agreement”) regarding the real property in question. Under the terms of that Agreement, Moats agreed to pay Dyar the sum of Two Hundred and Fifty Thousand and no/100 (\$250,000.00) Dollars (“Purchase Price”) as follows: Down Payment of \$37,500.00 and the balance of \$212,500.00, with interest at the rate of six percent (6%) per annum, payable in monthly installments of Four Thousand, One Hundred Eight and 22/100 (\$4,108.22) Dollars each beginning May 1, 2011 and continuing on the same day each month thereafter through April 1, 2016 with the principal balance due, together with accrued interest, to be paid on or before March 31, 2016. Thereafter, by agreement, the date that the balance was due was extended until March 16, 2021 with all other terms and conditions to remain the same.

E. The Agreement further provided that, upon payment of the Purchase Price, Dyar would convey to Moats title to the premises by General Warranty Deed, subject to the items referenced therein.

F. Moats has failed and neglected to pay all amounts due, when due, under the Agreement, despite demand therefore and is thus in default. Therefore, Dyar, as legal owner of the real property that is the subject of the Agreement, can elect to declare the Agreement terminated and of no further force and effect and is entitled to immediate possession of the premises and to retain all amounts paid to date by Moats as rent and liquidated damages, or, in the alternative, Dyar can elect to declare the entire balance of the purchase price due and payable and seek a sale of the property and foreclosure of all rights of Moats to said property.

G. Dyar contends that the total amount owed under the Agreement, as of April 1, 2021 is \$216,047.42 based upon the Affidavit of Joshua Pruiett-Lange filed with his Memorandum in Support of his Motion which includes the principal amount of the indebtedness under the Agreement, plus

interest at the rate of six percent (6%), together with costs and expenses incurred by Dyar, fifteen percent (15%) of the balance owed as attorney's fees along with late payment fees of five percent (5%) and insurance premiums and City of Anderson taxed paid by Dyar.

H. The Agreement in question, contains the following additional provisions:

4. CONVEYANCE OF TITLE. Upon payment of Purchase Price, the Seller shall convey to Purchaser title to the premises by General Warranty Deed, subject to the following:
 - (a) Ad Valorem taxes and special assessments for the City of Anderson and County of Anderson which have accrued but are not yet due.
 - (b) Rights of way and easements for public utility distribution lines.
 - (c) Restrictive covenants affecting the property.
 - (d) State of facts which may be revealed by a recent and accurate survey of the premises.
5. AD VALOREM TAXES AND SPECIAL ASSESSMENTS. All Ad Valorem taxes and special assessments imposed against the Premises by the County of Anderson, City of Anderson or any political subdivision thereof shall be prorated as of the date of this Contract, and thereafter the Purchaser agrees to pay all Ad Valorem taxes and special assessments against the Premises before the same becomes past due.
6. CLOSING COSTS. Upon transfer of title, Seller at its expense shall deliver the Deed of Title to Real Estate with South Carolina documentary stamps affixed thereto and Purchaser shall bear the expense of Anderson County recording taxes and all costs of recording the Deed and other documents of title.
7. DEFAULT. In the event the Purchaser defaults in making any payments provided for herein or in any other terms, provisions or covenants of this Contract, the Seller may, as its option, declare this Contract terminated and of no further force and effect, and will be entitled to immediate possession of the Premises and may retain all amounts paid by Purchaser to date of default as rent and liquidated damages. Seller may in the alternative, at its option, declare the entire balance of the Purchase Price due and payable without notice, and institute suit against the Purchaser seeking a sale of the property and foreclosure of Purchaser's rights.
8. PREPAYMENT. Purchaser may prepay the balance due in whole or in part at any time without penalty.
9. POSSESSION. Until Purchaser defaults in payment of sums to be paid hereunder or in performance of obligations to be performed hereunder, Purchaser shall be entitled to possession of the Premises, provided, the Purchaser shall not commit or suffer to exist any damage or destruction of the Premises.

10. RISK OF LOSS. Risk of loss of damage to or destruction of the Premises shall be upon the Purchaser during the term of this Agreement.

11. TIME OF ESSENCE. It is further agreed that the time of payment shall be an essential part of this Contract and all Covenants and agreements herein contained shall extent to and be obligatory upon the heirs, personal representatives and assigns of the respective parties.

12. LATE PAY PENALTY. The Purchaser agrees that if any payment is not paid when due and shall remain unpaid for more than ten (10) days from the due date, a late charge equal to five (5%) percent of the total payment shall be added to the payment due. The Purchaser agrees that the failure to pay the late charge when due shall be considered a default in this Contract and subject the Purchaser to immediate eviction.

13. ATTORNEY'S FEES. If this Contract is placed in the hands of an attorney for collection or for enforcing any of Seller's other rights hereunder, including any legal proceeding brought to sell said property, Purchaser agrees to pay all costs and expenses incurred by Seller including not less than Fifteen (15%) percent of the then balance due under this Contract as Attorney's fees.

14. INSURANCE. Purchaser agrees to keep the improvements on said real property insured against loss by fire or other casualty in a reputable fire insurance company in an amount of not less than the balance due to the Seller under this Contract and to have Seller named in said policy as an additional insured.

15. SELLER'S REMEDIES. In the event the Purchaser fails to pay the property taxes when due, or fails to pay the fire insurance premiums, the Seller may, at Seller's option, pay the same and add such to the indebtedness due to the Seller to bear interest at the same rate stated above.

17. MAINTENANCE. The Purchaser shall maintain the Premises and all improvements thereon in the same good condition as the same was delivered to the Purchaser, wear and tear exempted.

18. DISCLAIMER OF WARRANTIES. The Purchaser acknowledges that the Seller has made no representation to the Purchaser concerning the condition of the dwelling or any other improvement upon the Premises. The Seller specifically disclaims all warranties which may exist by implication of law, including the warranty of habitability. The Purchaser acknowledges that Purchaser has made an inspection of the Premises and accepts the same "AS IS, WITH ALL FAULTS."

19. SURVIVAL OF THIS AGREEMENT. This Agreement and the terms hereof shall not be merged into the documents of conveyance at closing but shall survive and remain a binding contractual agreement between the parties after closing.

20. WASTE OR DESTRUCTION. Purchaser during possession shall not commit any waste of the Premises or demolish any improvement or harvest any growing timber without the written consent of Seller. (Emphasis added).

I. In his deposition testimony, Moats offered the following defenses, none of which are legally sufficient to support his claims:

- (1) Believes he owes the real property based upon improvements and “sweat equity”;
- (2) Believes he has paid the purchase price;
- (3) The building on the property suffered damage from hurricane-related weather;
- (4) Discussions with Dyar regarding certain “issues” but denies having any letters/correspondence that memorialize those conversations, except for a letter from his attorney William Swent which clearly shows sums owed;
- (5) Claims to have paperwork that supports his disagreement with the amount Dyar claims is owed. However, no such documents/paperwork were produced;
- (6) Admits that he has never furnished Dyar with any documentation that would establish what he believes he owes Dyar under the terms of the Agreement.

Conclusions of Law

Under South Carolina law, courts have emphasized that “[c]ourts must enforce, not write, contracts, and their language must be given its plain, ordinary and popular meaning.” *Sloan Constr. Co. v. Central Nat’l Co. of Omaha*, 269 S.C. 183, 185, 236 S.E. 2d 818, 819 (1977). Further, when a contract is unambiguous, clear and explicit, it must be construed according to its terms. *BLG Enterps., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E. 2d 327, 330 (1999).

While now seeking to deny under oath that any amount of money is owed to Dyar under the Agreement, Moats previously retained attorney William B. Swent (“Swent”) of Smith Moore in Greenville, South Carolina, to determine the amount owed under the Agreement as of December

31, 2017 and to close the purchase of property in question. That analysis was memorialized in a letter from Swent dated January 5, 2018 in which it was stated that, as of December 31, 2017, the amount owed was \$83,338.98. That calculation included principal, interest, carrying costs, property taxes and insurance due pursuant to the Agreement. However, it did not include attorney's fees of fifteen (15%) percent of the then balance due. Further, while the transaction was not closed, the amount calculated to be owed by Moats' attorney did not include all amounts owed by Moats and no amount was paid by Moats, this letter constitutes an admission that, as of December 31, 2017, at least that amount was due and owed by Moats to Dyar. Finally, no payments have been paid by Moats to Dyar under the Agreement since December 31, 2017.

Accordingly, based upon the testimony of Moats, the written evidence of the amount of the unpaid indebtedness as of December 31, 2017 stated by Moats' then attorney which was never paid and the established fact that no payments have since been paid by Moats to Dyar under the Agreement since December 31, 2017 while Moats remained in possession of the property that is the subject of the Agreement, Moats is clearly in default under the Agreement. Thus, Dyar is entitled to exercise all of his rights and remedies under the Agreement.

Moats asserts that he is entitled to credits for "improvements" made, "sweat equity" and the cost of a "new roof". By the express terms of the Agreement, Moats is not entitled to any such "credits." Even if Moats made such improvements or engaged in any "sweat equity", the Agreement does not provide for any such credits. The Agreement provides, in Paragraph #10, that the "Risk of Loss" is "upon the Purchaser...." The Agreement further provides in Paragraph #18, that "the Purchaser acknowledges that Purchaser has made an inspection of the Premises and accepts the same AS IS, WITH ALL FAULT."

Accordingly, any improvements made, if any, “sweat equity”, if any, and/or the status of the roof, are totally irrelevant to the legal issues in this case, all of which are controlled by the terms of the Agreement. Moats took the building “as is” and nothing in the Agreement obligates Dyar to replace the roof, nor give any credit for any improvements or any “sweat equity.”

Additional amounts due have accrued under the Parties’ contract since the filing of the Counterclaim. While the amount claimed by Dyar appears to be correct (based upon the Affidavit of Joshua Pruiett-Lange), the Court is unable to make a definitive finding as to the amount presently due under the Contract which is necessary depending upon the remedy Dyar elects. Accordingly, a damages hearing pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure shall be promptly held in order to determine the exact amount presently due under the Agreement.

IT IS NOW THEREFORE ORDERED, ADJUDGED AND DECREED that Moats is in breach of the Agreement between Dyar and Moats and that said Agreement is thus hereby declared to be terminated and of no force and effect. Accordingly, Dyar is entitled to immediate possession of the premises and to retain all amounts paid by Moats as rent and liquidated damages or, in the alternative, and at the option of Dyar, this Court orders and decrees that the entire balance, as determined at a promptly held damages hearing pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure, is immediately due and payable entitling Dyar to seek a sale of the property and foreclosure of all rights of Moats in and to said property.

IT IS SO ORDERED this ____ day of May, 2021.

The Honorable R. Scott Sprouse
Tenth Judicial Circuit



Anderson Common Pleas

Case Caption: Moats Construction, Inc. VS Cecil R Dyar

Case Number: 2020CP0401202

Type: Order/Summary Judgment

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2021-06-10 14:56:52 page 8 of 8

ELECTRONICALLY FILED - 2021 Jun 10 3:24 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401202
ELECTRONICALLY FILED - 2022 Feb 08 1:29 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401202

FORM 4

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

JUDGMENT IN A CIVIL CASE

CIVIL ACTION NO.: 2020-CP-04-01202

MOATS CONSTRUCTION, INC.
PLAINTIFF(S)CECIL R. DYAR
DEFENDANT(S)Submitted By:
Address:Attorney for : ☐ Plaintiff ☐ Defendant
or ☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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:

After careful review of the pleadings, exhibits, memoranda filed by counsel and arguments of counsel, the Court finds that the Defendant is entitled to Summary Judgment against the Plaintiff. The Plaintiff did not reply to the Defendant's compulsory counterclaim, without good cause being demonstrated. Furthermore, the Court finds that the Defendant would be entitled to a foreclosure of the subject property even if a reply had been timely filed. The Plaintiff does not contest that foreclosure is appropriate in this case, although he seeks a set-off against the amounts claimed by the Defendant. Additional amounts due have accrued under the parties' contract since the filing of the counterclaim. Mr. Logan's statement of the amounts due appear to be correct when the total monthly payments due are calculated. However, the Court is unable to make a definite finding of the amount due after considering the allegations pled and presented by the Plaintiff.

The Court finds that a damages hearing pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure shall be held in order to determine that appropriate amount of damages due to the Defendant.

Mr. Logan is directed to prepare a formal order setting forth the procedural history, findings of facts and applicable law within fourteen (14) days, copying Mr. Hawkins with same.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

EXHIBIT

1

INFORMATION FOR THE PUBLIC INDEX Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court for judgment details.**

Circuit Court Judge

2752

Judge Code

Date



Anderson Common Pleas

Case Caption: Moats Construction, Inc. VS Cecil R Dyar

Case Number: 2020CP0401202

Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2021-05-04 15:30:18 page 4 of 4

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) FOR THE TENTH JUDICIAL CIRCUIT
) C/A NO. 2020-CP-04-01202

COUNTY OF ANDERSON

Moats Construction, Inc,

)

)

Plaintiff,

)

vs.

)

**PLAINTIFF'S MOTION TO ALTER OR
AMEND ORDER GRANTING
DEFENDANT'S MOTION FOR
DAMAGES AND JUDGMENT OF
FORECLOSURE AND SALE**

Cecil R. Dyar

)

)

Defendant.

)

)

)

Plaintiff Moats Construction, Inc., ("Moats"), moves pursuant to Rule 59(e), SCRPC, and the Court's inherent authority, for the Court to reconsider its Order Granting Defendant's Motion for Damages and Judgment of Foreclosure and Sale (the "Order").

The Order sets forth a Total Debt Secured by Agreement ("Total Debt") based on calculations performed by Joshua Pruett-Lange ("Pruett-Lange"). Plaintiff asks the Court to adjust the amount of Total Debt to correct the following errors:

- (1) Pruett-Lange's spreadsheet contained date column errors resulting in testimony as to the wrong month-end balance;
- (2) Pruett-Lange's calculation erroneously included taxes paid by Moats;
- (3) Pruett-Lange's calculation erroneously included insurance premiums that were not reimbursable to Dyar;
- (4) Pruett-Lange mistakenly eliminated a \$3,000 cash payment from February 2013;
- (5) Pruett-Lange's calculation included interest charges on accrued interest, late fees, and insurance premiums, which have no basis in the Agreement for Sale and Purchase of Real Property (the "Agreement"); and
- (6) Pruett-Lange's calculation includes late fee charges even though the parties modified the payment structure of the Agreement, and the Agreement was never extended beyond April 2016.

Plaintiff also asks the Court to reopen the damages hearing to permit Plaintiff to hire an expert witness to testify as to the amount owed to Dyar under the Agreement, and to reconsider its Order approving foreclosure and sale of the property before Plaintiff has had a opportunity to pursue its legal claims against Dyar, which, if successful, would reduce any amounts owing under the Agreement.

ARGUMENT

I. The Total Debt Should be Corrected to Eliminate Errors and Amounts Not Provided for in the Parties' Agreement.

a. The "Date" column in Joshua Pruett-Lange's spreadsheet reflects the wrong month.

At the damages hearing held on February 24, 2022, Defendant presented its calculation of amounts owed under the Agreement through testimony and calculations of bookkeeper Joshua Pruett-Lange. Pruett-Lange testified that he is a bookkeeper with Electric City Tax and Bookkeeping and has worked for Dyar for "many years." Damages Hearing 16:14-22 (Feb. 24, 2022), excerpts attached as **Exhibit B**. There was no testimony showing that Pruett-Lange is a licensed CPA, and a search of the South Carolina Labor Licensing and Regulation website returns no results for any licenses held by Pruett-Lange or Electric City Tax and Bookkeeping under the South Carolina Board of Accountancy.¹ The full extent of Pruett-Lange's testimony is less than three pages in the transcript and he was not crossed examined on his testimony or calculations. Damages Hearing 16-18, Ex. B.

Pruett-Lange testified that as of February 1, 2022, the amount due under the Agreement was \$222,415.95, as reflected in row 136 of his spreadsheet, which was entered as Defendant's Exhibit 1, and is attached hereto as **Exhibit A**; Damages Hearing 18:10-13, Ex. B. The Order

¹ <https://verify.llronline.com/LicLookup/Acct/Acct.aspx?div=15> (last viewed July 29, 2022).

adopts this total as the “Principal and Interest due as of February 1, 2022.” Order at 5.

However, Pruett-Lange’s spreadsheet contains an error in the Date column, which caused him to testify as to the amount due as of August 1, 2022, not as of February 1, 2022. As reflected in Table 1 below, Pruett-Lange’s date column begins to error at payment number 124, which Pruett-Lange reflects as May 1, 2021, when it should have been August 1, 2021, because payment number 123 was July 1, 2021. Pruett-Lange’s date column is then wrong the for rest of his spreadsheet, and additional errors show up in his Date field, such as skipping from September 1, 2021, directly to May 1, 2022, an eight-month gap in time.

When Pruett-Lange testified that the Balance was \$222,415.95 as of February 1, 2022, the correct Balance under his spreadsheet should have been payment number 130, which is \$214,528.12, a \$7,887.83 difference. Accordingly, the “Principal and Interest due as of February 1, 2022” (hereinafter, “Principal & Interest Due”) should be reduced by \$7,887.83.

Table 1:

PMT No.	Joshua Pruett-Lange		Corrected Date		Balance
120	April 1, 2021		April 1, 2021		201,895.12
121	May 1, 2021		May 1, 2021		203,130.25
122	June 1, 2021		June 1, 2021		204,371.57
123	July 1, 2021		July 1, 2021		205,619.08
124	May 1, 2021		August 1, 2021		206,872.84
125	June 1, 2021		September 1, 2021		208,132.86
126	July 1, 2021		October 1, 2021		209,399.19
127	August 1, 2021		November 1, 2021		210,671.84
128	September 1, 2021		December 1, 2021		211,950.86
129	May 1, 2022		January 1, 2022		213,236.28
130	June 1, 2022		February 1, 2022		214,528.12
131	July 1, 2022		March 1, 2022		215,826.42
132	October 1, 2021		April 1, 2022		217,131.21
133	November 1, 2021		May 1, 2022		218,442.53
134	December 1, 2021		June 1, 2022		219,760.40
135	January 1, 2022		July 1, 2022		221,084.86
136	February 1, 2022		August 1, 2022		222,415.95

b. Pruett-Lange erroneously included real estate taxes paid by Moats in the Principal & Interest Due to Dyar.

Pruett-Lange's calculation of Principal and Interest Due to Dyar is overstated by more than eighteen thousand dollars because it reimburses Dyar for real property taxes that he never paid along with interest charges on these amounts. The result is a windfall and would be an unjust enrichment for Dyar and a penalty to Moats. As such, this error should be corrected.

Pursuant to the Agreement, property taxes were the responsibility of Moats. Agreement ¶ 5, attached as **Exhibit C**. However, throughout the first five years of the Agreement, the course of performance between the parties was such that Dyar paid real property taxes and was reimbursed from the periodic payments made by Moats. This is how the parties performed the Agreement through its five-year term ending April 2016. Beginning with the 2016 tax year, Dyar no longer paid real property taxes and instead Moats paid all real property taxes directly to Anderson County. This change is reflected in the attached public records of real property tax receipts from Anderson County for the 2015-2020 tax years. Affidavit of Russell Moats (July 19, 2022), attached as **Exhibit D**. Dyar paid the 2015 tax year on January 2016. Ex. D, at 4 (2015 Tax Receipt). Beginning with the 2016 tax year, Moats paid all real property taxes. Ex. D, at 5-9 (2016-2020 Tax Receipts).

Russell Moats testified at the damages hearing that Dyar was responsible for property taxes during the five years of the Agreement and as of March 31, 2016, real property taxes for 2016 had not been paid. Damages Hearing 39:17-40:10, attached as Ex. B. This is consistent with the tax receipts. See Ex. D. No other person testified at the damages hearing as to real property taxes.

Accordingly, property taxes from 2016 onward should be removed from Pruett-Lange's calculation along with all related interest charges. Otherwise, reimbursing Dyar for taxes that he did not pay, along with interest that he should not earn, would be a windfall to Dyar and he would

be unjustly enriched, and making Moats pay a second time for taxes would be an impermissible penalty which equity does not enforce. Lewis v. Premium Inv. Corp., 351 S.C. 167, 172, 568 S.E.2d 361, 363 (2002) (“Equity will not enforce a penalty for breach of contract.” (internal citations omitted); Anderson Cnty. v. Preston, 427 S.C. 529, 543, 831 S.E.2d 911, 918 (2019) (“A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another.”). The related interest charges are discussed in the following section.

1. Pruett-Lange charged interest on all outstanding amounts.

In his calculation of Interest, Pruett-Lange not only charged monthly interest for accrued property taxes, but he also charged interest on accrued interest, accrued late charges, and accrued insurance premiums. By charging interest on accrued interest, Pruett-Lange was charging compound interest where the Agreement called for simple interest. This calculation can be seen in Table 2 below:

Table 2

Pmt. No.	Date	Interest	Lat Charge	Taxes	Insurance	Balance
65	1-Sep-16	685.63	225.66			138,036.31
66	1-Oct-16	690.18	225.66	3,329.58		142,281.73
67	1-Nov-16	711.41	225.66			143,218.80
68	1-Dec-16	716.09	225.66		2,265.21	146,425.76
69	1-Jan-17	732.13	225.66			147,383.55

As reflected Table 2, the Interest calculation is the previous month’s Balance multiplied by the monthly interest factor of .5%.² For example, for payment number 66, interest is equal to \$138,036.31 x .5%, or \$690.18.

Table 3 demonstrates how the Balance subject to the interest charge includes not only the principal loan balance, but also accrued interest in prior months, accrued late charges in prior

² The monthly interest factor is calculated by taking the annual percentage rate of 6% and dividing by 12. Pruett-Lange’s spreadsheet reflects this number on page 1. See **Ex. A** at 1.

months, accrued property taxes, and accrued insurance. Table 3 shows the interest calculation for payment numbers 64-68. During these months there were no payments, so all amounts of interest, late payments, taxes, and insurance were added to the Balance and subject to Pruett-Lange's monthly interest charge calculation.

Table 3

Pmt. No.		
64	137,125.03	Prior Month Balance
	0.5%	Interest Rate
	685.63	Interest
	225.66	Late Payment
	-	Property Taxes
	-	Insurance
65	138,036.31	New Month Balance
	0.5%	Interest Rate
	690.18	Interest
	225.66	Late Payment
	3,329.58	Property Taxes
	-	Insurance
66	142,281.73	New Month Balance
	0.5%	Interest Rate
	711.41	Interest
	225.66	Late Payment
	-	Property Taxes
	-	Insurance
67	143,218.80	New Month Balance
	0.5%	Interest Rate
	716.09	Interest
	225.66	Late Payment
	-	Property Taxes
	2,265.21	Insurance
68	146,425.77	New Month Balance

As demonstrated by Table 3, each month the Balance subject to interest charges increased by the amount of the new monthly interest, taxes, insurance premiums, and late fees. Accordingly, to accurately capture the amount in the Balance column attributed to taxes paid by Moats, not only must the amount of taxes be removed, but also all related interest charges on taxes through the end

of the time period. These amounts are set forth in the next section.

2. Taxes and related interest charges should be removed from Pruett-Lange's calculation of Principal & Interest Due.

The total amount of tax payments included in Pruett-Lange's spreadsheet that Moats paid directly to Anderson County is \$15,616.35.³ **Exhibit E** reflects the calculation to adjust these Taxes out of the Balance owed along with related interest.

First on Exhibit E, the taxes paid by Moats are removed from the Balance column to arrive at an Adjusted Balance. Ex. E. Next, the Adjusted Balance is used to calculate Adjusted Interest, which is then subtracted from Pruett-Lange's Interest calculation to get a Difference in interest charges each month. The Running Total Overcharged Interest column then adds up the amount of Difference interest for each month, resulting in a total overcharge of \$3,031.74 as of payment number 130 on February 1, 2022. Adding this Overcharged Interest to the taxes paid by Moats of \$15,516.35, results in a total overcharge of \$18,648.09, which is also reflected in the difference as of February 1, 2022, between the Balance and Adjusted Balance columns. Exhibit E, Payment No. 130 (\$214,528.12 - \$195,880.03 = \$18,648.09).

Accordingly, the Principal & Interest Due should be reduced by \$18,648.09. Otherwise, Dyar will receive a windfall and be unjustly enriched, and Moats will be penalized. Lewis, 351 S.C. at 172, 568 S.E.2d at 363 ("Equity will not enforce a penalty for breach of contract." (internal citation omitted)); Preston, 427 S.C. at 543, 831 S.E.2d at 918 ("A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another.").

³ This is calculated by adding the Taxes reflected on payment numbers 66-130 (3,329.58 + 3,329.58 + 4,498.15 + 4,459.04).

c. Pruett-Lange erroneously included the amount of insurance premiums paid by Moats, or not paid at all, in the Principal & Interest Due to Dyar.

Pruett-Lange's calculation of the Principal & Interest Due is also overstated by more than thirteen thousand dollars because it reimburses Dyar for insurance premiums that Dyar never paid, and then adds compound interest on top of these amounts. The total insurance premiums erroneously included in Pruett-Lange's calculation is \$11,326.05, to which Pruett-Lange added interest charges. The result is a windfall for Dyar and a penalty to Moats. As such, this error should be corrected.

Pursuant to the Agreement, insurance was the responsibility of Moats. Agreement ¶ 14, attached as Ex. C. However, the parties through their course of performance modified the Agreement such that Dyar retained insurance on the property and Moats paid premiums through its periodic payments to Dyar. Aff. Moats ¶¶ 8-12, attached as Ex. D. Dyar no longer paid insurance premiums after April 2016. *Id.* Moats paid the insurance premium for the February 2017 to February 2018 policy year. *Id.*; Vendor Payment History and Receipts attached as **Exhibit F**. Moats no longer paid insurance on the property after receiving notice that the insurance company would not cover damage from Hurricane Irma in September 2017. Aff. Moats ¶ 10-11, Ex. D. The property has been uninsured since this time and Dyar is not entitled to any reimbursement for insurance premiums. Aff. Moats ¶ 12. Dyar provided no evidence at the damages hearing that he paid insurance on the property for which he was owed reimbursement.

The calculation to adjust insurance premiums out of Principal & Interest Due is included on **Exhibit G**. The insurance paid by Moats, or not paid at all, is removed from the Balance column to arrive at the Adjusted Balance column. Ex. G. Next, the Adjusted Balance is used to calculate Adjusted Interest column, which is then subtracted from Pruett-Lange's Interest calculation to get a Difference for interest each month. The Running Total Overcharged Interest

column adds up the amount of overcharged interest for each month, resulting in a total overcharge as of payment number 130, as of February 1, 2022, of \$2,412.58. Adding this Overcharged Interest to the insurance premiums not paid by Dyar of \$11,326.05, results in a total downward adjustment in the Balance of \$13,738.63, which is also reflected in the difference as of February 1, 2022, between the Balance and Adjusted Balance columns. Exhibit G, Payment No. 130 (\$214,528.12 - \$200,789.49 = \$13,738.63).⁴

Accordingly, the Principal & Interest Due should be reduced by \$13,738.63. Otherwise, Dyar will receive a windfall and Moats will be penalized. Lewis, 351 S.C. at 172, 568 S.E.2d at 363 ("Equity will not enforce a penalty for breach of contract." (internal citation omitted); Preston, 427 S.C. at 543, 831 S.E.2d at 918 ("A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another.").

d. Pruett-Lange removed a cash payment made by Moats in February 2013.

In Pruett-Lange's previous iteration of his spreadsheet, he included a \$3,000 cash payment made by Moats to Dyar in February 2013. Damages Hearing Exhibit 2, attached as **Exhibit H**. This payment is reflected as payment number 22 on Exhibit H. Russell Moats testified to this \$3,000 cash payment during the damages hearing. Damages Hearing 25:13-16, 44:16-18, Ex. B. Dyar also testified in his deposition that Moats paid him \$3,000 cash in February 2013. Deposition Cecil Dyar 22:11-15 (Nov. 23, 2021), excerpts attached as **Exhibit I**. At the damages hearing, there was no testimony refuting this \$3,000 cash payment, and as such it should be deducted from the Principal & Interest Due along with related interest charges. Otherwise, Dyar will be paid money twice and receive a windfall and be unjustly enriched and Moats will be penalized. Lewis,

⁴ Note that the Adjusted Balance column is isolated and adjusted here for insurance payments only, it does not reflect a cumulative adjustment for all of Plaintiff's arguments.

351 S.C. at 172, 568 S.E.2d at 363 ("Equity will not enforce a penalty for breach of contract." (internal citation omitted)).

The adjustment for this cash payment is reflected in **Exhibit J**. Starting with payment number 22, the Adjusted Balance column takes into account the \$3,000 payment. Thereafter, the Adjusted Interest column calculates interest based off of this lower Adjusted Balance through February 1, 2022. The Difference column is the amount of interest that was overcharged by Pruett-Lange and the final column tallies up the total overcharged interest. The final page of Exhibit J, payment number 130, reflects that when this \$3,000 payment is added as a valid payment, the total Principal & Interest Due drops by an additional \$2,141.10 in interest, for a total difference of \$5,141.20. Ex. J. Accordingly, \$5,141.20 should be deducted from Principal & Interest Due.

e. The Agreement does not provide for interest to be charged on accrued interest, accrued late fees, or accrued insurance premiums.

As demonstrated above in Table 3, Pruett-Lange applied monthly interest charges to accrued interest, accrued late fees, and accrued insurance premiums by including all of these amounts in the Balance column. The Agreement does not contain provisions permitting compound interest (interest charged on top of accrued interest), interest to be charged on top of late charges, or interest to be charge on insurance premiums. Simple interest and the late charge itself are representative of payments not received on time. Adding additional interest on top of these amounts is not supported by the Agreement and simply penalizes Moats and gives a windfall to Dyar.

The Agreement contains a provision for charging interest on the late payment of taxes if Dyar paid taxes prior to receiving reimbursement from Moats. Agreement ¶ 15, Ex. C. If the parties had intended that interest be charged on accrued interest, on top of accrued late charges, or on top of accrued insurance premiums, they could have included such a provision in the Agreement

as they did for late payment of taxes.

A court reviewing a written contract must discern:

[T]he intention of the parties and the meaning[, which] are gathered primarily from the contents of the writing itself, or, as otherwise stated, *from the four corners of the instrument, and when such contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed.* Hence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed.

Park Regency, LLC v. R & D Dev. of the Carolinas, LLC, 402 S.C. 401, 412, 741 S.E.2d 528, 534 (Ct. App. 2012) (emphasis added) (citations omitted).

The absence in the Agreement of a such a provision indicates that the parties decided not to charge interest on these additional amounts. As such, compound interest, interest charged on late fees, and interest charged on insurance premiums should be removed from the total debt owed to Dyar.

Exhibit K calculates this overcharge.⁵ First on Exhibit K, the Pruett-Lange spreadsheet Balance column is divided into Loan Principal Balance and Accrued Taxes, both of which are subject to interest charges. Then, an Adjusted Balance for Interest is calculated by adding the Loan Principal Balance with Accrued Taxes. Adjusted Interest is then calculated based on the Adjusted Balance for Interest column. The difference between Pruett-Lange's Interest calculation and Adjusted Interest is calculated for each month in the Difference column, and then summed in the final column labeled Running Total Overcharged Interest. Where the Balance column and Loan Principal Balance columns are equal, such as payment number 10, the next month's interest charge is identical and the Difference column is zero. This additionally shows that the Balance

⁵ Attachment K, and all other spreadsheets provided as attachments are abbreviated for purposes of being legible. Plaintiff is happy to provide the underlying excel spreadsheets that reflect all underlying data.

column includes amounts beyond just the loan principal and taxes.

As of February 1, 2022, payment number 130, the running total of overcharged interest is \$9,505.44. In other words, by Pruett-Lange computing compound interest, interest on top of late fees, and interest on top of insurance premiums, Pruett-Lange overinflated the amount of interest owed by Moats in the amount of \$9,505.44.

Because the Agreement only provides for interest charges on the principal balance of the loan and taxes paid by Dyar, this \$9,505.44 overcharge should be removed from the total owed to Dyar. If not, this will be another instance where Dyar will receive a windfall and Moats will be penalized. Lewis, 351 S.C. at 172, 568 S.E.2d at 363 ("Equity will not enforce a penalty for breach of contract." (internal citation omitted)).

f. Dyar and Moats modified the payment terms by their course of performance.

Late charges should not be added to the total amount owed by Moats because Dyar and Moats modified the terms of payment. As Dyar testified in his deposition, he assented to the modified payments made by Moats. Dep. Cecil Dyar 21:16-22:1, Ex. I. Moreover, there is no evidence that Dyar ever provided notice to Moats of late charges or requested Moats to pay late charges under this new payment arrangement.

The parties clearly modified the payment amounts and due dates by their course of performance throughout the five years of the Agreement. Dyar only now seeks to add late charges to inflate the amount owed by Moats. Moreover, there is no evidence that the Agreement extended beyond April 2016. Documents introduced during the damages hearing reflect only Dyar's signature on the Agreement extension. **Exhibit L** at 5 (introduced as Exhibit 3 in Damages Hearing). Moats testified that he did not agree to the extension while the parties had outstanding disputes on the amount owed. Damages Hearing 31:5-8, Ex. B. Under no circumstances is there

a basis to continue charging late fees beyond April 2016.

Late fees charged during the term of the Agreement amount to \$12,636.96. Late charges after April 2016 amount to \$15,796.20. Together, late charges amount to \$28,433.16. Once the payment terms of the Agreement were modified by the parties to make payment due dates open ended, there was no longer any basis for Dyar to charge late fees unless the parties reached a different understanding. Accordingly, late charges of \$28,433.16 should be removed from the total debt owed by Moats.

g. Summary of Adjustments to Principal & Interest Due.

Taking all of these errors together, Principal & Interest Due should be adjusted as follows:

Principal & Interest Due as of February 1, 2022	\$ 222,415.95
Adjustments:	
Incorrect Month	\$ (7,887.83)
Property Taxes Paid by Moats	\$ (18,648.09)
Insurance Paid by Moats or Not Paid by Dyar	\$ (13,738.63)
February 2013 \$3,000 Cash Payment	\$ (5,141.10)
Erroneous Interest Calculation	\$ (9,505.44)
Late Fees Incorrectly Applied	\$ (28,433.16)
Adjusted Principal & Interest Due	\$ 139,061.70

These adjustments more accurately reflect the amount owed on the Agreement between Moats and Dyar. If the original amount of \$222,415.95 is permitted to stand without adjustment, it will result in a significant windfall to Dyar of over \$80,000, and a corresponding penalty to Moats. As such, these downward adjustments should be made.

II. The Damages Hearing Should be Reopened to Allow Moats to Present Expert Testimony on Damages.

Moats requests that the Court reopen the damages hearing and permit it to offer expert testimony. At the time of the damages hearing, Moats' then-counsel had filed a motion to be relieved as counsel. At the damages hearing, prior counsel asked no questions of Pruett-Lange and introduced no exhibits. Damages Hearing 18:10-20, Ex. B. Moats was not afforded an

opportunity to fully participate in the damages hearing and it would be inequitable to allow the Order to be entered without Moats having an opportunity to present expert testimony and introduce documentary evidence supporting his damages calculation.

For these reasons, Moats requests the Court reopen the damages hearing and take additional evidence.

III. The Order Should Not Direct the Sale of the Property Before Moats' Legal Claims Can Be Heard & Resolved By a Jury.

The Order directs the sale of the subject property before Moats has an opportunity to pursue his legal claims against Dyar. Such claims, if proven, would entitle Moats to a setoff as against any amounts owing to Dyar. Where a case has both equitable and legal claims, and those claims are have common issues, the South Carolina Supreme Court has directed that the legal claims be resolved prior to the equitable claims:

We . . . hold that where a complaint is equitable and the counterclaim is legal and compulsory, the trial judge has two options. He may either order separate trials pursuant to Rule 42(b) or may order the claims tried in a single proceeding. In making this determination, caution should be taken to assure that, under the circumstances of the case, a joint trial will not deprive a party of his right to a full jury trial of legal issues.

Moreover, *when issues common to both legal and equitable claims are to be tried in a single proceeding, legal issues are to be determined first*, and the findings of the jury are binding on the sitting judge, as trier of the equitable claims.

...

If separate trials are ordered, the judge must determine which issues are to be tried first. If there are factual issues common to both claims, absent the “most imperative circumstances,” *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 79 S.Ct. 948, 3 L.Ed.2d 988 (1959), the “at law” claim must be tried first.

Johnson v. S.C. Nat. Bank, 292 S.C. 51, 56, 354 S.E.2d 895, 897 (1987) (emphasis added)

(internal citations omitted).

Moats' legal claims against Dyar arise under the Agreement and concern the parties' modification to the Agreement such that Dyar agreed to continue carrying insurance on the property under his company's name. Aff. Moats ¶ 8-9, Ex. D. As the policyholder, Dyar had certain responsibilities to pursue insurance loss claims made by Moats. Dyar's failure to fulfill his duty to pursue claims is the basis of Moats' legal claims.

Under the current posture of this case, Dyar's equitable claims have leaped-frogged Moats' legal claims, which is contrary to the South Carolina Supreme Court's directive in *Johnson*. Accordingly, Moats requests the Court to adjust the Principal & Interest Due taking into consideration Plaintiff's arguments for reduction in this motion, and then to hold any land sale in abeyance until Moats is able to pursue his legal claims and bring those claims before a jury.⁶

IV. CONCLUSION

Pruett-Lange's calculation of Principal & Interest Due, which the Order adopts, includes significant errors which should be addressed. After making these adjustments, the amount owed by Moats to Dyar is significantly lower than as testified by Pruet-Lange.

Plaintiff also requests that the damages hearing be reopened to permit expert testimony and the submission of any related documentary evidence into the record. Plaintiff was not given a full and fair opportunity to fully participate in the initial damages hearing.

Finally, Plaintiff requests that the Court hold the Order directing the sale of the property in abeyance until Plaintiff's legal claims can be adjudicated.

⁶ Plaintiff fully incorporates its arguments in its Amended Motion to Reconsider & Amend Judgment (Jun. 18, 2021).

Respectfully submitted,

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Counsel for Plaintiff

Columbia, South Carolina
July 29, 2022

Exhibit A

Beginning Balance	\$	212,500.00								
APR		6%								
Monthly Interest		0.5%								
Total Payment	\$	4,108.22								
PMT NO	Date	Payment	Status	Principal	Interest	Late Charge	Property Taxes	Insurance	Balance	
1	May 1, 2011	\$ 5,213.22	On-time	\$ 4,150.72	\$ 1,062.50	\$ -			\$ 208,349.28	
2	June 1, 2011	\$ 4,513.22	On-time	\$ 3,471.47	\$ 1,041.75	\$ -			\$ 204,877.81	
3	July 1, 2011	\$ 4,513.22	On-time	\$ 3,488.83	\$ 1,024.39	\$ -			\$ 201,388.98	
4	August 1, 2011	\$ 4,513.22	On-time	\$ 3,506.28	\$ 1,006.94	\$ -			\$ 197,882.70	
5	September 1, 2011	\$ 4,513.22	Late	\$ 3,298.15	\$ 989.41	\$ 225.66			\$ 194,584.55	
6	October 1, 2011	\$ 4,513.22	Late	\$ 3,314.64	\$ 972.92	\$ 225.66	\$ 2,897.66		\$ 194,167.58	
7	November 1, 2011	\$ -	Late	\$ (1,196.50)	\$ 970.84	\$ 225.66			\$ 195,364.07	
8	December 1, 2011	\$ -	Late	\$ (1,202.48)	\$ 976.82	\$ 225.66		\$ 1,566.00	\$ 198,132.55	
9	January 1, 2012	\$ 9,026.44	Late	\$ 7,810.12	\$ 990.66	\$ 225.66			\$ 190,322.44	
10	February 1, 2012	\$ 4,513.22	Late	\$ 3,335.95	\$ 951.61	\$ 225.66			\$ 186,986.49	
11	March 1, 2012	\$ -	Late	\$ (1,160.59)	\$ 934.93	\$ 225.66			\$ 188,147.08	
12	April 1, 2012	\$ -	Late	\$ (1,166.40)	\$ 940.74	\$ 225.66			\$ 189,313.48	
13	May 1, 2012	\$ -	Late	\$ (1,172.23)	\$ 946.57	\$ 225.66			\$ 190,485.71	
14	June 1, 2012	\$ -	Late	\$ (1,178.09)	\$ 952.43	\$ 225.66			\$ 191,663.79	
15	July 1, 2012	\$ -	Late	\$ (1,183.98)	\$ 958.32	\$ 225.66			\$ 192,847.77	
16	August 1, 2012	\$ -	Late	\$ (1,189.90)	\$ 964.24	\$ 225.66			\$ 194,037.67	
17	September 1, 2012	\$ 9,026.44	Late	\$ 7,830.59	\$ 970.19	\$ 225.66			\$ 186,207.08	
18	October 1, 2012	\$ -	Late	\$ (1,156.70)	\$ 931.04	\$ 225.66	\$ 2,935.37		\$ 190,299.15	
19	November 1, 2012	\$ -	Late	\$ (1,177.16)	\$ 951.50	\$ 225.66			\$ 191,476.30	
20	December 1, 2012	\$ -	Late	\$ (1,183.04)	\$ 957.38	\$ 225.66		\$ 2,094.95	\$ 194,754.29	
21	January 1, 2013	\$ -	Late	\$ (1,199.43)	\$ 973.77	\$ 225.66			\$ 195,953.72	
22	February 1, 2013		Late	\$ (1,205.43)	\$ 979.77	\$ 225.66			\$ 197,159.15	
23	March 1, 2013	\$ 6,000.00	Late	\$ 4,788.54	\$ 985.80	\$ 225.66			\$ 192,370.61	
24	April 1, 2013	\$ -	Late	\$ (1,187.51)	\$ 961.85	\$ 225.66			\$ 193,558.12	
25	May 1, 2013	\$ -	Late	\$ (1,193.45)	\$ 967.79	\$ 225.66			\$ 194,751.57	
26	June 1, 2013	\$ 4,500.00	Late	\$ 3,300.58	\$ 973.76	\$ 225.66			\$ 191,450.99	
27	July 1, 2013	\$ -	Late	\$ (1,182.91)	\$ 957.25	\$ 225.66			\$ 192,633.90	
28	August 1, 2013	\$ 2,500.00	Late	\$ 1,311.17	\$ 963.17	\$ 225.66			\$ 191,322.73	
29	September 1, 2013	\$ 2,013.22	Late	\$ 830.95	\$ 956.61	\$ 225.66			\$ 190,491.79	
30	October 1, 2013	\$ -	Late	\$ (1,178.12)	\$ 952.46	\$ 225.66	\$ 3,366.66		\$ 195,036.57	
31	November 1, 2013	\$ 22,566.10	Late	\$ 21,365.26	\$ 975.18	\$ 225.66			\$ 173,671.31	
32	December 1, 2013	\$ -	Late	\$ (1,094.02)	\$ 868.36	\$ 225.66		\$ 2,222.82	\$ 176,988.15	
33	January 1, 2014	\$ -	Late	\$ (1,110.60)	\$ 884.94	\$ 225.66			\$ 178,098.75	
34	February 1, 2014	\$ -	Late	\$ (1,116.15)	\$ 890.49	\$ 225.66			\$ 179,214.90	
35	March 1, 2014	\$ -	Late	\$ (1,121.73)	\$ 896.07	\$ 225.66			\$ 180,336.64	
36	April 1, 2014	\$ 5,000.00	Late	\$ 3,872.66	\$ 901.68	\$ 225.66			\$ 176,463.98	
37	May 1, 2014	\$ -	Late	\$ (1,107.98)	\$ 882.32	\$ 225.66			\$ 177,571.96	
38	June 1, 2014	\$ -	Late	\$ (1,113.52)	\$ 887.86	\$ 225.66			\$ 178,685.48	
39	July 1, 2014	\$ 10,000.00	Late	\$ 8,880.91	\$ 893.43	\$ 225.66			\$ 169,804.57	
40	August 1, 2014	\$ -	Late	\$ (1,074.68)	\$ 849.02	\$ 225.66			\$ 170,879.25	
41	September 1, 2014	\$ -	Late	\$ (1,080.06)	\$ 854.40	\$ 225.66			\$ 171,959.30	
42	October 1, 2014	\$ -	Late	\$ (1,085.46)	\$ 859.80	\$ 225.66	\$ 3,293.29		\$ 176,338.05	
43	November 1, 2014	\$ 5,000.00	Late	\$ 3,892.65	\$ 881.69	\$ 225.66			\$ 172,445.40	
44	December 1, 2014	\$ -	Late	\$ (1,087.89)	\$ 862.23	\$ 225.66		\$ 2,265.22	\$ 175,798.51	
45	January 1, 2015	\$ 5,000.00	Late	\$ 3,895.35	\$ 878.99	\$ 225.66			\$ 171,903.16	

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46	February 1, 2015	\$ 5,000.00	Late	\$ 3,914.82	\$ 859.52	\$ 225.66		\$ 167,988.34
47	March 1, 2015	\$ -	Late	\$ (1,065.60)	\$ 839.94	\$ 225.66		\$ 169,053.94
48	April 1, 2015	\$ -	Late	\$ (1,070.93)	\$ 845.27	\$ 225.66		\$ 170,124.87
49	May 1, 2015	\$ -	Late	\$ (1,076.28)	\$ 850.62	\$ 225.66		\$ 171,201.15
50	June 1, 2015	\$ 10,000.00	Late	\$ 8,918.33	\$ 856.01	\$ 225.66		\$ 162,282.82
51	July 1, 2015	\$ -	Late	\$ (1,037.07)	\$ 811.41	\$ 225.66		\$ 163,319.89
52	August 1, 2015	\$ -	Late	\$ (1,042.26)	\$ 816.60	\$ 225.66		\$ 164,362.15
53	September 1, 2015	\$ -	Late	\$ (1,047.47)	\$ 821.81	\$ 225.66		\$ 165,409.62
54	October 1, 2015	\$ -	Late	\$ (1,052.71)	\$ 827.05	\$ 225.66	\$ 3,329.58	\$ 169,791.91
55	November 1, 2015	\$ -	Late	\$ (1,074.62)	\$ 848.96	\$ 225.66		\$ 170,866.53
56	December 1, 2015	\$ 20,000.00	Late	\$ 18,920.01	\$ 854.33	\$ 225.66	\$ 2,265.31	\$ 154,211.83
57	January 1, 2016	\$ -	Late	\$ (996.72)	\$ 771.06	\$ 225.66		\$ 155,208.55
58	February 1, 2016	\$ -	Late	\$ (1,001.70)	\$ 776.04	\$ 225.66		\$ 156,210.25
59	March 1, 2016	\$ -	Late	\$ (1,006.71)	\$ 781.05	\$ 225.66		\$ 157,216.97
60	April 1, 2016	\$ 10,000.00	Late	\$ 8,988.26	\$ 786.08	\$ 225.66		\$ 148,228.71
61	May 1, 2016	\$ -	Late	\$ (966.80)	\$ 741.14	\$ 225.66		\$ 149,195.51
62	June 1, 2016	\$ -	Late	\$ (971.64)	\$ 745.98	\$ 225.66		\$ 150,167.15
63	July 1, 2016	\$ -	Late	\$ (976.50)	\$ 750.84	\$ 225.66		\$ 151,143.65
64	August 1, 2016	\$ 15,000.00	Late	\$ 14,018.62	\$ 755.72	\$ 225.66		\$ 137,125.03
65	September 1, 2016	\$ -	Late	\$ (911.29)	\$ 685.63	\$ 225.66		\$ 138,036.31
66	October 1, 2016	\$ -	Late	\$ (915.84)	\$ 690.18	\$ 225.66	\$ 3,329.58	\$ 142,281.73
67	November 1, 2016	\$ -	Late	\$ (937.07)	\$ 711.41	\$ 225.66		\$ 143,218.80
68	December 1, 2016	\$ -	Late	\$ (941.75)	\$ 716.09	\$ 225.66	\$ 2,265.21	\$ 146,425.77
69	January 1, 2017	\$ -	Late	\$ (957.79)	\$ 732.13	\$ 225.66		\$ 147,383.55
70	February 1, 2017	\$ -	Late	\$ (962.58)	\$ 736.92	\$ 225.66		\$ 148,346.13
71	March 1, 2017	\$ 10,000.00	Late	\$ 9,032.61	\$ 741.73	\$ 225.66		\$ 139,313.52
72	April 1, 2017	\$ -	Late	\$ (922.23)	\$ 696.57	\$ 225.66		\$ 140,235.75
73	May 1, 2017	\$ -	Late	\$ (926.84)	\$ 701.18	\$ 225.66		\$ 141,162.59
74	June 1, 2017	\$ -	Late	\$ (931.47)	\$ 705.81	\$ 225.66		\$ 142,094.06
75	July 1, 2017	\$ -	Late	\$ (936.13)	\$ 710.47	\$ 225.66		\$ 143,030.19
76	August 1, 2017	\$ -	Late	\$ (940.81)	\$ 715.15	\$ 225.66		\$ 143,971.00
77	September 1, 2017	\$ -	Late	\$ (945.52)	\$ 719.86	\$ 225.66		\$ 144,916.52
78	October 1, 2017	\$ -	Late	\$ (950.24)	\$ 724.58	\$ 225.66		\$ 145,866.76
79	November 1, 2017	\$ -	Late	\$ (954.99)	\$ 729.33	\$ 225.66		\$ 146,821.75
80	December 1, 2017	\$ -	Late	\$ (959.77)	\$ 734.11	\$ 225.66	\$ 2,265.21	\$ 150,046.73
81	January 1, 2018	\$ -	Late	\$ (975.89)	\$ 750.23	\$ 225.66		\$ 151,022.63
82	February 1, 2018	\$ 5,000.00	Late	\$ 4,019.23	\$ 755.11	\$ 225.66		\$ 147,003.40
83	March 1, 2018	\$ -	Late	\$ (960.68)	\$ 735.02	\$ 225.66		\$ 147,964.08
84	April 1, 2018	\$ -	Late	\$ (965.48)	\$ 739.82	\$ 225.66		\$ 148,929.56
85	May 1, 2018	\$ 5,000.00	Late	\$ 4,029.69	\$ 744.65	\$ 225.66		\$ 144,899.87
86	June 1, 2018	\$ -	Late	\$ (950.16)	\$ 724.50	\$ 225.66		\$ 145,850.02
87	July 1, 2018	\$ -	Late	\$ (954.91)	\$ 729.25	\$ 225.66		\$ 146,804.93
88	August 1, 2018	\$ -	Late	\$ (959.68)	\$ 734.02	\$ 225.66		\$ 147,764.62
89	September 1, 2018	\$ -	Late	\$ (964.48)	\$ 738.82	\$ 225.66		\$ 148,729.10
90	October 1, 2018	\$ -	Late	\$ (969.31)	\$ 743.65	\$ 225.66	\$ 3,329.58	\$ 153,027.99
91	November 1, 2018	\$ -	Late	\$ (990.80)	\$ 765.14	\$ 225.66		\$ 154,018.79
92	December 1, 2018	\$ -	Late	\$ (995.75)	\$ 770.09	\$ 225.66	\$ 2,265.21	\$ 157,279.75
93	January 1, 2019	\$ -	Late	\$ (1,012.06)	\$ 786.40	\$ 225.66		\$ 158,291.81
94	February 1, 2019	\$ -	Late	\$ (1,017.12)	\$ 791.46	\$ 225.66		\$ 159,308.93
95	March 1, 2019	\$ -	Late	\$ (1,022.20)	\$ 796.54	\$ 225.66		\$ 160,331.13

96	April 1, 2019	\$	-	Late	\$ (1,027.32)	\$ 801.66	\$ 225.66		\$ 161,358.45
97	May 1, 2019	\$	-	Late	\$ (1,032.45)	\$ 806.79	\$ 225.66		\$ 162,390.90
98	June 1, 2019	\$	-	Late	\$ (1,037.61)	\$ 811.95	\$ 225.66		\$ 163,428.52
99	July 1, 2019	\$	-	Late	\$ (1,042.80)	\$ 817.14	\$ 225.66		\$ 164,471.32
100	August 1, 2019	\$	-	Late	\$ (1,048.02)	\$ 822.36	\$ 225.66		\$ 165,519.34
101	September 1, 2019	\$	-	Late	\$ (1,053.26)	\$ 827.60	\$ 225.66		\$ 166,572.59
102	October 1, 2019	\$	-	Late	\$ (1,058.52)	\$ 832.86	\$ 225.66	\$ 4,498.15	\$ 172,129.27
103	November 1, 2019	\$	-	Late	\$ (1,066.31)	\$ 860.65	\$ 225.66		\$ 173,215.57
104	December 1, 2019	\$	-	Late	\$ (1,091.74)	\$ 866.08	\$ 225.66	\$ 2,265.21	\$ 176,572.52
105	January 1, 2020	\$	-	Late	\$ (1,108.52)	\$ 882.86	\$ 225.66		\$ 177,681.04
106	February 1, 2020	\$	-	Late	\$ (1,114.07)	\$ 888.41	\$ 225.66		\$ 178,795.11
107	March 1, 2020	\$	-	Late	\$ (1,119.64)	\$ 893.98	\$ 225.66		\$ 179,914.74
108	April 1, 2020	\$	-	Late	\$ (1,125.23)	\$ 899.57	\$ 225.66		\$ 181,039.98
109	May 1, 2020	\$	-	Late	\$ (1,130.86)	\$ 905.20	\$ 225.66		\$ 182,170.84
110	June 1, 2020	\$	-	Late	\$ (1,136.51)	\$ 910.85	\$ 225.66		\$ 183,307.35
111	July 1, 2020	\$	-	Late	\$ (1,142.20)	\$ 916.54	\$ 225.66		\$ 184,449.55
112	August 1, 2020	\$	-	Late	\$ (1,147.91)	\$ 922.25	\$ 225.66		\$ 185,597.46
113	September 1, 2020	\$	-	Late	\$ (1,153.65)	\$ 927.99	\$ 225.66		\$ 186,751.10
114	October 1, 2020	\$	-	Late	\$ (1,159.42)	\$ 933.76	\$ 225.66	\$ 4,459.04	\$ 192,369.56
115	November 1, 2020	\$	-	Late	\$ (1,187.51)	\$ 961.85	\$ 225.66		\$ 193,557.07
116	December 1, 2020	\$	-	Late	\$ (1,193.45)	\$ 967.79	\$ 225.66	\$ 2,265.21	\$ 197,015.72
117	January 1, 2021	\$	-	Late	\$ (1,210.74)	\$ 985.08	\$ 225.66		\$ 198,226.46
118	February 1, 2021	\$	-	Late	\$ (1,216.79)	\$ 991.13	\$ 225.66		\$ 199,443.25
119	March 1, 2021	\$	-	Late	\$ (1,222.88)	\$ 997.22	\$ 225.66		\$ 200,666.13
120	April 1, 2021	\$	-	Late	\$ (1,228.99)	\$ 1,003.33	\$ 225.66		\$ 201,895.12
121	May 1, 2021	\$	-	Late	\$ (1,235.14)	\$ 1,009.48	\$ 225.66		\$ 203,130.25
122	June 1, 2021	\$	-	Late	\$ (1,241.31)	\$ 1,015.65	\$ 225.66		\$ 204,371.57
123	July 1, 2021	\$	-	Late	\$ (1,247.52)	\$ 1,021.86	\$ 225.66		\$ 205,619.08
124	August 1, 2021	\$	-	Late	\$ (1,253.76)	\$ 1,028.10	\$ 225.66		\$ 206,872.84
125	September 1, 2021	\$	-	Late	\$ (1,260.02)	\$ 1,034.36	\$ 225.66		\$ 208,132.86
126	October 1, 2021	\$	-	Late	\$ (1,266.32)	\$ 1,040.66	\$ 225.66		\$ 209,399.19
127	November 1, 2021	\$	-	Late	\$ (1,272.66)	\$ 1,047.00	\$ 225.66		\$ 210,671.84
128	December 1, 2021	\$	-	Late	\$ (1,279.02)	\$ 1,053.36	\$ 225.66		\$ 211,950.86
129	January 1, 2022	\$	-	Late	\$ (1,285.41)	\$ 1,059.75	\$ 225.66		\$ 213,236.28
130	February 1, 2022	\$	-	Late	\$ (1,291.84)	\$ 1,066.18	\$ 225.66		\$ 214,528.12
131	March 1, 2022	\$	-	Late	\$ (1,298.30)	\$ 1,072.64	\$ 225.66		\$ 215,826.42
132	April 1, 2022	\$	-	Late	\$ (1,304.79)	\$ 1,079.13	\$ 225.66		\$ 217,131.21
133	May 1, 2022	\$	-	Late	\$ (1,311.32)	\$ 1,085.66	\$ 225.66		\$ 218,442.53
134	June 1, 2022	\$	-	Late	\$ (1,317.87)	\$ 1,092.21	\$ 225.66		\$ 219,760.40
135	July 1, 2022	\$	-	Late	\$ (1,324.46)	\$ 1,098.80	\$ 225.66		\$ 221,084.86
136	August 1, 2022	\$	-	Late	\$ (1,331.08)	\$ 1,105.42	\$ 225.66		\$ 222,415.95

Exhibit B

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) C.A. NO. 2020-CP-04-01202

Moats Construction, Inc.,) **ORIGINAL**
 Plaintiff(s),)
versus)
)
Cecil R. Dyar,)
 Defendant(s).)

M O T I O N S H E A R I N G

BEFORE: The Honorable R. Scott Sprouse
DATE: February 24, 2022
TIME BEGIN: 10:05 a.m.
TIME END: 11:21 a.m.
LOCATION: Anderson County Courthouse
 100 South Main Street
 Anderson, South Carolina 29624
REPORTED BY: Lisa M. Nowell, Certified Verbatim Reporter
 LEGAL EAGLE
 Post Office Box 5682
 Greenville, South Carolina 29606
 864-467-1373
 depos@legaleagleinc.com

1 APPEARANCES:

2

3 Wendell L. Hawkins, Esquire

4 Wendell L. Hawkins, PA

5 310 The Parkway

6 Greenville, South Carolina 29650

7 wlh@wlhawkinslawfirm.com

8 Attorney for the Plaintiff(s),

9

10 James W. Logan, Jr., Esquire

11 Logan & Jolly, LLP

12 P.O. Box 259

13 Anderson, South Carolina 29622

14 logan@loganandjolly.com

15 Attorney for the Defendant(s).

16

17

18

19

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22

23

24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 favor of my client today in the damages hearing and we
2 will establish the amount owed, I want to establish a
3 time for him to either pay it or get out. And if he
4 does not do any of that, I want him -- I want a bond
5 for two and a half times what he owes so he can start
6 having some -- well, I won't say that. But this case
7 needs to be over and my clients need justice, and
8 they're not -- they haven't gotten it yet from this
9 man.

10 THE COURT:

11 Mr. Hawkins, let me hear from -- now, you've made a
12 motion to be relieved as counsel.

13 MR. HAWKINS:

14 Correct.

15 THE COURT:

16 I want to -- is your client here?

17 MR. HAWKINS:

18 Russell Moats? I don't believe he is, Your Honor.

19 THE COURT:

20 Did he get notice of today's hearing?

21 MR. HAWKINS:

22 My communication has been via email with him. I sent
23 him the email, I invited him here to testify as to the
24 damages. The expert won't show up because he hasn't
25 been paid. And to be honest, I've been a bit ghosted

1 and testified as follows:

2 CLERK OF COURT:

3 If you would take the stand and state your name and
4 spell your last name for the reporter, please.

5 WITNESS:

6 My name is Joshua Pruiett-Lange, and my last name is
7 spelled P-R-U-I-E-T-T-hyphen-L-A-N-G-E.

8 DIRECT EXAMINATION BY MR. LOGAN:

9 Q. Good morning, sir.

10 A. Yes, sir.

11 Q. As I understand it, you are a registered tax preparer
12 with the Internal Revenue Service; is that correct?

13 A. Yes, sir.

14 Q. Okay. And you've been a bookkeeper since 2016 and were
15 employed by Electric City Tax and Bookkeeping, formerly
16 Shiflette Bookkeeping and Tax; is that correct?

17 A. Yes, sir.

18 Q. Okay. And basically you took over the business of
19 Shiflette Bookkeeping and Tax, which for many years had
20 done the accounting and bookkeeping records for Mr.
21 Cecil Dyar; is that correct?

22 A. Yes, sir.

23 Q. All right. You said you've worked for Cecil Dyar for
24 many years and you have reviewed payments made by Moats
25 Construction, Incorporated to Cecil Dyar for the

1 property that is the subject of this lawsuit; is that
2 correct?

3 A. For clarification, the payments that were reviewed by
4 me were provided to me by your office.

5 Q. Yes, sir.

6 A. And -- but yes, those have been reviewed and --

7 Q. And you've reviewed the terms of the Agreement for Sale
8 and Purchase?

9 A. Yes, sir.

10 Q. And how those payments were to be allocated; is that
11 correct?

12 A. Yes, sir.

13 Q. All right. And based upon that analysis, what was the
14 amount that, as of April the 1st of 2021, was due under
15 the terms and provisions of that agreement?

16 A. Based on the payments that had been provided to me at
17 the time, it was \$218,000, I believe.

18 Q. Well, you have a -- I'm sorry, they have --

19 A. Well, this is -- this has since been updated.

20 Q. I believe that's identified as Exhibit 2; is that
21 correct?

22 A. Yes, this is the original. So as of April 1st, 2021,
23 it was \$216,047.42.

24 Q. All right, sir. Then at my request, you have updated
25 the payments due to February the 1st of this year; is

1 that correct?

2 A. Yes, sir.

3 Q. Okay. Did you use the same process and procedure that
4 you did to calculate the amount due under the Exhibit 2
5 that you've been testifying about?

6 A. Yes, sir.

7 Q. Okay. And Exhibit 1, I think, is your updated
8 calculations; is that correct?

9 A. Yes, sir.

10 Q. All right. And what is the amount you have determined
11 that, as of February 1, 2022, is due under the terms of
12 the agreement?

13 A. \$222,415.95.

14 MR. LOGAN:

15 All right. Thank you, sir. Answer any questions that
16 the other side may have.

17 THE COURT:

18 Mr. Hawkins, any questions for this witness?

19 MR. HAWKINS:

20 No, Your Honor.

21 THE COURT:

22 All right. You said you admit these Exhibits 1 and 2?

23 MR. LOGAN:

24 Yes, I -- both of those are admitted as Exhibits 1 and
25 2.

1 trying to figure out exactly what had taken place and
2 happened. And throughout the course of all that, we
3 discovered that our name was not even on the title,
4 that the agreement had not been recorded with the ROW
5 office in Anderson. So that was just another issue
6 with the property. But at no point in time did I tell
7 Mr. Dyar that I wouldn't pay any balance that was owed
8 on the property, and I was fully prepared and willing
9 to do that. We just never knew exactly what that
10 amount was. And once we got the bookkeeping back from
11 the Shiflette Bookkeeping, we saw numerous errors, a
12 couple of payments that were just not even on there.
13 There was a cash payment that we made to Mrs. Dyar one
14 time for some type of -- something that she needed and
15 needed the money pretty quick and I paid her cash --
16 some cash, and that was not on there. So we had
17 numerous issues with the agreement and the payments and
18 how they were applied to the accounting, and it was
19 nowhere close to \$216,000. I mean, the most we thought
20 we may have owed Mr. Dyar was \$50,000. But like I
21 said, we had numerous other issues with the property
22 that we wanted to address. We thought that he might
23 work with us on whatever the balance was because we had
24 no idea what it was going to cost us to replace the
25 roof and deal with the railroad and the City of

1 --

2 A. No, sir, I signed the original Agreement for Sale and
3 Purchase, which is pages 1 through 4.

4 Q. Did you --

5 A. The last part of it, the addendum, I didn't sign the
6 addendum. No, sir.

7 Q. Did you agree to the extension?

8 A. No, sir, I did not.

9 Q. But you continued to remain on the property; is that
10 right? Past that date, you continued to use that
11 property for your own purposes and you're telling us
12 now that you didn't agree to the extension; is that
13 what you're telling me?

14 A. That's exactly right.

15 Q. Okay. Why didn't you just leave if you wouldn't agree
16 to the extension?

17 A. Well, because I had several hundred thousand dollars in
18 equity in the property.

19 Q. All right. Let's mark that as Exhibit 3.

20 (COURT REPORTER MARKS DEFENDANT'S EXHIBIT NUMBER 3, AGREEMENT
21 FOR SALE AND PURCHASE OF REAL ESTATE, RETAINED BY THE COURT)

22 CROSS EXAMINATION RESUMED BY MR. LOGAN:

23 Q. Okay. This agreement deals with the fact that you paid
24 \$37,500 upon the signing of this document, correct?

25 A. I'm not sure. If you'll give me the document back,

1 question.

2 CROSS EXAMINATION RESUMED BY MR. LOGAN:

3 Q. Look at paragraph 3(B) on the document that you did
4 sign. Did I read that correctly?

5 A. 3(D)? I see A, B, and C.

6 Q. A, B, and C.

7 A. Oh, you're saying B. Okay. Yes, sir. What was the
8 question?

9 Q. Okay. Does not the last part of that paragraph say,
10 "Continuing on the same day of each month thereafter
11 through April 1, 2016 with the principal balance due
12 together with accrued interest to be paid in full on or
13 before March 31, 2016"? Is that correct?

14 A. Is that correct what it says?

15 Q. Yes, sir.

16 A. That's what it says, yes, sir.

17 Q. Okay. So would you agree that without an addendum or
18 an extension that you either agree to with the Dyars --
19 or that you agree to with the Dyars, you were obligated
20 to pay the balance under this contract on March 31,
21 2016?

22 A. That's correct, yes.

23 Q. And you did not make that payment, did you?

24 A. We did. We did.

25 Q. You paid the balance under this contract on that date?

1 A. The balance is not paid in full because we had numerous
2 issues with the property, and I've already stated that.
3 We paid all the payments as agreed for the first four
4 or five months of the agreement and then we got a
5 notice of the lien being placed on the property by the
6 City of Anderson. At that point in time, it was our
7 understanding per this agreement that the seller was
8 responsible for any taxes related to the property.
9 Those had not been paid by the Dyars. So as far as we
10 were concerned, the agreement had been breached. So we
11 had numerous discussions with Mr. Dyar about that. And
12 we had had other issues with the property like some
13 barge equipment being left on the property to clean up
14 around the property that we thought that he was going
15 to perform that had not been performed. We had a
16 mutual agreement, a mutual relationship and
17 understanding. I thought we had a good relationship
18 for five years, and so we just -- we were working it
19 out. For five years, we made payments to them. They
20 were fine with how we made the payments. For five
21 years, there was no issue. At the end of the five
22 years, he came to me and I believe I had called him
23 maybe a couple of times and told him that I had some
24 issues with the railroad. He came by and I asked him
25 if he could just be patient with us and we'll figure

1 Q. So he hired -- Mr. Hawkins, your attorney, hired an
2 accountant by the name of Michael Meilinger to
3 determine how much you owed under the agreement; is
4 that correct?

5 A. He had wanted to hire them to have them come and
6 testify today at this hearing, yes, sir.

7 Q. And he did hire them; is that right?

8 A. Evidently, he did.

9 Q. Have you paid for that accountant?

10 A. No, I didn't.

11 Q. And why not?

12 A. Because they would never give me any kind of -- he
13 tried to send me a bill for like \$5,000. I didn't even
14 know what it was for. And I told him just to take the
15 canceled checks that we had -- it's pretty simple.
16 Take our ledger, take the canceled checks, our copies
17 of our bank statements, make copies of them, and there
18 was a \$3,000 cash payment on top of that. I mean, it's
19 pretty simple, and that's what was paid. The checks --
20 the canceled checks speak for themselves.

21 Q. Did you ever see his report?

22 A. I saw -- I saw -- they were emailing back and forth.
23 Yes, sir, I saw the report.

24 Q. All right. And --

25 A. I saw -- I saw a preliminary report, I believe. And I

Exhibit C

1. PREMISES. The Seller agrees to sell and Purchaser agrees to purchase upon the terms and conditions and for the price set forth hereinafter the real property and improvements thereon located at 300-600 W. Orr Street, Anderson, South Carolina, 29625 and shown as Tax Map #123-24-03-003.

3. PAYMENT OF PURCHASE PRICE. The Purchase Price shall be paid in the following manner:

(a) Down-Payment. Purchaser has paid with the execution of these presents the sum of Thirty-Seven Thousand Five Hundred and no/100 (\$37,500.00) dollars, the receipt of which is hereby acknowledged.

(b) **Balance Due.** The balance due in the amount of Two hundred Twelve thousand five hundred and no/100 (\$212,500.00) Dollars with interest at the rate of six (6%) percent per annum shall be paid as follows: The principal balance shall be paid in sixty (60) successive monthly installments of Four thousand One hundred Eight and 22/100 (\$4,108.22) dollars each month beginning May 1, 2011 and continuing on the same day of each month thereafter through April 1, 2016 with the principal balance due together with accrued interest to be paid in full on or before March 31, 2016.

(c) Escrow Payments. Upon request of Seller, Purchaser shall pay along with each monthly installment of principal and interest 1/12th of annual estimated amount of ad valorem taxes and casualty insurance . It is agreed that Four Hundred Five and no/100ths (\$405.00) Dollars per month is the amount estimated to pay such annual costs but the Seller shall have the right to make reasonable adjustments to cover increased costs.

4. CONVEYANCE OF TITLE. Upon payment of the Purchase Price, the Seller shall convey to Purchaser title to the premises by General Warranty Deed, subject to the following:

(a) Ad Valorem taxes and special assessments for the City of Anderson and County of Anderson which have accrued but are not yet due.

(b) Rights of way and easements for public utility distribution lines.

(c) Restrictive covenants affecting the property.

(d) State of facts which may be revealed by a recent and accurate survey of the premises.

5. AD VALOREM TAXES AND SPECIAL ASSESSMENTS. All Ad Valorem taxes and special assessments imposed against the Premises by the County of Anderson, City of Anderson or any political subdivision thereof shall be prorated as of the date of this Contract, and thereafter the Purchaser agrees to pay all Ad Valorem taxes and special assessments against the Premises before the same becomes past due.

6. CLOSING COSTS. Upon transfer of title, Seller at its expense shall deliver the Deed of Title to Real Estate with South Carolina documentary stamps affixed thereto and Purchaser shall bear the expense of Anderson County recording taxes and all costs of recording the Deed and other documents of title.

7. DEFAULT. In the event the Purchaser defaults in making any payments provided for herein or in any other terms, provisions or covenants of this Contract, the Seller may, at its option, declare this Contract terminated and of no further force and effect, and will be entitled to immediate possession of the Premises and may retain all amounts paid by Purchaser to date of default as rent and liquidated damages. Seller may in the alternative, at its option, declare the entire balance of the Purchase Price due and payable without notice, and institute suit against the Purchaser seeking a sale of the property and foreclosure of Purchaser's rights.

8. PREPAYMENT. Purchaser may prepay the balance due in whole or in part at any time without penalty.

9. POSSESSION. Until Purchaser defaults in payment of sums to be paid hereunder or in performance of obligations to be performed hereunder, Purchaser shall be entitled to possession of the Premises, provided, the Purchaser shall not commit or suffer to exist any damage or destruction of the Premises.

10. RISK OF LOSS. Risk of loss by damage to or destruction of the Premises shall be upon the Purchaser during the term of this Agreement.

11. TIME OF ESSENCE. It is further agreed that the time of payment shall be an essential part of this *Contract* and all Covenants and agreements herein contained shall extend to and be obligatory upon the heirs, personal representatives and assigns of the respective parties.

12. LATE PAY PENALTY. The Purchaser agrees that if any payment is not paid when due and shall remain unpaid for more than ten (10) days from the due date, a late charge equal to five (5%) percent of the total payment shall be added to the payment due. The Purchaser agrees that the failure to pay the late charge when due shall be considered a default in this Contract and subject the Purchaser to immediate eviction.

13. ATTORNEY'S FEES. If this Contract is placed in the hands of an attorney for collection or for enforcing any of Seller's other rights hereunder, including any legal proceeding brought to sell said property, Purchaser agrees to pay all costs and expenses incurred by Seller including not less than Fifteen (15%) percent of the then balance due under this Contract as Attorney's fees.

14. INSURANCE. Purchaser agrees to keep the improvements on said real property insured against loss by fire or other casualty in a reputable fire insurance company in an amount of not less than the balance due to the Seller under this Contract and to have Seller named in said policy as an additional insured.

15. SELLER'S REMEDIES. In the event the Purchaser fails to pay the property taxes when due, or fails to pay the fire insurance premiums, the Seller may, at Seller's option, pay the same and add such amount to the indebtedness due to the Seller to bear interest at the same rate stated above.

16. ASSIGNMENT. The Purchaser shall have no right to assign this Contract or sublet the premises without prior written consent of Seller and any attempt to do so shall constitute a default in the terms and provisions of this Contract.

17. MAINTENANCE. The Purchaser shall maintain the Premises and all improvements thereon in the same good condition as the same was delivered to Purchaser, wear and tear excepted.

18. DISCLAIMER OF WARRANTIES. The Purchaser acknowledges that the Seller has made no representation to the Purchaser concerning the condition of the dwelling or any improvement upon the Premises. The Seller specifically disclaims all warranties which may exist by implication of law, including the warranty of habitability. The Purchaser acknowledges that Purchaser has made an inspection of the Premises and accepts the same "AS IS, WITH ALL FAULTS."

