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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Hon. Walton J McLeod, Circuit Judge

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Case No. 2021-CP-32-00328  
Appellate Case No. 2024-001297

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John Deere Construction & Forestry Company, Respondent  
v.

North Edisto Logging, INC.; The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019;  
The Estate of Paul D. Gunter; Matthew P. Rush; and Matthew Cody Gunter, Defendants

Of which, North Edisto Logging, INC.; The Paul & Brenda Gunter Revocable Trust UTD March 26,  
2019; The Estate of Paul D. Gunter; and Matthew Cody Gunter are the Appellants.

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RECORD ON APPEAL  
VOLUME I

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March 10, 2025

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| STATE OF SOUTH CAROLINA                                                                                                                                          | ) | IN THE COURT OF COMMON PLEAS      |
|                                                                                                                                                                  | ) |                                   |
| COUNTY OF LEXINGTON                                                                                                                                              | ) | ELEVENTH JUDICIAL CIRCUIT         |
|                                                                                                                                                                  | ) |                                   |
| John Deere Construction & Forestry Company,                                                                                                                      | ) | Civil Action No. 2021-CP-32-00328 |
|                                                                                                                                                                  | ) |                                   |
| Plaintiff,                                                                                                                                                       | ) |                                   |
|                                                                                                                                                                  | ) | <b>ORDER OF JUDGMENT</b>          |
| v.                                                                                                                                                               | ) |                                   |
|                                                                                                                                                                  | ) |                                   |
| North Edisto Logging, INC.; The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019; The Estate of Paul D. Gunter; Matthew P. Rush; and Matthew Cody Gunter, | ) |                                   |
|                                                                                                                                                                  | ) |                                   |
| Defendants.                                                                                                                                                      | ) |                                   |
|                                                                                                                                                                  | ) |                                   |

This matter came before the Court for trial on February 5, 2024. Plaintiff John Deere Construction & Forestry Company ("Plaintiff") was represented by Amy H. Wooten, Esquire and Paul A. Fanning, Esquire admitted *Pro Hac Vice*. Defendants North Edisto Logging, Inc., the Paul & Brenda Gunter Revocable Trust UTD March 26, 2019, the Estate of Paul D. Gunter, and Matthew Cody Gunter (collectively, "Defendants") were represented by D. Randolph Whitt, Esquire. After hearing witness testimony and arguments of Counsel for all parties, the Court makes the following findings of fact and conclusions of law.

### **FACTUAL AND PROCEDURAL HISTORY**

Plaintiff John Deere Construction & Forestry Company ("Plaintiff") filed the instant action on February 2, 2021, seeking to set aside the transfer of title to certain tracts of real property alleged in the Complaint to constitute fraudulent real property transfers pursuant to the Statute of Elizabeth codified at S.C. Code Ann. § 27-32-10, *et seq.* Actions that seek to set aside conveyances under the Statute of Elizabeth are equitable in nature. *See Oskin v. Johnson*, 400 S.C. 390, 735 S.E.2d 459, 463 (2012). The instant action was added to the jury trial roster for a date certain trial the

week of February 5, 2024, by the entry of an Order dated November 28, 2023. On February 2, 2024, Plaintiff and Defendants communicated their consent to have the trial proceed as a bench trial in lieu of a jury trial, and on February 5, 2024, the parties reiterated and confirmed on the record their consent to moving forward with a bench trial.

Prior to trial, Plaintiff and Defendants filed Joint Stipulations of Facts with the Court on January 31, 2024 ("Parties' Stipulations"). Pursuant to the Parties' Stipulations, the Plaintiff and Defendants stipulated to the following facts:

1. As of November 15, 2018, Paul D. Gunter and NEL were indebted to Plaintiff.
2. Neither Paul D. Gunter nor NEL have made a payment on the indebtedness since January 13, 2017.
3. Brenda W. Gunter was Paul D. Gunter's spouse in 2019.
4. Paul Rockford "Rocky" Gunter is Paul D. Gunter's son.
5. Paula Gunter Kneece f/k/a Paula L. Gunter is Paul D. Gunter's daughter.
6. Debra Gunter Rush is Paul D. Gunter's daughter.
7. Matthew Cody Gunter is Paul D. Gunter's grandson.
8. Each of Paul D. Gunter's family members listed above knew about the Collection Lawsuit while it was pending.
9. Before his death, Paul D. Gunter was the 100% owner and President of NEL and controlled all decisions and actions of NEL.
10. Paul D. Gunter died intestate on July 3, 2019.
11. Thereafter, Paul Rockford "Rocky" Gunter became the 100% owner and President of NEL and controlled all decisions and actions of NEL.
12. On March 26, 2019, Paul D. Gunter and Brenda W. Gunter signed the Paul and Brenda Gunter Revocable Trust Agreement ("Revocable Trust").
13. Paul D. Gunter and Brenda W. Gunter are the only Settlers/Trustees of the Revocable Trust.
14. No schedules or amendments to the Revocable Trust exist.

15. In 2019, NEL and Paul D. Gunter transferred the property listed in the attached **Exhibit A** ("Property").
16. Property 13 is encumbered by a mortgage in favor of South State Bank recorded in the real estate records of Lexington County on December 15, 2017 in Mortgage Book 19693 at Page 22.
17. On March 26, 2019, Paul D. Gunter as President of NEL, and individually, voluntarily signed deeds to transfer Property Nos. 1-12 and Property Nos. 14-15 to the Trust.
18. On March 26, 2019, Paul D. Gunter voluntarily signed a deed to transfer Property No. 13 to Matthew Cody Gunter.
19. The deeds transferring Property Nos. 1-15 were all recorded on July 11, 2019.
20. No consideration was given to NEL and/or Paul D. Gunter in exchange for any of the transfers of the Property.

The transfers that Plaintiff seeks to avoid are the transfers of Property Nos. 1, 3, 5-6, and 8-15 (collectively, "Transfers"), as referenced in the attached and incorporated herein Exhibit A to the parties' stipulations. The grantor for the transfers of Property Nos. 1, 3, 5-6, and 8-9 is Defendant North Edisto Logging, Inc. ("NEL"). Paul D. Gunter was the grantor of the transfers of Property Nos. 10-15. The grantee for the transfers of Property Nos. 1-12 and 14-15 is the Revocable Trust. The grantee for the transfer of Property No. 13 is Matthew Cody Gunter. The Transfers were voluntary transfers to family members of Paul D. Gunter. At the time of the Transfers, NEL and Paul D. Gunter were indebted to Plaintiff.

### **STANDARD OF REVIEW**

In a bench trial, the trial judge acts as the finder of fact. *Lollis v. Dutton*, 421 S.C. 467, 483, 807 S.E.2d 723, 731 (Ct. App. 2017). "[T]he judge, as the finder of fact, may believe all, some, or none of the testimony, even when [the testimony] is not contradicted." *Id.* (internal citation omitted). A trial judge will be accorded great deference where matters of credibility are involved. *Id.* (internal citations omitted).

## LEGAL ANALYSIS

South Carolina "law will not permit one who is indebted at the time to give his property away, provided such gift proves prejudicial to the interest of existing creditors." *Gardner v. Kirven*, 184 S.C. 37, 191 S.E. 814, 816-17 (1937) (finding that the motive that prompts the donation is immaterial, as the analytical focus is on whether the donor is indebted at the time, which causes the transfer to "operate as a legal fraud upon the rights of creditors, even though it might be perfectly clear that the transaction was free from any trace of moral fraud"). The Statute of Elizabeth expressly prohibits conveyances made to defraud creditors and declares such conveyances to be void and of no effect. Specifically, S.C. Code § 27-23-10(A) states:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands, tenements, or hereditaments, goods and chattels or any of them, or of any lease, rent, commons, or other profit or charge out of the same, by writing or otherwise, and every bond, suit, judgment, and execution which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every one of them whose actions, suits, debts, accounts, damages, penalties, and forfeitures by guileful, covinous, or fraudulent devices and practices are, must, or might be in any ways disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

S.C. Code Ann. § 27-23-10(A) (2023).

In interpreting this statute, our courts have held that there are two conditions under which conveyances shall be set aside: (1) "where the transfer is made by the grantor with the actual intent of defrauding his creditors where that intent is imputable to the grantee, even though there is a valuable consideration" and (2) "where a transfer is made without actual intent to defraud the grantor's creditors, but without consideration." *Gardner v. Kirven*, 184 S.C. 37, 191 S.E. 814, 816 (1937) (citations omitted); *see also Albertson v. Robinson*, 371 S.C. 311, 316, 638 S.E.2d 81, 83 (Ct. App. 2006); *McDaniel v. Allen*, 265 S.C. 237, 242–43, 217 S.E.2d 773, 775–76 (1975). The

first condition describes and is discussed by our courts as an actual fraudulent transfer while the second condition describes and is discussed by our courts as a constructive fraudulent transfer.

The elements of an actual fraudulent transfer are: "(1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee." *First Citizens Bank & Tr. Co., Inc. v. Park at Durbin Creek, LLC*, 419 S.C. 333, 340, 797 S.E.2d 409, 413 (Ct. App. 2017). The plaintiff typically carries the burden of proof to establish those elements by clear and convincing evidence, but when a grantor denies any fraudulent intent in transferring an asset outside a creditor's reach, where "one or more of the following 'badges of fraud' exist" fraudulent intent has been inferred by our courts:

[T]he insolvency or indebtedness of the transferor, [a] lack of consideration for the conveyance, [a] relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, [a] departure from the usual method of business, the transfer of the debtor's entire estate, the reservation of benefit to the transferor, and the retention by the debtor of possession of the property.

*First Citizens Bank & Tr. Co., Inc. v. Park at Durbin Creek, LLC*, 419 S.C. 333, 341, 797 S.E.2d 409, 413 (Ct. App. 2017) (quoting *Coleman v. Daniel*, 261 S.C. 198, 209, 199 S.E.2d 74, 79 (1973)); see also *Royal Z Lanes, Inc. v. Collins Holding Corp.*, 337 S.C. 592, 596, 524 S.E.2d 621, 623 (1999). In that instance, a rebuttable presumption that the conveyance was fraudulent is created.

The elements of a constructive fraudulent transfer are: "(1) the grantor was indebted to [the creditor] at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the [creditor] plaintiff in full—not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt." *In re J.R. Deans Co., Inc.*, 249 B.R. 121, 130 (Bankr. D.S.C. 2000) (citing *Mathis v. Burton*, 319 S.C. 261, 265, 460 S.E.2d 406, 408 (Ct. App. 1995)); see also *Gardner v. Kirven*, 184 S.C. 37, 191 S.E.

814, 816-17 (1937) ("If in the final event the property of the debtor is not sufficient to pay his debts existing at the time of his voluntary conveyance, then such conveyance is null and void as to such debts.").

"It is well-established that: 'Where transfers to family members are attacked either upon the ground of actual fraud or on account of their voluntary character [i.e. where consideration is lacking], the law imposes the burden on the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing testimony.'" *Windsor Properties, Inc. v. Dolphin Head Constr. Co., Inc.*, 331 S.C. 466, 498 S.E.2d 858, 861 (1998) (quoting *Gardner v. Kirven*, 184 S.C. 37, 191 S.E. 814, 816 (1937)); see also *Coleman v. Daniel, II*, 261 S.C. 198, 199 S.E.2d 74 (1973); *First Union Nat. Bank v. Smith*, 314 S.C. 459, 445 S.E.2d 457, 458-59 (Ct. App. 1994). The same burden shifting framework applies in the context of a transfer from a corporate entity where the court concludes the transfer was in actuality an intra-family transfer. See *Windsor Properties, Inc. v. Dolphin Head Constr. Co., Inc.*, 331 S.C. 466, 498 S.E.2d 858 (1998) (approving the shifting of the burden of proof where the real property transfer challenged was from a husband's wholly owned corporation to his wife).

Here, the Transfers were voluntary intra-family transfers either from Paul D. Gunter to the Revocable Trust or from NEL to the Revocable Trust and/or Matthew Cody Gunter. The Transfers from NEL to the Revocable Trust and Matthew Cody Gunter were in reality intra-family transfers. Before his death and at the time of the Transfers, Paul D. Gunter was the sole owner and President of NEL and controlled all of the company's decisions and actions. At the time of the Transfers, Brenda W. Gunter was NEL's bookkeeper and signed NEL's 2018 Tax Return as its President. As the Transfers were voluntary transfers to family members, it is the grantees (here, the Revocable Trust and Matthew Cody Gunter) who bear the burden of establishing "both a valuable

consideration and the bona fides of the transaction by clear and convincing testimony." *Gardner v. Kirven*, 184 S.C. 37, 191 S.E. 814, 816 (1937). The transferees' failed to meet their burden.

As noted, Paul D. Gunter and Brenda W. Gunter are the only Settlers/Trustees of the Defendant Revocable Trust. As Paul D. Gunter has passed away, Brenda W. Gunter is the sole remaining Settlor/Trustee of the Defendant Revocable Trust. Brenda W. Gunter was not called to testify and did not testify at the trial of this matter. Further, no exhibits evidencing (1) any consideration remitted by the Defendant Revocable Trust for the Transfers it received nor (2) any reasons (bona fide or otherwise) for the Transfers to the Defendant Revocable Trust were introduced.

Defendant Matthew Cody Gunter, who did testify, did not offer any testimony as to why Paul D. Gunter, who was his grandfather, transferred Property No. 13 to him, nor did he testify that he gave consideration to Paul D. Gunter in exchange for that transfer. Further, no exhibits evidencing (1) any consideration remitted by Defendant Matthew Cody Gunter for the Transfer he received nor (2) any reasons (bona fide or otherwise) for the Transfer he received were introduced. The Defendants also stipulated in the Parties' Stipulations that no consideration was given to NEL and/or Paul D. Gunter in exchange for the Transfers, that no schedules or amendments to the Revocable Trust exist, and that Brenda W. Gunter and Matthew Cody Gunter knew about the Collection Lawsuit, which Plaintiff commenced against NEL and Paul D. Gunter, prior to the Transfers, while it was pending.

Accordingly, neither the Defendant Revocable Trust nor Defendant Matthew Cody Gunter met their respective burdens of establishing, by clear and convincing testimony, valuable consideration and the bona fides of the transactions for which they were the transferees, which includes the Transfers as to Property Nos. 1-12 and 14-15 as to the Defendant Revocable Trust and

Property No. 13 as to Defendant Matthew Cody Gunter. *See Windsor Properties, Inc. v. Dolphin Head Constr. Co., Inc.*, 331 S.C. 466, 472, 498 S.E.2d 858, 861 (1998); *see also Judy v. Judy*, 403 S.C. 203, 209, 742 S.E.2d 672, 675 (Ct. App. 2013) (affirming grant of summary judgment regarding voluntary transfers made to family members where transferees did not testify and consequently did not meet their burden to establish the bona fides of the transfers).