19. SURVIVAL OF THIS AGREEMENT. This Agreement and the terms hereof shall not be merged into the documents of conveyance at closing but shall survive and remain a binding contractual agreement between the parties after closing.

20. WASTE OR DESTRUCTION. Purchaser during possession shall not commit any waste of the premises or demolish any improvement or harvest any growing timber without the written consent of the Seller.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year above written.

IN THE PRESENCE OF:

Nancy M. Wright

Jerry Hayes

Cecil R. Dyar
Cecil Dyar, Seller

Moats Construction, LLC
Moats Construction, LLC, Buyer

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s) he saw the within named Cecil Dyar, as Seller, sign, seal and as their act and deed deliver the within Contract, and that (s) he with the other witness whose name is subscribed above witnessed the execution thereof.

Nancy M. Wright

Sworn to before me this 11
 day of March, 2011

Thomas S. Krotter (SEAL)
 Notary Public for South Carolina
 My Commission Expires 12-10-2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Moats Construction, LLC, as Purchaser, sign, seal and as their act and deed deliver the within Contract, and that (s)he with the other witness whose name is subscribed above witnessed the execution thereof.

Gerry Hayes

Sworn to before me this 11
 day of March, 2011

Thomas S. Krotter (SEAL)
 Notary Public for South Carolina
 My Commission Expires 12-10-2011

Exhibit D

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

) IN THE COURT OF COMMON PLEAS
) FOR THE TENTH JUDICIAL CIRCUIT
) C/A NO. 2020-CP-04-01202

Moats Construction, Inc,

Plaintiff,

vs.

Cecil R. Dyar

Defendant.

**AFFIDAVIT
OF
RUSSELL TYSON MOATS**

PERSONALLY APPEARED before me Russell Tyson Moats, who, being first duly sworn, says and deposes:

1. That I am over the age of 18 and a resident of Anderson County, South Carolina.
2. I am the owner of Moats Construction, Inc.
3. I executed the Agreement for Sale and Purchase of Real Property (the "Agreement") effective January 29, 2011, on behalf of Moats Construction, LLC, now known as Moats Construction, Inc. ("Moats"), to purchase the property known as 300-600 W. Orr Street, Anderson, South Carolina (the "Property") from Cecil Dyar ("Dyar").
4. The term of the Agreement was for a period of sixty (60) months, beginning May 2011, through April 2016.
5. I am familiar with the Agreement's payment history.
6. During the five years of the Agreement, real property taxes and insurance premiums were deducted from Moats' payments made to Dyar.

7. After expiration of the Agreement in April 2016, and beginning with the 2016 Tax Year, Moats has paid all real property taxes directly to Anderson County. Attached are the tax receipts reflecting the tax years 2015-2020. **Exhibit 1.**

8. Prior to Moats purchasing the Property, the Property was insured under Anderson Steel Processing, Inc., a company believed to be owned by Cecil Dyar. After the Agreement was executed, the parties agreed to continue insurance coverage under Anderson Steel Processing, Inc. Accordingly, it is my understanding that Dyar paid insurance premiums, from the payments made by Moats, though the coverage effective date of February 2016-February 2017.

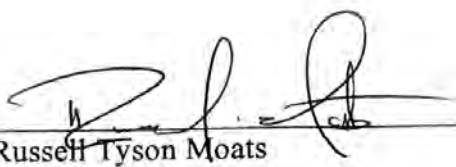
9. Beginning with the insurance coverage effective February 2017-February 2018, Moats paid insurance premium payments directly. Attached as Exhibit 2 is Moats' vendor report reflecting Moats' payments to Prime Rate Premium Financing Corp. Inc. for insurance coverage for February 2017-February 2018. **Exhibit 2.**

10. Hurricane Irma damaged the Property on September 11, 2017. A claim was submitted for this damage. The insurance carrier only paid \$3.31 on this claim.¹

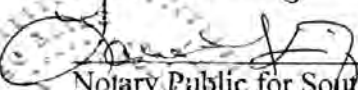
11. Because the insurance carrier did not cover the full extent of damages to the Property, Moats did not renew this insurance policy.

12. To my knowledge, no insurance premium payments have been made after the policy period ending February 2018.

¹ Moats Construction, Inc., has filed a claim against Cecil Dyar related to the failure to pursue insurance coverage for this claim.


Russell Tyson Moats

SWORN to before me this 19th
day of July, 2022


Notary Public for South Carolina

My Commission Expires: October 23, 2025



ANDERSON COUNTY, SOUTH CAROLINA TAX RECEIPT

ELECTRONICALLY FILED - 2022 Jul 29 3:31 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401202

V E H.	DESCRIPTION OF VEHICLE					ASSESSMENT	TAX DISTRICT	TAX YEAR	ACCOUNT NUMBER	
	YEAR	MAKE	BODY STY	MODEL #	IDENTIFICATION NUMBER					
							500	2015	2015 003776688	
N O N V E H.	CLASS	RATIO	NO. ACRES	NO. LOTS	LAND ASSESSMENT	NO. IMPS	IMP. ASSESSMENT	MORT COMPANY	TAX LEVY	
	0	.060	1.50		1,430	1	6,460		CITY	COUNTY
								IND PARK	.11800	30400
PROPERTY IDENTIFICATION							TOTAL ASSESSMENT		CITY TAX	
W ORR ST 1.50 AC							7,890		931.02	
DOR/CO ID NUMBER				TAX MAP SHEET			MARKET VALUE		COUNTY TAX	
				1232403003			131,457		2,398.56	

REAL PROPERTY

REAL ESTATE

TAX AMOUNT	3,329.58
FEES	
LESS EXEMPTIONS	
LESS PRORATE	
PENALTY ADDED	
PREVIOUS PAYMENTS	3,329.58
REFUNDED	
THIS PAYMENT *****	
TOTAL PAYMENTS	3,329.58

** D U P L I C A T E **
***** TAXPAYER COPY *****

DYAR CECIL R
PO BOX 2442
ANDERSON

T25

SC 296222442

TAXES FOR THE YEAR ENDING
DEC 31, 2015

This Tax Receipt is null
and void if payment is
made with a check that
fails to clear the bank.

TAX PAID
JANUARY 20 2016
<i>Jason P. Phillips</i>
COUNTY TREASURER

ANDERSON COUNTY TREASURER, P.O. BOX 8002, ANDERSON, SC 29622

PAID BY: CECIL DYAR
CK2475 M

SC 296222442

ANDERSON
PO BOX 2442

DYAR CECIL R

T25

12-37-2730

"It is unlawful for any person to use the treasurer's
receipt to obtain motor vehicle license plates unless
all municipal personal property taxes due in the county
of his residence on any vehicles now or previously
owned by the applicant have been paid."



ANDERSON COUNTY, SOUTH CAROLINA TAX RECEIPT

ELECTRONICALLY FILED - 2022 Jul 29 3:31 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401202

V E H.	DESCRIPTION OF VEHICLE					ASSESSMENT	TAX DISTRICT	TAX YEAR	ACCOUNT NUMBER	
	YEAR	MAKE	BODY STY	MODEL #	IDENTIFICATION NUMBER					
							500	2016	2016 003774388	
N O N V E H.	CLASS	RATIO	NO. ACRES	NO. LOTS	LAND ASSESSMENT	NO. IMPS	IMP. ASSESSMENT	MORT COMPANY	TAX LEVY	
	0	.060	1.50		1,430	1	6,460		CITY	COUNTY
								IND PARK	.11800	30080
PROPERTY IDENTIFICATION							TOTAL ASSESSMENT		CITY TAX	
W ORR ST 1.50 AC							7,890		931.02	
DOR/CO ID NUMBER				TAX MAP SHEET			MARKET VALUE		COUNTY TAX	
				1232403003			131,457		2,373.31	

REAL PROPERTY

REAL ESTATE

TAX AMOUNT	3,304.33
FEES	
LESS EXEMPTIONS	
LESS PRORATE	
PENALTY ADDED	495.65
PREVIOUS PAYMENTS	3,799.98
REFUNDED	
THIS PAYMENT *****	
TOTAL PAYMENTS	3,799.98

** D U P L I C A T E **
***** TAXPAYER COPY *****

DYAR CECIL R

PO BOX 2442
ANDERSON

T25

SC 296222442

TAXES FOR THE YEAR ENDING
DEC 31, 2016

This Tax Receipt is null
and void if payment is
made with a check that
fails to clear the bank.

TAX PAID
APRIL 27 2017
<i>Jason P. Phillips</i>
COUNTY TREASURER

ANDERSON COUNTY TREASURER, P.O. BOX 8002, ANDERSON, SC 29622

PAID BY: MOATS CONSTRUCTION COMPANY
CK11712

296222442 SC

ANDERSON
PO BOX 2442

DYAR CECIL R

T25

12-37-2730

"It is unlawful for any person to use the treasurer's
receipt to obtain motor vehicle license plates unless
all municipal personal property taxes due in the county
of his residence on any vehicles now or previously
owned by the applicant have been paid."



ANDERSON COUNTY, SOUTH CAROLINA TAX RECEIPT

ELECTRONICALLY FILED - 2022 Jul 29 3:31 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401202

V E H.	DESCRIPTION OF VEHICLE					ASSESSMENT	TAX DISTRICT	TAX YEAR	ACCOUNT NUMBER	
	YEAR	MAKE	BODY STY	MODEL #	IDENTIFICATION NUMBER					
							500	2017	2017 003786388	
N O N V E H.	CLASS	RATIO	NO. ACRES	NO. LOTS	LAND ASSESSMENT	NO. IMPS	IMP. ASSESSMENT	MORT COMPANY	TAX LEVY	
	0	.060	1.50		1,640	1	7,430		CITY	COUNTY
								IND PARK	.11600	29990
PROPERTY IDENTIFICATION							TOTAL ASSESSMENT		CITY TAX	
W ORR ST 1.50 AC							9,070		1,052.12	
DOR/CO ID NUMBER				TAX MAP SHEET			MARKET VALUE		COUNTY TAX	
				1232403003			151,176		2,720.09	

REAL PROPERTY	REAL ESTATE	TAX AMOUNT	3,772.21
FEE:		FEES	85.00
		LESS EXEMPTIONS	
		LESS PRORATE	
DELINQUENT COST	30.00	PENALTY ADDED	565.83
PHOTOGRAPHY	5.00	PREVIOUS PAYMENTS	4,423.04
ADVERTISEMENT	50.00	REFUNDED	
		THIS PAYMENT *****	
		TOTAL PAYMENTS	4,423.04

** D U P L I C A T E **
***** TAXPAYER COPY *****

DYAR CECIL R

PO BOX 2442
ANDERSON

T25

SC 296222442

TAXES FOR THE YEAR ENDING
DEC 31, 2017

This Tax Receipt is null
and void if payment is
made with a check that
fails to clear the bank.

TAX PAID

OCTOBER
12 2018

Jason P. Phillips

COUNTY TREASURER

ANDERSON COUNTY TREASURER, P.O. BOX 8002, ANDERSON, SC 29622

PAID BY: MOATS CONSTRUCTION COMPANY
CHK 11700

ANDERSON
PO BOX 2442

DYAR CECIL R

T25

12-37-2730

"It is unlawful for any person to use the treasurer's
receipt to obtain motor vehicle license plates unless
all municipal personal property taxes due in the county
of his residence on any vehicles now or previously
owned by the applicant have been paid."



ANDERSON COUNTY, SOUTH CAROLINA TAX RECEIPT

ELECTRONICALLY FILED - 2022 Jul 29 3:31 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401202

V E H.	DESCRIPTION OF VEHICLE					ASSESSMENT	TAX DISTRICT	TAX YEAR	ACCOUNT NUMBER	
	YEAR	MAKE	BODY STY	MODEL #	IDENTIFICATION NUMBER					
							500	2018	2018 003791288	
N O N V E H.	CLASS	RATIO	NO. ACRES	NO. LOTS	LAND ASSESSMENT	NO. IMPS	IMP. ASSESSMENT	MORT COMPANY	TAX LEVY	
	0	.060	1.50		1,640	1	7,430		CITY	COUNTY
								IND PARK	.11600	30710
PROPERTY IDENTIFICATION							TOTAL ASSESSMENT		CITY TAX	
W ORR ST 1.50 AC							9,070		1,052.12	
DOR/CO ID NUMBER				TAX MAP SHEET			MARKET VALUE		COUNTY TAX	
				1232403003			151,176		2,785.40	

REAL PROPERTY	REAL ESTATE	TAX AMOUNT	3,837.52
FEE:		FEES	85.00
		LESS EXEMPTIONS	
		LESS PRORATE	
DELINQUENT COST	30.00	PENALTY ADDED	575.63
PHOTOGRAPHY	5.00	PREVIOUS PAYMENTS	4,498.15
ADVERTISEMENT	50.00	REFUNDED	
		THIS PAYMENT *****	
		TOTAL PAYMENTS	4,498.15

** D U P L I C A T E **
***** TAXPAYER COPY *****

DYAR CECIL R

PO BOX 2442
ANDERSON

T25

SC 296222442

TAXES FOR THE YEAR ENDING
DEC 31, 2018

This Tax Receipt is null
and void if payment is
made with a check that
fails to clear the bank.

TAX PAID

OCTOBER
16 2019

Jason P. Phillips

COUNTY TREASURER

ANDERSON COUNTY TREASURER, P.O. BOX 8002, ANDERSON, SC 29622

PAID BY: RUSSELL MOATS
CK1088

SC 296222442

ANDERSON
PO BOX 2442

DYAR CECIL R

T25

12-37-2730

"It is unlawful for any person to use the treasurer's
receipt to obtain motor vehicle license plates unless
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ANDERSON COUNTY, SOUTH CAROLINA TAX RECEIPT

ELECTRONICALLY FILED - 2022 Jul 29 3:31 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401202

V E H.	DESCRIPTION OF VEHICLE					ASSESSMENT	TAX DISTRICT	TAX YEAR	ACCOUNT NUMBER	
	YEAR	MAKE	BODY STY	MODEL #	IDENTIFICATION NUMBER					
							500	2019	2019 003812988	
N O N V E H.	CLASS	RATIO	NO. ACRES	NO. LOTS	LAND ASSESSMENT	NO. IMPS	IMP. ASSESSMENT	MORT COMPANY	TAX LEVY	
	0	.060	1.50		1,640	1	7,430		CITY	COUNTY
								IND PARK	.11600	31150
PROPERTY IDENTIFICATION							TOTAL ASSESSMENT		CITY TAX	
W ORR ST 1.50 AC							9,070		1,052.12	
DOR/CO ID NUMBER				TAX MAP SHEET			MARKET VALUE		COUNTY TAX	
				1232403003			151,176		2,825.31	

REAL PROPERTY	REAL ESTATE	TAX AMOUNT	3,877.43
FEE:		FEES	35.00
		LESS EXEMPTIONS	
		LESS PRORATE	
DELINQUENT COST	30.00	PENALTY ADDED	581.61
PHOTOGRAPHY	5.00	PREVIOUS PAYMENTS	4,494.04
		REFUNDED	
		THIS PAYMENT *****	
		TOTAL PAYMENTS	4,494.04

** D U P L I C A T E **
***** TAXPAYER COPY *****
DYAR CECIL R T25
PO BOX 2442 SC 296222442
ANDERSON

TAXES FOR THE YEAR ENDING
DEC 31, 2019

This Tax Receipt is null
and void if payment is
made with a check that
fails to clear the bank.

TAX PAID
SEPTEMBER 30 2020
<i>Jason P. Phillips</i>
COUNTY TREASURER

ANDERSON COUNTY TREASURER, P.O. BOX 8002, ANDERSON, SC 29622

PAID BY: BRYTYE MOATS CONSTRUCTION 296222442 SC
12055

ANDERSON
PO BOX 2442
DYAR CECIL R

T25

12-37-2730

"It is unlawful for any person to use the treasurer's
receipt to obtain motor vehicle license plates unless
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of his residence on any vehicles now or previously
owned by the applicant have been paid."



ANDERSON COUNTY, SOUTH CAROLINA TAX RECEIPT

ELECTRONICALLY FILED - 2022 Jul 29 3:31 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401202

V E H.	DESCRIPTION OF VEHICLE					ASSESSMENT	TAX DISTRICT	TAX YEAR	ACCOUNT NUMBER	
	YEAR	MAKE	BODY STY	MODEL #	IDENTIFICATION NUMBER					
							500	2020	2020 003845788	
N O N V E H.	CLASS	RATIO	NO. ACRES	NO. LOTS	LAND ASSESSMENT	NO. IMPS	IMP. ASSESSMENT	MORT COMPANY	TAX LEVY	
	0	.060	1.50		1,640	1	7,430		CITY	COUNTY
								IND PARK	.11600	31150
PROPERTY IDENTIFICATION							TOTAL ASSESSMENT		CITY TAX	
W ORR ST 1.50 AC							9,070		1,052.12	
DOR/CO ID NUMBER				TAX MAP SHEET			MARKET VALUE		COUNTY TAX	
				1232403003			151,176		2,825.31	

REAL PROPERTY	REAL ESTATE	TAX AMOUNT	3,877.43
FEE:		FEES	85.00
DELINQUENT COST	30.00	LESS EXEMPTIONS	
PHOTOGRAPHY	5.00	LESS PRORATE	
ADVERTISEMENT	50.00	PENALTY ADDED	581.61
		PREVIOUS PAYMENTS	4,544.04
		REFUNDED	
		THIS PAYMENT *****	
		TOTAL PAYMENTS	4,544.04

** D U P L I C A T E **
***** TAXPAYER COPY *****
DYAR CECIL R T25
PO BOX 2442 SC 296222442
ANDERSON

TAXES FOR THE YEAR ENDING
DEC 31, 2020

This Tax Receipt is null
and void if payment is
made with a check that
fails to clear the bank.

TAX PAID
OCTOBER 20 2021
<i>Jason P. Phillips</i>
COUNTY TREASURER

ANDERSON COUNTY TREASURER, P.O. BOX 8002, ANDERSON, SC 29622

PAID BY: MOATS CONSTRUCTION COMPANY SC 296222442
CK12214
DYAR CECIL R
PO BOX 2442
ANDERSON
T25

12-37-2730

"It is unlawful for any person to use the treasurer's
receipt to obtain motor vehicle license plates unless
all municipal personal property taxes due in the county
of his residence on any vehicles now or previously
owned by the applicant have been paid."

12:13 PM

07/15/22

Moats Construction Company
Vendor QuickReport
All Transactions

Type	Date	Num	Memo	Account	Clr	Split	Amount
Prime Rate Premium Financing Corp. Inc.							
Bill	04/26/2017		300 West Orr	Accounts Payable		Insurance	-600.00
Bill Pmt -Check	04/26/2017	11710	300 West Orr	Suntrust Bank		Accounts Pa...	-600.00
Bill	05/11/2017			Accounts Payable		Insurance	-300.00
Bill	05/11/2017	DC		Accounts Payable		Insurance	-300.00
Bill Pmt -Check	05/11/2017	DC		Suntrust Bank		Accounts Pa...	-300.00
Bill	06/05/2017		300 West Orr	Accounts Payable		Insurance	-507.50
Bill Pmt -Check	06/05/2017	DC		Suntrust Bank		Accounts Pa...	-300.00
Bill Pmt -Check	06/05/2017	DC	300 West Orr	Suntrust Bank		Accounts Pa...	-507.50
Bill	09/01/2017	DC		Accounts Payable		Insurance	-270.34
Bill Pmt -Check	09/01/2017	DC		Suntrust Bank		Accounts Pa...	-270.34
Bill	10/05/2017	DC		Accounts Payable		Insurance	-259.00
Bill Pmt -Check	10/05/2017	DC		Suntrust Bank		Accounts Pa...	-259.00

Exhibit E

	Loan Starting Balance	212,500.00		Property Tax Adjustment					
	Interest Rate	6%							
	Monthly Interest	0.50%							
	Total Payment	\$ 4,108.22							
PMT No.	Date	Payment	Interest	Property Taxes	Balance	Adjusted Balance (Removing Taxes Paid by Moats)	Adjusted Interest	Difference (Interest - Adj. Interest)	Running Total Overcharged Interest
63	1-Jul-16		750.84		151,143.65				
64	1-Aug-16	15,000.00	755.72		137,125.03				
65	1-Sep-16		685.63		138,036.31				
66	1-Oct-16		690.18	3,329.58	142,281.73	138,952.15			
67	1-Nov-16		711.41		143,218.80	139,872.57	694.76	16.65	16.65
68	1-Dec-16		716.09		146,425.77	143,062.81	699.36	16.73	33.38
69	1-Jan-17		732.13		147,383.55	144,003.78	715.31	16.81	50.19
70	1-Feb-17		736.92		148,346.13	144,949.46	720.02	16.90	67.09
71	1-Mar-17	10,000.00	741.73		139,313.52	135,899.87	724.75	16.98	84.08
72	1-Apr-17		696.57		140,235.75	136,805.03	679.50	17.07	101.14
73	1-May-17		701.18		141,162.59	137,714.71	684.03	17.15	118.30
74	1-Jun-17		705.81		142,094.06	138,628.94	688.57	17.24	135.54
75	1-Jul-17		710.47		143,030.19	139,547.75	693.14	17.33	152.86
76	1-Aug-17		715.15		143,971.00	140,471.15	697.74	17.41	170.28
77	1-Sep-17		719.86		144,916.52	141,399.16	702.36	17.50	187.77
78	1-Oct-17		724.58		145,866.76	142,331.82	707.00	17.59	205.36
79	1-Nov-17		729.33		146,821.75	143,269.14	711.66	17.67	223.04
80	1-Dec-17		734.11		150,046.73	146,476.35	716.35	17.76	240.80
81	1-Jan-18		750.23		151,022.63	147,434.40	732.38	17.85	258.65
82	1-Feb-18	5,000.00	755.11		147,003.40	143,397.23	737.17	17.94	276.59
83	1-Mar-18		735.02		147,964.08	144,339.87	716.99	18.03	294.62
84	1-Apr-18		739.82		148,929.56	145,287.23	721.70	18.12	312.74
85	1-May-18	5,000.00	744.65		144,899.87	141,239.33	726.44	18.21	330.96
86	1-Jun-18		724.50		145,850.02	142,171.19	706.20	18.30	349.26
87	1-Jul-18		729.25		146,804.93	143,107.70	710.86	18.39	367.65
88	1-Aug-18		734.02		147,764.62	144,048.90	715.54	18.49	386.14
89	1-Sep-18		738.82		148,729.10	144,994.81	720.24	18.58	404.72
90	1-Oct-18		743.65	3,329.58	153,027.99	145,945.44	724.97	18.67	423.39
91	1-Nov-18		765.14		154,018.79	146,900.83	729.73	35.41	458.80
92	1-Dec-18		770.09		157,279.75	150,126.20	734.50	35.59	494.39
93	1-Jan-19		786.40		158,291.81	151,102.49	750.63	35.77	530.16
94	1-Feb-19		791.46		159,308.93	152,083.66	755.51	35.95	566.11
95	1-Mar-19		796.54		160,331.13	153,069.74	760.42	36.13	602.23
96	1-Apr-19		801.66		161,358.45	154,060.75	765.35	36.31	638.54
97	1-May-19		806.79		162,390.90	155,056.71	770.30	36.49	675.03
98	1-Jun-19		811.95		163,428.52	156,057.66	775.28	36.67	711.70
99	1-Jul-19		817.14		164,471.32	157,063.61	780.29	36.85	748.55
100	1-Aug-19		822.36		165,519.34	158,074.58	785.32	37.04	785.59
101	1-Sep-19		827.60		166,572.59	159,090.62	790.37	37.22	822.81
102	1-Oct-19		832.86	4,498.15	172,129.27	160,111.73	795.45	37.41	860.22
103	1-Nov-19		860.65		173,215.57	161,137.95	800.56	60.09	920.31
104	1-Dec-19		866.08		176,572.52	164,434.51	805.69	60.39	980.70
105	1-Jan-20		882.86		177,681.04	165,482.34	822.17	60.69	1,041.39
106	1-Feb-20		888.41		178,795.11	166,535.41	827.41	60.99	1,102.38
107	1-Mar-20		893.98		179,914.74	167,593.75	832.68	61.30	1,163.68
108	1-Apr-20		899.57		181,039.98	168,657.38	837.97	61.60	1,225.29
109	1-May-20		905.20		182,170.84	169,726.33	843.29	61.91	1,287.20
110	1-Jun-20		910.85		183,307.35	170,800.62	848.63	62.22	1,349.42
111	1-Jul-20		916.54		184,449.55	171,880.28	854.00	62.53	1,411.96
112	1-Aug-20		922.25		185,597.46	172,965.34	859.40	62.85	1,474.80
113	1-Sep-20		927.99		186,751.10	174,055.83	864.83	63.16	1,537.96
114	1-Oct-20		933.76	4,459.04	192,369.56	175,151.77	870.28	63.48	1,601.44
115	1-Nov-20		961.85		193,557.07	176,253.19	875.76	86.09	1,687.53
116	1-Dec-20		967.79		197,015.72	179,625.32	881.27	86.52	1,774.05

	Loan Starting Balance	212,500.00		Property Tax Adjustment					
	Interest Rate	6%							
	Monthly Interest	0.50%							
	Total Payment	\$ 4,108.22							
PMT No.	Date	Payment	Interest	Property Taxes	Balance	Adjusted Balance (Removing Taxes Paid by Moats)	Adjusted Interest	Difference (Interest - Adj. Interest)	Running Total Overcharged Interest
117	1-Jan-21		985.08		198,226.46	180,749.11	898.13	86.95	1,861.00
118	1-Feb-21		991.13		199,443.25	181,878.52	903.75	87.39	1,948.39
119	1-Mar-21		997.22		200,666.13	183,013.57	909.39	87.82	2,036.21
120	1-Apr-21		1,003.33		201,895.12	184,154.30	915.07	88.26	2,124.47
121	1-May-21		1,009.48		203,130.25	185,300.73	920.77	88.70	2,213.18
122	1-Jun-21		1,015.65		204,371.57	186,452.89	926.50	89.15	2,302.33
123	1-Jul-21		1,021.86		205,619.08	187,610.82	932.26	89.59	2,391.92
124	1-Aug-21		1,028.10		206,872.84	188,774.53	938.05	90.04	2,481.96
125	1-Sep-21		1,034.36		208,132.86	189,944.06	943.87	90.49	2,572.45
126	1-Oct-21		1,040.66		209,399.19	191,119.44	949.72	90.94	2,663.40
127	1-Nov-21		1,047.00		210,671.84	192,300.70	955.60	91.40	2,754.79
128	1-Dec-21		1,053.36		211,950.86	193,487.86	961.50	91.86	2,846.65
129	1-Jan-22		1,059.75		213,236.28	194,680.96	967.44	92.32	2,938.97
130	1-Feb-22		1,066.18		214,528.12	195,880.03	973.40	92.78	3,031.74

Exhibit F

12:13 PM

07/15/22

Moats Construction Company

Vendor QuickReport

All Transactions

Type	Date	Num	Memo	Account	Clr	Split	Amount
Prime Rate Premium Financing Corp. Inc.							
Bill	04/26/2017		300 West Orr	Accounts Payable		Insurance	-600.00
Bill Pmt -Check	04/26/2017	11710	300 West Orr	Suntrust Bank		Accounts Pa...	-600.00
Bill	05/11/2017			Accounts Payable		Insurance	✓ -300.00
Bill	05/11/2017	DC	DEBIT CARD	Accounts Payable		Insurance	✓ -300.00
Bill Pmt -Check	05/11/2017	DC		Suntrust Bank		Accounts Pa...	✓ -300.00
Bill	06/05/2017		300 West Orr	Accounts Payable		Insurance	✓ -507.50
Bill Pmt -Check	06/05/2017	DC		Suntrust Bank		Accounts Pa...	-300.00
Bill Pmt -Check	06/05/2017	DC	300 West Orr	Suntrust Bank		Accounts Pa...	✓ -507.50
Bill	09/01/2017	DC		Accounts Payable		Insurance	✓ -270.34
Bill Pmt -Check	09/01/2017	DC		Suntrust Bank		Accounts Pa...	✓ -270.34
Bill	10/05/2017	DC		Accounts Payable		Insurance	✓ -259.00
Bill Pmt -Check	10/05/2017	DC		Suntrust Bank		Accounts Pa...	✓ -259.00

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7/4/2022
05/11/2022
06/06/2022
09/01/2022
10/05/2022

ELECTRONICALLY FILED 2022 Jul 29 3:31 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401202

Suntrust Company 11710
Prime Rate Premium Financing Corp. Inc.
Date Type Reference Original Amt. Balance Due 4/26/2017 Discount Payment
4/26/2017 Bill 600.00 600.00 600.00
Check Amount 600.00

Suntrust Bank 300 West Orr 600.00

TO REORDER CHECKS, PLEASE CALL (PRINT 8-7 A) 845-782-9832 OR VISIT US AT WWW.SUNTRUST.COM

Register for SunTrust Mobile Banking at www.suntrust.com or call 1-800-926-9400

other notice which you have received or may receive regarding your obligations to Prime Rate

TOTAL AMOUNT DUE	\$216.67

IMPORTANT MESSAGE REGARDING YOUR ACCOUNT

A late charge in the amount of \$10.83 will be added to your account on 03/26/2017

Prime Rate announces its affiliation with MoneyGram. You may now make your Prime Rate payment at one of 30,000 nation-wide locations, including Wal-mart and CVS. In order to make your payment at any MoneyGram location, you will need Prime Rate's receiver Code - 6991 our name, city and state (Prime Rate, Florence, South Carolina) and your account number 2417161.

Call 1-800-926-9400 for the nearest MoneyGram location.

TEAR ALONG PERFORATION. RETAIN TOP PORTION FOR YOUR RECORDS. RETURN BOTTOM PORTION IN ENVELOPE PROVIDED.



Account Statement

Withdrawals/ Debits	Date Paid	Amount	Serial #	Description
	04/03	24.99		CHECK CARD PURCHASE TR DATE 04/02 SIMPLISAFE.COM BOSTON MA
	04/03	47.00		CHECK CARD PURCHASE TR DATE 04/02 LOGANS ROADHOUSE 211 ANDERSON SC
	04/03	30.91		POINT OF SALE DEBIT TR DATE 04/02 INGLES GAS EXPRESS #39 ANDERSON SC 26772801
	04/03	173.96		POINT OF SALE DEBIT TR DATE 04/02 INGLES MARKETS #39 ANDERSON SC 62838403
	04/03	28.12		POINT OF SALE DEBIT TR DATE 04/03 OREILLY AUTO # ANDERSON SC 02525902
	04/03	489.50		ELECTRONIC/ACH DEBIT WESTGUARD-INS.CO-INS.PREM MOWC814691
	04/04	300.00		POINT OF SALE DEBIT TR DATE 04/04 PRIME RT PMT&S Florence SC1001464
	04/05	10.00		CHECK CARD PURCHASE TR DATE 04/03 EL ARRIERO MEXICAN ANDERSON SC
	04/05	35.00		CHECK CARD PURCHASE TR DATE 04/04 CITY OF ANDERSON BUSIN ANDERSON SC
	04/06	30.00		CHECK CARD PURCHASE TR DATE 04/04 SUMMAJOES ANDERSON SC
	04/06	32.39		CHECK CARD PURCHASE TR DATE 04/05 GRACES COFFEE HOUSE ANDERSON SC
	04/06	75.00		POINT OF SALE DEBIT TR DATE 04/05 SPINX #248 ANDERSON SC 95827201
	04/07	93.46		POINT OF SALE DEBIT TR DATE 04/06 LOWE'S #3050 ANDERSON SC 001
	04/10	4.05		CHECK CARD PURCHASE TR DATE 04/07 USPS KIOSK 4502009550 ANDERSON SC
	04/10	34.13		POINT OF SALE DEBIT TR DATE 04/07 WALGREENS STOR ANDERSON SC W1156321
	04/10	26.17		CHECK CARD PURCHASE TR DATE 04/07 CHICK-FIL-A #00570 ANDERSON SC
	04/10	33.15		POINT OF SALE DEBIT TR DATE 04/08 INGLES GAS EXPRESS #39 ANDERSON SC 26772801
	04/10	30.00		CHECK CARD PURCHASE TR DATE 04/08 EL ARRIERO MEXICAN ANDERSON SC
	04/10	36.36		POINT OF SALE DEBIT TR DATE 04/08 STOP A MINIT 2 ANDERSON SC LK166394
	04/10	56.56		POINT OF SALE DEBIT TR DATE 04/10 QUIKTRIP ANDERSON SC 29105401
	04/10	30.81		POINT OF SALE DEBIT TR DATE 04/10 STOP A MINIT 2 ANDERSON SC LK166394
	04/10	3.31		POINT OF SALE DEBIT TR DATE 04/10 STOP A MINIT 2 ANDERSON SC LK166394
	04/11	36.12		CHECK CARD PURCHASE TR DATE 04/10 WWW.1AND1.COM 06105601589 PA
	04/11	24.99		CHECK CARD PURCHASE TR DATE 04/11 SIMPLISAFE.COM BOSTON MA
	04/11	1,958.20		ELECTRONIC/ACH DEBIT NGM INSURANCE CO EFT INS PY CACG2856M
	04/12	34.00		CHECK CARD PURCHASE TR DATE 04/11 BLUE TOLOK GRILL & BAR ANDERSON SC
	04/12	245.87		POINT OF SALE DEBIT TR DATE 04/12 LOWE'S #3050 ANDERSON SC 001
	04/13	225.21		POINT OF SALE DEBIT TR DATE 04/12 LOWE'S #3050 ANDERSON SC 001
	04/13	62.28		POINT OF SALE DEBIT TR DATE 04/13 LOWE'S #3050 ANDERSON SC 001
	04/13	150.09		POINT OF SALE DEBIT TR DATE 04/13 BRIGHT MART EXXON ANDERSON SC 29508201
	04/14	15.00		CHECK CARD PURCHASE TR DATE 04/12 EL ARRIERO MEXICAN ANDERSON SC



Account Statement

Withdrawals/ Debits	Date Paid	Amount	Serial #	Description
	05/03	24.99	—	CHECK CARD PURCHASE TR DATE 05/03 SIMPLISAFE.COM BOSTON MA
	05/03	15.00	—	POINT OF SALE DEBIT TR DATE 05/02 PAYPAL *JONATH San Jose CA 61692873
	05/03	489.50	— <i>02</i>	ELECTRONIC/ACH DEBIT WESTGUARD INS CO INS PREM MOWC814691
	05/04	156.93	—	CHECK CARD PURCHASE TR DATE 05/03 ONLINE BOATING PURCHAS 800-5890703 UT
	05/08	564.96	—	CHECK CARD PURCHASE TR DATE 05/05 CONCRETE SUPPLY CO LLC 704-3532037 NC
	05/08	39.00	—	CHECK CARD PURCHASE TR DATE 05/05 CHILI'S ANDERSON ANDERSON SC
	05/08	79.49	—	POINT OF SALE DEBIT TR DATE 05/05 QUIKTRIP ANDERSON SC 29103701
	05/08	24.75	—	CHECK CARD PURCHASE TR DATE 05/06 WENDYS #0030 CLINTON SC
	05/08	83.00	—	CHECK CARD PURCHASE TR DATE 05/06 CAROLINA WINGS BALLENT IRMO SC
	05/08	204.24	—	CHECK CARD PURCHASE TR DATE 05/06 COMFORT SUITES AT HARB COLUMBIA SC
	05/08	299.55	—	POINT OF SALE DEBIT TR DATE 05/07 SUNGLASS HUT 1 COLUMBIA SC00680111
	05/08	76.00	—	CHECK CARD PURCHASE TR DATE 05/07 FUSION JAPANESE & THAINWBERRY SC
	05/08	116.17	—	POINT OF SALE DEBIT TR DATE 05/08 INGLES MARKETS #39 ANDERSON SC 62838403
	05/09	32.24	—	CHECK CARD PURCHASE TR DATE 05/08 INGLES GAS EXPRESS # ANDERSON SC
	05/09	48.90	—	CHECK CARD PURCHASE TR DATE 05/09 VZWLSS*ETM SCT1456901 800-922-0204 FL
	05/10	1,380.30	—	CHECK CARD PURCHASE TR DATE 05/08 CONCRETE SUPPLY CO LLC 704-3532037 NC
	05/10	31.00	—	CHECK CARD PURCHASE TR DATE 05/08 TAQUERIA PICANTE LLCANDERSON SC SC
	05/10	24.95	—	CHECK CARD PURCHASE TR DATE 05/09 WWW.1AND1.COM 06105601589 PA
	05/10	279.32	—	ELECTRONIC/ACH DEBIT VZ WIRELESS VE VZW WEBPAY 1827118
	05/11	252.47	—	CHECK CARD PURCHASE TR DATE 05/11 APL*APPLE ONLINE STORE 800-676-2775 CA
	05/11	700.85	—	CHECK CARD PURCHASE TR DATE 05/09 CONCRETE SUPPLY CO LLC 704-3532037 NC
	05/11	836.74	—	CHECK CARD PURCHASE TR DATE 05/09 CONCRETE SUPPLY CO LLC 704-3532037 NC
	05/11	29.00	—	CHECK CARD PURCHASE TR DATE 05/09 TAQUERIA PICANTE LLCANDERSON SC SC
	05/11	47.00	—	CHECK CARD PURCHASE TR DATE 05/10 PAPAS & BEER - AND ANDERSON SC
	05/11	24.99	—	CHECK CARD PURCHASE TR DATE 05/11 SIMPLISAFE.COM BOSTON MA
	05/11	300.00	—	POINT OF SALE DEBIT TR DATE 05/11 PRIME RT PMT&S Florence SC1001464
	05/11	1,958.20	—	ELECTRONIC/ACH DEBIT NGM INSURANCE CO EFT INS PY CACG2856M
	05/12	1,380.30	—	CHECK CARD PURCHASE TR DATE 05/10 CONCRETE SUPPLY CO LLC 704-3532037 NC
	05/12	547.89	—	CHECK CARD PURCHASE TR DATE 05/12 GIH*GLOBALINDUSTRIAL EQ 800-645-2986 FL
	05/12	112.20	—	POINT OF SALE DEBIT TR DATE 05/11 THE HOME DEPOT ANDERSON SC 06143605
	05/12	19.32	—	POINT OF SALE DEBIT TR DATE 05/11 THE VILLAGER ANDERSON SC 13698501

ELECTRONICALLY FILED - 2022 Jul 29 3:31 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401202

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NASHVILLE TN 37230-5183

24.9716
3.00

Page 2 of 8
36/E00/0175/0/22
06/30/2017



Account Statement

Withdrawals/ Debits	Date Paid	Amount	Serial #	Description
	06/02	32.14		POINT OF SALE DEBIT TR DATE 06/02 QUIKTRIP ANDERSON SC 22320301
	06/05	238.08		CHECK CARD PURCHASE TR DATE 06/02 HEAD LEE NURSERY SENECA SC
	06/05	201.82		POINT OF SALE DEBIT TR DATE 06/02 INGLES MARKETS #39 ANDERSON SC 62838403
	06/05	27.00		CHECK CARD PURCHASE TR DATE 06/03 PAPAS & BEER - AND ANDERSON SC
	06/05	254.98		POINT OF SALE DEBIT TR DATE 06/03 XPRESS FUEL ANDERSON SC 00013L57
	06/05	64.00		CHECK CARD PURCHASE TR DATE 06/04 SUSHI MURASAKI AND ANDERSON SC
	06/05	1,100.00		CHECK CARD PURCHASE TR DATE 06/04 PAYPAL *HONG CHOE 4029357733 CA
	06/06	315.96		CHECK CARD PURCHASE TR DATE 06/05 SUNBELT RENTALS INC PC 803-5785072 SC
	06/06	57.30		CHECK CARD PURCHASE TR DATE 06/05 BLUE RIDGE ELECTRIC CO 864-8786326 SC
	06/06	180.99		CHECK CARD PURCHASE TR DATE 06/05 BLUE RIDGE ELECTRIC CO 864-8786326 SC
	06/06	221.85		CHECK CARD PURCHASE TR DATE 06/05 FLOAT ON CORP 07725694440 FL
	06/06	369.56		CHECK CARD PURCHASE TR DATE 06/05 A & D ENTERPRISES OF B ANDERSON SC
	06/06	800.00		ATM CASH WITHDRAWAL TR DATE 06/05 ANDERSON MAIN ANDERSON SC G061SC022
	06/06	200.00		ATM CASH WITHDRAWAL TR DATE 06/05 ANDERSON MAIN ANDERSON SC G061SC022
	06/06	507.50		ELECTRONIC/ACH DEBIT SPEEDPAY PrimeRate 0001SC2417161
	06/07	259.52		CHECK CARD PURCHASE TR DATE 06/06 DTV*DIRECTV SERVICE 800-347-3288 CA
	06/07	81.68		CHECK CARD PURCHASE TR DATE 06/06 SC FARM BUREAU 08007997500 SC
	06/08	4.90		CHECK CARD PURCHASE TR DATE 06/07 USPS KIOSK 4502009550 ANDERSON SC
	06/08	36.00		CHECK CARD PURCHASE TR DATE 06/07 PAPAS & BEER - AND ANDERSON SC
	06/08	481.08		POINT OF SALE DEBIT TR DATE 06/08 LOWE'S #728 ANDERSON SC 001
	06/09	100.00		CHECK CARD PURCHASE TR DATE 06/07 QT 1107 97011076 ANDERSON SC
	06/09	100.00		CHECK CARD PURCHASE TR DATE 06/07 QT 1107 97011076 ANDERSON SC
	06/09	50.00		CHECK CARD PURCHASE TR DATE 06/07 QT 1107 97011076 ANDERSON SC
	06/09	35.00		CHECK CARD PURCHASE TR DATE 06/08 GRACES COFFEE HOUSE ANDERSON SC
	06/09	6.90		POINT OF SALE DEBIT TR DATE 06/09 OREILLY AUTO # ANDERSON SC 02525702
	06/12	24.95		CHECK CARD PURCHASE TR DATE 06/09 WWW.1AND1.COM 06105601589 PA
	06/12	1,369.60		CHECK CARD PURCHASE TR DATE 06/09 CONCRETE SUPPLY CO LLC 704-3532037 NC
	06/12	40.00		CHECK CARD PURCHASE TR DATE 06/09 LOGANS ROADHOUSE 211 ANDERSON SC
	06/12	75.00		CHECK CARD PURCHASE TR DATE 06/09 POWER TRAC 9ANDERSON SC
	06/12	24.99		CHECK CARD PURCHASE TR DATE 06/11 SIMPLISAFE.COM BOSTON MA
	06/12	56.44		POINT OF SALE DEBIT TR DATE 06/10 INGLES GAS EXPRESS #39 ANDERSON SC 26772801

09/30/2017



Account Statement

Withdrawals/ Debits	Date Paid	Amount	Serial #	Description
	09/01	18.00	—	CHECK CARD PURCHASE TR DATE 08/30 EL ARRIERO MEXICAN ANDERSON SC
	09/01	1,300.00	—	CHECK CARD PURCHASE TR DATE 08/31 CAROLINA FRESH FARMS 4 ANDERSON SC
	09/01	24.99	—	CHECK CARD PURCHASE TR DATE 09/01 SIMPLISAFE.COM BOSTON MA
	09/01	270.34	—	POINT OF SALE DEBIT TR DATE 09/01 PRIME RT.PMT&S Florence SC001464
	09/01	489.50	—	ELECTRONIC/ACH DEBIT WESTGUARD INS CO INS PREM MOWC814691
	09/05	18.00	—	CHECK CARD PURCHASE TR DATE 08/31 EL ARRIERO MEXICAN ANDERSON SC
	09/05	84.00	—	CHECK CARD PURCHASE TR DATE 09/01 BLUESOMBRERO6:SPORT RE 08669812583 GA
	09/05	140.52	—	CHECK CARD PURCHASE TR DATE 09/02 DTV*DIRECTV SERVICE 800-347-3288 CA
	09/05	20.00	—	CHECK CARD PURCHASE TR DATE 09/01 J PETERS GRILL & B ANDERSON SC
	09/05	500.00	—	ATM CASH WITHDRAWAL TR DATE 09/01 ANDERSON MAIN ANDERSON SC G061SC022
	09/05	55.00	—	CHECK CARD PURCHASE TR DATE 09/03 SUSHI MURASAKI AND ANDERSON SC
	09/05	103.26	—	POINT OF SALE DEBIT TR DATE 09/03 THE HOME DEPOT ANDERSON SC 06143607
	09/05	47.06	—	POINT OF SALE DEBIT TR DATE 09/03 O'REILLY AUTO # ANDERSON SC 02525702
	09/05	28.85	—	POINT OF SALE DEBIT TR DATE 09/03 INGLES GAS EXPRESS #39 ANDERSON SC 26772801
	09/05	21.95	—	POINT OF SALE DEBIT TR DATE 09/03 THE VILLAGER ANDERSON SC 13698501
	09/05	243.99	—	POINT OF SALE DEBIT TR DATE 09/04 INGLES MARKETS #39 ANDERSON SC 62838403
	09/05	6.85	—	POINT OF SALE DEBIT TR DATE 09/04 THE VILLAGER ANDERSON SC 13698501
	09/07	39.85	—	POINT OF SALE DEBIT TR DATE 09/07 CIRCLE K ST 2723876 ROUND O SC 30256501
	09/07	78.58	—	POINT OF SALE DEBIT TR DATE 09/07 BI-LO GROCERY EDISTO BEACH SC 01286002
	09/08	15.00	—	CHECK CARD PURCHASE TR DATE 09/05 EL ARRIERO MEXICAN ANDERSON SC
	09/08	33.43	—	CHECK CARD PURCHASE TR DATE 09/06 7-ELEVEN 36851 CALHOUN FALLS SC
	09/08	36.00	—	CHECK CARD PURCHASE TR DATE 09/06 POBLANOS MEXICAN MARTINEZ GA
	09/08	241.97	—	CHECK CARD PURCHASE TR DATE 09/07 BP#6426803 THE EDISTO QPS EDISTO ISLAND SC
	09/08	75.00	—	CHECK CARD PURCHASE TR DATE 09/07 EZ SHOP 13 * EDISTO ISLAND SC
	09/08	75.00	—	CHECK CARD PURCHASE TR DATE 09/07 EZ SHOP 13 * EDISTO ISLAND SC
	09/08	75.00	—	CHECK CARD PURCHASE TR DATE 09/07 EZ SHOP 13 * EDISTO ISLAND SC
	09/08	75.00	—	CHECK CARD PURCHASE TR DATE 09/07 EZ SHOP 13 * EDISTO ISLAND SC
	09/11	660.00	—	CHECK CARD PURCHASE TR DATE 09/06 EDISTO REALTY 800-8685398 SC
	09/11	50.00	—	CHECK CARD PURCHASE TR DATE 09/08 SEA COW EATERY EDISTO ISLAND SC
	09/11	62.47	—	CHECK CARD PURCHASE TR DATE 09/08 EZ SHOP 13 * EDISTO ISLAND SC
	09/11	24.99	—	CHECK CARD PURCHASE TR DATE 09/10 SIMPLISAFE.COM BOSTON MA



Account Statement

Withdrawals/ Debits	Date Paid	Amount	Serial #	Description
	10/02	52.00	✓	CHECK CARD PURCHASE TR DATE 09/29 J PETERS GRILL & B ANDERSON SC
	10/02	100.49	✓	POINT OF SALE DEBIT TR DATE 09/29 LOWE'S #3050 ANDERSON SC 001
	10/02	84.00	✓	CHECK CARD PURCHASE TR DATE 10/01 BLUESOMBRERO6:SPORT RE 08669812583 GA
	10/02	24.99	✓	CHECK CARD PURCHASE TR DATE 10/02 SIMPLISAFE.COM BOSTON MA
	10/02	104.20	✓	POINT OF SALE DEBIT TR DATE 10/01 WAL-MART #0644 ANDERSON SC 24064401
	10/02	17.47	✓	POINT OF SALE DEBIT TR DATE 10/01 WALGREENS STOR ANDERSON SC 11563T21
	10/03	13.24	✓	CHECK CARD PURCHASE TR DATE 10/01 BOJANGLES 951 01009513 ANDERSON SC
	10/03	221.49	✓	CHECK CARD PURCHASE TR DATE 10/02 SUNBELT RENTALS INC PC 803-5785072 SC
	10/03	42.00	✓	CHECK CARD PURCHASE TR DATE 10/03 LAS BRAZAS LLC ANDERSON SC
	10/03	145.26	✓	POINT OF SALE DEBIT TR DATE 10/02 LOWE'S #3050 ANDERSON SC 001
	10/03	50.00	✓	POINT OF SALE DEBIT TR DATE 10/02 STOP A MINIT 2 ANDERSON SC LK166394
	10/03	30.00	✓	ELECTRONIC/ACH DEBIT DUKE ENERGY SE WEB_PAY 27981214100217
	10/03	320.00	✓	ELECTRONIC/ACH DEBIT DUKE ENERGY SE WEB_PAY 27981221100217
	10/04	111.96	✓	CHECK CARD PURCHASE TR DATE 10/03 CES-SC-0032 ANDERSON SC
	10/04	30.47	✓	POINT OF SALE DEBIT TR DATE 10/04 INGLES GAS EXPRESS #39 ANDERSON SC 26772801
	10/04	164.95	✓	POINT OF SALE DEBIT TR DATE 10/04 INGLES MARKETS #39 ANDERSON SC 62838403
	10/04	13.86	✓	POINT OF SALE DEBIT TR DATE 10/04 STOP A MINIT 2 ANDERSON SC LK166394
	10/04	23.89	✓	POINT OF SALE DEBIT TR DATE 10/04 LOWE'S #3050 ANDERSON SC 001
	10/05	157.02	✓	CHECK CARD PURCHASE TR DATE 10/04 BLUE RIDGE ELECTRIC CO 864-8786326 SC
	10/05	400.00	✓	CHECK CARD PURCHASE TR DATE 10/04 BLUE RIDGE ELECTRIC CO 864-8786326 SC
	10/05	259.00	✓	POINT OF SALE DEBIT TR DATE 10/05 PRIME RT PMT&S Florence SC1001464
	10/05	489.50	✓	ELECTRONIC/ACH DEBIT WESTGUARD INS CO INS PREM MOWC814691
	10/06	590.00	✓	CHECK CARD PURCHASE TR DATE 10/05 OLDCASTLE ARCHITECTURA06787318193 GA
	10/10	150.00	✓	CHECK CARD PURCHASE TR DATE 10/06 DTV*DIRECTV SERVICE 800-347-3288 CA
	10/10	47.00	✓	CHECK CARD PURCHASE TR DATE 10/06 SUSHI MURASAKI AND ANDERSON SC
	10/10	50.00	✓	POINT OF SALE DEBIT TR DATE 10/07 STOP A MINIT 2 ANDERSON SC LK166394
	10/10	87.90	✓	POINT OF SALE DEBIT TR DATE 10/08 INGLES MARKETS #39 ANDERSON SC 62838403
	10/10	24.95	✓	CHECK CARD PURCHASE TR DATE 10/09 WWW.1AND1.COM 06105601589 PA
	10/10	16.79	✓	POINT OF SALE DEBIT TR DATE 10/09 AMAZON.COM SEATTLE WA 00000101
	10/10	45.27	✓	POINT OF SALE DEBIT TR DATE 10/09 SPINX #248 ANDERSON SC 95827201
	10/10	24.99	✓	CHECK CARD PURCHASE TR DATE 10/10 SIMPLISAFE.COM BOSTON MA

Exhibit G

	Loan Starting Balance	212,500.00		Insurance Adjustment					
	Interest Rate	6%							
	Monthly Interest	0.50%							
	Total Payment	\$ 4,108.22							
PMT No.	Date	Payment	Interest	Insurance	Balance	Adjusted Balance (Removing Insurance Not Paid by Dyar)	Adjusted Interest	Difference (Interest - Adj. Interest)	Running Total Overcharged Interest
63	1-Jul-16		750.84		151,143.65				
64	1-Aug-16	15,000.00	755.72		137,125.03				
65	1-Sep-16		685.63		138,036.31				
66	1-Oct-16		690.18		142,281.73	142,281.73			
67	1-Nov-16		711.41		143,218.80	143,218.80	711.41	-	-
68	1-Dec-16		716.09	2,265.21	146,425.77	144,160.56	716.09	-	-
69	1-Jan-17		732.13		147,383.55	145,107.02	720.80	11.33	11.33
70	1-Feb-17		736.92		148,346.13	146,058.21	725.54	11.38	22.71
71	1-Mar-17	10,000.00	741.73		139,313.52	137,014.16	730.29	11.44	34.15
72	1-Apr-17		696.57		140,235.75	137,924.89	685.07	11.50	45.65
73	1-May-17		701.18		141,162.59	138,840.18	689.62	11.55	57.20
74	1-Jun-17		705.81		142,094.06	139,760.04	694.20	11.61	68.81
75	1-Jul-17		710.47		143,030.19	140,684.50	698.80	11.67	80.48
76	1-Aug-17		715.15		143,971.00	141,613.58	703.42	11.73	92.21
77	1-Sep-17		719.86		144,916.52	142,547.31	708.07	11.79	104.00
78	1-Oct-17		724.58		145,866.76	143,485.71	712.74	11.85	115.84
79	1-Nov-17		729.33		146,821.75	144,428.80	717.43	11.91	127.75
80	1-Dec-17		734.11	2,265.21	150,046.73	145,376.60	722.14	11.96	139.71
81	1-Jan-18		750.23		151,022.63	146,329.14	726.88	23.35	163.06
82	1-Feb-18	5,000.00	755.11		147,003.40	142,286.45	731.65	23.47	186.53
83	1-Mar-18		735.02		147,964.08	143,223.54	711.43	23.58	210.12
84	1-Apr-18		739.82		148,929.56	144,165.32	716.12	23.70	233.82
85	1-May-18	5,000.00	744.65		144,899.87	140,111.81	720.83	23.82	257.64
86	1-Jun-18		724.50		145,850.02	141,038.02	700.56	23.94	281.58
87	1-Jul-18		729.25		146,804.93	141,968.87	705.19	24.06	305.64
88	1-Aug-18		734.02		147,764.62	142,904.38	709.84	24.18	329.82
89	1-Sep-18		738.82		148,729.10	143,844.56	714.52	24.30	354.12
90	1-Oct-18		743.65		153,027.99	148,119.02	719.22	24.42	378.54
91	1-Nov-18		765.14		154,018.79	149,085.28	740.60	24.54	403.09
92	1-Dec-18		770.09	2,265.21	157,279.75	150,056.37	745.43	24.67	427.76
93	1-Jan-19		786.40		158,291.81	151,032.31	750.28	36.12	463.87
94	1-Feb-19		791.46		159,308.93	152,013.13	755.16	36.30	500.17
95	1-Mar-19		796.54		160,331.13	152,998.85	760.07	36.48	536.65
96	1-Apr-19		801.66		161,358.45	153,989.51	764.99	36.66	573.31
97	1-May-19		806.79		162,390.90	154,985.12	769.95	36.84	610.16
98	1-Jun-19		811.95		163,428.52	155,985.70	774.93	37.03	647.19
99	1-Jul-19		817.14		164,471.32	156,991.29	779.93	37.21	684.40
100	1-Aug-19		822.36		165,519.34	158,001.91	784.96	37.40	721.80
101	1-Sep-19		827.60		166,572.59	159,017.58	790.01	37.59	759.39
102	1-Oct-19		832.86		172,129.27	164,536.47	795.09	37.78	797.16
103	1-Nov-19		860.65		173,215.57	165,584.82	822.68	37.96	835.13
104	1-Dec-19		866.08	2,265.21	176,572.52	166,638.40	827.92	38.15	873.28
105	1-Jan-20		882.86		177,681.04	167,697.25	833.19	49.67	922.95
106	1-Feb-20		888.41		178,795.11	168,761.40	838.49	49.92	972.87
107	1-Mar-20		893.98		179,914.74	169,830.87	843.81	50.17	1,023.04
108	1-Apr-20		899.57		181,039.98	170,905.68	849.15	50.42	1,073.46
109	1-May-20		905.20		182,170.84	171,985.87	854.53	50.67	1,124.13
110	1-Jun-20		910.85		183,307.35	173,071.46	859.93	50.92	1,175.05
111	1-Jul-20		916.54		184,449.55	174,162.47	865.36	51.18	1,226.23
112	1-Aug-20		922.25		185,597.46	175,258.95	870.81	51.44	1,277.67
113	1-Sep-20		927.99		186,751.10	176,360.90	876.29	51.69	1,329.36
114	1-Oct-20		933.76		192,369.56	181,927.41	881.80	51.95	1,381.31

	Loan Starting Balance	212,500.00		Insurance Adjustment					
	Interest Rate	6%							
	Monthly Interest	0.50%							
	Total Payment	\$ 4,108.22							
PMT No.	Date	Payment	Interest	Insurance	Balance	Adjusted Balance (Removing Insurance Not Paid by Dyar)	Adjusted Interest	Difference (Interest - Adj. Interest)	Running Total Overcharged Interest
115	1-Nov-20		961.85		193,557.07	183,062.70	909.64	52.21	1,433.52
116	1-Dec-20		967.79	2,265.21	197,015.72	184,203.68	915.31	52.47	1,485.99
117	1-Jan-21		985.08		198,226.46	185,350.36	921.02	64.06	1,550.05
118	1-Feb-21		991.13		199,443.25	186,502.77	926.75	64.38	1,614.43
119	1-Mar-21		997.22		200,666.13	187,660.94	932.51	64.70	1,679.14
120	1-Apr-21		1,003.33		201,895.12	188,824.91	938.30	65.03	1,744.16
121	1-May-21		1,009.48		203,130.25	189,994.69	944.12	65.35	1,809.51
122	1-Jun-21		1,015.65		204,371.57	191,170.32	949.97	65.68	1,875.19
123	1-Jul-21		1,021.86		205,619.08	192,351.84	955.85	66.01	1,941.20
124	1-Aug-21		1,028.10		206,872.84	193,539.25	961.76	66.34	2,007.53
125	1-Sep-21		1,034.36		208,132.86	194,732.61	967.70	66.67	2,074.20
126	1-Oct-21		1,040.66		209,399.19	195,931.93	973.66	67.00	2,141.20
127	1-Nov-21		1,047.00		210,671.84	197,137.25	979.66	67.34	2,208.54
128	1-Dec-21		1,053.36		211,950.86	198,348.60	985.69	67.67	2,276.21
129	1-Jan-22		1,059.75		213,236.28	199,566.00	991.74	68.01	2,344.22
130	1-Feb-22		1,066.18		214,528.12	200,789.49	997.83	68.35	2,412.58

Exhibit H

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON) CASE NO.: 2020-CP-04-01202

Moats Construction, Inc.,)

Plaintiff,)

v.)

Cecil R. Dyar,)

Defendant.)

Affidavit of Joshua Pruiett-Lange

PERSONALLY appeared before me, Joshua Pruiett-Lange, who, being duly sworn, deposes and says:

1. I am a registered tax preparer with the Internal Revenue Service.
2. I have been a bookkeeper since 2016 and am employed by Electric City Tax and Bookkeeping, formerly Shiflette Bookkeeping and Tax.
3. I have worked with Mr. Cecil Dyar for many years and have reviewed payments made by Moats Construction, Inc. to Cecil Dyar for the property that is the subject of this lawsuit.
4. Based upon my review and analysis, it is my professional opinion that the balance owed to date by Moats Construction, Inc. to Cecil Dyar is \$216,047.42.

FURTHER AFFIANT SAYETH NOT.

Print Name: Joshua Pruiett-Lange
Joshua Pruiett-Lange

Signature: [Handwritten Signature]

Sworn to before me this 1st
day of April, 2021.

[Handwritten Signature]

Notary Public for South Carolina

My Commission Expires: 10/31/30

22 FEB 24 PM 4:10
Anderson, SC COC, CP/GS



Beginning Balance	\$	212,500.00							
APR		6%							
Monthly Interest		0.5%							
Total Payment	\$	4,108.22							
PMT NO	Date	Payment	Status	Principal	Interest	Late Charge	Property Taxes	Insurance	Balance
1	May 1, 2011	\$ 5,213.22	On-time	\$ 4,150.72	\$ 1,062.50	\$ -			\$ 208,349.28
2	June 1, 2011	\$ 4,513.22	On-time	\$ 3,471.47	\$ 1,041.75	\$ -			\$ 204,877.81
3	July 1, 2011	\$ 4,513.22	On-time	\$ 3,488.83	\$ 1,024.39	\$ -			\$ 201,388.98
4	August 1, 2011	\$ 4,513.22	On-time	\$ 3,506.28	\$ 1,006.94	\$ -			\$ 197,882.70
5	September 1, 2011	\$ 4,513.22	Late	\$ 3,298.15	\$ 989.41	\$ 225.66			\$ 194,584.55
6	October 1, 2011	\$ 4,513.22	Late	\$ 3,314.64	\$ 972.92	\$ 225.66	\$ 2,897.66		\$ 194,167.58
7	November 1, 2011	\$ -	Late	\$ (1,196.50)	\$ 970.84	\$ 225.66			\$ 195,364.07
8	December 1, 2011	\$ -	Late	\$ (1,202.48)	\$ 976.82	\$ 225.66		\$ 1,566.00	\$ 198,132.55
9	January 1, 2012	\$ 9,026.44	Late	\$ 7,810.12	\$ 990.66	\$ 225.66			\$ 190,322.44
10	February 1, 2012	\$ 4,513.22	Late	\$ 3,335.95	\$ 951.61	\$ 225.66			\$ 186,986.49
11	March 1, 2012	\$ -	Late	\$ (1,160.59)	\$ 934.93	\$ 225.66			\$ 188,147.08
12	April 1, 2012	\$ -	Late	\$ (1,166.40)	\$ 940.74	\$ 225.66			\$ 189,313.48
13	May 1, 2012	\$ -	Late	\$ (1,172.23)	\$ 946.57	\$ 225.66			\$ 190,485.71
14	June 1, 2012	\$ -	Late	\$ (1,178.09)	\$ 952.43	\$ 225.66			\$ 191,663.79
15	July 1, 2012	\$ -	Late	\$ (1,183.98)	\$ 958.32	\$ 225.66			\$ 192,847.77
16	August 1, 2012	\$ -	Late	\$ (1,189.90)	\$ 964.24	\$ 225.66			\$ 194,037.67
17	September 1, 2012	\$ -	Late	\$ (1,195.85)	\$ 970.19	\$ 225.66			\$ 195,233.52
18	October 1, 2012	\$ -	Late	\$ (1,201.83)	\$ 976.17	\$ 225.66	\$ 2,935.37		\$ 199,370.72
19	November 1, 2012	\$ -	Late	\$ (1,222.51)	\$ 996.85	\$ 225.66			\$ 200,593.23
20	December 1, 2012	\$ -	Late	\$ (1,228.63)	\$ 1,002.97	\$ 225.66		\$ 2,094.95	\$ 203,916.81
21	January 1, 2013	\$ -	Late	\$ (1,245.24)	\$ 1,019.58	\$ 225.66			\$ 205,162.05
22	February 1, 2013	\$ 3,000.00	Late	\$ 1,748.53	\$ 1,025.81	\$ 225.66			\$ 203,413.52
23	March 1, 2013	\$ 6,000.00	Late	\$ 4,757.27	\$ 1,017.07	\$ 225.66			\$ 198,656.25
24	April 1, 2013	\$ -	Late	\$ (1,218.94)	\$ 993.28	\$ 225.66			\$ 199,875.19
25	May 1, 2013	\$ -	Late	\$ (1,225.04)	\$ 999.38	\$ 225.66			\$ 201,100.23
26	June 1, 2013	\$ 4,500.00	Late	\$ 3,268.84	\$ 1,005.50	\$ 225.66			\$ 197,831.39
27	July 1, 2013	\$ -	Late	\$ (1,214.82)	\$ 989.16	\$ 225.66			\$ 199,046.20
28	August 1, 2013	\$ -	Late	\$ (1,220.89)	\$ 995.23	\$ 225.66			\$ 200,267.10
29	September 1, 2013	\$ 2,013.22	Late	\$ 786.22	\$ 1,001.34	\$ 225.66			\$ 199,480.87
30	October 1, 2013	\$ -	Late	\$ (1,223.06)	\$ 997.40	\$ 225.66	\$ 3,366.66		\$ 204,070.60
31	November 1, 2013	\$ 22,566.10	Late	\$ 21,320.09	\$ 1,020.35	\$ 225.66			\$ 182,750.51
32	December 1, 2013	\$ -	Late	\$ (1,139.41)	\$ 913.75	\$ 225.66		\$ 2,222.82	\$ 186,112.74
33	January 1, 2014	\$ -	Late	\$ (1,156.22)	\$ 930.56	\$ 225.66			\$ 187,268.96
34	February 1, 2014	\$ -	Late	\$ (1,162.00)	\$ 936.34	\$ 225.66			\$ 188,430.97
35	March 1, 2014	\$ -	Late	\$ (1,167.81)	\$ 942.15	\$ 225.66			\$ 189,598.78
36	April 1, 2014	\$ 5,000.00	Late	\$ 3,826.35	\$ 947.99	\$ 225.66			\$ 185,772.44
37	May 1, 2014	\$ -	Late	\$ (1,154.52)	\$ 928.86	\$ 225.66			\$ 186,926.96
38	June 1, 2014	\$ -	Late	\$ (1,160.29)	\$ 934.63	\$ 225.66			\$ 188,087.25
39	July 1, 2014	\$ 10,000.00	Late	\$ 8,833.90	\$ 940.44	\$ 225.66			\$ 179,253.35
40	August 1, 2014	\$ -	Late	\$ (1,121.93)	\$ 896.27	\$ 225.66			\$ 180,375.28
41	September 1, 2014	\$ -	Late	\$ (1,127.54)	\$ 901.88	\$ 225.66			\$ 181,502.81
42	October 1, 2014	\$ -	Late	\$ (1,133.17)	\$ 907.51	\$ 225.66	\$ 3,293.29		\$ 185,929.28
43	November 1, 2014	\$ 5,000.00	Late	\$ 3,844.69	\$ 929.65	\$ 225.66			\$ 182,084.58
44	December 1, 2014	\$ -	Late	\$ (1,136.08)	\$ 910.42	\$ 225.66		\$ 2,265.22	\$ 185,485.89
45	January 1, 2015	\$ 5,000.00	Late	\$ 3,846.91	\$ 927.43	\$ 225.66			\$ 181,638.98

46	February 1, 2015	\$ 5,000.00	Late	\$ 3,866.15	\$ 908.19	\$ 225.66		\$ 177,772.83
47	March 1, 2015	\$ -	Late	\$ (1,114.52)	\$ 888.86	\$ 225.66		\$ 178,887.36
48	April 1, 2015	\$ -	Late	\$ (1,120.10)	\$ 894.44	\$ 225.66		\$ 180,007.45
49	May 1, 2015	\$ -	Late	\$ (1,125.70)	\$ 900.04	\$ 225.66		\$ 181,133.15
50	June 1, 2015	\$ 10,000.00	Late	\$ 8,868.67	\$ 905.67	\$ 225.66		\$ 172,264.48
51	July 1, 2015	\$ -	Late	\$ (1,086.98)	\$ 861.32	\$ 225.66		\$ 173,351.46
52	August 1, 2015	\$ -	Late	\$ (1,092.42)	\$ 866.76	\$ 225.66		\$ 174,443.88
53	September 1, 2015	\$ -	Late	\$ (1,097.88)	\$ 872.22	\$ 225.66		\$ 175,541.76
54	October 1, 2015	\$ -	Late	\$ (1,103.37)	\$ 877.71	\$ 225.66	\$ 3,329.58	\$ 179,974.70
55	November 1, 2015	\$ -	Late	\$ (1,125.53)	\$ 899.87	\$ 225.66		\$ 181,100.24
56	December 1, 2015	\$ 20,000.00	Late	\$ 18,868.84	\$ 905.50	\$ 225.66	\$ 2,265.31	\$ 164,496.71
57	January 1, 2016	\$ -	Late	\$ (1,048.14)	\$ 822.48	\$ 225.66		\$ 165,544.85
58	February 1, 2016	\$ -	Late	\$ (1,053.38)	\$ 827.72	\$ 225.66		\$ 166,598.24
59	March 1, 2016	\$ -	Late	\$ (1,058.65)	\$ 832.99	\$ 225.66		\$ 167,656.89
60	April 1, 2016	\$ 10,000.00	Late	\$ 8,936.06	\$ 838.28	\$ 225.66		\$ 158,720.83
61	May 1, 2016	\$ -	Late	\$ (1,019.26)	\$ 793.60	\$ 225.66		\$ 159,740.10
62	June 1, 2016	\$ -	Late	\$ (1,024.36)	\$ 798.70	\$ 225.66		\$ 160,764.46
63	July 1, 2016	\$ -	Late	\$ (1,029.48)	\$ 803.82	\$ 225.66		\$ 161,793.94
64	August 1, 2016	\$ 15,000.00	Late	\$ 13,965.37	\$ 808.97	\$ 225.66		\$ 147,828.57
65	September 1, 2016	\$ -	Late	\$ (964.80)	\$ 739.14	\$ 225.66		\$ 148,793.37
66	October 1, 2016	\$ -	Late	\$ (969.63)	\$ 743.97	\$ 225.66	\$ 3,329.58	\$ 153,092.58
67	November 1, 2016	\$ -	Late	\$ (991.12)	\$ 765.46	\$ 225.66		\$ 154,083.70
68	December 1, 2016	\$ -	Late	\$ (996.08)	\$ 770.42	\$ 225.66	\$ 2,265.21	\$ 157,344.99
69	January 1, 2017	\$ -	Late	\$ (1,012.38)	\$ 786.72	\$ 225.66		\$ 158,357.37
70	February 1, 2017	\$ -	Late	\$ (1,017.45)	\$ 791.79	\$ 225.66		\$ 159,374.82
71	March 1, 2017	\$ 10,000.00	Late	\$ 8,977.47	\$ 796.87	\$ 225.66		\$ 150,397.36
72	April 1, 2017	\$ -	Late	\$ (977.65)	\$ 751.99	\$ 225.66		\$ 151,375.00
73	May 1, 2017	\$ -	Late	\$ (982.54)	\$ 756.88	\$ 225.66		\$ 152,357.54
74	June 1, 2017	\$ -	Late	\$ (987.45)	\$ 761.79	\$ 225.66		\$ 153,344.99
75	July 1, 2017	\$ -	Late	\$ (992.38)	\$ 766.72	\$ 225.66		\$ 154,337.37
76	August 1, 2017	\$ -	Late	\$ (997.35)	\$ 771.69	\$ 225.66		\$ 155,334.72
77	September 1, 2017	\$ -	Late	\$ (1,002.33)	\$ 776.67	\$ 225.66		\$ 156,337.05
78	October 1, 2017	\$ -	Late	\$ (1,007.35)	\$ 781.69	\$ 225.66		\$ 157,344.40
79	November 1, 2017	\$ -	Late	\$ (1,012.38)	\$ 786.72	\$ 225.66		\$ 158,356.78
80	December 1, 2017	\$ -	Late	\$ (1,017.44)	\$ 791.78	\$ 225.66	\$ 2,265.21	\$ 161,639.43
81	January 1, 2018	\$ -	Late	\$ (1,033.86)	\$ 808.20	\$ 225.66		\$ 162,673.29
82	February 1, 2018	\$ 5,000.00	Late	\$ 3,960.97	\$ 813.37	\$ 225.66		\$ 158,712.32
83	March 1, 2018	\$ -	Late	\$ (1,019.22)	\$ 793.56	\$ 225.66		\$ 159,731.54
84	April 1, 2018	\$ -	Late	\$ (1,024.32)	\$ 798.66	\$ 225.66		\$ 160,755.85
85	May 1, 2018	\$ 5,000.00	Late	\$ 3,970.56	\$ 803.78	\$ 225.66		\$ 156,785.29
86	June 1, 2018	\$ -	Late	\$ (1,009.59)	\$ 783.93	\$ 225.66		\$ 157,794.88
87	July 1, 2018	\$ -	Late	\$ (1,014.63)	\$ 788.97	\$ 225.66		\$ 158,809.51
88	August 1, 2018	\$ -	Late	\$ (1,019.71)	\$ 794.05	\$ 225.66		\$ 159,829.22
89	September 1, 2018	\$ -	Late	\$ (1,024.81)	\$ 799.15	\$ 225.66		\$ 160,854.03
90	October 1, 2018	\$ -	Late	\$ (1,029.93)	\$ 804.27	\$ 225.66	\$ 3,329.58	\$ 165,213.54
91	November 1, 2018	\$ -	Late	\$ (1,051.73)	\$ 826.07	\$ 225.66		\$ 166,265.27
92	December 1, 2018	\$ -	Late	\$ (1,056.99)	\$ 831.33	\$ 225.66	\$ 2,265.21	\$ 169,587.46
93	January 1, 2019	\$ -	Late	\$ (1,073.60)	\$ 847.94	\$ 225.66		\$ 170,661.06
94	February 1, 2019	\$ -	Late	\$ (1,078.97)	\$ 853.31	\$ 225.66		\$ 171,740.03
95	March 1, 2019	\$ -	Late	\$ (1,084.36)	\$ 858.70	\$ 225.66		\$ 172,824.39

96	April 1, 2019	\$ -	Late	\$ (1,089.78)	\$ 864.12	\$ 225.66			\$ 173,914.17
97	May 1, 2019	\$ -	Late	\$ (1,095.23)	\$ 869.57	\$ 225.66			\$ 175,009.40
98	June 1, 2019	\$ -	Late	\$ (1,100.71)	\$ 875.05	\$ 225.66			\$ 176,110.10
99	July 1, 2019	\$ -	Late	\$ (1,106.21)	\$ 880.55	\$ 225.66			\$ 177,216.32
100	August 1, 2019	\$ -	Late	\$ (1,111.74)	\$ 886.08	\$ 225.66			\$ 178,328.06
101	September 1, 2019	\$ -	Late	\$ (1,117.30)	\$ 891.64	\$ 225.66			\$ 179,445.36
102	October 1, 2019	\$ -	Late	\$ (1,122.89)	\$ 897.23	\$ 225.66	\$ 4,498.15		\$ 185,066.39
103	November 1, 2019	\$ -	Late	\$ (1,150.99)	\$ 925.33	\$ 225.66			\$ 186,217.39
104	December 1, 2019	\$ -	Late	\$ (1,156.75)	\$ 931.09	\$ 225.66		\$ 2,265.21	\$ 189,639.34
105	January 1, 2020	\$ -	Late	\$ (1,173.86)	\$ 948.20	\$ 225.66			\$ 190,813.20
106	February 1, 2020	\$ -	Late	\$ (1,179.73)	\$ 954.07	\$ 225.66			\$ 191,992.93
107	March 1, 2020	\$ -	Late	\$ (1,185.62)	\$ 959.96	\$ 225.66			\$ 193,178.55
108	April 1, 2020	\$ -	Late	\$ (1,191.55)	\$ 965.89	\$ 225.66			\$ 194,370.10
109	May 1, 2020	\$ -	Late	\$ (1,197.51)	\$ 971.85	\$ 225.66			\$ 195,567.61
110	June 1, 2020	\$ -	Late	\$ (1,203.50)	\$ 977.84	\$ 225.66			\$ 196,771.11
111	July 1, 2020	\$ -	Late	\$ (1,209.52)	\$ 983.86	\$ 225.66			\$ 197,980.63
112	August 1, 2020	\$ -	Late	\$ (1,215.56)	\$ 989.90	\$ 225.66			\$ 199,196.19
113	September 1, 2020	\$ -	Late	\$ (1,221.64)	\$ 995.98	\$ 225.66			\$ 200,417.83
114	October 1, 2020	\$ -	Late	\$ (1,227.75)	\$ 1,002.09	\$ 225.66	\$ 4,459.04		\$ 206,104.62
115	November 1, 2020	\$ -	Late	\$ (1,256.18)	\$ 1,030.52	\$ 225.66			\$ 207,360.80
116	December 1, 2020	\$ -	Late	\$ (1,262.46)	\$ 1,036.80	\$ 225.66		\$ 2,265.21	\$ 210,888.48
117	January 1, 2021	\$ -	Late	\$ (1,280.10)	\$ 1,054.44	\$ 225.66			\$ 212,168.58
118	February 1, 2021	\$ -	Late	\$ (1,286.50)	\$ 1,060.84	\$ 225.66			\$ 213,455.08
119	March 1, 2021	\$ -	Late	\$ (1,292.94)	\$ 1,067.28	\$ 225.66			\$ 214,748.02
120	April 1, 2021	\$ -	Late	\$ (1,299.40)	\$ 1,073.74	\$ 225.66			\$ 216,047.42
		\$ 184,398.30			\$ 108,589.90	\$ 26,176.56	\$ 31,438.91	\$ 21,740.35	

Exhibit I

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF ANDERSON

C.A. No.: 2020-CP-04-01202

Moats Construction, Inc.