The only other witness called by the defense was Paula Kneece, Paul D. Gunter's daughter. Ms. Kneece, who is not a transferee of any of the Transfers, testified that Paul D. Gunter was diagnosed with stage four colon cancer in October 2018 and advised "early on to get his affairs in order, he wouldn't have much time left." She offered no testimony regarding the Transfers themselves, nor did she testify that she is a Trustee, or other representative of the Defendant Revocable Trust.

Even if the Defendants had met their burden, which they did not, Plaintiff presented evidence of a number of "badges of fraud," creating a rebuttable presumption of fraud. Specifically, Plaintiff presented evidence of the following badges of fraud:

- a. the indebtedness of the transferors Paul D. Gunter and Defendant NEL (acknowledged and stipulated to by Defendants);
- b. lack of consideration for the Transfers (acknowledged and stipulated to by Defendants);
- c. the relationship between the transferors (Paul D. Gunter and Defendant NEL) and the transferees (the Defendants Revocable Trust and Matthew Cody Gunter) (familial relationships and full ownership and control of Defendant NEL exercised by Paul D. Gunter prior to his death acknowledged and stipulated to by Defendants);
- d. the pendency of litigation (acknowledged and stipulated to by Defendants);

e. except as to the Transfer of Property No. 13, the reservation of benefit to the transferor (Paul D. Gunter, through the Revocable Trust as a Settlor/Trustee as to Transfers of Property Nos. 1-12 and 14-15 and Defendant NEL through its ownership by Paul D. Gunter); and

f. except as to the Transfer of Property No. 13, the retention by the debtor of possession of the property (Paul D. Gunter, through the Revocable Trust as a Settlor/Trustee as to Transfers of Property Nos. 1-12 and 14-15 and Defendant NEL through its ownership by Paul D. Gunter).

In this Court's view, the rebuttable presumption of fraud that was created went un rebutted, establishing the actual fraud of Paul D. Gunter and of Defendant NEL in making the Transfers. While Ms. Kneece testified that Paul D. Gunter had been diagnosed with cancer and advised "to get his affairs in order", the inference to be drawn therefrom: that his motivations in making or (in the case of Defendant NEL causing to be made) the Transfers was devoid of moral fraud is wholly immaterial in addition to being hearsay. The law of South Carolina is clear that it "will not permit one who is indebted at the time to give his property away, provided such gift proves prejudicial to the interest of existing creditors" regardless of the motive that sparks the donation. *Gardner v. Kirven*, 184 S.C. 37, 191 S.E. 814, 816-17 (1937) ("One is presumed to intend the natural consequences of his act.") (referencing *Rice v. City of Columbia*, 143 S.C. 516, 543, 141 S.E. 703 (1928)).

The evidence here supports the conclusion that the Transfers were voluntary conveyances made at the expense of Plaintiff, and other creditors, for the benefit of Paul D. Gunter's family members and for the Defendant Revocable Trust of which Paul D. Gunter and his then wife Brenda W. Gunter were the sole Settlers/Trustees. Under the facts and circumstances presented, the actual

fraud of Paul D. Gunter and of Defendant NEL in making the Transfers is imputable to the grantees/transferees, the Defendants Revocable Trust and Matthew Cody Gunter, respectively.

The cornerstone of Defendants argument and response to Plaintiffs assertions is that constructive fraud cannot be established because Plaintiff failed to establish that Defendant NEL failed to retain sufficient assets to pay its debt to Plaintiff. The Court first notes that burden shifting required by the factual context of this matter and notes the Defendants are the ones whom must establish the bona fides of the transaction by clear and convincing testimony. Thus, Defendants must establish sufficient property was retained such that constructive fraud under the Statute of Elizabeth would fail, and this Court finds Defendants failed to establish such an argument by clear and convincing testimony.

Zach Hartje, of John Deer Credit Services Inc., testified about the indebtedness owing to Plaintiff at the time of the Transfers and at the time of the trial. Mr. Hartje also testified that all real property in the names of Paul D. Gunter and NEL was transferred, and no real property was retained by either. Defendants point to the "Total assets" referenced in the NEL tax returns for tax years 2018 through 2021. However, the NEL tax returns show "(o)rinary business losses" in each year, and the Defendants did not produce any documentation concerning Defendant NEL's liabilities. In fact, Defendants did not produce or present evidence or documentation of any short-term or long-term liabilities, financial statements, balance sheets, accounts receivable, accounts payable or bank account statements of any kind for any of the years that Defendant NEL has been indebted to Plaintiff. Evidence that Paul D. Gunter, or his estate, retained sufficient property to pay its indebtedness to Plaintiff was likewise absent.

The Defendants did not produce documentation of any kind nor did they present evidence of any kind, including witness testimony, concerning the assets or liabilities of Paul D. Gunter, or

his estate, for any of the years of indebtedness to Plaintiff. Paul D. Gunter died intestate. There is no will passing other property. The Defendant Revocable Trust lists no additional property or assets retained by Paul D. Gunter or his estate.

Therefore, the Court finds these Transfers are null and void under the Statute of Elizabeth because they were made with actual intent to defraud creditors of Paul D. Gunter and Defendant NEL, Defendants were indebted at the time, and the intent is imputable to the Irrevocable Trust and Matthew Cody Gunter. *See Gardner v. Kirven*, 184 S.C. 37, 191 S.E. 814, 820 (1937).

### **CONCLUSION**

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW IT IS THEREFORE ORDERED AND ADJUDGED as follows:

1. Title transfer of Property Nos. 1, 3, 5-6, and 8-15 shall be and hereby is voided and set aside as fraudulent, or constructively fraudulent, under S.C. Code § 27-23-10, *et seq.*
2. Title to Property Nos. 1, 3, 5-6, and 8-15 shall remain encumbered by and subject to the *Lis Pendens* and this Order/Judgment until the indebtedness owing to Plaintiff is resolved.
3. Defendants shall not transfer, sell, encumber, dispose of, or dilute the value of, Property Nos. 1, 3, 5-6, and 8-15 until the indebtedness owing to Plaintiff is resolved. Defendants shall maintain, and timely pay all taxes, assessments, and encumbrances against, Property Nos. 1, 3, 5-6, and 8-15 until the indebtedness owing to Plaintiff is resolved.

The Court, and the parties, recognize that further legal proceedings will be necessary pertaining to the satisfaction of this Order of Judgment. The parties may seek those proceedings in the ordinary course.

**IT IS SO ORDERED.**

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]



## Lexington Common Pleas

**Case Caption:** John Deere Construction & Forestry Company VS North Edisto Logging Inc , defendant, et al  
**Case Number:** 2021CP3200328  
**Type:** Order/Other

It Is So Ordered

s/ Walton J. McLeod

Electronically signed on 2024-03-07 10:43:36 page 12 of 12

|                                        |   |                                     |
|----------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                | ) | THE ELEVENTH JUDICIAL CIRCUIT       |
|                                        | ) | IN THE COURT OF COMMON PLEAS        |
| COUNTY OF LEXINGTON                    | ) |                                     |
|                                        | ) | Case No.: 2021-CP-32-00328          |
| John Deere Construction & Forestry     | ) |                                     |
| Company,                               | ) |                                     |
|                                        | ) |                                     |
| Plaintiff,                             | ) |                                     |
|                                        | ) |                                     |
| v.                                     | ) |                                     |
|                                        | ) |                                     |
| North Edisto Logging, Inc., The Paul & | ) | <b>ORDER DENYING MOTIONS TO</b>     |
| Brenda Gunter Revocable Trust UTD      | ) | <b>DISMISS AND MOTION TO STRIKE</b> |
| March 26, 2019, The Estate of Paul D.  | ) |                                     |
| Gunter, Matthew P. Rush, and Matthew   | ) |                                     |
| Cody Gunter,                           | ) |                                     |
|                                        | ) |                                     |
| Defendants.                            | ) |                                     |
|                                        | ) |                                     |

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**THIS MATTER** came before the Court on March 16, 2021 upon several Defendants filing respective motions to dismiss. The Defendants' Motions seeks to dismiss Plaintiff's Complaint pursuant to SCRCR Rules 12(b)(1), 12(b)6, 12(f), and 9(b).

Appearing for the Plaintiff was Amy H. Wooten, Esq. and Paul Fanning, Esq. of Ward and Smith, PA. Appearing for Defendant Matthew Rush was Anna E. Kirkland, Esq. of the Law Office of James R. Snell, LLC. D. Randolph Whitt, Esq. of Fleming & Whitt, PA appeared on behalf of all other Defendants.

Each of the parties provided memoranda of law in support of their respective arguments, and oral arguments were conducted via Webex. In addition, each party provided a proposed order for the court to review after taking this matter under advisement.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff filed a collection action against North Edisto Logging, Inc. and Paul D. Gunter on December 20, 2018 and it remains pending in this Court as File No. 2018-CP-32-04329 (the "2018 Lawsuit"). Paul Gunter died intestate on July 3, 2019. To date, no estate proceeding has ever been field. Prior to his death, on March 26, 2019, Paul Gunter signed deeds transferring 5 properties titled in his name and 8 properties titled in the name of North Edisto Logging, Inc. to Paul and Brenda Gunter Revocable Trust. A dispute has arisen as to whether that transfer of the property was not for fair market value or valid consideration. Matthew P. Rush acquired ownership of one property from North Edisto Logging, Inc., and the Paul & Brenda Gunter Revocable Trust UTD on March 26, 2019 by use of two deeds, one a "Quit-Claim Deed" dated October 9, 2019 and the other a "General Warranty Deed" dated July 10, 2019. Both deeds were signed by Paul R. Gunter (decedent's son), one as "Trustee" of the Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 and the other as "President" of North Edisto Logging, Inc. Both deeds were recording with Lexington County on October 10, 2019.

On February 2, 2021, Plaintiff filed this action for the purpose of setting aside the title transfers as fraudulent conveyances under S.C. §27-32-10, *et seq.* Defendants' argue that Plaintiff's claims in this action are barred by S.C. Code §62-3-803(a). Specifically the following motions are pending:

- (1) Defendant Matthew Rush – Motion to Dismiss pursuant to Rule 12(b)(1) and Rule 12(b)(6) asserting the Nonclaim Statute (SC Code 62-3-803) and protection due to being a bona fide purchaser for value.
- (2) Defendant North Edisto Logging – Rule 9(b) requirement for particularity not met by the allegations set forth in the Complaint and Rule 12(f) Motion to Strike.
- (3) Defendant Estate of Paul Gunter – Motion to Dismiss pursuant to the Nonclaim Statute cited above.
- (4) Defendant Paul and Brenda Gunter Revocable Trust - Motion to Dismiss pursuant to the Nonclaim Statute cited above.

## STANDARD OF REVIEW

### **A. Motion to Dismiss**

In determining whether to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, “the trial court must base its ruling solely on allegations set forth in the complaint.” *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). Dismissal under Rule 12(b)(6) is improper “[i]f the facts alleged and inferences reasonably deducible from them, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory.” *Doe*, 373 S.C. at 395, 645 S.E.2d at 247. Moreover, the court should not dismiss the complaint merely because the court doubts the plaintiff would prevail in the action. *Id.* at 395, 645 S.E.2d at 248. “The trial court’s grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law.” *Ashley River Props. I, LLC v. Ashley River Props. II, LLC*, 374 S.C. 271, 278, 648 S.E.2d 295, 298 (Ct. App. 2007).

### **B. Nonclaim Statute**

Defendant’s Motion to Dismiss comes down to the application of South Carolina’s Nonclaim Statute. The Nonclaim Statute bars “all claims against a decedent's estate which arose before the death of the decedent” unless presented within **one year** after the decedent's death. S.C. Code Ann. § 62-3-803(a). A nonclaim statute is fundamentally different, and dramatically stronger, than a statute of limitations. While a statute of limitations is a defense to a claim of action, a nonclaim statute is a complete bar to a claim of action. See *In Re Estate of Hover*, 407 S.C., 754 S.E.2d (2014) (“In contrast to the Bank’s characterization, the nonclaim statute is not a general statute of limitations as the two statutes are fundamentally and operationally distinct.”)

The Probate Code defines "claims" as including "liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration." S.C. Code Ann. § 62-1-201(4). The Probate Codes specifically excludes "estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate" from its definition of "claims." *Id.* However, the preamble of the general definitions in Section 201 contains the following language of limitation: "Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in this Code.

Therefore, the general definitions in Section 201 must be read in light of the context and more specific provisions of other sections, such as S.C. Code §62-3-803. The references in Section 803 to "all claims" and the inclusion of pairs of attributes such as "due or become due," "absolute or contingent," "liquidated or unliquidated," and the trio "founded on contract, tort, or other legal basis" are inconsistent with the narrow Section 201 definition of claims. In each instance, the groupings are designed to cover the entirety of the spectrum of these attributes.

There is also an integral distinction between the entities covered by the two definitions in Section 201 and 803. Section 201 applies only to claims against "estate of decedents and protected persons." Section 803 applies to claims against "the estate, the personal representative, the decedent's heirs and devisees, and nonprobate transferees of the decedent."

The Court finds a central tenant of the rules of statutory construction is that every word of the legislative enactment should be given credence. Adopting the restrictive Section 201 definition of claims would read many of the words of Section 804 out of existence and render them

meaningless. The context and specifics of Section 804 also compel the conclusion that an expansive definition of claims is intended for the nonclaim statute.

### **ANALYSIS**

Plaintiff's claims in this case seek to set aside the transfer of title to fifteen (15) separate parcels of real estate that are alleged to have been fraudulently transferred during the 2018 Lawsuit. Plaintiff argues that the South Carolina Nonclaim Statute does not apply to disputes regarding transfer of title to real estate. This Court agrees.

While, Paul Gunter died intestate, and no estate file has been opened with the probate court, the Court finds Plaintiff had ample opportunity to file claims under the Probate Code. S.C. Code §62-3-203(a)(6) allows a creditor to open an estate forty-five days after the death of the decedent. Additionally, S.C. Code §62-3-804(1)(b) references "a creditor seeking appointment as personal representative pursuant to Section 62-3-203(a)(6)." Therefore, Plaintiff arguably had an opportunity to assert its claim in a probate proceeding any time between forty-six days and three-hundred sixty-four days after the Decedent's death and failed to do so.

As it stands now, there appear to be competing inferences which would benefit from discovery between the parties, and the Court finds that a Rule 12(b) dismissal under the Nonclaim Statute is not appropriate at this stage of litigation and is therefore DENIED. The parties may continue to develop this case, and Defendants are free to readdress this matter under Rule 56, SCRCF should they desire to do so.

Next, Plaintiff's claims for fraudulent conveyance meet the pleading standards set by Rules 8 and 9(b) of the South Carolina Rules of Civil Procedure ("Rules"), because they plead with requisite particularity all of the essential elements for fraudulent conveyance. *Albertson v. Robinson*, 371 S.C. 311, 316, 638 S.E.2d 81, 83 (S.C. Ct. App. 2006); *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (S.C. 2007). The general pleading standard applicable to civil

actions pending in the Court of Common Pleas simply requires causes of action to contain "a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends." Rule 8, SCRCP.

For claims of fraud, Rule 9(b) requires that the claimant plead the "circumstances constituting fraud . . . with particularity" but does not require that "[m]alice, intent, knowledge, and other condition of mind of a person" be pled with particularity, allowing instead general averments to be made. Rule 9(b), SCRCP. The "principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial." *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 574, 743 S.E.2d 778, 785 (S.C. 2013) (considering the purpose of a pleading is to "place the adversary on notice as to what the issues are"). When viewed in a light most favorable to Plaintiff, the Court finds the allegations of Plaintiff's Complaint are sufficient to place Defendants on notice of the conduct complained of and pled with the requisite particularity under Rules 8 and 9 of the Rules, in particular, the essential elements for fraudulent transfer. Defendants' Motion to Dismiss under Rule 9(b) is DENIED.

Further, Defendant Matthew Rush asserts that he is a bona fide purchaser for value under S.C. Code § 27-23-40. The Statute of Elizabeth allows transfers to be set aside regardless of whether consideration was paid. *Albertson v. Robinson*, 371 S.C. 311, 316, 638 S.E.2d 81, 83 (S.C. Ct. App. 2006). The Court finds Plaintiff's claims for fraudulent conveyance meet the pleading standards set by Rules 8 and 9(b) of the South Carolina Rules of Civil Procedure.

Plaintiff's Complaint pleads all of the essential elements of the Statute of Elizabeth, sufficient to survive Rule 12(b)(6) review, namely that (i) the transfer of the subject property to Matthew Rush was "not made for fair market value," (ii) neither NEL nor the Trust "received reasonably equivalent value in exchange" for the transfer, and (iii) upon information and belief,

"no consideration was given to NEL in exchange for the transfer." (Comp. ¶¶66-69). Furthermore, the Court finds that this defense is premature and not ripe for review for the purpose of the subject Motion to Dismiss, and is therefore DENIED.

Lastly, Defendant's Motions to Strike allegation pertaining Rocky Gunter are denied as premature. The decision whether to strike a matter from a pleading is a decision to be made by the trial judge, in the exercise of his discretion. *Gambrell v. Cox*, 250 S.C. 228, 234, 157 S.E.2d 233, 236 (1967). Defendant may readdress this matter as discovery continues.

### **CONCLUSION**

Based on the foregoing, the Court hereby DENIES Defendants' Motions to Dismiss with leave to readdress upon further discovery, to include relief under Rule 56, SCRPC. Furthermore, the Court hereby DENIES Defendant's Motion to Strike as premature.

**AND IT IS SO ORDERED.**

[JUDICIAL E-SIGNATURE ON THE FOLLOWING PAGE]



Lexington Common Pleas

**Case Caption:** John Deere Construction & Forestry Company VS North Edisto Logging Inc , defendant, et al

**Case Number:** 2021CP3200328

**Type:** Order/Other

It Is So Ordered

s/ Walton J. McLeod

Electronically signed on 2022-06-22 10:36:15 page 8 of 8

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT  
CASE NO. 2021-CP-32-00328

JOHN DEERE CONSTRUCTION &  
FORESTRY COMPANY,  
Plaintiff

v.

NORTH EDISTO LOGGING, INC.;  
THE PAUL & BRENDA GUNTER  
REVOCABLE TRUST UTD MARCH  
26, 2019; The ESTATE of PAUL D.  
GUNTER; MATTHEW P. RUSH; and  
MATTHEW CODY GUNTER,  
Defendants

ORDER DENYING DEFENDANT  
MATTHEW CODY GUNTER'S  
MOTION FOR SUMMARY  
JUDGMENT

This matter comes before the Court upon Motion for Summary Judgment by Defendant Matthew Cody Gunter, which was filed on November 4, 2023. A hearing was conducted on January 5, 2023. Plaintiff was represented by Amy H. Wooten, Esquire and Paul A. Fanning, Esquire admitted *Pro Hac Vice*. Defendants Matthew Cody Gunter, North Edisto Logging, Inc., The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019, and The Estate of Paul D. Gunter were represented by D. Randolph Whitt, Esquire. Defendant Matthew P. Rush was represented by Anna Sharpe, Esquire.

BASED UPON THE RECORD AND THE EVIDENCE BEFORE THE COURT, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. This Court has jurisdiction over the parties to and subject matter of this action, and venue is appropriate in Lexington County.
2. Plaintiff filed the instant action on February 2, 2021, seeking to set aside the transfer of title to certain tracts of real property alleged in the Complaint to constitute fraudulent conveyances under S.C. Code Ann. § 27-32-10, *et seq.*
3. Paul D. Gunter died intestate on July 3, 2019.

4. No estate proceeding has ever been filed.

5. February 2, 2021, the date of the filing of the Complaint, is more than one year after July 3, 2019.

6. By a General Warranty Deed dated March 26, 2019 and recorded on July 11, 2019, in Book 20824, Page 5896 in the Lexington County Register of Deeds, Defendant Mathew Cody Gunter currently holds title to a portion of the real property that is the subject of the Complaint.

7. On March 22, 2021, Defendant Mathew Cody Gunter filed a Motion to Dismiss the Plaintiff's Complaint pursuant to Rule 12(b)(1), or in the alternative, Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("12(b) Motion").

8. The 12(b) Motion sought dismissal of the Complaint on the sole ground that South Carolina's Nonclaim Statute, which is codified in South Carolina's Probate Code ("Probate Code") at S.C. Code Ann. § 62-3-803(a), serves as an absolute bar to Plaintiff's claims because Paul Gunter died on July 3, 2019, and the Complaint was filed on February 2, 2021, more than one year after July 3, 2019.

9. The remaining Defendants in this action filed similar motions in this action between March 24, 2021 and April 14, 2021 (collectively with the 12(b) Motion, the "Motions to Dismiss").

10. On June 22, 2022, the Honorable Walton J. McLeod, IV entered an Order denying the Motions to Dismiss ("Order"). The Order, in pertinent part, states that the Nonclaim Statute "does not apply to disputes regarding transfer of title to real estate." (*Order* at p. 5).

11. On November 4, 2023, Defendant Mathew Cody Gunter filed his Motion for Summary Judgment on the same ground that formed the basis of his 12(b) Motion, asserting that Plaintiff's Complaint is time-barred by the Nonclaim Statute.

12. Summary judgment is appropriate "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 judgment as a matter of law." Rule 56(c), SCRPC (emphasis added). The Party moving for summary judgment bears the initial burden of pointing to the absence of a genuine issue of material fact. *Richardson v. State Record Co., Inc.*, 330 S.C. 562, 499 S.E.2d 822 (Ct. App. 1998). The burden then shifts to the nonmoving party to respond with specific facts to show that there is a triable issue of fact. *City of Columbia v. Town of Irmo*, 316 S.C. 193, 195, 447 S.E.2d 855, 857 (1994). The Court must view the facts and inferences therefrom in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Commission*, 332 S.C. 54, 504 S.E.2d 117 (1998).

13. In interpreting statutory language, "the cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Books-A-Million, Inc. v. S.C. Dep't of Revenue*, 880 S.E.2d 476 (S.C. 2022) (quoting *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993)). In *Books-A-Million*, the South Carolina Supreme Court, quoting a prior opinion, noted that "the best evidence of legislative intent is the text of the statute". *Id.* (quoting *Creswick v. Univ. of S.C.*, 434 S.C. 77, 82, 862 S.E. 2d 706, 708 (2021)); *see also Wade v. State*, 348 S.C. 255, 259, 559 S.E. 843, 844 (2002). "A court must apply the plain meaning of a statute where its language is unambiguous and conveys a clear meaning." *Id.*; *see also Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000). In such circumstances, "the rules of statutory interpretation are not needed, and the Court has no right to impose another meaning." *State v. Taylor*, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022); *Pope v. Gordon*, 359 S.C. 572, 581, 598 S.E.2d 288, 293 (S.C. Ct. App. 2004). The plain language of the statute "must be construed in light of its intended purpose," with the Court giving the words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.*; *see also Pope*, 359 S.C. at 581, 598 S.E.2d at 293 (holding that "legislative intent must prevail if it reasonably can be discovered in the language used . . . [when] construed in the light of the intended purpose of the statute"). Importantly, the court should not focus on any particular part, section or provision, but "should consider the

language of the statute as a whole.” *Taylor*, 436 S.C. at 34, 870 S.E.2d at 171.

14. The legislature's intent to exempt from the Nonclaim Statute claims involving title disputes, such as disputes regarding the transfer of title to real property, can be discerned from the text of the Probate Code, which text is unambiguous and conveys a clear meaning.

15. The beginning of the Probate Code's general definitions states the following: "Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in this Code". S.C. Code Ann. § 62-1-201. This language makes clear that the general definitions apply throughout the Probate Code, of which the Nonclaim Statute is a part, and that those additional definitions apply subject to additional definitions contained in later articles unless the context in the Probate Code otherwise requires.

16. The Probate Code's general definitions defines the word "Claims" as follows:

(4) 'Claims', in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

S.C. Code Ann. § 62-1-201(4).

17. The Nonclaim Statute states in pertinent part:

All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute or limitations or nonclaim statute; are barred against the estate, the personal representative, the decedent's heirs and devisees, and nonprobate transferees of the decedent; unless presented within the earlier of the following:

(1) one year after the decedent's death

\*\*\*

S.C. Code Ann. § 62-3-803(a).

18. All of the defined terms contained in the Nonclaim Statute are found in the general definitions set out in § 62-1-201; it does not contain additional definitions.

19. In the absence of additional definitions, the language of § 62-2-201 is clear: the general definition of "claims" contained in § 62-1-201(4) of the Probate Code, including its carve out for title disputes, is the definition of claims that applies to the Nonclaim Statute.

20. Accordingly, the plain, unambiguous language of the Probate Code excludes from the Nonclaim Statute demands or disputes over title to specific assets alleged to be included in the estate such as title to real property.

21. As the instant action disputes and seeks to set aside the transfer of title to certain tracts of real property, it is a dispute over title to specific assets that is exempt from the Nonclaim Statute.

22. Accordingly, Defendant Matthew Cody Gunter is not entitled to judgment as a matter of law that Plaintiff's claims are time-barred by the Nonclaim Statute.

**IT IS THEREFORE ORDERED** that Defendant Matthew Cody Gunter's Motion for Summary Judgment is hereby denied with prejudice for the reasons outlined hereinabove.

**AND IT IS SO ORDERED.**

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The Honorable J. Cordell Maddox, Jr.  
Presiding Circuit Court Judge

\_\_\_\_\_, 2023



Lexington Common Pleas

**Case Caption:** John Deere Construction & Forestry Company VS North Edisto  
Logging Inc , defendant, et al  
**Case Number:** 2021CP3200328  
**Type:** Order/Summary Judgment

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2023-03-01 17:08:14 page 6 of 6

## FORM 4

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

## JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP3200328

John Deere Construction & Forestry Company  
PLAINTIFF(S)

North Edisto Logging Inc et al  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), 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:

Two motions for summary judgment were heard on March 6, 2023, via the Webex Virtual Courtroom by consent: (1) Matthew P. Rush's motion filed December 16, 2022; and, (2) the motion filed by The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 and The Estate of Paul D. Gunter, filed January 13, 2023. Both motions are respectfully denied. Please see page 2.

## 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 03/08/2023 .

Paul Fanning for John Deere Construction & Forestry Company

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.

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The parties feel that the sole issue before the court is one of law and the application of the nonclaim statute. If that is the case, a ruling has already been made in a seemingly identical motion filed by Matthew Cody Hunter finding that the nonclaim statute is not a bar to this action. Recognizing that the defendants have different interests and transactions occurred on different properties and different dates, the central issue that was argued is the same - whether the nonclaim statute bars pursuit of this action to set aside allegedly fraudulent transfers to defraud a creditor. The Honorable Cordell Maddox issued an order on February 2, 2023, essentially finding that the definition of the word "claim" under the Probate Code is applicable, that it exempts litigation related to the title to real estate, and thus necessitated denial of the summary judgment motion that was before him. The Honorable Walton J. McLeod issued an order on June 22, 2022, on a motion to dismiss and to strike under Rules 12 and 9, SCRCP, which appears to contain conflicting language. Judge McLeod's ruling was to deny the motion based on his finding that additional discovery was needed. While this court does not necessarily disagree in any way with Judge Maddox's ruling, if this court were to rule that the nonclaim statute is a bar, it would create an untenable position.

As a second ground, this court feels that the record should be fully developed.



Lexington Common Pleas

**Case Caption:** John Deere Construction & Forestry Company VS North Edisto Logging Inc , defendant, et al

**Case Number:** 2021CP3200328

**Type:** Order/Summary Judgment

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2023-03-08 14:44:48 page 3 of 3

## FORM 4

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

## JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP3200328

John Deere Construction & Forestry Company  
PLAINTIFF(S)

North Edisto Logging Inc et al  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), 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:

On March 18, 2024, Defendant filed a Rule 59(e) Motion seeking this Court to alter, amend, or reconsider its Order of Judgment, filed March 7, 2024. On April 8, 2024, this Court filed an Order Denying the Rule 59(e) Motion; however, this Court inadvertently referenced Defendant's previous Rule 59(e) Motion, filed February 8, 2024, in the Order. The Court now seeks to clarify the April 8, 2024 Order and finds that Defendants Rule 59(e) Motion, filed March 18, 2024, is hereby 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 07/12/2024 .

Paul Fanning for John Deere Construction & Forestry Company

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.