Plaintiff,

v.

Cecil R. Dyar,

Defendant.



DEPOSITION OF

CECIL R. DYAR

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, a deposition was taken on the 23rd day of November 2021, beginning at approximately 10:00 a.m. attended by counsel as follows:

Appearances:

WENDELL L. HAWKINS, Esquire

Wendell L. Hawkins, PA

310 The Parkway

Greer, South Carolina 29650

wlh@wlhawkinslawfirm.com

Attorney for the Plaintiff

JAMES W. LOGAN, JR., Esquire

Logan, Jolly & Smith, LLP

1805 North Boulevard

Anderson, South Carolina 29621

logan@loganandjolly.com

Attorney for the Defendant

Also present:

Jane Dyar

Deposition Reported by:

Virginia H. Campbell, CR

Depositions And..., Inc.

(864) 235-3518

1 with the last entry being 8/12; do you see that? That
2 would be on the second page.

3 A. I didn't get but one.

4 Q. No, there's two.

5 A. Oh, there's two?

6 Q. Yeah.

7 A. Oh, yeah, okay.

8 Q. So that starts in 2011 and goes all the way to 2016 to
9 8/12 with 15,000?

10 A. 8/12. That's the record of his checks.

11 Q. Okay. And that's up until 2016?

12 A. Uh-huh (affirmative).

13 Q. So in the beginning it looks like he was kind of paying
14 regular?

15 A. Started out good.

16 Q. And then it looks like as early as 2012 there were
17 sporadic payments?

18 A. Paid four, yeah.

19 Q. Okay. Do you recall ever protesting this payment
20 activity?

21 A. Well, he had excuses, you know, the business was slow or
22 whatever and I went along with him for a lot of months
23 before I tried to do anything about it.

24 Q. So you two had discussions about these sporadic payments?

25 A. Yeah, we talked about it, but he was like I say when he

1 said hard times, you know, I sort of let it slide.

2 Q. Okay. When is the last time you've been to your property?

3 A. It's been a little over two years I guess.

4 Q. What was your purpose to go there?

5 A. Well, before I had an attorney I felt free to go, but
6 after this I was instructed not to go back down there.

7 Q. Okay. And what was your purpose to go down there?

8 A. I collected money, you know, mostly during the years.

9 Q. Did he ever pay you in cash?

10 A. Sir?

11 Q. Did he ever pay you in cash?

12 A. Yeah, twice.

13 Q. Do you know how much cash he gave you?

14 A. In '13 he paid 3,000 on 2/20. There's another one
15 somewhere. Yeah, in '14 on 11/15 he paid 5,000 cash.

16 (PLAINTIFF'S EXHIBIT "6" MARKED)

17 Q. Mr. Dyar, I'm going to hand you what's been marked as
18 Plaintiff's Exhibit 6. Why don't you just go through all
19 the documents and make sure that you know what they are.

20 A. Okay.

21 BY MR. LOGAN:

22 This is Exhibit 6?

23 Q. Yes. I'll make a representation to you if it helps and
24 you don't have to go along with this, but this is a
25 printout of all the liens that were filed on the property

Exhibit J

	Loan Starting Balance	212,500.00						
	Interest Rate	6%						
	Monthly Interest	0.50%						
	Total Payment	\$ 4,108.22						
PMT No.	Date	Payment	Interest	Balance	Adjusted Balance (Deducting Feb. 2013 Cash Payment)	Adjusted Interest	Difference (Interest - Adj. Interest)	Running Total Overcharged Interest
1	1-May-11	5,213.22	1,062.50	208,349.28				
2	1-Jun-11	4,513.22	1,041.75	204,877.81				
3	1-Jul-11	4,513.22	1,024.39	201,388.98				
4	1-Aug-11	4,513.22	1,006.94	197,882.70				
5	1-Sep-11	4,513.22	989.41	194,584.55				
6	1-Oct-11	4,513.22	972.92	194,167.58				
7	1-Nov-11		970.84	195,364.07				
8	1-Dec-11		976.82	198,132.55				
9	1-Jan-12	9,026.44	990.66	190,322.44				
10	1-Feb-12	4,513.22	951.61	186,986.49				
11	1-Mar-12		934.93	188,147.08				
12	1-Apr-12		940.74	189,313.48				
13	1-May-12		946.57	190,485.71				
14	1-Jun-12		952.43	191,663.79				
15	1-Jul-12		958.32	192,847.77				
16	1-Aug-12		964.24	194,037.67				
17	1-Sep-12	9,026.44	970.19	186,207.08				
18	1-Oct-12		931.04	190,299.15				
19	1-Nov-12		951.50	191,476.30				
20	1-Dec-12		957.38	194,754.29	194,754.29			
21	1-Jan-13		973.77	195,953.72	195,953.72	973.77	-	-
22	1-Feb-13	3,000.00	979.77	197,159.15	194,159.15	979.77	-	-
23	1-Mar-13	6,000.00	985.80	192,370.61	189,355.61	970.80	15.00	15.00
24	1-Apr-13		961.85	193,558.12	190,528.05	946.78	15.07	30.07
25	1-May-13		967.79	194,751.57	191,706.35	952.64	15.15	45.23
26	1-Jun-13	4,500.00	973.76	191,450.99	188,390.54	958.53	15.23	60.45
27	1-Jul-13		957.25	192,633.90	189,558.15	941.95	15.30	75.75
28	1-Aug-13	2,500.00	963.17	191,322.73	188,231.60	947.79	15.38	91.13
29	1-Sep-13	2,013.22	956.61	190,491.79	187,385.20	941.16	15.46	106.59
30	1-Oct-13		952.46	195,036.57	191,914.45	936.93	15.53	122.12
31	1-Nov-13	22,566.10	975.18	173,671.31	170,533.58	959.57	15.61	137.73
32	1-Dec-13		868.36	176,988.15	173,834.73	852.67	15.69	153.42
33	1-Jan-14		884.94	178,098.75	174,929.56	869.17	15.77	169.19
34	1-Feb-14		890.49	179,214.90	176,029.87	874.65	15.85	185.03
35	1-Mar-14		896.07	180,336.64	177,135.68	880.15	15.93	200.96
36	1-Apr-14	5,000.00	901.68	176,463.98	173,247.01	885.68	16.00	216.96
37	1-May-14		882.32	177,571.96	174,338.91	866.24	16.08	233.05
38	1-Jun-14		887.86	178,685.48	175,436.26	871.69	16.17	249.21
39	1-Jul-14	10,000.00	893.43	169,804.57	166,539.11	877.18	16.25	265.46
40	1-Aug-14		849.02	170,879.25	167,597.46	832.70	16.33	281.79
41	1-Sep-14		854.40	171,959.30	168,661.11	837.99	16.41	298.20
42	1-Oct-14		859.80	176,338.05	173,023.36	843.31	16.49	314.69
43	1-Nov-14	5,000.00	881.69	172,445.40	169,114.14	865.12	16.57	331.26
44	1-Dec-14		862.23	175,798.51	172,450.59	845.57	16.66	347.92
45	1-Jan-15	5,000.00	878.99	171,903.16	168,538.50	862.25	16.74	364.66
46	1-Feb-15	5,000.00	859.52	167,988.34	164,606.86	842.69	16.82	381.48
47	1-Mar-15		839.94	169,053.94	165,655.55	823.03	16.91	398.39
48	1-Apr-15		845.27	170,124.87	166,709.49	828.28	16.99	415.38

	Loan Starting Balance	212,500.00						
	Interest Rate	6%						
	Monthly Interest	0.50%						
	Total Payment	\$ 4,108.22						
PMT No.	Date	Payment	Interest	Balance	Adjusted Balance (Deducting Feb. 2013 Cash Payment)	Adjusted Interest	Difference (Interest - Adj. Interest)	Running Total Overcharged Interest
49	1-May-15		850.62	171,201.15	167,768.70	833.55	17.08	432.46
50	1-Jun-15	10,000.00	856.01	162,282.82	158,833.20	838.84	17.16	449.62
51	1-Jul-15		811.41	163,319.89	159,853.03	794.17	17.25	466.87
52	1-Aug-15		816.60	164,362.15	160,877.95	799.27	17.33	484.20
53	1-Sep-15		821.81	165,409.62	161,908.00	804.39	17.42	501.62
54	1-Oct-15		827.05	169,791.91	166,272.78	809.54	17.51	519.13
55	1-Nov-15		848.96	170,866.53	167,329.81	831.36	17.60	536.73
56	1-Dec-15	20,000.00	854.33	154,211.83	150,657.42	836.65	17.68	554.41
57	1-Jan-16		771.06	155,208.55	151,636.37	753.29	17.77	572.18
58	1-Feb-16		776.04	156,210.25	152,620.21	758.18	17.86	590.04
59	1-Mar-16		781.05	157,216.97	153,608.97	763.10	17.95	607.99
60	1-Apr-16	10,000.00	786.08	148,228.71	144,602.68	768.04	18.04	626.03
61	1-May-16		741.14	149,195.51	145,551.35	723.01	18.13	644.16
62	1-Jun-16		745.98	150,167.15	146,504.77	727.76	18.22	662.38
63	1-Jul-16		750.84	151,143.65	147,462.95	732.52	18.31	680.69
64	1-Aug-16	15,000.00	755.72	137,125.03	133,425.93	737.31	18.40	699.10
65	1-Sep-16		685.63	138,036.31	134,318.72	667.13	18.50	717.59
66	1-Oct-16		690.18	142,281.73	138,545.55	671.59	18.59	736.18
67	1-Nov-16		711.41	143,218.80	139,463.94	692.73	18.68	754.86
68	1-Dec-16		716.09	146,425.77	142,652.13	697.32	18.77	773.64
69	1-Jan-17		732.13	147,383.55	143,591.05	713.26	18.87	792.50
70	1-Feb-17		736.92	148,346.13	144,534.66	717.96	18.96	811.47
71	1-Mar-17	10,000.00	741.73	139,313.52	135,483.00	722.67	19.06	830.52
72	1-Apr-17		696.57	140,235.75	136,386.07	677.41	19.15	849.68
73	1-May-17		701.18	141,162.59	137,293.66	681.93	19.25	868.93
74	1-Jun-17		705.81	142,094.06	138,205.79	686.47	19.34	888.27
75	1-Jul-17		710.47	143,030.19	139,122.48	691.03	19.44	907.71
76	1-Aug-17		715.15	143,971.00	140,043.75	695.61	19.54	927.25
77	1-Sep-17		719.86	144,916.52	140,969.63	700.22	19.64	946.89
78	1-Oct-17		724.58	145,866.76	141,900.14	704.85	19.73	966.62
79	1-Nov-17		729.33	146,821.75	142,835.30	709.50	19.83	986.45
80	1-Dec-17		734.11	150,046.73	146,040.35	714.18	19.93	1,006.39
81	1-Jan-18		750.23	151,022.63	146,996.21	730.20	20.03	1,026.42
82	1-Feb-18	5,000.00	755.11	147,003.40	142,956.85	734.98	20.13	1,046.55
83	1-Mar-18		735.02	147,964.08	143,897.29	714.78	20.23	1,066.78
84	1-Apr-18		739.82	148,929.56	144,842.44	719.49	20.33	1,087.12
85	1-May-18	5,000.00	744.65	144,899.87	140,792.31	724.21	20.44	1,107.55
86	1-Jun-18		724.50	145,850.02	141,721.93	703.96	20.54	1,128.09
87	1-Jul-18		729.25	146,804.93	142,656.20	708.61	20.64	1,148.73
88	1-Aug-18		734.02	147,764.62	143,595.14	713.28	20.74	1,169.47
89	1-Sep-18		738.82	148,729.10	144,538.78	717.98	20.85	1,190.32
90	1-Oct-18		743.65	153,027.99	148,816.71	722.69	20.95	1,211.27
91	1-Nov-18		765.14	154,018.79	149,786.46	744.08	21.06	1,232.33
92	1-Dec-18		770.09	157,279.75	153,026.26	748.93	21.16	1,253.49
93	1-Jan-19		786.40	158,291.81	154,017.05	765.13	21.27	1,274.76
94	1-Feb-19		791.46	159,308.93	155,012.80	770.09	21.37	1,296.13
95	1-Mar-19		796.54	160,331.13	156,013.52	775.06	21.48	1,317.61
96	1-Apr-19		801.66	161,358.45	157,019.25	780.07	21.59	1,339.20

	Loan Starting Balance	212,500.00						
	Interest Rate	6%						
	Monthly Interest	0.50%						
	Total Payment	\$ 4,108.22						
PMT No.	Date	Payment	Interest	Balance	Adjusted Balance (Deducting Feb. 2013 Cash Payment)	Adjusted Interest	Difference (Interest - Adj. Interest)	Running Total Overcharged Interest
97	1-May-19		806.79	162,390.90	158,030.00	785.10	21.70	1,360.90
98	1-Jun-19		811.95	163,428.52	159,045.81	790.15	21.80	1,382.70
99	1-Jul-19		817.14	164,471.32	160,066.70	795.23	21.91	1,404.62
100	1-Aug-19		822.36	165,519.34	161,092.70	800.33	22.02	1,426.64
101	1-Sep-19		827.60	166,572.59	162,123.82	805.46	22.13	1,448.77
102	1-Oct-19		832.86	172,129.27	167,658.25	810.62	22.24	1,471.02
103	1-Nov-19		860.65	173,215.57	168,722.20	838.29	22.36	1,493.37
104	1-Dec-19		866.08	176,572.52	172,056.68	843.61	22.47	1,515.84
105	1-Jan-20		882.86	177,681.04	173,142.63	860.28	22.58	1,538.42
106	1-Feb-20		888.41	178,795.11	174,234.00	865.71	22.69	1,561.11
107	1-Mar-20		893.98	179,914.74	175,330.83	871.17	22.81	1,583.91
108	1-Apr-20		899.57	181,039.98	176,433.14	876.65	22.92	1,606.83
109	1-May-20		905.20	182,170.84	177,540.97	882.17	23.03	1,629.87
110	1-Jun-20		910.85	183,307.35	178,654.33	887.70	23.15	1,653.02
111	1-Jul-20		916.54	184,449.55	179,773.26	893.27	23.27	1,676.28
112	1-Aug-20		922.25	185,597.46	180,897.79	898.87	23.38	1,699.66
113	1-Sep-20		927.99	186,751.10	182,027.94	904.49	23.50	1,723.16
114	1-Oct-20		933.76	192,369.56	187,622.78	910.14	23.62	1,746.78
115	1-Nov-20		961.85	193,557.07	188,786.55	938.11	23.73	1,770.51
116	1-Dec-20		967.79	197,015.72	192,221.36	943.93	23.85	1,794.36
117	1-Jan-21		985.08	198,226.46	193,408.12	961.11	23.97	1,818.34
118	1-Feb-21		991.13	199,443.25	194,600.82	967.04	24.09	1,842.43
119	1-Mar-21		997.22	200,666.13	195,799.49	973.00	24.21	1,866.64
120	1-Apr-21		1,003.33	201,895.12	197,004.15	979.00	24.33	1,890.97
121	1-May-21		1,009.48	203,130.25	198,214.83	985.02	24.45	1,915.43
122	1-Jun-21		1,015.65	204,371.57	199,431.56	991.07	24.58	1,940.01
123	1-Jul-21		1,021.86	205,619.08	200,654.38	997.16	24.70	1,964.71
124	1-Aug-21		1,028.10	206,872.84	201,883.31	1,003.27	24.82	1,989.53
125	1-Sep-21		1,034.36	208,132.86	203,118.39	1,009.42	24.95	2,014.48
126	1-Oct-21		1,040.66	209,399.19	204,359.64	1,015.59	25.07	2,039.55
127	1-Nov-21		1,047.00	210,671.84	205,607.10	1,021.80	25.20	2,064.75
128	1-Dec-21		1,053.36	211,950.86	206,860.79	1,028.04	25.32	2,090.07
129	1-Jan-22		1,059.75	213,236.28	208,120.76	1,034.30	25.45	2,115.52
130	1-Feb-22		1,066.18	214,528.12	209,387.02	1,040.60	25.58	2,141.10

Exhibit K

	Loan Starting Balance	212,500.00		Compound Interest, Interest on Late Fees & Insurance							
	Interest Rate	6%									
	Monthly Interest	0.50%									
	Total Payment	\$ 4,108.22									
PMT No.	Date	Payment	Interest	Property Taxes	Balance	Loan Principal Balance	Accrued Taxes	Adjusted Balance for Interest	Adjusted Interest	Difference (Interest - Adj. Interest)	Running Total Overcharged Interest
1	1-May-11	5,213.22	1,062.50		208,349.28	208,349.28		208,349.28	1,062.50	-	-
2	1-Jun-11	4,513.22	1,041.75		204,877.81	204,877.81		204,877.81	1,041.75	-	-
3	1-Jul-11	4,513.22	1,024.39		201,388.98	201,388.98		201,388.98	1,024.39	-	-
4	1-Aug-11	4,513.22	1,006.94		197,882.70	197,882.70		197,882.70	1,006.94	-	-
5	1-Sep-11	4,513.22	989.41		194,584.55	194,584.55		194,584.55	989.41	-	-
6	1-Oct-11	4,513.22	972.92	2,897.66	194,167.58	194,167.58		194,167.58	972.92	-	-
7	1-Nov-11		970.84		195,364.07	194,167.58		194,167.58	970.84	-	-
8	1-Dec-11		976.82		198,132.55	194,167.58		194,167.58	970.84	5.98	5.98
9	1-Jan-12	9,026.44	990.66		190,322.44	190,322.44		190,322.44	970.84	19.82	25.81
10	1-Feb-12	4,513.22	951.61		186,986.49	186,986.49		186,986.49	951.61	-	25.81
11	1-Mar-12		934.93		188,147.08	186,986.49		186,986.49	934.93	-	25.81
12	1-Apr-12		940.74		189,313.48	186,986.49		186,986.49	934.93	5.80	31.61
13	1-May-12		946.57		190,485.71	186,986.49		186,986.49	934.93	11.63	43.25
14	1-Jun-12		952.43		191,663.79	186,986.49		186,986.49	934.93	17.50	60.74
15	1-Jul-12		958.32		192,847.77	186,986.49		186,986.49	934.93	23.39	84.13
16	1-Aug-12		964.24		194,037.67	186,986.49		186,986.49	934.93	29.31	113.43
17	1-Sep-12	9,026.44	970.19		186,207.08	186,207.08		186,207.08	934.93	35.26	148.69
18	1-Oct-12		931.04	2,935.37	190,299.15	186,207.08	2,935.37	189,142.45	931.04	-	148.69
19	1-Nov-12		951.50		191,476.30	186,207.08	2,935.37	189,142.45	945.71	5.78	154.47
20	1-Dec-12		957.38		194,754.29	186,207.08	2,935.37	189,142.45	945.71	11.67	166.14
21	1-Jan-13		973.77		195,953.72	186,207.08	2,935.37	189,142.45	945.71	28.06	194.20
22	1-Feb-13		979.77		197,159.15	186,207.08	2,935.37	189,142.45	945.71	34.06	228.26
23	1-Mar-13	6,000.00	985.80		192,370.61	186,207.08		186,207.08	945.71	40.08	268.34
24	1-Apr-13		961.85		193,558.12	186,207.08		186,207.08	931.04	30.82	299.16
25	1-May-13		967.79		194,751.57	186,207.08		186,207.08	931.04	36.76	335.91
26	1-Jun-13	4,500.00	973.76		191,450.99	186,207.08		186,207.08	931.04	42.72	378.64
27	1-Jul-13		957.25		192,633.90	186,207.08		186,207.08	931.04	26.22	404.86
28	1-Aug-13	2,500.00	963.17		191,322.73	186,207.08		186,207.08	931.04	32.13	436.99
29	1-Sep-13	2,013.22	956.61		190,491.79	186,207.08		186,207.08	931.04	25.58	462.57
30	1-Oct-13		952.46	3,366.66	195,036.57	186,207.08	3,366.66	189,573.74	931.04	21.42	483.99
31	1-Nov-13	22,566.10	975.18		173,671.31	173,671.31		173,671.31	947.87	27.31	511.31
32	1-Dec-13		868.36		176,988.15	173,671.31		173,671.31	868.36	-	511.31
33	1-Jan-14		884.94		178,098.75	173,671.31		173,671.31	868.36	16.58	527.89
34	1-Feb-14		890.49		179,214.90	173,671.31		173,671.31	868.36	22.14	550.03
35	1-Mar-14		896.07		180,336.64	173,671.31		173,671.31	868.36	27.72	577.75
36	1-Apr-14	5,000.00	901.68		176,463.98	173,671.31		173,671.31	868.36	33.33	611.07
37	1-May-14		882.32		177,571.96	173,671.31		173,671.31	868.36	13.96	625.04
38	1-Jun-14		887.86		178,685.48	173,671.31		173,671.31	868.36	19.50	644.54
39	1-Jul-14	10,000.00	893.43		169,804.57	169,804.57		169,804.57	868.36	25.07	669.61
40	1-Aug-14		849.02		170,879.25	169,804.57		169,804.57	849.02	0.00	669.61
41	1-Sep-14		854.40		171,959.30	169,804.57		169,804.57	849.02	5.37	674.98
42	1-Oct-14		859.80	3,293.29	176,338.05	169,804.57	3,293.29	173,097.86	849.02	10.77	685.76
43	1-Nov-14	5,000.00	881.69		172,445.40	169,804.57		169,804.57	865.49	16.20	701.96
44	1-Dec-14		862.23		175,798.51	169,804.57		169,804.57	849.02	13.20	715.16
45	1-Jan-15	5,000.00	878.99		171,903.16	169,804.57		169,804.57	849.02	29.97	745.13
46	1-Feb-15	5,000.00	859.52		167,988.34	167,988.34		167,988.34	849.02	10.49	755.63
47	1-Mar-15		839.94		169,053.94	167,988.34		167,988.34	839.94	0.00	755.63
48	1-Apr-15		845.27		170,124.87	167,988.34		167,988.34	839.94	5.33	760.95
49	1-May-15		850.62		171,201.15	167,988.34		167,988.34	839.94	10.68	771.64
50	1-Jun-15	10,000.00	856.01		162,282.82	162,282.82		162,282.82	839.94	16.06	787.70
51	1-Jul-15		811.41		163,319.89	162,282.82		162,282.82	811.41	0.00	787.70
52	1-Aug-15		816.60		164,362.15	162,282.82		162,282.82	811.41	5.19	792.89
53	1-Sep-15		821.81		165,409.62	162,282.82		162,282.82	811.41	10.40	803.28
54	1-Oct-15		827.05	3,329.58	169,791.91	162,282.82	3,329.58	165,612.40	811.41	15.63	818.92
55	1-Nov-15		848.96		170,866.53	162,282.82	3,329.58	165,612.40	828.06	20.90	839.81
56	1-Dec-15	20,000.00	854.33		154,211.83	154,211.83		154,211.83	828.06	26.27	866.08
57	1-Jan-16		771.06		155,208.55	154,211.83		154,211.83	771.06	0.00	866.08
58	1-Feb-16		776.04		156,210.25	154,211.83		154,211.83	771.06	4.98	871.07
59	1-Mar-16		781.05		157,216.97	154,211.83		154,211.83	771.06	9.99	881.06
60	1-Apr-16	10,000.00	786.08		148,228.71	148,228.71		148,228.71	771.06	15.03	896.09
61	1-May-16		741.14		149,195.51	148,228.71		148,228.71	741.14	0.00	896.09
62	1-Jun-16		745.98		150,167.15	148,228.71		148,228.71	741.14	4.83	900.92

	Loan Starting Balance	212,500.00		Compound Interest, Interest on Late Fees & Insurance							
	Interest Rate	6%									
	Monthly Interest	0.50%									
	Total Payment	\$ 4,108.22									
PMT No.	Date	Payment	Interest	Property Taxes	Balance	Loan Principal Balance	Accrued Taxes	Adjusted Balance for Interest	Adjusted Interest	Difference (Interest - Adj. Interest)	Running Total Overcharged Interest
63	1-Jul-16		750.84		151,143.65	148,228.71		148,228.71	741.14	9.69	910.61
64	1-Aug-16	15,000.00	755.72		137,125.03	137,125.03		137,125.03	741.14	14.57	925.19
65	1-Sep-16		685.62513		138,036.31	137,125.03		137,125.03	685.63	0.00	925.19
66	1-Oct-16		690.18	3,329.58	142,281.73	137,125.03	3,329.58	140,454.61	685.63	4.56	929.74
67	1-Nov-16		711.41		143,218.80	137,125.03	3,329.58	140,454.61	702.27	9.14	938.88
68	1-Dec-16		716.09		146,425.77	137,125.03	3,329.58	140,454.61	702.27	13.82	952.70
69	1-Jan-17		732.13		147,383.55	137,125.03	3,329.58	140,454.61	702.27	29.86	982.56
70	1-Feb-17		736.92		148,346.13	137,125.03	3,329.58	140,454.61	702.27	34.64	1,017.20
71	1-Mar-17	10,000.00	741.73		139,313.52	137,125.03		137,125.03	702.27	39.46	1,056.66
72	1-Apr-17		696.57		140,235.75	137,125.03		137,125.03	685.63	10.94	1,067.60
73	1-May-17		701.18		141,162.59	137,125.03		137,125.03	685.63	15.55	1,083.15
74	1-Jun-17		705.81		142,094.06	137,125.03		137,125.03	685.63	20.19	1,103.34
75	1-Jul-17		710.47		143,030.19	137,125.03		137,125.03	685.63	24.85	1,128.19
76	1-Aug-17		715.15		143,971.00	137,125.03		137,125.03	685.63	29.53	1,157.71
77	1-Sep-17		719.86		144,916.52	137,125.03		137,125.03	685.63	34.23	1,191.94
78	1-Oct-17		724.58		145,866.76	137,125.03		137,125.03	685.63	38.96	1,230.90
79	1-Nov-17		729.33		146,821.75	137,125.03		137,125.03	685.63	43.71	1,274.61
80	1-Dec-17		734.11		150,046.73	137,125.03		137,125.03	685.63	48.48	1,323.09
81	1-Jan-18		750.23		151,022.63	137,125.03		137,125.03	685.63	64.61	1,387.70
82	1-Feb-18	5,000.00	755.11		147,003.40	137,125.03		137,125.03	685.63	69.49	1,457.19
83	1-Mar-18		735.02		147,964.08	137,125.03		137,125.03	685.63	49.39	1,506.58
84	1-Apr-18		739.82		148,929.56	137,125.03		137,125.03	685.63	54.20	1,560.78
85	1-May-18	5,000.00	744.65		144,899.87	137,125.03		137,125.03	685.63	59.02	1,619.80
86	1-Jun-18		724.50		145,850.02	137,125.03		137,125.03	685.63	38.87	1,658.67
87	1-Jul-18		729.25		146,804.93	137,125.03		137,125.03	685.63	43.62	1,702.30
88	1-Aug-18		734.02		147,764.62	137,125.03		137,125.03	685.63	48.40	1,750.70
89	1-Sep-18		738.82		148,729.10	137,125.03		137,125.03	685.63	53.20	1,803.90
90	1-Oct-18		743.65	3,329.58	153,027.99	137,125.03	3,329.58	140,454.61	685.63	58.02	1,861.92
91	1-Nov-18		765.14		154,018.79	137,125.03	3,329.58	140,454.61	702.27	62.87	1,924.78
92	1-Dec-18		770.09		157,279.75	137,125.03	3,329.58	140,454.61	702.27	67.82	1,992.60
93	1-Jan-19		786.40		158,291.81	137,125.03	3,329.58	140,454.61	702.27	84.13	2,076.73
94	1-Feb-19		791.46		159,308.93	137,125.03	3,329.58	140,454.61	702.27	89.19	2,165.92
95	1-Mar-19		796.54		160,331.13	137,125.03	3,329.58	140,454.61	702.27	94.27	2,260.19
96	1-Apr-19		801.66		161,358.45	137,125.03	3,329.58	140,454.61	702.27	99.38	2,359.57
97	1-May-19		806.79		162,390.90	137,125.03	3,329.58	140,454.61	702.27	104.52	2,464.09
98	1-Jun-19		811.95		163,428.52	137,125.03	3,329.58	140,454.61	702.27	109.68	2,573.77
99	1-Jul-19		817.14		164,471.32	137,125.03	3,329.58	140,454.61	702.27	114.87	2,688.64
100	1-Aug-19		822.36		165,519.34	137,125.03	3,329.58	140,454.61	702.27	120.08	2,808.72
101	1-Sep-19		827.60		166,572.59	137,125.03	3,329.58	140,454.61	702.27	125.32	2,934.05
102	1-Oct-19		832.86	4,498.15	172,129.27	137,125.03	7,827.73	144,952.76	702.27	130.59	3,064.64
103	1-Nov-19		860.65		173,215.57	137,125.03	7,827.73	144,952.76	724.76	135.88	3,200.52
104	1-Dec-19		866.08		176,572.52	137,125.03	7,827.73	144,952.76	724.76	141.31	3,341.83
105	1-Jan-20		882.86		177,681.04	137,125.03	7,827.73	144,952.76	724.76	158.10	3,499.93
106	1-Feb-20		888.41		178,795.11	137,125.03	7,827.73	144,952.76	724.76	163.64	3,663.57
107	1-Mar-20		893.98		179,914.74	137,125.03	7,827.73	144,952.76	724.76	169.21	3,832.79
108	1-Apr-20		899.57		181,039.98	137,125.03	7,827.73	144,952.76	724.76	174.81	4,007.60
109	1-May-20		905.20		182,170.84	137,125.03	7,827.73	144,952.76	724.76	180.44	4,188.03
110	1-Jun-20		910.85		183,307.35	137,125.03	7,827.73	144,952.76	724.76	186.09	4,374.12
111	1-Jul-20		916.54		184,449.55	137,125.03	7,827.73	144,952.76	724.76	191.77	4,565.90
112	1-Aug-20		922.25		185,597.46	137,125.03	7,827.73	144,952.76	724.76	197.48	4,763.38
113	1-Sep-20		927.99		186,751.10	137,125.03	7,827.73	144,952.76	724.76	203.22	4,966.60
114	1-Oct-20		933.76	4,459.04	192,369.56	137,125.03	12,286.77	149,411.80	724.76	208.99	5,175.59
115	1-Nov-20		961.85		193,557.07	137,125.03	12,286.77	149,411.80	747.06	214.79	5,390.38
116	1-Dec-20		967.79		197,015.72	137,125.03	12,286.77	149,411.80	747.06	220.73	5,611.11
117	1-Jan-21		985.08		198,226.46	137,125.03	12,286.77	149,411.80	747.06	238.02	5,849.13
118	1-Feb-21		991.13		199,443.25	137,125.03	12,286.77	149,411.80	747.06	244.07	6,093.20
119	1-Mar-21		997.22		200,666.13	137,125.03	12,286.77	149,411.80	747.06	250.16	6,343.36
120	1-Apr-21		1,003.33		201,895.12	137,125.03	12,286.77	149,411.80	747.06	256.27	6,599.63
121	1-May-21		1,009.48		203,130.25	137,125.03	12,286.77	149,411.80	747.06	262.42	6,862.05
122	1-Jun-21		1,015.65		204,371.57	137,125.03	12,286.77	149,411.80	747.06	268.59	7,130.64
123	1-Jul-21		1,021.86		205,619.08	137,125.03	12,286.77	149,411.80	747.06	274.80	7,405.44
124	1-Aug-21		1,028.10		206,872.84	137,125.03	12,286.77	149,411.80	747.06	281.04	7,686.48

	Loan Starting Balance	212,500.00	Compound Interest, Interest on Late Fees & Insurance								
	Interest Rate	6%									
	Monthly Interest	0.50%									
	Total Payment	\$ 4,108.22									
PMT No.	Date	Payment	Interest	Property Taxes	Balance	Loan Principal Balance	Accrued Taxes	Adjusted Balance for Interest	Adjusted Interest	Difference (Interest - Adj. Interest)	Running Total Overcharged Interest
125	1-Sep-21		1,034.36		208,132.86	137,125.03	12,286.77	149,411.80	747.06	287.31	7,973.78
126	1-Oct-21		1,040.66		209,399.19	137,125.03	12,286.77	149,411.80	747.06	293.61	8,267.39
127	1-Nov-21		1,047.00		210,671.84	137,125.03	12,286.77	149,411.80	747.06	299.94	8,567.32
128	1-Dec-21		1,053.36		211,950.86	137,125.03	12,286.77	149,411.80	747.06	306.30	8,873.62
129	1-Jan-22		1,059.75		213,236.28	137,125.03	12,286.77	149,411.80	747.06	312.70	9,186.32
130	1-Feb-22		1,066.18		214,528.12	137,125.03	12,286.77	149,411.80	747.06	319.12	9,505.44

Exhibit L

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON) AGREEMENT FOR SALE AND PURCHASE
 OF REAL PROPERTY

THIS AGREEMENT made effective January 29, 2011 between Cecil Dyar (hereinafter referred to as the "Seller") and Moats Construction, LLC (hereinafter referred to as "Purchaser")

1. PREMISES. The Seller agrees to sell and Purchaser agrees to purchase upon the terms and conditions and for the price set forth hereinafter the real property and improvements thereon located at 300-600 W. Orr Street, Anderson, South Carolina, 29625 and shown as Tax Map #123-24-03-003.
2. PURCHASE PRICE. The Purchase Price for the premises is Two Hundred Fifty Thousand and no/100 (\$250,000.00) dollars.
3. PAYMENT OF PURCHASE PRICE. The Purchase Price shall be paid in the following manner:
 - (a) Down-Payment. Purchaser has paid with the execution of these presents the sum of Thirty-Seven Thousand Five Hundred and no/100 (\$37,500.00) dollars, the receipt of which is hereby acknowledged.
 - (b) Balance Due. The balance due in the amount of Two hundred Twelve thousand five hundred and no/100 (\$212,500.00) Dollars with interest at the rate of six (6%) percent per annum shall be paid as follows: The principal balance shall be paid in sixty (60) successive monthly installments of Four thousand One hundred Eight and 22/100 (\$4,108.22) dollars each month beginning May 1, 2011 and continuing on the same day of each month thereafter through April 1, 2016 with the principal balance due together with accrued interest to be paid in full on or before March 31, 2016.
 - (c) Escrow Payments. Upon request of Seller, Purchaser shall pay along with each monthly installment of principal and interest 1/12th of annual estimated amount of ad valorem taxes and casualty insurance. It is agreed that Four Hundred Five and no/100ths (\$405.00) Dollars per month is the amount estimated to pay such annual costs but the Seller shall have the right to make reasonable adjustments to cover increased costs.
4. CONVEYANCE OF TITLE. Upon payment of the Purchase Price, the Seller shall convey to Purchaser title to the premises by General Warranty Deed, subject to the following:
 - (a) Ad Valorem taxes and special assessments for the City of Anderson and County of Anderson which have accrued but are not yet due.
 - (b) Rights of way and easements for public utility distribution lines.
 - (c) Restrictive covenants affecting the property.
 - (d) State of facts which may be revealed by a recent and accurate survey of the premises.



5. AD VALOREM TAXES AND SPECIAL ASSESSMENTS. All Ad Valorem taxes and special assessments imposed against the Premises by the County of Anderson, City of Anderson or any political subdivision thereof shall be prorated as of the date of this Contract, and thereafter the Purchaser agrees to pay all Ad Valorem taxes and special assessments against the Premises before the same becomes past due.

6. CLOSING COSTS. Upon transfer of title, Seller at its expense shall deliver the Deed of Title to Real Estate with South Carolina documentary stamps affixed thereto and Purchaser shall bear the expense of Anderson County recording taxes and all costs of recording the Deed and other documents of title.

7. DEFAULT. In the event the Purchaser defaults in making any payments provided for herein or in any other terms, provisions or covenants of this Contract, the Seller may, at its option, declare this Contract terminated and of no further force and effect, and will be entitled to immediate possession of the Premises and may retain all amounts paid by Purchaser to date of default as rent and liquidated damages. Seller may in the alternative, at its option, declare the entire balance of the Purchase Price due and payable without notice, and institute suit against the Purchaser seeking a sale of the property and foreclosure of Purchaser's rights.

8. PREPAYMENT. Purchaser may prepay the balance due in whole or in part at any time without penalty.

9. POSSESSION. Until Purchaser defaults in payment of sums to be paid hereunder or in performance of obligations to be performed hereunder, Purchaser shall be entitled to possession of the Premises, provided, the Purchaser shall not commit or suffer to exist any damage or destruction of the Premises.

10. RISK OF LOSS. Risk of loss by damage to or destruction of the Premises shall be upon the Purchaser during the term of this Agreement.

11. TIME OF ESSENCE. It is further agreed that the time of payment shall be an essential part of this Contract and all Covenants and agreements herein contained shall extend to and be obligatory upon the heirs, personal representatives and assigns of the respective parties.

12. LATE PAY PENALTY. The Purchaser agrees that if any payment is not paid when due and shall remain unpaid for more than ten (10) days from the due date, a late charge equal to five (5%) percent of the total payment shall be added to the payment due. The Purchaser agrees that the failure to pay the late charge when due shall be considered a default in this Contract and subject the Purchaser to immediate eviction.

13. ATTORNEY'S FEES. If this Contract is placed in the hands of an attorney for collection or for enforcing any of Seller's other rights hereunder, including any legal proceeding brought to sell said property, Purchaser agrees to pay all costs and expenses incurred by Seller including not less than Fifteen (15%) percent of the then balance due under this Contract as Attorney's fees.

14. INSURANCE. Purchaser agrees to keep the improvements on said real property insured against loss by fire or other casualty in a reputable fire insurance company in an amount of not less than the balance due to the Seller under this Contract and to have Seller named in said policy as an additional insured.

15. SELLER'S REMEDIES. In the event the Purchaser fails to pay the property taxes when due, or fails to pay the fire insurance premiums, the Seller may, at Seller's option, pay the same and add such amount to the indebtedness due to the Seller to bear interest at the same rate stated above.

16. ASSIGNMENT. The Purchaser shall have no right to assign this Contract or sublet the premises without prior written consent of Seller and any attempt to do so shall constitute a default in the terms and provisions of this Contract.

17. MAINTENANCE. The Purchaser shall maintain the Premises and all improvements thereon in the same good condition as the same was delivered to Purchaser, wear and tear excepted.

18. DISCLAIMER OF WARRANTIES. The Purchaser acknowledges that the Seller has made no representation to the Purchaser concerning the condition of the dwelling or any improvement upon the Premises. The Seller specifically disclaims all warranties which may exist by implication of law, including the warranty of habitability. The Purchaser acknowledges that Purchaser has made an inspection of the Premises and accepts the same "AS IS, WITH ALL FAULTS."

19. SURVIVAL OF THIS AGREEMENT. This Agreement and the terms hereof shall not be merged into the documents of conveyance at closing but shall survive and remain a binding contractual agreement between the parties after closing.

20. WASTE OR DESTRUCTION. Purchaser during possession shall not commit any waste of the premises or demolish any improvement or harvest any growing timber without the written consent of the Seller.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year above written.

IN THE PRESENCE OF:

Nancy M. Wright

Gary Hayes

Cecil D. Dyar
Cecil Dyar, Seller

Moats Construction, LLC
Moats Construction, LLC, Buyer

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s) he saw the within named Cecil Dyar, as Seller, sign, seal and as their act and deed deliver the within Contract, and that (s) he with the other witness whose name is subscribed above witnessed the execution thereof.

Sworn to before me this 11
day of March, 2011

Nancy M. Wright

Thomas S. Kuntz (SEAL)
Notary Public for South Carolina
My Commission Expires 12-10-2011

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s) he saw the within named Moats Construction, LLC, as Purchaser, sign, seal and as their act and deed deliver the within Contract, and that (s) he with the other witness whose name is subscribed above witnessed the execution thereof.

Sworn to before me this 11
day of March, 2011

Gerry Hayes

Thomas S. Kuntz (SEAL)
Notary Public for South Carolina
My Commission Expires 12-10-2011



ADDENDUM/AMENDMENT TO

☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☐ COUNTEROFFER] OR

☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____

COVERING THE ☒ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as:

Address _____ 300-600 West Orr Street _____ Unit # _____

City _____ Anderson _____ State of South Carolina

Other _____ TMS _____ 123-24-03-003

The undersigned Parties hereby agree as follows: This agreement shall be extended until March 16, 2021.
All other terms and conditions shall remain the same. This is a legally binding agreement,
both Buyer and Seller shall seek further assistance if the contents are not understood.
Both Buyer and Seller acknowledge receipt of a copy of this agreement. Both Buyer and
Seller acknowledge receiving, reading and understanding the South Carolina Agency
Disclosure Form.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at _____ ☐ AM ☐ PM on _____ unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: _____ Date: _____ Time: _____

BUYER: _____ Date: _____ Time: _____

_____ Date: _____ Time: _____

_____ Date: _____ Time: _____

SELLER: Carol R. Ryan Date: 7-1-16 Time: 10:30

SELLER: _____ Date: _____ Time: _____

_____ Date: _____ Time: _____

_____ Date: _____ Time: _____

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[☐] BUYER [☐] BUYER [☐] SELLER [☐] SELLER HAVE READ THIS PAGE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CASE NO.: 2020-CP-04-01202
	)	
Moats Construction, Inc.,	)	
	)	
Plaintiff,	)	
	)	Defendant's Response to Plaintiff's Motion
v.	)	To Alter or Amend Order Granting
	)	Defendant's Motion for Damages and
Cecil R. Dyar,	)	Judgment of Foreclosure and Sale
	)	
Defendant.	)	

The Plaintiff, Moats Construction, Inc., ("Moats") has filed a Motion to Alter or Amend the Order Granting Defendant's Motion for Damages and Judgment of Foreclosure and Sale dated July 21, 2022. In his Motion, Moats asks the Court to "adjust" the amount in the total debt to correct alleged errors. Moats outlines those specific errors on Page 1 of his Motion and asks the Court to "re-open" the damages hearing to allow the Plaintiff to hire an expert witness to testify as to the amount owed Dyar under the Agreement. The Defendant, Cecil R. Dyar ("Dyar"), opposes the Motion for the following reasons.

1. A damages hearing was previously held in this matter on February 24, 2022. A copy of the transcript of that hearing is attached hereto as Exhibit 1. At that hearing, Moats' counsel made the following statement on Page 7 of the Exhibit 1: "We're not contesting his right to a damages hearing at this point...But we're just here to make sure that we're going to follow procedures that we've requested in our motion to amend or alter the Order" (emphasis added) (i.e., no objections to the hearing and no request for a continuance of the hearing).

2. Moats' attorney informed the Court, beginning on Page 10 of the transcript, that an expert that had been retained and had written a report on behalf of Moats and was invited to the damages hearing but refused to come because he had not been paid. Therefore, it was clearly

established that Moats' attorney, on behalf of Moats, had retained an expert witness to testify, as to his opinion on the issues on which they are now seeking to have another hearing. Further, that expert had prepared a report and was available to testify at the damages hearing on February 24, 2022, but Moats made a choice not to call him as a witness at that hearing because he simply did not want to pay him. (A copy of that report is attached as Exhibit 2). Further, a review of that report, though not introduced in evidence, reveals that Moats' expert determined that, at the very least, Moats owed Dyar \$145,581.00 as of March 31, 2021, plus the additional interest, costs and attorney's fees included in this Court's Order of July 21, 2022. All of that is in contrast to Moats' testimony at the damages hearing that he owed Dyar nothing under the Agreement in question.

3. Counsel for Dyar called as a witness at the damages hearing Joshua Pruiett-Lange who is the accountant who had been retained by Dyar. Mr. Pruiett-Lange's testimony, based upon an analysis of payments made by Moats to Dyar, that the amount owed to Dyar as of February 1, 2022, plus interest at the legal rate from February 1, 2022, attorney's fees of 15% pursuant to the Agreement for Sale and Purchase of Real Estate dated January 29, 2011 and the costs of this action totaling, as outlined in this Court's subsequent Order dated July 21, 2022 was \$250,614.04. At the conclusion of direct examination, Moats' attorney did not ask any questions of this witness or challenge/cross examine, in any way, this testimony as to his damages calculations even though he had an opportunity to do so.

4. At the conclusion of the hearing, Moats' attorney called his client as a witness and he testified, under oath, without any basis and in contrast to previous attorney/accountants who, at various times in this case, had calculated amounts due under the Agreement, that he did not owe Dyar a dime under the Agreement. In other words, he did not agree with the calculations determining the amount owed under the Agreement as determined by any "experts" hired by him or by Dyar.

Based upon the above, it is clear that a “damages” hearing was held by this Court on February 24, 2022; that Moats presented unchallenged testimony as to the amounts due under the Agreement in question; that Moats was given an opportunity to testify on his own behalf to establish any damages that he owed under the Agreement and/or to dispute any claimed damages owed; and that Moats, in effect, testified that he owed nothing under the Agreement. As stated in its Order, the Court disagreed with Moats. Under these circumstances, Moats is not entitled to have a second damages hearing to now present evidence that he had available in February, 2022, on the same, if not all, of these issues to “adjust” the amount of the total debt owed. He had that opportunity on February 24, 2022!

Accordingly, Dyar respectfully requests that Moats’ Motion to Alter or Amend this Court’s Order of July 21, 2022 be denied in its entirety and that this matter be allowed to proceed as Ordered by the Court in its Order of July 21, 2022.

Respectfully submitted,

LOGAN & JOLLY, LLP

s/James W. Logan, Jr.

James W. Logan, Jr.
Post Office Box 259 (29622)
Anderson, South Carolina
864-226-1910
864-226-1931 (fax)
logan@loganandjolly.com
Attorneys for Defendant

August 22, 2022

EXHIBIT 1

ELECTRONICALLY FILED - 2022 Aug 22 3:43 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0401202

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) C.A. NO. 2020-CP-04-01202

Moats Construction, Inc.,) **COPY**
) Plaintiff(s),
))
versus))
))
Cecil R. Dyar,))
) Defendant(s).)

M O T I O N S H E A R I N G

BEFORE: The Honorable R. Scott Sprouse
DATE: February 24, 2022
TIME BEGIN: 10:05 a.m.
TIME END: 11:21 a.m.
LOCATION: Anderson County Courthouse
 100 South Main Street
 Anderson, South Carolina 29624
REPORTED BY: Lisa M. Nowell, Certified Verbatim Reporter
 LEGAL EAGLE
 Post Office Box 5682
 Greenville, South Carolina 29606
 864-467-1373
 depos@legaleagleinc.com

1 APPEARANCES:

2
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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

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1 CLERK OF COURT:

2 The next case is 2020CP0401202. This is Moats
3 Construction, Incorporated versus Cecil R. Dyar.

4 MR. LOGAN:

5 Your Honor, this is a -- I'll remind you of a little
6 background in this case. I represent Cecil R. Dyar.
7 Mr. and Mrs. Dyar are in the courtroom today. This is
8 a scheduled damages hearing. You've issued an Order
9 granting the defendant's motion for summary judgment
10 back on June the 10th of 2021. If you do not have
11 access -- easy access to a copy of your Order, I do
12 have an extra one if that would help.

13 THE COURT:

14 I've got it. But if you've got a hard copy, that would
15 be helpful. Okay, I've got it.

16 MR. LOGAN:

17 There are three motions pending today in addition to
18 the damages hearing. Mr. Hawkins on behalf of Moats
19 had filed a motion to alter and amend the judgment.
20 And then the next motion is my motion for the damages -
21 - for a damages hearing, which is what this is actually
22 set for. But Mr. -- the motion to alter or amend
23 actually came before the motion for the damages
24 hearing, although we've been trying to get a damages
25 hearing scheduled by the court for a good while now and

1 you were the only one who could hear it. So that's why
2 -- I mean, I filed the motion for a damages hearing,
3 then I think he filed his motion to amend the judgment.
4 And then after all that, he's also filed a motion to be
5 relieved as counsel. So I don't know what order -- I
6 do -- I would request that a motion to be relieved be
7 after the damages hearing because his client is not
8 here, apparently not coming. And although he's been
9 notified that he should be here -- I believe I've got a
10 --

11 THE COURT:

12 Well, let me hear from Mr. Hawkins.

13 MR. HAWKINS:

14 Thank you, Your Honor. May it please the Court. My
15 first motion is the motion to amend and reconsider the
16 judgment entered, Your Honor. After a WebEx hearing,
17 the Court submitted a Form 4 Order basically directing
18 that a damages hearing be sought or be heard. We're
19 not contesting the propriety of that at all. In fact,
20 I believe it's probably a possible first step under the
21 foreclosure proceedings. However, Your Honor, when Mr.
22 Logan submitted the Formal Order, that Order was packed
23 with some findings of fact, which Your Honor did direct
24 that he provide the procedural history and finding of
25 facts. Basically that finding of facts in Mr. Logan's

1 Order is a recitation of the bond for title itself. I
2 don't know that all that was explored in the hearing.
3 Nevertheless, the reason for our filing is the choice
4 of remedies in that Order, which were immediate
5 possession, forfeiture of payments in the rent, things
6 of that nature that weren't part of Your Honor's Order.
7 And just as we've agreed -- we've stipulated that he's
8 entitled to foreclosure because it is a bond for title.
9 It transfers equitable interest to my client and it has
10 to be foreclosed on. And I'm accustomed to seeing
11 those Orders referred to the Master in Equity to follow
12 the foreclosure proceedings under foreclosure statutes
13 and rules, so I was a bit miffed by the damages hearing
14 in that is he here to get money damages or are we just
15 establishing that top debt under Rule 71. I would hope
16 it would be the latter. Certainly we have legal
17 claims. And as briefed in our motion, my client is
18 entitled to a hearing on those legal claims before
19 proceeding with the equitable claims. So that case, or
20 those cases, would have to be tried first and the
21 foreclosure is necessarily stayed until we got to that
22 point. So the purpose of this hearing is to make sure
23 that that was the Court's intention to follow along
24 those lines and kind of remove all these other remedies
25 that were part of the contract, which is not just a

1 contract. It's a special contract. It's a bond for
2 title that is equitable in nature and gives rise to the
3 protection of foreclosure rules to my client, and those
4 are the rules that his client also has to follow when
5 enforcing that document. So I would be -- I would like
6 the Court to be clear to stipulate that, you know,
7 that's the steps that we're going to take. And I've
8 got the case that I cited and Your Honor is unfamiliar
9 with it, but that case requires that those legal
10 actions be heard prior to moving forward with the
11 equitable actions. And that's the basis of our motion,
12 that's the relief that we're seeking. We're not
13 contesting his right to a damages hearing at this
14 point. We believe that could be a starting point under
15 the rules for foreclosure, which I've got Rule 71 here
16 as well. You ordered the damages pursuant to the
17 default hearing, which could be interpreted as, you
18 know, this is a money damages case. But we're just
19 here to make sure that we're going to follow those
20 procedures that we've requested in our motion to amend
21 or alter the Order.

22 THE COURT:

23 Well, Mr. Hawkins, did you -- let me ask you this. I
24 issued the Form 4 and directed Mr. Logan to prepare the
25 Formal Order as you just stated. Did you receive a

1 copy of the draft before that was submitted to the
2 Court?

3 MR. HAWKINS:

4 I don't -- I don't believe, Your Honor. I haven't --

5 THE COURT:

6 It was in my -- in my Form 4, it was directed that you
7 be copied on a record of submission. So you don't know
8 if you got that or not?

9 MR. HAWKINS:

10 I have no idea. I don't know.

11 THE COURT:

12 Mr. Logan, I'll be happy to hear from you on that, the
13 issues that Mr. Hawkins just raised.

14 MR. LOGAN:

15 Your Honor, the Form 4 that I received, it was sent out
16 electronically. So I can't imagine that he didn't
17 receive it. After that, you asked me to prepare a
18 Formal Order. I did, and that was sent to you prior to
19 and signed by you and filed on June the 10th of 2021.
20 So he and his client have had notice of that. I would
21 point out that the document that we are enforcing is
22 called an Agreement for Sale and Purchase, basically a
23 contract of sale and purchase. This man has not paid
24 any rent since 2016 or anything under the agreement to
25 sell for 2016. He refuses to vacate the premises.

1 Nothing has happened since you issued your Formal Order
2 in June of '21. As I say, we've been trying to get the
3 damages hearing scheduled. That's why we're here now
4 as opposed to earlier. And this thing has got to end.
5 This man is not paying. He won't pay, for whatever
6 reason. He's dragging this case out. My clients are
7 elderly -- or my client is elderly, he has serious
8 health issues, and they need to have the ability to
9 either receive the money that is rightfully due them
10 for him to stay on that property or for him to be
11 evicted and get out so they can either rent to somebody
12 else so that they can have access to these funds in
13 their later years which are needed because of their age
14 and limited income, and also -- or he can pay it, get
15 out. That's up to him. But he needs to be gone so
16 that they can either rent it out to somebody who will
17 pay the bill or they can sell it. I have pictures
18 showing the condition of the property. I have the
19 accountant here, their accountant, ready to testify as
20 to not only the amount that was owed at the time of
21 these earlier hearings which you -- the only thing you
22 questioned in your Form 4 Order was the damages amount,
23 and that's what I tried to incorporate in the Formal
24 Order. And when I say your Form 4 Order, I tried to
25 incorporate it in the Formal Order. And if you rule in

1 favor of my client today in the damages hearing and we
2 will establish the amount owed, I want to establish a
3 time for him to either pay it or get out. And if he
4 does not do any of that, I want him -- I want a bond
5 for two and a half times what he owes so he can start
6 having some -- well, I won't say that. But this case
7 needs to be over and my clients need justice, and
8 they're not -- they haven't gotten it yet from this
9 man.

10 THE COURT:

11 Mr. Hawkins, let me hear from -- now, you've made a
12 motion to be relieved as counsel.

13 MR. HAWKINS:

14 Correct.

15 THE COURT:

16 I want to -- is your client here?

17 MR. HAWKINS:

18 Russell Moats? I don't believe he is, Your Honor.

19 THE COURT:

20 Did he get notice of today's hearing?

21 MR. HAWKINS:

22 My communication has been via email with him. I sent
23 him the email, I invited him here to testify as to the
24 damages. The expert won't show up because he hasn't
25 been paid. And to be honest, I've been a bit ghosted

1 in the emails and there's been some threatening and
2 derogatory emails from him to me, is the reason --
3 well, one of the reasons for me to get out of it. But
4 if I may add, Mr. Logan may have sent me the Proposed
5 Order. We may not have agreed -- and I don't -- I
6 can't remember. I mean, there are some --

7 THE COURT:

8 Well, I ask that because that's my standard procedure
9 to have whoever's preparing the Order to copy the other
10 side. And then if there are any objections to it,
11 we'll deal with that with a conference call. I want
12 all that sorted out before the Order is signed. So if
13 you don't -- I didn't receive any objections from you
14 about the Proposed Order.

15 MR. HAWKINS:

16 I understand, Your Honor, and I can't tell you. I
17 don't doubt his honesty and integrity to the Court. I
18 don't doubt that whatsoever. But you're asking me if I
19 recall, but I don't. And if I may as to his argument,
20 it doesn't matter whether you call it a contract for
21 the purpose of a sale. That's form over substance.
22 It's a bond for title. It has to be foreclosed on.
23 Just as my client has to be bound by those rules, his
24 client does as well. They both signed it. I don't
25 believe either one of them were represented by counsel.

1 You know, my simple request in this motion to alter or
2 amend is this immediate possession, kick him out. The
3 bond's not before the Court. You know, if they want to
4 file that and be heard on it, that's fine, but it's not
5 before the Court now. Hopefully I won't be counsel at
6 that time. But that's simply all we're asking is that
7 we move forward with the proper proceeding.

8 MR. LOGAN:

9 Your Honor, my practice is, if the Court directs me to
10 prepare a Formal Order, I send it to the Court and I
11 send it to opposing counsel. And if he's so bound and
12 determined to use the foreclosure then we have the
13 damage hearing, it's determinate in this proceeding
14 today. There's no sense in having another hearing or
15 anything like that. To satisfy him, we'll foreclose
16 it. We've ordered the amount that's owed. He can pay
17 it or he can get out. But your Order is broad -- your
18 Formal Order is broad enough to include anything that
19 he's talking about, in my judgment.

20 THE COURT:

21 Well, I find that it is. We're going to proceed with
22 the damages hearing and it will be noted the -- Mr.
23 Hawkins, I hesitate to go ahead and relieve you because
24 your client didn't show up today and your client's not
25 going to have an opportunity to testify.

1 MR. HAWKINS:

2 That's fine with me.

3 THE COURT:

4 That puts him at a disadvantage.

5 MR. HAWKINS:

6 Well, I gave him proper notice and --

7 MR. MOATS:

8 I'm here.

9 MR. HAWKINS:

10 I heard he's right here, Your Honor.

11 THE COURT:

12 Okay, all right. Let me -- Mr. Moats, do you want to
13 come around, please? Mr. Moats, your attorney has made
14 a motion for him to be relieved as counsel in the case.
15 And any time one of those motions is filed, I always
16 give the opportunity to the client, to the party, to
17 tell the Court their position on that. So I'll be
18 happy to hear from you.

19 MR. MOATS:

20 It was my understanding -- I'm sorry I've been sick. I
21 contacted the clerk this morning about it. But it was
22 my understanding that he was still going to argue this
23 motion to amend and maybe any kind of damages hearing
24 after this. So that's why that motion was filed.

25 THE COURT:

1 Okay. Well --

2 MR. MOATS:

3 I have an email from him that said that he's going to
4 do that, so I didn't bother to, you know, file
5 anything.

6 THE COURT:

7 Okay. What we're going to do -- I was concerned that
8 you weren't here. But you have appeared, so that's
9 good. Because I was concerned with you not being able
10 to be heard on the issue of damages, but now --

11 MR. MOATS:

12 I was waiting to hear back from the clerk. I didn't
13 want to come in here coughing and hacking and getting
14 around people coughing, you know.

15 THE COURT:

16 Well, I'm not going to rule on the motion to be
17 relieved at this time. Since your client's here, he'll
18 have the opportunity to be heard. So we will --

19 MR. HAWKINS:

20 You want to hear from my client, Your Honor?

21 THE COURT:

22 Yeah, I'll allow him to be heard on the issue of
23 damages.

24 MR. HAWKINS:

25 Oh, yes, sir. Yeah, we plan on it.

1 THE COURT:

2 Yeah, that was my concern. I wanted him to be
3 available so I could hear from him on the issue of
4 damages. So you can have a seat, Mr. Moats. Mr.
5 Logan, if you have some testimony you'd like to present
6 on the issue of damages.

7 MR. LOGAN:

8 Yes, Your Honor. I'd like for my clients to come on
9 over and just have a seat right there. You have in the
10 record the -- it was an exhibit to several of the
11 motions that were filed, the earlier affidavit of Mr.
12 Joshua Pruiett-Lange, who was the accountant that we've
13 retained in this case. He signed an affidavit that is
14 part of the record that was filed April the 1st of 2021
15 in this case in which, pursuant to his testimony, he
16 testified that the amount owed was \$216,047.42 as of
17 April 1, 2021. I will -- I have him here to verify
18 that, as well as he has updated that affidavit or
19 updated his calculations. And I will pass that up to
20 the Court and ask him to come to the witness stand.

21 (COURT REPORTER MARKS DEFENDANT'S EXHIBIT NUMBER 1,

22 ACCOUNTING, RETAINED BY THE COURT)

23 (COURT REPORTER MARKS DEFENDANT'S EXHIBIT NUMBER 2, AFFIDAVIT
24 OF JOSHUA PRUIETT-LANGE, RETAINED BY THE COURT)

25 JOSHUA PRUIETT-LANGE, first being duly sworn, was examined

1 and testified as follows:

2 CLERK OF COURT:

3 If you would take the stand and state your name and
4 spell your last name for the reporter, please.

5 WITNESS:

6 My name is Joshua Pruiett-Lange, and my last name is
7 spelled P-R-U-I-E-T-T-hyphen-L-A-N-G-E.

8 DIRECT EXAMINATION BY MR. LOGAN:

9 Q. Good morning, sir.

10 A. Yes, sir.

11 Q. As I understand it, you are a registered tax preparer
12 with the Internal Revenue Service; is that correct?

13 A. Yes, sir.

14 Q. Okay. And you've been a bookkeeper since 2016 and were
15 employed by Electric City Tax and Bookkeeping, formerly
16 Shiflette Bookkeeping and Tax; is that correct?

17 A. Yes, sir.

18 Q. Okay. And basically you took over the business of
19 Shiflette Bookkeeping and Tax, which for many years had
20 done the accounting and bookkeeping records for Mr.
21 Cecil Dyar; is that correct?

22 A. Yes, sir.

23 Q. All right. You said you've worked for Cecil Dyar for
24 many years and you have reviewed payments made by Moats
25 Construction, Incorporated to Cecil Dyar for the

1 property that is the subject of this lawsuit; is that
2 correct?

3 A. For clarification, the payments that were reviewed by
4 me were provided to me by your office.

5 Q. Yes, sir.

6 A. And -- but yes, those have been reviewed and --

7 Q. And you've reviewed the terms of the Agreement for Sale
8 and Purchase?

9 A. Yes, sir.

10 Q. And how those payments were to be allocated; is that
11 correct?

12 A. Yes, sir.

13 Q. All right. And based upon that analysis, what was the
14 amount that, as of April the 1st of 2021, was due under
15 the terms and provisions of that agreement?

16 A. Based on the payments that had been provided to me at
17 the time, it was \$218,000, I believe.

18 Q. Well, you have a -- I'm sorry, they have --

19 A. Well, this is -- this has since been updated.

20 Q. I believe that's identified as Exhibit 2; is that
21 correct?

22 A. Yes, this is the original. So as of April 1st, 2021,
23 it was \$216,047.42.

24 Q. All right, sir. Then at my request, you have updated
25 the payments due to February the 1st of this year; is

1 that correct?

2 A. Yes, sir.

3 Q. Okay. Did you use the same process and procedure that
4 you did to calculate the amount due under the Exhibit 2
5 that you've been testifying about?

6 A. Yes, sir.

7 Q. Okay. And Exhibit 1, I think, is your updated
8 calculations; is that correct?

9 A. Yes, sir.

10 Q. All right. And what is the amount you have determined
11 that, as of February 1, 2022, is due under the terms of
12 the agreement?

13 A. \$222,415.95.

14 MR. LOGAN:

15 All right. Thank you, sir. Answer any questions that
16 the other side may have.

17 THE COURT:

18 Mr. Hawkins, any questions for this witness?

19 MR. HAWKINS:

20 No, Your Honor.

21 THE COURT:

22 All right. You said you admit these Exhibits 1 and 2?

23 MR. LOGAN:

24 Yes, I -- both of those are admitted as Exhibits 1 and
25 2.

1 THE COURT:

2 They were at the hearing -- they were at the summary
3 judgment hearing, but you're saying -- for this
4 hearing, you're saying you're going to admit those?

5 MR. LOGAN:

6 Yes, sir. For this hearing -- the summary judgment --
7 I mean, the earlier hearing was in '21.

8 THE COURT:

9 Yes, sir.

10 MR. LOGAN:

11 And you saw that in the Order.

12 THE COURT:

13 Yes, sir.

14 MR. LOGAN:

15 And then the other exhibit is the updated version that
16 carries it forward to the present.

17 THE COURT:

18 Okay. Mr. Hawkins?

19 MR. HAWKINS:

20 No objection.

21 THE COURT:

22 Okay. So that'd be without objection. Okay. Thank
23 you, sir. You can step down.

24 MR. LOGAN:

25 Per the terms of the Agreement for Sale and Purchase,

1 there is due a -- the amount of 15 percent of the
2 amount found to be due as attorney's fees. And I have
3 some pictures of the property that I would like to be
4 admitted. I don't have extra copies, but these were
5 taken within the last two weeks from the road. Didn't
6 get on the property at all. They can look at them and
7 I'm going to pass them up to you for the Court to add
8 as an exhibit.

9 THE COURT:

10 But are they stipulated to, Mr. Hawkins?

11 MR. HAWKINS:

12 No, Your Honor. I haven't seen the photos.

13 THE COURT:

14 Okay. Well, you would need to produce some testimony
15 in that case.

16 MR. LOGAN:

17 I don't have any testimony. I'm just introducing
18 another exhibit. All it is is copies of what this
19 property looks like.

20 THE COURT:

21 Okay, but you need to produce testimony that can
22 identify these pictures and authenticate these
23 pictures. Whether Mr. Hawkins objects to --

24 MR. LOGAN:

25 That's fine. They're just pictures of what -- it's the

1 old Kent Steel mill out there on --

2 THE COURT:

3 Just go ahead and you can mark them -- if you want to
4 mark them as a group and then just number them on the
5 back.

6 MR. LOGAN:

7 I mean, I don't see why they can't look at them and say
8 --

9 THE COURT:

10 We're having an evidentiary hearing and somebody's
11 going to have to -- if they object, somebody's going to
12 have to authenticate them.

13 MR. HAWKINS:

14 For the record, we object.

15 THE COURT:

16 So noted.

17 MR. LOGAN:

18 Since this was a damage hearing and not dealing with
19 any other issues besides the damages that are owed
20 under the agreement, that's my case.

21 THE COURT:

22 Okay. Mr. Hawkins, do you have anything you'd like to
23 present?

24 MR. HAWKINS:

25 The plaintiff calls Russell Moats, Your Honor.

1 THE COURT:

2 All right. Mr. Moats, if you could come around to the
3 witness chair, please, sir.

4 RUSSELL MOATS, first being duly sworn, was examined and
5 testified as follows:

6 CLERK OF COURT:

7 If you'd take the witness stand, please, sir. And
8 state your name and spell your last name for the
9 reporter, please.

10 WITNESS:

11 It's Russell Moats. R-U-S-S-E-L-L, M-O-A-T-S.

12 DIRECT EXAMINATION BY MR. HAWKINS:

13 Q. Mr. Moats, what is your position with Moats
14 Construction, Inc.?

15 A. Owner and president.

16 Q. Okay. And as owner and president of Moats
17 Construction, Inc., are you familiar with this
18 particular document and the accounting that's
19 surrounding this particular document?

20 A. Can you repeat the question? I can barely hear you.

21 Q. As president of Moats Construction, Inc., are you
22 familiar with the debt underlying the bond for title
23 which is the subject of this action and the accounting
24 regarding that particular document?

25 A. Yes, I'm familiar.

1 Q. Okay. And you heard Mr. Dyar's witness testimony
2 regarding that accounting. Is there any -- are there
3 any discrepancies or anything incorrect with that
4 particular testimony and that accounting? And if you
5 believe that there is, can you please explain that to
6 the Court?

7 A. Yes, sir, there's very large discrepancy.

8 Q. Can you explain that to the Court and quantify that?

9 A. I'll try to to the best of my knowledge from what I
10 understand. So this note ran from early 2011 -- I
11 believe it was February or March 2011 until six months
12 later where it matured, and I believe it was a bond for
13 title. And early on in the agreement, we had issues
14 with the Dyars, or Mr. Dyar, concerning our agreements
15 with the property and some issues with the property,
16 liens with the City of Anderson, and some equipment and
17 cleanup that was supposed to have been performed by Mr.
18 Dyar that was not performed --

19 MR. LOGAN:

20 Your Honor, I'm going to object to this. Now he's
21 getting into testimony dealing with liability as
22 opposed to what the amount is owed. This is a damages
23 hearing. This is not a question of whether or not he
24 doesn't owe anything.

25 THE COURT:

1 I'm going to overrule the objection. Go ahead, you can
2 answer the question.

3 WITNESS:

4 A. So Mr. Dyar's aware of all that. We paid and -- not as
5 -- not monthly, but we did make payments. And I made
6 representations to Mr. Dyar and his wife both that we
7 would pay every -- you know, all our -- in full to
8 them. I believe to date we've paid \$240,000 or close
9 to \$250,000 to them, but we had issues with the
10 property. And toward the end of maturity of that note,
11 we had additional issues with the railroad and access
12 to the property and had to retain an attorney, Smith
13 Moore Leatherwood in Greenville, to try to work those
14 issues out with the railroad. We also had -- of course
15 had the other issues with liens. We had two named
16 storms come through and ripped the roof off the
17 building and insurance would not -- well, they denied
18 the claims and Mr. Dyar did not pursue them for the
19 claims. So I had, at the end of the maturity of that
20 note, let Mr. Dyar know -- he used to come by the
21 property from time to time. And I let him know the
22 issues that we had and that I knew there was a balance
23 owed on the note and we were having to pay that but
24 that I was having to incur a number of different costs;
25 attorney's fees, surveyors, appraisers, and costs

1 trying to figure out exactly what had taken place and
2 happened. And throughout the course of all that, we
3 discovered that our name was not even on the title,
4 that the agreement had not been recorded with the ROW
5 office in Anderson. So that was just another issue
6 with the property. But at no point in time did I tell
7 Mr. Dyar that I wouldn't pay any balance that was owed
8 on the property, and I was fully prepared and willing
9 to do that. We just never knew exactly what that
10 amount was. And once we got the bookkeeping back from
11 the Shiflette Bookkeeping, we saw numerous errors, a
12 couple of payments that were just not even on there.
13 There was a cash payment that we made to Mrs. Dyar one
14 time for some type of -- something that she needed and
15 needed the money pretty quick and I paid her cash --
16 some cash, and that was not on there. So we had
17 numerous issues with the agreement and the payments and
18 how they were applied to the accounting, and it was
19 nowhere close to \$216,000. I mean, the most we thought
20 we may have owed Mr. Dyar was \$50,000. But like I
21 said, we had numerous other issues with the property
22 that we wanted to address. We thought that he might
23 work with us on whatever the balance was because we had
24 no idea what it was going to cost us to replace the
25 roof and deal with the railroad and the City of

1 Anderson.

2 DIRECT EXAMINATION RESUMED BY MR. HAWKINS:

3 Q. So the payments that you say were not accounted for,
4 can you be a little more specific about that and
5 quantify those particular payments that were
6 unreported?

7 A. So there was the original deposit made, and that was
8 the original deposit. And then every check that we
9 wrote to the Dyars after that came out of our
10 construction operating account, and so it was on the
11 ledger. And our totals for that did not match what he
12 had. He sent us -- I think it was a couple of months
13 after I spoke to Mr. Dyar -- it may have been two
14 months. I'm not sure exactly when it was. That was
15 2017. So a couple of months after that, I got a
16 written -- I believe he came by and gave me a written --
17 - it was just a handwritten kind of compilation of the
18 payments and things that were made, and I gave that to
19 William Smith from Smith Moore and Leatherwood and he
20 started drafting a letter to Mr. Dyar that I don't
21 believe Mr. Dyar ever got. I'm not sure. Per his
22 testimony in his deposition, he said he never received
23 it. And we went back and forth for a number of months
24 about the balance and what was owed because we needed a
25 clear title on the property in order to deal with this

1 issue with the City of Anderson and with the railroad.
2 So I was trying and making every effort I could to get
3 them paid so we could get a clear title to the
4 property.

5 Q. Can you specify the particular amounts that you say you
6 paid but was not accounted for by Mr. Dyar's
7 accountant?

8 A. Mr. Hawkins, can you repeat that? I can barely hear
9 you. I don't know if it's the glass or just --

10 Q. I'll speak -- can you hear me better now?

11 A. A little bit.

12 Q. Okay. Can you quantify the payments that you say you
13 paid that were not accounted for by Mr. Dyar's
14 accountant?

15 A. Yes, sir, we did. And I believe we did that in a
16 letter to Mr. Dyar, and Mr. Smith did that. I believe
17 it's been done several times now.

18 Q. Can you quantify it to the Court right now?

19 A. I believe it was -- I believe that it was about \$10,000
20 or thereabouts, or \$11,000. I believe it was two
21 payments and a cash payment, I believe is what it was.

22 Q. So \$10,000 or \$11,000?

23 A. Yes, sir. The note matured at like 270 and some odd
24 dollars with interest and everything -- taxes,
25 insurance, and interest, and we had paid \$240,000,

1 thereabouts. And so we felt like that there was, at
2 the very most, owed to Mr. Dyar \$50,000.

3 Q. So the amounts that you were speaking of earlier with
4 respect to the roof and some work you did for some
5 things left around the property that you cleaned up
6 that Mr. Dyar was supposed to clean up, those are all
7 part of your claims - in your case in chief, what we
8 would call your legal claims - and you felt like you
9 were entitled to a setoff for those items; is that
10 correct?

11 A. Yes, sir.

12 Q. And you wanted that to be worked out in the balance
13 owed?

14 A. We were trying to work out that with the balance owed
15 instead of going through this whole process, you know,
16 that we're doing right now. We were trying to work
17 that out and just be done and go our separate ways.
18 And I thought that that's what we were going to be able
19 to do, but -- and if I can add to that. At the end of
20 that 60 month term, I was willing to pay whatever the
21 balance was, and the Dyars came to me and wanted to
22 extend that agreement another five years. They were
23 willing to do that, but I did not want to do that
24 because I had no control over the property. I could
25 not deal with the City of Anderson, I could not deal

1 with the railroad, couldn't do anything. It's almost
2 like we didn't even own it. I mean, the agreement we
3 had hadn't even been recorded with Anderson County.
4 And I was wanting to pay them a lump sum and be done,
5 and I never signed any extension. I never agreed to
6 pay any extra interest or penalties or late fees, all
7 of which they're claiming in their \$216,000 number that
8 they're giving.

9 Q. Is there anything else you believe that you need to
10 share with the Court regarding the inaccuracy of the
11 accounting that Mr. Dyar's accountant testified about?

12 A. I don't believe so except I just have seen this new
13 accounting that came out. I've never -- I've heard the
14 \$216,000 number from different motions and things that
15 Mr. Jolly filed, but I never actually seen the
16 accounting at all. I've never seen any kind of ledger
17 or anything until just now this morning. So I'm really
18 not even sure how we got here. I mean, I was -- I know
19 this is a damages hearing, but I was under the
20 impression we were having a motion hearing to amend or
21 alter the motion for summary judgment ruling.

22 Q. Those are legal claims and procedural issues that have
23 been covered by the Court. I have no further questions
24 unless you think you need something -- there's
25 something you need to share with the Court about the

1 accounting.

2 A. Nothing else that I can think of right off my head, no.

3 MR. HAWKINS:

4 Please answer any questions Mr. Logan may have.

5 MR. COURT:

6 Mr. Logan, go ahead.

7 CROSS EXAMINATION BY MR. LOGAN:

8 Q. This is already a part of the court file as Exhibit 2
9 to your affidavit, but it's labeled Agreement for Sale
10 and Purchase of Real Property. Do you recognize that
11 document?

12 A. I do.

13 Q. Did you sign that document?

14 A. I believe I did.

15 Q. All right, thank you.

16 A. No, sir, I didn't sign this document. I'm sorry.

17 MR. LOGAN:

18 I would offer that as --

19 THE COURT:

20 Hold on, I think he just amended his answer.

21 WITNESS:

22 A. I signed -- I signed part of this document. I didn't
23 sign the -- I didn't sign the last page.

24 CROSS EXAMINATION RESUMED BY MR. LOGAN:

25 Q. You signed or did you agree to the last page where the

1 --

2 A. No, sir, I signed the original Agreement for Sale and
3 Purchase, which is pages 1 through 4.

4 Q. Did you --

5 A. The last part of it, the addendum, I didn't sign the
6 addendum. No, sir.

7 Q. Did you agree to the extension?

8 A. No, sir, I did not.

9 Q. But you continued to remain on the property; is that
10 right? Past that date, you continued to use that
11 property for your own purposes and you're telling us
12 now that you didn't agree to the extension; is that
13 what you're telling me?

14 A. That's exactly right.

15 Q. Okay. Why didn't you just leave if you wouldn't agree
16 to the extension?

17 A. Well, because I had several hundred thousand dollars in
18 equity in the property.

19 Q. All right. Let's mark that as Exhibit 3.

20 (COURT REPORTER MARKS DEFENDANT'S EXHIBIT NUMBER 3, AGREEMENT
21 FOR SALE AND PURCHASE OF REAL ESTATE, RETAINED BY THE COURT)

22 CROSS EXAMINATION RESUMED BY MR. LOGAN:

23 Q. Okay. This agreement deals with the fact that you paid
24 \$37,500 upon the signing of this document, correct?

25 A. I'm not sure. If you'll give me the document back,

1 I'll look at it. But I did pay \$37,500 --

2 MR. HAWKINS:

3 Your Honor, all of the document hasn't been offered
4 into evidence yet.

5 MR. LOGAN:

6 I just did as Exhibit 3. It's part of the record.

7 MR. HAWKINS:

8 Mr. Logan says he offered it into evidence. We would -
9 - we have no objection other than the fact that my
10 client says he didn't sign the last page. So to the
11 extent that there's testimony about it, he says he
12 didn't sign it.

13 THE COURT:

14 The Court's understanding of his testimony is that he
15 signed the original document but did not agree to the
16 extension, which is different.

17 MR. HAWKINS:

18 I actually -- I don't know what's on there, Your Honor,
19 because I haven't seen it prior to going in.

20 THE COURT:

21 Okay.

22 MR. HAWKINS:

23 Okay. I see -- his testimony is he didn't sign it. He
24 didn't sign the last page.

25 THE COURT:

1 I couldn't understand you, Mr. Hawkins.

2 MR. HAWKINS:

3 He didn't sign the last page, which is the --

4 THE COURT:

5 That was his testimony, that he didn't agree with that.

6 MR. HAWKINS:

7 Yes, sir.

8 CROSS EXAMINATION RESUMED BY MR. LOGAN:

9 Q. Okay, do you have it in front of you now?

10 A. Yes, sir.

11 Q. Purchase price \$250,000; is that correct?

12 A. Yes, sir.

13 Q. And the payment is \$37,500, down payment, correct?

14 A. Correct.

15 Q. Balance would be paid of \$212,500, interest at 6
16 percent, 60 consecutive payments of \$4,108.22 beginning
17 May 1, and conveyance of title. Look at number 4. It
18 says, "Upon payment of the purchase price, the seller
19 shall convey to purchaser title to the premises by
20 general warranty deed." Is there anything about that
21 paragraph that you do not understand and did not
22 understand at the time you signed the agreement?

23 A. I don't believe so, sir. And I've looked at that
24 paragraph many times and the only thing is, I was under
25 the impression that this was going to be recorded with

1 the ROD office. I was under the impression that the
2 property was actually going to be placed in our name so
3 we would have some kind of control over the property to
4 be able to alter it, improve it, or whatever we needed
5 to do.

6 Q. So your contention is the fact that this document
7 wasn't recorded makes it otherwise invalid or illegal;
8 is that what you're telling me?

9 A. No, sir, I'm not saying it makes it invalid or illegal
10 because it's not illegal because I signed it.

11 Q. You did sign it.

12 A. But it wasn't recorded and attached to the deed, or it
13 wasn't attached -- even this probate -- it wasn't
14 recorded in the probate --

15 Q. I'm not going to argue with you, but it says the seller
16 shall convey to purchaser title to the premises by
17 general warranty deed upon payment. And you had not
18 paid for this property at the time this agreement was
19 entered into, had you?

20 A. Not at the time it was agreed -- no, I hadn't paid for
21 it.

22 Q. Okay. And it has the provisions in here that the Court
23 is aware of and has already reviewed, but it carries
24 with it liability for attorney's fees on paragraph 13,
25 it carries liability for late payment penalty, it

1 carries with it a risk of loss paragraph that says,
2 "Risk of loss by damage to or destruction of the
3 premises shall be upon the purchaser during the term of
4 this agreement," it carries with it the other
5 provisions including the responsibility of ad valorem
6 taxes and special assessments and what happens in case
7 of default. And that is your signature on behalf of
8 Moats on page 3 of 4; is that correct?

9 A. Three of four, yes.

10 Q. Okay. And then the addendum that Mr. Dyar signed and
11 you said -- did you ever see the addendum?

12 A. I never saw any -- I never saw any addendum.

13 Q. You never saw the addendum --

14 A. I may have -- it seems like I remember an original
15 addendum to this contract, but it was not the one that
16 you've attached after the probate sheet. There was an
17 actual addendum that I signed that carried the original
18 agreement to 2016, I believe. But this --

19 Q. It says, "In this addendum that Mr. Moats signed --"

20 THE COURT:

21 Let him finish his answer.

22 WITNESS:

23 A. But the one that's attached is something else that they
24 -- that you guys have produced since then that I have
25 not ever --

1 CROSS EXAMINATION RESUMED BY MR. LOGAN:

2 Q. Well, do you have a copy of the addendum that you said
3 you did sign? Or did not sign, but saw?

4 A. I'm not sure. I'm sure we do. I'm sure we've produced
5 it.

6 Q. Well, I'd like for you to produce it for the Court,
7 please.

8 A. You'll have to talk to my attorney. I'm sure he --

9 Q. You don't have --

10 A. If it's in the discovery, I'm sure he can.

11 Q. So you don't have it available right now?

12 A. I'm not sure if it is or not, sir. It's whatever's in
13 his file.

14 Q. All right. Well, let me --

15 A. I'm sure we have it in our file.

16 Q. -- ask you this. Let's read the addendum that's
17 attached. Read the language there. It says, "All
18 other terms and conditions --" excuse me, "This
19 agreement shall be extended until March 16th, 2021."
20 Was that on the one that you saw before or that you say
21 you have possibly?

22 A. Where are you reading that? On the last page?

23 Q. Yes, sir, the last page. It's labeled Addendum.
24 Amendment to Addendum.

25 A. I see that. Where are you reading that? You're

1 reading the bold print?

2 Q. All right, it's one page. It says -- the paragraph
3 that I'm reading from starts, "The undersigned parties
4 hereby agree as follows." Do you see that?

5 A. Yes, sir.

6 Q. Okay. Next, it says, "This agreement shall be extended
7 until March 16th, 2021." Was that part of the addendum
8 that you recall seeing and that you say you may have in
9 your file?

10 A. No, sir.

11 Q. So you never got a written document that extended the
12 agreement until March 16th, 2021; is that what you're
13 saying?

14 A. That's exactly what I'm saying.

15 Q. Again, why did you remain there, then? Why did you not
16 insist that the contract be extended so that you would
17 have use of that property?

18 A. Because I have almost a half a million dollars in that
19 piece of property.

20 Q. Without that addendum, this contract expired --

21 A. That's why --

22 Q. Let me finish my question.

23 A. To answer your question --

24 Q. Without that addendum, this contract expired --

25 MR. HAWKINS:

1 Objection, Your Honor. There's not a question.

2 THE COURT:

3 Finish your question and let him answer.

4 MR. LOGAN:

5 Thank you, sir.

6 CROSS EXAMINATION RESUMED BY MR. LOGAN:

7 Q. Without that extension -- on the first page of this
8 agreement, it says, "The principal balance due together
9 with accrued interest to be paid in full on or before
10 March 31, 2016." And that's a part of the document
11 that you did sign, correct?

12 A. I believe so, yes, sir.

13 MR. HAWKINS:

14 Objection. He's already testified -- it's asked and
15 answered. He testified that he didn't sign it, he
16 didn't agree to it, and he's answered the question,
17 Your Honor.

18 THE COURT:

19 All right, let's move on.

20 MR. LOGAN:

21 Your Honor, I'm asking him -- what I read was part of
22 the agreement that he did sign, that without an
23 extension, it's to be paid on March 31, 2016.

24 THE COURT:

25 You've asked him that question and he answered that

1 question.

2 CROSS EXAMINATION RESUMED BY MR. LOGAN:

3 Q. Look at paragraph 3(B) on the document that you did
4 sign. Did I read that correctly?

5 A. 3(D)? I see A, B, and C.

6 Q. A, B, and C.

7 A. Oh, you're saying B. Okay. Yes, sir. What was the
8 question?

9 Q. Okay. Does not the last part of that paragraph say,
10 "Continuing on the same day of each month thereafter
11 through April 1, 2016 with the principal balance due
12 together with accrued interest to be paid in full on or
13 before March 31, 2016"? Is that correct?

14 A. Is that correct what it says?

15 Q. Yes, sir.

16 A. That's what it says, yes, sir.

17 Q. Okay. So would you agree that without an addendum or
18 an extension that you either agree to with the Dyars --
19 or that you agree to with the Dyars, you were obligated
20 to pay the balance under this contract on March 31,
21 2016?

22 A. That's correct, yes.

23 Q. And you did not make that payment, did you?

24 A. We did. We did.

25 Q. You paid the balance under this contract on that date?

1 A. The balance is not paid in full because we had numerous
2 issues with the property, and I've already stated that.
3 We paid all the payments as agreed for the first four
4 or five months of the agreement and then we got a
5 notice of the lien being placed on the property by the
6 City of Anderson. At that point in time, it was our
7 understanding per this agreement that the seller was
8 responsible for any taxes related to the property.
9 Those had not been paid by the Dyars. So as far as we
10 were concerned, the agreement had been breached. So we
11 had numerous discussions with Mr. Dyar about that. And
12 we had had other issues with the property like some
13 barge equipment being left on the property to clean up
14 around the property that we thought that he was going
15 to perform that had not been performed. We had a
16 mutual agreement, a mutual relationship and
17 understanding. I thought we had a good relationship
18 for five years, and so we just -- we were working it
19 out. For five years, we made payments to them. They
20 were fine with how we made the payments. For five
21 years, there was no issue. At the end of the five
22 years, he came to me and I believe I had called him
23 maybe a couple of times and told him that I had some
24 issues with the railroad. He came by and I asked him
25 if he could just be patient with us and we'll figure

1 out what the balance is and I'll pay them in full. And
2 at that point in time, I had retained an attorney to
3 figure out exactly what was going on with the property.
4 He informed me that the title was not clear, there were
5 numerous issues with the title, with the agreement, and
6 that we needed to get all of that straightened out
7 before we could even think about dealing with the
8 railroad or the City of Anderson. At no point in time
9 did I ever tell them that I would not pay them any
10 balance that was owed on the property.

11 Q. So you and Mr. Dyar entered into some sort of agreement
12 that extended the term; is that right?

13 A. No, sir. I've answered that numerous times. I never
14 agreed to extend any agreement beyond 60 months.
15 Never.

16 Q. And the attorney that you hired --

17 MR. LOGAN:

18 And this also is Exhibit 8 to the previous hearing,
19 Your Honor. So we have it in the file.

20 CROSS EXAMINATION RESUMED BY MR. LOGAN:

21 Q. It's a letter from an attorney by the name of William
22 Swent; is that correct?

23 A. That's correct.

24 Q. Okay, all right. And this Exhibit 8 from the summary
25 judgment hearing, is that your attorney at that time?

1 A. Yes, sir.

2 Q. And that's dated 2018 and not 2016; is that correct?

3 A. That's correct.

4 Q. Okay. Now, did he have an amount on that letter that
5 he referred to as being owed under the contract at that
6 time?

7 A. It looks like \$83,338.98.

8 Q. Okay. So the attorney you hired came up with that
9 number as of 2018; is that right?

10 A. That's correct.

11 Q. Okay. Being your attorney, did you then pay the Dyars
12 \$83,000 or offer to pay them \$83,000?

13 A. No. We do not offer, no. And I want to clear this
14 document up. This is a draft. This is a draft.

15 Q. A draft.

16 A. And all that Mr. Swent was to do was to abstract the
17 title and figure out what was going on with the title
18 and then they were performing calculations. One thing
19 that he did do that's added to that \$83,000 is the same
20 thing that the Shiflette Bookkeeping firm also did was
21 added the interest per the contract. I think he also
22 added some penalties in there, and all that's into that
23 \$83,000.

24 Q. So you didn't authorize -- are you saying to the Court
25 you didn't authorize the attorney to estimate or to

1 determine the amount that you owed under the contract?

2 A. Under the contract, yes. We were trying to get to a
3 balance, what was owed. And I believe he actually --
4 he did that up until that date, but we had went back --
5 had gone back and forth with him about giving me an
6 exact number of what we owed Mr. Dyar, or the Dyars, on
7 the date that the note matured, which was in 2016.
8 What we owed them then at that date.

9 Q. So the attorney you hired to make that determination,
10 you didn't agree with. And therefore, you didn't pay
11 them the amount that he said you owed; is that right?

12 A. Well, he wasn't saying that this is what I owed. We
13 never -- this was never filed, I mean, with the Court.
14 I mean, it was a draft and it was the only thing I got
15 from him.

16 Q. Now, you also say that you have paid everything that
17 you owe under the contract. Did you, through your
18 attorney, hire an accounting firm for them to come up
19 with an opinion of what was owed by the name of Michael
20 E. Meilinger?

21 A. No, Mr. Hawkins hired the Meilingers. Mike Meilinger.

22 Q. Mr. Hawkins, your attorney, hired --

23 A. Mr. Hawkins hired the Meilingers, or Mike Meilinger,
24 and this is the source of our disagreement with how all
25 that transpired, yes.

1 Q. So he hired -- Mr. Hawkins, your attorney, hired an
2 accountant by the name of Michael Meilinger to
3 determine how much you owed under the agreement; is
4 that correct?

5 A. He had wanted to hire them to have them come and
6 testify today at this hearing, yes, sir.

7 Q. And he did hire them; is that right?

8 A. Evidently, he did.

9 Q. Have you paid for that accountant?

10 A. No, I didn't.

11 Q. And why not?

12 A. Because they would never give me any kind of -- he
13 tried to send me a bill for like \$5,000. I didn't even
14 know what it was for. And I told him just to take the
15 canceled checks that we had -- it's pretty simple.
16 Take our ledger, take the canceled checks, our copies
17 of our bank statements, make copies of them, and there
18 was a \$3,000 cash payment on top of that. I mean, it's
19 pretty simple, and that's what was paid. The checks --
20 the canceled checks speak for themselves.

21 Q. Did you ever see his report?

22 A. I saw -- I saw -- they were emailing back and forth.
23 Yes, sir, I saw the report.

24 Q. All right. And --

25 A. I saw -- I saw a preliminary report, I believe. And I

1 had issues with that, too. And there are emails that I
2 sent back and forth to them regarding the exact same
3 thing I just mentioned; the additional interest,
4 penalties, and -- the additional interest and penalties
5 beyond the 60 month term.

6 Q. So every accountant that has been either hired by you
7 or hired on your behalf who has come up with an amount
8 that they claim you owe under the contract, you have
9 disagreed with, right?

10 A. I haven't hired any accountant, sir.

11 Q. You haven't hired -- well, you hired a lawyer that came
12 up with a number that you didn't agree with?

13 A. I did. I did hire him.

14 MR. HAWKINS:

15 Your Honor --

16 CROSS EXAMINATION RESUMED BY MR. LOGAN:

17 Q. You hired Mr. Meilinger, who is an accountant. Or your
18 lawyer hired an accountant.

19 THE COURT:

20 Hold on, let me hear the objection.

21 MR. HAWKINS:

22 I object to any testimony about the document. The
23 document's hearsay. I don't exactly know what he's
24 going to say, Your Honor, but right now the document's
25 hearsay. I don't think it's properly introducable to

1 question my client about it.

2 MR. LOGAN:

3 Your Honor, he's testified under oath that he doesn't
4 owe a dime under the contract. And I've got a lawyer
5 and an accountant that was hired by his attorney that
6 determined otherwise, and I think I'm entitled to cross
7 examine him about that.

8 THE COURT:

9 Well, you've asked him if he disagreed with the amount
10 of the CPA. So I think we've heard enough on that.
11 I'm going to sustain the objection. Let's move on to
12 something else.

13 MR. LOGAN:

14 Okay. Well, can I at least question him on what the
15 accountant came up with that he owes? That's a part --
16 that's a part of the exhibit that they furnished to me.
17 I'll be glad to read it to the Court and let the Court
18 read it.

19 THE COURT:

20 Mr. Hawkins?

21 MR. HAWKINS:

22 At this point, it's hearsay. He disagrees with what
23 the accountant said, the accountant's not here, it's
24 hearsay.

25 THE COURT:

1 Did you furnish that to the defendant in discovery?

2 MR. HAWKINS:

3 Yes, Your Honor.

4 THE COURT:

5 Okay. Was that in response to a question of how much
6 your client believes he owed?

7 MR. HAWKINS:

8 Well, I don't know that it was necessarily produced as
9 a supplement. We produced it because we were going to
10 be here for the accountant to testify. So I produced
11 that to Mr. Logan in anticipation of this hearing.

12 THE COURT:

13 All right, this is what I'll do. I'll allow you to ask
14 him a number. Don't get into the details because the
15 accountant's not here to explain the --

16 MR. LOGAN:

17 That's fine.

18 THE COURT:

19 -- procedure he used to come up with the number, and
20 it's noted that he does not agree with the number. But
21 you can ask him again.

22 MR. LOGAN:

23 The only reason I'm asking him is because of his
24 testimony.

25 THE COURT:

1 Yes, sir.

2 CROSS EXAMINATION RESUMED BY MR. LOGAN:

3 Q. And Mr. Meilinger came up with two numbers depending
4 upon whether you charge a prevailing interest through
5 the date of this appraisal or whether you don't. One
6 of them was \$167,617. Did you pay that to Mr. Dyar?

7 A. I paid \$167,000. I paid more than \$167,000.

8 Q. So you're testifying under oath that, since you
9 received this appraisal, you have paid my client
10 \$167,000?

11 A. No, sir, that's not the question you asked me.

12 Q. Yes, it is. Once you received this appraisal with that
13 amount on it, did you pay the Dyars that amount?

14 A. No, sir.

15 Q. Okay. Did you pay them \$145,581?

16 A. Yes, sir, I did.

17 Q. Did you pay it after you received this calculation of
18 what Mr. Meilinger said -- alternate calculation that
19 you owed the Dyars?

20 A. Well, for one, that's not Mr. Meilinger. That's a
21 gentleman by the name of Travis Lively that did that.
22 And no, I did not pay \$145,000 to them, and I disagreed
23 with the amount. We've got it in emails back and
24 forth. I had told Mr. Hawkins that he never should
25 have sent it to you guys for discovery because I hadn't

1 even had a chance to look at it. And I told them to
2 come up with an amount at the end of the 60 month term
3 that they could come up with that we owed, and I was
4 willing to pay the Dyars that. I even made a offer to
5 pay them -- I made them a offer since then to pay them
6 an amount of money, two different amounts of money. I
7 never heard a word back about either one of them.

8 Q. Do you have any documentation that establishes that?

9 A. I have emails, yes, sir.

10 Q. Okay. Where are they?

11 A. They're on my phone in my truck.

12 Q. You don't have them in court today?

13 A. I can't bring my phone in court.

14 Q. You didn't try to print them off your phone so you
15 could --

16 A. I've got some documents on that desk over there. I can
17 look through them. There may be something to that
18 effect over there, yes, sir.

19 Q. Do you have any documentation concerning your
20 discussions with the Dyars about these other issues
21 that you said needed to be worked out before you could
22 pay them?

23 A. No, sir. Mr. Dyar never -- we never traded emails. I
24 didn't even know what his email account was. He talked
25 on the telephone, he would come by. That's the kind of

1 relationship that we had.

2 Q. So all these adjustments that you've testified to, or
3 supposed adjustments or amendments or whatever, that's
4 just based on your own personal verbal testimony; is
5 that correct?

6 A. Yes, sir. I mean, I also had witnesses -- a number of
7 witnesses. Employees, former employees, that we have
8 not been able to depose that would testify, sign
9 affidavits. We have not had the opportunity to do any
10 of that.

11 Q. Where are these witnesses today, sir? Do you have
12 them?

13 A. I mean, we had a motion for summary judgment hearing
14 that I didn't even know anything about. I had asked my
15 attorney to give me notice when we were going to have
16 it. It was virtual. I didn't even -- I wasn't even
17 afforded the opportunity to come and testify to defend
18 myself or my company and a decision was rendered by the
19 Court.

20 THE COURT:

21 Anything further, Mr. Logan?

22 MR. LOGAN:

23 No, sir, I think I've had enough.

24 THE COURT:

25 All right. Mr. Hawkins, any redirect?

1 REDIRECT EXAMINATION BY MR. HAWKINS:

2 Q. Mr. Moats, if you would look through Exhibit 2, which
3 is the affidavit of -- it's the affidavit of Mr. Dyars'
4 accountant. Will you look through that affidavit and
5 testify about the sporadic payments that you made in
6 both the amount called for under the contract, other
7 much larger amounts that you paid, and how the Dyars
8 received those payments?

9 A. Yes, sir. And I believe I've already testified about
10 these payments and why they were made the way they were
11 made. And I'm not even sure that what I'm looking at
12 is correct without our ledger that we had submitted in
13 discovery, but I'll testify to what I believe it is
14 maybe.

15 Q. Well, my point is that there are months that you did
16 make payments, right?

17 A. (Affirmative nod).

18 Q. And there are months -- can you answer the question in
19 the microphone?

20 A. Yes, sir.

21 Q. There's months you did make payments?

22 A. Correct. So for like the first -- and I'm going by
23 this document. The first six or seven months, we paid
24 exactly how the note read. And then we had issues like
25 I had mentioned earlier. We got -- there was a lien.

1 We got notice of a lien being filed by the City of
2 Anderson against the property, and Mr. Dyar still had
3 not cleaned up all the pallets and everything.

4 Q. Well, let's -- I don't want to interrupt you, but I
5 want to stick to this particular document. And what
6 I'm trying to get to is, there's times that you made
7 payments under that -- under your contract and they
8 were much greater than your minimum payment, right?

9 A. That's correct.

10 Q. And those amounts would be shown in Exhibit 2; is that
11 correct?

12 A. That's correct.

13 Q. Okay. And did you ever get any objection from the
14 Dyars about receiving payments in that manner?

15 A. No, sir.

16 Q. So were they agreeable to your payments in that manner?

17 A. Yes, sir, for five years.

18 Q. So is it safe to say that somehow you all altered your
19 payment method and amount?

20 A. Yes, sir.

21 MR. HAWKINS:

22 Nothing further.

23 THE COURT:

24 Okay.

25 MR. LOGAN:

1 Follow up, Your Honor?

2 THE COURT:

3 Limited to the scope of his redirect.

4 MR. LOGAN:

5 Yes, sir.

6 RE-CROSS EXAMINATION BY MR. LOGAN:

7 Q. Those payments that you made in larger amounts, they
8 stopped on May the 1st of 2018, according to the
9 accounting records; do they not?

10 A. Yes, sir. May the 1st, it looks like.

11 Q. I'm sorry, I didn't hear you.

12 A. It looks like May the 1st.

13 Q. Okay. And you haven't made any payments since the
14 pavement you made on May the 1st of 2018; is that
15 correct?

16 A. I don't -- I'm not sure. I don't think we have. It
17 seems like -- I don't think we have, but I can't be a
18 hundred percent sure without looking at our records. I
19 don't believe so. We tried to work from 2016 to 2018
20 to work everything out with the Dyars. I tried to make
21 a good-faith effort and continue to give them some
22 money on the property while we worked out all the
23 issues with it.

24 Q. So you wanted to give them money when you wanted to
25 give them money, not according to the contract?

1 A. I can't hear you.

2 Q. That's all right, don't worry about it. And those
3 payments -- that last payment on May the 1st, 2018 of
4 \$5,000, that was made -- those payments up to that
5 point were made after the contract was extended even
6 though you say you didn't extend the -- or didn't sign
7 the extension; is that right?

8 A. That's exactly right. I agreed -- I agreed that there
9 was a balance that was owed. I didn't know what the
10 offset was going to be with all the other issues that
11 we had. But like I said, I was just trying to make a
12 good-faith effort.

13 MR. LOGAN:

14 That's all I've got.

15 THE COURT:

16 All right, thank you, Mr. Moats. You can step down.

17 Mr. Hawkins, do you have anything further?

18 MR. HAWKINS:

19 Just the motion to be relieved, Your Honor.

20 THE COURT:

21 Well, let me ask Mr. Logan. Is there anything further
22 from the defendant?

23 MR. LOGAN:

24 No, sir.

25 THE COURT:

1 Okay, all right. This is what I'm going to do. I want
2 to take this under advisement and read these -- re-read
3 what's been submitted into evidence and I want to
4 review my notes. And Mr. Hawkins, I have heard your
5 motion and Mr. Moats has also testified to the
6 disagreements between the two of you. So I will grant
7 your motion to be relieved at this point. However, I
8 want you to remain on the case until such time as an
9 Order, however I decide, is submitted because I need an
10 attorney to be able to review the Order that -- either
11 prepare or review the Order at that point. Now, Mr.
12 Moats, if you are able -- if you wish to retain another
13 lawyer, you have a right to do that.

14 MR. MOATS:

15 I plan on doing that. I just have one thing to add, if
16 I can.

17 THE COURT:

18 Yes, sir.

19 MR. MOATS:

20 I've requested all the records and discovery documents
21 related to this case and Mr. Hawkins has refused to
22 produce them. So it's hard for me to go and retain
23 another attorney without having the file. So I just
24 need that.

25 THE COURT:

1 Mr. Hawkins, is there any problem making your client a
2 copy of his file?

3 MR. HAWKINS:

4 I'm still on the case, Your Honor. So obviously I need
5 that. I have no problem to provide those documents;
6 however, he would have to bear the cost of
7 reproduction.

8 THE COURT:

9 Well, that's something that you can give him the figure
10 on what you charge for copies. That's something the
11 two of you can work out. But certainly, any time you
12 get records and billing, that's an issue between the
13 attorney and the client. But I will -- and I do want
14 you to stay on the case until this Order, however I
15 decide, is executed, and then Mr. Moats can proceed
16 with subsequent counsel.

17 MR. HAWKINS:

18 And if you could give him a timeframe to obtain counsel
19 after the Order, Your Honor.

20 THE COURT:

21 They'll be a -- I'll put that in the Order. And Mr.
22 Moats, if you have subsequent counsel that you've
23 already talked to and -- I mean, they're in a
24 precarious position because they can't offer you legal
25 advice while you're represented by another attorney.

1 So let's -- I'm going to issue this Order and then
2 y'all can go from there. Okay, we'll close the record.
3 (WITH NOTHING FURTHER, THIS HEARING CONCLUDED AT 11:21 A.M.)
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CERTIFICATE OF REPORTER

I, Lisa M. Nowell, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing hearing was taken before me on the date and at the time and location stated on page 1 of this transcript.

That the witnesses were duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.



Lisa M. Nowell, CVR

Notary Public for S.C.

Commission Expires: 11/22/2023

IN THE COURT OF COMMON PLEAS
ANDERSON COUNTY, SOUTH CAROLINA

Cecil Dyar, Plaintiff vs.
Moats Construction, LLC, Defendant

C.A. No.: 2020-CP-04-01202
Amended Final Expert Report of:
Michael E Meilinger, CPA, ABV, CFE, CFF, MAFF, CMA and Travis Lively, CVA
Dated **September 21, 2021**

I. Expert Report of Travis Lively

My name is Travis Lively. I am an employee with Meilinger Consulting, P.C. I have been employed at Meilinger since January 2012 working primarily in family court matters in addition to business valuation, consulting, and other financial analysis. My curriculum vitae is included as Addendum 1.

II. Documents

In preparing this expert report, I have considered the following documents:

1. Agreement for Sale and Purchase of Real Property dated January 29, 2011 between Cecil Dyar and Moats Construction (Moats 1037 – 1040) ("Loan Agreement")
2. Affidavit of Joshua Pruiett-Lange
3. QuickBooks reports and copies of canceled checks supporting payments made by Moats Construction to McCoy Wright Realty and Cecil Dyar (Moats Payments 0001 – 0031)

III. Executive Summary

My analysis indicates the following:

1. I have calculated the total amount due from Moats Construction as of 8/31/2021 to be \$167,617, including all requisite late fees, assuming that the prevailing interest rate has accrued to date
2. I have calculated the total amount due from Moats Construction to be \$145,581, including all requisite late fees, under the assumption that the loan matured as of March 31, 2016, no further interest accrued, and all subsequent payments made from that date through the present were applied to the balance.
3. My analysis indicates that the calculation performed by Mr. Joshua Pruiett-Lange incorrectly capitalized late fees, thus accruing additional interest, and did not include all payments made from Moats to Mr. Dyar during the period which led to an overstatement of the balance due.
4. After adjusting for the stated issues with his calculation, I have calculated a similar balance due using the method employed by Mr. Pruiett-Lange.

IV. Assignment

I have been asked to prepare a report stating my calculation of the note balance due from Moats Construction to Cecil Dyar related to the Agreement for Sale and Purchase of Real Property dated January 29, 2011 between Cecil Dyar and Moats Construction (Moats 1037 – 1040) as of assumed loan maturity dates of August 31, 2021 and March 31, 2016. Additionally, I have also been asked to analyze and comment on the differences between my calculations and those of Mr. Joshua Pruiett-Lange submitted on behalf of Mr. Dyar.

V. Basis for Opinions

I have reviewed the aforementioned documents in Section II of this report. I have also been informed of relevant facts by Mr. Wendell Hawkins and Mr. Moats.

VI. Procedures

I reviewed the documents provided to me as mentioned in Section II and prepared various schedules and calculations using Microsoft Excel and TValue loan amortization software. Exhibits and tables have been exported and referred to as necessary throughout this report.

I have performed two separate calculations at the request of Mr. Moats and his counsel.

1. Calculation of the total balance due from Moats Construction to Mr. Dyar assuming that the loan and prevailing interest rates have survived through the present (8/31/2021).
2. Calculation of the total balance due from Moats Construction to Mr. Dyar assuming that the loan matured and all interest accrual stopped on March 31, 2016, and all payments since that date are applied to the balance as of March 31, 2016.

Throughout my calculations, I have made certain common assumptions. They are:

1. Interest is compounded monthly at the stated rate of 6% annual interest
2. Real estate taxes and insurance are capitalized and all payments, including intended escrow for taxes and insurance, are treated as such, through the original loan maturity of March 31, 2016. It is my understanding from conversations with Mr. Moats that he has paid all property taxes and insurance directly since that time.
3. Late fees are assumed to be incurred when payments occur after the 10th of each month (10 days after the due date as stated in the loan agreement)
4. Late fees accrue as long as payments are not current

Additionally, I have prepared an analysis of Mr. Pruiett-Lange's calculations illustrating the effects of errors or his perceived mistreatment of factors in his calculations.

VII. Findings

Calculation of Loan Balance assuming Maturity Date of 8/31/2021

1. Assuming the loan and prevailing interest has survived to the present (8/31/2021), I have calculated the balance due from Moats to be \$141,440 plus estimated applicable late fees of \$26,177 totaling \$167,617.
2. Please see Exhibit 1 attached detailing this calculation.

Calculation of Loan Balance assuming Maturity Date of 3/31/2016

3. As of March 31, 2016, the date at which the loan was originally intended to mature, I have calculated the balance due from Moats to be \$164,404 plus estimated applicable late fees of \$26,177 (through 8/31/2016) totaling \$190,581. Payments after the loan's maturity date of March 31, 2016 have totaled \$45,000, leading to a net balance due of \$145,581, including all estimated and applicable late fees, through August 2021.
4. Please see Exhibit 2 attached detailing this calculation

Analysis of Mr. Pruiett-Lange's Calculation

5. In his affidavit, Mr. Pruiett-Lange asserts that the balance due to Mr. Dyar as of April 2021 is \$216,047. In order to properly analyze Mr. Pruiett-Lange's calculations, I have recreated the spreadsheet provided with his affidavit and made adjustments for the following items and extrapolating his spreadsheet from April 2021 to August 2021:
6. **Capitalized Late Fees:**
Mr. Pruiett-Lange's calculation in which he arrives at a total balance due of \$216,047 assumes that late fees are capitalized to the loan balance and interest accrues from those additions. Section 12 of the Loan Agreement states that "a late charge...shall be added to the payment due. There is no reference to capitalization of any fee in the note balance. Therefore, it is my understanding that the late fee is a separate charge and should not be capitalized in the balance.
7. Adjusting Mr. Pruiett-Lange's calculation to eliminate capitalized late fees, the balance due on the note would be \$185,144 plus the \$27,079 in estimated applicable late fees totaling \$212,224, a difference of approximately \$9,086 after extrapolating his original calculation to August 2021.
8. **Missing Payments:**
Comparison of Mr. Pruiett-Lange's payment schedule to mine shows \$8,526 in payments made to Mr. Dyar from Moats for which Mr. Pruiett-Lange did not account in his calculation. After correcting for the timing and amounts of these payments, I have adjusted Mr. Pruiett-Lange's calculation leading to a balance of \$170,713 plus \$27,079 in estimated and applicable late fees totaling \$197,792 as of August 2021.

9. Improperly Capitalized Taxes and Insurance Following March 31, 2016:

Mr. Moats has stated to me that all property taxes and insurance was paid directly for years 2016 forward, and I have been asked to perform my calculations assuming that is correct. I have not been provided document confirming those payments as of the writing of this report.

As such, Mr. Pruiett-Lange's addition of such costs in the loan balance from 2016 forward overstated the balance and accrued additional interest. I have made a final adjustment to Mr. Pruiett-Lange's calculation for this error leading to a balance of \$139,281 plus \$27,079 in estimated and applicable late fees totaling \$166,360 as of August 2021.

10. Please see Exhibits 3, 4, 5, and 6 for details of these calculations.

Summary:

The table below illustrates the results from the five scenarios discussed above and detailed in the attached Exhibits.

Loan Balance as of:	8/31/2021	8/31/2021	8/31/2021	8/31/2021	8/31/2021	3/31/2016
	Lange Original	Lange - No Cap of Fees	Lange - Correct Pmts	Lange - Tax & Insurance Correction	Meilinger	Meilinger
Loan Balance	221,310	185,144	170,713	139,281	141,440	164,404
Plus Est. Late Fees through 8/31/2021	<i>capitalized</i>	27,079	27,079	27,079	26,177	26,177
Subtotal	221,310	212,224	197,792	166,360	167,617	190,581
Less Pmts After 3/31/2016	n/a	n/a	n/a	n/a	n/a	(45,000)
Total Owed as of 8/31/2021	221,310	212,224	197,792	166,360	167,617	145,581

VIII. Reservation of Right to Amend

In the event that additional documents and/or other discovered material is made available to me after the submission of this report, I respectfully reserve the right to amend this writing, as appropriate.

IX. Rebuttal Testimony

In addition to the substance of the foregoing discussion, my testimony may also include rebuttal testimony, as required.

X. Compensation:

Fees for our services are charged at standard hourly rates:

- \$375 for Principal
- \$275 for Other Accounting Staff
- \$100 for Admin staff

To date, I have charged \$3,000 for my services including an estimate for testimony.

XI. Prior Testimony

My prior testimony is detailed in my curriculum vitae which is attached to this report as Appendix 1.

Travis Lively, CVA

September 21, 2021

Exhibit 1:

Calculation of Amount Due Assuming Maturity Date of 8/31/2021

Compounding Period: Monthly

Nominal Annual Rate: 6.000%

Cash Flow Data - Loans and Payments

	Event	Date	Amount	Number	Period	End Date	Memo
1	Loan	03/31/2011	212,500.00	1			
2	Payment	05/05/2011	5,213.22	1			10451
3	Payment	06/06/2011	4,513.22	1			10477
4	Payment	07/07/2011	4,513.22	1			10491
5	Payment	08/08/2011	4,513.22	1			10512
6	Payment	09/08/2011	4,513.22	1			10525
7	Loan	10/01/2011	2,897.66	1			property tax 2011
8	Payment	10/03/2011	4,513.22	1			10534
9	Payment	11/09/2011	4,513.22	1			10542
10	Loan	12/01/2011	1,566.00	1			insurance 2013
11	Payment	01/10/2012	9,026.44	1			10549
12	Loan	10/01/2012	2,935.37	1			property tax 2012
13	Payment	10/01/2012	9,026.44	1			10636
14	Loan	12/01/2012	2,094.95	1			insurance 2012
15	Payment	04/01/2013	6,000.00	1			10683
16	Payment	06/10/2013	4,500.00	1			10701
17	Payment	08/28/2013	2,500.00	1			10737
18	Payment	09/30/2013	2,013.13	1			10742
19	Loan	10/01/2013	3,366.66	1			property tax 2013
20	Payment	11/25/2013	22,566.10	1			10783
21	Loan	12/01/2013	2,222.82	1			insurance 2013
22	Payment	04/11/2014	5,000.00	1			10819
23	Payment	07/03/2014	10,000.00	1			10870
24	Loan	10/01/2014	3,293.29	1			property tax 2014
25	Payment	11/14/2014	5,000.00	1			Cash OTC

	Event	Date	Amount	Number	Period	End Date	Memo
26	Loan	12/01/2014	2,265.22	1			insurance 2014
27	Payment	01/16/2015	5,000.00	1			11100
28	Payment	02/23/2015	5,000.00	1			10893
29	Payment	06/24/2015	10,000.00	1			11000
30	Loan	10/01/2015	3,329.58	1			property tax 2015
31	Loan	12/01/2015	2,265.34	1			insurance 2015
32	Payment	12/23/2015	20,000.00	1			11032
33	Payment	08/15/2016	15,000.00	1			11427
34	Loan	10/01/2016	0.00	1			property tax 2016 - paid by Moats
35	Loan	12/01/2016	0.00	1			insurance 2016 - paid by Moats
36	Payment	03/15/2017	10,000.00	1			11668
37	Loan	10/01/2017	0.00	1			property tax 2017 - paid by Moats
38	Loan	12/01/2017	0.00	1			insurance 2017 - paid by Moats
39	Payment	02/09/2018	5,000.00	1			11541
40	Payment	05/03/2018	10,000.00	1			11298
41	Payment	05/31/2018	5,000.00	1			11628
42	Loan	08/01/2018	0.00	1			property tax 2018 paid by Moats
43	Loan	10/01/2018	0.00	1			insurance 2018 paid by Moats
44	Loan	08/01/2019	0.00	1			property tax 2019 paid by Moats
45	Loan	10/01/2019	0.00	1			insurance 2019 paid by Moats
46	Loan	08/01/2020	0.00	1			property tax 2020 paid by Moats
47	Loan	10/01/2020	0.00	1			insurance 2020 paid by Moats
48	Payment	08/31/2021	141,440.16	1			

TValue Amortization Schedule - Normal, 365 Day Year

	Date	Loan	Payment	Interest	Principal	Balance	Memo
Loan	03/31/2011	212,500.00				212,500.00	
March Totals		212,500.00	0.00	0.00	0.00		
1	05/05/2011		5,213.22	1,238.03	3,975.19	208,524.81	10451
May Totals		0.00	5,213.22	1,238.03	3,975.19		
2	06/06/2011		4,513.22	1,077.07	3,436.15	205,088.66	10477

	Date	Loan	Payment	Interest	Principal	Balance	Memo
June Totals		0.00	4,513.22	1,077.07	3,436.15		
3	07/07/2011		4,513.22	1,059.33	3,453.89	201,634.77	10491
July Totals		0.00	4,513.22	1,059.33	3,453.89		
4	08/08/2011		4,513.22	1,041.49	3,471.73	198,163.04	10512
August Totals		0.00	4,513.22	1,041.49	3,471.73		
5	09/08/2011		4,513.22	990.82	3,522.40	194,640.64	10525
September Totals		0.00	4,513.22	990.82	3,522.40		
Loan	10/01/2011	2,897.66		735.90	-735.90	198,274.20	property tax 2011
6	10/03/2011		4,513.22	65.19	4,448.03	193,826.17	10534
October Totals		2,897.66	4,513.22	801.09	3,712.13		
7	11/09/2011		4,513.22	1,161.26	3,351.96	190,474.21	10542
November Totals		0.00	4,513.22	1,161.26	3,351.96		
Loan	12/01/2011	1,566.00		688.84	-688.84	192,729.05	insurance 2013
December Totals		1,566.00	0.00	688.84	-688.84		
2011 Totals		216,963.66	32,292.54	8,057.93	24,234.61		
8	01/10/2012		9,026.44	1,250.20	7,776.24	184,952.81	10549
January Totals		0.00	9,026.44	1,250.20	7,776.24		
Loan	10/01/2012	2,935.37		8,224.98	-8,224.98	196,113.16	property tax 2012
9	10/01/2012		9,026.44	0.00	9,026.44	187,086.72	10636
October Totals		2,935.37	9,026.44	8,224.98	801.46		
Loan	12/01/2012	2,094.95		1,875.54	-1,875.54	191,057.21	insurance 2012
December Totals		2,094.95	0.00	1,875.54	-1,875.54		
2012 Totals		5,030.32	18,052.88	11,350.72	6,702.16		
10	04/01/2013		6,000.00	3,849.90	2,150.10	188,907.11	10683

	Date	Loan	Payment	Interest	Principal	Balance	Memo
April Totals		0.00	6,000.00	3,849.90	2,150.10		
11	06/10/2013		4,500.00	2,176.07	2,323.93	186,583.18	10701
June Totals		0.00	4,500.00	2,176.07	2,323.93		
12	08/28/2013		2,500.00	2,428.11	71.89	186,511.29	10737
August Totals		0.00	2,500.00	2,428.11	71.89		
13	09/30/2013		2,013.13	1,024.99	988.14	185,523.15	10742
September Totals		0.00	2,013.13	1,024.99	988.14		
Loan	10/01/2013	3,366.66		30.50	-30.50	188,920.31	property tax 2013
October Totals		3,366.66	0.00	30.50	-30.50		
14	11/25/2013		22,566.10	1,693.66	20,872.44	168,047.87	10783
November Totals		0.00	22,566.10	1,693.66	20,872.44		
Loan	12/01/2013	2,222.82		165.75	-165.75	170,436.44	insurance 2013
December Totals		2,222.82	0.00	165.75	-165.75		
2013 Totals		5,589.48	37,579.23	11,368.98	26,210.25		
15	04/11/2014		5,000.00	3,720.19	1,279.81	169,156.63	10819
April Totals		0.00	5,000.00	3,720.19	1,279.81		
16	07/03/2014		10,000.00	2,313.67	7,686.33	161,470.30	10870
July Totals		0.00	10,000.00	2,313.67	7,686.33		
Loan	10/01/2014	3,293.29		2,396.21	-2,396.21	167,159.80	property tax 2014
October Totals		3,293.29	0.00	2,396.21	-2,396.21		
17	11/14/2014		5,000.00	1,194.80	3,805.20	163,354.60	Cash OTC
November Totals		0.00	5,000.00	1,194.80	3,805.20		
Loan	12/01/2014	2,265.22		456.50	-456.50	166,076.32	insurance 2014

	Date	Loan	Payment	Interest	Principal	Balance	Memo
December Totals		2,265.22	0.00	456.50	-456.50		
2014 Totals		5,558.51	20,000.00	10,081.37	9,918.63		
18	01/16/2015		5,000.00	1,241.93	3,758.07	162,318.25	11100
January Totals		0.00	5,000.00	1,241.93	3,758.07		
19	02/23/2015		5,000.00	999.30	4,000.70	158,317.55	10893
February Totals		0.00	5,000.00	999.30	4,000.70		
20	06/24/2015		10,000.00	3,216.73	6,783.27	151,534.28	11000
June Totals		0.00	10,000.00	3,216.73	6,783.27		
Loan	10/01/2015	3,329.58		2,461.40	-2,461.40	157,325.26	property tax 2015
October Totals		3,329.58	0.00	2,461.40	-2,461.40		
Loan	12/01/2015	2,265.34		1,577.19	-1,577.19	161,167.79	insurance 2015
21	12/23/2015		20,000.00	582.85	19,417.15	141,750.64	11032
December Totals		2,265.34	20,000.00	2,160.04	17,839.96		
2015 Totals		5,594.92	40,000.00	10,079.40	29,920.60		
22	08/15/2016		15,000.00	5,591.29	9,408.71	132,341.93	11427
August Totals		0.00	15,000.00	5,591.29	9,408.71		
Loan	10/01/2016	0.00		1,033.39	-1,033.39	133,375.32	property tax 2016
October Totals		0.00	0.00	1,033.39	-1,033.39		
Loan	12/01/2016	0.00		1,337.09	-1,337.09	134,712.41	insurance 2016
December Totals		0.00	0.00	1,337.09	-1,337.09		
2016 Totals		0.00	15,000.00	7,961.77	7,038.23		
23	03/15/2017		10,000.00	2,345.50	7,654.50	127,057.91	11668
March Totals		0.00	10,000.00	2,345.50	7,654.50		

	Date	Loan	Payment	Interest	Principal	Balance	Memo
Loan	10/01/2017	0.00		4,225.55	-4,225.55	131,283.46	property tax 2017
October Totals		0.00	0.00	4,225.55	-4,225.55		
Loan	12/01/2017	0.00		1,316.12	-1,316.12	132,599.58	insurance 2017
December Totals		0.00	0.00	1,316.12	-1,316.12		
2017 Totals		0.00	10,000.00	7,887.17	2,112.83		
24	02/09/2018		5,000.00	1,505.44	3,494.56	129,105.02	11541
February Totals		0.00	5,000.00	1,505.44	3,494.56		
25	05/03/2018		10,000.00	1,765.86	8,234.14	120,870.88	11298
26	05/31/2018		5,000.00	556.34	4,443.66	116,427.22	11628
May Totals		0.00	15,000.00	2,322.20	12,677.80		
Loan	08/01/2018	0.00		1,186.51	-1,186.51	117,613.73	property tax 2018 paid by Moats
August Totals		0.00	0.00	1,186.51	-1,186.51		
Loan	10/01/2018	0.00		1,179.08	-1,179.08	118,792.81	insurance 2018 paid by Moats
October Totals		0.00	0.00	1,179.08	-1,179.08		
2018 Totals		0.00	20,000.00	6,193.23	13,806.77		
Loan	08/01/2019	0.00		6,075.08	-6,075.08	124,867.89	property tax 2019 paid by Moats
August Totals		0.00	0.00	6,075.08	-6,075.08		
Loan	10/01/2019	0.00		1,251.80	-1,251.80	126,119.69	insurance 2019 paid by Moats
October Totals		0.00	0.00	1,251.80	-1,251.80		
2019 Totals		0.00	0.00	7,326.88	-7,326.88		
Loan	08/01/2020	0.00		6,449.78	-6,449.78	132,569.47	property tax 2020 paid by Moats
August Totals		0.00	0.00	6,449.78	-6,449.78		
Loan	10/01/2020	0.00		1,329.01	-1,329.01	133,898.48	insurance 2020 paid by Moats

	Date	Loan	Payment	Interest	Principal	Balance	Memo
October Totals		0.00	0.00	1,329.01	-1,329.01		
2020 Totals		0.00	0.00	7,778.79	-7,778.79		
27 08/31/2021			141,440.16	7,541.68	133,898.48	0.00	
August Totals		0.00	141,440.16	7,541.68	133,898.48		
2021 Totals		0.00	141,440.16	7,541.68	133,898.48		
Grand Totals		238,736.89	334,364.81	95,627.92	238,736.89		

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
5.975%	\$95,627.92	\$238,736.89	\$334,364.81

Exhibit 2:

Calculation of Amount Due Assuming Maturity Date of 3/31/2016

Compounding Period: Monthly

Nominal Annual Rate: 6.000%

Cash Flow Data - Loans and Payments

	Event	Date	Amount	Number	Period	End Date	Memo
1	Loan	03/31/2011	212,500.00	1			
2	Payment	05/05/2011	5,213.22	1			10451
3	Payment	06/06/2011	4,513.22	1			10477
4	Payment	07/07/2011	4,513.22	1			10491
5	Payment	08/08/2011	4,513.22	1			10512
6	Payment	09/08/2011	4,513.22	1			10525
7	Loan	10/01/2011	2,897.66	1			property tax 2011
8	Payment	10/03/2011	4,513.22	1			10534
9	Payment	11/09/2011	4,513.22	1			10542
10	Loan	12/01/2011	1,566.00	1			insurance 20131
11	Payment	01/10/2012	9,026.44	1			10549
12	Loan	10/01/2012	2,935.37	1			property tax 2012
13	Payment	10/01/2012	9,026.44	1			10636
14	Loan	12/01/2012	2,094.95	1			insurance 2012
15	Payment	04/01/2013	6,000.00	1			10683
16	Payment	06/10/2013	4,500.00	1			10701
17	Payment	08/28/2013	2,500.00	1			10737
18	Payment	09/30/2013	2,013.13	1			10742
19	Loan	10/01/2013	3,366.66	1			property tax 2013
20	Payment	11/25/2013	22,566.10	1			10783
21	Loan	12/01/2013	2,222.82	1			insurance 2013
22	Payment	04/11/2014	5,000.00	1			10819
23	Payment	07/03/2014	10,000.00	1			10870
24	Loan	10/01/2014	3,293.29	1			property tax 2014
25	Payment	11/14/2014	5,000.00	1			Cash OTC
26	Loan	12/01/2014	2,265.22	1			insurance 2014
27	Payment	01/16/2015	5,000.00	1			11100
28	Payment	02/23/2015	5,000.00	1			10893
29	Payment	06/24/2015	10,000.00	1			11000
30	Loan	10/01/2015	3,329.58	1			property tax 2015
31	Loan	12/01/2015	2,265.34	1			insurance 2015
32	Payment	03/31/2016	164,404.20	1			

TValue Amortization Schedule - Normal, 365 Day Year

	Date	Loan	Payment	Interest	Principal	Balance	Memo
Loan	03/31/2011	212,500.00				212,500.00	

	Date	Loan	Payment	Interest	Principal	Balance	Memo
March Totals		212,500.00	0.00	0.00	0.00		
1	05/05/2011		5,213.22	1,238.03	3,975.19	208,524.81	10451
May Totals		0.00	5,213.22	1,238.03	3,975.19		
2	06/06/2011		4,513.22	1,077.07	3,436.15	205,088.66	10477
June Totals		0.00	4,513.22	1,077.07	3,436.15		
3	07/07/2011		4,513.22	1,059.33	3,453.89	201,634.77	10491
July Totals		0.00	4,513.22	1,059.33	3,453.89		
4	08/08/2011		4,513.22	1,041.49	3,471.73	198,163.04	10512
August Totals		0.00	4,513.22	1,041.49	3,471.73		
5	09/08/2011		4,513.22	990.82	3,522.40	194,640.64	10525
September Totals		0.00	4,513.22	990.82	3,522.40		
Loan	10/01/2011	2,897.66		735.90	-735.90	198,274.20	property tax 2011
6	10/03/2011		4,513.22	65.19	4,448.03	193,826.17	10534
October Totals		2,897.66	4,513.22	801.09	3,712.13		
7	11/09/2011		4,513.22	1,161.26	3,351.96	190,474.21	10542
November Totals		0.00	4,513.22	1,161.26	3,351.96		
Loan	12/01/2011	1,566.00		688.84	-688.84	192,729.05	insurance 20131
December Totals		1,566.00	0.00	688.84	-688.84		
2011 Totals		216,963.66	32,292.54	8,057.93	24,234.61		
8	01/10/2012		9,026.44	1,250.20	7,776.24	184,952.81	10549
January Totals		0.00	9,026.44	1,250.20	7,776.24		
Loan	10/01/2012	2,935.37		8,224.98	-8,224.98	196,113.16	property tax 2012
9	10/01/2012		9,026.44	0.00	9,026.44	187,086.72	10636
October Totals		2,935.37	9,026.44	8,224.98	801.46		
Loan	12/01/2012	2,094.95		1,875.54	-1,875.54	191,057.21	insurance 2012
December Totals		2,094.95	0.00	1,875.54	-1,875.54		
2012 Totals		5,030.32	18,052.88	11,350.72	6,702.16		
10	04/01/2013		6,000.00	3,849.90	2,150.10	188,907.11	10683
April Totals		0.00	6,000.00	3,849.90	2,150.10		
11	06/10/2013		4,500.00	2,176.07	2,323.93	186,583.18	10701
June Totals		0.00	4,500.00	2,176.07	2,323.93		
12	08/28/2013		2,500.00	2,428.11	71.89	186,511.29	10737
August Totals		0.00	2,500.00	2,428.11	71.89		

	Date	Loan	Payment	Interest	Principal	Balance	Memo
13	09/30/2013		2,013.13	1,024.99	988.14	185,523.15	10742
September Totals		0.00	2,013.13	1,024.99	988.14		
Loan	10/01/2013	3,366.66		30.50	-30.50	188,920.31	property tax 2013
October Totals		3,366.66	0.00	30.50	-30.50		
14	11/25/2013		22,566.10	1,693.66	20,872.44	168,047.87	10783
November Totals		0.00	22,566.10	1,693.66	20,872.44		
Loan	12/01/2013	2,222.82		165.75	-165.75	170,436.44	insurance 2013
December Totals		2,222.82	0.00	165.75	-165.75		
2013 Totals		5,589.48	37,579.23	11,368.98	26,210.25		
15	04/11/2014		5,000.00	3,720.19	1,279.81	169,156.63	10819
April Totals		0.00	5,000.00	3,720.19	1,279.81		
16	07/03/2014		10,000.00	2,313.67	7,686.33	161,470.30	10870
July Totals		0.00	10,000.00	2,313.67	7,686.33		
Loan	10/01/2014	3,293.29		2,396.21	-2,396.21	167,159.80	property tax 2014
October Totals		3,293.29	0.00	2,396.21	-2,396.21		
17	11/14/2014		5,000.00	1,194.80	3,805.20	163,354.60	Cash OTC
November Totals		0.00	5,000.00	1,194.80	3,805.20		
Loan	12/01/2014	2,265.22		456.50	-456.50	166,076.32	insurance 2014
December Totals		2,265.22	0.00	456.50	-456.50		
2014 Totals		5,558.51	20,000.00	10,081.37	9,918.63		
18	01/16/2015		5,000.00	1,241.93	3,758.07	162,318.25	11100
January Totals		0.00	5,000.00	1,241.93	3,758.07		
19	02/23/2015		5,000.00	999.30	4,000.70	158,317.55	10893
February Totals		0.00	5,000.00	999.30	4,000.70		
20	06/24/2015		10,000.00	3,216.73	6,783.27	151,534.28	11000
June Totals		0.00	10,000.00	3,216.73	6,783.27		
Loan	10/01/2015	3,329.58		2,461.40	-2,461.40	157,325.26	property tax 2015
October Totals		3,329.58	0.00	2,461.40	-2,461.40		
Loan	12/01/2015	2,265.34		1,577.19	-1,577.19	161,167.79	insurance 2015
December Totals		2,265.34	0.00	1,577.19	-1,577.19		
2015 Totals		5,594.92	20,000.00	9,496.55	10,503.45		
21	03/31/2016		164,404.20	3,236.41	161,167.79	0.00	

	Date	Loan	Payment	Interest	Principal	Balance	Memo
March Totals		0.00	164,404.20	3,236.41	161,167.79		
2016 Totals		0.00	164,404.20	3,236.41	161,167.79		
Grand Totals		238,736.89	292,328.85	53,591.96	238,736.89		

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
5.993%	\$53,591.96	\$238,736.89	\$292,328.85

Exhibit 3: Replication and Extrapolation of Mr. Pruiett-Lange's Calculation from Affidavit

Period	Pmt	Principal Applied	Interest Applied	Late Fees	Property Tax	Insurance	Balance
5/1/2011	5,213	4,151	1,062.50	-	-	-	208,349
6/1/2011	4,513	3,471	1,041.75	-	-	-	204,878
7/1/2011	4,513	3,489	1,024.39	-	-	-	201,389
8/1/2011	4,513	3,506	1,006.94	-	-	-	197,883
9/1/2011	4,513	3,298	989.41	226	-	-	194,585
10/1/2011	4,513	3,315	972.92	226	2,898	-	194,168
11/1/2011	-	(1,196)	970.84	226	-	-	195,364
12/1/2011	-	(1,202)	976.82	226	-	1,566	198,133
1/1/2012	9,026	7,810	990.66	226	-	-	190,322
2/1/2012	4,513	3,336	951.61	226	-	-	186,986
3/1/2012	-	(1,161)	934.93	226	-	-	188,147
4/1/2012	-	(1,166)	940.74	226	-	-	189,313
5/1/2012	-	(1,172)	946.57	226	-	-	190,486
6/1/2012	-	(1,178)	952.43	226	-	-	191,664
7/1/2012	-	(1,184)	958.32	226	-	-	192,848
8/1/2012	-	(1,190)	964.24	226	-	-	194,038
9/1/2012	-	(1,196)	970.19	226	-	-	195,234
10/1/2012	-	(1,202)	976.17	226	2,935	-	199,371
11/1/2012	-	(1,223)	996.85	226	-	-	200,593
12/1/2012	-	(1,229)	1,002.97	226	-	2,095	203,917
1/1/2013	-	(1,245)	1,019.58	226	-	-	205,162
2/1/2013	3,000	1,749	1,025.81	226	-	-	203,414
3/1/2013	6,000	4,757	1,017.07	226	-	-	198,656
4/1/2013	-	(1,219)	993.28	226	-	-	199,875
5/1/2013	-	(1,225)	999.38	226	-	-	201,100
6/1/2013	4,500	3,269	1,005.50	226	-	-	197,831
7/1/2013	-	(1,215)	989.16	226	-	-	199,046
8/1/2013	-	(1,221)	995.23	226	-	-	200,267
9/1/2013	2,013	786	1,001.34	226	-	-	199,481
10/1/2013	-	(1,223)	997.40	226	3,367	-	204,071
11/1/2013	22,566	21,320	1,020.35	226	-	-	182,751
12/1/2013	-	(1,139)	913.75	226	-	2,223	186,113
1/1/2014	-	(1,156)	930.56	226	-	-	187,269
2/1/2014	-	(1,162)	936.34	226	-	-	188,431
3/1/2014	-	(1,168)	942.15	226	-	-	189,599
4/1/2014	5,000	3,826	947.99	226	-	-	185,772
5/1/2014	-	(1,155)	928.86	226	-	-	186,927
6/1/2014	-	(1,160)	934.63	226	-	-	188,087
7/1/2014	10,000	8,834	940.44	226	-	-	179,253
8/1/2014	-	(1,122)	896.27	226	-	-	180,375
9/1/2014	-	(1,128)	901.88	226	-	-	181,503
10/1/2014	-	(1,133)	907.51	226	3,293	-	185,929
11/1/2014	5,000	3,845	929.65	226	-	-	182,085

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Period	Pmt	Principal Applied	Interest Applied	Late Fees	Property Tax	Insurance	Balance
12/1/2014	-	(1,136)	910.42	226		2,265	185,486
1/1/2015	5,000	3,847	927.43	226			181,639
2/1/2015	5,000	3,866	908.19	226			177,773
3/1/2015	-	(1,115)	888.86	226			178,887
4/1/2015	-	(1,120)	894.44	226			180,007
5/1/2015	-	(1,126)	900.04	226			181,133
6/1/2015	10,000	8,869	905.67	226			172,264
7/1/2015	-	(1,087)	861.32	226			173,351
8/1/2015	-	(1,092)	866.76	226			174,444
9/1/2015	-	(1,098)	872.22	226			175,542
10/1/2015	-	(1,103)	877.71	226	3,330		179,975
11/1/2015	-	(1,126)	899.87	226			181,100
12/1/2015	20,000	18,869	905.50	226		2,265	164,497
1/1/2016	-	(1,048)	822.48	226			165,545
2/1/2016	-	(1,053)	827.72	226			166,598
3/1/2016	-	(1,059)	832.99	226			167,657
4/1/2016	10,000	8,936	838.28	226			158,721
5/1/2016	-	(1,019)	793.60	226			159,740
6/1/2016	-	(1,024)	798.70	226			160,764
7/1/2016	-	(1,029)	803.82	226			161,794
8/1/2016	15,000	13,965	808.97	226			147,829
9/1/2016	-	(965)	739.14	226			148,793
10/1/2016	-	(970)	743.97	226	3,330		153,093
11/1/2016	-	(991)	765.46	226			154,084
12/1/2016	-	(996)	770.42	226		2,265	157,345
1/1/2017	-	(1,012)	786.72	226			158,357
2/1/2017	-	(1,017)	791.79	226			159,375
3/1/2017	10,000	8,977	796.87	226			150,397
4/1/2017	-	(978)	751.99	226			151,375
5/1/2017	-	(983)	756.87	226			152,358
6/1/2017	-	(987)	761.79	226			153,345
7/1/2017	-	(992)	766.72	226			154,337
8/1/2017	-	(997)	771.69	226			155,335
9/1/2017	-	(1,002)	776.67	226			156,337
10/1/2017	-	(1,007)	781.69	226			157,344
11/1/2017	-	(1,012)	786.72	226			158,357
12/1/2017	-	(1,017)	791.78	226		2,265	161,639
1/1/2018	-	(1,034)	808.20	226			162,673
2/1/2018	5,000	3,961	813.37	226			158,712
3/1/2018	-	(1,019)	793.56	226			159,732
4/1/2018	-	(1,024)	798.66	226			160,756
5/1/2018	5,000	3,971	803.78	226			156,785
6/1/2018	-	(1,010)	783.93	226			157,795
7/1/2018	-	(1,015)	788.97	226			158,810

Period	Pmt	Principal Applied	Interest Applied	Late Fees	Property Tax	Insurance	Balance
8/1/2018	-	(1,020)	794.05	226			159,829
9/1/2018	-	(1,025)	799.15	226			160,854
10/1/2018	-	(1,030)	804.27	226	3,330		165,214
11/1/2018	-	(1,052)	826.07	226			166,265
12/1/2018	-	(1,057)	831.33	226		2,265	169,587
1/1/2019	-	(1,074)	847.94	226			170,661
2/1/2019	-	(1,079)	853.31	226			171,740
3/1/2019	-	(1,084)	858.70	226			172,824
4/1/2019	-	(1,090)	864.12	226			173,914
5/1/2019	-	(1,095)	869.57	226			175,009
6/1/2019	-	(1,101)	875.05	226			176,110
7/1/2019	-	(1,106)	880.55	226			177,216
8/1/2019	-	(1,112)	886.08	226			178,328
9/1/2019	-	(1,117)	891.64	226			179,445
10/1/2019	-	(1,123)	897.23	226	4,498		185,066
11/1/2019	-	(1,151)	925.33	226			186,217
12/1/2019	-	(1,157)	931.09	226		2,265	189,639
1/1/2020	-	(1,174)	948.20	226			190,813
2/1/2020	-	(1,180)	954.07	226			191,993
3/1/2020	-	(1,186)	959.96	226			193,179
4/1/2020	-	(1,192)	965.89	226			194,370
5/1/2020	-	(1,198)	971.85	226			195,568
6/1/2020	-	(1,203)	977.84	226			196,771
7/1/2020	-	(1,210)	983.86	226			197,981
8/1/2020	-	(1,216)	989.90	226			199,196
9/1/2020	-	(1,222)	995.98	226			200,418
10/1/2020	-	(1,228)	1,002.09	226	4,459		206,105
11/1/2020	-	(1,256)	1,030.52	226			207,361
12/1/2020	-	(1,262)	1,036.80	226		2,265	210,888
1/1/2021	-	(1,280)	1,054.44	226			212,169
2/1/2021	-	(1,287)	1,060.84	226			213,455
3/1/2021	-	(1,293)	1,067.28	226			214,748
4/1/2021	-	(1,299)	1,073.74	226			216,047
5/1/2021	-	(1,306)	1,080.24	226			217,353
6/1/2021	-	(1,312)	1,086.77	226			218,666
7/1/2021	-	(1,319)	1,093.33	226			219,985
8/1/2021	-	(1,326)	1,099.92	226			221,310
184,398.30			108,589.89	26,176.56	31,438.91	21,740.35	

*Extrapolated to August 2021

Exhibit 4: Adjusted for Non-Capitalization of Late Fees

Period	Pmt	Principal Applied	Interest Applied	Late Fees	Property Tax	Insurance	Balance
5/1/2011	5,213	4,151	1,062.50	-	-	-	208,349
6/1/2011	4,513	3,471	1,041.75	-	-	-	204,878
7/1/2011	4,513	3,489	1,024.39	-	-	-	201,389
8/1/2011	4,513	3,506	1,006.94	-	-	-	197,883
9/1/2011	4,513	3,298	989.41	226	-	-	194,585
10/1/2011	4,513	3,315	972.92	226	2,898	-	194,168
11/1/2011	-	(971)	970.84	226	-	-	195,138
12/1/2011	-	(976)	975.69	226	-	1,566	197,680
1/1/2012	9,026	8,038	988.40	226	-	-	189,642
2/1/2012	4,513	3,565	948.21	226	-	-	186,077
3/1/2012	-	(930)	930.39	226	-	-	187,007
4/1/2012	-	(935)	935.04	226	-	-	187,942
5/1/2012	-	(940)	939.71	226	-	-	188,882
6/1/2012	-	(944)	944.41	226	-	-	189,827
7/1/2012	-	(949)	949.13	226	-	-	190,776
8/1/2012	-	(954)	953.88	226	-	-	191,730
9/1/2012	-	(959)	958.65	226	-	-	192,688
10/1/2012	-	(963)	963.44	226	2,935	-	196,587
11/1/2012	-	(983)	982.94	226	-	-	197,570
12/1/2012	-	(988)	987.85	226	-	2,095	200,653
1/1/2013	-	(1,003)	1,003.26	226	-	-	201,656
2/1/2013	3,000	1,992	1,008.28	226	-	-	199,664
3/1/2013	6,000	5,002	998.32	226	-	-	194,663
4/1/2013	-	(973)	973.31	226	-	-	195,636
5/1/2013	-	(978)	978.18	226	-	-	196,614
6/1/2013	4,500	3,517	983.07	226	-	-	193,097
7/1/2013	-	(965)	965.49	226	-	-	194,063
8/1/2013	-	(970)	970.31	226	-	-	195,033
9/1/2013	2,013	1,038	975.17	226	-	-	193,995
10/1/2013	-	(970)	969.97	226	3,367	-	198,332
11/1/2013	22,566	21,574	991.66	226	-	-	176,757
12/1/2013	-	(884)	883.79	226	-	2,223	179,864
1/1/2014	-	(899)	899.32	226	-	-	180,763
2/1/2014	-	(904)	903.82	226	-	-	181,667
3/1/2014	-	(908)	908.33	226	-	-	182,575
4/1/2014	5,000	4,087	912.88	226	-	-	178,488
5/1/2014	-	(892)	892.44	226	-	-	179,381
6/1/2014	-	(897)	896.90	226	-	-	180,277
7/1/2014	10,000	9,099	901.39	226	-	-	171,179
8/1/2014	-	(856)	855.89	226	-	-	172,035
9/1/2014	-	(860)	860.17	226	-	-	172,895
10/1/2014	-	(864)	864.47	226	3,293	-	177,053
11/1/2014	5,000	4,115	885.26	226	-	-	172,938