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Lexington Common Pleas

**Case Caption:** John Deere Construction & Forestry Company VS North Edisto  
Logging Inc , defendant, et al  
**Case Number:** 2021CP3200328  
**Type:** Order/Electronic Form 4

It Is So Ordered

s/ Walton J. McLeod

Electronically signed on 2024-07-12 13:20:44 page 3 of 3

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

SUMMONS

JOHN DEERE CONSTRUCTION & )  
FORESTRY COMPANY, )  
Plaintiff )  
 )  
v. )  
 )  
NORTH EDISTO LOGGING, INC.; )  
THE PAUL & BRENDA GUNTER )  
REVOCABLE TRUST UTD MARCH )  
26, 2019; The ESTATE of PAUL D. )  
GUNTER; MATTHEW P. RUSH; and )  
MATTHEW CODY GUNTER, )  
Defendants )

FILE NO. 2021-CP\_\_\_\_\_-\_\_\_\_\_

TO THE DEFENDANTS ABOVE-NAMED:

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

/s/ Amy H. Wooten

Amy H. Wooten

S.C. State Bar I.D. No.: 100128

N.C. State Bar I.D. No.: 39762

For the firm of Ward and Smith, P.A.

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Telephone: 919.277.9100

Facsimile: 919.277.9177

E-mail: ahwooten@wardandsmith.com

*Attorneys for Plaintiff*

Raleigh, North Carolina  
February 2, 2021.

ND: 4812-5113-1097, v. 1

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TATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

CASE NO. 2021-CP \_\_\_\_\_ - \_\_\_\_\_

JOHN DEERE CONSTRUCTION & )  
FORESTRY COMPANY, )  
Plaintiff )  
 )  
v. )  
 )  
NORTH EDISTO LOGGING, INC.; )  
THE PAUL & BRENDA GUNTER )  
REVOCABLE TRUST UTD MARCH )  
26, 2019; The ESTATE of PAUL D. )  
GUNTER; MATTHEW P. RUSH; and )  
MATTHEW CODY GUNTER, )  
Defendants )

VERIFIED COMPLAINT

Plaintiff, John Deere Construction & Forestry Company ("Plaintiff") complaining of Defendants North Edisto Logging, Inc., The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019, The Estate of Paul D. Gunter (the "Estate"), Matthew P. Rush, and Matthew Cody Gunter (collectively, "Defendants"), says and avers:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff is a corporation authorized and existing under the laws of the State of Delaware and doing business in Lexington County, South Carolina.

2. Defendant North Edisto Logging, Inc. ("North Edisto") is a corporation authorized and existing under the laws of the State of South Carolina with a principal place of business in Lexington County, South Carolina.

3. Upon information and belief, The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 (the "Trust") is a revocable trust established with Paul R. Gunter ("Rocky Gunter") as the trustee, and is domiciled in Lexington County, South Carolina.

4. Paul D. Gunter ("Paul Gunter"), deceased, was formerly a resident and citizen of Lexington County, South Carolina.

5. Upon information and belief, Defendant Matthew P. Rush ("Matthew Rush") is a resident and citizen of Lexington County, South Carolina.

6. Upon information and belief, Defendant Matthew Cody Gunter ("Cody Gunter") is a resident and citizen of Lexington County, South Carolina.

7. Upon information and belief, Defendants are not in the military or on active duty status, and the filing of this action is not prohibited by the Servicemembers Civil Relief Act, 50 U.S.C. § 501 *et seq.*

8. This Court has jurisdiction over the subject matter of this action and all parties set forth herein.

9. Venue is proper in this Court.

### **GENERAL ALLEGATIONS**

10. Plaintiff incorporates by reference all previous allegations.

#### ***the Contracts***

11. Between January 30, 2014 and September 30, 2015, North Edisto and Paul Gunter executed and delivered to Plaintiff five separate Loan Contract-Security Agreements (collectively, the "Contracts").

12. The aggregate balance owing to Plaintiff under the Contracts was \$1,218,374.38 as of November 15, 2018.

13. As security for the Contracts, North Edisto granted Plaintiff a security interest in several items of logging equipment (collectively, the "Collateral").

14. North Edisto and Paul Gunter defaulted in their obligations evidenced by the Contracts.

#### ***the Lawsuit***

15. Notice of default, notice of acceleration, and demand for payment in full on the Contracts was made by letter dated November 7, 2017 (the "Notice of Default").

16. On December 10, 2018, through counsel, Plaintiff again provided notice of default, notice of acceleration, and demanded payment in full (the "Demand Letter"), and North Edisto and Paul Gunter failed and refused to pay same.

17. Copies of the Notice of Default and Demand Letter (collectively, the "Demand Letters") are attached hereto collectively as "**Exhibit A**" and are incorporated herein by reference as if completely set forth.

18. Following Defendant North Edisto and Paul Gunter's default of their respective obligations under the Contracts, on December 20, 2018, Plaintiff instituted a proceeding in Lexington County, South Carolina, Court of Common Pleas for the Eleventh Judicial Circuit, said proceeding bearing File No. 2018-CP-32-04329 (the "Lawsuit").

19. Upon information and belief, Paul Gunter passed away on July 3, 2019 in Lexington County, South Carolina.

***the Real Property***

20. At the time of its default under the Contracts, North Edisto was the record owner of the following real property:

a. All of that real property known as Lot 41 consisting of 1.96 acres and Lot 42 consisting of 2.01 acres, more or less, more commonly referred to as 252 Sugar Bottom Road, Leesville, South Carolina, bearing Tax Parcel ID No. 011418-01-041, and being more particularly described in that Limited Warranty Deed recorded in Book 13069, Page 92 in the Lexington County Register of Deeds office (collectively, "Property 1");

b. All of that real property known as Lot 4 of Candy Bar Ranches subdivision consisting of 3.48 acres, more or less, located at 319 Sugar Bottom Road, Leesville, South Carolina, bearing Tax Parcel ID No. 011417-01-004, and being more particularly described in that Master's Deed recorded in Book 19931, Page 39 in the Lexington County Register of Deeds office ("Property 2");

c. All of that real property known as Parcel C consisting of 10 acres, more or less, located at 341 Convent Church Road, Leesville, South Carolina, bearing Tax Parcel ID No. 012500-02-002, and being more particularly described in that Title to Real Estate deed recorded in Book 6842, Page 27 in the Lexington County Register of Deeds office ("Property 3");

d. All of that real property known as Tracts A, B, and C, also known as the Western portion of Tract 2, consisting of 54.02 acres, more or less, located at Steedman Road, Leesville, South Carolina, bearing Tax Parcel ID No. 010400-03-009, and being more particularly described in that Title to Real Estate deed recorded in Book 5392, Page 269 in the Lexington County Register of Deeds office (collectively, "Property 4");

e. All of that real property known as Parcel B consisting of 15.40 acres, more or less, located at Swamp Rabbit Road, Leesville, South Carolina, bearing Tax Parcel ID No. 010400-03-048, and being more particularly described in that General Warranty Deed recorded in Book 5272, Page 168 in the Lexington County Register of Deeds office ("Property 5");

f. All of that real property consisting of 15.40 acres, more or less, located at Swamp Rabbit Road, Leesville, South Carolina, bearing Tax Parcel ID No. 010400-03-049, and being more particularly described in that General Warranty Deed recorded in Book 5272, Page 171 in the Lexington County Register of Deeds office ("Property 6");

g. All of that real property known as Lot A consisting of 28.45 acres and Lot B consisting of 1.26 acres, more or less, located at 1057 Pine Grove Road, Leesville, South Carolina, bearing Tax Parcel ID No. 011300-01-030, and being more particularly described in that Affidavit deed recorded in Book 9376, Page 113 in the Lexington County Register of Deeds office (collectively, "Property 7");

h. All of that real property known as Lots 62, 64, 66, and 68 consisting of 1.82 acres, more or less, located at 916 North Edisto Road, Leesville, South Carolina, bearing Tax Parcel ID No. 010400-03-024, and being more particularly described in that Title to Real Estate deed recorded in Book 8439, Page 202 in the Lexington County Register of Deeds office (collectively, "Property 8"); and

i. All of that real property known as Parcel A consisting of 15.40 acres, more or less, located at North Edisto Road, Leesville, South Carolina, bearing Tax Parcel ID No. 010400-03-011, and being more particularly described in that General Warranty Deed recorded in Book 5272, Page 174 in the Lexington County Register of Deeds office ("Property 9").

21. At the time of his default under the Contracts, Paul Gunter was the record owner of the following real property:

a. All of that real property known as Parcel B consisting of 1.20 acres, more or less, more commonly referred to as North Edisto Road, Leesville, South Carolina, bearing Tax Parcel ID No. 010400-04-022 and/or 010400-04-037, and being more particularly described in that Affidavit deed recorded in Book 1955, Page 177 in the Lexington County Register of Deeds office ("Property 10");

b. All of that real property known as Tract A consisting of 4.00 acres, more or less, more commonly referred to as 916 North Edisto Road, Leesville, South Carolina, bearing Tax Parcel ID No. 010400-04-010, and being more particularly described in that Title to Real Estate deed recorded in Book 15B, Page 71 in the Lexington County Register of Deeds office ("Property 11");

c. All of that real property known as Tract B consisting of 4.00 acres, more or less, more commonly referred to as 916 North Edisto Road, Leesville, South Carolina, bearing Tax Parcel ID No. 010400-04-009, and being more particularly described in that Title to Real Estate deed recorded in Book 20S, Page 173 in the Lexington County Register of Deeds office ("Property 12");

d. All of that real property known as Tract B near US Highway 178 consisting of 15.83 acres, more or less, more commonly referred to as North Edisto Road, Leesville, South Carolina, bearing Tax Parcel ID No. 010400-05-021, and being more particularly described in that General Warranty Deed recorded in Book 10439, Page 328 in the Lexington County Register of Deeds office ("Property 13");

e. All of that real property consisting of 12.97 acres, more or less, more commonly referred to as 916 North Edisto Road, Leesville, South Carolina, bearing Tax Parcel ID No. 010400-04-011, and being more particularly described in that General Warranty Deed recorded in Book 5146, Page 293 in the Lexington County Register of Deeds office ("Property 14"); and

f. All of that real property commonly referred to as 1008 North Edisto Road, Leesville, South Carolina, bearing Tax Parcel ID No. 010400-04-015, and being more particularly described in that General Warranty Deed recorded in Book 9222, Page 346 in the Lexington County Register of Deeds office ("Property 15").

22. Property 1, Property 2, Property 3, Property 4, Property 5, Property 6, Property 7, Property 8, Property 9, Property 10, Property 11, Property 12, Property 13, Property 14, and Property 15 are herein collectively referred to as the "Property."

### ***the Fraudulent Transfers***

23. Pursuant to the Dispossession Order, Plaintiff sold the Collateral and applied the net proceeds received from the sale of Collateral to the balances due and owing to Plaintiff under each of the Contracts.

24. While the Lawsuit was pending, North Edisto and Paul Gunter transferred Property 1, Property 2, Property 3, Property 4, Property 5, Property 6, Property 7, Property 8, Property 9, Property 10, Property 11, Property 12, Property 14, and Property 15 (collectively, the "Trust Property") to the Trust by a General Warranty Deed dated March 26, 2019 and recorded in Book 20824, Page 5889 in the Lexington County Register of Deeds on July 11, 2019 (the "Trust Deed").

25. A copy of the Trust Deed is attached hereto as "**Exhibit B**" and is incorporated herein by reference as if completely set forth.

26. On July 11, 2019 Paul Gunter transferred Property 13 to Cody Gunter by a General Warranty Deed dated March 26, 2019 and recorded in Book 20824, Page 5896 in the Lexington County Register of Deeds (the "Cody Gunter Deed").

27. A copy of the Cody Gunter Deed is attached hereto as "**Exhibit C**" and is incorporated herein by reference as if completely set forth.

28. Defendant Trust subsequently transferred its rights in Property 4 to Matthew Rush by a Quit-Claim Deed dated October 9, 2019 and recorded in Book 20839, Page 2275 in the Lexington County Register of Deeds on October 10, 2019 (the "First Rush Deed").

29. Defendant North Edisto also transferred its rights in Property 4 to Matthew Rush by a General Warranty Deed with Limited Reservation of Timber Rights dated July 10, 2019 and recorded in Book 20839, Page 2279 in the Lexington County Register of Deeds on October 10, 2019 (the "Second Rush Deed").

30. Copies of the First Rush Deed and the Second Rush Deed (collectively, the "Rush Deeds") are attached hereto collectively as "**Exhibit D**" and are incorporated herein by reference as if completely set forth.

31. On December 8, 2020, the Honorable Walton J. McLeod IV, Circuit Court Judge, entered Summary Judgment in favor of Plaintiff against North Edisto and Paul Gunter, jointly and severally, in the aggregate amount of \$946,378.65, with pre-judgment interest accruing at the relative contract rates from and after August 10, 2020 through December 8, 2020, plus post-judgment interest accruing thereafter at the legal rate until paid in full, plus Plaintiff's reasonable attorney's fees and court costs (the "Judgment").

32. A copy of the Judgment is attached hereto as "**Exhibit E**" and is incorporated herein by reference as if completely set forth.

33. On January 14, 2021, prior to filing this Verified Complaint, Plaintiff filed with the Lexington County Clerk of Court the following Lis Pendens:

a. That Lis Pendens concerning Property 4, filed in Lexington County, South Carolina, Court of Common Pleas for the Eleventh Judicial Circuit, said proceeding bearing File No. 2021-LP-32-00006;

b. That Lis Pendens concerning Property 13, filed in Lexington County, South Carolina, Court of Common Pleas for the Eleventh Judicial Circuit, said proceeding bearing File No. 2021-LP-32-00007; and

c. That Lis Pendens concerning the Trust Property, filed in Lexington County, South Carolina, Court of Common Pleas for the Eleventh Judicial Circuit, said proceeding bearing File No. 2021-LP-32-00008; (collectively, the "Lis Pendens").

34. Copies of the Lis Pendens are attached hereto collectively as "**Exhibit F**" and are incorporated herein by reference as if completely set forth.

### **FIRST CLAIM FOR RELIEF**

(FRAUDULENT CONVEYANCE OF TRUST PROPERTY - S.C. CODE § 27-23-10, ET SEQ.)

35. Plaintiff incorporates by reference all previous allegations.

36. Upon information and belief, Defendants North Edisto and/or Paul Gunter were in control of the Trust Property at the time of the transfers.

37. Upon information and belief, Rocky Gunter was the named trustee of the Trust at the time of the transfer of the Trust Property.

38. Rocky Gunter is the son of Paul Gunter and current owner of 100% of the stock of North Edisto, and therefore has a close relationship with North Edisto and Paul Gunter, and is an interested party to the transfer of the Trust Property.

39. Upon information and belief, North Edisto and Paul Gunter were in control of the Trust at the time of the transfers.

40. Upon information and belief, North Edisto and/or the Trust have continued to be in control of the Trust Property since its transfer to the Trust.