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Period	Pmt	Principal Applied	Interest Applied	Late Fees	Property Tax	Insurance	Balance
12/1/2014	-	(865)	864.69	226		2,265	176,068
1/1/2015	5,000	4,120	880.34	226			171,948
2/1/2015	5,000	4,140	859.74	226			167,808
3/1/2015	-	(839)	839.04	226			168,647
4/1/2015	-	(843)	843.23	226			169,490
5/1/2015	-	(847)	847.45	226			170,338
6/1/2015	10,000	9,148	851.69	226			161,189
7/1/2015	-	(806)	805.95	226			161,995
8/1/2015	-	(810)	809.98	226			162,805
9/1/2015	-	(814)	814.03	226			163,619
10/1/2015	-	(818)	818.10	226	3,330		167,767
11/1/2015	-	(839)	838.83	226			168,606
12/1/2015	20,000	19,157	843.03	226		2,265	151,714
1/1/2016	-	(759)	758.57	226			152,473
2/1/2016	-	(762)	762.36	226			153,235
3/1/2016	-	(766)	766.18	226			154,001
4/1/2016	10,000	9,230	770.01	226			144,771
5/1/2016	-	(724)	723.86	226			145,495
6/1/2016	-	(727)	727.48	226			146,223
7/1/2016	-	(731)	731.11	226			146,954
8/1/2016	15,000	14,265	734.77	226			132,688
9/1/2016	-	(663)	663.44	226			133,352
10/1/2016	-	(667)	666.76	226	3,330		137,348
11/1/2016	-	(687)	686.74	226			138,035
12/1/2016	-	(690)	690.18	226		2,265	140,990
1/1/2017	-	(705)	704.95	226			141,695
2/1/2017	-	(708)	708.48	226			142,404
3/1/2017	10,000	9,288	712.02	226			133,116
4/1/2017	-	(666)	665.58	226			133,781
5/1/2017	-	(669)	668.91	226			134,450
6/1/2017	-	(672)	672.25	226			135,123
7/1/2017	-	(676)	675.61	226			135,798
8/1/2017	-	(679)	678.99	226			136,477
9/1/2017	-	(682)	682.39	226			137,160
10/1/2017	-	(686)	685.80	226			137,845
11/1/2017	-	(689)	689.23	226			138,535
12/1/2017	-	(693)	692.67	226		2,265	141,492
1/1/2018	-	(707)	707.46	226			142,200
2/1/2018	5,000	4,289	711.00	226			137,911
3/1/2018	-	(690)	689.55	226			138,600
4/1/2018	-	(693)	693.00	226			139,293
5/1/2018	5,000	4,304	696.47	226			134,990
6/1/2018	-	(675)	674.95	226			135,665
7/1/2018	-	(678)	678.32	226			136,343

Period	Pmt	Principal Applied	Interest Applied	Late Fees	Property Tax	Insurance	Balance
8/1/2018	-	(682)	681.72	226			137,025
9/1/2018	-	(685)	685.12	226			137,710
10/1/2018	-	(689)	688.55	226	3,330		141,728
11/1/2018	-	(709)	708.64	226			142,437
12/1/2018	-	(712)	712.18	226		2,265	145,414
1/1/2019	-	(727)	727.07	226			146,141
2/1/2019	-	(731)	730.71	226			146,872
3/1/2019	-	(734)	734.36	226			147,606
4/1/2019	-	(738)	738.03	226			148,344
5/1/2019	-	(742)	741.72	226			149,086
6/1/2019	-	(745)	745.43	226			149,832
7/1/2019	-	(749)	749.16	226			150,581
8/1/2019	-	(753)	752.90	226			151,334
9/1/2019	-	(757)	756.67	226			152,090
10/1/2019	-	(760)	760.45	226	4,498		157,349
11/1/2019	-	(787)	786.74	226			158,136
12/1/2019	-	(791)	790.68	226		2,265	161,192
1/1/2020	-	(806)	805.96	226			161,997
2/1/2020	-	(810)	809.99	226			162,807
3/1/2020	-	(814)	814.04	226			163,622
4/1/2020	-	(818)	818.11	226			164,440
5/1/2020	-	(822)	822.20	226			165,262
6/1/2020	-	(826)	826.31	226			166,088
7/1/2020	-	(830)	830.44	226			166,919
8/1/2020	-	(835)	834.59	226			167,753
9/1/2020	-	(839)	838.77	226			168,592
10/1/2020	-	(843)	842.96	226	4,459		173,894
11/1/2020	-	(869)	869.47	226			174,763
12/1/2020	-	(874)	873.82	226		2,265	177,902
1/1/2021	-	(890)	889.51	226			178,792
2/1/2021	-	(894)	893.96	226			179,686
3/1/2021	-	(898)	898.43	226			180,584
4/1/2021	-	(903)	902.92	226			181,487
5/1/2021	-	(907)	907.44	226			182,395
6/1/2021	-	(912)	911.97	226			183,307
7/1/2021	-	(917)	916.53	226			184,223
8/1/2021	-	(921)	921.12	226			185,144
184,398.30			103,412.03	27,079.20	31,438.91	21,740.35	

*Extrapolated to August 2021

Exhibit 5: Adjust to Correct for Payments per Checks and Bank Documents

		P	I	Late	PT	Ins	Balance
5/1/2011	5,213	4,151	1,062.50	-	-	-	208,349
6/1/2011	4,513	3,471	1,041.75	-	-	-	204,878
7/1/2011	4,513	3,489	1,024.39	-	-	-	201,389
8/1/2011	4,513	3,506	1,006.94	-	-	-	197,883
9/1/2011	4,513	3,298	989.41	226	-	-	194,585
10/1/2011	4,513	3,315	972.92	226	2,898	-	194,168
11/1/2011	4,513	3,542	970.84	226	-	-	190,625
12/1/2011	-	(953)	953.13	226	-	1,566	193,145
1/1/2012	9,026	8,061	965.72	226	-	-	185,084
2/1/2012	-	(925)	925.42	226	-	-	186,009
3/1/2012	-	(930)	930.05	226	-	-	186,939
4/1/2012	-	(935)	934.70	226	-	-	187,874
5/1/2012	-	(939)	939.37	226	-	-	188,813
6/1/2012	-	(944)	944.07	226	-	-	189,757
7/1/2012	-	(949)	948.79	226	-	-	190,706
8/1/2012	-	(954)	953.53	226	-	-	191,660
9/1/2012	-	(958)	958.30	226	-	-	192,618
10/1/2012	9,026	8,063	963.09	226	2,935	-	187,490
11/1/2012	-	(937)	937.45	226	-	-	188,428
12/1/2012	-	(942)	942.14	226	-	2,095	191,465
1/1/2013	-	(957)	957.32	226	-	-	192,422
2/1/2013	-	(962)	962.11	226	-	-	193,384
3/1/2013	-	(967)	966.92	226	-	-	194,351
4/1/2013	6,000	5,028	971.75	226	-	-	189,323
5/1/2013	-	(947)	946.61	226	-	-	190,269
6/1/2013	4,500	3,549	951.35	226	-	-	186,721
7/1/2013	-	(934)	933.60	226	-	-	187,654
8/1/2013	2,500	1,562	938.27	226	-	-	186,093
9/1/2013	2,013	1,083	930.46	226	-	-	185,010
10/1/2013	-	(925)	925.05	226	3,367	-	189,301
11/1/2013	22,566	21,620	946.51	226	-	-	167,682
12/1/2013	-	(838)	838.41	226	-	2,223	170,743
1/1/2014	-	(854)	853.72	226	-	-	171,597
2/1/2014	-	(858)	857.98	226	-	-	172,455
3/1/2014	-	(862)	862.27	226	-	-	173,317
4/1/2014	5,000	4,133	866.59	226	-	-	169,184
5/1/2014	-	(846)	845.92	226	-	-	170,030
6/1/2014	-	(850)	850.15	226	-	-	170,880
7/1/2014	10,000	9,146	854.40	226	-	-	161,734
8/1/2014	-	(809)	808.67	226	-	-	162,543
9/1/2014	-	(813)	812.71	226	-	-	163,356
10/1/2014	-	(817)	816.78	226	3,293	-	167,466
11/1/2014	5,000	4,163	837.33	226	-	-	163,303
12/1/2014	-	(817)	816.51	226	-	2,265	166,385

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		P	I	Late	PT	Ins	Balance
1/1/2015	5,000	4,168	831.92	226			162,217
2/1/2015	5,000	4,189	811.08	226			158,028
3/1/2015	-	(790)	790.14	226			158,818
4/1/2015	-	(794)	794.09	226			159,612
5/1/2015	-	(798)	798.06	226			160,410
6/1/2015	10,000	9,198	802.05	226			151,212
7/1/2015	-	(756)	756.06	226			151,968
8/1/2015	-	(760)	759.84	226			152,728
9/1/2015	-	(764)	763.64	226			153,492
10/1/2015	-	(767)	767.46	226	3,330		157,589
11/1/2015	-	(788)	787.94	226			158,377
12/1/2015	20,000	19,208	791.88	226		2,265	141,434
1/1/2016	-	(707)	707.17	226			142,141
2/1/2016	-	(711)	710.70	226			142,852
3/1/2016	-	(714)	714.26	226			143,566
4/1/2016	10,000	9,282	717.83	226			134,284
5/1/2016	-	(671)	671.42	226			134,955
6/1/2016	-	(675)	674.78	226			135,630
7/1/2016	-	(678)	678.15	226			136,308
8/1/2016	15,000	14,318	681.54	226			121,990
9/1/2016	-	(610)	609.95	226			122,600
10/1/2016	-	(613)	613.00	226	3,330		126,542
11/1/2016	-	(633)	632.71	226			127,175
12/1/2016	-	(636)	635.87	226		2,265	130,076
1/1/2017	-	(650)	650.38	226			130,726
2/1/2017	-	(654)	653.63	226			131,380
3/1/2017	10,000	9,343	656.90	226			122,037
4/1/2017	-	(610)	610.18	226			122,647
5/1/2017	-	(613)	613.23	226			123,260
6/1/2017	-	(616)	616.30	226			123,877
7/1/2017	-	(619)	619.38	226			124,496
8/1/2017	-	(622)	622.48	226			125,118
9/1/2017	-	(626)	625.59	226			125,744
10/1/2017	-	(629)	628.72	226			126,373
11/1/2017	-	(632)	631.86	226			127,005
12/1/2017	-	(635)	635.02	226		2,265	129,905
1/1/2018	-	(650)	649.52	226			130,554
2/1/2018	5,000	4,347	652.77	226			126,207
3/1/2018	-	(631)	631.04	226			126,838
4/1/2018	-	(634)	634.19	226			127,472
5/1/2018	5,000	4,363	637.36	226			123,110
6/1/2018	-	(616)	615.55	226			123,725
7/1/2018	-	(619)	618.63	226			124,344
8/1/2018	-	(622)	621.72	226			124,966
9/1/2018	-	(625)	624.83	226			125,590

		P	I	Late	PT	Ins	Balance
10/1/2018	-	(628)	627.95	226	3,330		129,548
11/1/2018	-	(648)	647.74	226			130,196
12/1/2018	-	(651)	650.98	226		2,265	133,112
1/1/2019	-	(666)	665.56	226			133,777
2/1/2019	-	(669)	668.89	226			134,446
3/1/2019	-	(672)	672.23	226			135,119
4/1/2019	-	(676)	675.59	226			135,794
5/1/2019	-	(679)	678.97	226			136,473
6/1/2019	-	(682)	682.37	226			137,155
7/1/2019	-	(686)	685.78	226			137,841
8/1/2019	-	(689)	689.21	226			138,530
9/1/2019	-	(693)	692.65	226			139,223
10/1/2019	-	(696)	696.12	226	4,498		144,417
11/1/2019	-	(722)	722.09	226			145,139
12/1/2019	-	(726)	725.70	226		2,265	148,130
1/1/2020	-	(741)	740.65	226			148,871
2/1/2020	-	(744)	744.35	226			149,615
3/1/2020	-	(748)	748.08	226			150,363
4/1/2020	-	(752)	751.82	226			151,115
5/1/2020	-	(756)	755.58	226			151,871
6/1/2020	-	(759)	759.35	226			152,630
7/1/2020	-	(763)	763.15	226			153,393
8/1/2020	-	(767)	766.97	226			154,160
9/1/2020	-	(771)	770.80	226			154,931
10/1/2020	-	(775)	774.66	226	4,459		160,165
11/1/2020	-	(801)	800.82	226			160,966
12/1/2020	-	(805)	804.83	226		2,265	164,036
1/1/2021	-	(820)	820.18	226			164,856
2/1/2021	-	(824)	824.28	226			165,680
3/1/2021	-	(828)	828.40	226			166,509
4/1/2021	-	(833)	832.54	226			167,341
5/1/2021	-	(837)	836.71	226			168,178
6/1/2021	-	(841)	840.89	226			169,019
7/1/2021	-	(845)	845.09	226			169,864
8/1/2021	-	(849)	849.32	226			170,713
192,924.52			97,507.01	27,079.20	31,438.91	21,740.35	

*Extrapolated to August 2021

Exhibit 6: Adjust to Correct for Payments per Checks and Bank Documents

		P	I	Late	PT	Ins	Balance
5/1/2011	5,213	4,151	1,062.50	-	-	-	208,349
6/1/2011	4,513	3,471	1,041.75	-	-	-	204,878
7/1/2011	4,513	3,489	1,024.39	-	-	-	201,389
8/1/2011	4,513	3,506	1,006.94	-	-	-	197,883
9/1/2011	4,513	3,298	989.41	226	-	-	194,585
10/1/2011	4,513	3,315	972.92	226	2,898	-	194,168
11/1/2011	4,513	3,542	970.84	226	-	-	190,625
12/1/2011	-	(953)	953.13	226	-	1,566	193,145
1/1/2012	9,026	8,061	965.72	226	-	-	185,084
2/1/2012	-	(925)	925.42	226	-	-	186,009
3/1/2012	-	(930)	930.05	226	-	-	186,939
4/1/2012	-	(935)	934.70	226	-	-	187,874
5/1/2012	-	(939)	939.37	226	-	-	188,813
6/1/2012	-	(944)	944.07	226	-	-	189,757
7/1/2012	-	(949)	948.79	226	-	-	190,706
8/1/2012	-	(954)	953.53	226	-	-	191,660
9/1/2012	-	(958)	958.30	226	-	-	192,618
10/1/2012	9,026	8,063	963.09	226	2,935	-	187,490
11/1/2012	-	(937)	937.45	226	-	-	188,428
12/1/2012	-	(942)	942.14	226	-	2,095	191,465
1/1/2013	-	(957)	957.32	226	-	-	192,422
2/1/2013	-	(962)	962.11	226	-	-	193,384
3/1/2013	-	(967)	966.92	226	-	-	194,351
4/1/2013	6,000	5,028	971.75	226	-	-	189,323
5/1/2013	-	(947)	946.61	226	-	-	190,269
6/1/2013	4,500	3,549	951.35	226	-	-	186,721
7/1/2013	-	(934)	933.60	226	-	-	187,654
8/1/2013	2,500	1,562	938.27	226	-	-	186,093
9/1/2013	2,013	1,083	930.46	226	-	-	185,010
10/1/2013	-	(925)	925.05	226	3,367	-	189,301
11/1/2013	22,566	21,620	946.51	226	-	-	167,682
12/1/2013	-	(838)	838.41	226	-	2,223	170,743
1/1/2014	-	(854)	853.72	226	-	-	171,597
2/1/2014	-	(858)	857.98	226	-	-	172,455
3/1/2014	-	(862)	862.27	226	-	-	173,317
4/1/2014	5,000	4,133	866.59	226	-	-	169,184
5/1/2014	-	(846)	845.92	226	-	-	170,030
6/1/2014	-	(850)	850.15	226	-	-	170,880
7/1/2014	10,000	9,146	854.40	226	-	-	161,734
8/1/2014	-	(809)	808.67	226	-	-	162,543
9/1/2014	-	(813)	812.71	226	-	-	163,356
10/1/2014	-	(817)	816.78	226	3,293	-	167,466
11/1/2014	5,000	4,163	837.33	226	-	-	163,303
12/1/2014	-	(817)	816.51	226	-	2,265	166,385

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		P	I	Late	PT	Ins	Balance
1/1/2015	5,000	4,168	831.92	226			162,217
2/1/2015	5,000	4,189	811.08	226			158,028
3/1/2015	-	(790)	790.14	226			158,818
4/1/2015	-	(794)	794.09	226			159,612
5/1/2015	-	(798)	798.06	226			160,410
6/1/2015	10,000	9,198	802.05	226			151,212
7/1/2015	-	(756)	756.06	226			151,968
8/1/2015	-	(760)	759.84	226			152,728
9/1/2015	-	(764)	763.64	226			153,492
10/1/2015	-	(767)	767.46	226	3,330		157,589
11/1/2015	-	(788)	787.94	226			158,377
12/1/2015	20,000	19,208	791.88	226		2,265	141,434
1/1/2016	-	(707)	707.17	226			142,141
2/1/2016	-	(711)	710.70	226			142,852
3/1/2016	-	(714)	714.26	226			143,566
4/1/2016	10,000	9,282	717.83	226			134,284
5/1/2016	-	(671)	671.42	226			134,955
6/1/2016	-	(675)	674.78	226			135,630
7/1/2016	-	(678)	678.15	226			136,308
8/1/2016	15,000	14,318	681.54	226			121,990
9/1/2016	-	(610)	609.95	226			122,600
10/1/2016	-	(613)	613.00	226	-		123,213
11/1/2016	-	(616)	616.06	226			123,829
12/1/2016	-	(619)	619.14	226		-	124,448
1/1/2017	-	(622)	622.24	226			125,070
2/1/2017	-	(625)	625.35	226			125,695
3/1/2017	10,000	9,372	628.48	226			116,324
4/1/2017	-	(582)	581.62	226			116,905
5/1/2017	-	(585)	584.53	226			117,490
6/1/2017	-	(587)	587.45	226			118,077
7/1/2017	-	(590)	590.39	226			118,668
8/1/2017	-	(593)	593.34	226			119,261
9/1/2017	-	(596)	596.31	226			119,857
10/1/2017	-	(599)	599.29	226			120,457
11/1/2017	-	(602)	602.28	226			121,059
12/1/2017	-	(605)	605.29	226		-	121,664
1/1/2018	-	(608)	608.32	226			122,273
2/1/2018	5,000	4,389	611.36	226			117,884
3/1/2018	-	(589)	589.42	226			118,473
4/1/2018	-	(592)	592.37	226			119,066
5/1/2018	5,000	4,405	595.33	226			114,661
6/1/2018	-	(573)	573.31	226			115,234
7/1/2018	-	(576)	576.17	226			115,811
8/1/2018	-	(579)	579.05	226			116,390
9/1/2018	-	(582)	581.95	226			116,972

		P	I	Late	PT	Ins	Balance
10/1/2018	-	(585)	584.86	226	-		117,556
11/1/2018	-	(588)	587.78	226			118,144
12/1/2018	-	(591)	590.72	226		-	118,735
1/1/2019	-	(594)	593.67	226			119,329
2/1/2019	-	(597)	596.64	226			119,925
3/1/2019	-	(600)	599.63	226			120,525
4/1/2019	-	(603)	602.62	226			121,127
5/1/2019	-	(606)	605.64	226			121,733
6/1/2019	-	(609)	608.67	226			122,342
7/1/2019	-	(612)	611.71	226			122,953
8/1/2019	-	(615)	614.77	226			123,568
9/1/2019	-	(618)	617.84	226			124,186
10/1/2019	-	(621)	620.93	226	-		124,807
11/1/2019	-	(624)	624.04	226			125,431
12/1/2019	-	(627)	627.16	226		-	126,058
1/1/2020	-	(630)	630.29	226			126,689
2/1/2020	-	(633)	633.44	226			127,322
3/1/2020	-	(637)	636.61	226			127,959
4/1/2020	-	(640)	639.79	226			128,598
5/1/2020	-	(643)	642.99	226			129,241
6/1/2020	-	(646)	646.21	226			129,888
7/1/2020	-	(649)	649.44	226			130,537
8/1/2020	-	(653)	652.68	226			131,190
9/1/2020	-	(656)	655.95	226			131,846
10/1/2020	-	(659)	659.23	226	-		132,505
11/1/2020	-	(663)	662.52	226			133,167
12/1/2020	-	(666)	665.84	226		-	133,833
1/1/2021	-	(669)	669.17	226			134,502
2/1/2021	-	(673)	672.51	226			135,175
3/1/2021	-	(676)	675.87	226			135,851
4/1/2021	-	(679)	679.25	226			136,530
5/1/2021	-	(683)	682.65	226			137,213
6/1/2021	-	(686)	686.06	226			137,899
7/1/2021	-	(689)	689.49	226			138,588
8/1/2021	-	(693)	692.94	226			139,281
192,924.52			93,017.51	27,079.20	15,822.56	10,414.30	

*Extrapolated to August 2021

Travis Lively, CVA

September 2021

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EDUCATIONAL BACKGROUND:

Graduated from North Greenville University located in Tigerville, South Carolina with a Bachelor of Science Degree in Accounting, December 2011, *Summa Cum Laude*.

Professional Certifications:

- **Certified Valuation Analyst:** Certified as of April 22, 2019; passed certification exam in the first sitting in February 2019 and requisite case study in April 2019

EMPLOYMENT INFORMATION:

December 2011 – Current: Meilinger Consulting, P.C., Litigation and Valuation Engagement Manager

- Passed all four sections of Uniform CPA Exam as of January 2016
- Worked primarily as an analyst specializing in litigation and valuation matters in addition to tax, accounting, and consulting
- Worked as analyst and project lead in over 150 engagements, all of which involved one or more of the following areas: income and need analysis, forensic analysis, business valuation, non-marital asset tracing, or marital asset division
- Attended and assisted in mediation, deposition preparations, and testimony

Testimony Experience

- Qualified and accepted as expert witness in Cox vs. Cox in Greenville County Family Court in March 2016
- Qualified and accepted as expert witness in Ledbetter vs. Elliott in Greenville County Family Court in September 2017
- Deposed as expert witness in Adams vs Adams in Greenville County Family Court in January 2020

RECEIVED

Jan 24 2023

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Scott Sprouse

Case No. 2020-CP-04-01202
Appellate Case No.: 2022-001527

MOATS CONSTRUCTION, INC. Appellant,

v.

CECIL R. DYAR Respondent.

RESPONDENT'S MOTION TO DISMISS APPELLANT'S APPEAL

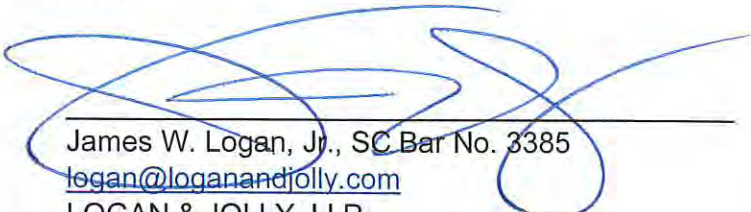
In accordance with Rule 240, SCACR, Respondent herein files this Motion to Dismiss Appellant's Appeal based on the fact that Moats voluntarily paid the amount of the Judgment and filed a Satisfaction of Judgment. Therefore, Appellant is barred from pursuing this appeal. *Reedy River Power Co., v. City of Laurens, et al*, 109 S.C. 240, 96 S.E. 2d 116 (1918); *Kelm v. Hess*, 8 Ohio App. 3d 448 (1983).

After the issuance of the Court's final Order (October 4, 2022) and Notice of Sale, Moats prepared and filed a Consent Order and Satisfaction of Judgment stating that "...the Judgment in this action be shown as satisfied." (Order dated November 23, 2022). Thereafter, the public sale, for which notification to the public had been given as required,

was cancelled, title was transferred to Bry Tye Moats Construction Company, LLC, and full payment of the amount of the judgment was voluntarily paid by Moats and received by Dyar. In other words, the litigation between the Plaintiff-Appellant and the Defendant-Respondent is ended and the Judgment in favor of Dyar against Moats has been paid and satisfied. Therefore, there is nothing in this case for this Court to consider and this case is over. *Reedy River Power Co. v. City of Laurens, et al.* 109 S.C. 240, 96 S.E. 116 (1918).

Further, under the law of South Carolina, §18-9-170, Moats had the option to either post a bond to stay the execution of this Judgment and appeal the decision of the Lower Court to the South Carolina Supreme Court or satisfy the Judgment. Moats chose to avoid, for whatever reason, the lesser expense associated with obtaining such a bond and voluntarily paid the full amount of the Judgment. Moats had a choice, post a bond and stay the execution of the judgment or pay the judgment. He voluntarily chose the latter. Accordingly, there is nothing in this case for the Court to consider. *Reedy River Power Co. v. City of Laurens, et al.* 109 S.C. 240, 96 S.E. 116 (1918); *Kelm v. Hess*, 8 Ohio App. 3d 448, 457 N.E. 2d 911 (1983).

Finally, there is no longer in existence a “Final Judgment” necessary to create a “Right to Appeal” as referenced in Rule 201(a), South Carolina Rules of Civil Procedure. The Final Judgment has been satisfied.



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(864)226-1910
Attorney for Respondent

Date: 1/24/2023

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Jan 24 2023

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Scott Sprouse

Case No. 2020-CP-04-01202
Appellate Case No.: 2022-001527

MOATS CONSTRUCTION, INC. Appellant,

v.

CECIL R. DYAR Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Respondent's Motion to Dismiss Appeal was served via electronic mail and by first class mail, postage prepaid this 24th day of January, 2023, upon the following:

David L. Paavola, Esquire
Lewis Babcock, LLP
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Columbia, SC 29211


James W. Logan, Jr., SC Bar No. 3385
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Post Office Box 259
Anderson, SC 29622
(864)226-1910
Attorneys for Respondent

Date: January 24, 2023 

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
Moats Construction, Inc.,
Plaintiff,

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2020-CP-04-01202

 COPY

vs.
Cecil R. Dyar,
Defendant.

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
Cecil R. Dyar,
Plaintiff,

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2019-CP-04-02232

vs.
Moats Construction, LLC,
Defendant.

DEPOSITION OF RUSSELL TYSON MOATS

DATE TAKEN:	January 28, 2021
TIME:	10:07 a.m.
LOCATION:	Logan & Jolly 1805 North Boulevard Anderson, South Carolina
REPORTED BY:	Rusti Davis, Court Reporter LEGAL EAGLE, INC. P. O. Box 5682 Greenville, South Carolina 29606 864-467-1373 depos@legaleagleinc.com

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ALSO PRESENT: Cecil R. Dyar

Jane Dyar

John R. Simpson

I N D E X

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E X H I B I T S

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3	9/17/2019 E-mail to Jim Logan from Sarah Williamson (12 pgs.)	30
4	1/5/2018 Letter to Mr. Dyar from William B. Swent (2 pgs.)	57
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7	Loan Amortization Schedule (2 pgs.)	62
8	Handwritten Document (2 pgs.)	62
9	ACPASS Property Record Detail for 600 W. Orr Street (5 pgs.)	62

1	10	1/29/2011 Commercial Purchase Agreement	62
2		and Deposit Receipt (9 pgs.)	
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10		LLC, from Mr. Logan (7 pgs.)	
11	21	11/27/2019 Copy of USPS Final Notice	79
12	22	2/10/2020 Letter to Moats Construction,	84
13		LLC, from Mr. Logan (6 pgs.)	
14	23	2/4/2020 Affidavit of Service	84
15	24	1/23/2020 Incident Report (2 pgs.)	87
16	25	2/21/2020 Anderson County Sheriff's	91
17		Office Affidavit of Non-Service	

*All exhibits attached to transcript.

1 [It is hereby stipulated and agreed
2 by and among counsel for the respective
3 parties that this deposition is being
4 taken in accordance with the South
5 Carolina Rules of Civil Procedure, and
6 that the deponent does not waive reading
7 and signing of this deposition
8 transcript.]

9 - - -
10 RUSSELL TYSON MOATS, being duly
11 sworn, testified as follows:

12 - - -
13 EXAMINATION

14 BY MR. LOGAN:

15 Q. Mr. Moats, my name is Jim Logan. For
16 the record, I represent Mr. Cecil Dyar, who is here
17 in the room with us, and his wife in this matter.
18 I'm going to be asking you some questions this
19 morning. Hopefully, we can finish this morning or
20 early afternoon, but I'm required by our rules,
21 even though I'm sure your attorney has already told
22 you about these, to tell you a few things about the
23 deposition.

24 First of all, you're under oath. Your
25 obligation is to respond truthfully and accurately

1 to questions that are asked. If you have any
2 question about my questions, you are to direct that
3 -- those questions to me.

4 And if you and your attorney, during a
5 break, talk about the case or the substance of your
6 testimony in any way, I'm entitled to go into that
7 conversation with you when we reconvene.

8 As I say, if you have any questions about
9 any questions that I ask you, direct those to me,
10 please, and if you need to take a break for any
11 reason, just let me know. I'll be glad to
12 accommodate you. This is not an endurance contest,
13 but we will be here as long as it takes to finish
14 your testimony and your deposition in this case,
15 subject to the eight-hour rule. But I don't have any
16 idea it'll last eight hours, but it will be -- it
17 will be as thorough as I can make it.

18 Do you have any questions so far?

19 A. No, sir, I do not.

20 Q. Have you ever given a deposition in a case
21 before?

22 A. I have.

23 Q. All right. What type of case or cases were
24 they?

25 A. Debt collection and contract disputes.

1 Q. Were you the one collecting the debt, or
2 was somebody suing you for a debt?

3 A. I was the one collecting the debt.

4 Q. All right. And where was that action
5 filed, in Anderson County or somewhere else?

6 A. Anderson.

7 Q. Okay. And how long ago was that?

8 A. I mean, they're ongoing. I mean, we
9 usually keep somebody that owes us money or
10 something. I mean, it's an ongoing thing since we've
11 been in business.

12 Q. All right. Do you have the same attorney
13 that represents you in those cases?

14 A. I have different attorneys.

15 Q. Okay. Who are some of the attorneys that
16 have represented you in these cases?

17 A. Mr. Hawkins and Lee Prickett.

18 Q. Where does he practice?

19 A. Holder, Padgett, Littlejohn, and Prickett.

20 Q. Okay.

21 A. Jeff Goodwyn, Goodwyn Law Firm.

22 Q. Anybody else?

23 A. Steve Krause has represented us before.

24 Q. Okay. All right.

25 A. Kirk Moorhead.

1 Q. All right. And when you say us, are you
2 talking about you, personally, or a group of people,
3 or are you talking about your company or companies
4 that you own?

5 A. I'm talking about Moats Construction.

6 Q. Moats Construction. Okay. What type of
7 construction does Moats Construction do?

8 A. Moats Construction does any type of
9 building, construction. We're a licensed general
10 contractor. We primarily specialize in civil
11 construction projects.

12 Q. Civil construction, what does that mean?

13 A. Civil construction, infrastructure, earth
14 grading and earthwork, demolition. We do a lot of
15 demolition.

16 Q. How long have you been in that business?

17 A. Moats Construction, as an entity, has been
18 -- 2002.

19 Q. Okay. And have you been located in
20 Anderson the whole time?

21 A. Yes, sir.

22 Q. Okay. Are you in -- do you have business
23 partners?

24 A. No, sir.

25 Q. You are the one and only of Moats

1 Construction?

2 A. Unfortunately, yeah, one and only.

3 Q. Okay. So you have no officers or no
4 investors or nobody else that's in business with you
5 from a management point of view?

6 A. No, sir.

7 Q. Okay. How many employees do you have?

8 A. We have about five employees, just five
9 full-time employees.

10 Q. And do they engage in the same business
11 that you've just described to me?

12 A. They do.

13 Q. Okay. Can you name those employees for me?

14 A. Anthony Mennix.

15 Q. I'm sorry. Who?

16 A. Anthony Mennix, Laura King, Jerry Moats.
17 We have Jamie King and -- we have four full-time.

18 Q. Four full-time?

19 A. Yeah.

20 Q. All right. And have they been all with you
21 for any appreciable time or --

22 A. They have.

23 Q. Okay. Since you organized the company?

24 A. Yes, sir.

25 Q. Okay. I was looking on the public records

1 regarding your company, and it appears that -- it
2 says Moats Construction Company has been in what's
3 called administrative dissolution since August of
4 2019. Are you aware of that?

5 A. I am aware of that. That's something that
6 has been -- we've had issues twice with the secretary
7 of state, for some reason, where it had been
8 administratively dissolved and --

9 Q. What does that mean?

10 [Reporter clarification.]

11 A. I believe the first time they did it, it
12 was an error on their part. The second time, I'm not
13 really sure. My accountant, Greg Owens, was made
14 aware of it when it happened. We didn't even know
15 about it when it originally happened. And I don't
16 know. It's been resolved, as far as I know.

17 [R. Moats Deposition Exhibit No. 1 was
18 marked.]

19 Q. [By Mr. Logan] Well, I'm going to show you
20 what's been marked as Exhibit 1 to your deposition,
21 which is a document I'm referring to, and it shows
22 that there was an administrative dissolution in error
23 in October of 2015 and then an administrative
24 dissolution in August of 2019. Are those the two
25 that you were talking about?

1 A. They are.

2 Q. All right. What was the forfeiture about
3 in August of 2015?

4 A. I really do not know. I do not know. It
5 wasn't anything that we did. It wasn't anything that
6 the company did. It was -- it was either a document
7 that didn't get filed by our accountant. That's the
8 only thing that we can figure out. He got it
9 straightened out, whatever it was.

10 Q. Okay. Well, this is the information that's
11 on the public records. If you've got it straightened
12 out, I'd like for you and/or your accountant to
13 furnish me the documentation that straightens it out.
14 okay?

15 A. Oh, yeah. I'm sure we can.

16 Q. All right.

17 A. I mean, I don't know where you're getting
18 this. Off the secretary of state's website?

19 Q. Yes.

20 A. Yeah. It should show good standing. This
21 is the first I've heard of it.

22 Q. Okay. Because that affects your right to
23 file a lawsuit, to so forth and so on. Okay?

24 A. I agree. It probably does.

25 Q. Okay. Now, it has the agent, registered

1 agent as you. That's you, right, Russell T. Moats?

2 A. That's correct.

3 Q. Okay. And it has the address of 1523 Old
4 Roberts Church Road in Anderson. Is that your
5 business address or home address?

6 A. That is our business and home address.

7 Q. Okay. So you work out of your home?

8 A. We have an office at that address, correct.

9 Q. And is that the office for Moats
10 Construction, Incorporated?

11 A. It is.

12 Q. Okay.

13 A. That is in the process of actually being
14 changed. We have a reg -- a new registered agent
15 that we're using for our businesses.

16 Q. And who is that?

17 A. Jeff Goodwyn.

18 Q. Jeff Goodwyn?

19 A. In Columbia.

20 Q. An attorney?

21 A. An attorney in Columbia, yes.

22 Q. And why are you doing that?

23 A. We're doing that primarily because we do
24 not want any kind of process servers coming to that
25 address.

1 Q. Okay. Well, as we'll get to in a little
2 while, that would have been nice to know earlier on,
3 if you had a correct filing.

4 All right. And who did you say your
5 accountant is?

6 A. I'm sorry. What do you mean by correct
7 filing?

8 Q. I'll get to that in a minute.

9 A. Okay.

10 Q. Okay. Because this is the only address we
11 had for you.

12 A. Well, I mean, if that's what they have on
13 file, it probably hasn't been changed yet.

14 Q. What are the assets of your corporation?

15 A. The equipment.

16 Q. What type of equipment?

17 A. The type that you use in construction.

18 Q. Well, I'm not in construction, so how about
19 use some names?

20 A. Okay. Tools, various tools and equipment,
21 excavators, loaders, dozers, things like that.

22 Q. Okay. And are those located at Old Roberts
23 Church Road, or are they located at some other place?

24 A. No. They're usually in various places, on
25 job sites.

1 Q. On job sites. Okay. All right. I'm going
2 to be asking you for a -- through your attorney, for
3 a list of those pieces of equipment and tools. Okay.

4 Now, when we were doing the search for
5 Moats, I also found another company that you
6 apparently are involved in. Do you know the name of
7 that company?

8 A. I have two other companies.

9 Q. Pardon me?

10 A. I have two other companies that I'm
11 involved in.

12 Q. Okay. And what are the names of those
13 companies?

14 A. One of them is Bry Tye Moats Construction.

15 Q. Bry Tye?

16 A. LLC.

17 Q. Okay.

18 A. And the other one is The Green Man, LLC.

19 Q. And what type of companies are those?

20 A. Bry Tye is an entity that we created to put
21 rolling stock equipment in, and The Green Man is a
22 recycling and waste hauling company.

23 Q. And are they organized under the laws of
24 the State of South Carolina?

25 A. They are.

1 Q. Okay. And how long have those companies
2 been in existence?

3 A. Bry Tye since 2008, I believe, and The
4 Green Man since 2017.

5 [R. Moats Deposition Exhibit No. 2 was
6 marked.]

7 Q. [By Mr. Logan] Okay. Well, I found online,
8 with the secretary of state's office, the information
9 regarding Bry Tye. I'll show you as Exhibit 2 a copy
10 of that information. And when this was checked, I
11 did not find any information regarding any other
12 corporation. Effective date April of 2008, is that
13 correct?

14 A. Yes, sir.

15 Q. Okay. And you are listed as the registered
16 agent at the same address on Roberts Church Road; is
17 that right?

18 A. Correct.

19 Q. And what's the business of Bry Tye
20 Construction Company?

21 A. Well, I believe I just said that. We
22 created that entity to put our rolling stock in, like
23 our trucks, trucks and -- we were advised by an
24 accountant to do that, so that's what we did.

25 Q. Okay. So if your -- so the trucks and

1 equipment are listed in Bry Tye Moats Construction --

2 A. Yes.

3 Q. -- or owned by that company?

4 A. Most of it, yes, sir.

5 Q. What does Moats Construction own?

6 A. Tools. Tools and -- I don't know -- I
7 don't know if it has anything titled in its name.

8 Q. All right. Do you have more than one
9 accountant who has advised you on this?

10 A. No. This was -- this is just our
11 accountant that we use.

12 Q. And who is that again? I'm sorry.

13 A. Greg Owens.

14 Q. Greg Owens. All right. And you say the
15 other most recent corporation that you organized was
16 in 2018?

17 A. Yes, sir.

18 Q. And tell me that name again.

19 A. The Green Man.

20 Q. Green Man. And what are the assets of
21 Green Man?

22 A. It owns a piece of property, and I don't
23 know that it owns anything titled.

24 Q. Are you talking about equipment titled?

25 A. Equipment titled, right.

1 Q. All right. What's the piece of property
2 that it owns?

3 A. It's at 2306 South Main Street.

4 Q. Okay. All right. Does it have, as a
5 registered agent, the same Roberts Church Road
6 address?

7 A. It does.

8 Q. And you as the agent?

9 A. It does. They are all -- they are all
10 being changed. All three entities are being changed.

11 Q. As we speak?

12 A. As we speak, yeah.

13 Q. And the registered agent for the other two
14 are going to be the same lawyer in Columbia?

15 A. It will be.

16 Q. At his address?

17 A. At his address.

18 Q. Okay. All right. And how large is that
19 piece of -- I mean, that real property that you
20 locate -- that you own on, I believe you said, South
21 Main; is that right?

22 A. It's one acre.

23 Q. One acre?

24 A. Yes, sir.

25 Q. And what was the address?

1 A. 2306.

2 Q. All right. Is it vacant, or does it have a
3 building on it?

4 A. It has a -- a building on it.

5 Q. All right. And what do you do with that
6 building?

7 A. We have been cleaning it up actually. It
8 was actually gifted to us.

9 Q. By who?

10 A. The previous owner.

11 Q. Who was that?

12 A. What is his -- Marcel, I can't -- Klauser
13 is his last name.

14 Q. Kawson?

15 A. Klauser.

16 Q. Klauser. Okay. And what do you intend to
17 use that building for?

18 A. We're going to use it for that business.

19 Q. All right. I need to get some information
20 about your -- and excuse me for interrupting myself.

21 Do these other two businesses have any
22 employees, or are they the same employees as Moats
23 Construction?

24 A. They do not. We are trying to hire some
25 employees right now, but that's -- that's a pretty

1 tough thing to do these days.

2 Q. So Bry Tye Moats doesn't have any
3 employees?

4 A. No.

5 Q. And the other one has no employees?

6 A. No, sir.

7 Q. Okay. All right. Are you originally from
8 Anderson?

9 A. Yes, sir.

10 Q. Okay. And your date of birth?

11 A. 4/28/1978.

12 Q. Okay. And are you married?

13 A. No, sir.

14 Q. Okay. Have you ever been married?

15 A. No, sir.

16 Q. Okay. Who lives with you at -- I assume or
17 I believe that Old Roberts Church Road is also your
18 home address; is that right?

19 A. It is.

20 Q. Okay. Is that where you live?

21 A. It is.

22 Q. Okay. And does anybody else live there
23 with you?

24 A. Yes.

25 Q. Who is that?

1 A. My common-law wife, Laura King.

2 Q. Laura King?

3 A. Yes.

4 Q. Okay.

5 A. And my two sons.

6 Q. Two sons. And their names and ages?

7 A. Bryson.

8 Q. Okay.

9 A. And Kinsey.

10 Q. All right. And their ages?

11 A. They are 13 and 10.

12 Q. Okay. How long have you and Laura King
13 been in that relationship that you described?

14 A. Since 2004.

15 Q. Okay. Do you have any extended family that
16 lives in Anderson County?

17 A. I do.

18 Q. All right. And please identify those for
19 me. And I'm asking these questions --

20 A. There are a lot. I mean, do you want to
21 know everybody in my family? My whole family is from
22 Anderson.

23 Q. All right. What I want to know are the
24 names of those who have a last name of other than
25 Moats, primarily. I don't want your second cousin

1 sitting on the jury.

2 A. Okay.

3 Q. That's what this is for.

4 A. Right.

5 Q. So I need the last names of those who don't
6 have a last name of Moats.

7 A. Okay.

8 Q. Moats is an unusual name, and I assume
9 anybody with the last name of Moats you're probably
10 related to; is that right?

11 A. No.

12 Q. Okay.

13 A. No.

14 Q. All right.

15 A. They spell it different. There's only one
16 other family that I know of that spells it like that
17 around here.

18 Q. All right.

19 A. I mean, well, I'll start, let's see --
20 let's see, Cindy Anderson, Kristi Clark, Benny Clark,
21 Hannah Clark, Hailey Clark, Angie Anderson, Ricky
22 Isom, Richard Isom, Deena Bailes Isom, Dina Ragsdale,
23 Leslie Ragsdale, Jeannie Gleason.

24 [Reporter clarification.]

25 A. Gleason, G-L-E-A-S-O-N. Let's see, no

1 second cousins, right? These are all my first
2 cousins.

3 Q. Okay.

4 A. On my -- let's see, Thomas Beebe. I mean,
5 that's all, right off, that I can think of.

6 Q. Are your parents still alive?

7 A. They are.

8 Q. And what are their names and their address?

9 A. Elaine Moats.

10 Q. Okay.

11 A. 532 Galloping Ghost Road.

12 Q. Okay.

13 A. Anderson 29626.

14 Q. Are either one of them still employed?

15 A. My dad works for Moats Construction.

16 Q. Okay.

17 A. But, I mean, he's kind of -- he's full-time
18 if he wants to be. He's partially retired, I guess.

19 Q. Okay. And tell me his name again, first
20 name.

21 A. Jerry Moats.

22 Q. Jerry Moats. All right.

23 A. And Sheree Moats, they're both at 1033
24 Pintail Point, Anderson 29626.

25 Q. Okay. So those are your parents. What

1 about your -- do you have any siblings?

2 A. No.

3 Q. Okay. Only child?

4 A. Only child.

5 Q. All right. What about Laura King, does she
6 have any relatives in Anderson County?

7 A. No.

8 Q. Where is she from originally?

9 A. She's from Charleston.

10 Q. Okay. And is she the mother of your two
11 sons?

12 A. She is.

13 Q. Okay. Do you have -- of the names that you
14 have mentioned to me that you are related to, do you
15 have any of them that work with the Anderson County
16 Sheriff's Office?

17 A. No.

18 Q. Okay. Do you have any that work for the
19 City of Anderson Police Department?

20 A. No.

21 Q. Okay. What is the extent of your
22 educational background?

23 A. High school diploma and some college at
24 Clemson University from 1996 to 2004.

25 Q. Okay. What high school did you graduate

1 from?

2 A. Westside High School.

3 Q. And what year?

4 A. 1996.

5 Q. '96. And then did you immediately go to
6 Clemson or --

7 A. I did.

8 Q. All right. I gather there was some
9 interruption in your college education?

10 A. Work.

11 Q. Okay.

12 A. Life.

13 Q. Who did you go to work for out of high
14 school?

15 A. I've always worked for my father's
16 business.

17 Q. What type business was your father in?

18 A. Construction.

19 Q. Okay. Did he have a company?

20 A. He did.

21 Q. What was the name of his company?

22 A. Fowler and Moats.

23 Q. Fowler and Moats. Who was the Fowler?

24 A. Jerry Fowler.

25 Q. Jerry Fowler. Okay. And was that business

1 located in the City of Anderson, County of Anderson
2 or where?

3 A. County.

4 Q. County. Does that business still exist?

5 A. No.

6 Q. Okay. All right. So you worked for that
7 business, I assume, while you were in high school and
8 then some after college; is that right?

9 A. Some after college.

10 Q. Okay. Did you ever get a degree from
11 Clemson?

12 A. No.

13 Q. Okay. All right. Between -- well, between
14 high school and your forming Moats Construction and
15 these other two entities, besides working for your
16 father's company, did you work for any other
17 companies?

18 A. I did.

19 Q. Who were they?

20 A. Sloan Construction.

21 Q. Okay.

22 A. Blythe Construction, APAC-McDougal
23 Construction, and James Allen Construction.

24 Q. All in Anderson?

25 A. No. Sloan was out of Greer, Duncan.

1 Blythe was from Charlotte. APAC was out of Atlanta,
2 and James Allen was out of Mount Juliet, Tennessee.

3 Q. What type work did you do for those various
4 construction companies?

5 A. I was a field engineer, surveying screw
6 operator, foreman.

7 Q. Okay. And the type construction that you
8 were doing with those companies is basically the same
9 that your companies now do?

10 A. Basically. They were all heavy highway
11 contractors, so we worked on interstates and
12 airports.

13 Q. Okay. Have you or Moats Construction or
14 either of the other two companies ever been sued by
15 anybody?

16 A. I'm sorry. Can you repeat that question?

17 Q. Have you, personally, or Moats
18 Construction, Bry Tye Moats Construction, and the
19 other company that you mentioned that you've just
20 organized, have they ever been sued by anybody?

21 A. Yes. Yes.

22 Q. Okay. What type of lawsuit was that?

23 A. It was a contract dispute lawsuit or breach
24 of contract.

25 Q. Okay. And were you personally sued or just

1 one of your companies?

2 A. I can't remember. The lady that -- I'm
3 talking to Mr. Hawkins.

4 Q. I know, but you can't. I need to know what
5 you know.

6 A. I can't remember if I'm -- if she
7 personally sued me or not. I believe it was the
8 company or corporation, but -- and I'm trying to
9 remember her name, but I can't remember her name
10 right off.

11 Q. Okay. Is that suit still going on?

12 A. It is.

13 Q. Okay. And is it against you, personally?
14 Are you named individually in the lawsuit?

15 A. I don't believe I am.

16 Q. All right. So the only entity that's named
17 is Moats Construction?

18 A. Yes, sir, I think so.

19 Q. And do you know where that case is filed?

20 A. Anderson County.

21 Q. Okay. Do you know how long it's been
22 filed?

23 A. Two years almost.

24 Q. And it's a breach of contract claim?

25 A. Yes, sir.

1 Q. And what is the plaintiff or the individual
2 who has sued you claiming that you did wrong?

3 A. She claimed that we did not finish the job.

4 Q. Was this for a home, a building, or --

5 A. For a residential home --

6 Q. Okay.

7 A. -- for clearing the lot.

8 Q. Okay. You had the contract to clear the
9 property, the real property?

10 A. Yes, sir.

11 Q. Okay. And she sued you for failure to
12 clear it properly or something of that nature?

13 A. I'm not really sure why she sued us.

14 Q. Okay. Who are you represented by in that
15 case?

16 A. Mr. Hawkins.

17 Q. Okay. Do you know who's representing her?

18 A. Mr. Pruitt. No. An attorney that works
19 for Mr. Calhoun Pruitt.

20 Q. Okay. A lawyer in the firm of Pruitt &
21 Pruitt?

22 A. Yes, sir.

23 Q. Okay. Is Moats Construction the only named
24 defendant to your knowledge?

25 A. Yes, sir.

1 Q. Okay. All right. And that's the only
2 lawsuit that you can remember?

3 A. No, sir. I have another suit that a lady,
4 her name is Ms. Eloise Bryant -- I don't really know
5 all the details to it, but it -- evidently she
6 slipped and fell somewhere downtown Anderson, and
7 there's a project that we had worked on down there.
8 And it was well after we had completed or finished
9 the project, and somehow we got named, along with the
10 City of Anderson and another general contractor and
11 several John Doe company and contractors that I
12 believe they just tried to cover their bases, so they
13 just sued everybody.

14 Q. Is that lawsuit still ongoing?

15 A. As far as I know, they haven't dismissed it
16 yet.

17 Q. And you're represented by who in that case?

18 A. Jeff Goodwyn.

19 Q. Jeff Goodwyn. And who represents the
20 person who brought the suit?

21 A. The I-85 lawyers up the road here.

22 Q. The I-85 lawyers?

23 A. Trammell, I think it is.

24 Q. Trammell and Wright?

25 A. I believe so.

1 Q. Not Wright. The Trammell Law Firm?

2 A. I believe that's who it is.

3 Q. Okay. And that case is still pending?

4 A. As far as I know.

5 Q. Okay. Any others?

6 A. No, sir.

7 Q. All right. Now, once you organized -- I'll
8 use Moats, since that was the one organized in 2004.

9 Since you've organized Moats Construction,
10 have you continued to work for any other of the --
11 any other company or companies?

12 A. Just the other ones that I have listed.

13 Q. Right. Okay. Just those. All right.

14 MR. LOGAN: I believe this is 3; is that
15 right?

16 [R. Moats Deposition Exhibit No. 3 was
17 marked.]

18 Q. [By Mr. Logan] Let me show you a packet of
19 paperwork that we've marked as Exhibit 3 to your
20 deposition, and this pertains to 300 Orr Street. And
21 300 Orr Street, is that the property that is the
22 subject matter of this location -- of this litigation
23 that's owned by Mr. Dyar? It says, 300 to 600 West
24 Orr Street.

25 A. I'm sorry. What page are you referring to?

1 Q. why don't you take a minute and look
2 through the pages, and then I'll ask you certain
3 questions about each page. Okay?

4 A. Okay.

5 Q. All right. If you'll look at the document
6 that starts at the third page of that exhibit, it's
7 titled, Agreement for Sale and Purchase of Real
8 Property. Do you see that?

9 A. I do.

10 Q. Is that your signature on page -- on the
11 third page over from there, on behalf of Moats
12 Construction?

13 A. Looks like my signature on the page 3 here,
14 3 of 4.

15 Q. Is that the agreement that is the subject
16 of these lawsuits?

17 A. I'm not sure. I would assume it is. We
18 had a couple, I believe, that were drafted, but it
19 would appear to be, yes, sir.

20 Q. And the property that's listed there is 300
21 to 600 West Orr Street; is that right, on page 1?

22 A. It is.

23 Q. And the original purchase price was
24 \$250,000; is that right?

25 A. It is.

1 Q. Okay. And then paragraph 2(b) sets out the
2 -- how the balance is to be paid; is that correct?

3 A. It does.

4 Q. Okay.

5 MR. HAWKINS: I'm sorry. Are you look --
6 are you look -- I see 3(b), but 2 --

7 MR. LOGAN: I said paragraph 3, payment of
8 purchase price.

9 MR. HAWKINS: Oh, 3, 3(b).

10 MR. LOGAN: What did I say?

11 MR. HAWKINS: I think you said 2.

12 MR. LOGAN: Oh, I apologize if I said --

13 MR. HAWKINS: No, that's okay.

14 MR. LOGAN: The one that's labeled, Balance
15 Due. How about that, can we agree on that?

16 Q. [By Mr. Logan] All right. And that sets
17 forth the terms as to how you were to pay the balance
18 due of \$212,500; is that correct?

19 A. Yes, sir.

20 Q. Okay. And then paragraph 3(c) talked about
21 the insurance obligations that the purchaser assumed;
22 is that correct, and agreed to pay?

23 A. 3(c)? You're referring to 3(c)?

24 Q. Yes, I am.

25 I may be eating up my eight hours today, if

1 this keeps up.

2 I assume you've seen this agreement before;
3 is that correct?

4 A. I have or some form of it. I want to make
5 sure that this is -- we had two separate -- we had a
6 couple separate agreements, and then we had one that
7 we executed. So I'm reading through to make sure
8 that this is the one that we agreed --

9 Q. Take all the time you need, but just
10 remember that's -- I've got all day, so, and you've
11 acknowledged this is your signature to this
12 agreement, so. You take your time and read through
13 it.

14 A. Okay.

15 Q. Is that the agreement that is the subject
16 of this lawsuit?

17 A. It looks like it.

18 Q. Sir?

19 A. It looks like it.

20 Q. Okay. Have you fully complied with all the
21 terms of this agreement?

22 A. I believe I have.

23 Q. Okay. So you have paid -- Mr. Dyar is the
24 owner of this property; is that right?

25 A. I thought I was the owner of the property.

1 Q. Sir, did you have anybody help you with
2 this agreement? Are you pleading ignorance of the
3 terms of this agreement? Somebody that's been in
4 business as long as you have, you didn't read it?

5 A. I did read the agreement. I did.

6 Q. Does it say up here at the top, This
7 agreement, effective January 29, 2011, between Cecil
8 Dyar, referred to as seller, and Moats Construction,
9 referred to as purchaser? Okay. This is an
10 agreement for sale or purchase of real property. You
11 don't own that property, do you?

12 MR. HAWKINS: Object to the form.

13 A. Yes, sir, I believe I do.

14 Q. And what's the basis of that? Have you
15 paid the purchase price in here?

16 A. And more.

17 Q. And more?

18 A. (Nods head).

19 Q. Okay. Do you have any documentation that
20 establishes that, because I haven't seen it?

21 A. Well, I believe we can present it, if you
22 haven't seen it.

23 Q. Well, why hasn't it been presented? I
24 served -- I served discovery requests for this type
25 of information.

1 A. well, I thought we had presented it.

2 Q. So you agree that this document, beginning
3 with the third page of Exhibit 3, is the contract
4 that's involved in this lawsuit; you do agree with
5 that, correct?

6 A. Yes, sir.

7 Q. Okay. And it's your testimony under oath
8 that you have paid all that you owed under the terms
9 of this agreement, pursuant to this contract?

10 A. No, sir. There is a balance owed on this
11 contract.

12 Q. well, that's what I've been trying to get
13 to. What is that balance that you contend is owed?

14 A. I'm not sure. I believe it's -- I'm not
15 sure what the balance is.

16 Q. well, you've asked for an accounting in
17 some of the papers that you have filed. Have you
18 made any effort, since you've asked for it, to have
19 an accounting done to establish exactly how much you
20 contend is owed under this contract?

21 A. We have, I believe.

22 Q. All right. Enlighten me, where is that?

23 A. I guess it's in discovery that we
24 submitted; is it not?

25 Q. Okay. All right. Let's go on. All right.

1 sale of building, 300 West Orr Street, \$250,000.

2 That's this page right here. You paid a down payment
3 of 300 -- or \$37,500, left a balance owed of \$212,500
4 at 6 percent. You see that?

5 A. I do.

6 Q. Okay. Now, the next page after that, have
7 you seen that page before?

8 A. I don't think I've seen this page.

9 Q. Okay.

10 A. And this is not a part of the contract,
11 just for the record.

12 Q. Well, I didn't say it was.

13 A. Okay. Well, I mean, you have it stapled
14 and labeled as the same exhibit.

15 Q. It's part of an exhibit.

16 A. Okay.

17 Q. There are other things that are part of
18 this exhibit that were not attached to that contract.
19 I will concede that for you.

20 But this, obviously, is a schedule prepared
21 by somebody dealing with payments that you made
22 beginning in, according to this, April of 2011. And
23 it's your testimony under oath that you've never seen
24 this before?

25 A. I don't know. Mr. Dyar handed me or

1 mailed, I believe there was two or three different
2 accountings, that, to my knowledge, his accountant
3 had tallied up regarding payments related to this
4 property.

5 Q. Okay. And what did you do --

6 A. I'm not sure if this is one of them or not.

7 Q. Well, there's several. We'll get to them.

8 A. Right.

9 Q. What did you do in response to receiving
10 that information? Did you question the amounts that
11 he claimed were owed? Did you bring it to his
12 attention, any mistakes that he had made?

13 A. We did.

14 Q. All right. And who did you talk to about
15 that?

16 A. Mr. Dyar.

17 Q. And what mistakes did you contend he had
18 made?

19 A. There was some cash that we had given to
20 either Mr. Dyar or Mrs. Dyar at one point in time
21 that were not on there.

22 Q. And what was the amount of that cash?

23 A. I really don't recall. I believe it was
24 \$3,000 or a thousand dollars or -- it was only --
25 that was only once or twice that that happened, and

1 then there was actually a payment that was completely
2 missed.

3 Q. And what was the amount of that payment?

4 A. I believe it was the -- whatever the
5 payment amount in the contract was.

6 Q. All right. \$4,513.22 is what it started
7 off as. Was it a payment?

8 A. I believe it was that amount.

9 Q. Okay. Did you present any evidence to
10 either Mr. Dyar or Mrs. Dyar to establish the cash
11 payment and the missed payment?

12 A. I discussed this with Mr. Dyar in person
13 and, I believe, on the telephone, that we needed to
14 get together with his accountant and go over
15 everything so that we could figure out what exactly
16 the balance was owed and, you know, pay the balance
17 in full. I believe all this was at the end of the
18 term, the original term.

19 Q. Sometime in 2016?

20 A. I believe so.

21 Q. Okay. Because this was a five-year deal,
22 right?

23 A. Yes, sir.

24 Q. Okay. All right. So these two items you
25 contend were discussed toward the end of that six --

1 or that five-year period with Mr. Dyar; is that
2 correct?

3 A. That's correct.

4 Q. Okay. And do you have anything that you
5 presented to him that you recall that -- to support
6 that there was a cash payment of \$3,000 and a missed
7 payment of \$4,513.22?

8 A. I don't recall that I ever -- I mean --

9 Q. I haven't seen it if you have.

10 A. I don't believe I have. I didn't --
11 usually we have e-mail addresses. The way we
12 communicate things to people like that, we would scan
13 it and e-mail it or something. I never have had
14 Mr. Dyar's e-mail address. I have a home address for
15 them, and then I believe they had moved, at one point
16 in time during all of this, to another address. We
17 really didn't have much communication between us,
18 aside from him stopping by and delivering letters
19 from the City of Anderson and from the insurance
20 company.

21 Q. And why would he be delivering letters from
22 the City of Anderson and the insurance company to
23 you?

24 A. Because he expected me to pay them, pay the
25 bills.

1 Q. And wasn't that a part of your contract?

2 A. Was what a part of the contract?

3 Q. Taxes and insurance, utilities, wasn't that
4 a part of the contract?

5 A. No, I don't believe it was. I mean, the
6 insurance -- the insurance was what -- whatever the
7 language in that section C3 or 3(c) is.

8 Q. Okay. Well, let's flip back to that.

9 A. That we were required to keep insurance on
10 the building, that was impossible. And the only
11 reason why Mr. Dyar kept the policy in his name was
12 because nobody else, no other insurance company was
13 going to insure that property, and he knew that prior
14 to the sale.

15 Q. All right. Let's look at our -- let's look
16 at what we've established as the agreement between
17 you all. Okay. Under 3(c), Escrow Payments,
18 Purchaser shall pay, along with each monthly
19 installment of principal and interest, 1/12th of the
20 annual estimated amount of ad valorem taxes and
21 casualty insurance. It is agreed that \$405 per month
22 is the amount estimated to pay such annual costs, but
23 the seller shall have the right to make reasonable
24 adjustments to cover increased costs.

25 Did I read that correctly?

1 A. If you're reading it verbatim. I'm not
2 looking at it, but --

3 Q. You see where I'm reading from, right?
4 That's the purchaser's responsibility?

5 A. Yeah, 3(c), I see it.

6 Q. Okay. And under paragraph 5 on the next
7 page, labeled, Ad Valorem Taxes and Special
8 Assessments, it also creates an obligation on the
9 part of the purchaser to pay those items; does it
10 not?

11 A. Correct. which we always have.

12 Q. Always have what?

13 A. We have always paid those, the ad valorem
14 taxes.

15 Q. You've always paid the taxes and the
16 insurance amounts?

17 A. We have always paid the taxes and the
18 insurance on the property, until we cancelled the
19 policy because --

20 Q. When was the policy cancelled?

21 A. The last hurricane we had.

22 Q. 2018?

23 A. Two thousand -- I'm not really sure exactly
24 when it was, if it was '16 -- we had one in '16,
25 Matthew, that ripped half the roof off the building.

1 Q. well, you haven't alleged anything in your
2 complaint about 2016.

3 A. Okay. well, we may need to amend that
4 then, I guess.

5 Q. And what was the amount of that?

6 A. Of what?

7 Q. Of the claim.

8 A. well, it was for the repair of the roof.
9 There was no amount. I mean, they sent an adjuster
10 out three months later, and we never -- we never got
11 -- we got a check back for \$3.32.

12 Q. well, that happened in 2018.

13 A. It was either '16 -- we had two hurricanes
14 that came through. They both damaged the roof of
15 that building, substantially damaged it, and the
16 insurer did not cover any repair at all, even though
17 we had paid the premiums like they were supposed to
18 be paid. So we didn't feel like -- since they
19 weren't going to cover the property or any damage
20 incurred by any kind of natural disaster or act of
21 God, then we weren't going to continue to pay the
22 premiums. So we cancelled the premium, or we
23 cancelled the policy.

24 Q. Okay. You say, we cancelled the policy?

25 A. I canc -- the company. The company, the

1 buyer, the owner.

2 Q. Okay. Well, the only thing I've seen about
3 those two dates is, according to what you furnished
4 to me, is information pertaining to a claim that was
5 filed in 2018, regarding Hurricane -- Hurricane Irma,
6 I think it was.

7 A. Maybe.

8 Q. And then there was a payment in 2011.
9 Yeah, Hurricane Irma. And this material was in your
10 file. And that's the one where they paid -- they
11 found a loss of a little over \$500 because of the
12 terms of the policy. The actual cash value of the
13 damage was determined to be \$503.31, minus a property
14 -- I mean, a policy deductible of \$500. That's why
15 you ended up --

16 A. I'm familiar with it.

17 Q. Okay. You're familiar with it. All right.
18 And the other one that you -- that was in your file
19 that you all furnished to me is in 2011, dealing with
20 another loss associated, I believe, with wind issues
21 for \$32,720.47.

22 Now, if there's something that happened in
23 2016, I need to see that because I haven't been
24 furnished that information.

25 A. Okay. It may have been -- I may have meant

1 '18. But we did have two hurricanes, one in 2016,
2 that I remember, and I believe we made repairs to the
3 building that time. I don't think it was a major
4 damage. I'm mainly referring to the one in 2018.

5 Q. Well, you say major. The one in 2011, they
6 paid \$32,720.47.

7 A. That was --

8 Q. What did you do with that money?

9 A. That was -- we gave -- we used it to clean
10 up the property is what we did, yeah.

11 Q. So he gave that check to you, didn't he?

12 A. He did.

13 Q. Okay. And you endorsed it and put it in
14 your company account?

15 A. We did.

16 Q. Okay. So, again, for the record, if you
17 have anything -- any other claims out there that
18 you're referring to, I need to see that information,
19 and we'll come back and go over that.

20 So it's your testimony under oath that
21 after the 2018 loss is when you cancelled the policy?

22 A. I believe so.

23 Q. Okay. So that's two years ago?

24 A. Correct.

25 Q. Okay. All right. And you stopped paying

1 the insurance premiums or an amount for casualty
2 insurance under the terms of the agreement when you
3 cancelled the policy; is that right?

4 A. That's correct.

5 Q. But it's your testimony under oath that
6 until that time period, you paid those premiums?

7 A. I did.

8 Q. Okay. All right. Flipping over on the
9 agreement, you see on page -- which is part of
10 Exhibit 1, paragraph 17, that deals with maintenance.
11 You acknowledge that this agreement says the
12 purchaser is responsible for maintenance on the
13 property; is that correct?

14 MR. HAWKINS: I think that's Exhibit 3.
15 You referred to Exhibit 1.

16 MR. LOGAN: I'm sorry. You're correct,
17 Exhibit 1.

18 MR. HAWKINS: Exhibit 3.

19 MR. LOGAN: Exhibit 3, you're correct.

20 Q. [By Mr. Logan] Paragraph number 17, which
21 is on page 3 of 4. Do you see that obligation?

22 A. Yes, sir.

23 Q. Okay. And number 18 talks about the
24 disclaimer of warranties. The purchaser acknowledges
25 that the purchaser has made an inspection of the

1 premises and accepts the same as is, with all faults.
2 Do you see that?

3 A. I do.

4 Q. Okay. All right. And you were not under
5 the influence of any substances or medication at the
6 time you signed this contract; is that right?

7 A. No, sir.

8 Q. Okay. All right. Continuing with page --
9 with Exhibit 3. There's a copy of a letter that was
10 sent to you by Mr. Dyar, dated July 16, 2019. Do you
11 remember receiving that letter?

12 A. I do not.

13 Q. You do not. Is that your address --

14 A. It is.

15 Q. -- 1523?

16 A. It is.

17 Q. Any reason you can think of that you would
18 not have received that letter?

19 A. We get a lot of mail at the address. I
20 mean, I don't -- I just, honestly --

21 Q. Well, this is pretty important.

22 A. Well, I'm just telling you, I honestly
23 don't remember getting this letter. That's why I
24 looked at it a few minutes ago when you first handed
25 me the exhibit.

1 Q. Do you remember discussing with Mr. Dyar
2 the contents of this letter?

3 A. No.

4 Q. Did you take any action when you received
5 this letter or in response to this letter?

6 A. I had -- I had been in contact, discussed
7 the contents of this letter numerous times with
8 Mr. Dyar.

9 Q. Okay. And what have you discussed with
10 him?

11 A. Well, we discussed that -- the issues with
12 the building, the issues with the property, the
13 issues with the insurance policy, the issues with the
14 City of Anderson. We discussed the issues with the
15 railroad. We discussed the issues of the equipment
16 that was left in the building, the clean-up that we
17 had to perform after we purchased the property, the
18 tenants that supposedly -- the leases and the tenants
19 that were in the building originally, moving his
20 property out of the building. I mean, we had several
21 discussions.

22 Usually, every few months, Cecil would call
23 me and ask me about the property, and I told him the
24 same thing I told him every other time, that we had a
25 lot of issues with the building, and as soon as we

1 got them resolved, I would pay the balance on the
2 note. He was agreeable to that every other time. We
3 discussed having meetings with the accountant to get
4 the numbers worked out so we had a definitive amount
5 to be paid. And I informed him that I had to hire an
6 attorney to deal with the issues with the railroad,
7 and I was having to hire an attorney to deal with the
8 issues with the insurance company. But being that
9 the insurance policy was never in our name, that was
10 next to impossible. And also, the property was never
11 in our name. It was never recorded at the ROD office
12 in Anderson, or the probate was never recorded. And
13 so we had no authority. We weren't even -- we were
14 not even an owner of the property. We couldn't deal
15 with the City of Anderson with all the stormwater
16 issues that -- stormwater liens that the property had
17 on it.

18 Q. Do you have any documentation that
19 references these discussions and conversations and
20 issues that you have just referred to that supports
21 your position that you talked to Mr. Moats about -- I
22 mean, Mr. Dyar about these issues?

23 A. Yes, we do.

24 Q. And where is that information?

25 A. We have a letter that the attorney, William

1 Swent, in Greenville, had drafted for Mr. Dyar. I
2 don't know that that letter was ever sent to him, but
3 I do have a copy of that letter. I don't know that I
4 ever provided that --

5 Q. I'm going to ask you about that, but I will
6 represent to you that he never saw a copy of that
7 letter.

8 A. Okay.

9 Q. Okay. And we will talk about that letter.
10 Anything else besides that?

11 A. Most all of the dealings that I had with
12 Mr. Dyar were in person, unless he called me on the
13 telephone, so I don't have any other letters or
14 correspondence with Mr. Dyar, like, as far as
15 documents go that you're asking me about.

16 Q. Okay. And under the terms of this
17 agreement, the condition of the property, whatever
18 condition it was in, it says that that is your
19 responsibility and not his; does it not? You took
20 the property as is, with all faults, under the terms
21 of this agreement, paragraph number 18.

22 A. Okay. What was your question?

23 Q. All of what you just told me, including the
24 taxes and the insurance, were your obligations under
25 this contract?

1 A. No.

2 Q. All right. What did you tell me that was
3 not your obligation under the contract?

4 A. We did not know anything about any issues
5 with stormwater or issues with the City of Anderson
6 prior to buying this property. That came at a later
7 date. Mr. Dyar started bringing us letters from the
8 City, stormwater letters from the City and said that
9 he had been getting these. I don't know at what
10 point he had started getting them, but at some point,
11 either prior to the sale or after the sale. I mean,
12 I'm guessing -- I believe I've got -- I've got a box
13 of these that I've got from him that the City of
14 Anderson was sending him letters to pay stormwater
15 taxes on the property, a program that they had
16 recently implemented. I don't know when they did
17 that, a decade ago, and that he had never paid those.
18 And he didn't think he was obligated to pay those.
19 After that, he gave us a letter. All of this
20 information is going to him, not us, mailed to his
21 address, not ours --

22 Q. Well, he got it to you, didn't he?

23 A. -- from the City of Anderson. He would
24 bring those letters by and either leave them with an
25 employee or leave them at the property, and it was a

1 stormwater lien that had been filed by the City of
2 Anderson on the property.

3 Q. Look at paragraph 18 again, and I'm going
4 to read it into the record. The purchaser, which is
5 you, acknowledges that the seller has made no
6 representation to the purchaser concerning the
7 condition of the dwelling or any improvements upon
8 the premises. The seller specifically disclaims all
9 warranties, which may exist by implication of law,
10 including the warranty of habitability. The
11 purchaser acknowledges that the purchaser has made --
12 that the purchaser has made an inspection of the
13 premises and accepts the same as is, with all faults.
14 And you signed this document, didn't you?

15 A. Yes, I did. But paragraph 18 is open to
16 interpretation, I mean, I believe. I mean, I believe
17 that it's specifically related to the real property.
18 Is it not?

19 Q. And what is your definition of real
20 property?

21 A. The land and the improvements on the
22 property.

23 Q. Including the building?

24 A. Correct.

25 Q. Okay. And we've got a separate one for

1 taxes. And we've got a separate one from the
2 insurance obligations, which is your obligation. And
3 we've got a separate one for the maintenance of the
4 building, which is your obligation as the purchaser.
5 That's paragraph 17.

6 So I was asking you about the document that
7 looks like this. Do you have that in front of you?

8 A. I have one that's not highlighted.

9 Q. Yeah. This is my copy.

10 A. Is this what appears to be the payments?

11 Q. Yeah.

12 A. Okay.

13 Q. And you've told me that you did not -- you
14 don't recall ever seeing this document?

15 A. I do not.

16 Q. All right. Flip over to the next page.
17 Have you ever seen this document?

18 A. I have seen something that looks like this.
19 I'm not sure if it was just a single page like this.
20 I remember the handwriting, so I'm not sure if it was
21 this actual document or another one.

22 Q. So if you remember the handwriting, are you
23 saying that you received a copy of it at some point?

24 A. No, I'm not.

25 Q. Okay. All right. Well, how do you know

1 that you've seen it then?

2 A. I don't know that I have seen it. I
3 recognize the handwriting, and I believe it's his
4 accountant's handwriting.

5 Q. And why -- so you're telling me that you
6 don't recall Mr. Dyar ever giving you this one-page
7 document that begins with the balance as of February
8 5, 2018, which is a month after the letter that was
9 in your file that you had your attorney send about
10 the balance then owed, which I'll get to in a minute,
11 and you never -- you've never either seen -- other
12 than recognizing the writing, you can't tell me one
13 way or the other whether or not you got this
14 document; is that your testimony?

15 A. No, I can't tell you one way or the other
16 whether it was this document or not. I mean, we had
17 a couple of different -- I believe there were two,
18 what I recall. What I remember is that there were
19 two different accountings of the payments that
20 Mr. Dyar sent or shared with me, sent to us, mailed
21 to us, or handed -- he would come by and just hand --
22 give letters and things related to the building with
23 my employees. He would drop them off with the
24 employees. They would put them on a desk in there.
25 So, I mean, it's not -- I can't tell you for sure if

1 I got this or not, no, this particular document.

2 Q. And where would he drop them off, what
3 location?

4 A. 300 West Orr Street.

5 Q. Okay. Now, based upon this document, which
6 I understand was prepared by Mr. Dyar, it shows that
7 you have made no payments under the terms of the
8 contract since May 20, 2018. Do you agree or
9 disagree with that?

10 A. What document are we looking at, what page?

11 Q. The one that's right in front of you.

12 A. Okay. I mean, according to this --

13 MR. HAWKINS: Just for the record, this is
14 -- we're speaking of the handwritten ledger that
15 has 300 West Orr Street up top?

16 MR. LOGAN: Correct, which is a part of
17 Exhibit 3.

18 MR. HAWKINS: I got it.

19 A. I mean, I don't see where it has -- I mean,
20 it has interest, late charges, and balance, and then,
21 okay, payment. Okay. I see the payment. Yeah, it
22 says payment. It looks like last payment May 20,
23 2018.

24 Q. Correct. Now, I don't see a record of any
25 payments on this after that date. My question to you

1 is, do you disagree with what he's representing on
2 this document, that the last payment you made under
3 the terms of that contract was on May 20, 2018?

4 A. I do not know. I don't know, unless --

5 Q. who handles your financial affairs?

6 A. well, if you'll let me --

7 Q. I'll be glad to.

8 A. -- finish answering the question --

9 Q. Go right ahead.

10 A. -- I'll let you know.

11 Q. Go right ahead.

12 A. Normally, we've got a QuickBooks accounting
13 spreadsheet or just a transaction sheet that shows
14 the payments made to the vendor, so I believe we
15 included that in the discovery. That is -- whatever
16 is on that sheet would be the last payment that I re
17 -- that was made.