41. Rocky Gunter had notice and actual knowledge of the Lawsuit filed against North Edisto and Paul Gunter at the time of the transfer of the Trust Property to the Trust.

42. Upon information and belief, the transfer of the Trust Property was a departure from the usual method of business for North Edisto and Paul Gunter.

43. Upon information and belief, the transfer of the Trust Property was not made for fair market value.

44. Upon information and belief, Defendant North Edisto did not receive reasonably equivalent value in exchange for the transfer of the Trust Property.

45. Upon information and belief, Defendant Paul Gunter did not receive reasonably equivalent value in exchange for the transfer of the Trust Property.

46. The Trust Deed indicates the consideration given to North Edisto and Paul Gunter for the transfer of Trust Property was "transferring to my entity."

47. Upon information and belief, no consideration was given to North Edisto and/or Paul Gunter in exchange for the transfer of the Trust Property.

48. Upon information and belief, the transfer of the Trust Property was not disclosed to, or was concealed from Plaintiff and the other creditors of North Edisto and/or Paul Gunter.

49. At the time of the transfer of the Trust Property, North Edisto and Paul Gunter had defaulted on their obligations to Plaintiff under the Contracts.

50. Upon information and belief, at the time of the transfer of the Trust Property, North Edisto and Paul Gunter had incurred debts beyond their ability to pay as they became due.

51. At the time of the transfer of the Trust Property, North Edisto and Paul Gunter had been sued by Plaintiff.

52. Upon information and belief, Rocky Gunter, acting as Trustee of the Trust, had reasonable cause to believe that North Edisto and Paul Gunter were insolvent or unable to pay their debts at the time of the transfer of the Trust Property.

53. Upon information and belief, the transfer of the Trust Property was substantially all of North Edisto and/or Paul Gunter's assets.

54. Upon information and belief, North Edisto and Paul Gunter removed or concealed assets for the purpose of delaying, hindering, or defrauding Plaintiff.

55. Upon information and belief, North Edisto and Paul Gunter were insolvent or unable to pay their debts at the time of the transfer of the Trust Property or as a result of the transfer of the Trust Property.

56. Plaintiff's claims on the Contracts arose prior to the transfer of the Trust Property.

57. The Judgment remains of record and has not been satisfied.

58. Upon information and belief, there is equity in the Trust Property capable of satisfying a portion of the Judgment.

59. The transfer of the Trust Property by North Edisto and Paul Gunter constitutes a conveyance to defraud creditors under S.C. Code § 27-23-10, et seq.

60. Plaintiff is entitled to an order which voids, sets aside, revokes, and annuls the transfers of the Trust Property, and allow Plaintiff to levy against the Trust Property and any other relief the circumstances may require to the extent necessary to satisfy the Judgment indebtedness of North Edisto and the Estate to Plaintiff pursuant to S.C. Code § 27-23-10, et seq.

61. Plaintiff is entitled to have the Trust Property be subject to its Judgment lien.

62. Plaintiff is entitled to issue an execution against the property of Defendants North Edisto and/or the Estate, including but not limited to the Trust Property, pursuant to S.C. Code § 15-39-10, and have such Trust Property sold with the proceeds being used to satisfy the debt evidenced by the Judgment pursuant to S.C. Code § 15-39-610, et seq.

### **SECOND CLAIM FOR RELIEF**

(FRAUDULENT CONVEYANCE OF PROPERTY 4 - S.C. CODE § 27-23-10, ET SEQ.)

63. Plaintiff incorporates by reference all previous allegations.

64. Upon information and belief, Defendants North Edisto and the Trust were in control of Property 4 at the time of its transfer to Matthew Rush.

65. Upon information and belief, the transfer of Property 4 was a departure from the usual method of business for North Edisto and/or the Trust.

66. Upon information and belief, the transfer of Property 4 was not made for fair market value.

67. Upon information and belief, neither North Edisto nor the Trust received reasonably equivalent value in exchange for the transfer of Property 4 to Matthew Rush.

68. The First Rush Deed indicates the consideration given to North Edisto for the transfer of Property 4 was "by way of quitclaim."

69. Upon information and belief, no consideration was given to North Edisto in exchange for the transfer of Property 4.

70. Upon information and belief, the transfer of Property 4 was not disclosed to or was concealed from Plaintiff and the other creditors of North Edisto and/or Paul Gunter.

71. At the time of the transfer of Property 4 to Matthew Rush, North Edisto and Paul Gunter had defaulted on their obligations to Plaintiff under the Contracts.

72. Upon information and belief, at the time of the transfer of Property 4 to Matthew Rush, North Edisto and Paul Gunter had incurred debts beyond their ability to pay as they became due.

73. At the time of the transfer of Property 4 to Matthew Rush, North Edisto and Paul Gunter had been sued by Plaintiff.

74. Upon information and belief, Rocky Gunter, acting as Trustee of the Trust, had reasonable cause to believe that North Edisto and Paul Gunter were insolvent or unable to pay their debts at the time of the transfer of Property 4 to Matthew Rush.

75. Upon information and belief, North Edisto, Paul Gunter, the Trust and/or Matthew Rush removed or concealed assets for the purpose of delaying, hindering, or defrauding Plaintiff.

76. Upon information and belief, North Edisto and Paul Gunter were insolvent or unable to pay their debts at the time of the transfer of Property 4 or as a result of the transfer of Property 4.

77. Plaintiff's claims on the Contracts arose prior to the transfer of Property 4.

78. The Judgment remains of record and has not been satisfied.

79. Upon information and belief, there is equity in Property 4 capable of satisfying a portion of the Judgment.

80. The transfer of Property 4 by North Edisto and/or the Trust constitutes a conveyance to defraud creditors under S.C. Code § 27-23-10, et seq.

81. Plaintiff is entitled to an order which voids, sets aside, revokes, and annuls the transfers of Property 4, and allow Plaintiff to levy against Property 4 and any other relief the circumstances may require to the extent necessary to satisfy the Judgment indebtedness of North Edisto and the Estate to Plaintiff pursuant to S.C. Code § 27-23-10, et seq.

82. Plaintiff is entitled to have Property 4 be subject to its Judgment lien.

83. Plaintiff is entitled to issue an execution against the property of Defendants North Edisto and/or the Estate, including but not limited to Property 4, pursuant to S.C. Code § 15-39-10, and have such Property 4 sold with the proceeds being used to satisfy the debt evidenced by the Judgment pursuant to S.C. Code § 15-39-610, et seq.

### **THIRD CLAIM FOR RELIEF**

(FRAUDULENT CONVEYANCE OF PROPERTY 13 - S.C. CODE § 27-23-10, ET SEQ.)

84. Plaintiff incorporates by reference all previous allegations.

85. Upon information and belief, Paul Gunter was in control of Property 13 at the time of its transfer to Cody Gunter.

86. Cody Gunter is the grandson of Paul Gunter and was/is employed by North Edisto, and therefore has a close relationship with North Edisto and Paul Gunter, and is an interested party to the transfer of Property 13.

87. Upon information and belief, Cody Gunter had actual knowledge of the Lawsuit filed against North Edisto and Paul Gunter at the time of the transfer of the Property 13.

88. Upon information and belief, the transfer of Property 13 was a departure from the usual method of business for Paul Gunter.

89. Upon information and belief, the transfer of Property 13 was not made for fair market value.

90. Upon information and belief, Paul Gunter did not receive reasonably equivalent value in exchange for the transfer of Property 13 to Cody Gunter.

91. The Cody Gunter Deed indicates the consideration given to Cody Gunter for the transfer of Property 13 was for "love and affection for my grandson."

92. Upon information and belief, no consideration was given to Paul Gunter in exchange for the transfer of Property 13.

93. Upon information and belief, the transfer of Property 13 was not disclosed to or was concealed from Plaintiff and the other creditors of North Edisto and/or Paul Gunter.

94. At the time of the transfer of Property 13 to Cody Gunter, Paul Gunter had defaulted on his obligations to Plaintiff under the Contracts.

95. Upon information and belief, at the time of the transfer of Property 13 to Cody Gunter, Paul Gunter had incurred debts beyond his ability to pay as they became due.

96. At the time of the transfer of Property 13 to Cody Gunter, Paul Gunter had been sued by Plaintiff.

97. Upon information and belief, Paul Gunter was insolvent or unable to pay his debts at the time of the transfer of Property 13 to Cody Gunter.

98. Upon information and belief, Paul Gunter removed or concealed assets for the purpose of delaying, hindering, or defrauding Plaintiff.

99. Upon information and belief, Paul Gunter was insolvent or unable to pay his debts at the time of the transfer of Property 13 or as a result of the transfer of Property 13.

100. Plaintiff's claims on the Contracts arose prior to the transfer of Property 13.

101. The Judgment remains of record and has not been satisfied.

102. Upon information and belief, there is equity in Property 13 capable of satisfying a portion of the Judgment.

103. The transfer of Property 13 by Paul Gunter constitutes a conveyance to defraud creditors under S.C. Code § 27-23-10, et seq.

104. Plaintiff is entitled to an order which voids, sets aside, revokes, and annuls the transfers of Property 13, and allow Plaintiff to levy against Property 13 and any other relief the circumstances may require to the extent necessary to satisfy the Judgment indebtedness of North Edisto and the Estate to Plaintiff pursuant to S.C. Code § 27-23-10, et seq.

105. Plaintiff is entitled to have Property 13 be subject to its Judgment lien.

106. Plaintiff is entitled to issue an execution against the property of Defendants North Edisto and/or the Estate, including but not limited to Property 13, pursuant to S.C. Code § 15-39-10, and have such Property 13 sold with the proceeds being used to satisfy the debt evidenced by the Judgment pursuant to S.C. Code § 15-39-610, et seq.

#### **FOURTH CLAIM FOR RELIEF**

(PUNITIVE DAMAGES - S.C. CODE § 15-32-510, ET SEQ.)

107. Plaintiff incorporates by reference all previous allegations.

108. Upon information and belief, the transfer of the Property was made with North Edisto and Paul Gunter's actual intent to defraud, hinder, and delay Plaintiff and their other creditors.

109. Upon information and belief, at the time of the transfer of the Property, Defendant Trust had notice and actual knowledge of said fraudulent intent of North Edisto and Paul Gunter.

110. Upon information and belief, at the time of the transfer of the Property, Rocky Gunter, as trustee of the Trust had notice and actual knowledge of said fraudulent intent of North Edisto and Paul Gunter.

111. Upon information and belief, the transfer of the Property was made with Defendant Trust's actual intent to defraud, hinder and delay Plaintiff and the other creditors of North Edisto and/or Paul Gunter.

112. Upon information and belief, at the time of the transfer of Property 13, Defendant Cody Gunter had notice and actual knowledge of said fraudulent intent of Paul Gunter.

113. Upon information and belief, the transfer of Property 13 was made with Defendant Cody Gunter's actual intent to defraud, hinder and delay Plaintiff and the other creditors of Paul Gunter.

114. Upon information and belief, the conduct of Defendants North Edisto, The Estate, the Trust, and Cody Gunter, as set forth above, constitutes fraudulent, willful, and wanton conduct.

115. Plaintiff is entitled to recover punitive damages in this action from Defendants North Edisto, The Estate, the Trust, and Cody Gunter.

WHEREFORE, Plaintiff respectfully prays unto the Court:

1. On Plaintiff's First Claim for Relief, that the transfer of the Trust Property from Defendants North Edisto and Paul Gunter to Defendant Trust be set aside, revoked, rescinded, and annulled pursuant to S.C. Code § 27-23-10, et seq.

2. On Plaintiff's Second Claim for Relief, that the transfer of Property 4 from Defendants North Edisto and the Trust to Defendant Matthew Rush be set aside, revoked, rescinded, and annulled pursuant to S.C. Code § 27-23-10, et seq.

3. On Plaintiff's Third Claim for Relief, that the transfer of Property 13 from Defendant Paul Gunter to Defendant Cody Gunter be set aside, revoked,

rescinded, and annulled pursuant to S.C. Code § 27-23-10, et seq.

4. That the Property shall be subject to Plaintiff's Judgment lien.

5. That Plaintiff be entitled to issue an execution against the property of Defendants North Edisto and/or the Estate of Paul D. Gunter, including but not limited to the Property, pursuant to S.C. Code § 15-39-10.

6. That Plaintiff be allowed to have the Property sold at auction, with the proceeds being used to satisfy the debt evidenced by the Judgment, pursuant to S.C. Code § 15-39-610, et seq.

7. On Plaintiff's Fourth Claim for Relief, that Plaintiff have and recover of Defendants, jointly and severally, punitive damages in an amount to be determined by this Court.

8. That Plaintiff have and recover of the Defendants, jointly and severally, the costs of this action.

9. That Plaintiff have and recover such other and further relief as to the Court may seem just and proper.

John Deere Construction & Forestry Company  
by and through its attorneys:

/s/ Amy H. Wooten

Amy H. Wooten

S.C. State Bar I.D. No.: 100128

N.C. State Bar I.D. No.: 39762

For the firm of Ward and Smith, P.A.

Post Office Box 33009

Raleigh, NC 27636-3009

Telephone: 919.277.9100

Facsimile: 919.277.9177

E-mail: ahwooten@wardandsmith.com

*Attorneys for Plaintiff*

Raleigh, North Carolina  
February 2, 2021.

STATE OF SOUTH CAR  
COUNTY OF LEXINGTON

COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

CASE NO. 2021-CP \_\_\_\_\_

JOHN DEERE CONSTRUCTION &  
FORESTRY COMPANY,  
Plaintiff

v.

NORTH EDISTO LOGGING, INC.;  
THE PAUL & BRENDA GUNTER  
REVOCABLE TRUST UTD MARCH  
26, 2019; The ESTATE of PAUL D.  
GUNTER; MATTHEW P. RUSH; and  
MATTHEW CODY GUNTER,  
Defendants

VERIFICATION

ZACH HARTJE, being duly sworn, deposes and says that he is  
Litigation Administrator of Deere Credit Services, Inc., servicing agent for Plaintiff  
John Deere Construction & Forestry Company, and as such is authorized to make  
this verification; that he has read the foregoing VERIFIED COMPLAINT, and the  
same is true of his own knowledge, except as to those matters and things stated on  
information and belief, and, as to those, he believes them to be true.

Zach Hartje  
Zach Hartje

POK COUNTY, IOWA

Sworn to (or affirmed) and subscribed before me this day by ZACH HARTJE.

Date January 27, 2021  
(Official Seal)

Lyndee Rae Hashman  
Signature of Notary Public

My commission expires: 10/8/21

ND: 4839-9674-7480, v. 2

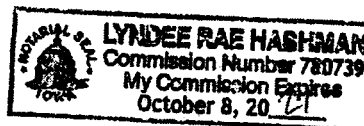


**EXHIBIT A****JOHN DEERE  
FINANCIAL**John Deere Financial  
6400 NW 86th Street, P.O. Box 6600  
Johnston, IA 50131-6600 USA

11/7/2017

**NOTICE OF DEFAULT, ACCELERATION & DEMAND FOR SURRENDER****North Edisto Logging  
916 N. Edisto Road  
Leesville, SC 29070-9707****Paul Davis Gunter  
916 N. Edisto Road  
Leesville, SC 29070-9707****Dear North Edisto Logging Inc & Paul Davis Gunter:**

This letter is being sent to you as notice of your default under the accounts referenced below ("Accounts") between you and Deere Credit Inc. and its affiliates (collectively, "Deere").

You have failed to make payments when due on the following Accounts:

| Account #         | Mfg     | Full Equipment   | Serial #            | Past Due            |
|-------------------|---------|------------------|---------------------|---------------------|
| [REDACTED] 1902   | JD      | 753J Buncher     | 1T0753JXJEC255864   | \$94,708.68         |
|                   | JD      | 22 Tree Cutter   | 1DWFS22BCE0012178   |                     |
| [REDACTED] 9950   | JD      | 2154 Excavator   | 1FF2154DEE0210810   | \$143,336.38        |
| [REDACTED] 3725   | JD      | 437D Log Loader  | 1T0437DDTEC257806   | \$80,798.72         |
|                   | Cutting | 264 Tree Cutter  | 26414043125         |                     |
|                   | Kodiak  | Trailer          | 1B9MC4823EFBJ5163   |                     |
| [REDACTED] 1474   | JD      | 648H Skidder     | 1DW648HXJED660787   | \$98,902.49         |
| [REDACTED] 5795   | JD      | 853M Buncher     | 1T0853MXEFD277576   | \$186,084.03        |
|                   | JD      | R22B Tree Cutter | 1DWFR22BKF0030447   |                     |
| [REDACTED] -00163 |         | Revolving        |                     | \$8,934.60          |
|                   |         |                  | <b>Total Amount</b> | <b>\$612,764.90</b> |

Due to these payment defaults, and pursuant to the terms of the credit agreements on each of the Accounts, you are in default on all outstanding Accounts listed below,

| Account #         | Mfg     | Full Equipment   | Serial #          | Payoff Good Until 11/21/2017 |
|-------------------|---------|------------------|-------------------|------------------------------|
| [REDACTED] 1902   | JD      | 753J Buncher     | 1T0753JXJEC255864 | \$156,660.66                 |
|                   | JD      | 22 Tree Cutter   | 1DWFS22BCE0012178 |                              |
| [REDACTED] 9950   | JD      | 2154 Excavator   | 1FF2154DEE0210810 | \$212,059.26                 |
| [REDACTED] 3725   | JD      | 437D Log Loader  | 1T0437DDTEC257806 | \$129,134.61                 |
|                   | Cutting | 264 Tree Cutter  | 26414043125       |                              |
|                   | Kodiak  | Trailer          | 1B9MC4823EFBJ5163 |                              |
| [REDACTED] 1474   | JD      | 648H Skidder     | 1DW648HXJED660787 | \$151,512.40                 |
| [REDACTED] 5795   | JD      | 853M Buncher     | 1T0853MXEFD277576 | \$406,722.39                 |
|                   | JD      | R22B Tree Cutter | 1DWFR22BKF0030447 |                              |
| [REDACTED] -00163 |         | Revolving        |                   | \$13,329.12                  |
|                   |         |                  | Total Amount      | \$1,069,418.44               |

and each Account is due and payable in full. Collateral pledged to secure the credit agreements secures all of your obligations under the credit agreements and any other obligation which you may owe to Deere or any of its affiliates. You are required to return the equipment or allow Deere to take possession of the equipment.

We expressly reserve any and all rights and remedies we have under the Accounts and under applicable law including, but not limited to, the right to recover the entire balance of each Account, the right to recover the equipment on each Account, and the right to pursue a deficiency claim.

Deere requests that you immediately surrender and deliver the equipment described above on or before 11/21/2017, to:

Flint Equipment Company  
3464 Sunset Blvd.  
West Columbia, SC 29169-3054

In the alternative, you may remit payment of the total amount due under the Accounts of \$1,069,418.44 on or before 11/21/17.

Please contact me at the number provided below to make arrangements to satisfy this request.

Sincerely,

Paul Whelan  
Asset Specialist

**John Deere Financial**  
**6400 NW 86<sup>th</sup> St**  
**Johnston, IA 50131-6600**  
**Phone: 800-771-0689 ext. 73952**  
**Fax: 888-777-2558**

**CC: Flint Equipment Company**

## USPS Tracking®

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Track Another Package +

Tracking Number: 9171999991703746692910

Remove X

Your item was delivered to an individual at the address at 10:08 am on November 10, 2017 in LEESVILLE, SC 29070.

 Delivered

November 10, 2017 at 10:08 am  
DELIVERED, LEFT WITH INDIVIDUAL  
LEESVILLE, SC 29070

Get Updates ✓

Text &amp; Email Updates



Tracking History



Product Information



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000054

The easiest tracking number is the one you don't have to know.

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- See images\* of incoming mail.
- Automatically track the packages you're expecting.
- Set up email and text alerts so you don't need to enter tracking numbers.
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\*NOTE: Black and white (grayscale) images show the outside, front of letter-sized envelopes and mailpieces that are processed through USPS automated equipment.

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## USPS Tracking®

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Track Another Package +

Tracking Number: 9171999991703746692903

Remove X

Your item was delivered to an individual at the address at 10:08 am on November 10, 2017 in LEESVILLE, SC 29070.

 Delivered

November 10, 2017 at 10:08 am  
DELIVERED, LEFT WITH INDIVIDUAL  
LEESVILLE, SC 29070

Get Updates ✓

Text &amp; Email Updates



Tracking History



Product Information



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EDWARD J. "TRIP" COYNE III, Attorney at Law

127 Racine Drive  
University Corporate Center (28403)  
Post Office Box 7068  
Wilmington, NC 28406-7068

P: 910.794.4887  
F: 910.794.4877  
ejcoyne@wardandsmith.com

December 10, 2018

North Edisto Logging, Inc.  
c/o Paul D. Gunter, Registered Agent  
916 N. Edisto Road  
Leesville, SC 29070-9707

Mr. Paul D. Gunter  
916 N. Edisto Road  
Leesville, SC 29070-9707

North Edisto Logging, Inc.  
c/o Paul D. Gunter, Registered Agent  
RFD 1, Box 139  
Leesville, SC 29070-9707

RE: Indebtedness owing to Deere & Company  
Our Client: Deere & Company  
Our File 070644-00226

Dear Mr. Gunter:

Our firm is legal counsel for Deere & Company ("Deere"). As you know, each of you are indebted to the Deere on certain Loan Contract – Security Agreements (collectively, the "Contracts"), as follows:

| Account No. Ending | Date of Contract | Collateral                                                                                                     | Balance as of 11/15/2018 | Per Annum |
|--------------------|------------------|----------------------------------------------------------------------------------------------------------------|--------------------------|-----------|
| -1902              | 01/30/2014       | John Deere 753J Buncher bearing SN 1T0753JXJEC255864<br>John Deere 22 Tree Cutter bearing SN 1DWFS22BCE0012178 | \$184,577.29             | 1.9%      |
| -9950              | 08/30/2014       | John Deere 2154 Excavator bearing SN 1FF2154DEE0210810                                                         | \$250,839.11             | 3.5%      |

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ELECTRONICALLY FILED - 2021 Feb 02 4:35 PM - LEXINGTON - COMMON PLEAS - CASE#2021CP3200328

**WARD AND SMITH, P.A.**

North Edisto Logging, Inc.  
 Mr. Paul D. Gunter  
 December 10, 2018  
 Page 2

| Account No. Ending | Date of Contract | Collateral                                                                                                                                                                         | Balance as of 11/15/2018 | Per Annum |
|--------------------|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-----------|
| -3725              | 08/30/2014       | John Deere 437D Log Loader bearing SN 1T0437DDTEC257806<br><br>Cutting Systems Inc. 264 Tree Cutter bearing SN 26414043125<br><br>Kodiak 48LT Trailer bearing SN 1B9MC4823EFBJ5163 | \$150,985.77             | 1.9%      |
| -1474              | 08/30/2014       | John Deere 648H Skidder bearing SN 1DW648HXJED660787                                                                                                                               | \$177,136.01             | 1.9%      |
| -5795              | 09/30/2015       | John Deere 853M Buncher bearing SN 1T0853MXEFD277576<br><br>John Deere R22B Tree Cutter bearing SN 1DWFR22BKF0030447                                                               | \$454,836.20             | 0.9%      |

The payments on your Contracts with Deere are seriously delinquent. Deere has made numerous attempts to resolve this matter with you to date, but the Contracts remain delinquent, past due, and in default.

Each of the Contracts: (i) provide for the cross-collateralization of Deere's collateral with each of your obligations owing to Deere; and (ii) contain cross-default terms, whereby your default or failure to perform under any agreement you may have with Deere creates an event of default under all other agreements that you may have with Deere.

You are hereby notified that Deere has elected to enforce the cross-default provisions contained within each of the Contracts. Accordingly, by copy of this letter, **you are hereby notified that all of the Contracts have been declared in default and the indebtedness owing under each such Contract has been accelerated and is immediately due and payable.**

The Contracts provide that you will be obligated for any legal expenses and reasonable attorneys' fees incurred in exercising Deere's rights upon default. **You are hereby notified that payment of attorneys' fees will be enforced unless you pay the outstanding balances on said Contracts within five (5) days from the date of this**

WARD AND SMITH, P.A.

North Edisto Logging, Inc.  
Mr. Paul D. Gunter  
December 10, 2018  
Page 3

**letter.** If you pay the outstanding balances in full before the expiration of such time, you will not be obligated to pay attorneys' fees.

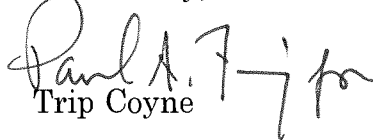
The Contracts also provide that, upon default, Deere is entitled to recover possession of its collateral. **Demand is hereby made that you immediately surrender possession of all collateral to Deere.**

Please contact the undersigned immediately with respect to the payment of your obligations. If some agreement or resolution of this matter has not been reached within five (5) days from the date of this letter, suit will be instituted to collect the balances due on the Contracts, interest, and reasonable attorneys' fees and the collateral will be repossessed.

*Nothing contained in this letter shall be deemed to waive or modify any right or any remedy of the Lender available at law or in equity, or as provided in any loan documents. In addition, the Lender reserve the right to charge interest at the default rate, if any, as provided in the loan documents.*

*Be advised that any partial payments on the Contracts after the date of this letter may be retained by the Lender and applied to the outstanding balances due on the Contracts, as determined by the Lender in their sole discretion, but will not reinstate the Contracts.*

Yours truly,

  
Trip Coyne

ND: 4827-6820-2626, v. 1

cc: Deere & Company (via e-mail)  
D. Randolph Whitt, Esq.

  
2019030203 BK: 20824 PG: 5889 - 5895 7 PGS  
DEED  
Rec: \$12.00 Cnty: \$0.00 State: \$0.00  
July 11, 2019 10:56:31 AM  
FILED IN LEXINGTON COUNTY, SC *Tina Quarry*

**GENERAL WARRANTY DEED**

**STATE OF SOUTH CAROLINA**

**COUNTY OF LEXINGTON**

**TITLE NOT EXAMINED**

KNOW ALL MEN BY THESE PRESENTS, THAT **PAUL D. GUNTER AND NORTH EDISTO LOGGING, INC.** (hereinafter whether singular or plural the "Grantor")

in the State aforesaid, for and in consideration of **TRANSFERRING TO MY ENTITY** to the Grantor paid by

**PAUL GUNTER AS TRUSTEE OF THE  
PAUL & BRENDA GUNTER REVOCABLE TRUST UTD MARCH 26, 2019  
916 NORTH EDISTO ROAD  
LEESVILLE, SC 29070**

(hereinafter whether singular or plural the "Grantee") has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, Its Successors and assigns the following described property.

See attached Exhibit A

**TOGETHER** with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

**TO HAVE AND TO HOLD** all and singular the premises before mentioned unto the said Grantee, Its Successors and Assigns forever.

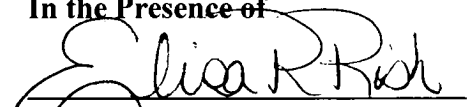
And the Grantor does hereby bind his Heirs and Assigns, to warrant and forever defend all and singular the said premises unto the said grantee and the Grantee's Heirs and Assigns, against the Grantor and the Grantor's Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

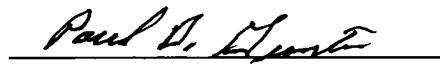
**RETURN TO: BUSBEE LAW FIRM  
P.O. BOX 596  
WAGENER, SC 29164**

**WITNESS** the Hand and Seal of the Grantor this 26<sup>th</sup> day of  
March in the year of our Lord Two Thousand Nineteen and in  
the Two Hundredth and Forty-Fourth year of Sovereignty and  
Independence of the United States of America.

Signed, Sealed and Delivered )  
In the Presence of )

NORTH EDISTO LOGGING, INC.

  
WITNESS SIGNATURE

  
BY: PAUL D. GUNTER  
ITS: PRESIDENT

  
NOTARY PUBLIC SIGNATURE

  
PAUL D. GUNTER

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

I, Jacqueline F. Busbee, Notary Public do hereby certify that the Grantor personally appeared  
before me and made oath that s/he saw the within named Grantor sign, seal and, as the Grantor's  
act and deed, deliver the within-written Deed for the uses and purposes therein mentioned.

SWORN to before me this )  
26<sup>th</sup> Day of March 2019 )

  
Notary Public for South Carolina  
Commission Expires: 11/28/28  
Printed name of Notary:  
Jacqueline F. Busbee

**EXHIBIT A**

All that certain piece, parcel or tract of land, situate, lying and being in School District #3, Lexington County, South Carolina, being fully shown and delineated as Parcel B, containing 1.20 acres, more or less, as shown on a plat prepared for Paul D. Gunter and Daniel E. Hall, Sr. by Allen Associates, Inc. dated July 15, 1991 and recorded in Plat Book 248 Page 7 in the Lexington County ROD Office. Reference being made to such plat for a more complete and accurate description thereof.