18 Q. well, I would appreciate you getting with
19 your attorney - and if the information was furnished
20 to him, he would have sent it to me - and see if that
21 documentation is in what you furnished -- what you,
22 through him, furnished to me because I haven't seen
23 it if it is.

24 A. Okay.

25 Q. So you don't know one way or the other, as

1 we sit here, whether or not the last payment you made
2 was on May 20, 2018; is that what you're telling me?

3 A. No, sitting here, I do not know.

4 Q. So, therefore, you have no reason to
5 disagree with his statement contained in this
6 handwritten sheet that that was the last payment that
7 you made?

8 A. I have every reason to disagree. I mean,
9 that's what we're doing here. That's why we're here;
10 we're disagreeing on what's owed and --

11 Q. I want to know the basis of your
12 disagreement, papers that say, no, I disagree with
13 this; this is what I've paid. Do you have that?

14 A. We do have that.

15 Q. Well, furnish it to me, please.

16 A. Okay. I thought we already had.

17 Q. Well, I've gone through everything that you
18 furnished.

19 All right. Flip over to the page that's
20 Cecil Dyar to Moats Construction. Do you recognize
21 that document? It's a one-page document that begins
22 with the first payment of May 1st of 2011 and goes
23 through September of 2014. And it's just one page.
24 Have you ever seen that?

25 A. It looks familiar. It looks like the

1 original amortization schedule from the original
2 purchase.

3 Q. Okay. So you have this?

4 A. I believe so.

5 Q. Okay. Flip over to the next page, a loan
6 amortization schedule. It's a two-page document that
7 begins with Payment Number 1, and I don't have the
8 second page. I believe all this was in the material
9 that was -- you furnished. Do you have another page
10 for this amortization schedule to your knowledge?

11 A. Another page? I mean, if it says there's a
12 second page, I imagine we do have a second page.

13 Q. Okay.

14 A. But, I mean, it's not included in this
15 exhibit, is it?

16 Q. Okay. All right. Put that aside for right
17 now. We may come back to it.

18 [R. Moats Deposition Exhibit No. 4 was
19 marked.]

20 Q. [By Mr. Logan] Okay. This is material
21 coming from your file, Exhibit 4. And it begins with
22 a letter from your attorney that Mr. Dyar did not
23 receive, but it's by William Sweet or Swent; is that
24 correct?

25 A. Yes, sir.

1 Q. Okay. And it's -- and one of the issues in
2 your allegations is that Mr. Dyar never responded to
3 this letter, and I believe you testified already that
4 you believe he had never received that letter?

5 A. That's correct.

6 Q. Okay. So it would be difficult for him to
7 respond to a letter that he never received; is that
8 correct?

9 A. That is correct.

10 Q. Do you know why he would not have received
11 this letter?

12 A. Yes. There were some issues. We were
13 going back and forth with Mr. Swent about the balance
14 owed and some of his calculations, and I believe that
15 -- I believe that was the main thing. This -- I
16 believe this was originally just a draft that he had
17 drafted and he had sent to me to look over. And so I
18 believe that's the reason why it never got sent to
19 Mr. Dyar. I made Mr. Dyar aware of it.

20 Q. Do what?

21 A. I made Mr. Dyar aware of it in our
22 discussions, face-to-face discussions that we were
23 having, that I had hired an attorney and that he was
24 sending him a letter, would be sending him a letter.
25 I mean, he was aware of it. We just -- we -- it was

1 just never sent.

2 Q. But you received a copy of it, or you saw
3 it?

4 A. I did.

5 Q. Okay. And on page -- the first page of
6 that letter, it refers or asking a confirmation of a
7 final payment due of \$83,338.98, as of December 31,
8 2017. Would you agree with that, that that amount
9 was owed under the contract as of that date?

10 A. No, sir. I believe that I just responded
11 to that and answered that question before you asked
12 it, that we did not agree with that amount, his
13 calculations. He had performed a number of
14 calculations based on the information that we were
15 providing him, which was accounting information, and
16 I don't know that it was -- and I think he was
17 calculating the additional interest, late fees, and
18 things like that, and that was -- that was the main
19 thing that we were -- we had an issue with is we were
20 not agreeing to pay Mr. Dyar any late fees or
21 interest. We were willing, at that point, to make a
22 final payment to him, lump-sum payment to him for the
23 property, but we were not agreeable to paying any
24 late fees or interest, any other interest.

25 Q. So what you're telling me is that this

1 letter was prepared by your attorney, based upon the
2 information that you had furnished to him, to
3 calculate what the amount owed under the agreement
4 was as of the date of this letter; is that correct?

5 A. Correct.

6 Q. So he would not have come up with this
7 number based upon any information that Mr. Dyar had
8 given him; is that right?

9 A. That's correct.

10 Q. Okay. So it's all based upon the
11 information that you or Moats had given to him?

12 A. That's correct.

13 Q. Okay. Now, and did you bring this to his
14 attention, the attorney's attention, that you did not
15 agree with this?

16 A. I did.

17 Q. Okay. And what was his response?

18 MR. HAWKINS: I'm going to object to that.
19 We've produced the document, and I think -- I
20 don't want to make a speaking objection, but I
21 think you know what it is.

22 MR. LOGAN: Attorney-client privilege?

23 MR. HAWKINS: Yes, sir. I don't want to
24 push the envelope too far.

25 MR. LOGAN: Huh?

1 MR. HAWKINS: I don't want to push the
2 envelope too far.

3 Q. [By Mr. Logan] All right. Well, attached
4 to his letter and referenced in his letter is a
5 document or one page labeled, Moats from Dyar Bond
6 Payoff Calculation. Do you see that?

7 A. I'm sorry. Where -- okay. This is after
8 -- okay.

9 Q. Does that have an exhibit number on it?

10 A. It does not.

11 MR. HAWKINS: It does. It's --

12 MR. LOGAN: Maybe I --

13 MR. HAWKINS: It's --

14 THE DEPONENT: Oh, 0086, yeah.

15 MR. LOGAN: It has a Bates number on it.

16 THE DEPONENT: Yeah. Moats 0086.

17 MR. LOGAN: Let me see that back just a
18 minute, please. I think I intended to -- yeah,
19 let me go ahead and mark these pages. I put
20 exhibit stickers on them, but I just didn't fill
21 it in.

22 MR. HAWKINS: Oh, okay.

23 MR. LOGAN: So that was 4. This is 5.

24 This will be 6, 7, 8, 9, 10, 11, 12, 13, 14, 15,
25 16, 17, 18, and 19.

1 [R. Moats Deposition Exhibit Nos. 5 through
2 19 were marked.]

3 MR. LOGAN: All right. This packet that
4 we're talking about now -- so what I've put in
5 front of you are exhibits that are marked
6 Exhibit 4 through Exhibit 19, which I will
7 represent to you came from your production. You
8 want this?

9 MR. HAWKINS: No. I'll just look at them
10 when you start asking questions, and I'll mark
11 mine.

12 Q. [By Mr. Logan] Okay. So 14 is the letter
13 from the attorney -- I'm sorry.

14 MR. HAWKINS: That's 4.

15 MR. LOGAN: Or 4.

16 Q. [By Mr. Logan] 15 is the Moats from Dyar
17 Bond Payoff Calculations.

18 MR. HAWKINS: 5.

19 MR. LOGAN: I mean, 5. I'm sorry.

20 Q. [By Mr. Logan] Okay. 5. Now, is that --
21 as far as you know, is that a document that your
22 attorney prepared?

23 A. Yes, sir, I believe it is.

24 Q. That you disagreed with?

25 A. I agreed -- I disagreed with a portion of

1 it, yes, sir.

2 Q. Can you show me what portion you disagreed
3 with?

4 A. Okay. You have to give me a minute. It's
5 been a while since I looked at it. Yeah, there was
6 just a -- there was, like, the insurance, property
7 taxes, the other interest. These are all in 2(a) on
8 this sheet.

9 Q. All right. 2(a). So where you have
10 interest of 33,000; is that correct? You disagreed
11 with that?

12 A. Yes. Yeah, I'm not sure. I'm just looking
13 back over it. I think I was in agreement with paying
14 -- can I mark -- I can't mark on these.

15 Q. No, no, no, not on the exhibit. Okay.

16 A. I believe I was in agreement with paying
17 the interest because that was in the original
18 agreement, but anything outside of that, outside of
19 that 60-month, five-year period, I was not in
20 agreement with paying any further interest or late
21 fees or anything like that. And I believe that was
22 the difference, to my knowledge, and I believe he had
23 been confused about who had paid the property taxes
24 and insurance after that original term because after
25 that, I believe, originally the insurance was -- let

1 me back up.

2 We were paying the premium for the
3 insurance and the taxes after the five-year term. So
4 he had some of that included in his calculations, so
5 that was just -- that was the biggest difference in
6 it. It wasn't that we weren't agreeing to pay the
7 original amount at that time, but it was some of the
8 other calculations he had made. And so that's what
9 we -- we were wanting him to revise his letter to
10 Mr. Dyar.

11 Q. All right. In connection with that, if you
12 would go back -- I believe it's the -- let me see
13 those. Exhibit 3, in front of you, if you will flip
14 over to a page toward the back of that document that
15 is labeled, Addendum/Amendment To. It looks like
16 this. Keep going till you find this.

17 A. Okay.

18 Q. You see it?

19 A. I do.

20 Q. And while this one is not signed, do you
21 recall entering into an addendum or amendment to the
22 agreement?

23 A. No, we did not.

24 Q. You never executed this?

25 A. Never executed this.

1 Q. Okay. why is that?

2 A. Because we were not in agreement with it.
3 We were wanting to pay, just pay the balance that we
4 -- myself and Mr. Dyar agreed to, the amount that was
5 owed at the end of the original term, and that's what
6 we had discussed with Mr. Dyar on several different
7 occasions.

8 Q. Okay.

9 A. I believe Mr. Dyar was in agreement with
10 extending, but we were not.

11 Q. Okay. But you, instead of turning the
12 property back over to him, you continued to occupy
13 that space and that property pursuant to the original
14 agreement, correct?

15 A. Well, we felt like we owned the property.
16 I mean, we had -- we made more improvements on the
17 property than it was even worth and that we had even
18 paid for.

19 Q. Where is your documentation about the
20 amount of improvements that you made?

21 A. If we don't have them in discovery already,
22 I mean, I imagine we can provide them. I know we
23 can. We documented the whole entire clean-up of that
24 property and any repairs we made, so.

25 Q. And what paragraph in the agreement

1 provides that you get credit for improvements that
2 you've made on the property?

3 A. well, I don't know that there is any, but
4 it would just be our sweat equity in the property.
5 We weren't going to just turn it over to the seller,
6 wouldn't make any equitable sense for us to do that.

7 Q. Regardless of what you agreed to do; is
8 that right, in writing?

9 A. No. We agreed, in writing, to pay a
10 certain amount for the property, and we were
11 agreeable to do that.

12 Q. well, apparently, you didn't agree with
13 your attorney in January of 2018, as to the amount
14 that was owed, if I understand your testimony
15 correctly?

16 A. Are you asking me a question?

17 Q. Yeah.

18 A. Okay. What's that question?

19 Q. I said, apparently, you didn't agree with
20 your attorney who had calculated the amount owed as
21 of that date?

22 A. That's correct. I've already stated that.

23 Q. Okay. So you owed him money. You didn't
24 even agree to pay him \$83,000, correct?

25 A. That's correct.

1 Q. why?

2 A. I just got through saying that and
3 explaining it to you.

4 Q. Say it -- I'm thick.

5 A. I can do it again.

6 Q. I'm thick. If somebody has an obligation,
7 I don't understand why they don't fulfill an
8 obligation.

9 A. Because the way he calculated the amount,
10 it was outside of the original term period, and he
11 had calculated original interest and late fees that
12 we were not agreeable to.

13 Q. All right. So going back to this, Exhibit
14 5, you say you didn't agree with the property taxes
15 paid by seller. You didn't agree with that; is that
16 right, 15,000 some-odd dollars?

17 A. I don't think -- I don't think we did.
18 \$15,000 paid by the seller. No, I believe that was
19 in the original contract. I believe we did agree
20 with that.

21 Q. Okay. So continuing on under 2(a), what
22 did you disagree with?

23 A. well, I believe that he included additional
24 property taxes that was -- were after the five-year
25 period, 60-month period that we had paid. We started

1 paying the property taxes on the property after the
2 five-year period. We started paying them. Mr. Dyar
3 did not pay them. We did.

4 Q. Okay. So after --

5 A. So he had included those amounts in that
6 number, so we had an issue with that.

7 Q. Which number is that?

8 A. It's the property tax number.

9 Q. Okay. So it was -- you disagreed with a
10 portion of that amount?

11 A. Correct.

12 Q. Okay. How much was the portion that you
13 disagreed with?

14 A. Well, I don't know. I'm not sure. We'd
15 have to calculate it. I don't know if he ever
16 recalculated it. We wound up pulling Mr. Swent off
17 of this because he could not get it completed and
18 done for us, for whatever reason. We paid him, but
19 we couldn't -- he couldn't get it done. We were --
20 so I don't know. I don't know what portion of that
21 is. I'm sure we can figure it out, calculate it.

22 Q. Did you hire somebody else to calculate
23 what you were willing to pay Mr. Dyar, what you
24 believed you owed under the contract?

25 A. After that, we did not.

1 Q. But you continued to remain in the
2 building?

3 A. Yes.

4 Q. You continued to occupy the property that
5 you -- which is the subject of this agreement?

6 A. Correct.

7 Q. And did not pay him another dime in rent or
8 payment under the terms of the agreement?

9 A. As of what date? The May 18th date --

10 Q. Yep.

11 A. -- from before?

12 Q. Yeah.

13 A. I don't know. I don't know when the last
14 payment was.

15 Q. All right. The next exhibit, I think,
16 would be number 6, Loan Calculator with Extra
17 Payments. Do you know where that came from?

18 A. I am not sure.

19 Q. Have you ever seen it before?

20 A. It looks familiar.

21 Q. Number 7, Loan Amortization Schedule,
22 again, out of your file. Have you ever seen that
23 before?

24 A. Yes, sir. I believe this is the original
25 amortization schedule for the agreement --

1 Q. okay.

2 A. -- the purchase.

3 Q. okay. Did you prepare it or Mr. Dyar?

4 A. I believe McCoy Wright prepared this, I
5 think. I'm not a hundred percent sure, but I believe
6 that's who prepared it.

7 Q. All right. Next is Exhibit 8, again,
8 handwritten, but has a date on it of March 14th of
9 2011. Do you know where that came from?

10 A. I believe this is from Mr. Dyar's
11 accountant or himself.

12 Q. And who was his accountant?

13 A. I don't -- I do not know who his accountant
14 is.

15 Q. okay.

16 A. I mean, it says, Shif -- I believe this is
17 -- I believe this is Shiflette Bookkeeping, if I'm
18 reading on the side, in the margin.

19 Q. In the margin. Which one you looking at,
20 what exhibit, 8?

21 A. Second page on 8, Moats 127.

22 Q. oh, Shiflette, I see what you're talking
23 about. All right. There's a -- I believe it's
24 toward the back. I can't remember what number it is,
25 but it looks like this.

1 MR. HAWKINS: Is that one marked?

2 THE DEPONENT: Looks like 12.

3 MR. HAWKINS: Exhibit 12.

4 Q. [By Mr. Logan] 12. Okay. That was in your
5 material. Do you know why that was included?

6 A. Not right off. I'm not sure. I mean, it
7 looks like a check to Mr. Dyar.

8 Q. But you have no idea what it was for?

9 A. I mean, it looks like one of our company
10 checks.

11 Q. And beyond that are several, five or six,
12 separately marked photographs that were part of your
13 production. What was the purpose of these
14 photographs?

15 A. These exhibits, want to start with 14?

16 Q. Start with the first one, yeah.

17 A. Okay. Yeah, we took these pictures. They
18 were just the condition of the building, the roof of
19 the building after the storm damage --

20 Q. Which storm damage?

21 A. -- and the current state of the building.
22 I believe it was the storm in 2018.

23 Q. Okay. So all these pictures deal with,
24 basically, water coming in as a result of the
25 hurricane --

1 A. Yes.

2 Q. -- in 2017/18?

3 A. Yeah.

4 Q. Hurricane Irma. Okay.

5 Now, did you ever furnish -- you've talked
6 many times about disagreements with Mr. Dyar and
7 disagreements with Mr. Swent, who calculated payments
8 due based upon information you furnished to him.
9 After you fired Mr. Swent, did you ever have any
10 follow-up with Mr. Dyar or present Mr. Dyar with a
11 statement showing what you were willing to pay based
12 upon what you interpreted your obligations to be
13 under that agreement?

14 A. You lost me there. One more time.

15 Q. All right. Let me back up. Don't try to
16 figure out what I'm trying to say. Sometimes I get
17 confused myself.

18 You disagreed with Mr. Dyar's accounting.
19 You disagreed with your attorney's accounting. After
20 January of 2018, while you -- and from that time
21 forward, while you were still occupying the building,
22 have you ever or did you ever furnish Mr. Dyar with
23 any sort of documentation to establish what you
24 believed you owed under the contract?

25 A. No, I don't believe I have. We spoke -- we

1 never -- we never -- we never exchanged documents,
2 except for him bringing me things and -- or bringing
3 them down to the building and giving them to other
4 people there. That's the only time we ever exchanged
5 documents, so, but we had a different kind of
6 relationship. We had more of a personal kind of
7 relationship where we'd -- he would either call me or
8 I'd call him or he would come down there in person
9 and speak to me. And that was our -- that was our
10 relationship as far as communication goes, so.

11 Q. So you assumed that he was okay with you
12 continuing to occupy that space without paying him
13 any payments; is that what you assumed?

14 A. That is what I assumed. We had had
15 conversations about, you know, the money that was
16 owed, and it was related to the balance. And I had
17 intended on paying Mr. Dyar, in full, that balance,
18 and then we ran into a number of additional issues
19 with the property that related to the insurance
20 policy on the building and also the railroad.

21 Q. Did you ever determine the amount that you
22 were willing to pay him?

23 A. I believe we did. I believe we did. I
24 believe it was -- I'm not sure of the exact amount.
25 I believe it was somewhere 50- to \$70,000 is what was

1 left owed that we were going to pay.

2 Q. Okay. Did you have any documentation where
3 you furnished that information to Mr. Dyar?

4 A. I don't believe so.

5 Q. Okay. So you made a call -- do you have any
6 documentation that shows the calculations that you
7 made to come up with whatever number you came up
8 with?

9 A. Our accounting. Our accounting software
10 and, like I said, the transactions pages that shows
11 the payments, the bills and payments, and then our
12 knowledge of the cash that we had paid him, which,
13 like I said, was only like once or twice that we had
14 done that.

15 Q. And where is that documentation, because I
16 haven't seen it?

17 A. I have a share file that I have been
18 sharing with my attorney. I thought that it was in
19 that share file and we had provided it already.
20 Maybe we didn't. I don't -- I had also forwarded
21 some e-mails from Mr. Swent or to Mr. Swent, and I
22 know those e-mails had some attachments and documents
23 in those, so.

24 MR. LOGAN: We'll talk after -- after his
25 deposition. Well, we'll take a break and talk

1 about it. okay?

2 MR. HAWKINS: For documents that you need?

3 MR. LOGAN: Yeah.

4 MR. HAWKINS: Okay.

5 MR. LOGAN: All I can go with is what
6 you've sent to me, and if you have any knowledge
7 about documents that he is talking about, I
8 would appreciate --

9 MR. HAWKINS: Yeah, what I'll do is I'll
10 agree to continue the deposition if you need --
11 if we have more documents and you want to ask
12 questions, I'll agree to continue the deposition
13 so you can ask questions on those items.

14 MR. LOGAN: And if you would let me know
15 what you find within 10 days of this deposition.

16 MR. HAWKINS: Well, what I'd like to do is,
17 I've kind of taken notes on what he says he may
18 have and what you want, but perhaps if you'll
19 just send me a -- you may want to get the
20 deposition back first and see exactly what
21 you're looking for and how he answered the
22 question or whatever, and I'll be glad to
23 specifically look for those items for you and
24 continue the deposition based on whatever the
25 documents are.

1 MR. LOGAN: Well, I'll agree to this. I
2 think it's very evident what I'm looking for.
3 He has testified based upon his memory but has
4 not established, to my knowledge, that these
5 documents exist, at least I haven't seen them.
6 So if I haven't received any additional
7 documents within -- I'll know when I get a copy
8 of the deposition.

9 MR. HAWKINS: Or you can send an e-mail or
10 whatever.

11 MR. LOGAN: Yeah. I'll be glad to, but I
12 think you know what -- I mean, you certainly
13 know what you have produced, and what you have
14 produced came from your client. And to the
15 extent you can look through what you've produced
16 and see if there is anything in there that I
17 have missed that goes to the issues that he has
18 said he had records of and has not been
19 produced, I would expect that to come fairly
20 early because I want to move this case.

21 MR. HAWKINS: Yeah, I'm not going to --

22 MR. LOGAN: I want to file a motion for
23 summary judgment based upon his deposition
24 testimony, but I don't want to sit around and
25 wait for another six months for documents when

1 we've been dealing with this case for a while.

2 MR. HAWKINS: I understand.

3 MR. LOGAN: Okay. So I will -- I will
4 expect to receive those documents promptly from
5 what you've already got. Now, if you need to go
6 -- if you need to look at -- if he needs to get
7 more documents to you, I understand that that's
8 something you haven't seen.

9 MR. HAWKINS: Oh, I've sent you everything
10 I have.

11 MR. LOGAN: Okay. Okay.

12 MR. HAWKINS: I don't have anything extra.

13 MR. LOGAN: So I would ask you to ask your
14 client that if he has anything else that
15 supports what he's testified to about these
16 financial issues to get it to you within 10 days
17 because I'm not going to sit around and wait on
18 it forever.

19 MR. HAWKINS: Oh, I understand that, but I
20 think --

21 MR. LOGAN: These people need the money.
22 okay?

23 MR. HAWKINS: I understand. I think what
24 I'm asking you is just to -- if you recall
25 exactly what you want today, send me an e-mail,

1 and I'll get it over to him. But I don't want
2 to -- I don't want to -- I don't want to miss
3 things based on my recollection of your
4 deposition because I'm defending here, and I'm
5 looking for little things, you know. And I
6 don't necessarily listen for everything, so.
7 Are you done?

8 MR. LOGAN: No, no, no. I've got some
9 more.

10 MR. HAWKINS: Can I use the restroom?

11 MR. LOGAN: Yeah, we can take a break.

12 [Recess taken.]

13 [R. Moats Deposition Exhibit No. 20 was
14 marked.]

15 Q. [By Mr. Logan] All right, sir. The next
16 exhibit is Exhibit 20, and that is a letter, along
17 with a summons and complaint, that I sent or that's
18 dated November 8, 2019, that I sent by certified mail
19 that was addressed to Moats Construction at 1523 Old
20 Roberts Church Road. Do you recall receiving this at
21 that address.

22 A. No, sir.

23 Q. Okay. How often do you check your mail?

24 A. It's usually checked daily, unless we're
25 out of town or something.

1 MR. LOGAN: Exhibit 20 -- did I give you 21
2 also?

3 THE DEPONENT: I just have 20.

4 MR. LOGAN: Did I hand you 21? Here it is.

5 [R. Moats Deposition Exhibit No. 21 was
6 marked.]

7 Q. [By Mr. Logan] Exhibit 21, that came out of
8 your files. You will see that there is, attached to
9 this letter, a certified envelope with the
10 appropriate sticker attached to it. And then from
11 your file, Exhibit 21, I see that you were notified
12 by the postal service that there was a certified
13 letter for you, and you were notified at the Old
14 Roberts Church Road. And it has written, by somebody
15 from Logan & Jolly, received 11/18/2019.

16 Since this was in your file, I assume you
17 were made aware of this or had the opportunity to
18 examine this, and I will ask you what, if anything,
19 did you do to contact the postal service or go by and
20 pick up a certified letter that had been addressed to
21 your company, to you in particular, at the address
22 that's on the secretary of state's office -- I mean,
23 records as being your address?

24 A. I mean, what we have to do is go to the
25 post office. We live -- we live 25 -- 20, 25 minutes

1 from town. So any time we get a card, we don't
2 always go directly to the office. I mean, we just
3 come up here when we have time, and we have to have
4 the card on us a lot of times. And so sometimes we
5 do not get things like this that are, like,
6 registered letters or whatever they are, you know.
7 It's kind of the reason why we're -- one of the
8 reasons why we're changing our registered agent to
9 someone else now because we have gates at the
10 property. The property's gated and fenced. So mail
11 carriers, if they need a signature, they can't do
12 that, so they'll just leave it in the mailbox or
13 something, or they'll, like, tape them to the gate or
14 something like that, so.

15 Q. Well, would you agree with me that,
16 apparently, since it's in your folder, it came into
17 your possession?

18 A. Yeah. I'm guessing if it was in --

19 Q. Okay.

20 A. I'm guessing.

21 Q. What, if anything, did you do to see what
22 it was when it came into your possession?

23 A. I mean, we probably went to the -- either
24 myself or Laura would go to the -- if it's addressed
25 to the business, either myself or Laura would go to

1 the post office to pick it up.

2 Q. well, do you have any explanation for me as
3 to whether or not you -- or strike that.

4 Did you pick up this document that was at
5 the post office?

6 A. I don't believe we did.

7 Q. okay. why?

8 A. I don't know. I mean, maybe it may have
9 been sent back already or something. I don't know.

10 Q. well, do you come in -- how often do you
11 come into town?

12 A. Daily.

13 Q. okay. So it's not like you have to go out
14 of your way from your house where this address is to
15 come into town to pick up your mail, is it?

16 A. well, I mean, if we're not going by the
17 post office or something, I guess it would be out of
18 the way, but --

19 Q. How far is the post office that you go to
20 from where you -- from this property?

21 A. what property? The property it's addressed
22 to?

23 Q. The property that is the subject of this
24 lawsuit.

25 A. How far is the post office?

1 Q. Yes, sir. Is it a mile? Is it two miles?

2 A. Probably, I'm going to say a mile.

3 Q. A mile. So it wouldn't be out of your way,
4 when you come to that location of that property, to
5 go by the post office, would it?

6 A. Well, I mean, I don't go to that property
7 every day.

8 Q. Well, I asked you, how often do you go to
9 this property, and you said, every day.

10 A. No. You asked me how often I come to
11 Anderson, come to town.

12 Q. Okay. So you do come to town daily?

13 A. Usually daily, yeah.

14 Q. Okay. And what post office do you go to?

15 A. The closest one to wherever I'm at.

16 Q. To the closest one wherever you're at?

17 A. Yeah. We have more than one post office in
18 Anderson.

19 Q. We have more than one post office location
20 in Anderson. Which ones do you go -- do you get mail
21 at all of the locations in Anderson?

22 A. No. I have no reason to go to the post
23 office in Anderson, unless I have something waiting
24 there for me to pick up. I have no reason to.

25 Q. Well, you got notice that this was there.

1 A. Right.

2 Q. But you didn't go to the post office to
3 pick it up?

4 A. Well, you have to have the card with you,
5 and sometimes I don't have the card with me. I don't
6 know about you, but I'm a pretty busy person. I
7 don't have very many employees, so I stay busy. And
8 sometimes I don't make it a point to go by the post
9 office to pick up my mail that might be there.

10 Q. Mail sent to -- by certified, sent to the
11 address that, in your filings with the secretary of
12 state's office, you told people to send your mail to,
13 and you don't bother to pick it up?

14 A. We do.

15 Q. How often?

16 A. When we have time to. When we have time to
17 go by the post office and pick up the mail,
18 especially something certified, we do. We make every
19 effort to do that. Sometimes we have had things that
20 have been returned before. In that case, it probably
21 was returned, if we didn't get there in time to pick
22 it up.

23 Q. And you come to Anderson daily. All right.
24 When you didn't respond to a certified mail addressed
25 to the address on the material on file with the

1 secretary of state, we hired a process server, and
2 I'll show you --

3 MR. LOGAN: What is the next one?

4 [R. Moats Deposition Exhibit No. 22 was
5 marked.]

6 Q. [By Mr. Logan] This was the summons and
7 complaint, Exhibit 22, that he was hired to serve on
8 you.

9 MR. HAWKINS: Can I have a copy?

10 MR. LOGAN: Yeah.

11 [R. Moats Deposition Exhibit No. 23 was
12 marked.]

13 Q. [By Mr. Logan] This is the affidavit of
14 service that he filled out, Exhibit 23, when he
15 attempted to serve you. Have you seen that before?

16 A. Yes, I've seen all this.

17 Q. All right. It says - signed by the process
18 server - attempted on January 6, 2020, gates locked.
19 Then he talks about another time that he found the
20 gates locked, but could see people walking in front
21 of windows. Gates locked on another day, no luck.
22 Did surveillance 5:30 a.m. to 8 a.m. Once gate was
23 open, I attempted service. Mr. Moats came out and
24 put a gun to my head. I was unable to serve the
25 papers. His son was inside the truck. I made a

1 police report but no action was taken. I also
2 videoed the incident.

3 Have you seen that before?

4 A. Seen what, the video?

5 Q. The affidavits in front you, that exhibit.

6 A. Yeah, I don't know that I've seen this
7 affidavit. I've seen this. I don't think I've seen
8 this affidavit actually.

9 Q. When did you see one -- that one?

10 A. I believe I saw this when I spoke to
11 Mr. Hawkins -- right before I spoke to Mr. Hawkins.
12 We were trying to figure out what was going on, and I
13 believe that's when it was. I'm not sure exactly
14 when I -- like the date that I saw it, but I don't
15 think I've ever seen this affidavit of service.

16 Q. Okay. Well, let's talk about what he said.
17 Mr. Moats came out and put a gun to my head. Did you
18 do that?

19 MR. HAWKINS: Don't answer that question.
20 Fifth Amendment privilege. He's not answering
21 that question.

22 MR. LOGAN: I'm not concerned about the
23 gun. I'm just talking about --

24 MR. HAWKINS: He's not going to ask a
25 question -- he's not going to ask a -- answer a

1 question about criminal conduct. You're asking
2 him to admit criminal conduct, and he's not
3 going to answer the question.

4 MR. LOGAN: Okay. Well, so you're
5 instructing him not to answer the question?

6 MR. HAWKINS: That's right, I am.

7 MR. LOGAN: Okay. So you're saying that
8 what's in this affidavit, a part of it, could be
9 criminal conduct; is that what you're saying?

10 MR. HAWKINS: If you're asking him if he
11 put a gun to somebody's head, that's criminal
12 conduct, and he's not going to admit to that in
13 this deposition. I don't know whether he did it
14 or not, but he ain't going to talk to you about
15 it.

16 MR. LOGAN: Well, I can get the process
17 server to talk about it and show what he did.

18 MR. HAWKINS: He filed a police report.

19 MR. LOGAN: Well, the incident report --

20 MR. HAWKINS: They didn't do anything.

21 MR. LOGAN: That's right.

22 MR. HAWKINS: Okay. So --

23 MR. LOGAN: And that's what --

24 MR. HAWKINS: He's not answering the
25 question. He's not answering the question.

1 MR. LOGAN: Okay. Well, very good. We'll
2 take it up with the Court.

3 MR. HAWKINS: Very well.

4 Q. [By Mr. Logan] All right. Have you ever
5 seen the incident report that was filled out by the
6 sheriff's office?

7 MR. LOGAN: What was this, 24?

8 [R. Moats Deposition Exhibit No. 24 was
9 marked.]

10 Q. [By Mr. Logan] Have you seen that?

11 MR. HAWKINS: May I have a copy?

12 A. I don't believe I have.

13 Q. You don't believe you have?

14 A. I don't believe I have.

15 Q. Okay. Was the son in your car or truck
16 with you at the time the process server attempted to
17 serve you?

18 THE DEPONENT: Do you want me to answer?

19 Q. [By Mr. Logan] It ain't criminal conduct to
20 have your son in the car with you.

21 A. I mean, I don't mind answering any of it,
22 but --

23 Q. Go ahead.

24 A. Yeah. Yes, he was.

25 Q. Okay. And how old is he?

1 A. He's 10.

2 Q. 10.

3 A. He was 9 at the time.

4 Q. Anybody else in the car with you at the
5 time?

6 A. No. I wasn't in the car -- truck.

7 Q. You weren't?

8 A. No, I wasn't.

9 Q. Who was in it?

10 A. My son was --

11 Q. Was he driving?

12 A. -- by himself.

13 Q. Was he driving?

14 A. Was he driving? Where do you think he was
15 at? I mean, if you want to be antagonizing --

16 Q. You said you weren't in the truck. I
17 assume that means you weren't driving the truck.

18 A. I mean --

19 Q. What am I missing?

20 A. I mean, do you want to take this whole
21 eight hours? I mean, where do you think he was at?
22 Yeah, he was driving. He's 9. What kind of question
23 is that?

24 Q. You said you weren't in the truck, but he
25 was in the truck. So who was driving the truck?

1 A. Nobody was driving the truck. I was inside
2 the house. I had to go back inside the house. He
3 gets ready to go when he's ready to go to school. I
4 happened to be taking him to school that morning.

5 MR. HAWKINS: All right. I'm going to
6 object to any test --

7 MR. LOGAN: I'm not asking him criminal
8 conduct.

9 MR. HAWKINS: No, no, no. No. I'm going
10 to -- you're gathering evidence that can be used
11 in a criminal suit, and you're asking him to
12 testify about it here. There have been no
13 charges. So anything related to the charge of
14 pointing and presenting a firearm, the incident
15 report, the affidavit of service, the conduct on
16 that, the alleged conduct on that day, he's not
17 going to answer the question. And if you want
18 to take it up with the Court, we can take it up
19 with the Court, and we'll go from there. But
20 he's not going to answer anything related to
21 this.

22 MR. LOGAN: Well, my question now deals
23 with a statement that he made that he
24 volunteered. He said his son was in the truck.

25 MR. HAWKINS: Okay. Well, that's the end

1 of it because after that, I've objected, and
2 we're not going down this road.

3 MR. LOGAN: And you object to me asking him
4 where he was?

5 MR. HAWKINS: I object to you asking about
6 anything related to a criminal investigation,
7 whether it be his son, what he saw, anything.
8 That is a criminal matter, and it's not proper
9 in this deposition. And I'm objecting. And if
10 the judge says he's got to testify about it,
11 fine, but I think it's a proper objection. And
12 he's not going to ask -- or answer questions.

13 MR. LOGAN: All right. My question is not
14 dealing with --

15 MR. HAWKINS: I don't care what --

16 MR. LOGAN: -- a weapon.

17 MR. HAWKINS: I understand what your
18 question is.

19 MR. LOGAN: Okay.

20 MR. HAWKINS: Okay.

21 MR. LOGAN: I just want the record to be
22 clear as to what you're telling him and why
23 you're telling him that in response to the
24 questions that I've asked.

25 MR. HAWKINS: Right.

1 MR. LOGAN: Okay.

2 MR. HAWKINS: I understand completely.

3 MR. LOGAN: Okay. I'm not interested in a
4 criminal prosecution. I'm interested in getting
5 this case resolved, one way or the other.

6 MR. HAWKINS: Yeah, one way or the other.
7 And so with respect to an incident report or
8 your processor's hearsay, he's not answering the
9 question.

10 MR. LOGAN: Processor's hearsay?

11 MR. HAWKINS: Yeah. I mean, the processor
12 ain't here to testify about his affidavit.

13 MR. LOGAN: Okay. Well, I can remedy that.
14 I'll get the processor under oath.

15 MR. HAWKINS: I'm just saying that --

16 MR. LOGAN: We can get the same thing, one
17 way or the other. All right. What about --
18 what is the next one, 25?

19 [R. Moats Deposition Exhibit No. 25 was
20 marked.]

21 MR. LOGAN: This is the affidavit we got
22 from the sheriff's office when they tried to
23 serve him with the papers, 25.

24 Q. [By Mr. Logan] Sir, would you look at 25?
25 It appears that the sheriff's office tried to serve

1 Moats on one, two, three, four, five separate times
2 and even called and left a voicemail. Do you recall
3 having a voicemail or recall seeing someone from the
4 sheriff's office?

5 A. No, sir, I don't.

6 Q. You don't. Okay. All right.

7 So from your testimony, even regard -- or
8 regardless of what the secretary of state has to say,
9 Moats Construction is still in good standing; is that
10 right?

11 A. Yes, sir.

12 MR. LOGAN: Okay. All right. Let's take a
13 break.

14 [Recess taken.]

15 Q. [By Mr. Logan] Okay. I've just got a few
16 more questions.

17 What changes have you made in that --
18 please put that down while I'm asking you questions.
19 Okay? Thank you.

20 A. Well, you just started.

21 Q. Yeah, I did, but you were still pecking
22 away.

23 What changes have you made in the building
24 since you've been occupying it?

25 A. To the building specifically or the

1 property?

2 Q. Well, I'm going to ask the building first,
3 and then I'll ask the property also.

4 A. Well, we cleaned out the building.

5 Q. Cleaned it out, what does that mean?

6 A. Well, I mean, it was -- it was full of
7 pallets. When we got it, it was full of pallets. We
8 cleaned the building out.

9 Q. Okay.

10 A. And we repaired some doors on the building
11 that wouldn't open. We put a new electrical service
12 in the building --

13 Q. Okay.

14 A. -- to bring it up to code. We've made a
15 roof repair on the building, used the money that we
16 had gotten or part of the money that we had gotten
17 from the original claim on the building to repair
18 about a hundred feet of the roof on one end, and then
19 we --

20 Q. Did you all do that work yourself?

21 A. We did.

22 Q. Okay.

23 A. And then we cleaned up outside extensively
24 and re-graded it to get -- try to get the water to
25 flow away from the building.

1 Q. Okay. So is that a complete list of
2 everything you've done since you've been in the
3 building?

4 A. I don't know if it's a complete list. I
5 mean, we've done a lot of things to the building
6 since we've --

7 Q. Okay. That's what I'm trying to figure
8 out. What have you done to the building, and then
9 what have you done to the property, the land?

10 A. Okay. Well, what have we done to the
11 building? We repaired sections of the floor --

12 Q. Okay.

13 A. -- that were unusable, I guess. We've
14 repaired some of the lights, the lights that are on
15 the sides of the building. We've installed some
16 exterior, like, floodlighting on the outside. I
17 think that's it.

18 Q. Does that go with the real estate, too,
19 that list that you've just given?

20 A. I mean, as far as the property goes, we
21 just -- we've just removed a lot of trash that had
22 been buried on the property, around the building,
23 hauled in -- and removed it, took it to the landfill,
24 and we hauled in some good, clean fill, graded it for
25 positive drainage around the building, and then we

1 put some stone down around the building.

2 Q. Okay.

3 A. And we put a -- we had a problem with water
4 getting into the building. We had to put a large
5 French drain in the center of the building and along
6 the back side of the building.

7 Q. All right. Did the building have any
8 overhead cranes in it?

9 A. It did.

10 Q. Are they still there?

11 A. They're still there.

12 Q. Okay. And did you remove any office
13 spaces?

14 A. There was -- there was a -- there was some
15 office space in the front of the building when we
16 first got the building. It wasn't usable. It was --
17 the roof was gone on it. It was full of termites,
18 and it wasn't usable, so we removed it all together.

19 Q. About how many square feet you talking
20 about?

21 A. Probably 400 square feet, 500 square feet,
22 something like that.

23 Q. All right. How long is the building that
24 you are presently using, after this other space has
25 been removed? How long is it?

1 A. It's 60 by 320 -- I mean, 520.

2 Q. 60 by 520?

3 A. Uh-huh.

4 Q. okay. And does that --

5 A. 30,000 square feet.

6 Q. And does the 520 include the office spaces
7 that you removed?

8 A. No. Because it was kind of a -- it was an
9 addition on the front of the building.

10 Q. Have you removed any of the building that
11 is within the 530 [sic] feet in length?

12 A. Have I removed -- no, I haven't removed any
13 of the building.

14 Q. Haven't removed any of the building. All
15 right. You mentioned several times some railroad
16 issues. What railroad issues are you talking about?

17 A. So we had -- we had never had an issue with
18 the railroad, with access to the property. To kind
19 of put it in context, I guess, the property is
20 surrounded by a railroad right-of-way, and before I
21 purchased the property from Mr. Dyar, he told me that
22 he had never had an issue with access to the property
23 by the railroad. So, I mean, the railroad had
24 allowed him to access the property.

25 And we got there -- my guys got there one

1 day -- we use just one side of the property usually,
2 unless we come in the back, and we keep it blocked
3 off so people don't come back there and try to steal
4 anything.

5 And so they got there one morning, and the
6 railroad was doing some maintenance on the line. And
7 they had the entire access, which is only about 20 --
8 not even 20 feet wide blocked, so we couldn't even --
9 we couldn't access the building. And I had the
10 number for the -- he's the line foreman or something.
11 I had had it from when they did some repair work, and
12 they wanted to come across our property. They were
13 doing some repair work on a trestle right behind it.
14 And I asked him about it. I said, you know, we need
15 -- we got to have access to the property. You know,
16 we got trucks that come in and out, employees that
17 come in and out. And I said, if you guys are going
18 to block it, just let us know, and we can open the
19 back up and use the back.

20 Well, evidently me doing that bothered
21 somebody. I don't know who it was, if it was him or
22 who it was, but the next thing I know, we have a
23 railroad detective down there. And then the short
24 line, Pickens -- let me back up. This is Norfolk,
25 the main carrier, and then Pickens is the short line.

1 And we have a good relationship with -- or have with
2 all of them. Donnie Sims was the guy with Pickens.
3 He came down there. Anyway, they wanted to have a
4 meeting down there with us. So we had a meeting down
5 there with them, and we just kind of went back and
6 forth about access to the property. And they made
7 their claim that they were the railroad and if they
8 wanted to shut that down, then they could. So, you
9 know, at that point is when I hired Mr. Swent to deal
10 with the issues with the railroad --

11 Q. Okay.

12 A. -- 'cause I had to have -- we had to have
13 legal access to the property.

14 Q. Do you now have access? Do you still have
15 access?

16 A. I mean, we have access when they don't
17 block it off.

18 Q. Okay. And how often do they block it off?

19 A. It's only when they make repairs to the
20 line.

21 Q. And how often do they make repairs?

22 A. A couple of times a year.

23 Q. And what time period are we talking about
24 that these issues came up?

25 A. You know, it's going to be prior to

1 whenever that letter was that Mr. Swent had drafted.

2 Q. Oh, are you talking about the January 2018
3 letter?

4 A. Yeah. So I'm guessing it was in 2017
5 sometime.

6 Q. So did you ever resolve those issues to
7 your satisfaction?

8 A. We have not because we found out -- in
9 hiring Mr. Swent, he made us aware of the other
10 issues that we had that related to the property, and
11 that was the issues with the purchase agreement and
12 -- that we had -- we were not aware of up until that
13 point.

14 Q. What issues with the purchase agreement?

15 A. Well, that the property was never recorded,
16 nothing was ever recorded like we had thought it was.
17 Nothing was ever recorded with the register of deeds
18 office in Anderson, or the probate wasn't recorded
19 like Mr. Wright, John Wright told us that it was
20 going to be, showing that we were -- we were
21 incurring an equity interest, I guess, in the
22 property by making payments on the note. And we had
23 not been made aware. We didn't know that before,
24 before he started -- I guess they performed their own
25 abstract of the title, and then they -- at that

1 point, they made us aware of that.

2 Q. Okay. Have you retained another attorney
3 to deal with that issue?

4 A. I have.

5 Q. Okay. Is that the gentleman sitting right
6 next to you?

7 A. It is.

8 Q. Okay. And what are you proposing to do
9 about the railroad?

10 A. Well, we were hoping to get the issues
11 resolved, one way or the other, with Mr. Dyar and
12 then at that point deal with the railroad. That was
13 the advice of Mr. Swent, and so that's why we were
14 trying to work out exactly what the amount was that
15 we owed to Mr. Dyar so that we could move forward,
16 you know, more in that direction.

17 MR. LOGAN: Okay. All right. Thank you.
18 Appreciate it.

19 EXAMINATION

20 BY MR. HAWKINS:

21 Q. Just a few questions. Mr. Moats, if you'll
22 look at Exhibit 3.

23 A. One second.

24 Q. Looking at what looks like a ledger here
25 that is computer generated, attached to Exhibit 3,

1 there seemed to be some irregularities in payment.
2 Did Mr. Dyar ever object to these irregularities?

3 A. No, sir.

4 Q. Did he ever send you anything in writing
5 regarding the irregularities?

6 A. No, sir.

7 Q. Did he ever object to the 22,566 payment on
8 November of 2013? Do you see what I'm talking about?

9 A. No, sir.

10 Q. If you look to November 22nd of 2013, I see
11 a payment of \$22,566. Are we looking at the same --

12 A. I mean, I see that on this sheet.

13 Q. Did Mr. Dyar ever object to receiving that
14 much money?

15 A. No.

16 Q. And your payment amount was the 4513.22; is
17 that what the agreement said?

18 A. Yes, I believe so.

19 Q. So I see a payment in February of 2013 for
20 3,000 cash. Do you see that?

21 A. I see it.

22 Q. Did he object to that?

23 A. No.

24 Q. March 29, 2013, a \$6,000 payment, did he
25 object to that?

1 A. March 29, two thousand --

2 Q. '13.

3 A. No.

4 Q. July 2, 2014, \$10,000, did he ever object
5 to that?

6 A. No, sir.

7 Q. Did he ever object - and when I say object,
8 either orally or in writing - to the cash payment of
9 November 15, 2014?

10 A. No, sir.

11 Q. Did he give you a receipt?

12 A. He did not.

13 Q. June 23, 2015, \$10,000, did he object to
14 that?

15 A. No.

16 Q. The \$20,000 payment, 12/21/15, did he ever
17 object to that?

18 A. No.

19 Q. March 30, 2016, \$10,000, did he ever object
20 to that?

21 A. No.

22 Q. August 12, 2016, \$15,000, did he ever
23 object to that?

24 A. No.

25 Q. And if you'll turn the page, this is the

1 handwritten ledger. The first payment I see is a
2 \$5,000 payment in February of 2018. Did he ever
3 object to that?

4 A. No.

5 Q. And \$50,000 made about three months
6 thereafter, it says 5/20/2018?

7 MR. LOGAN: Did you just say 50?

8 THE DEPONENT: I believe it's -- I believe
9 it's 5,000.

10 MR. LOGAN: 5,000.

11 MR. HAWKINS: I don't -- I can't read it.
12 It didn't have any decimals.

13 Q. [By Mr. Hawkins] He never objected to that?

14 A. No, sir.

15 Q. So obviously between -- is it fair to say
16 between 2011 and 2018, you all just changed whatever
17 the payment requirements were?

18 MR. LOGAN: Object to the form.

19 Q. [By Mr. Hawkins] I mean, he never
20 objected, right?

21 A. No, he never objected --

22 Q. He never sent you a letter --

23 A. -- to the payments.

24 MRS. DYAR: That we begged for.

25 Q. [By Mr. Hawkins] And then you got sued

1 sometime in 2020, I guess, whatever the exhibit says?

2 A. Whenever they filed their action, I guess.
3 I'm not sure what the date was.

4 Q. But when you consulted me, that's when we
5 actually sued Mr. Dyar, correct?

6 A. Correct.

7 Q. Do you know what a lis pendens is?

8 A. Yes.

9 Q. What's your --

10 A. Well, I've got an idea of what it is.

11 Q. We sued Mr. Dyar for negligence on the
12 insurance claim, correct?

13 A. Correct.

14 Q. Okay. And it was your feeling that you had
15 an extensive repair that he did not properly process,
16 correct?

17 A. Correct.

18 Q. And so, as in your summons and complaint,
19 you felt like that he may owe you money, correct?

20 A. I did.

21 Q. And that's why you hired a lawyer --

22 A. Correct.

23 Q. -- correct?

24 MR. HAWKINS: I don't have any other
25 questions.

1 MR. LOGAN: I have none either.

2 THE REPORTER: Mr. Hawkins, did you want
3 him to read or waive signature?

4 MR. HAWKINS: We'll probably read.

5 THE REPORTER: Okay. Did you want a copy
6 of the deposition?

7 MR. HAWKINS: Yeah, I want an E-tran and a
8 hard copy with exhibits and a condensed version.

9 [Whereupon, at 12:43 p.m., the taking of
10 the deposition was concluded.]
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CERTIFICATE

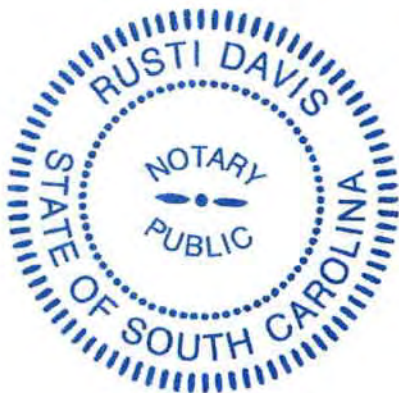
I, the undersigned, Rusti Davis, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing deposition of RUSSELL TYSON MOATS was taken on the 28th day of January, 2021;

That the within named deponent was sworn to tell the truth and that the foregoing is an accurate transcription of the testimony taken under oath;

That all exhibits entered herein are attached hereto and made a part of the deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 5th day of February, 2021.



Rusti Davis
Notary Public for South Carolina
My Commission Expires 5/31/2027

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Anderson

3

4 Case No.: 2020CP0401202

5 Moats Construction, Inc.,

6 Plaintiff(s),

7 vs. **Transcript of Record**

8 Cecil R. Dyar,

9 Defendant(s).

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15 April 13, 2021

16 Anderson, South Carolina

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21 BEFORE:

22 The Honorable R. Scott Sprouse

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APPEARANCES

REPRESENTING THE DEFENDANT:

Jim Logan, Esquire
Logan & Jolly
PO Box 259
Anderson, SC 29622

REPRESENTING THE PLAINTIFF:

Wendell Hawkins, Esquire
310 The Parkway
Greer, SC 29650

1 PROCEEDINGS

2 THE COURT: Well, let's call it. I have
3 got my docket. It looks like this is Moats Construction
4 Inc. versus Cecil R. Dyar, 2020CP0401202. Now, this is
5 listed as two motions filed by each party. A memorandum
6 was filed by the Defendant, and then a motion to enlarge
7 the time filed by the Plaintiff.

8 So Mr. Logan, your motion is listed first
9 on the docket. So tell me what relief -- why you
10 believe that you are entitled to summary judgment?

11 MR. LOGAN: To summary judgment.

12 THE COURT: Yes, it is listed as a Motion
13 for Summary Judgment.

14 MR. LOGAN: At the end I didn't hear what
15 you said, Judge, I'm sorry.

16 THE COURT: All right. Well, I'll hear
17 from you first on your motion.

18 MR. LOGAN: That will be great. Judge,
19 we have filed a detailed memorandum with exhibits in
20 support of our Motion for Summary Judgment. I don't
21 know whether Your Honor has had a chance to review them
22 yet or not. But they are available. And I would
23 appreciate your consideration of the written material.
24 I'm not going to sit here this morning and read that
25 material to you, I just want to sort of hit the high

1 spots as to why we believe that we are entitled to
2 summary judgment at this stage of the case.

3 Regardless of whether or not Mr. Hawkins
4 prevails on his motion to enlarge time, from my
5 perspective it doesn't make any difference because there
6 is absolutely no proof of any of their allegations or
7 that they allege that would give them any sort of relief
8 from this.

9 This action involves a -- what we used to
10 call a contract to sale, where you -- where the owner
11 retains title to the property, the person -- the parties
12 agree on the terms. And when those terms are complied
13 with, then -- and the debt is paid, then the property is
14 transferred to the owner.

15 In this case, I represent the Dyars. I
16 have explained to you in the memorandum sort of the
17 procedural matters that lead us to this point and the
18 difficulty we had in initially getting Mr. Moats to
19 accept service or respond in this case. I will not go
20 over those, they are there for your review.

21 I have attached to the motion the
22 document which is Exhibit 2 labeled, Agreement for Sale
23 and purchase of real property on which this claim is
24 based. It provided for a purchase price as of January
25 2011 of \$250,000 and the terms on which that purchase

1 price were to be paid. In addition to outlining -- to
2 referring the Court to the actual agreement itself, I
3 have also referred to the applicable provisions in the
4 agreement dealing with the issues in this case.

5 There's also attached to Exhibit 2 an
6 amendment where the terms of that agreement were
7 extended until March the 16th of 2021. And provided
8 that all other terms and conditions would remain the
9 same, which would be the obligations to make the
10 payments, including not only principal and interest but
11 insurance as well as taxes and other expenses that are
12 referred to in the agreement.

13 The risk of loss was all on the
14 purchaser. Time was of the essence. It provided for
15 attorneys fees in the event that he did not live up to
16 the terms of the agreement, and provided that the
17 purchaser would pay the insurance, so forth and so on.
18 Those are spelled out in the agreement itself and also
19 in my memorandum.

20 The other two key documents that I relied
21 on, even though they are not the only ones attached to
22 the agreement are Exhibits 7 and 8. In his reply or
23 response to the Defendant's memorandum, Mr. Hawkins
24 spends four and a half pages saying why he should not be
25 held in default, or his client should not be, and only

1 two pages presenting any proof as to why his client is
2 not indebted to my client.

3 First of all, in his document he admits
4 that Dyar, my client, is entitled to foreclosure. Which
5 is an admission that there is a debt owed. The only
6 issue, from their perspective, is the amount of that
7 debt. As I say, the provision provides that the
8 agreement was extended until July of 2016. They
9 presented, however, no evidence as to what the amount is
10 of that debt.

11 We have presented in the affidavit that
12 we have attached what we believe the amount of the debt
13 is. This is a summary judgment motion. They can't just
14 sit on the pleadings and say, Well, we have other
15 defenses, we have this and we have that. They have an
16 obligation to present whatever it is that they have,
17 such as an itemization of what they contend the debt is,
18 how much they say they owe, and the reason and the other
19 issues that they say amount to a reduction of the debt
20 because of things like sweat equity, things like
21 improvement that they have made to the property.

22 Well, they have presented none of that
23 evidence. Deposition was taken, I asked for that
24 evidence. They have presented none to me prior to
25 filing the motion. They have presented none to me

1 during the time period of -- that I have filed my
2 memorandum until they filed their response. They have
3 presented no documentation, no evidence as to what they
4 believe the debt ought to be in this case. And they
5 have not referred to any such in their memorandum.

6 Now, Exhibit 8 is an important exhibit.
7 That is a letter dated January the 5th, 2018 from then
8 Mr. Moats' own attorney. He's gone through several
9 attorneys. His attorney, at that time, in 2008, a
10 gentleman with a firm over in Greenville, in the -- on
11 the first page of that agreement, paragraph, has a
12 number one on it, confirmation of accounting details and
13 pay-off amount. His attorney, Mr. Moats' attorney,
14 determined that as of January 5, 2018, that debt was
15 \$83,338.19. And did not (inaudible) as of that date.

16 As I say, Mr. Moats cannot rest on his
17 pleadings. This is a letter from his file, by his
18 attorney, whereas as of that date, he says that the debt
19 then was in excess of \$83,000. Well, we have some
20 knit-picking about that amount. Let's assume that to be
21 the amount of the debt as of that time for purposes of
22 argument only.

23 Then look at Exhibit 7, which is an
24 affidavit from the bookkeeper for my client, Mr. Dyar,
25 who has handled his taxes and property management for

1 years. And if you will look on the second page of that
2 Exhibit 8 there are columns that are numbered. You see
3 where it starts off at the top, column 46, if you go all
4 the way down to that column, you will see that as of the
5 date that Mr. Moats' own attorney said that 83,000 plus
6 was owed, he said, As of December 31, 83,338 and some
7 cents, 98 cents.

8 You will see going down on that column,
9 in February there was a payment by Mr. Moats of \$5,000.
10 And then in May -- no payment in March, no payment in
11 April, and then May there was another \$5,000. So, let's
12 give him credit off of the 83,000 for the \$10,000 that
13 he paid in those two months. Again, the monthly
14 payment, monthly payment that was supposed to have been
15 made were according to the terms of the agreement are in
16 the agreement of 4100 and some odd dollars.

17 Now, beginning June 1, 2018, which is
18 column 86 on that page, until April the 1st, 2021, which
19 is column 120, there has been no payments. And they
20 have not presented any evidence that there have been any
21 such payment. So, even if you assume the \$83,000, give
22 him credit for \$10,000, you have got to add back 35
23 monthly payments of \$4,108.22, which comes to a total of
24 \$143,787.70 for 35 payments. You add that to what his
25 own attorney said was owed of 83,000, and just doing

1 that simple math, you come up with the amount of
2 payments that are owed of \$217,126.68.

3 That does not include late charges. That
4 did not include property tax. That does not include
5 insurance payments. All of those obligations were the
6 obligations of Moats under the agreement. Nor does it
7 include what the contract provides for of 50 percent
8 attorneys fees if an attorney has to get involved in
9 this case. So, that is why the amount that I state in
10 my memorandum is what it is.

11 It makes no difference whether they are
12 in default or not for purposes of this. They have not
13 presented any evidence to attack the amount that is owed
14 under the written contract. There are no terms that
15 allow him to reduce anything for sweat equity, whatever
16 that may be, and they have assigned no value to that.
17 It does not allow him to reduce any amount by any
18 improvement that he has made. And they have furnished
19 no evidence of any dollar amount of any improvements,
20 nor any of these other nebulous defenses that they claim
21 that they have.

22 It's nothing but a stalling agreement.
23 And he hasn't made a dime's worth of a payment for 35
24 weeks under this agreement. My folks were counting on
25 this property for their retirement, and he is doing

1 nothing but dragging this thing out. It's time to fish
2 or cut bait. One way or the other. Either (inaudible)
3 or they get the property back, and plus they have the
4 ability to collect the debt that he already owes on it.
5 One way or the other, it is his choice.

6 If he can't pay for it, which apparently
7 he can't, then we need to go that way as well. So,
8 again, they have done nothing but try to delay, delay,
9 to delay and avoid this debt and it's time for it to be
10 over with. Thank you, Your Honor.

11 THE COURT: Thank you, Mr. Logan. All
12 right. Mr. Hawkins.

13 MR. HAWKINS: Your Honor, I'll cover the
14 Motion for Summary Judgment first. If you will note in
15 the memorandum that I filed, I think that I had
16 delivered to chambers this morning, via Fed Ex, but
17 Exhibit A and Exhibit B kind of memorialize the messy
18 course of dealing between these two parties and the
19 alteration of the agreement that, for years, Exhibit B
20 is where I kind of rehabilitated Mr. Moats about the
21 debt. And it started at Page 101. He's making payments
22 for 22,566, 22,566, a \$4300 payment, a 300-dollar
23 payment, a 6,000-dollar payment.

24 And the evidence is that nobody objected
25 to it, that is -- that was their course of dealing.

1 They changed in the way that Mr. Dyar accepted payments
2 and Mr. Moats made payments.

3 Secondly, with respect to insurance, even
4 though the document says that Mr. Moats would provide
5 insurance, there's testimony in Exhibit B, Exhibits A
6 and B wherein Mr. Dyar actually provided the insurance
7 and my client paid him back for it because the building
8 was damaged when -- and, quite frankly, he had all of
9 these pallets laying around which made it a fire hazard.
10 But I think that it's clear that these parties have
11 changed their course in dealing with respect to an
12 amount due under that. My client tried to establish an
13 amount due and was rejected.

14 Secondly, we are the ones that brought
15 this action to force the hand. We do not dispute in any
16 way that the proper remedy in this situation, a
17 foreclosure on the property, but the debt still has to
18 be established. And we -- our cause of actions are for
19 negligence. And in the handling of an insurance claim
20 wherein a hurricane tore the roof off of the place. And
21 Mr. Dyar, because he carried the policy, he settled the
22 claim for \$3.23 cents, Your Honor.

23 Now, since Mr. Moats' deposition, we have
24 produced an estimate from the repair company to repair
25 the roof which is over a hundred thousand dollars. And

1 part of -- part of our causes of action are for the
2 negligence in handling the claim, accounting and
3 set-off, and breach of the contract itself as altered by
4 the parties. So, we are trying to solve the situation,
5 but the numbers and the disparity of the numbers are so
6 big that it is almost impossible for us to agree without
7 going to a jury trial and having a jury help us out.

8 Plus we are entitled to a set-off on the
9 negligence claim, which is over a hundred thousand
10 dollars. So, the evidence is there. There is a change
11 in the course of dealing. The bond for title as it
12 reads is not what the parties have been doing for quite
13 some time. I believe the affidavit of the accountant is
14 somewhat hearsay because that affidavit says that he's
15 been the accountant since 2016 and this has been going
16 on since 2011.

17 It is -- you know, you have also got the
18 evidence of William Swintsleder (sp), which is Exhibit A
19 of Mr. Logan's -- Mr. Logan's memorandum. And it
20 clearly says, We think this is it. And I don't have any
21 evidence of a response.

22 Secondly, I think summary judgment is
23 completely inappropriate at this point in time because
24 discovery is not complete. In February, I believe that
25 it was January of this year, and this is part of my

1 thing for the, you know, motion to enlarge, people were
2 just starting to come out of the woodwork to even get
3 together to take depositions or mediate or anything,
4 putting people in the same room together was somewhat of
5 a risk. And, you know, I hate -- I hate to blame things
6 on Covid, but it was real.

7 And I believe there is a point in time
8 where the Clerk of Court in Anderson wasn't -- they were
9 not even coming in. And I don't know if they were doing
10 things remotely or what. I can't really remember the
11 circumstances at the time, but every case I have got has
12 just started up at the same time. And I know that the
13 courts are backlogged and want to push this stuff
14 through, but I would like to proceed with discovery in
15 this case and get it to a point where it's ready to try.

16 THE COURT: Okay.

17 MR. HAWKINS: There is evidence of the
18 change in the course of the dealing, and we have these
19 other causes, legal causes of action against them. That
20 is why we brought it, because we wanted to bring it to a
21 head and get it over with. But everybody has just been
22 crushed with the advancement of cases. We haven't
23 even -- I don't believe that we have even mediated this
24 case. But we agree that it needs to be advanced. We
25 want to do that. I don't think that it takes a whole

1 lot of discovery, but certainly we have got to get into
2 the numbers.

3 And we have produced, since the
4 deposition, other evidence of the damages to the tune of
5 about a hundred thousand dollars. And I -- Mr. Logan
6 asked my client for certain things in the deposition and
7 I -- I agreed at that time to a continuance of the
8 deposition so that -- and I asked Mr. Logan to
9 specifically tell me what he wanted, and the reply was,
10 You know what I want. And I said, No, I don't. If
11 you -- if you want something specific, please ask for
12 it, I'll try to get it for you and I'll let you
13 reconvene your deposition.

14 THE COURT: Mr. Hawkins, let me make sure
15 that I understand. You are alleging, and I haven't had
16 an opportunity to look at what you filed yet. But you
17 are alleging a hundred thousand dollars. Are you
18 challenging the basic figure, the 217,126.68 that Mr.
19 Logan alleges?

20 MR. HAWKINS: Of course we are. I mean,
21 I have got a letter from the prior attorney that says
22 \$83,000.

23 THE COURT: Okay.

24 MR. HAWKINS: There's evidence of cash
25 payments and things of that nature.

1 THE COURT: Okay. All right. Well, that
2 is what I need to know. So, you are challenging the
3 underlying figure, plus you are alleging a set-off on
4 account of an insurance claim and damage to the property
5 and other things?

6 MR. HAWKINS: That is correct, Your
7 Honor.

8 THE COURT: Okay. All right. Well,
9 gentlemen, I want to read what you have submitted and I
10 will take it under advisement. You have both submitted
11 memorandum, a memorandum along with exhibits, which I
12 want to go through this. It looks like a lot of
13 material. But certainly, as you know, you have been in
14 front of me before, I'll read what you submit and take
15 it under advisement. And I'll have my law clerk send
16 you a decision.

17 MR. LOGAN: Your Honor, may I make a
18 couple of comments in response to Mr. Hawkins' comments?
19 As far as the amount is concerned, it is a very
20 elementary calculation. The \$83,000 was, according to
21 Moats' own lawyer, what was due as of December 31, 2017.
22 This is now April of 2021. And I showed on the
23 affidavit, and they do not dispute, there have been no
24 payments made for those 35 months.

25 So, it is just a simple mathematical

1 calculation to add to the 83,000 that Moats' lawyer said
2 was due as of the end of January 2017, add those 35
3 payments, which they admit they haven't made, and you
4 come up with a number. That is -- that is not rocket
5 science by any means in this case. So, for them to try
6 to say, Well, we dispute everything above \$83,000 and
7 offer no evidence that they have made a single payment
8 during that 35 months after that is rather disingenuous
9 and dishonest to the Court. They know that money is
10 owed.

11 The next thing that I would like to point
12 out is the risk of loss has been and was always on the
13 purchaser. The insurance obligation to insure the
14 building for whatever loss there may be was always on
15 the purchaser. So, if they have a problem with the
16 insurance coverage to the extent that they didn't
17 provide that coverage, that is their problem, not my
18 client's problem. That is a bogus claim. That is
19 another red herring in this case.

20 And Mr. Moats on Page 7 of my brief I
21 advised the Court and cited to the deposition pages
22 where he admits that he never furnished Dyar with any
23 documentation that would establish that he believes he
24 owes Dyar under the terms of the agreement.

25 Mr. Hawkins has known what I needed

1 since, if not before, since the time I filed this
2 memorandum in support of my motion for summary judgment.
3 None of that has been produced because there is nothing
4 in writing that alters the terms of this document. It
5 is just a red herring. Thank you, sir.

6 THE COURT: All right. Mr. Hawkins I
7 will let you respond briefly.

8 MR. HAWKINS: All right. I think, as
9 pointed out in my brief, there is evidence that the
10 parties changed their course of dealing, Your Honor.
11 And that is an alteration to the contract. It is going
12 to take evidence to prove that other than my client's
13 deposition, but I think that it's readily available. I
14 don't know what Mr. Logan wants exactly.

15 MR. LOGAN: Okay.

16 MR. HAWKINS: And if he wants to send me
17 a supplemental interrogatory for exactly what he wants,
18 I'll be glad to try and get it for him. I've been
19 completely cooperative. I agreed to the continuance of
20 the deposition after he gets whatever papers he wants.
21 We produced documents which are estimates of roof
22 repairs that stip -- that would set forth our damages
23 with respect to that cause of action, Your Honor. But I
24 can't -- he says that I know what he wants, but I don't.
25 You know, I can't just guess. I would like to know

1 exactly what he wants.

2 THE COURT: Okay. Well, I would
3 encourage the two of you to talk further. Maybe there
4 is some clarifications that can be made in what is
5 requested. But again, I want to read what y'all have
6 submitted, so I'll take it under advisement. Thank you
7 gentlemen.

8 MR. LOGAN: Thank you, Your Honor. Thank
9 you for your time.

10 (Proceeding concluded.)

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF OCONEE:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 2nd day of June, 2022.

Mona L. Manley /s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 10th Circuit
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mmanley@sccourts.org

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) C.A. NO. 2020-CP-04-01202

Moats Construction, Inc.,) **ORIGINAL**
 Plaintiff(s),)
versus)
)
Cecil R. Dyar,)
 Defendant(s).)

M O T I O N S H E A R I N G

BEFORE: The Honorable R. Scott Sprouse
DATE: February 24, 2022
TIME BEGIN: 10:05 a.m.
TIME END: 11:21 a.m.
LOCATION: Anderson County Courthouse
 100 South Main Street
 Anderson, South Carolina 29624
REPORTED BY: Lisa M. Nowell, Certified Verbatim Reporter
 LEGAL EAGLE
 Post Office Box 5682
 Greenville, South Carolina 29606
 864-467-1373
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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

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1 CLERK OF COURT:

2 The next case is 2020CP0401202. This is Moats
3 Construction, Incorporated versus Cecil R. Dyar.

4 MR. LOGAN:

5 Your Honor, this is a -- I'll remind you of a little
6 background in this case. I represent Cecil R. Dyar.
7 Mr. and Mrs. Dyar are in the courtroom today. This is
8 a scheduled damages hearing. You've issued an Order
9 granting the defendant's motion for summary judgment
10 back on June the 10th of 2021. If you do not have
11 access -- easy access to a copy of your Order, I do
12 have an extra one if that would help.

13 THE COURT:

14 I've got it. But if you've got a hard copy, that would
15 be helpful. Okay, I've got it.

16 MR. LOGAN:

17 There are three motions pending today in addition to
18 the damages hearing. Mr. Hawkins on behalf of Moats
19 had filed a motion to alter and amend the judgment.
20 And then the next motion is my motion for the damages -
21 - for a damages hearing, which is what this is actually
22 set for. But Mr. -- the motion to alter or amend
23 actually came before the motion for the damages
24 hearing, although we've been trying to get a damages
25 hearing scheduled by the court for a good while now and

1 you were the only one who could hear it. So that's why
2 -- I mean, I filed the motion for a damages hearing,
3 then I think he filed his motion to amend the judgment.
4 And then after all that, he's also filed a motion to be
5 relieved as counsel. So I don't know what order -- I
6 do -- I would request that a motion to be relieved be
7 after the damages hearing because his client is not
8 here, apparently not coming. And although he's been
9 notified that he should be here -- I believe I've got a
10 --

11 THE COURT:

12 Well, let me hear from Mr. Hawkins.

13 MR. HAWKINS:

14 Thank you, Your Honor. May it please the Court. My
15 first motion is the motion to amend and reconsider the
16 judgment entered, Your Honor. After a WebEx hearing,
17 the Court submitted a Form 4 Order basically directing
18 that a damages hearing be sought or be heard. We're
19 not contesting the propriety of that at all. In fact,
20 I believe it's probably a possible first step under the
21 foreclosure proceedings. However, Your Honor, when Mr.
22 Logan submitted the Formal Order, that Order was packed
23 with some findings of fact, which Your Honor did direct
24 that he provide the procedural history and finding of
25 facts. Basically that finding of facts in Mr. Logan's

1 Order is a recitation of the bond for title itself. I
2 don't know that all that was explored in the hearing.
3 Nevertheless, the reason for our filing is the choice
4 of remedies in that Order, which were immediate
5 possession, forfeiture of payments in the rent, things
6 of that nature that weren't part of Your Honor's Order.
7 And just as we've agreed -- we've stipulated that he's
8 entitled to foreclosure because it is a bond for title.
9 It transfers equitable interest to my client and it has
10 to be foreclosed on. And I'm accustomed to seeing
11 those Orders referred to the Master in Equity to follow
12 the foreclosure proceedings under foreclosure statutes
13 and rules, so I was a bit miffed by the damages hearing
14 in that is he here to get money damages or are we just
15 establishing that top debt under Rule 71. I would hope
16 it would be the latter. Certainly we have legal
17 claims. And as briefed in our motion, my client is
18 entitled to a hearing on those legal claims before
19 proceeding with the equitable claims. So that case, or
20 those cases, would have to be tried first and the
21 foreclosure is necessarily stayed until we got to that
22 point. So the purpose of this hearing is to make sure
23 that that was the Court's intention to follow along
24 those lines and kind of remove all these other remedies
25 that were part of the contract, which is not just a

1 contract. It's a special contract. It's a bond for
2 title that is equitable in nature and gives rise to the
3 protection of foreclosure rules to my client, and those
4 are the rules that his client also has to follow when
5 enforcing that document. So I would be -- I would like
6 the Court to be clear to stipulate that, you know,
7 that's the steps that we're going to take. And I've
8 got the case that I cited and Your Honor is unfamiliar
9 with it, but that case requires that those legal
10 actions be heard prior to moving forward with the
11 equitable actions. And that's the basis of our motion,
12 that's the relief that we're seeking. We're not
13 contesting his right to a damages hearing at this
14 point. We believe that could be a starting point under
15 the rules for foreclosure, which I've got Rule 71 here
16 as well. You ordered the damages pursuant to the
17 default hearing, which could be interpreted as, you
18 know, this is a money damages case. But we're just
19 here to make sure that we're going to follow those
20 procedures that we've requested in our motion to amend
21 or alter the Order.

22 THE COURT:

23 Well, Mr. Hawkins, did you -- let me ask you this. I
24 issued the Form 4 and directed Mr. Logan to prepare the
25 Formal Order as you just stated. Did you receive a

1 copy of the draft before that was submitted to the
2 Court?

3 MR. HAWKINS:

4 I don't -- I don't believe, Your Honor. I haven't --

5 THE COURT:

6 It was in my -- in my Form 4, it was directed that you
7 be copied on a record of submission. So you don't know
8 if you got that or not?

9 MR. HAWKINS:

10 I have no idea. I don't know.

11 THE COURT:

12 Mr. Logan, I'll be happy to hear from you on that, the
13 issues that Mr. Hawkins just raised.

14 MR. LOGAN:

15 Your Honor, the Form 4 that I received, it was sent out
16 electronically. So I can't imagine that he didn't
17 receive it. After that, you asked me to prepare a
18 Formal Order. I did, and that was sent to you prior to
19 and signed by you and filed on June the 10th of 2021.
20 So he and his client have had notice of that. I would
21 point out that the document that we are enforcing is
22 called an Agreement for Sale and Purchase, basically a
23 contract of sale and purchase. This man has not paid
24 any rent since 2016 or anything under the agreement to
25 sell for 2016. He refuses to vacate the premises.

1 Nothing has happened since you issued your Formal Order
2 in June of '21. As I say, we've been trying to get the
3 damages hearing scheduled. That's why we're here now
4 as opposed to earlier. And this thing has got to end.
5 This man is not paying. He won't pay, for whatever
6 reason. He's dragging this case out. My clients are
7 elderly -- or my client is elderly, he has serious
8 health issues, and they need to have the ability to
9 either receive the money that is rightfully due them
10 for him to stay on that property or for him to be
11 evicted and get out so they can either rent to somebody
12 else so that they can have access to these funds in
13 their later years which are needed because of their age
14 and limited income, and also -- or he can pay it, get
15 out. That's up to him. But he needs to be gone so
16 that they can either rent it out to somebody who will
17 pay the bill or they can sell it. I have pictures
18 showing the condition of the property. I have the
19 accountant here, their accountant, ready to testify as
20 to not only the amount that was owed at the time of
21 these earlier hearings which you -- the only thing you
22 questioned in your Form 4 Order was the damages amount,
23 and that's what I tried to incorporate in the Formal
24 Order. And when I say your Form 4 Order, I tried to
25 incorporate it in the Formal Order. And if you rule in

1 favor of my client today in the damages hearing and we
2 will establish the amount owed, I want to establish a
3 time for him to either pay it or get out. And if he
4 does not do any of that, I want him -- I want a bond
5 for two and a half times what he owes so he can start
6 having some -- well, I won't say that. But this case
7 needs to be over and my clients need justice, and
8 they're not -- they haven't gotten it yet from this
9 man.

10 THE COURT:

11 Mr. Hawkins, let me hear from -- now, you've made a
12 motion to be relieved as counsel.

13 MR. HAWKINS:

14 Correct.

15 THE COURT:

16 I want to -- is your client here?

17 MR. HAWKINS:

18 Russell Moats? I don't believe he is, Your Honor.

19 THE COURT:

20 Did he get notice of today's hearing?

21 MR. HAWKINS:

22 My communication has been via email with him. I sent
23 him the email, I invited him here to testify as to the
24 damages. The expert won't show up because he hasn't
25 been paid. And to be honest, I've been a bit ghosted

1 in the emails and there's been some threatening and
2 derogatory emails from him to me, is the reason --
3 well, one of the reasons for me to get out of it. But
4 if I may add, Mr. Logan may have sent me the Proposed
5 Order. We may not have agreed -- and I don't -- I
6 can't remember. I mean, there are some --

7 THE COURT:

8 Well, I ask that because that's my standard procedure
9 to have whoever's preparing the Order to copy the other
10 side. And then if there are any objections to it,
11 we'll deal with that with a conference call. I want
12 all that sorted out before the Order is signed. So if
13 you don't -- I didn't receive any objections from you
14 about the Proposed Order.

15 MR. HAWKINS:

16 I understand, Your Honor, and I can't tell you. I
17 don't doubt his honesty and integrity to the Court. I
18 don't doubt that whatsoever. But you're asking me if I
19 recall, but I don't. And if I may as to his argument,
20 it doesn't matter whether you call it a contract for
21 the purpose of a sale. That's form over substance.
22 It's a bond for title. It has to be foreclosed on.
23 Just as my client has to be bound by those rules, his
24 client does as well. They both signed it. I don't
25 believe either one of them were represented by counsel.

1 You know, my simple request in this motion to alter or
2 amend is this immediate possession, kick him out. The
3 bond's not before the Court. You know, if they want to
4 file that and be heard on it, that's fine, but it's not
5 before the Court now. Hopefully I won't be counsel at
6 that time. But that's simply all we're asking is that
7 we move forward with the proper proceeding.

8 MR. LOGAN:

9 Your Honor, my practice is, if the Court directs me to
10 prepare a Formal Order, I send it to the Court and I
11 send it to opposing counsel. And if he's so bound and
12 determined to use the foreclosure then we have the
13 damage hearing, it's determinate in this proceeding
14 today. There's no sense in having another hearing or
15 anything like that. To satisfy him, we'll foreclose
16 it. We've ordered the amount that's owed. He can pay
17 it or he can get out. But your Order is broad -- your
18 Formal Order is broad enough to include anything that
19 he's talking about, in my judgment.

20 THE COURT:

21 Well, I find that it is. We're going to proceed with
22 the damages hearing and it will be noted the -- Mr.
23 Hawkins, I hesitate to go ahead and relieve you because
24 your client didn't show up today and your client's not
25 going to have an opportunity to testify.

1 MR. HAWKINS:

2 That's fine with me.

3 THE COURT:

4 That puts him at a disadvantage.

5 MR. HAWKINS:

6 Well, I gave him proper notice and --

7 MR. MOATS:

8 I'm here.

9 MR. HAWKINS:

10 I heard he's right here, Your Honor.

11 THE COURT:

12 Okay, all right. Let me -- Mr. Moats, do you want to
13 come around, please? Mr. Moats, your attorney has made
14 a motion for him to be relieved as counsel in the case.
15 And any time one of those motions is filed, I always
16 give the opportunity to the client, to the party, to
17 tell the Court their position on that. So I'll be
18 happy to hear from you.

19 MR. MOATS:

20 It was my understanding -- I'm sorry I've been sick. I
21 contacted the clerk this morning about it. But it was
22 my understanding that he was still going to argue this
23 motion to amend and maybe any kind of damages hearing
24 after this. So that's why that motion was filed.

25 THE COURT:

1 Okay. Well --

2 MR. MOATS:

3 I have an email from him that said that he's going to
4 do that, so I didn't bother to, you know, file
5 anything.

6 THE COURT:

7 Okay. What we're going to do -- I was concerned that
8 you weren't here. But you have appeared, so that's
9 good. Because I was concerned with you not being able
10 to be heard on the issue of damages, but now --

11 MR. MOATS:

12 I was waiting to hear back from the clerk. I didn't
13 want to come in here coughing and hacking and getting
14 around people coughing, you know.

15 THE COURT:

16 Well, I'm not going to rule on the motion to be
17 relieved at this time. Since your client's here, he'll
18 have the opportunity to be heard. So we will --

19 MR. HAWKINS:

20 You want to hear from my client, Your Honor?

21 THE COURT:

22 Yeah, I'll allow him to be heard on the issue of
23 damages.

24 MR. HAWKINS:

25 Oh, yes, sir. Yeah, we plan on it.

1 THE COURT:

2 Yeah, that was my concern. I wanted him to be
3 available so I could hear from him on the issue of
4 damages. So you can have a seat, Mr. Moats. Mr.
5 Logan, if you have some testimony you'd like to present
6 on the issue of damages.

7 MR. LOGAN:

8 Yes, Your Honor. I'd like for my clients to come on
9 over and just have a seat right there. You have in the
10 record the -- it was an exhibit to several of the
11 motions that were filed, the earlier affidavit of Mr.
12 Joshua Pruiett-Lange, who was the accountant that we've
13 retained in this case. He signed an affidavit that is
14 part of the record that was filed April the 1st of 2021
15 in this case in which, pursuant to his testimony, he
16 testified that the amount owed was \$216,047.42 as of
17 April 1, 2021. I will -- I have him here to verify
18 that, as well as he has updated that affidavit or
19 updated his calculations. And I will pass that up to
20 the Court and ask him to come to the witness stand.

21 (COURT REPORTER MARKS DEFENDANT'S EXHIBIT NUMBER 1,
22 ACCOUNTING, RETAINED BY THE COURT)

23 (COURT REPORTER MARKS DEFENDANT'S EXHIBIT NUMBER 2, AFFIDAVIT
24 OF JOSHUA PRUIETT-LANGE, RETAINED BY THE COURT)

25 JOSHUA PRUIETT-LANGE, first being duly sworn, was examined

1 and testified as follows:

2 CLERK OF COURT:

3 If you would take the stand and state your name and
4 spell your last name for the reporter, please.

5 WITNESS:

6 My name is Joshua Pruiett-Lange, and my last name is
7 spelled P-R-U-I-E-T-T-hyphen-L-A-N-G-E.

8 DIRECT EXAMINATION BY MR. LOGAN:

9 Q. Good morning, sir.

10 A. Yes, sir.

11 Q. As I understand it, you are a registered tax preparer
12 with the Internal Revenue Service; is that correct?

13 A. Yes, sir.

14 Q. Okay. And you've been a bookkeeper since 2016 and were
15 employed by Electric City Tax and Bookkeeping, formerly
16 Shiflette Bookkeeping and Tax; is that correct?

17 A. Yes, sir.

18 Q. Okay. And basically you took over the business of
19 Shiflette Bookkeeping and Tax, which for many years had
20 done the accounting and bookkeeping records for Mr.
21 Cecil Dyar; is that correct?

22 A. Yes, sir.

23 Q. All right. You said you've worked for Cecil Dyar for
24 many years and you have reviewed payments made by Moats
25 Construction, Incorporated to Cecil Dyar for the

1 property that is the subject of this lawsuit; is that
2 correct?

3 A. For clarification, the payments that were reviewed by
4 me were provided to me by your office.

5 Q. Yes, sir.

6 A. And -- but yes, those have been reviewed and --

7 Q. And you've reviewed the terms of the Agreement for Sale
8 and Purchase?

9 A. Yes, sir.

10 Q. And how those payments were to be allocated; is that
11 correct?

12 A. Yes, sir.

13 Q. All right. And based upon that analysis, what was the
14 amount that, as of April the 1st of 2021, was due under
15 the terms and provisions of that agreement?

16 A. Based on the payments that had been provided to me at
17 the time, it was \$218,000, I believe.

18 Q. Well, you have a -- I'm sorry, they have --

19 A. Well, this is -- this has since been updated.

20 Q. I believe that's identified as Exhibit 2; is that
21 correct?

22 A. Yes, this is the original. So as of April 1st, 2021,
23 it was \$216,047.42.

24 Q. All right, sir. Then at my request, you have updated
25 the payments due to February the 1st of this year; is

1 that correct?

2 A. Yes, sir.

3 Q. Okay. Did you use the same process and procedure that
4 you did to calculate the amount due under the Exhibit 2
5 that you've been testifying about?

6 A. Yes, sir.

7 Q. Okay. And Exhibit 1, I think, is your updated
8 calculations; is that correct?

9 A. Yes, sir.

10 Q. All right. And what is the amount you have determined
11 that, as of February 1, 2022, is due under the terms of
12 the agreement?

13 A. \$222,415.95.

14 MR. LOGAN:

15 All right. Thank you, sir. Answer any questions that
16 the other side may have.

17 THE COURT:

18 Mr. Hawkins, any questions for this witness?

19 MR. HAWKINS:

20 No, Your Honor.

21 THE COURT:

22 All right. You said you admit these Exhibits 1 and 2?

23 MR. LOGAN:

24 Yes, I -- both of those are admitted as Exhibits 1 and
25 2.

1 THE COURT:

2 They were at the hearing -- they were at the summary
3 judgment hearing, but you're saying -- for this
4 hearing, you're saying you're going to admit those?

5 MR. LOGAN:

6 Yes, sir. For this hearing -- the summary judgment --
7 I mean, the earlier hearing was in '21.

8 THE COURT:

9 Yes, sir.

10 MR. LOGAN:

11 And you saw that in the Order.

12 THE COURT:

13 Yes, sir.

14 MR. LOGAN:

15 And then the other exhibit is the updated version that
16 carries it forward to the present.

17 THE COURT:

18 Okay. Mr. Hawkins?

19 MR. HAWKINS:

20 No objection.

21 THE COURT:

22 Okay. So that'd be without objection. Okay. Thank
23 you, sir. You can step down.

24 MR. LOGAN:

25 Per the terms of the Agreement for Sale and Purchase,

1 there is due a -- the amount of 15 percent of the
2 amount found to be due as attorney's fees. And I have
3 some pictures of the property that I would like to be
4 admitted. I don't have extra copies, but these were
5 taken within the last two weeks from the road. Didn't
6 get on the property at all. They can look at them and
7 I'm going to pass them up to you for the Court to add
8 as an exhibit.

9 THE COURT:

10 But are they stipulated to, Mr. Hawkins?

11 MR. HAWKINS:

12 No, Your Honor. I haven't seen the photos.

13 THE COURT:

14 Okay. Well, you would need to produce some testimony
15 in that case.

16 MR. LOGAN:

17 I don't have any testimony. I'm just introducing
18 another exhibit. All it is is copies of what this
19 property looks like.

20 THE COURT:

21 Okay, but you need to produce testimony that can
22 identify these pictures and authenticate these
23 pictures. Whether Mr. Hawkins objects to --

24 MR. LOGAN:

25 That's fine. They're just pictures of what -- it's the

1 old Kent Steel mill out there on --

2 THE COURT:

3 Just go ahead and you can mark them -- if you want to
4 mark them as a group and then just number them on the
5 back.

6 MR. LOGAN:

7 I mean, I don't see why they can't look at them and say
8 --

9 THE COURT:

10 We're having an evidentiary hearing and somebody's
11 going to have to -- if they object, somebody's going to
12 have to authenticate them.

13 MR. HAWKINS:

14 For the record, we object.

15 THE COURT:

16 So noted.

17 MR. LOGAN:

18 Since this was a damage hearing and not dealing with
19 any other issues besides the damages that are owed
20 under the agreement, that's my case.

21 THE COURT:

22 Okay. Mr. Hawkins, do you have anything you'd like to
23 present?

24 MR. HAWKINS:

25 The plaintiff calls Russell Moats, Your Honor.

1 THE COURT:

2 All right. Mr. Moats, if you could come around to the
3 witness chair, please, sir.

4 RUSSELL MOATS, first being duly sworn, was examined and
5 testified as follows:

6 CLERK OF COURT:

7 If you'd take the witness stand, please, sir. And
8 state your name and spell your last name for the
9 reporter, please.

10 WITNESS:

11 It's Russell Moats. R-U-S-S-E-L-L, M-O-A-T-S.

12 DIRECT EXAMINATION BY MR. HAWKINS:

13 Q. Mr. Moats, what is your position with Moats
14 Construction, Inc.?

15 A. Owner and president.

16 Q. Okay. And as owner and president of Moats
17 Construction, Inc., are you familiar with this
18 particular document and the accounting that's
19 surrounding this particular document?

20 A. Can you repeat the question? I can barely hear you.

21 Q. As president of Moats Construction, Inc., are you
22 familiar with the debt underlying the bond for title
23 which is the subject of this action and the accounting
24 regarding that particular document?

25 A. Yes, I'm familiar.

1 Q. Okay. And you heard Mr. Dyar's witness testimony
2 regarding that accounting. Is there any -- are there
3 any discrepancies or anything incorrect with that
4 particular testimony and that accounting? And if you
5 believe that there is, can you please explain that to
6 the Court?

7 A. Yes, sir, there's very large discrepancy.

8 Q. Can you explain that to the Court and quantify that?

9 A. I'll try to to the best of my knowledge from what I
10 understand. So this note ran from early 2011 -- I
11 believe it was February or March 2011 until six months
12 later where it matured, and I believe it was a bond for
13 title. And early on in the agreement, we had issues
14 with the Dyars, or Mr. Dyar, concerning our agreements
15 with the property and some issues with the property,
16 liens with the City of Anderson, and some equipment and
17 cleanup that was supposed to have been performed by Mr.
18 Dyar that was not performed --

19 MR. LOGAN:

20 Your Honor, I'm going to object to this. Now he's
21 getting into testimony dealing with liability as
22 opposed to what the amount is owed. This is a damages
23 hearing. This is not a question of whether or not he
24 doesn't owe anything.

25 THE COURT:

1 I'm going to overrule the objection. Go ahead, you can
2 answer the question.

3 WITNESS:

4 A. So Mr. Dyar's aware of all that. We paid and -- not as
5 -- not monthly, but we did make payments. And I made
6 representations to Mr. Dyar and his wife both that we
7 would pay every -- you know, all our -- in full to
8 them. I believe to date we've paid \$240,000 or close
9 to \$250,000 to them, but we had issues with the
10 property. And toward the end of maturity of that note,
11 we had additional issues with the railroad and access
12 to the property and had to retain an attorney, Smith
13 Moore Leatherwood in Greenville, to try to work those
14 issues out with the railroad. We also had -- of course
15 had the other issues with liens. We had two named
16 storms come through and ripped the roof off the
17 building and insurance would not -- well, they denied
18 the claims and Mr. Dyar did not pursue them for the
19 claims. So I had, at the end of the maturity of that
20 note, let Mr. Dyar know -- he used to come by the
21 property from time to time. And I let him know the
22 issues that we had and that I knew there was a balance
23 owed on the note and we were having to pay that but
24 that I was having to incur a number of different costs;
25 attorney's fees, surveyors, appraisers, and costs

1 trying to figure out exactly what had taken place and
2 happened. And throughout the course of all that, we
3 discovered that our name was not even on the title,
4 that the agreement had not been recorded with the ROW
5 office in Anderson. So that was just another issue
6 with the property. But at no point in time did I tell
7 Mr. Dyar that I wouldn't pay any balance that was owed
8 on the property, and I was fully prepared and willing
9 to do that. We just never knew exactly what that
10 amount was. And once we got the bookkeeping back from
11 the Shiflette Bookkeeping, we saw numerous errors, a
12 couple of payments that were just not even on there.
13 There was a cash payment that we made to Mrs. Dyar one
14 time for some type of -- something that she needed and
15 needed the money pretty quick and I paid her cash --
16 some cash, and that was not on there. So we had
17 numerous issues with the agreement and the payments and
18 how they were applied to the accounting, and it was
19 nowhere close to \$216,000. I mean, the most we thought
20 we may have owed Mr. Dyar was \$50,000. But like I
21 said, we had numerous other issues with the property
22 that we wanted to address. We thought that he might
23 work with us on whatever the balance was because we had
24 no idea what it was going to cost us to replace the
25 roof and deal with the railroad and the City of

1 Anderson.

2 DIRECT EXAMINATION RESUMED BY MR. HAWKINS:

3 Q. So the payments that you say were not accounted for,
4 can you be a little more specific about that and
5 quantify those particular payments that were
6 unreported?

7 A. So there was the original deposit made, and that was
8 the original deposit. And then every check that we
9 wrote to the Dyars after that came out of our
10 construction operating account, and so it was on the
11 ledger. And our totals for that did not match what he
12 had. He sent us -- I think it was a couple of months
13 after I spoke to Mr. Dyar -- it may have been two
14 months. I'm not sure exactly when it was. That was
15 2017. So a couple of months after that, I got a
16 written -- I believe he came by and gave me a written -
17 - it was just a handwritten kind of compilation of the
18 payments and things that were made, and I gave that to
19 William Smith from Smith Moore and Leatherwood and he
20 started drafting a letter to Mr. Dyar that I don't
21 believe Mr. Dyar ever got. I'm not sure. Per his
22 testimony in his deposition, he said he never received
23 it. And we went back and forth for a number of months
24 about the balance and what was owed because we needed a
25 clear title on the property in order to deal with this

1 issue with the City of Anderson and with the railroad.
2 So I was trying and making every effort I could to get
3 them paid so we could get a clear title to the
4 property.

5 Q. Can you specify the particular amounts that you say you
6 paid but was not accounted for by Mr. Dyar's
7 accountant?

8 A. Mr. Hawkins, can you repeat that? I can barely hear
9 you. I don't know if it's the glass or just --

10 Q. I'll speak -- can you hear me better now?

11 A. A little bit.

12 Q. Okay. Can you quantify the payments that you say you
13 paid that were not accounted for by Mr. Dyar's
14 accountant?

15 A. Yes, sir, we did. And I believe we did that in a
16 letter to Mr. Dyar, and Mr. Smith did that. I believe
17 it's been done several times now.

18 Q. Can you quantify it to the Court right now?

19 A. I believe it was -- I believe that it was about \$10,000
20 or thereabouts, or \$11,000. I believe it was two
21 payments and a cash payment, I believe is what it was.

22 Q. So \$10,000 or \$11,000?

23 A. Yes, sir. The note matured at like 270 and some odd
24 dollars with interest and everything -- taxes,
25 insurance, and interest, and we had paid \$240,000,

1 thereabouts. And so we felt like that there was, at
2 the very most, owed to Mr. Dyar \$50,000.

3 Q. So the amounts that you were speaking of earlier with
4 respect to the roof and some work you did for some
5 things left around the property that you cleaned up
6 that Mr. Dyar was supposed to clean up, those are all
7 part of your claims - in your case in chief, what we
8 would call your legal claims - and you felt like you
9 were entitled to a setoff for those items; is that
10 correct?

11 A. Yes, sir.

12 Q. And you wanted that to be worked out in the balance
13 owed?

14 A. We were trying to work out that with the balance owed
15 instead of going through this whole process, you know,
16 that we're doing right now. We were trying to work
17 that out and just be done and go our separate ways.
18 And I thought that that's what we were going to be able
19 to do, but -- and if I can add to that. At the end of
20 that 60 month term, I was willing to pay whatever the
21 balance was, and the Dyars came to me and wanted to
22 extend that agreement another five years. They were
23 willing to do that, but I did not want to do that
24 because I had no control over the property. I could
25 not deal with the City of Anderson, I could not deal

1 with the railroad, couldn't do anything. It's almost
2 like we didn't even own it. I mean, the agreement we
3 had hadn't even been recorded with Anderson County.
4 And I was wanting to pay them a lump sum and be done,
5 and I never signed any extension. I never agreed to
6 pay any extra interest or penalties or late fees, all
7 of which they're claiming in their \$216,000 number that
8 they're giving.

9 Q. Is there anything else you believe that you need to
10 share with the Court regarding the inaccuracy of the
11 accounting that Mr. Dyar's accountant testified about?

12 A. I don't believe so except I just have seen this new
13 accounting that came out. I've never -- I've heard the
14 \$216,000 number from different motions and things that
15 Mr. Jolly filed, but I never actually seen the
16 accounting at all. I've never seen any kind of ledger
17 or anything until just now this morning. So I'm really
18 not even sure how we got here. I mean, I was -- I know
19 this is a damages hearing, but I was under the
20 impression we were having a motion hearing to amend or
21 alter the motion for summary judgment ruling.

22 Q. Those are legal claims and procedural issues that have
23 been covered by the Court. I have no further questions
24 unless you think you need something -- there's
25 something you need to share with the Court about the

1 accounting.

2 A. Nothing else that I can think of right off my head, no.

3 MR. HAWKINS:

4 Please answer any questions Mr. Logan may have.

5 MR. COURT:

6 Mr. Logan, go ahead.

7 CROSS EXAMINATION BY MR. LOGAN:

8 Q. This is already a part of the court file as Exhibit 2
9 to your affidavit, but it's labeled Agreement for Sale
10 and Purchase of Real Property. Do you recognize that
11 document?

12 A. I do.

13 Q. Did you sign that document?

14 A. I believe I did.

15 Q. All right, thank you.

16 A. No, sir, I didn't sign this document. I'm sorry.

17 MR. LOGAN:

18 I would offer that as --

19 THE COURT:

20 Hold on, I think he just amended his answer.

21 WITNESS:

22 A. I signed -- I signed part of this document. I didn't
23 sign the -- I didn't sign the last page.

24 CROSS EXAMINATION RESUMED BY MR. LOGAN:

25 Q. You signed or did you agree to the last page where the

1 --

2 A. No, sir, I signed the original Agreement for Sale and
3 Purchase, which is pages 1 through 4.

4 Q. Did you --

5 A. The last part of it, the addendum, I didn't sign the
6 addendum. No, sir.

7 Q. Did you agree to the extension?

8 A. No, sir, I did not.

9 Q. But you continued to remain on the property; is that
10 right? Past that date, you continued to use that
11 property for your own purposes and you're telling us
12 now that you didn't agree to the extension; is that
13 what you're telling me?

14 A. That's exactly right.

15 Q. Okay. Why didn't you just leave if you wouldn't agree
16 to the extension?

17 A. Well, because I had several hundred thousand dollars in
18 equity in the property.

19 Q. All right. Let's mark that as Exhibit 3.

20 (COURT REPORTER MARKS DEFENDANT'S EXHIBIT NUMBER 3, AGREEMENT
21 FOR SALE AND PURCHASE OF REAL ESTATE, RETAINED BY THE COURT)

22 CROSS EXAMINATION RESUMED BY MR. LOGAN:

23 Q. Okay. This agreement deals with the fact that you paid
24 \$37,500 upon the signing of this document, correct?

25 A. I'm not sure. If you'll give me the document back,

1 I'll look at it. But I did pay \$37,500 --

2 MR. HAWKINS:

3 Your Honor, all of the document hasn't been offered
4 into evidence yet.

5 MR. LOGAN:

6 I just did as Exhibit 3. It's part of the record.

7 MR. HAWKINS:

8 Mr. Logan says he offered it into evidence. We would -
9 - we have no objection other than the fact that my
10 client says he didn't sign the last page. So to the
11 extent that there's testimony about it, he says he
12 didn't sign it.

13 THE COURT:

14 The Court's understanding of his testimony is that he
15 signed the original document but did not agree to the
16 extension, which is different.

17 MR. HAWKINS:

18 I actually -- I don't know what's on there, Your Honor,
19 because I haven't seen it prior to going in.

20 THE COURT:

21 Okay.

22 MR. HAWKINS:

23 Okay. I see -- his testimony is he didn't sign it. He
24 didn't sign the last page.

25 THE COURT:

1 I couldn't understand you, Mr. Hawkins.

2 MR. HAWKINS:

3 He didn't sign the last page, which is the --

4 THE COURT:

5 That was his testimony, that he didn't agree with that.

6 MR. HAWKINS:

7 Yes, sir.

8 CROSS EXAMINATION RESUMED BY MR. LOGAN:

9 Q. Okay, do you have it in front of you now?

10 A. Yes, sir.

11 Q. Purchase price \$250,000; is that correct?

12 A. Yes, sir.

13 Q. And the payment is \$37,500, down payment, correct?

14 A. Correct.

15 Q. Balance would be paid of \$212,500, interest at 6
16 percent, 60 consecutive payments of \$4,108.22 beginning
17 May 1, and conveyance of title. Look at number 4. It
18 says, "Upon payment of the purchase price, the seller
19 shall convey to purchaser title to the premises by
20 general warranty deed." Is there anything about that
21 paragraph that you do not understand and did not
22 understand at the time you signed the agreement?

23 A. I don't believe so, sir. And I've looked at that
24 paragraph many times and the only thing is, I was under
25 the impression that this was going to be recorded with

1 the ROD office. I was under the impression that the
2 property was actually going to be placed in our name so
3 we would have some kind of control over the property to
4 be able to alter it, improve it, or whatever we needed
5 to do.

6 Q. So your contention is the fact that this document
7 wasn't recorded makes it otherwise invalid or illegal;
8 is that what you're telling me?

9 A. No, sir, I'm not saying it makes it invalid or illegal
10 because it's not illegal because I signed it.

11 Q. You did sign it.

12 A. But it wasn't recorded and attached to the deed, or it
13 wasn't attached -- even this probate -- it wasn't
14 recorded in the probate --

15 Q. I'm not going to argue with you, but it says the seller
16 shall convey to purchaser title to the premises by
17 general warranty deed upon payment. And you had not
18 paid for this property at the time this agreement was
19 entered into, had you?

20 A. Not at the time it was agreed -- no, I hadn't paid for
21 it.

22 Q. Okay. And it has the provisions in here that the Court
23 is aware of and has already reviewed, but it carries
24 with it liability for attorney's fees on paragraph 13,
25 it carries liability for late payment penalty, it

1 carries with it a risk of loss paragraph that says,
2 "Risk of loss by damage to or destruction of the
3 premises shall be upon the purchaser during the term of
4 this agreement," it carries with it the other
5 provisions including the responsibility of ad valorem
6 taxes and special assessments and what happens in case
7 of default. And that is your signature on behalf of
8 Moats on page 3 of 4; is that correct?

9 A. Three of four, yes.

10 Q. Okay. And then the addendum that Mr. Dyar signed and
11 you said -- did you ever see the addendum?

12 A. I never saw any -- I never saw any addendum.

13 Q. You never saw the addendum --

14 A. I may have -- it seems like I remember an original
15 addendum to this contract, but it was not the one that
16 you've attached after the probate sheet. There was an
17 actual addendum that I signed that carried the original
18 agreement to 2016, I believe. But this --

19 Q. It says, "In this addendum that Mr. Moats signed --"

20 THE COURT:

21 Let him finish his answer.

22 WITNESS:

23 A. But the one that's attached is something else that they
24 -- that you guys have produced since then that I have
25 not ever --

1 CROSS EXAMINATION RESUMED BY MR. LOGAN:

2 Q. Well, do you have a copy of the addendum that you said
3 you did sign? Or did not sign, but saw?

4 A. I'm not sure. I'm sure we do. I'm sure we've produced
5 it.

6 Q. Well, I'd like for you to produce it for the Court,
7 please.

8 A. You'll have to talk to my attorney. I'm sure he --

9 Q. You don't have --

10 A. If it's in the discovery, I'm sure he can.

11 Q. So you don't have it available right now?

12 A. I'm not sure if it is or not, sir. It's whatever's in
13 his file.

14 Q. All right. Well, let me --

15 A. I'm sure we have it in our file.

16 Q. -- ask you this. Let's read the addendum that's
17 attached. Read the language there. It says, "All
18 other terms and conditions --" excuse me, "This
19 agreement shall be extended until March 16th, 2021."
20 Was that on the one that you saw before or that you say
21 you have possibly?

22 A. Where are you reading that? On the last page?

23 Q. Yes, sir, the last page. It's labeled Addendum.
24 Amendment to Addendum.

25 A. I see that. Where are you reading that? You're

1 reading the bold print?

2 Q. All right, it's one page. It says -- the paragraph
3 that I'm reading from starts, "The undersigned parties
4 hereby agree as follows." Do you see that?

5 A. Yes, sir.

6 Q. Okay. Next, it says, "This agreement shall be extended
7 until March 16th, 2021." Was that part of the addendum
8 that you recall seeing and that you say you may have in
9 your file?

10 A. No, sir.

11 Q. So you never got a written document that extended the
12 agreement until March 16th, 2021; is that what you're
13 saying?

14 A. That's exactly what I'm saying.

15 Q. Again, why did you remain there, then? Why did you not
16 insist that the contract be extended so that you would
17 have use of that property?

18 A. Because I have almost a half a million dollars in that
19 piece of property.

20 Q. Without that addendum, this contract expired --

21 A. That's why --

22 Q. Let me finish my question.

23 A. To answer your question --

24 Q. Without that addendum, this contract expired --

25 MR. HAWKINS:

1 Objection, Your Honor. There's not a question.

2 THE COURT:

3 Finish your question and let him answer.

4 MR. LOGAN:

5 Thank you, sir.

6 CROSS EXAMINATION RESUMED BY MR. LOGAN:

7 Q. Without that extension -- on the first page of this
8 agreement, it says, "The principal balance due together
9 with accrued interest to be paid in full on or before
10 March 31, 2016." And that's a part of the document
11 that you did sign, correct?

12 A. I believe so, yes, sir.

13 MR. HAWKINS:

14 Objection. He's already testified -- it's asked and
15 answered. He testified that he didn't sign it, he
16 didn't agree to it, and he's answered the question,
17 Your Honor.

18 THE COURT:

19 All right, let's move on.

20 MR. LOGAN:

21 Your Honor, I'm asking him -- what I read was part of
22 the agreement that he did sign, that without an
23 extension, it's to be paid on March 31, 2016.

24 THE COURT:

25 You've asked him that question and he answered that

1 question.

2 CROSS EXAMINATION RESUMED BY MR. LOGAN:

3 Q. Look at paragraph 3(B) on the document that you did
4 sign. Did I read that correctly?

5 A. 3(D)? I see A, B, and C.

6 Q. A, B, and C.

7 A. Oh, you're saying B. Okay. Yes, sir. What was the
8 question?

9 Q. Okay. Does not the last part of that paragraph say,
10 "Continuing on the same day of each month thereafter
11 through April 1, 2016 with the principal balance due
12 together with accrued interest to be paid in full on or
13 before March 31, 2016"? Is that correct?

14 A. Is that correct what it says?

15 Q. Yes, sir.

16 A. That's what it says, yes, sir.

17 Q. Okay. So would you agree that without an addendum or
18 an extension that you either agree to with the Dyars --
19 or that you agree to with the Dyars, you were obligated
20 to pay the balance under this contract on March 31,
21 2016?

22 A. That's correct, yes.

23 Q. And you did not make that payment, did you?

24 A. We did. We did.

25 Q. You paid the balance under this contract on that date?

1 A. The balance is not paid in full because we had numerous
2 issues with the property, and I've already stated that.
3 We paid all the payments as agreed for the first four
4 or five months of the agreement and then we got a
5 notice of the lien being placed on the property by the
6 City of Anderson. At that point in time, it was our
7 understanding per this agreement that the seller was
8 responsible for any taxes related to the property.
9 Those had not been paid by the Dyars. So as far as we
10 were concerned, the agreement had been breached. So we
11 had numerous discussions with Mr. Dyar about that. And
12 we had had other issues with the property like some
13 barge equipment being left on the property to clean up
14 around the property that we thought that he was going
15 to perform that had not been performed. We had a
16 mutual agreement, a mutual relationship and
17 understanding. I thought we had a good relationship
18 for five years, and so we just -- we were working it
19 out. For five years, we made payments to them. They
20 were fine with how we made the payments. For five
21 years, there was no issue. At the end of the five
22 years, he came to me and I believe I had called him
23 maybe a couple of times and told him that I had some
24 issues with the railroad. He came by and I asked him
25 if he could just be patient with us and we'll figure

1 out what the balance is and I'll pay them in full. And
2 at that point in time, I had retained an attorney to
3 figure out exactly what was going on with the property.
4 He informed me that the title was not clear, there were
5 numerous issues with the title, with the agreement, and
6 that we needed to get all of that straightened out
7 before we could even think about dealing with the
8 railroad or the City of Anderson. At no point in time
9 did I ever tell them that I would not pay them any
10 balance that was owed on the property.

11 Q. So you and Mr. Dyar entered into some sort of agreement
12 that extended the term; is that right?

13 A. No, sir. I've answered that numerous times. I never
14 agreed to extend any agreement beyond 60 months.
15 Never.

16 Q. And the attorney that you hired --

17 MR. LOGAN:

18 And this also is Exhibit 8 to the previous hearing,
19 Your Honor. So we have it in the file.

20 CROSS EXAMINATION RESUMED BY MR. LOGAN:

21 Q. It's a letter from an attorney by the name of William
22 Swent; is that correct?

23 A. That's correct.

24 Q. Okay, all right. And this Exhibit 8 from the summary
25 judgment hearing, is that your attorney at that time?

1 A. Yes, sir.

2 Q. And that's dated 2018 and not 2016; is that correct?

3 A. That's correct.

4 Q. Okay. Now, did he have an amount on that letter that
5 he referred to as being owed under the contract at that
6 time?

7 A. It looks like \$83,338.98.

8 Q. Okay. So the attorney you hired came up with that
9 number as of 2018; is that right?

10 A. That's correct.

11 Q. Okay. Being your attorney, did you then pay the Dyars
12 \$83,000 or offer to pay them \$83,000?

13 A. No. We do not offer, no. And I want to clear this
14 document up. This is a draft. This is a draft.

15 Q. A draft.

16 A. And all that Mr. Swent was to do was to abstract the
17 title and figure out what was going on with the title
18 and then they were performing calculations. One thing
19 that he did do that's added to that \$83,000 is the same
20 thing that the Shiflette Bookkeeping firm also did was
21 added the interest per the contract. I think he also
22 added some penalties in there, and all that's into that
23 \$83,000.

24 Q. So you didn't authorize -- are you saying to the Court
25 you didn't authorize the attorney to estimate or to

1 determine the amount that you owed under the contract?

2 A. Under the contract, yes. We were trying to get to a
3 balance, what was owed. And I believe he actually --
4 he did that up until that date, but we had went back --
5 had gone back and forth with him about giving me an
6 exact number of what we owed Mr. Dyar, or the Dyars, on
7 the date that the note matured, which was in 2016.
8 What we owed them then at that date.

9 Q. So the attorney you hired to make that determination,
10 you didn't agree with. And therefore, you didn't pay
11 them the amount that he said you owed; is that right?

12 A. Well, he wasn't saying that this is what I owed. We
13 never -- this was never filed, I mean, with the Court.
14 I mean, it was a draft and it was the only thing I got
15 from him.

16 Q. Now, you also say that you have paid everything that
17 you owe under the contract. Did you, through your
18 attorney, hire an accounting firm for them to come up
19 with an opinion of what was owed by the name of Michael
20 E. Meilinger?

21 A. No, Mr. Hawkins hired the Meilingers. Mike Meilinger.

22 Q. Mr. Hawkins, your attorney, hired --

23 A. Mr. Hawkins hired the Meilingers, or Mike Meilinger,
24 and this is the source of our disagreement with how all
25 that transpired, yes.

1 Q. So he hired -- Mr. Hawkins, your attorney, hired an
2 accountant by the name of Michael Meilinger to
3 determine how much you owed under the agreement; is
4 that correct?

5 A. He had wanted to hire them to have them come and
6 testify today at this hearing, yes, sir.

7 Q. And he did hire them; is that right?

8 A. Evidently, he did.

9 Q. Have you paid for that accountant?

10 A. No, I didn't.

11 Q. And why not?

12 A. Because they would never give me any kind of -- he
13 tried to send me a bill for like \$5,000. I didn't even
14 know what it was for. And I told him just to take the
15 canceled checks that we had -- it's pretty simple.
16 Take our ledger, take the canceled checks, our copies
17 of our bank statements, make copies of them, and there
18 was a \$3,000 cash payment on top of that. I mean, it's
19 pretty simple, and that's what was paid. The checks --
20 the canceled checks speak for themselves.

21 Q. Did you ever see his report?

22 A. I saw -- I saw -- they were emailing back and forth.
23 Yes, sir, I saw the report.

24 Q. All right. And --

25 A. I saw -- I saw a preliminary report, I believe. And I

1 had issues with that, too. And there are emails that I
2 sent back and forth to them regarding the exact same
3 thing I just mentioned; the additional interest,
4 penalties, and -- the additional interest and penalties
5 beyond the 60 month term.

6 Q. So every accountant that has been either hired by you
7 or hired on your behalf who has come up with an amount
8 that they claim you owe under the contract, you have
9 disagreed with, right?

10 A. I haven't hired any accountant, sir.

11 Q. You haven't hired -- well, you hired a lawyer that came
12 up with a number that you didn't agree with?

13 A. I did. I did hire him.

14 MR. HAWKINS:

15 Your Honor --

16 CROSS EXAMINATION RESUMED BY MR. LOGAN:

17 Q. You hired Mr. Meilinger, who is an accountant. Or your
18 lawyer hired an accountant.

19 THE COURT:

20 Hold on, let me hear the objection.

21 MR. HAWKINS:

22 I object to any testimony about the document. The
23 document's hearsay. I don't exactly know what he's
24 going to say, Your Honor, but right now the document's
25 hearsay. I don't think it's properly introducable to

1 question my client about it.

2 MR. LOGAN:

3 Your Honor, he's testified under oath that he doesn't
4 owe a dime under the contract. And I've got a lawyer
5 and an accountant that was hired by his attorney that
6 determined otherwise, and I think I'm entitled to cross
7 examine him about that.

8 THE COURT:

9 Well, you've asked him if he disagreed with the amount
10 of the CPA. So I think we've heard enough on that.
11 I'm going to sustain the objection. Let's move on to
12 something else.

13 MR. LOGAN:

14 Okay. Well, can I at least question him on what the
15 accountant came up with that he owes? That's a part --
16 that's a part of the exhibit that they furnished to me.
17 I'll be glad to read it to the Court and let the Court
18 read it.

19 THE COURT:

20 Mr. Hawkins?

21 MR. HAWKINS:

22 At this point, it's hearsay. He disagrees with what
23 the accountant said, the accountant's not here, it's
24 hearsay.

25 THE COURT:

1 Did you furnish that to the defendant in discovery?

2 MR. HAWKINS:

3 Yes, Your Honor.

4 THE COURT:

5 Okay. Was that in response to a question of how much
6 your client believes he owed?

7 MR. HAWKINS:

8 Well, I don't know that it was necessarily produced as
9 a supplement. We produced it because we were going to
10 be here for the accountant to testify. So I produced
11 that to Mr. Logan in anticipation of this hearing.

12 THE COURT:

13 All right, this is what I'll do. I'll allow you to ask
14 him a number. Don't get into the details because the
15 accountant's not here to explain the --

16 MR. LOGAN:

17 That's fine.

18 THE COURT:

19 -- procedure he used to come up with the number, and
20 it's noted that he does not agree with the number. But
21 you can ask him again.

22 MR. LOGAN:

23 The only reason I'm asking him is because of his
24 testimony.

25 THE COURT:

1 Yes, sir.

2 CROSS EXAMINATION RESUMED BY MR. LOGAN:

3 Q. And Mr. Meilinger came up with two numbers depending
4 upon whether you charge a prevailing interest through
5 the date of this appraisal or whether you don't. One
6 of them was \$167,617. Did you pay that to Mr. Dyar?

7 A. I paid \$167,000. I paid more than \$167,000.

8 Q. So you're testifying under oath that, since you
9 received this appraisal, you have paid my client
10 \$167,000?

11 A. No, sir, that's not the question you asked me.

12 Q. Yes, it is. Once you received this appraisal with that
13 amount on it, did you pay the Dyars that amount?

14 A. No, sir.

15 Q. Okay. Did you pay them \$145,581?

16 A. Yes, sir, I did.

17 Q. Did you pay it after you received this calculation of
18 what Mr. Meilinger said -- alternate calculation that
19 you owed the Dyars?

20 A. Well, for one, that's not Mr. Meilinger. That's a
21 gentleman by the name of Travis Lively that did that.
22 And no, I did not pay \$145,000 to them, and I disagreed
23 with the amount. We've got it in emails back and
24 forth. I had told Mr. Hawkins that he never should
25 have sent it to you guys for discovery because I hadn't

1 even had a chance to look at it. And I told them to
2 come up with an amount at the end of the 60 month term
3 that they could come up with that we owed, and I was
4 willing to pay the Dyars that. I even made a offer to
5 pay them -- I made them a offer since then to pay them
6 an amount of money, two different amounts of money. I
7 never heard a word back about either one of them.

8 Q. Do you have any documentation that establishes that?

9 A. I have emails, yes, sir.

10 Q. Okay. Where are they?

11 A. They're on my phone in my truck.

12 Q. You don't have them in court today?

13 A. I can't bring my phone in court.

14 Q. You didn't try to print them off your phone so you
15 could --

16 A. I've got some documents on that desk over there. I can
17 look through them. There may be something to that
18 effect over there, yes, sir.

19 Q. Do you have any documentation concerning your
20 discussions with the Dyars about these other issues
21 that you said needed to be worked out before you could
22 pay them?

23 A. No, sir. Mr. Dyar never -- we never traded emails. I
24 didn't even know what his email account was. He talked
25 on the telephone, he would come by. That's the kind of

1 relationship that we had.

2 Q. So all these adjustments that you've testified to, or
3 supposed adjustments or amendments or whatever, that's
4 just based on your own personal verbal testimony; is
5 that correct?

6 A. Yes, sir. I mean, I also had witnesses -- a number of
7 witnesses. Employees, former employees, that we have
8 not been able to depose that would testify, sign
9 affidavits. We have not had the opportunity to do any
10 of that.

11 Q. Where are these witnesses today, sir? Do you have
12 them?

13 A. I mean, we had a motion for summary judgment hearing
14 that I didn't even know anything about. I had asked my
15 attorney to give me notice when we were going to have
16 it. It was virtual. I didn't even -- I wasn't even
17 afforded the opportunity to come and testify to defend
18 myself or my company and a decision was rendered by the
19 Court.

20 THE COURT:

21 Anything further, Mr. Logan?

22 MR. LOGAN:

23 No, sir, I think I've had enough.

24 THE COURT:

25 All right. Mr. Hawkins, any redirect?

1 REDIRECT EXAMINATION BY MR. HAWKINS:

2 Q. Mr. Moats, if you would look through Exhibit 2, which
3 is the affidavit of -- it's the affidavit of Mr. Dyars'
4 accountant. Will you look through that affidavit and
5 testify about the sporadic payments that you made in
6 both the amount called for under the contract, other
7 much larger amounts that you paid, and how the Dyars
8 received those payments?

9 A. Yes, sir. And I believe I've already testified about
10 these payments and why they were made the way they were
11 made. And I'm not even sure that what I'm looking at
12 is correct without our ledger that we had submitted in
13 discovery, but I'll testify to what I believe it is
14 maybe.

15 Q. Well, my point is that there are months that you did
16 make payments, right?

17 A. (Affirmative nod).

18 Q. And there are months -- can you answer the question in
19 the microphone?

20 A. Yes, sir.

21 Q. There's months you did make payments?

22 A. Correct. So for like the first -- and I'm going by
23 this document. The first six or seven months, we paid
24 exactly how the note read. And then we had issues like
25 I had mentioned earlier. We got -- there was a lien.

1 We got notice of a lien being filed by the City of
2 Anderson against the property, and Mr. Dyar still had
3 not cleaned up all the pallets and everything.

4 Q. Well, let's -- I don't want to interrupt you, but I
5 want to stick to this particular document. And what
6 I'm trying to get to is, there's times that you made
7 payments under that -- under your contract and they
8 were much greater than your minimum payment, right?

9 A. That's correct.

10 Q. And those amounts would be shown in Exhibit 2; is that
11 correct?

12 A. That's correct.

13 Q. Okay. And did you ever get any objection from the
14 Dyars about receiving payments in that manner?

15 A. No, sir.

16 Q. So were they agreeable to your payments in that manner?

17 A. Yes, sir, for five years.

18 Q. So is it safe to say that somehow you all altered your
19 payment method and amount?

20 A. Yes, sir.

21 MR. HAWKINS:

22 Nothing further.

23 THE COURT:

24 Okay.

25 MR. LOGAN:

1 Follow up, Your Honor?

2 THE COURT:

3 Limited to the scope of his redirect.

4 MR. LOGAN:

5 Yes, sir.

6 RE-CROSS EXAMINATION BY MR. LOGAN:

7 Q. Those payments that you made in larger amounts, they
8 stopped on May the 1st of 2018, according to the
9 accounting records; do they not?

10 A. Yes, sir. May the 1st, it looks like.

11 Q. I'm sorry, I didn't hear you.

12 A. It looks like May the 1st.

13 Q. Okay. And you haven't made any payments since the
14 pavement you made on May the 1st of 2018; is that
15 correct?

16 A. I don't -- I'm not sure. I don't think we have. It
17 seems like -- I don't think we have, but I can't be a
18 hundred percent sure without looking at our records. I
19 don't believe so. We tried to work from 2016 to 2018
20 to work everything out with the Dyars. I tried to make
21 a good-faith effort and continue to give them some
22 money on the property while we worked out all the
23 issues with it.

24 Q. So you wanted to give them money when you wanted to
25 give them money, not according to the contract?

1 A. I can't hear you.

2 Q. That's all right, don't worry about it. And those
3 payments -- that last payment on May the 1st, 2018 of
4 \$5,000, that was made -- those payments up to that
5 point were made after the contract was extended even
6 though you say you didn't extend the -- or didn't sign
7 the extension; is that right?

8 A. That's exactly right. I agreed -- I agreed that there
9 was a balance that was owed. I didn't know what the
10 offset was going to be with all the other issues that
11 we had. But like I said, I was just trying to make a
12 good-faith effort.

13 MR. LOGAN:

14 That's all I've got.

15 THE COURT:

16 All right, thank you, Mr. Moats. You can step down.

17 Mr. Hawkins, do you have anything further?

18 MR. HAWKINS:

19 Just the motion to be relieved, Your Honor.

20 THE COURT:

21 Well, let me ask Mr. Logan. Is there anything further
22 from the defendant?

23 MR. LOGAN:

24 No, sir.

25 THE COURT:

1 Okay, all right. This is what I'm going to do. I want
2 to take this under advisement and read these -- re-read
3 what's been submitted into evidence and I want to
4 review my notes. And Mr. Hawkins, I have heard your
5 motion and Mr. Moats has also testified to the
6 disagreements between the two of you. So I will grant
7 your motion to be relieved at this point. However, I
8 want you to remain on the case until such time as an
9 Order, however I decide, is submitted because I need an
10 attorney to be able to review the Order that -- either
11 prepare or review the Order at that point. Now, Mr.
12 Moats, if you are able -- if you wish to retain another
13 lawyer, you have a right to do that.

14 MR. MOATS:

15 I plan on doing that. I just have one thing to add, if
16 I can.

17 THE COURT:

18 Yes, sir.

19 MR. MOATS:

20 I've requested all the records and discovery documents
21 related to this case and Mr. Hawkins has refused to
22 produce them. So it's hard for me to go and retain
23 another attorney without having the file. So I just
24 need that.

25 THE COURT:

1 Mr. Hawkins, is there any problem making your client a
2 copy of his file?

3 MR. HAWKINS:

4 I'm still on the case, Your Honor. So obviously I need
5 that. I have no problem to provide those documents;
6 however, he would have to bear the cost of
7 reproduction.

8 THE COURT:

9 Well, that's something that you can give him the figure
10 on what you charge for copies. That's something the
11 two of you can work out. But certainly, any time you
12 get records and billing, that's an issue between the
13 attorney and the client. But I will -- and I do want
14 you to stay on the case until this Order, however I
15 decide, is executed, and then Mr. Moats can proceed
16 with subsequent counsel.

17 MR. HAWKINS:

18 And if you could give him a timeframe to obtain counsel
19 after the Order, Your Honor.

20 THE COURT:

21 They'll be a -- I'll put that in the Order. And Mr.
22 Moats, if you have subsequent counsel that you've
23 already talked to and -- I mean, they're in a
24 precarious position because they can't offer you legal
25 advice while you're represented by another attorney.

1 So let's -- I'm going to issue this Order and then
2 y'all can go from there. Okay, we'll close the record.

3 (WITH NOTHING FURTHER, THIS HEARING CONCLUDED AT 11:21 A.M.)
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CERTIFICATE OF REPORTER

I, Lisa M. Nowell, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing hearing was taken before me on the date and at the time and location stated on page 1 of this transcript.

That the witnesses were duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Lisa M. Nowell

Lisa M. Nowell, CVR

Notary Public for S.C.

Commission Expires: 11/22/2023

STATE OF SOUTH CAROLINA
COUNTY OF Anderson

EXHIBITS

Case # 2020CP0401202

22 FEB 24 PM 4:40:48
Anderson, SC DOC. CLERK

Plaintiff(s) Moats Construction, Inc.

vs. Defendant(s) Cecil R. Dyar

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1	1 Accounting	1
2	2 Affidavit of Joshua Pruett-Lange	2
3	3 Agreement for Sale and Purchase of Real Estate	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
10	10	10
11	11	11
12	12	12
13	13	13
14	14	14
15	15	15

Court Reporter Lisa Nowell - Legal Eagle (contract)

Clerk of Court Richard D. Jones

Date 2-24-22

Beginning Balance	\$ 212,500.00
APR	6%
Monthly Interest	0.5%
Total Payment	\$ 4,108.22

PMT NO	Date	Payment	Status	Principal	Interest	Late Charge	Property Taxes	Insurance	Balance
1	May 1, 2011	\$ 5,213.22	On-time	\$ 4,150.72	\$ 1,062.50	\$ -			\$ 208,349.28
2	June 1, 2011	\$ 4,513.22	On-time	\$ 3,471.47	\$ 1,041.75	\$ -			\$ 204,877.81
3	July 1, 2011	\$ 4,513.22	On-time	\$ 3,488.83	\$ 1,024.39	\$ -			\$ 201,388.98
4	August 1, 2011	\$ 4,513.22	On-time	\$ 3,506.28	\$ 1,006.94	\$ -			\$ 197,882.70
5	September 1, 2011	\$ 4,513.22	Late	\$ 3,298.15	\$ 989.41	\$ 225.66			\$ 194,584.55
6	October 1, 2011	\$ 4,513.22	Late	\$ 3,314.64	\$ 972.92	\$ 225.66	\$ 2,897.66		\$ 194,167.58
7	November 1, 2011	\$ -	Late	\$ (1,196.50)	\$ 970.84	\$ 225.66			\$ 195,364.07
8	December 1, 2011	\$ -	Late	\$ (1,202.48)	\$ 976.82	\$ 225.66		\$ 1,566.00	\$ 198,132.55
9	January 1, 2012	\$ 9,026.44	Late	\$ 7,810.12	\$ 990.66	\$ 225.66			\$ 190,322.44
10	February 1, 2012	\$ 4,513.22	Late	\$ 3,335.95	\$ 951.61	\$ 225.66			\$ 186,986.49
11	March 1, 2012	\$ -	Late	\$ (1,160.59)	\$ 934.93	\$ 225.66			\$ 188,147.08
12	April 1, 2012	\$ -	Late	\$ (1,166.40)	\$ 940.74	\$ 225.66			\$ 189,313.48
13	May 1, 2012	\$ -	Late	\$ (1,172.23)	\$ 946.57	\$ 225.66			\$ 190,485.71
14	June 1, 2012	\$ -	Late	\$ (1,178.09)	\$ 952.43	\$ 225.66			\$ 191,663.79
15	July 1, 2012	\$ -	Late	\$ (1,183.98)	\$ 958.32	\$ 225.66			\$ 192,847.77
16	August 1, 2012	\$ -	Late	\$ (1,189.90)	\$ 964.24	\$ 225.66			\$ 194,037.67
17	September 1, 2012	\$ 9,026.44	Late	\$ 7,830.59	\$ 970.19	\$ 225.66			\$ 186,207.08
18	October 1, 2012	\$ -	Late	\$ (1,156.70)	\$ 931.04	\$ 225.66	\$ 2,935.37		\$ 190,299.15
19	November 1, 2012	\$ -	Late	\$ (1,177.16)	\$ 951.50	\$ 225.66			\$ 191,476.30
20	December 1, 2012	\$ -	Late	\$ (1,183.04)	\$ 957.38	\$ 225.66		\$ 2,094.95	\$ 194,754.29
21	January 1, 2013	\$ -	Late	\$ (1,199.43)	\$ 973.77	\$ 225.66			\$ 195,953.72
22	February 1, 2013		Late	\$ (1,205.43)	\$ 979.77	\$ 225.66			\$ 197,159.15
23	March 1, 2013	\$ 6,000.00	Late	\$ 4,788.54	\$ 985.80	\$ 225.66			\$ 192,370.61
24	April 1, 2013	\$ -	Late	\$ (1,187.51)	\$ 961.85	\$ 225.66			\$ 193,558.12
25	May 1, 2013	\$ -	Late	\$ (1,193.45)	\$ 967.79	\$ 225.66			\$ 194,751.57
26	June 1, 2013	\$ 4,500.00	Late	\$ 3,300.58	\$ 973.76	\$ 225.66			\$ 191,450.99
27	July 1, 2013	\$ -	Late	\$ (1,182.91)	\$ 957.25	\$ 225.66			\$ 192,633.90
28	August 1, 2013	\$ 2,500.00	Late	\$ 1,311.17	\$ 963.17	\$ 225.66			\$ 191,322.73
29	September 1, 2013	\$ 2,013.22	Late	\$ 830.95	\$ 956.61	\$ 225.66			\$ 190,491.79
30	October 1, 2013	\$ -	Late	\$ (1,178.12)	\$ 952.46	\$ 225.66	\$ 3,366.66		\$ 195,036.57
31	November 1, 2013	\$ 22,566.10	Late	\$ 21,365.26	\$ 975.18	\$ 225.66			\$ 173,671.31
32	December 1, 2013	\$ -	Late	\$ (1,094.02)	\$ 868.36	\$ 225.66		\$ 2,222.82	\$ 176,988.15
33	January 1, 2014	\$ -	Late	\$ (1,110.60)	\$ 884.94	\$ 225.66			\$ 178,098.75
34	February 1, 2014	\$ -	Late	\$ (1,116.15)	\$ 890.49	\$ 225.66			\$ 179,214.90
35	March 1, 2014	\$ -	Late	\$ (1,121.73)	\$ 896.07	\$ 225.66			\$ 180,336.64
36	April 1, 2014	\$ 5,000.00	Late	\$ 3,872.66	\$ 901.68	\$ 225.66			\$ 176,463.98
37	May 1, 2014	\$ -	Late	\$ (1,107.98)	\$ 882.32	\$ 225.66			\$ 177,571.96
38	June 1, 2014	\$ -	Late	\$ (1,113.52)	\$ 887.86	\$ 225.66			\$ 178,685.48
39	July 1, 2014	\$ 10,000.00	Late	\$ 8,880.91	\$ 893.43	\$ 225.66			\$ 169,804.57
40	August 1, 2014	\$ -	Late	\$ (1,074.68)	\$ 849.02	\$ 225.66			\$ 170,879.25
41	September 1, 2014	\$ -	Late	\$ (1,080.06)	\$ 854.40	\$ 225.66			\$ 171,959.30
42	October 1, 2014	\$ -	Late	\$ (1,085.46)	\$ 859.80	\$ 225.66	\$ 3,293.29		\$ 176,338.05
43	November 1, 2014	\$ 5,000.00	Late	\$ 3,892.65	\$ 881.69	\$ 225.66			\$ 172,445.40
44	December 1, 2014	\$ -	Late	\$ (1,087.89)	\$ 862.23	\$ 225.66		\$ 2,265.22	\$ 175,798.51
45	January 1, 2015	\$ 5,000.00	Late	\$ 3,895.35	\$ 878.99	\$ 225.66			\$ 171,903.16

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Anderson, SC COC, CP/GS



46	February 1, 2015	\$ 5,000.00	Late	\$ 3,914.82	\$ 859.52	\$ 225.66		\$ 167,988.34
47	March 1, 2015	\$ -	Late	\$ (1,065.60)	\$ 839.94	\$ 225.66		\$ 169,053.94
48	April 1, 2015	\$ -	Late	\$ (1,070.93)	\$ 845.27	\$ 225.66		\$ 170,124.87
49	May 1, 2015	\$ -	Late	\$ (1,076.28)	\$ 850.62	\$ 225.66		\$ 171,201.15
50	June 1, 2015	\$ 10,000.00	Late	\$ 8,918.33	\$ 856.01	\$ 225.66		\$ 162,282.82
51	July 1, 2015	\$ -	Late	\$ (1,037.07)	\$ 811.41	\$ 225.66		\$ 163,319.89
52	August 1, 2015	\$ -	Late	\$ (1,042.26)	\$ 816.60	\$ 225.66		\$ 164,362.15
53	September 1, 2015	\$ -	Late	\$ (1,047.47)	\$ 821.81	\$ 225.66		\$ 165,409.62
54	October 1, 2015	\$ -	Late	\$ (1,052.71)	\$ 827.05	\$ 225.66	\$ 3,329.58	\$ 169,791.91
55	November 1, 2015	\$ -	Late	\$ (1,074.62)	\$ 848.96	\$ 225.66		\$ 170,866.53
56	December 1, 2015	\$ 20,000.00	Late	\$ 18,920.01	\$ 854.33	\$ 225.66	\$ 2,265.31	\$ 154,211.83
57	January 1, 2016	\$ -	Late	\$ (996.72)	\$ 771.06	\$ 225.66		\$ 155,208.55
58	February 1, 2016	\$ -	Late	\$ (1,001.70)	\$ 776.04	\$ 225.66		\$ 156,210.25
59	March 1, 2016	\$ -	Late	\$ (1,006.71)	\$ 781.05	\$ 225.66		\$ 157,216.97
60	April 1, 2016	\$ 10,000.00	Late	\$ 8,988.26	\$ 786.08	\$ 225.66		\$ 148,228.71
61	May 1, 2016	\$ -	Late	\$ (966.80)	\$ 741.14	\$ 225.66		\$ 149,195.51
62	June 1, 2016	\$ -	Late	\$ (971.64)	\$ 745.98	\$ 225.66		\$ 150,167.15
63	July 1, 2016	\$ -	Late	\$ (976.50)	\$ 750.84	\$ 225.66		\$ 151,143.65
64	August 1, 2016	\$ 15,000.00	Late	\$ 14,018.62	\$ 755.72	\$ 225.66		\$ 137,125.03
65	September 1, 2016	\$ -	Late	\$ (911.29)	\$ 685.63	\$ 225.66		\$ 138,036.31
66	October 1, 2016	\$ -	Late	\$ (915.84)	\$ 690.18	\$ 225.66	\$ 3,329.58	\$ 142,281.73
67	November 1, 2016	\$ -	Late	\$ (937.07)	\$ 711.41	\$ 225.66		\$ 143,218.80
68	December 1, 2016	\$ -	Late	\$ (941.75)	\$ 716.09	\$ 225.66	\$ 2,265.21	\$ 146,425.77
69	January 1, 2017	\$ -	Late	\$ (957.79)	\$ 732.13	\$ 225.66		\$ 147,383.55
70	February 1, 2017	\$ -	Late	\$ (962.58)	\$ 736.92	\$ 225.66		\$ 148,346.13
71	March 1, 2017	\$ 10,000.00	Late	\$ 9,032.61	\$ 741.73	\$ 225.66		\$ 139,313.52
72	April 1, 2017	\$ -	Late	\$ (922.23)	\$ 696.57	\$ 225.66		\$ 140,235.75
73	May 1, 2017	\$ -	Late	\$ (926.84)	\$ 701.18	\$ 225.66		\$ 141,162.59
74	June 1, 2017	\$ -	Late	\$ (931.47)	\$ 705.81	\$ 225.66		\$ 142,094.06
75	July 1, 2017	\$ -	Late	\$ (936.13)	\$ 710.47	\$ 225.66		\$ 143,030.19
76	August 1, 2017	\$ -	Late	\$ (940.81)	\$ 715.15	\$ 225.66		\$ 143,971.00
77	September 1, 2017	\$ -	Late	\$ (945.52)	\$ 719.86	\$ 225.66		\$ 144,916.52
78	October 1, 2017	\$ -	Late	\$ (950.24)	\$ 724.58	\$ 225.66		\$ 145,866.76
79	November 1, 2017	\$ -	Late	\$ (954.99)	\$ 729.33	\$ 225.66		\$ 146,821.75
80	December 1, 2017	\$ -	Late	\$ (959.77)	\$ 734.11	\$ 225.66	\$ 2,265.21	\$ 150,046.73
81	January 1, 2018	\$ -	Late	\$ (975.89)	\$ 750.23	\$ 225.66		\$ 151,022.63
82	February 1, 2018	\$ 5,000.00	Late	\$ 4,019.23	\$ 755.11	\$ 225.66		\$ 147,003.40
83	March 1, 2018	\$ -	Late	\$ (960.68)	\$ 735.02	\$ 225.66		\$ 147,964.08
84	April 1, 2018	\$ -	Late	\$ (965.48)	\$ 739.82	\$ 225.66		\$ 148,929.56
85	May 1, 2018	\$ 5,000.00	Late	\$ 4,029.69	\$ 744.65	\$ 225.66		\$ 144,899.87
86	June 1, 2018	\$ -	Late	\$ (950.16)	\$ 724.50	\$ 225.66		\$ 145,850.02
87	July 1, 2018	\$ -	Late	\$ (954.91)	\$ 729.25	\$ 225.66		\$ 146,804.93
88	August 1, 2018	\$ -	Late	\$ (959.68)	\$ 734.02	\$ 225.66		\$ 147,764.62
89	September 1, 2018	\$ -	Late	\$ (964.48)	\$ 738.82	\$ 225.66		\$ 148,729.10
90	October 1, 2018	\$ -	Late	\$ (969.31)	\$ 743.65	\$ 225.66	\$ 3,329.58	\$ 153,027.99
91	November 1, 2018	\$ -	Late	\$ (990.80)	\$ 765.14	\$ 225.66		\$ 154,018.79
92	December 1, 2018	\$ -	Late	\$ (995.75)	\$ 770.09	\$ 225.66	\$ 2,265.21	\$ 157,279.75
93	January 1, 2019	\$ -	Late	\$ (1,012.06)	\$ 786.40	\$ 225.66		\$ 158,291.81
94	February 1, 2019	\$ -	Late	\$ (1,017.12)	\$ 791.46	\$ 225.66		\$ 159,308.93
95	March 1, 2019	\$ -	Late	\$ (1,022.20)	\$ 796.54	\$ 225.66		\$ 160,331.13

96	April 1, 2019	\$	-	Late	\$ (1,027.32)	\$ 801.66	\$ 225.66		\$ 161,358.45
97	May 1, 2019	\$	-	Late	\$ (1,032.45)	\$ 806.79	\$ 225.66		\$ 162,390.90
98	June 1, 2019	\$	-	Late	\$ (1,037.61)	\$ 811.95	\$ 225.66		\$ 163,428.52
99	July 1, 2019	\$	-	Late	\$ (1,042.80)	\$ 817.14	\$ 225.66		\$ 164,471.32
100	August 1, 2019	\$	-	Late	\$ (1,048.02)	\$ 822.36	\$ 225.66		\$ 165,519.34
101	September 1, 2019	\$	-	Late	\$ (1,053.26)	\$ 827.60	\$ 225.66		\$ 166,572.59
102	October 1, 2019	\$	-	Late	\$ (1,058.52)	\$ 832.86	\$ 225.66	\$ 4,498.15	\$ 172,129.27
103	November 1, 2019	\$	-	Late	\$ (1,086.31)	\$ 860.65	\$ 225.66		\$ 173,215.57
104	December 1, 2019	\$	-	Late	\$ (1,091.74)	\$ 866.08	\$ 225.66	\$ 2,265.21	\$ 176,572.52
105	January 1, 2020	\$	-	Late	\$ (1,108.52)	\$ 882.86	\$ 225.66		\$ 177,681.04
106	February 1, 2020	\$	-	Late	\$ (1,114.07)	\$ 888.41	\$ 225.66		\$ 178,795.11
107	March 1, 2020	\$	-	Late	\$ (1,119.64)	\$ 893.98	\$ 225.66		\$ 179,914.74
108	April 1, 2020	\$	-	Late	\$ (1,125.23)	\$ 899.57	\$ 225.66		\$ 181,039.98
109	May 1, 2020	\$	-	Late	\$ (1,130.86)	\$ 905.20	\$ 225.66		\$ 182,170.84
110	June 1, 2020	\$	-	Late	\$ (1,136.51)	\$ 910.85	\$ 225.66		\$ 183,307.35
111	July 1, 2020	\$	-	Late	\$ (1,142.20)	\$ 916.54	\$ 225.66		\$ 184,449.55
112	August 1, 2020	\$	-	Late	\$ (1,147.91)	\$ 922.25	\$ 225.66		\$ 185,597.46
113	September 1, 2020	\$	-	Late	\$ (1,153.65)	\$ 927.99	\$ 225.66		\$ 186,751.10
114	October 1, 2020	\$	-	Late	\$ (1,159.42)	\$ 933.76	\$ 225.66	\$ 4,459.04	\$ 192,369.56
115	November 1, 2020	\$	-	Late	\$ (1,187.51)	\$ 961.85	\$ 225.66		\$ 193,557.07
116	December 1, 2020	\$	-	Late	\$ (1,193.45)	\$ 967.79	\$ 225.66	\$ 2,265.21	\$ 197,015.72
117	January 1, 2021	\$	-	Late	\$ (1,210.74)	\$ 985.08	\$ 225.66		\$ 198,226.46
118	February 1, 2021	\$	-	Late	\$ (1,216.79)	\$ 991.13	\$ 225.66		\$ 199,443.25
119	March 1, 2021	\$	-	Late	\$ (1,222.88)	\$ 997.22	\$ 225.66		\$ 200,666.13
120	April 1, 2021	\$	-	Late	\$ (1,228.99)	\$ 1,003.33	\$ 225.66		\$ 201,895.12
121	May 1, 2021	\$	-	Late	\$ (1,235.14)	\$ 1,009.48	\$ 225.66		\$ 203,130.25
122	June 1, 2021	\$	-	Late	\$ (1,241.31)	\$ 1,015.65	\$ 225.66		\$ 204,371.57
123	July 1, 2021	\$	-	Late	\$ (1,247.52)	\$ 1,021.86	\$ 225.66		\$ 205,619.08
124	August 1, 2021	\$	-	Late	\$ (1,253.76)	\$ 1,028.10	\$ 225.66		\$ 206,872.84
125	September 1, 2021	\$	-	Late	\$ (1,260.02)	\$ 1,034.36	\$ 225.66		\$ 208,132.86
126	October 1, 2021	\$	-	Late	\$ (1,266.32)	\$ 1,040.66	\$ 225.66		\$ 209,399.19
127	November 1, 2021	\$	-	Late	\$ (1,272.66)	\$ 1,047.00	\$ 225.66		\$ 210,671.84
128	December 1, 2021	\$	-	Late	\$ (1,279.02)	\$ 1,053.36	\$ 225.66		\$ 211,950.86
129	January 1, 2022	\$	-	Late	\$ (1,285.41)	\$ 1,059.75	\$ 225.66		\$ 213,236.28
130	February 1, 2022	\$	-	Late	\$ (1,291.84)	\$ 1,066.18	\$ 225.66		\$ 214,528.12
131	March 1, 2022	\$	-	Late	\$ (1,298.30)	\$ 1,072.64	\$ 225.66		\$ 215,826.42
132	April 1, 2022	\$	-	Late	\$ (1,304.79)	\$ 1,079.13	\$ 225.66		\$ 217,131.21
133	May 1, 2022	\$	-	Late	\$ (1,311.32)	\$ 1,085.66	\$ 225.66		\$ 218,442.53
134	June 1, 2022	\$	-	Late	\$ (1,317.87)	\$ 1,092.21	\$ 225.66		\$ 219,760.40
135	July 1, 2022	\$	-	Late	\$ (1,324.46)	\$ 1,098.80	\$ 225.66		\$ 221,084.86
136	August 1, 2022	\$	-	Late	\$ (1,331.08)	\$ 1,105.42	\$ 225.66		\$ 222,415.95

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
Moats Construction, Inc.,)
Plaintiff,)
v.)
Cecil R. Dyar,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2020-CP-04-01202

Affidavit of Joshua Pruiett-Lange

PERSONALLY appeared before me, **Joshua Pruiett-Lange**, who, being duly sworn, deposes and says:

1. I am a registered tax preparer with the Internal Revenue Service.
2. I have been a bookkeeper since 2016 and am employed by Electric City Tax and Bookkeeping, formerly Shiflette Bookkeeping and Tax.
3. I have worked with Mr. Cecil Dyar for many years and have reviewed payments made by Moats Construction, Inc. to Cecil Dyar for the property that is the subject of this lawsuit.
4. Based upon my review and analysis, it is my professional opinion that the balance owed to date by Moats Construction, Inc. to Cecil Dyar is \$216,047.42.

FURTHER AFFIANT SAYETH NOT.

Print Name: Joshua Pruiett-Lange
Joshua Pruiett-Lange

Signature: *Joshua Pruiett-Lange*

Sworn to before me this 1st
day of April, 2021.