This being the identical property conveyed to Paul D. Gunter by deed of Daniel E. Hall, Sr. recorded in Deed Book 195 Page 177 in the Lexington County ROD Office.  
Tax Parcel # 010400-04-022

Also: All that certain piece, parcel or tract of land, together with all improvements thereon, situate, lying and being near the Town of Steadman, Lexington County, South Carolina, containing four (4) acres, more or less, and being bounded as follows North by property of T. B. Quattlebaum; East by a paved road; South and west by property of Perry Hall. Boundaries being now or formerly.

This being the identical property conveyed to Paul Gunter by deed of Pansy Kneece recorded in Deed Book 20S Page 173 in the Lexington County ROD Office.  
Tax Parcel # 010400-04-009

Also: All that certain piece, parcel or tract of land, situate, lying and being near the Town of Steadman, Lexington County, South Carolina, containing one (1) acre, more or less, and being shown and delineated as Tract A on a plat prepared for Mrs. Effie Lou S. Hall, prepared by Dewey H. Campbell, Jr. RLS dated April 15, 1966 and recorded in Plat Book 86 G Page 71 in the Lexington County ROD Office. Reference being made to such plat for a more complete and accurate description thereof.

This being the identical property conveyed to Paul D. Gunter by deed of Effie Lou S. Hall recorded in Deed Book 15-B Page 71 in the Lexington County ROD Office.  
Tax Parcel #:010400-04-010

ALSO: All that certain piece, parcel or lot of land, with the improvements thereon, situate lying and being in School District No. 3, Lexington County, South Carolina, the same being shown and designated as Parcel A, containing 2.72 acres, more or less, on a plat prepared for Furman T. Hall, prepared by Allen Associates, Inc. dated August 1, 1991 and recorded in Plat Book 248 Page 6 in the Lexington County ROD Office. Reference being made to such plat for a more complete and accurate description thereof.

This being the identical property conveyed to Paul Gunter by deed of Furman T. Hall dated April 28, 2004 recorded April 30, 2004 in Deed Book 9222 Page 346 in the Lexington County ROD Office.  
Tax Parcel #:010400-04-015

Also: All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Lexington County, South Carolina, located about eight (8) miles Southeast of the Town of Leesville, containing 2.21 acres, more or less, being shown and designated as Parcel No. 5 on a plat prepared for the Estate of W. Homer Hall, prepared by Arthur J. Weed, RLS, dated April 28, 1991 and being bounded incorporated herein by reference thereto, being bounded on the North by property now or formerly of Quattlebaum; East by Parcel No. 6; South by Ben Franklin Road; West by Parcel No. 4. All boundaries being now or formerly.  
Tax Parcel #:009400-04-021

Also: All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Lexington County, South Carolina, located about eight (8) miles Southeast of the Town of Leesville, containing 2.21 acres, more or less, being shown and designated as Parcel No. 6 on a plat prepared for Algernon Quattlebaum, prepared by O. F. Hunter, Jr., RLS, dated November 25, 1996 and being bounded incorporated herein by reference thereto, being bounded on the North by Estate of A. J. Quattlebaum; East by Lot No. 7; South by Ben Franklin; and West by Lot No. 5. All boundaries being now or formerly. Tax Parcel #:009400-04-022

Also: All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Lexington County, South Carolina, located about eight (8) miles Southeast of the Town of Leesville, containing 2.21 acres, more or less, being shown and designated as Parcel No. 3 on a plat prepared for the Estate of W. Homer Hall, prepared by Arthur J. Weed, RLS, dated April 28, 1991 and being bounded incorporated herein by reference thereto, being bounded on the North by Quattlebaum; East by Lot No. 4; South by Ben Franklin; and West by Lot No. 2. All boundaries being now or formerly.

Tax Parcel #:009400-04-026

Also: All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Lexington County, South Carolina, located about eight (8) miles Southeast of the Town of Leesville, containing 2.21 acres, more or less, being shown and designated as Parcel No. 4 on a plat prepared for the Estate of W. Homer Hall, prepared by Arthur J. Weed, RLS, dated April 28, 1991 and being bounded incorporated herein by reference thereto, being bounded on the North by Quattlebaum; East by Lot No. 5; South by Ben Franklin; and West by Lot No. 3. All boundaries being now or formerly.

Tax Parcel #:009400-04-027

Also: All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Lexington County, South Carolina, located about eight (8) miles Southeast of the Town of Leesville, containing 114.11 acres, more or less, and being generally bounded on the North by right of way of U. S. Highway No. 20; East and Southeast by property of Clinton Hallman and Roy Frick; South by property of Roy Frick; and Southwest by property of the Estate of Homer Hall. All boundaries being now or formerly.

Tax Parcel #:009400-04-034

This being the identical property conveyed to Paul D. Gunter by deed of Tracy C. Gunter, Jr. dated May 31, 2000 and recorded June 15, 2000 in Deed Book 5831 Page 76 in the Lexington County ROD Office.

Also: All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Lexington County, South Carolina, located about eight (8) miles Southeast of the Town of Leesville, containing 12.97 acres, more or less, as shown on a plat prepared by Allen Associates, Inc., prepared for Daniel E. Hall, Sr., dated August 1, 1991 recorded in Plat Book 248 Page 5 in the Lexington County ROD Office. Reference being made to such plat for a more complete and accurate description thereof.

This being the identical property conveyed to Paul D. Gunter by deed of Daniel E. Hall, Jr. recorded March 15, 1999 in Deed Book 5146 Page 293 in the Lexington County ROD Office.

Tax Parcel #:010400-04-011

Also: All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Lexington County, South Carolina, Lot A, containing 28.45 acres, more or less, and Lot B, containing 1.26 acres, more or less, as shown on a plat prepared for Troy A. Tims and Sheryl L. Tims, prepared by Douglas E. Platt, Sr., dated August 12, 1998 and revised February 9, 2000 and recorded March 2, 2000 in Plat Book 5673 Page 68 in the Lexington County ROD Office. Reference being made to such plat for a more complete and accurate description thereof.

This being the identical property conveyed to North Edisto Logging by deed of Fannie Mae AKA Federal National Mortgage Association recorded June 30, 2004 in Deed Book 9376 Page 113 in the Lexington County ROD Office.

Tax Parcel #:011300-01-030

Also: All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being approximately four (4) miles East of Fairview, Lexington County, South Carolina, containing ten (10) acres, more or less, and being shown as Parcel C on a plat prepared for Teddy R. Gauble, prepared by Douglas E. Platt, Sr., RLS, dated October 30, 1974, revised June 9, 1975 and recorded in Plat Book 138-G Page 92 in the Lexington County ROD Office. Reference being made to such plat for a more complete and accurate description thereof.

This being the identical property conveyed to North Edisto Logging by deed of Paul D. Gunter recorded December 5, 2001 in Deed Book 6842 Page 27 in the Lexington County ROD Office.

Tax Parcel #:012500-02-002

Also: All that certain piece, parcel or tract of land, situate, lying and being near the Town of Steadman, Lexington County, South Carolina, containing sixty (60) acres, more or less, being the western portion of Tract No. 2, on a plat of property of Perry C. Hall and Danile E. Hall, prepared by B. P. Barber & Associates, Engineers, dated December 12, 1961 and recorded in Plat Book 62-G Page 18 in the Lexington County ROD, and being bounded on the North by County Road; the center line of which is the line; East by property of Macky E. Rush and J. David Rush, III; Southeast by property of Macky E. Rush and J. David Rush, III; South by property of W. C. Rogers; and West by property of Daniel E. Hall. The said property is all of that tract of land, containing 111.2 acres, more or less, shown and delineated on the plat above referred to, excepting a tract of land, containing 30.16 acres, conveyed to Mackey E. Rush and J. David Rush, III, prepared by Perry C. Hall by deed recorded in Deed Book 659 Page 51, and a tract of land, containing 21.5 acres, more or less, conveyed to Mackey E. Rush and J. David Rush, III by Perry C. Hall by deed recorded in Deed Book 685 Page 8 both of which tracts are shown and delineated on plat prepared for Mackey E. Rush and J. David Rush, III by C. Ashley Abel, dated May 31, 1984 and recorded in Plat Book 199-G Page 308 in the Lexington County ROD Office. Reference being made to such plat for a more complete and accurate description thereof.

This being the identical property conveyed to North Edisto Logging, Inc. by deed of Thomas Clay Chappell recorded August 10, 1999 in Deed Book 5392 Page 269 in the Lexington County ROD.

Tax Parcel #:010400-03-009

Also: All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in Lexington County, South Carolina, the same being shown and designated as Parcel A, containing 15.40 acres more or less, on a plat dated May 2, 1991 prepared by Allen Associates, Inc. prepared for Perry C. Hall, recorded in Plat Book 247 Page 159 in the Lexington County ROD Office. Reference being made to such plat for a more complete and accurate description thereof.

This being the identical property conveyed to North Edisto Logging, Inc. by deed of Mary Elizabeth Hall Staley recorded June 1, 1999 in Deed Book 5272 Page 174 in the Lexington County ROD.

Tax Parcel #:010400-03-011

Also: All those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in the Town of Steadman, Lexington County, South Carolina, known as Lots 62, 64, 66 and 68 said lots jointly containing 1.82 acres, more or less, as more particularly shown on a plat prepared for the estate of Lloyd C. Hall, prepared by Arthur J. Weed, RLS, dated November 18, 1981 said plat recorded in Plat Book 188-G Page 42 in the Lexington County ROD Office. Reference being made to such plat for a more complete and accurate description thereof.

This being the identical property conveyed to North Edisto Logging, Inc. by deed of Osceola B. Baughman and Shelley B. Derrick recorded July 23, 2003 in Deed Book 8439 Page 202 in the Lexington County ROD Office.

Tax Parcel #:010400-03-024

Also: All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in Lexington County, South Carolina, the same being shown and designated as Parcel B containing 15.40 acres, more or less, as shown on a plat dated May 2, 1991 prepared by Allen Associates, Inc. for Perry C. Hall, recorded in Plat Book 247 Page 159 in the Lexington County ROD Office. Reference being made to such plat for a more complete and accurate description thereof.

This being the identical property conveyed to North Edisto Logging, Inc. by deed of Susan Claudette Halls Mays recorded June 1, 1999 in Deed Book 5272 Page 168 in the Lexington County ROD Office.

Tax Parcel #:010400-03-048

Also: All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in Lexington County, South Carolina, the same being shown and designated as Parcel A containing 16.00 acres, more or less, as shown on a plat dated May 2, 1991 prepared by Allen Associates, Inc. for Perry C. Hall, recorded in Plat Book 248 Page 375 in the Lexington County

ROD Office. Reference being made to such plat for a more complete and accurate description thereof.

This being the identical property conveyed to North Edisto Logging, Inc. by deed of Allison Margarite Hall Wall recorded June 1, 1999 in Deed Book 5272 Page 171 in the Lexington County ROD Office.

Tax Parcel #:010400-03-049

Also: All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being approximately 18 miles southwest of Lexington near Fairfield Crossroads, Lexington County, South Carolina, being designated as Lot four (4) upon a plat of Candy Bar Ranches subdivision prepared by Glenn Associates Land Surveying Company dated January 8, 1990 and recorded in Plat Book 235 Page 167 in the Lexington County ROD Office. Reference being made to such plat for a more complete and accurate description thereof.

This being the identical property conveyed to North Edisto Logging, Inc. by deed of James O. Spence, Master in Equity for Lexington County recorded April 11, 2018 in Deed Book 19931 Page 39 in the Lexington County ROD Office.

Tax Parcel #:011417-01-004

Also: All those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in Lexington County, South Carolina being shown and delineated as Lot 41, containing 1.96 acres, more or less and Lot 42, containing 2.01 acres, more or less, as shown on a plat of West Fairview arms, Phase II prepared by George S. Todd, dated March 3, 1990 and recorded in Book 237 Page 82 in the Lexington County ROD Office. Reference being made to such plat for a more complete and accurate description thereof.

This being the identical property conveyed to North Edisto Logging, Inc. by deed of American General Financial Services, Inc. recorded August 4, 2008 in Deed Book 13069 Page 92 in the Lexington County ROD Office.

Tax Parcel #:011418-01-041

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

AFFIDAVIT OF CONSIDERATION

Personally appeared before me, **JACQUELINE F. BUSBEE**, who is duly sworn, deposed and says that the following is a true and correct statement concerning the consideration for the conveyance set forth below:

**GRANTOR: PAUL D. GUNTER AND NORTH EDISTO LOGGING, INC.**

**GRANTEE (PAYOR): PAUL & BRENDA GUNTER REVOCABLE TRUST UTD  
MARCH 26, 2019**

**GRANTEE MAILING ADDRESS: 916 NORTH EDISTO ROAD  
LEESVILLE, SC 29070**

**CONSIDERATION: TRANSFERRING TO MY ENTITY**

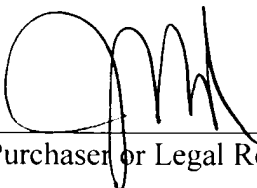
**DATED: MARCH 26<sup>th</sup> 2019**

**TMS#: 010400-04-022, 010400-04-009, 010400-04-010, 010400-04-015, 009400-04-021,  
009400-04-022, 009400-04-026, 009400-04-027, 009400-04-034, 010400-04-011, 011300-01-  
030, 012500-02-002, 010400-03-009, 010400-03-011, 010400-03-024, 010400-03-048, 010400-  
03-049, 011417-01-004, 011418-01-041**

**EXEMPTION (if applicable):**

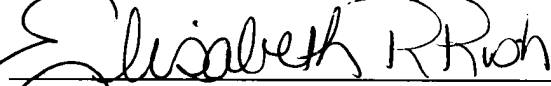
  X   This transfer is exempt from the deed recording fee based on by way of Exception #3.

       This transfer is subject to the deed recording fee as a transfer for the consideration amount listed above.

  
\_\_\_\_\_  
Purchaser or Legal Representative of Purchaser

**SWORN TO BEFORE ME**

**This 26<sup>th</sup> DAY OF MARCH 2019**

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission expires: 2/8/2020  
Elisabeth R. Rish

  
2019030204 BK: 20824 PG: 5896 - 5899 4 PGS  
DEED  
Rec: \$10.00 Cnty: \$0.00 State: \$0.00  
July 11, 2019 10:56:32 AM  
FILED IN LEXINGTON COUNTY, SC *Tina Quarry*

ELECTRONICALLY FILED - 2021 Feb 02 4:35 PM - LEXINGTON - COMMON PLEAS - CASE#2021CP3200328

**GENERAL WARRANTY DEED**

**STATE OF SOUTH CAROLINA**

**COUNTY OF LEXINGTON**

**TITLE NOT EXAMINED**

KNOW ALL MEN BY THESE PRESENTS, THAT **PAUL GUNTER**  
(hereinafter whether singular or plural the "Grantor")

in the State aforesaid, for and in consideration of **LOVE AND**  
**AFFECTION FOR MY GRANDSON** to the Grantor paid by

**MATTHEW CODY GUNTER**  
**911 NORTH EDISTO ROAD**  
**LEESVILLE, SC 29070**

(hereinafter whether singular or plural the "Grantee") has  
granted, bargained, sold and released, and by these presents does  
grant, bargain, sell and release unto the said Grantee, his  
heirs and assigns the following described property.