Heather Reed
Notary Public for South Carolina
My Commission Expires: 10/31/30

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Anderson, SC COC, CP/GS



Beginning Balance	\$	212,500.00								
APR		6%								
Monthly Interest		0.5%								
Total Payment	\$	4,108.22								
PMT NO	Date	Payment	Status	Principal	Interest	Late Charge	Property Taxes	Insurance	Balance	
1	May 1, 2011	\$ 5,213.22	On-time	\$ 4,150.72	\$ 1,062.50	\$ -			\$ 208,349.28	
2	June 1, 2011	\$ 4,513.22	On-time	\$ 3,471.47	\$ 1,041.75	\$ -			\$ 204,877.81	
3	July 1, 2011	\$ 4,513.22	On-time	\$ 3,488.83	\$ 1,024.39	\$ -			\$ 201,388.98	
4	August 1, 2011	\$ 4,513.22	On-time	\$ 3,506.28	\$ 1,006.94	\$ -			\$ 197,882.70	
5	September 1, 2011	\$ 4,513.22	Late	\$ 3,298.15	\$ 989.41	\$ 225.66			\$ 194,584.55	
6	October 1, 2011	\$ 4,513.22	Late	\$ 3,314.64	\$ 972.92	\$ 225.66	\$ 2,897.66		\$ 194,167.58	
7	November 1, 2011	\$ -	Late	\$ (1,196.50)	\$ 970.84	\$ 225.66			\$ 195,364.07	
8	December 1, 2011	\$ -	Late	\$ (1,202.48)	\$ 976.82	\$ 225.66		\$ 1,566.00	\$ 198,132.55	
9	January 1, 2012	\$ 9,026.44	Late	\$ 7,810.12	\$ 990.66	\$ 225.66			\$ 190,322.44	
10	February 1, 2012	\$ 4,513.22	Late	\$ 3,335.95	\$ 951.61	\$ 225.66			\$ 186,986.49	
11	March 1, 2012	\$ -	Late	\$ (1,160.59)	\$ 934.93	\$ 225.66			\$ 188,147.08	
12	April 1, 2012	\$ -	Late	\$ (1,166.40)	\$ 940.74	\$ 225.66			\$ 189,313.48	
13	May 1, 2012	\$ -	Late	\$ (1,172.23)	\$ 946.57	\$ 225.66			\$ 190,485.71	
14	June 1, 2012	\$ -	Late	\$ (1,178.09)	\$ 952.43	\$ 225.66			\$ 191,663.79	
15	July 1, 2012	\$ -	Late	\$ (1,183.98)	\$ 958.32	\$ 225.66			\$ 192,847.77	
16	August 1, 2012	\$ -	Late	\$ (1,189.90)	\$ 964.24	\$ 225.66			\$ 194,037.67	
17	September 1, 2012	\$ -	Late	\$ (1,195.85)	\$ 970.19	\$ 225.66			\$ 195,233.52	
18	October 1, 2012	\$ -	Late	\$ (1,201.83)	\$ 976.17	\$ 225.66	\$ 2,935.37		\$ 199,370.72	
19	November 1, 2012	\$ -	Late	\$ (1,222.51)	\$ 996.85	\$ 225.66			\$ 200,593.23	
20	December 1, 2012	\$ -	Late	\$ (1,228.63)	\$ 1,002.97	\$ 225.66		\$ 2,094.95	\$ 203,916.81	
21	January 1, 2013	\$ -	Late	\$ (1,245.24)	\$ 1,019.58	\$ 225.66			\$ 205,162.05	
22	February 1, 2013	\$ 3,000.00	Late	\$ 1,748.53	\$ 1,025.81	\$ 225.66			\$ 203,413.52	
23	March 1, 2013	\$ 6,000.00	Late	\$ 4,757.27	\$ 1,017.07	\$ 225.66			\$ 198,656.25	
24	April 1, 2013	\$ -	Late	\$ (1,218.94)	\$ 993.28	\$ 225.66			\$ 199,875.19	
25	May 1, 2013	\$ -	Late	\$ (1,225.04)	\$ 999.38	\$ 225.66			\$ 201,100.23	
26	June 1, 2013	\$ 4,500.00	Late	\$ 3,268.84	\$ 1,005.50	\$ 225.66			\$ 197,831.39	
27	July 1, 2013	\$ -	Late	\$ (1,214.82)	\$ 989.16	\$ 225.66			\$ 199,046.20	
28	August 1, 2013	\$ -	Late	\$ (1,220.89)	\$ 995.23	\$ 225.66			\$ 200,267.10	
29	September 1, 2013	\$ 2,013.22	Late	\$ 786.22	\$ 1,001.34	\$ 225.66			\$ 199,480.87	
30	October 1, 2013	\$ -	Late	\$ (1,223.06)	\$ 997.40	\$ 225.66	\$ 3,366.66		\$ 204,070.60	
31	November 1, 2013	\$ 22,566.10	Late	\$ 21,320.09	\$ 1,020.35	\$ 225.66			\$ 182,750.51	
32	December 1, 2013	\$ -	Late	\$ (1,139.41)	\$ 913.75	\$ 225.66		\$ 2,222.82	\$ 186,112.74	
33	January 1, 2014	\$ -	Late	\$ (1,156.22)	\$ 930.56	\$ 225.66			\$ 187,268.96	
34	February 1, 2014	\$ -	Late	\$ (1,162.00)	\$ 936.34	\$ 225.66			\$ 188,430.97	
35	March 1, 2014	\$ -	Late	\$ (1,167.81)	\$ 942.15	\$ 225.66			\$ 189,598.78	
36	April 1, 2014	\$ 5,000.00	Late	\$ 3,826.35	\$ 947.99	\$ 225.66			\$ 185,772.44	
37	May 1, 2014	\$ -	Late	\$ (1,154.52)	\$ 928.86	\$ 225.66			\$ 186,926.96	
38	June 1, 2014	\$ -	Late	\$ (1,160.29)	\$ 934.63	\$ 225.66			\$ 188,087.25	
39	July 1, 2014	\$ 10,000.00	Late	\$ 8,833.90	\$ 940.44	\$ 225.66			\$ 179,253.35	
40	August 1, 2014	\$ -	Late	\$ (1,121.93)	\$ 896.27	\$ 225.66			\$ 180,375.28	
41	September 1, 2014	\$ -	Late	\$ (1,127.54)	\$ 901.88	\$ 225.66			\$ 181,502.81	
42	October 1, 2014	\$ -	Late	\$ (1,133.17)	\$ 907.51	\$ 225.66	\$ 3,293.29		\$ 185,929.28	
43	November 1, 2014	\$ 5,000.00	Late	\$ 3,844.69	\$ 929.65	\$ 225.66			\$ 182,084.58	
44	December 1, 2014	\$ -	Late	\$ (1,136.08)	\$ 910.42	\$ 225.66		\$ 2,265.22	\$ 185,485.89	
45	January 1, 2015	\$ 5,000.00	Late	\$ 3,846.91	\$ 927.43	\$ 225.66			\$ 181,638.98	

46	February 1, 2015	\$ 5,000.00	Late	\$ 3,866.15	\$ 908.19	\$ 225.66		\$ 177,772.83
47	March 1, 2015	\$ -	Late	\$ (1,114.52)	\$ 888.86	\$ 225.66		\$ 178,887.36
48	April 1, 2015	\$ -	Late	\$ (1,120.10)	\$ 894.44	\$ 225.66		\$ 180,007.45
49	May 1, 2015	\$ -	Late	\$ (1,125.70)	\$ 900.04	\$ 225.66		\$ 181,133.15
50	June 1, 2015	\$ 10,000.00	Late	\$ 8,868.67	\$ 905.67	\$ 225.66		\$ 172,264.48
51	July 1, 2015	\$ -	Late	\$ (1,086.98)	\$ 861.32	\$ 225.66		\$ 173,351.46
52	August 1, 2015	\$ -	Late	\$ (1,092.42)	\$ 866.76	\$ 225.66		\$ 174,443.88
53	September 1, 2015	\$ -	Late	\$ (1,097.88)	\$ 872.22	\$ 225.66		\$ 175,541.76
54	October 1, 2015	\$ -	Late	\$ (1,103.37)	\$ 877.71	\$ 225.66	\$ 3,329.58	\$ 179,974.70
55	November 1, 2015	\$ -	Late	\$ (1,125.53)	\$ 899.87	\$ 225.66		\$ 181,100.24
56	December 1, 2015	\$ 20,000.00	Late	\$ 18,868.84	\$ 905.50	\$ 225.66	\$ 2,265.31	\$ 164,496.71
57	January 1, 2016	\$ -	Late	\$ (1,048.14)	\$ 822.48	\$ 225.66		\$ 165,544.85
58	February 1, 2016	\$ -	Late	\$ (1,053.38)	\$ 827.72	\$ 225.66		\$ 166,598.24
59	March 1, 2016	\$ -	Late	\$ (1,058.65)	\$ 832.99	\$ 225.66		\$ 167,656.89
60	April 1, 2016	\$ 10,000.00	Late	\$ 8,936.06	\$ 838.28	\$ 225.66		\$ 158,720.83
61	May 1, 2016	\$ -	Late	\$ (1,019.26)	\$ 793.60	\$ 225.66		\$ 159,740.10
62	June 1, 2016	\$ -	Late	\$ (1,024.36)	\$ 798.70	\$ 225.66		\$ 160,764.46
63	July 1, 2016	\$ -	Late	\$ (1,029.48)	\$ 803.82	\$ 225.66		\$ 161,793.94
64	August 1, 2016	\$ 15,000.00	Late	\$ 13,965.37	\$ 808.97	\$ 225.66		\$ 147,828.57
65	September 1, 2016	\$ -	Late	\$ (964.80)	\$ 739.14	\$ 225.66		\$ 148,793.37
66	October 1, 2016	\$ -	Late	\$ (969.63)	\$ 743.97	\$ 225.66	\$ 3,329.58	\$ 153,092.58
67	November 1, 2016	\$ -	Late	\$ (991.12)	\$ 765.46	\$ 225.66		\$ 154,083.70
68	December 1, 2016	\$ -	Late	\$ (996.08)	\$ 770.42	\$ 225.66	\$ 2,265.21	\$ 157,344.99
69	January 1, 2017	\$ -	Late	\$ (1,012.38)	\$ 786.72	\$ 225.66		\$ 158,357.37
70	February 1, 2017	\$ -	Late	\$ (1,017.45)	\$ 791.79	\$ 225.66		\$ 159,374.82
71	March 1, 2017	\$ 10,000.00	Late	\$ 8,977.47	\$ 796.87	\$ 225.66		\$ 150,397.36
72	April 1, 2017	\$ -	Late	\$ (977.65)	\$ 751.99	\$ 225.66		\$ 151,375.00
73	May 1, 2017	\$ -	Late	\$ (982.54)	\$ 756.88	\$ 225.66		\$ 152,357.54
74	June 1, 2017	\$ -	Late	\$ (987.45)	\$ 761.79	\$ 225.66		\$ 153,344.99
75	July 1, 2017	\$ -	Late	\$ (992.38)	\$ 766.72	\$ 225.66		\$ 154,337.37
76	August 1, 2017	\$ -	Late	\$ (997.35)	\$ 771.69	\$ 225.66		\$ 155,334.72
77	September 1, 2017	\$ -	Late	\$ (1,002.33)	\$ 776.67	\$ 225.66		\$ 156,337.05
78	October 1, 2017	\$ -	Late	\$ (1,007.35)	\$ 781.69	\$ 225.66		\$ 157,344.40
79	November 1, 2017	\$ -	Late	\$ (1,012.38)	\$ 786.72	\$ 225.66		\$ 158,356.78
80	December 1, 2017	\$ -	Late	\$ (1,017.44)	\$ 791.78	\$ 225.66	\$ 2,265.21	\$ 161,639.43
81	January 1, 2018	\$ -	Late	\$ (1,033.86)	\$ 808.20	\$ 225.66		\$ 162,673.29
82	February 1, 2018	\$ 5,000.00	Late	\$ 3,960.97	\$ 813.37	\$ 225.66		\$ 158,712.32
83	March 1, 2018	\$ -	Late	\$ (1,019.22)	\$ 793.56	\$ 225.66		\$ 159,731.54
84	April 1, 2018	\$ -	Late	\$ (1,024.32)	\$ 798.66	\$ 225.66		\$ 160,755.85
85	May 1, 2018	\$ 5,000.00	Late	\$ 3,970.56	\$ 803.78	\$ 225.66		\$ 156,785.29
86	June 1, 2018	\$ -	Late	\$ (1,009.59)	\$ 783.93	\$ 225.66		\$ 157,794.88
87	July 1, 2018	\$ -	Late	\$ (1,014.63)	\$ 788.97	\$ 225.66		\$ 158,809.51
88	August 1, 2018	\$ -	Late	\$ (1,019.71)	\$ 794.05	\$ 225.66		\$ 159,829.22
89	September 1, 2018	\$ -	Late	\$ (1,024.81)	\$ 799.15	\$ 225.66		\$ 160,854.03
90	October 1, 2018	\$ -	Late	\$ (1,029.93)	\$ 804.27	\$ 225.66	\$ 3,329.58	\$ 165,213.54
91	November 1, 2018	\$ -	Late	\$ (1,051.73)	\$ 826.07	\$ 225.66		\$ 166,265.27
92	December 1, 2018	\$ -	Late	\$ (1,056.99)	\$ 831.33	\$ 225.66	\$ 2,265.21	\$ 169,587.46
93	January 1, 2019	\$ -	Late	\$ (1,073.60)	\$ 847.94	\$ 225.66		\$ 170,661.06
94	February 1, 2019	\$ -	Late	\$ (1,078.97)	\$ 853.31	\$ 225.66		\$ 171,740.03
95	March 1, 2019	\$ -	Late	\$ (1,084.36)	\$ 858.70	\$ 225.66		\$ 172,824.39

96	April 1, 2019	\$ -	Late	\$ (1,089.78)	\$ 864.12	\$ 225.66			\$ 173,914.17
97	May 1, 2019	\$ -	Late	\$ (1,095.23)	\$ 869.57	\$ 225.66			\$ 175,009.40
98	June 1, 2019	\$ -	Late	\$ (1,100.71)	\$ 875.05	\$ 225.66			\$ 176,110.10
99	July 1, 2019	\$ -	Late	\$ (1,106.21)	\$ 880.55	\$ 225.66			\$ 177,216.32
100	August 1, 2019	\$ -	Late	\$ (1,111.74)	\$ 886.08	\$ 225.66			\$ 178,328.06
101	September 1, 2019	\$ -	Late	\$ (1,117.30)	\$ 891.64	\$ 225.66			\$ 179,445.36
102	October 1, 2019	\$ -	Late	\$ (1,122.89)	\$ 897.23	\$ 225.66	\$ 4,498.15		\$ 185,066.39
103	November 1, 2019	\$ -	Late	\$ (1,150.99)	\$ 925.33	\$ 225.66			\$ 186,217.39
104	December 1, 2019	\$ -	Late	\$ (1,156.75)	\$ 931.09	\$ 225.66		\$ 2,265.21	\$ 189,639.34
105	January 1, 2020	\$ -	Late	\$ (1,173.86)	\$ 948.20	\$ 225.66			\$ 190,813.20
106	February 1, 2020	\$ -	Late	\$ (1,179.73)	\$ 954.07	\$ 225.66			\$ 191,992.93
107	March 1, 2020	\$ -	Late	\$ (1,185.62)	\$ 959.96	\$ 225.66			\$ 193,178.55
108	April 1, 2020	\$ -	Late	\$ (1,191.55)	\$ 965.89	\$ 225.66			\$ 194,370.10
109	May 1, 2020	\$ -	Late	\$ (1,197.51)	\$ 971.85	\$ 225.66			\$ 195,567.61
110	June 1, 2020	\$ -	Late	\$ (1,203.50)	\$ 977.84	\$ 225.66			\$ 196,771.11
111	July 1, 2020	\$ -	Late	\$ (1,209.52)	\$ 983.86	\$ 225.66			\$ 197,980.63
112	August 1, 2020	\$ -	Late	\$ (1,215.56)	\$ 989.90	\$ 225.66			\$ 199,196.19
113	September 1, 2020	\$ -	Late	\$ (1,221.64)	\$ 995.98	\$ 225.66			\$ 200,417.83
114	October 1, 2020	\$ -	Late	\$ (1,227.75)	\$ 1,002.09	\$ 225.66	\$ 4,459.04		\$ 206,104.62
115	November 1, 2020	\$ -	Late	\$ (1,256.18)	\$ 1,030.52	\$ 225.66			\$ 207,360.80
116	December 1, 2020	\$ -	Late	\$ (1,262.46)	\$ 1,036.80	\$ 225.66		\$ 2,265.21	\$ 210,888.48
117	January 1, 2021	\$ -	Late	\$ (1,280.10)	\$ 1,054.44	\$ 225.66			\$ 212,168.58
118	February 1, 2021	\$ -	Late	\$ (1,286.50)	\$ 1,060.84	\$ 225.66			\$ 213,455.08
119	March 1, 2021	\$ -	Late	\$ (1,292.94)	\$ 1,067.28	\$ 225.66			\$ 214,748.02
120	April 1, 2021	\$ -	Late	\$ (1,299.40)	\$ 1,073.74	\$ 225.66			\$ 216,047.42
		\$ 184,398.30			\$ 108,589.90	\$ 26,176.56	\$ 31,438.91	\$ 21,740.35	

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON) AGREEMENT FOR SALE AND PURCHASE
 OF REAL PROPERTY

THIS AGREEMENT made effective January 29, 2011 between Cecil Dyar (hereinafter referred to as the "Seller") and Moats Construction, LLC (hereinafter referred to as "Purchaser")

1. PREMISES. The Seller agrees to sell and Purchaser agrees to purchase upon the terms and conditions and for the price set forth hereinafter the real property and improvements thereon located at 300-600 W. Orr Street, Anderson, South Carolina, 29625 and shown as Tax Map #123-24-03-003.
2. PURCHASE PRICE. The Purchase Price for the premises is Two Hundred Fifty Thousand and no/100 (\$250,000.00) dollars.
3. PAYMENT OF PURCHASE PRICE. The Purchase Price shall be paid in the following manner:
 - (a) Down-Payment. Purchaser has paid with the execution of these presents the sum of Thirty-Seven Thousand Five Hundred and no/100 (\$37,500.00) dollars, the receipt of which is hereby acknowledged.
 - (b) Balance Due. The balance due in the amount of Two hundred Twelve thousand five hundred and no/100 (\$212,500.00) Dollars with interest at the rate of six (6%) percent per annum shall be paid as follows: The principal balance shall be paid in sixty (60) successive monthly installments of Four thousand One hundred Eight and 22/100 (\$4,108.22) dollars each month beginning May 1, 2011 and continuing on the same day of each month thereafter through April 1, 2016 with the principal balance due together with accrued interest to be paid in full on or before March 31, 2016.
 - (c) Escrow Payments. Upon request of Seller, Purchaser shall pay along with each monthly installment of principal and interest 1/12th of annual estimated amount of ad valorem taxes and casualty insurance. It is agreed that Four Hundred Five and no/100ths (\$405.00) Dollars per month is the amount estimated to pay such annual costs but the Seller shall have the right to make reasonable adjustments to cover increased costs.
4. CONVEYANCE OF TITLE. Upon payment of the Purchase Price, the Seller shall convey to Purchaser title to the premises by General Warranty Deed, subject to the following:
 - (a) Ad Valorem taxes and special assessments for the City of Anderson and County of Anderson which have accrued but are not yet due.
 - (b) Rights of way and easements for public utility distribution lines.
 - (c) Restrictive covenants affecting the property.
 - (d) State of facts which may be revealed by a recent and accurate survey of the premises.

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 Anderson, SC COC, CP/GS



5. AD VALOREM TAXES AND SPECIAL ASSESSMENTS. All Ad Valorem taxes and special assessments imposed against the Premises by the County of Anderson, City of Anderson or any political subdivision thereof shall be prorated as of the date of this Contract, and thereafter the Purchaser agrees to pay all Ad Valorem taxes and special assessments against the Premises before the same becomes past due.

6. CLOSING COSTS. Upon transfer of title, Seller at its expense shall deliver the Deed of Title to Real Estate with South Carolina documentary stamps affixed thereto and Purchaser shall bear the expense of Anderson County recording taxes and all costs of recording the Deed and other documents of title.

7. DEFAULT. In the event the Purchaser defaults in making any payments provided for herein or in any other terms, provisions or covenants of this Contract, the Seller may, at its option, declare this Contract terminated and of no further force and effect, and will be entitled to immediate possession of the Premises and may retain all amounts paid by Purchaser to date of default as rent and liquidated damages. Seller may in the alternative, at its option, declare the entire balance of the Purchase Price due and payable without notice, and institute suit against the Purchaser seeking a sale of the property and foreclosure of Purchaser's rights.

8. PREPAYMENT. Purchaser may prepay the balance due in whole or in part at any time without penalty.

9. POSSESSION. Until Purchaser defaults in payment of sums to be paid hereunder or in performance of obligations to be performed hereunder, Purchaser shall be entitled to possession of the Premises, provided, the Purchaser shall not commit or suffer to exist any damage or destruction of the Premises.

10. RISK OF LOSS. Risk of loss by damage to or destruction of the Premises shall be upon the Purchaser during the term of this Agreement.

11. TIME OF ESSENCE. It is further agreed that the time of payment shall be an essential part of this Contract and all Covenants and agreements herein contained shall extend to and be obligatory upon the heirs, personal representatives and assigns of the respective parties.

12. LATE PAY PENALTY. The Purchaser agrees that if any payment is not paid when due and shall remain unpaid for more than ten (10) days from the due date, a late charge equal to five (5%) percent of the total payment shall be added to the payment due. The Purchaser agrees that the failure to pay the late charge when due shall be considered a default in this Contract and subject the Purchaser to immediate eviction.

13. ATTORNEY'S FEES. If this Contract is placed in the hands of an attorney for collection or for enforcing any of Seller's other rights hereunder, including any legal proceeding brought to sell said property, Purchaser agrees to pay all costs and expenses incurred by Seller including not less than Fifteen (15%) percent of the then balance due under this Contract as Attorney's fees.

14. INSURANCE. Purchaser agrees to keep the improvements on said real property insured against loss by fire or other casualty in a reputable fire insurance company in an amount of not less than the balance due to the Seller under this Contract and to have Seller named in said policy as an additional insured.

15. SELLER'S REMEDIES. In the event the Purchaser fails to pay the property taxes when due, or fails to pay the fire insurance premiums, the Seller may, at Seller's option, pay the same and add such amount to the indebtedness due to the Seller to bear interest at the same rate stated above.

16. ASSIGNMENT. The Purchaser shall have no right to assign this Contract or sublet the premises without prior written consent of Seller and any attempt to do so shall constitute a default in the terms and provisions of this Contract.

17. MAINTENANCE. The Purchaser shall maintain the Premises and all improvements thereon in the same good condition as the same was delivered to Purchaser, wear and tear excepted.

18. DISCLAIMER OF WARRANTIES. The Purchaser acknowledges that the Seller has made no representation to the Purchaser concerning the condition of the dwelling or any improvement upon the Premises. The Seller specifically disclaims all warranties which may exist by implication of law, including the warranty of habitability. The Purchaser acknowledges that Purchaser has made an inspection of the Premises and accepts the same "AS IS, WITH ALL FAULTS."

19. SURVIVAL OF THIS AGREEMENT. This Agreement and the terms hereof shall not be merged into the documents of conveyance at closing but shall survive and remain a binding contractual agreement between the parties after closing.

20. WASTE OR DESTRUCTION. Purchaser during possession shall not commit any waste of the premises or demolish any improvement or harvest any growing timber without the written consent of the Seller.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year above written.

IN THE PRESENCE OF:

Nancy M. Wright

Gary Hayes

Cecil D. Dyar
Cecil Dyar, Seller

Moats Construction, LLC
Moats Construction, LLC, Buyer

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s) he saw the within named Cecil Dyar, as Seller, sign, seal and as their act and deed deliver the within Contract, and that (s) he with the other witness whose name is subscribed above witnessed the execution thereof.

Sworn to before me this 11
 day of March, 2011

Nancy M. Wright

Thomas S. Kuntz (SEAL)
 Notary Public for South Carolina
 My Commission Expires 12-10-2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s) he saw the within named Moats Construction, LLC, as Purchaser, sign, seal and as their act and deed deliver the within Contract, and that (s) he with the other witness whose name is subscribed above witnessed the execution thereof.

Sworn to before me this 11
 day of March, 2011

Gerry Hayes

Thomas S. Kuntz (SEAL)
 Notary Public for South Carolina
 My Commission Expires 12-10-2011



ADDENDUM/AMENDMENT TO

☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☐ COUNTEROFFER] OR

☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____

COVERING THE ☒ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as:

Address _____ 300-600 West Orr Street _____ Unit # _____

City _____ Anderson _____ State of South Carolina

Other _____ TMS _____ 123-24-03-003

The undersigned Parties hereby agree as follows: This agreement shall be extended until March 16, 2021.
All other terms and conditions shall remain the same. This is a legally binding agreement,
both Buyer and Seller shall seek further assistance if the contents are not understood.
Both Buyer and Seller acknowledge receipt of a copy of this agreement. Both Buyer and
Seller acknowledge receiving, reading and understanding the South Carolina Agency
Disclosure Form.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at _____ ☐ AM ☐ PM on _____ unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: _____ Date: _____ Time: _____

BUYER: _____ Date: _____ Time: _____

_____ Date: _____ Time: _____

_____ Date: _____ Time: _____

SELLER: Carol R. Ryan Date: 7-1-16 Time: 10:30

SELLER: _____ Date: _____ Time: _____

_____ Date: _____ Time: _____

_____ Date: _____ Time: _____

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[☐] BUYER [☐] BUYER [☐] SELLER [☐] SELLER HAVE READ THIS PAGE

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT OF THE
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	CASE NO: 2020CP0401202
	)	
Moats Construction, Inc.,	)	
	)	
PLAINTIFF,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
Cecil R. Dyar,	)	
	)	
DEFENDANT.	)	
	)	
_____	)	

July 20, 2022
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. SCOTT SPROUSE, JUDGE

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

David Lee Paavola, Esquire
Attorney for Plaintiff

Wendell L. Hawkins, Esquire
Attorney for Plaintiff

James W. Logan, Jr., Esquire
Attorney for Defendant

LESA D. TAYLOR
Court Reporter

I N D E X

		Direct	Cross	Redirect	Recross
Colloquy	4				
Certificate of Reporter	22				

E X H I B I T S

Page

None

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PROCEEDINGS

THE COURT: Now let's go to Moats Construction versus Cecil Dyar. Okay. In looking at this case, it appears that a hearing was held, a Form 4 was issued. The formal order has not been completed. The parties are unable -- the information the Court received, the parties are unable to agree on the order. And then the Plaintiff retained subsequent counsel, and this is a motion before the Court for a status conference and to continue. Let me start -- what is the status of the case and the proposed order? I'll start with you, Mr. Logan.

MR. LOGAN: Your Honor, we submitted a proposed order to the Court for foreclosure, and if you don't have a copy of that in the file -- it was submitted a good while ago, and then they objected and wanted this status conference and also Mr. -- Moats wants to change counsel. So, we're here as a result of their motion, and we are ready to proceed if the Court will sign the proposed order that we submitted in response to your Form 4 order that you directed me to prepare.

THE COURT: Okay. Do we have a -- do you have a hard copy of that -- because it's not in the court file. Like I said ---

MR. LOGAN: Your Honor, this is the -- I believe this is the order -- may I approach the bench?

THE COURT: Yes, sir.

MR. LOGAN: That we submitted, filed May the 20 -- May

1 the 12th ---

2 THE COURT: Okay.

3 MR. LOGAN: -- for foreclosure. It's got the stamp on

4 it.

5 THE COURT: Okay. Okay, my clerk just informed me this

6 is one that we were going to do a telephone conference on and

7 we were unable to set up the ---

8 MR. LOGAN: You were unable to set it up because ---

9 THE COURT: Yes, sir.

10 MR. LOGAN: --- things were lagging and then this thing

11 about changing counsel came up, and then they filed this

12 motion, so.

13 THE COURT: Yes, sir. Yes, sir. Okay, I ---

14 MR. LOGAN: We are ready for the Court to sign the order.

15 THE COURT: Okay. And that's -- I remember that I was in

16 -- I believe I was in Greenville ---

17 MR. LOGAN: I think you were in Greenville.

18 THE COURT: --- when this came. We were going to have a

19 conference and then ---

20 MR. LOGAN: I've got the filed affidavit of attorney's

21 fees that went with that, along with the correspondence and

22 all dealing with that order.

23 THE COURT: Okay.

24 MR. LOGAN: So, you should have that as well as part of

25 that record.

1 THE COURT: Okay. Very good. Very good. All right,
2 well, let me hear from Mr. Paavola.

3 MR. PAAVOLA: Yes, Your Honor. Your Honor, I've been
4 hired by Moats Construction as the new counsel. Wendell
5 Hawkins has played his role. I filed a new motion for
6 continuance to give me 60 days to get up to speed on the case
7 and for a status conference so I could understand what
8 outstanding motions are yet to be heard and resolved and of
9 course that -- I filed my motion two months ago, so the time I
10 asked for is done. I've had a chance to review the file, get
11 a copy of the transcript, and --- the damages hearing what was
12 presented.

13 There is a few things I'd like to address. One, which
14 Mr. Hawkins can speak to as well. The Court entered summary
15 judgment. Mr. Hawkins had filed a motion to alter or amend,
16 but that motion is still outstanding, it hasn't been ruled on,
17 there's no order addressing that motion. That's where we ask
18 the Court to allow our legal claims to go before a court
19 motion under case law --- claims if they have common --
20 logical ratio common facts, the legal claims need to go first.
21 That was the basis of this --- address that in his motion, and
22 we'd ask the Court to let our legal claims proceed ---.

23 The second issue I'd like to bring up, and I'd be happy
24 to hand the Court anything -- I have some documents. But in
25 reviewing the testimony and the damages, the number of

1 mathematical errors for certain that their bookkeeper
2 presented in his report, and I'd like to ask the Court to
3 allow a chance to address those with my own expert, and
4 address them today with the Court to show it's fairly obvious
5 that they -- but also so we -- that we would need an
6 opportunity -- ask the Court for an opportunity to present our
7 testimony on how those errors affected the damages
8 calculation.

9 THE COURT: Okay, well, let me ask you this. Now, the
10 Court issued a summary judgment order, as you've noted. And
11 this is a sort of unusual situation in that the Plaintiff is
12 the subject of the foreclosure. And at the summary judgment
13 hearing, if my memory is correct, the Plaintiff acknowledged
14 that the Defendant was entitled to foreclosure. However, the
15 parties disputed what the amount should be. Now, what are the
16 errors that -- the order has not been -- the formal order has
17 not been signed yet, so your motion is still outstanding. But
18 what are the errors that are alleged on the calculations at
19 the ---

20 MR. PAAVOLA: Your Honor, if I may.

21 THE COURT: --- damages hearing?

22 MR. PAAVOLA: May I approach and show you the documents?

23 THE COURT: Yes, sir.

24 MR. PAAVOLA: I think that will be easier. Your Honor,
25 what I have prepared, I've handed up two documents. The first

1 document is Exhibit 1 through the date of this hearing. It is
2 a spreadsheet created by Mr. Joshua Pruett Lane. And then
3 document 2, I made a replica of Mr. Lane's spreadsheet and
4 then I highlighted a few errors --- would ask the Court to
5 reconsider those errors in his calculation.

6 The first discrepancy is -- if you turn to the very final
7 page. I'm sorry there's not page numbers, but on the final
8 page, Mr. Pruett Lane, he testified that the amount owed was
9 \$222,415 -- that's row 136 in his report, the very last row of
10 his report. And if you look up just a few rows above that,
11 you see the months are not sequential. There's actually an
12 error in the months. They weren't copied correctly, and if
13 you look at my sheet, in fact, February 1st of 2022, the
14 damages was only \$214,528, as per his spreadsheet. So that's
15 the first error, is that he put the wrong month on his
16 testimony.

17 The second error, Your Honor, is that he -- Mr. Pruett
18 Lane included property taxes from October 2016, which is row
19 66, all the way through the end of his report in October of
20 2020. And all of those property taxes, and I have an
21 affidavit from my client, and I also have the records from
22 Anderson County, the receipts reflect that Moats Construction
23 paid all those years. So, those amounts should not be paid to
24 Dyar because he didn't pay those amounts, so they can't be
25 reimbursed.

1 As well, I've highlighted the insurance column. Mr. --
2 Moats Construction -- Mr. -- Moats Construction as of December
3 '16 -- that insurance payment was paid by Moats Construction,
4 and then insurance was canceled that next year, so there were
5 no more insurance payments throughout the rest of the time
6 period of Mr. Pruett Lane. And he -- they put insurance on
7 their -- insurance wasn't reimbursable expense in the way Mr.
8 Dyar was supposed to pay it and then take it out of my
9 client's payments to him, so there was no insurance paid, so
10 it can't be repaid to Dyar. He never paid it. It would be a
11 windfall, so.

12 Just those two, the property taxes -- the error in the
13 month -- that first error was about \$8,000 difference. The
14 property taxes total on Mr. Pruett Lane's spreadsheet is about
15 \$15,000 -- a little over \$15,000, when you take into account
16 that the bookkeeper tacked an interest on top of that for each
17 month that it wasn't paid, that amounts to about a little over
18 \$18,000. Okay, the same with the insurance was about \$11,000
19 reflected on Mr. Pruett Lane's spreadsheet he said was owed,
20 but when we take into consideration he's adding interest on
21 top of that, that's more than \$13,000, almost \$14,000.

22 THE COURT: So, what is the grand total that you allege
23 should to be deducted from the amount of the judgment?

24 MR. PAAVOLA: Well, --- on -- there's one more -- the
25 other, I believe, error, is on February, 2013, my client made

1 a \$3,000 cash payment, which was not reflected on Mr. Pruett
2 Lane's spreadsheet that was presented at the damages hearing.
3 It was presented on Mr. Pruett Lane's spreadsheet, I think
4 filed with the Court a few month's before that, so it was on
5 that spreadsheet before and it was taken off, I don't know
6 why. But including those three issues, the --- adjusted
7 amount --- adjusted amount down to \$177,000 from the \$222,000.

8 And then, Your Honor, of course, we argue that there's no
9 -- Mr. Lane calculated interest owed on late payments, so
10 interest due on late payments, I would argue that's not
11 provided for in the contract. It also had interest on top of
12 interest -- so accrued interest, compound interest, forgive me
13 that's not provided for in the contract, so that should be
14 deducted as well, and that gets it down to \$168,000. And
15 then, I think, again, we argue the late fees -- the parties
16 changed the base of the contract and how things were to
17 remain, to basically charge late fees to my client and it's
18 certainly not --- original five-year period had ended, and the
19 parties did not agree on that moving forward, and late fees
20 total about \$27,000, \$28,000.

21 So, there's a number of --- all that, and of course, I'm
22 not an accountant and the precise calculations are beyond my
23 ability, but that gets us down roughly to \$140,000, so it's a
24 lot of different discrepancies in the calculations. I can
25 hand up my summary sheet if Your Honor would like.

1 THE COURT: Yeah, if you've got a summary sheet.

2 MR. PAAVOLA: I do.

3 THE COURT: Let me see that. Does Mr. Logan have a copy
4 of that?

5 MR. LOGAN: First time I've seen it until now.

6 MR. PAAVOLA: And, Your Honor, I think this -- I can have
7 him walk through --- if that would be of assistance. And
8 again, I'm not a CPA, obviously, so it may be -- my
9 calculations -- these are my best effort in making the
10 differences ---

11 THE COURT: Okay. Mr. Logan, I know you just received
12 this, but do you have any comments?

13 MR. LOGAN: Well, Your Honor, my main comment without
14 reviewing this in detail is the court order caught all that.
15 We had a damages hearing in this case pursuant to your first
16 order, and at that damages hearing, we presented testimony
17 from our accountant, who calculated the information based upon
18 the records that he reviewed, and that's how he came up with
19 the amount owed and then the other items that were reflected
20 in there.

21 They had the right to cross-examine that expert witness
22 that we presented, and they did, but they didn't challenge by
23 specific information or numbers, his calculations. They also
24 had a right to call the gentleman that he is talking about,
25 but for whatever reason -- who had prepared the calculations

1 -- but for whatever reason, they did not present their expert
2 witness to testify regarding this same information and the
3 critique that he had about it.

4 So, we've already had a damages hearing in this case, as
5 a result of which, the Court issued its Form 4 saying that my
6 client is entitled to all -- I believe your words were --
7 entitled to the full amount he is asking for. So, I think
8 they are too late. And I submit to the Court that they have
9 had this opportunity in the past, and that this is just
10 another delay mechanism. They're on the third attorney -- or
11 he's on the third attorney to handle this case.

12 But they are foreclosed from having an additional damages
13 hearing, which is what they want to do to try to reduce this
14 amount. They haven't presented the first iota of expert
15 testimony to explain this. They had an opportunity at the
16 damages hearing, and did not do so. The damages hearing that
17 you ordered was held -- I can't remember off the top of my
18 head give you the date of that hearing, but I'll be glad to
19 request the transcript of that hearing, and present it to the
20 Court, but they are precluded, in my judgment, from now trying
21 to relitigate the damages hearing.

22 I didn't know what they were going to try to contest
23 today, coming into this hearing. I'm glad they admitted that
24 the 60 days has expired in order to review this matter, and
25 now apparently the only thing they are coming in with to

1 challenge the Court issuing the foreclosure order, and the
2 Court rightly remembers that their counsel admitted
3 foreclosure was the appropriate matter -- the appropriate way
4 to handle this case -- we're not asking for a deficiency
5 judgment, but they've had the damages hearing. They don't get
6 two bites at the apple.

7 So, that's all I can say about the damages, without
8 obviously having my accountant review this information. So --
9 which, obviously, since I didn't get it until today, I can't
10 do. But my main point is, we're way past that. They had that
11 opportunity. They did not do it, and we're ready to have the
12 Court sign the order.

13 THE COURT: Mr. Paavola?

14 MR. PAAVOLA: Your Honor, obviously, I'm new to the case.
15 I wasn't at the damages hearing. The -- we have retained an
16 expert -- I've talked to somebody who potentially could serve
17 as an expert ---. It's not -- no one's --- news before.
18 Again, I wasn't involved. Because of the errors and some of
19 my challenges were not as, we'll say, apparent as others, like
20 the -- you know, the late fees and interest, but the taxes I
21 can hand up to Your Honor, the tax receipts right now.

22 It's clear from the face of those, that -- if you allow
23 the damages number to go forward, it's a windfall for Mr.
24 Dyar, paying taxes never paid, paying interest never paid. I
25 don't think that's the correct approach to go forward, and I'd

1 ask the Court -- and I understand there was a damages hearing
2 I wasn't involved in.

3 There also was a motion pending for Mr. Hawkins to be
4 relieved that second time, so, that's an unusual circumstance,
5 and I'd -- we'd ask the Court for the opportunity to have that
6 hearing on that issue.

7 THE COURT: Well, this is what I'm going to do. Mr.
8 Logan is correct in that the hearing was held specifically as
9 a fact-finding hearing on this issue of damages. Now, so, the
10 order is in line with what the Court ordered. Now, I'm going
11 to sign that order. You have the -- and you're tolled as far
12 as time goes to bring a Rule 59 or Rule 60 motion to alter or
13 amend for mistakes, which -- I'm going to sign the order, and
14 then allow you to -- if there are mistakes in the order, the
15 rules allow you to ask that the mistakes be corrected, and
16 that'll also give Mr. Logan an opportunity to have his people
17 look at these mistakes.

18 But the order is in line with what was ordered by the
19 Court from that hearing, and he's correct in that no other
20 information was presented during the hearing to contradict
21 what the expert on the behalf of Mr. Dyar put forth. Again,
22 there's a mechanism for you to ask that the -- for relief from
23 mistake in an order. But, I'm going to sign the order as it
24 is submitted right now, and then you can go from there.

25 So, procedure -- and Mr. Hawkins, you're -- I put in

1 there that you were relieved as counsel, so are you ---

2 MR. HAWKINS: I would like to speak on the issue that I'm
3 still involved in, which is the submittal of the order from
4 the damages hearing.

5 THE COURT: Yes, sir.

6 MR. HAWKINS: It's not the damages amount. I believe
7 that the order has some things the Court didn't order. And
8 very specifically, there are two things. I think one is just
9 probably a, not necessarily a typo, but a cut and paste from a
10 standard foreclosure order, and what that would be is on page
11 8 of Mr. Logan's proposed order. And it states that the
12 surplus would be held pending further order of this Court.

13 That would infer that that is you, Your Honor, and I
14 believe once the order of referral is signed and gets over to
15 the Master, the Master has jurisdiction. And the Master is in
16 control of the surplus per the statute, and you know, the
17 applications for the surplus and all that stuff. So, to say
18 that this Court retains jurisdiction over the surplus, I think
19 is just an error probably in the language of the order.

20 MR. LOGAN: I would have to look at the language, but I
21 -- conceptually, I don't have ---

22 MR. HAWKINS: Yes.

23 MR. LOGAN: Once it goes to the Master, I think that that
24 -- the Master is the one that has the jurisdiction. I'm just
25 trying to get to a sales day, is what I'm trying to do.

1 THE COURT: It says this. Instead, it could say the
2 Court.

3 MR. LOGAN: The Court, yes, sir.

4 MR. HAWKINS: And secondly, Your Honor, on page 10,
5 paragraph 15, he's requesting the Court to order a provision
6 for a bond to be posted. And number one, I don't think that
7 was an issue before the Court at the damages hearing, Your
8 Honor. And number two, if bond is appropriate, those bonds
9 are provided by statute. And those bonds have to be, you
10 know, brought to the Court on a motion for that bond and the
11 statutory requirements have to be met, so I believe that for
12 the Court to order that in this particular order, is improper
13 for those two reasons.

14 So, those are my particular issues with this order. Mr.
15 Paavola can deal with the damages number. That's not my
16 issue. But -- and that's it on this particular order. But as
17 Mr. Paavola did state, the hearing that we had prior to that
18 motion for summary judgment to which I filed a motion to
19 reconsider or alter/amend, I want to address that for one
20 minute, if I may.

21 I think the Court gave some latitude and some weight to
22 the fact that the order was submitted and that I did not
23 object in any way or -- and there is a good bit of discussion
24 about that. And at the time of that, I really -- you know, I
25 told Your Honor, I don't know. In receiving this order, which

1 was about 4:30 or 4:45 in the afternoon prior to the date that
2 the order was supposed to be filed, which I thought was a
3 little odd, because it gave me no time to review the order,
4 and I believe it was a Friday and it was to be filed on
5 Monday.

6 But nevertheless, I went back and I looked at the other
7 order. At that particular time, Your Honor, I was extremely
8 sick. I mean, I've lost like 50 pounds in a year. And at
9 that particular time, I was dealing with the Covid vaccines.
10 I had had Covid. I took the vaccine once in May, and it put
11 me down for, like, two weeks. Then I went back in early June
12 and got the other one, it did the same thing. At that
13 particular time, the world could have fell off out of the
14 universe, and I would not have cared. You know, I just --
15 that's how bad it was, so.

16 That's what was going on at that particular time, and
17 perhaps it helps the Court to understand, you know, where I
18 was at that particular time, and even when you asked me the
19 question about it, I didn't know. I just didn't know. But
20 those were the circumstances, and I would, you know, ask the
21 Court to take that into consideration because the order on
22 that particular motion has still not been filed. All we
23 really got was a damages hearing out of it.

24 And part of that order that -- and Mr. Paavola can pick
25 this up. We've discussed it. Part of that order was

1 immediate possession and some other things that I had objected
2 to. However, if we are at the point where all that is thrown
3 by the wayside and we are just operating on this particular
4 order to move forward with the foreclosure and those
5 particular procedures and rules, then I'm fine with it. But I
6 still think there needs to be some sort of order so he has an
7 opportunity to readdress it in any way that he feels proper.

8 All of the issues that I had with that particular order
9 are in the record and he can deal with it as he may. But I
10 did want to explain, you know, my lack of response to his
11 filing of the order and, you know, kind of what I was going
12 through at the time. Quite frankly, in February of 2022, I
13 think I was okay, but it's something I've been fighting for
14 almost two years now, so.

15 THE COURT: Thank you, Mr. Hawkins.

16 MR. LOGAN: Your Honor, as far as the bond issue in the
17 order, as I understand it, as a matter of course, if a party
18 appeals a foreclosure action, that the bond is appropriate and
19 a bond is required, so I was just trying to address that issue
20 in the same order, because whether it's in the order or
21 whether it's not, if he files an appeal then I'm going to be
22 insisting on a bond. So, I just wanted to put him on notice
23 that that was going to occur.

24 As far as his health issues, I am certainly sympathetic
25 to that. I was not aware of the extent of them, and I believe

1 that at the time of the damages hearing is subsequent to his
2 health issues that he's been talking about, and these issues
3 weren't, to my recollection, raised at the time of the damages
4 hearing. So, that would be my comments to that.

5 THE COURT: Well, Mr. Logan, what you've stated about a
6 bond, it is a matter of course. And Mr. Hawkins is correct,
7 that was not specifically addressed by the Court in the order,
8 so I would just say delete that paragraph, and then if it is
9 appealed, you can take whatever steps that you deem
10 appropriate in requesting a bond from the Court. And then
11 change that other sentence on page 8 to where it says any
12 surplus will be held in further of the Court rather than this
13 Court and that'll answer Mr. Hawkins' concerns on those two
14 things. And Mr. Hawkins, as to the summary judgment order, I
15 am looking, there was not a Form 4 denying that motion for
16 reconsideration, so I will enter that so Mr. Paavola can
17 proceed on that issue.

18 MR. LOGAN: I think what happened is there was just a
19 delay for whatever reason between the time that Form 4 came
20 out and them -- and any response from them, and you just went
21 on and issued -- asked me to prepare a formal order. I think
22 that's how it came out.

23 THE COURT: Well, there have been a lot of moving parts
24 to this case. And Mr. Hawkins, certainly, everyone's
25 sympathetic that you've had a rough time health-wise and ---

1 MR. HAWKINS: I'm just trying to explain ---

2 THE COURT: And I appreciate you letting me know that.

3 So, we'll go from there. Make those modifications and I'll

4 sign it and Mr. Paavola can go from there.

5 MR. LOGAN: Do you want me to prepare another order

6 deleting that paragraph and changing that word?

7 THE COURT: Yes, sir. Yes, sir.

8 MR. LOGAN: What page is changing the to? What page is

9 that?

10 THE COURT: That's on page 8.

11 MR. LOGAN: Page 8.

12 THE COURT: Where it says at the top, the second

13 paragraph, next, any surplus will be held pending further

14 order of the Court instead of this Court.

15 MR. LOGAN: And then strike the paragraph dealing with

16 bond?

17 THE COURT: Strike paragraph 15 on page 10.

18 MR. LOGAN: Okay. All right, sir, thank you.

19 MR. HAWKINS: Am I relieved as counsel?

20 THE COURT: Yes, sir.

21 MR. LOGAN: And I'll get that to you today.

22 THE COURT: You are formally relieved.

23 MR. HAWKINS: Will you file a Form 4 or do you request a

24 formal order?

25 THE COURT: I will put that in a Form 4.

1 MR. HAWKINS: Thank you, Your Honor.

2 THE COURT: Unless you would like to prepare a formal
3 order to that effect.

4 MR. HAWKINS: I really wouldn't, Your Honor.

5 THE COURT: Okay. Okay, I'll do a Form 4.

6 MR. HAWKINS: Thank you, Your Honor.

7 THE COURT: Thank you, gentlemen.

8 MR. LOGAN: Now what are you preparing an order for?

9 MR. HAWKINS: I'm not preparing an order.

10 MR. LOGAN: I thought you said he wanted you to prepare
11 ---

12 MR. HAWKINS: That's just the order to be relieved.

13 MR. LOGAN: Oh, okay.

14 THE COURT: I'm going to do a Form 4 that relieves him.

15 MR. LOGAN: Relieving him of counsel.

16 MR. HAWKINS: Thank you, Your Honor.

17 End of Transcript.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED LESA D. TAYLOR, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF ALL REQUESTED PROCEEDINGS RECORDED AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT OF ANDERSON COUNTY, SOUTH CAROLINA, ON THE 20TH DAY OF July, 2022.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

November 25, 2022

Lesa D. Williams

LESA D. TAYLOR
COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

MOATS CONSTRUCTION,)
PLAINTIFF,)
-VS-)
CECIL R. DYAR,)
DEFENDANT.)

2020-CP-04-01202

TRANSCRIPT OF RECORD

SEPTEMBER 8, 2022
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. SCOTT, SPROUSE, JUDGE

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

ATTORNEY FOR THE PLAINTIFF, MOATS CONSTRUCTION:
DAVID LEE PAAVOLA, ESQ.

ATTORNEY FOR THE DEFENDANT, CECIL R. DYAR:
JAMES W. LOGAN, JR., ESQ.

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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CERTIFICATE OF REPORTER.....	23

E X H I B I T S

(THERE WERE NO EXHIBITS INTRODUCED DURING THIS PROCEEDING)

1 THE COURT: Madam Clerk, call the next case.

2 CLERK OF COURT: The next case is *Moats Construction,*
3 *Inc. v Cecil R. Dyar.*

4 THE COURT: This is the Plaintiff's Motion to alter
5 and/or amend and Motion to stay. Mr. Paavola, I'll be happy
6 to hear from you.

7 MR. PAAVOLA: May it please the Court, Your Honor.
8 David Paavola on behalf of Moats Construction. I will first
9 start with the motion to stay judgement on foreclosure
10 pending a ruling on a motion to alter or amend. I filed
11 that. Your Honor entered the order regarding Defense motion
12 for damages and judgement for sale. We had ten days to
13 alter or amend before that period expired. The Master in
14 Equity agreed, entered a notice of sale of the property.
15 So, because of that and the timing, I found it necessary to
16 move the Court to stay the foreclosure until after His Honor
17 has a chance to review our motion to alter or amend and rule
18 on it, so we have a chance to do all the steps necessary if
19 we choose to appeal. That's what that motion I filed
20 afterward. So, we would ask that you stay the foreclosure
21 sale until Your Honor has a chance to rule on the motion to
22 alter or amend.

23 MR. LOGAN: May I be heard on that particular motion?

24 THE COURT: Yes.

25 MR. LOGAN: Thank you, Your Honor. It is our position

1 that that motion is moot. That motion that he was asking
2 that the Court -- once I found out that the Court was going
3 to have time to hear this motion before the next sales date
4 I, in effect, agreed not to go forward with the September
5 sales date, reserving my right to go forward on the October
6 sales date. So, any request for stay, assuming that the
7 Court will render a decision between now and what time I
8 have to get the notice to the publisher, that motion is moot
9 from our perspective.

10 MR. PAAVOLA: Your Honor, I would add that we would ask
11 that -- knowing that Your Honor rule and that depends and
12 after you rule if we choose to appeal, place bond -- we have
13 to have some time to do that so, that's also I think -- to
14 stay -- get that into ---

15 THE COURT: There's no sales date right now?

16 MR. LOGAN: No, sir. There's no sales date right now,
17 but depending upon the timing of your order, we will proceed
18 accordingly.

19 MR. PAAVOLA: Beg your pardon. Not to be sold before
20 we get a chance to get a ruling.

21 THE COURT: Yes. I understand. I understand. I will
22 try to get this done in a timely manner so that it doesn't
23 affect a potential issue with the sale taking place, if that
24 happens.

25 MR. PAAVOLA: Your Honor, next is our motion to alter

1 and amend the order granting the foreclosure sale that we
2 identified a number of errors we believe should be
3 corrected. The first -- in Your Honor's order granting
4 foreclosure and judgement, the principal interest due that
5 the Court identified was \$222,415 due as of February 1,
6 2022. That was based -- that's page five of your order, and
7 that's based on the testimony from the Dyar's accountant,
8 Joshua Pruett-Lange and a spreadsheet he provided and
9 entered into evidence as Exhibit 1 to the hearing. On page
10 three of our brief you can see that Mr. Pruett-Lange picked
11 up a number of \$222,415. That was actually mis-dated. He
12 had that dated as February 1. That is actually August 1.
13 So, he mis-dated that.

14 The actual number, according to his spreadsheet that he
15 should have testified to if he had correctly labeled the
16 rows, the dates, the months that the payments are due should
17 be \$214,528. That's on page three of our brief. Because of
18 the error, the months that Pruett-Lange testified to are
19 wrong on the row, and therefore the wrong number. It's
20 actually \$7,800 less than what it should be. It should be
21 \$214,528, not \$222,000.

22 The second error Mr. Pruett-Lange made was that he had
23 erroneously included real estate taxes paid by Moats and he
24 also added interest on top of those taxes that Mr. Moats
25 paid, so his number of \$214,000 includes taxes that Moats

1 Construction actually paid, about \$15,000. Then, it
2 includes an additional \$3,000 in interest that Mr. Pruett-
3 Lange charged on top of those taxes that he believed that
4 Dyar paid, or he believed that Moats owed. So, we walked
5 through the analysis on page four of our brief and we've
6 provided -- in Exhibit "D" we have an affidavit of Russell
7 Moats. Attached to Exhibit "D" you have the Anderson County
8 tax receipts for 2015 through 2020. Those should be at the
9 end of Exhibit "D". You'll see 2015 at the top of the first
10 tax receipt and the "paid by" it says Cecil Dyar. That's
11 for \$2,398. Does Your Honor see that?

12 THE COURT: Okay.

13 MR. PAAVOLA: Then the tax receipt each year after
14 that, 2016 to 2020, are all paid by Moats Construction.
15 So, Moats Construction paid all these additional tax years.
16 If you look on Exhibit -- Pruett-Lange included all those
17 taxes as due and payable from Moats under this foreclosure.
18 It would be a double accounting, because Moats already paid
19 it. In Exhibit "E" -- I know it's a lot of exhibits and I
20 apologize for that, but when you get into numbers there's no
21 other way to do it. In Exhibit "E", the spreadsheet where
22 we've identified the property tax payments. Moats
23 Construction has paid, starting in 2016, we've taken those
24 out of the balance owed by Moats, and because the balance
25 reduces, the interest amount reduces each month.

1 So, in Exhibit "E" we've got a column called "property
2 taxes". That matches the column from Pruett-Lange's
3 spreadsheet, and we've got the column balance that also
4 matches the balance from Pruett-Lange's spreadsheet. Then,
5 when I go on the right side, I've adjusted the balance to
6 take out taxes that Moats Construction paid, and because I
7 have reduced the balance owing that's reduced the interest
8 owing each month and then that difference is calculated for
9 each month and then the final column called "running total
10 overcharge" and if you flip to the last page of Exhibit "E"
11 you'll see a running total of overcharge interest of
12 \$3,031.74. So, we would ask that that \$15,000 in taxes that
13 Moats already paid, plus the \$3,000 that Pruett-Lange added
14 interest, all be deducted from what's already been paid.

15 Additionally, in Pruett-Lange's calculation he included
16 -- this is important later, but he added interest, on top of
17 late fees, on top of taxes, and on top of insurance, and the
18 agreement of the parties only provides for interest to be
19 paid on the principal balance of the loan, interest to be
20 paid on real estate taxes that if Dyar paid taxes he could
21 charge interest. There's no provision for charging interest
22 on late fees or interest on top of insurance, but that's
23 what Pruett-Lange does. It's important, and we'll get to
24 why that matters later, but that's in our brief.

25 On page six, the third error -- so, the first error was

1 the wrong month identified by Pruett-Lange, the second is
2 real estate taxes, and the third error is the insurance
3 premiums erroneously included by Pruett-Lange in his
4 spreadsheet. This is very similar to real estate taxes that
5 were paid. Mr. Pruett-Lange including insurance payments
6 for a number of years that were not paid by Dyar, so the
7 agreement between the parties -- the agreement -- Moats was
8 supposed to put insurance on the property, however, when the
9 parties ultimately got insurance, he just kept the insurance
10 Mr. Dyar had. Moats paid Dyar, and Dyar paid the premiums.
11 That's how it happened until 2016. In that year, Moats pays
12 the insurance premiums directly. After that year, the
13 property is not insured, so there's no more premiums paid.
14 Pruett-Lange has included insurance premiums each year as if
15 those need to be reimbursed to Dyar. That totaled \$11,000 in
16 insurance premiums. This is Exhibit "F".

17 Exhibit "F" is showing where my client provided a
18 vendor report for my client showing that he paid the
19 insurance company, which was Prime Rate Financing Group and
20 copies of one check that he paid the insurance company and
21 the other bank statement, which is on Exhibit "F" shows
22 debits, electronic ACH debits, out of our accounts. We've
23 included those for the Court so you can see that it was paid
24 by Moats Construction.

25 Then Exhibit "G" reflects a calculation to back out

1 insurance premiums and back out insurance on top of
2 insurance, because that's what Pruett-Lange charges. This is
3 very similar to the exhibit for real estate taxes. We start
4 with the first several columns -- just match the Pruett-
5 Lange spreadsheet that show insurance -- that show the
6 balance, and match with Pruett-Lange's spreadsheet and then
7 on the right side, the right four columns, I've taken that
8 balance and removed insurance premiums that Mr. Dyar did not
9 pay and because that's reduced premiums out of the balance,
10 that changes how much interest is due each month. So,
11 calculate a new adjustment interest, which is lower, and
12 then calculate a difference, how much less interest that is
13 each month. Then the final column is a running total to
14 just sum that added interest each month all the way down to
15 the end of the period of February 1, 2022. And that
16 interest calculates to \$2,412. So, in this third error we
17 would ask the Court to reduce the balance owing by \$11,326,
18 of premiums that Dyar did not pay and an additional \$2,412
19 in interest that should not be charged.

20 Your Honor, the next error, there is a cash payment
21 that Moats Construction made to Dyar in February 2013 of
22 \$3,000, and this was originally on Mr. Pruett-Lange's
23 spreadsheet in Exhibit "H". This is the first version of
24 Pruett-Lange's spreadsheet entered into the Court's record.
25 In Exhibit "H", second page of Exhibit "H", is a

1 spreadsheet. If you look on Row Number 22, page Number 22,
2 February 1, 2013 there is a \$3,000 number there. That is
3 Exhibit "H", page 2, first page of Mr. Pruett-Lange's
4 spreadsheet \$3,000. February 1, 2013. That's included on
5 his spreadsheet. I've included deposition testimony from
6 Mr. Dyer testifying that he did, in fact, pay this \$3,000
7 cash. Moats paid \$3,000 cash to him and testimony at the
8 hearing from Mr. Moats that he paid \$3,000 cash. So, for
9 some reason Mr. Pruett-Lange missed that on his revised
10 spreadsheet. We'd ask that that be added back. There's no
11 testimony otherwise. No testimony contradicting this \$3,000
12 cash payment that was -- both Mr. Dyer testified to in his
13 deposition and Mr. Moats testified to at the hearing.

14 Once you reduce that \$3,000 out of the total -- again,
15 it requires an adjustment of interest as well, because
16 Pruett-Lange charged interest, but didn't charge interest on
17 that. Exhibit "J" does the same. We looked at in previous
18 exhibits, which it takes the balance owing and it takes out
19 the \$3,000 payment and calculates at the end of the day that
20 \$3000 payment that should be included resulted in an
21 additional \$2,000 of interest being added to the total of
22 Pruett-Lange's spreadsheet. So, we'd ask that that be taken
23 out.

24 Finally, Your Honor, the -- I mentioned earlier Mr.
25 Pruett-Lange, in his calculation, he charged interest on top

1 of accrued late fees on top of accrued interest. Which
2 means he actually, in fact, charged compound interest to
3 Moats Construction and he charged interest on top of
4 insurance premiums. There's no provision for those three
5 things. There's no provision to charge interest on top of
6 all those three items in the contract. There is a provision
7 to charge interest on taxes. If Dyar paid taxes he can
8 charge interest on, but the absence of provision saying that
9 can charge interest on accrued late fees or accrued interest
10 amounts or insurance premiums the contract, I suggest that,
11 the parties did not agree to that. That should not be
12 included.

13 I've, in Exhibit "K", calculated the amount -- what the
14 agreement -- so, you can charge interest on the loan
15 principal balance and accrued taxes. So, in Exhibit "K" add
16 the principal balance and the taxes together and the left
17 six columns and come up with a new adjusted balance for
18 which, under the agreement, could generally be charged
19 interest and calculated an adjusted interest payment without
20 all the other interest factors for accrued interest,
21 insurance premiums. Again, I've adjusted interest, a
22 difference in the interest calculation and then the running
23 total. At the end of the day, because Pruett-Lange charged
24 compound interest, interest on top of late fees, and
25 interest on top of insurance premiums, that he overcharged

1 Moats by \$9,505. So, we ask that those be taken out.

2 Finally, Your Honor, on the issue of the late fees,
3 there's a provision for late fees in the contract. However,
4 the parties changed the terms of how the note was being
5 paid. Originally, it was at four thousand some odd dollars
6 a month. The parties, in their course of dealings, changed
7 and Moats paid periodically.

8 So, for that reason, late fees -- there's no basis to
9 charge them after that point. Dyar never sent notice about
10 late fees. Never sent notice about late fees being owed or
11 due to him. Additionally, the original agreement in 2016 in
12 April. It was not signed never extended. So, for that
13 additional reason, there's no basis to charge late fees
14 after this initial agreement has ended as well. So, late
15 fees during the agreement, we would argue, the parties
16 modified their payment terms of is about \$12,600. Late fees
17 post-April 2016, which was when the contract originally
18 ended an additional \$16,000 in that total is \$28,000, \$400
19 of late fees it looks like are legitimately charged to my
20 client.

21 I've summarized all these adjustments to that on page
22 13 of my motion. So, page 13 of the motion, which starts
23 with the \$222,415.95 which is the number picked up from the
24 Pruett-Lange spreadsheet, because it was mis-dated, he
25 picked up the wrong row -- the incorrect month, that would

1 be a reduction of \$7,887. Because Mr. Pruett-Lange put in
2 taxes paid by Moats and interest on top of taxes that should
3 be reduced. That's \$18,000, \$648 in reduction. Then,
4 because Mr. Pruett-Lange included insurance that Moats paid
5 that Dyar did not pay and charged interest on top of that,
6 that's an additional \$13,700 that should be reduced. The
7 February 2017 cash payment that was testified to, that's a
8 total of \$5,141 that should reduce the total. The erroneous
9 interest calculation -- this is the interest, the compound
10 interest -- the interest on top of interest. Interest on
11 late fees, interest on insurance premiums which are not
12 provided for in the agreement, that overcharge is \$9,505.
13 Then, finally, that late payment fees, we would argue,
14 should not be included it's \$28,433.

15 All those, if you adjust for all of those factors the
16 amount that we argue would be a reduction to \$139,061.70.

17 The other points I'm making in my motion, Your Honor, I
18 do ask for an opportunity to bring an expert to the hearing.
19 At the time of the hearing, Moats Construction's prior
20 attorney had already moved to be withdrawn. Didn't ask any
21 questions of Pruett-Lange. So, for that reason I think
22 there's a basis to allow my client an opportunity to present
23 that testimony. I've presented -- what I've done here, the
24 calculations, that maybe an expert can be more precise.

25 Then, finally, again, we argue that the sale shouldn't

1 go forward until my client's legal claims are heard. The
2 Supreme Court, in the Johnson case -- when the legal claims
3 and equitable claims that arise out of the same -- logically
4 related that arise out of the same kind of facts the legal
5 claims should go first. In this instance, the equitable
6 claims have leapfrogged my client's legal claims and that
7 was error. We feel like that should be -- the sale should
8 be held up for the legal claims to go forward and proceed.

9 THE COURT: Let me ask you about that, Mr. Paavola.
10 The assertion -- and I've got a couple of hearings in this
11 matter -- the assertion from previous counsel for your
12 client has been that a foreclosure was not -- that it was
13 not contested that a foreclosure was proper.

14 Does your client have legal claims that do not involve
15 simply a reduction in the amount that's due the Defendant as
16 a result of the foreclosure? Are there independent legal
17 claims that can be asserted that are not linked to the
18 foreclosure?

19 MR. PAAVOLA: Well, it's all related to the contract.
20 All related to the parties' duties that arose out of the
21 contract. So, yes, his claims are that Dyar, by insuring
22 the property, took on a duty to pursue claims for damage of
23 the property and it didn't do it in this instance a
24 hurricane came through and the insurance company ultimately
25 gave \$300. My client wanted to challenge that. Mr. Dyar

1 didn't do it. That's the claim that arises out of all of
2 this.

3 THE COURT: Okay. All right. Thank you. Mr. Logan,
4 your response?

5 MR. LOGAN: May it please the Court. My clients are in
6 the courtroom today. I wanted you to know that. I filed a
7 response, which I hope the Court has had a chance to review,
8 to his motion. I will summarize that, but I will start by
9 saying that it has now been between five and six years since
10 his client has paid my client any money under the terms of
11 the agreement. Okay. At the -- I thought it was important
12 to attach the transcript of the damages hearing, and that is
13 Exhibit 1 to my response. They seem to be arguing that
14 there either hasn't been a damages hearing or that it was
15 somehow deficient in some way. So, in that Exhibit you will
16 see that there was a full exploration of the damages in this
17 case, that despite whatever drama was going on on the
18 Defense side, they made no motion to continue the damages
19 hearing and chose to proceed with the damages hearing.

20 I point out in Item 1 in my brief that that transcript
21 establishes the following comments, "We are not contesting
22 his right to a damages hearing at this point," -- that was
23 in February of this year -- "but, we're just here to make
24 sure that we're going to follow procedures that we've
25 requested in our motion to amend or alter the order." Thus,

1 they made no objection to the hearing going forward. They
2 made no request for any continuance of the hearing going
3 forward. And the hearing did, in fact, go forward.

4 Now, beginning on page ten of the transcript, his
5 attorney made statements about the expert that they had
6 retained in this case several months prior to this hearing.
7 That expert had issued a report dealing with, basically as I
8 understand it, the same issues dealing with what should be
9 reduced from the amount owed that he's now arguing. So, at
10 the hearing, they had a report from an expert that they had
11 had for many months that dealt with these same issues and
12 they made a conscious decision not to call that witness for
13 the reason that - and I'll just quote from the transcript.
14 "Expert had been retained, had a written report on behalf of
15 Moats, and was invited to the damages hearing but refused to
16 come because he had not been paid."

17 All he had to do to get his expert there is pay him the
18 fee that I assume he agreed to pay him from the very
19 beginning. My point is that they had every opportunity to
20 not only have their expert there, but to have their expert
21 testify as to these same issues that he's now raising, which
22 the expert that I retained on behalf of my client addressed
23 in that damages hearing. They didn't even cross examine the
24 expert on these issues at that damages hearing, where they
25 had every right to go into any of these issues. Ask my

1 witness, my expert, if these issues should have been
2 addressed. Were you incorrect when you calculated this
3 figure or this number or this number. Item by item they had
4 a right to cross examine even if they didn't call their own
5 expert who they had retained months earlier.

6 So, those issues have been addressed or they had a
7 right to address those at the damages hearing. That's why I
8 thought it important to attach as Exhibit 2 to my response
9 that expert report, which they had furnished to me as was
10 proper, which we went into detail in examining that report.
11 My expert was available to testify as to the issues that are
12 addressed in that report. If they had either offered that
13 report into evidence or had paid their expert and called him
14 to come to the hearing to testify.

15 This is just a long history of, in my opinion,
16 conscious decisions on the part of Moats in this case to
17 continue to operate his business in that location and not
18 pay my client for what he's owed, what he should be paying
19 him under the terms of agreement that's been going on now
20 for five to six years. He had no intention of -- his only
21 intention, in my judgement, was to just drag this process
22 out and we're seeing the fruition of that now because
23 they're claiming that they need another bite of the apple as
24 far as a damages hearing. They've had their bite. They've
25 had their one bite. They had an opportunity to call their

1 own expert. They had an opportunity to cross examine the
2 expert that we presented on these same points and made a
3 conscious decision not to do so. So, that's Exhibit 2.

4 Moats testified at that damages hearing that he owed
5 nothing. They didn't present any reduction in what the
6 expert, our expert, was saying. He just said he didn't owe
7 anything and that was his testimony. I suggest he didn't
8 call his witness because he did not want to counteract his
9 expert testimony who said he owed a hundred and forty some
10 odd thousand dollars. He didn't want to be in conflict with
11 his own expert. He wanted to be able to say I don't owe a
12 thing, and that's what he said at the hearing, because he
13 had an opportunity to testify. If you go with that number,
14 \$145,000, then you add on what was added on in your order in
15 this case of interest through April of '22, cost of
16 collection, and the 15 percent attorney fees - or the amount
17 of attorney's fees, which by contract can be 15 percent,
18 then you come up to a number somewhere a hundred and ninety,
19 two hundred thousand plus dollars.

20 They had a right to examine that. They had a right to
21 look into all of that through the process that we have in
22 place in this country of vigorous cross examination and an
23 expert witness who disagrees with another expert witness,
24 and they did not take advantage of that and that's not my
25 fault and that's not my client's fault. Okay. So, I have

1 an error on page 3 of my memo that I would like to correct
2 on the record. I said, "Based upon the above, it is clear
3 that a damages hearing was held by the Court on February 24,
4 '22." Then I said that, "Moats presented unchallenged
5 testimony." That should be Dyar, my client, presented
6 unchallenged testimony as to the amounts owed under the
7 agreement. Moats was given the opportunity to testify on
8 his own behalf as to the amounts that he owed under the
9 agreement, and he basically testified he owed nothing under
10 the agreement. He didn't raise any of these issues that his
11 own expert calculated he did owe. He just disagreed with
12 that report entirely and apparently just refused to pay it.
13 And his own expert determined that there was money owed
14 under the agreement. He had that opportunity, and my
15 position is he's not entitled to a second bite at the apple
16 and I request that this motion be denied and hopefully if
17 the Court is so inclined that that can be done in time for
18 me to publish the notice of sale for the October sales date.

19 Thank you, Your Honor.

20 THE COURT: Mr. Paavola, your response?

21 MR. PAAVOLA: First, I just none of our arguments for a
22 reduction rely on needing another hearing. All plain
23 mathematical errors and errors of documents that were in the
24 record, so there's nothing that -- we don't need to have an
25 additional hearing for that, but the calculations are before

1 the Court. The request for an expert to do it was if there
2 was someone who has more precision than an attorney do it,
3 that was the request. I've not seen the expert report until
4 Mr. Logan filed his response and provided it. Hopefully
5 there was an Exhibit to the hearing, because the expert
6 wasn't in attendance. I do see some similar arguments that
7 were made that we are making today.

8 The clients had a legitimate dispute as to what's been
9 owed since at least September of '17 when the hurricane came
10 through or maybe after when the insurance case settles, but
11 there's been a legitimate dispute. Both sides, Dyar is as
12 able to file a lawsuit or bring it as soon as he wanted to,
13 so delay that the claim is all my client - I don't think
14 that's a fair on my client. I'm just saying - you know, the
15 damages hearing, obviously I wasn't there, but I believe Mr.
16 Moats testify he didn't owe money in my mind talking about
17 offset, the offset that we haven't had a chance to argue.
18 Which was the damages building from the hurricane that
19 weren't pursued.

20 That's all I have, Your Honor.

21 MR. LOGAN: That report had been in his lawyer's file
22 for many, many months, whether he saw it prior to that or
23 not.

24 THE COURT: So, Mr. Paavola, I want to make sure I
25 understand you. In your motion you ask that the damages

1 hearing be re-opened. Are you asking today that the order
2 be modified based on the documentation that you've presented
3 on account of a mistake in the order?

4 MR. PAAVOLA: Yes. I'm asking the order be modified.
5 I ask, additionally, that we have an opportunity to retain
6 an expert to look at all the issues that I've raised made
7 with others and present those. That's what I was
8 alternatively asking for. We could do the reduction without
9 the expert.

10 THE COURT: I understand. You've each submitted a
11 significant amount and I appreciate the hard work the
12 attorneys have made to put this in digestible form. I'm
13 going to read this and I am going to make a ruling in a
14 timely fashion, acknowledging that the parties need some
15 resolution to this case and there are some time constraints.
16 Anything further?

17 MR. PAAVOLA: Your Honor, if I might add in
18 anticipation of a need to set up a bond or an amount or what
19 needs to be in place, I didn't know if that may be
20 appropriate to do it now or to wait. Obviously, timing
21 wise, Mr. Logan wants as soon as possible.

22 THE COURT: If at such time that that's the order we
23 can deal with that. I'll get this out.

24 MR. LOGAN: And as far as the bond I just ask that the
25 Court follow the statutory process.

1 THE COURT: Yes, sir. Yes, sir. Thank you, gentlemen.

2 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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CERTIFICATE OF REPORTER

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 8th day of September, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



Tara T. Scott, CVR

Official Court Reporter

November 29, 2022

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
The Honorable R. Scott Sprouse

Case No. 2020-CP-04-01202
Appellate Case No. 2022-001527

Moats Construction, Inc.,

Appellant,

v.

Cecil R. Dyar,

Respondent.

AFFIDAVIT OF RUSSELL TYSON MOATS

PERSONALLY APPEARED before me Russell Tyson Moats, who, being first duly sworn, says and deposes:

1. That I am over the age of 18 and a resident of Anderson County, South Carolina.
2. I am the owner of Moats Construction, Inc.
3. The property at issue in the underlying lawsuit is known as 300-600 W. Orr Street, Anderson, South Carolina (the "Property").
4. Moats Construction, Inc. has invested significant money into the Property since 2011 and it was always its intention to keep the Property.
5. Upon entry of the circuit court's Order Granting Defendant's Motion for Damages and Judgment of Foreclosure and Sale, I undertook the process of investigating the process for obtaining a bond. During my research, I learned about potential costs of a bond secured by real estate and costs for a bond secured by cash. I was informed by one bond provider that a bond in the amount of the court's judgment would have to be secured by cash.
6. After considering the costs of a bond, as well as the potential for additional interest and rental value during the appeal, I determined to pay the judgment in full, obtain clear title to the Property, and also pursue an appeal.



Russell Tyson Moats

day of January, 2023

[Signature]
Notary Public for South Carolina

My Commission Expires: October 23, 2025

Page 1 of 2 pages





LOGAN & JOLLY, LLP.
— ATTORNEYS AT LAW —

James W. Logan, Jr., Esquire
Email: logan@loganandjolly.com

October 25, 2022

(Via Electronic Mail Only)

David L. Paavola, Esquire
Lewis Babcock, LLP
P.O. Box 11208
Columbia, SC 29211

Re: Moats Construction, Inc. v. Cecil Dyar

Dear David:

At your request contained in your email of October 18, 2022, I enclose herein the wiring instructions from GrandSouth Bank pertaining to my firm's trust account along with the updated payoff calculations regarding the items referred to in Paragraph 12 of the Court's Order dated July 21, 2022.

A breakdown of the components of the updated calculations are as follows:

(a) Principal and Interest	\$226,449.26
(\$222,415.95 + \$4,033.31)	
(b) Interest @ 6%	\$7,784.56
(\$2,224.16 + \$5560.40)	
(c) Costs of Collection	\$5,616.59
(\$3,677.84 + \$1,938.75)	
(d) Additional Attorney's Fees	<u>\$24,756.09</u>
(\$22,296.09 + \$2,460.00)	

Total Payoff as of 10/28/2022 - \$264,606.50

It is my understanding from you that these funds will be wired into my trust account no later than this Friday, October 28, 2022.

Upon payment of this total payoff, my client will be in a position to execute a deed to your client and/or his designated grantee for the premises in question. You have informed me that your client believes that he has the legal right to pay off the judgment in this case and also appeal the Court's Order of October 4, 2022. I have informed you that, while I disagree with that position, I recognize that my client cannot prohibit your client from taking that position at this stage of the proceedings.

1805 North Boulevard
Anderson, SC 29621
Telephone: 864-226-1910
Facsimile: 864-226-1931

Mailing Address
Post Office Box 259
Anderson, SC 29622

www.loganandjolly.com

David L. Paavola, Esquire
October 25, 2022
Page 2

Following your review, if you have any questions, do not hesitate to contact me.

With kind regards, I remain,

Yours Very Truly,

LOGAN & JOLLY, LLP

James W. Logan, Jr.

JWLjr:krm
Enclosures