See attached Exhibit A

**TOGETHER** with all and singular, the rights, members,  
hereditaments and appurtenances to the said premises belonging or  
in anywise incident or appertaining.

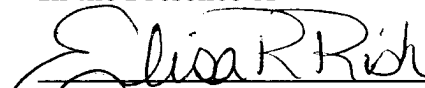
**TO HAVE AND TO HOLD** all and singular the premises before  
mentioned unto the said Grantee, his Heirs and Assigns forever.

And the Grantor does hereby bind his Heirs and Assigns,  
to warrant and forever defend all and singular the said premises  
unto the said grantee and the Grantee's Heirs and Assigns,  
against the Grantor and the Grantor's Heirs and against every  
person whomsoever lawfully claiming, or to claim, the same or any  
part thereof.

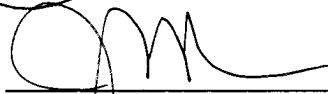
**RETURN TO: BUSBEE LAW FIRM**  
**P.O. BOX 596**  
**WAGENER, SC 29164**

**WITNESS** the Hand and Seal of the Grantor this 26<sup>th</sup> day of  
March in the year of our Lord Two Thousand Nineteen and in  
the Two Hundredth and Forty-Fourth year of Sovereignty and  
Independence of the United States of America.

Signed, Sealed and Delivered )  
In the Presence of )

  
WITNESS SIGNATURE

  
PAUL GUNTER

  
NOTARY PUBLIC SIGNATURE

**ACKNOWLEDGEMENT**

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

I, Jacqueline F. Busbee, Notary Public do hereby certify that the Grantor personally appeared  
before me and made oath that s/he saw the within named Grantor sign, seal and, as the Grantor's  
act and deed, deliver the within-written Deed for the uses and purposes therein mentioned.

SWORN to before me this )  
26<sup>th</sup> )  
Day of March 2019 )

  
Notary Public for South Carolina  
Commission Expires: 11/28/28  
Printed name of Notary:  
Jacqueline F. Busbee

**EXHIBIT A**

**All that certain piece, parcel or tract of land, with improvements thereon, containing 15.83 acres, more or less, situate, lying and being near US Highway #178, in School District #3, Lexington County, South Carolina, being more particularly described and delineated as Tract B upon a plat prepared for Mike C. Watson, prepared by C. Ashley Abel, RLS dated March 1990 and measuring and bounded as follows: North by Parcel A as shown on a plat for a distance of 1,084.75 feet; East by lands of Freddie Givens, Jr. for a distance of 656.19 feet; South by lands of Ralph Kennedy for a distance of 1,252.67 feet; and West by lands of U. W. Collum now or formerly of Ridgell for a distance of 552.85 feet. All boundaries being now or formerly and measurements being more or less.**

**This being the identical property conveyed to Paul Gunter by deed of Carolyn M. Watson dated August 29, 2005 and recorded September 6, 2005 in Deed Book 10439 Page 328 in the Lexington County ROD Office.**

**Tax Parcel #:010400-05-021**

**STATE OF SOUTH CAROLINA**

**COUNTY OF LEXINGTON**

**AFFIDAVIT OF CONSIDERATION**

Personally appeared before me, **Jacqueline F. Busbee**, who is duly sworn, deposed and says that the following is a true and correct statement concerning the consideration for the conveyance set forth below:

**GRANTOR: PAUL GUNTER**

**GRANTEE (PAYOR): MATTHEW CODY GUNTER**

**GRANTEE MAILING ADDRESS: 911 NORTH EDISTO ROAD  
LEESVILLE, SC 29070**

**CONSIDERATION: LOVE AND AFFECTION FOR MY GRANSON**

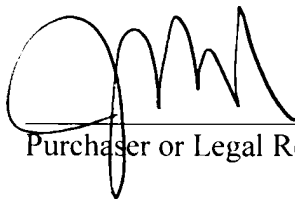
**DATED: MARCH 26<sup>th</sup> 2018**

**TMS#: 010400-05-021**

**EXEMPTION (if applicable):**

  X   This transfer is exempt from the deed recording fee based on by way of Exception #3.

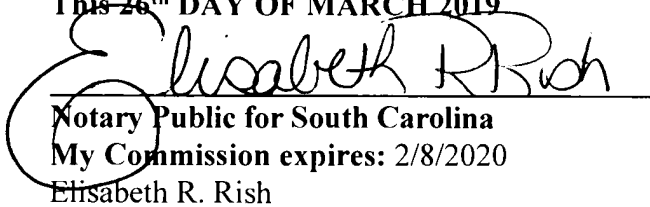
       This transfer is subject to the deed recording fee as a transfer for the consideration amount listed above.



Purchaser or Legal Representative of Purchaser

**SWORN TO BEFORE ME**

**This 26<sup>th</sup> DAY OF MARCH 2019**



Notary Public for South Carolina  
My Commission expires: 2/8/2020  
Elisabeth R. Rish

**EXHIBIT D**

2019046328 BK: 20839 PG: 2275 - 2278  
QUIT CLAIM DEED  
Rec: \$15.00 Cnty: \$0.00 State: \$0.00  
October 10, 2019 03:31:36 PM  
FILED IN LEXINGTON COUNTY, SC

4 PGS

*Tina Quarry*

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

**QUIT-CLAIM DEED**

Re-recorded to add date;

KNOW ALL MEN BY THESE PRESENTS, that, I, **PAUL R. GUNTER** AS TRUSTEE OF THE **PAUL & BRENDA GUNTER REVOCABLE TRUST UTD MARCH 26, 2019** (hereinafter called the "Grantor") in the state aforesaid, for and in consideration by way of quit claim, to me in hand paid at and before the sealing of these presents (the receipt of which is hereby acknowledged) have remised, released and forever quit-claimed, and by these presents do remise, release and forever quitclaim unto **MATTHEW P. RUSH** (hereinafter called "Grantee) whose address is [REDACTED], Leesville, SC 29070, his heirs and assigns, forever, all my right, title and interest in the following described real estate to wit:

SEE ATTACHED EXHIBIT "A"

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Grantee, her heirs and assigns forever, so that neither I, the Grantor, my heirs, nor any other person or persons claiming under them, shall at any time hereafter by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any parcel or part thereof, forever.

**RETURN TO: BUSBEE LAW FIRM  
P.O. BOX 596  
WAGENER, SC 29164**

2019048950 BK: 20841 PG: 3852 - 3855  
QUIT CLAIM DEED  
Rec: \$15.00 Cnty: \$0.00 State: \$0.00  
October 25, 2019 10:18:00 AM  
FILED IN LEXINGTON COUNTY, SC

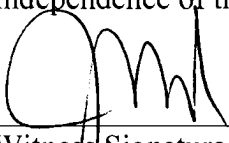
4 PGS

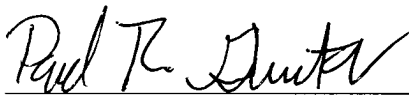
*Tina Quarry*

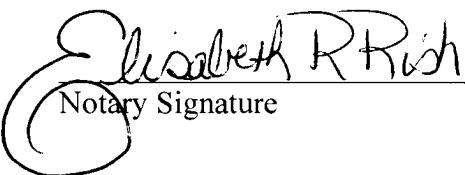
000074

ELECTRONICALLY FILED - 2021 Feb 02 4:35 PM - LEXINGTON - COMMON PLEAS - CASE#2021CP3200328

WITNESS MY HAND AND SEAL this 9<sup>th</sup> day of October 2019 in the year of our Lord Two Thousand Nineteen and in the Two Hundredth and Forty- Fourth Year of Sovereignty and Independence of the United States of America.

  
\_\_\_\_\_  
Witness Signature

  
\_\_\_\_\_  
BY: PAUL R. GUNTER  
ITS: TRUSTEE

  
\_\_\_\_\_  
Notary Signature

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

I, Notary Public, do hereby certify that the Grantor personally appeared before me this day and acknowledged the due execution of the within-written Deed.

SWORN to before me this )  
9<sup>th</sup> Day of October 2019 )

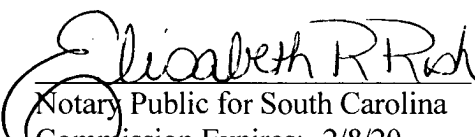
  
\_\_\_\_\_  
Notary Public for South Carolina  
Commission Expires: 2/8/20  
Printed name of Notary:  
Elisabeth R. Rish

**EXHIBIT A**

All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in the Steedman Community, Lexington County, South Carolina, being shown as Parcel A, containing 24.78 acres, more or less, Parcel B, containing 28.90 acres, and Parcel C, containing 0.34 acres, more or less, on a plat prepared for Matthew P. Rush, prepared by Yonce Land Surveying, LLC dated May 2, 2019 and recorded simultaneously herewith in Plat Book 20839 Page 2270 in the Lexington County ROD Office. Reference being made to such plat for a more complete and accurate description thereof.

This being a portion of the property conveyed to Paul Gunter as Trustee of the Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 by deed of Paul D. Gunter and North Edisto Logging, Inc. dated March 26, 2019 and recorded July 11, 2019 in Deed Book 20824 Page 5889 in the Lexington County ROD Office.

TMS#: 010400-03-009

**STATE OF SOUTH CAROLINA**

**COUNTY OF LEXINGTON AFFIDAVIT OF CONSIDERATION**

Personally appeared before me, **JACQUELINE F. BUSBEE** who is duly sworn, deposed and says that the following is a true and correct statement concerning the consideration for the conveyance set forth below:

**GRANTOR: PAUL & BRENDA GUNTER REVOCABLE TRUST UTD MARCH 26, 2019**

**GRANTEE (PAYOR): MATTHEW P. RUSH**

**GRANTEE MAILING ADDRESS:** [REDACTED]  
**LEESVILLE, SC 29070**

**CONSIDERATION: BY WAY OF QUIT CLAIM**

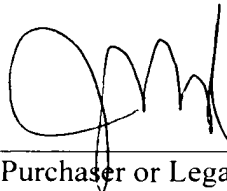
**DATED: OCTOBER 9<sup>th</sup>, 2019**

**TAX PARCEL: 010400-03-009**

**EXEMPTION (if applicable):**

  X   This transfer is exempt from the deed recording fee based on by way of Exception 3

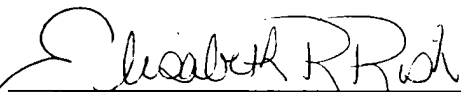
       This transfer is subject to the deed recording fee as a transfer for the consideration amount listed above.



Purchaser or Legal Representative of Purchaser

**SWORN TO BEFORE ME**

This   9<sup>th</sup>   day of October 2019



Notary Public for South Carolina  
My Commission expires: 2/8/20

Tina Querry

ELECTRONICALLY FILED - 2021 Feb 02 4:35 PM - LEXINGTON - COMMON PLEAS - CASE#2021CP3200328

**GENERAL WARRANTY DEED**  
**With Limited Reservation of Timber Rights**

**STATE OF SOUTH CAROLINA**  
**COUNTY OF LEXINGTON**

KNOW ALL MEN BY THESE PRESENTS, THAT **NORTH EDISTO LOGGING, INC.**  
(hereinafter whether singular or plural the "Grantor")  
in the State aforesaid, for and in consideration of **SIXTY THOUSAND**  
**DOLLARS (\$60,000.00)** to the Grantor paid by

**MATTHEW P. RUSH**  
[REDACTED]  
**LEESVILLE, SC 29070**

(hereinafter whether singular or plural the "Grantee") has  
granted, bargained, sold and released, and by these presents does  
grant, bargain, sell and release unto the said Grantee, his  
heirs and assigns the following described property.

See attached Exhibit A

**RESERVING FOR GRANTOR, NEVERTHEESS, A ONE TIME RIGHT TO CUT THE**  
**EXISTING TIMBER.** *PKG* *MPK*

**TOGETHER** with all and singular, the rights, members,  
hereditaments and appurtenances to the said premises belonging or  
in anywise incident or appertaining.

**TO HAVE AND TO HOLD** all and singular the premises before  
mentioned unto the said Grantee, his Heirs and Assigns forever.

And the Grantor does hereby bind Its Successor and Assigns,  
to warrant and forever defend all and singular the said premises  
unto the said grantee and the Grantee's Heirs and Assigns,  
against the Grantor and the Grantor's Heirs and against every  
person whomsoever lawfully claiming, or to claim, the same or any  
part thereof.

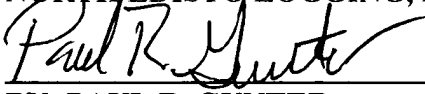
**RETURN TO: BUSBEE LAW FIRM**  
**P.O. BOX 596**  
**WAGENER, SC 29164**

**WITNESS** the Hand and Seal of the Grantor this 10<sup>th</sup> day of  
July in the year of our Lord Two Thousand Nineteen and in  
the Two Hundredth and Forty-Fourth year of Sovereignty and  
Independence of the United States of America.

Signed, Sealed and Delivered )  
In the Presence of )

  
\_\_\_\_\_  
WITNESS SIGNATURE  
  
\_\_\_\_\_  
NOTARY PUBLIC SIGNATURE

NORTHEDISTO LOGGING, INC.

  
\_\_\_\_\_  
BY: PAUL R. GUNTER  
ITS: PRESIDENT

**ACKNOWLEDGEMENT**

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

I, Jacqueline F. Busbee, Notary Public do hereby certify that the Grantor personally appeared before me and made oath that s/he saw the within named Grantor sign, seal and, as the Grantor's act and deed, deliver the within-written Deed for the uses and purposes therein mentioned.

SWORN to before me this )  
10<sup>th</sup> )  
Day of July 2019 )

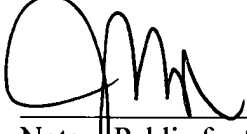
  
\_\_\_\_\_  
Notary Public for South Carolina  
Commission Expires: 11/28/28  
Printed name of Notary:  
Jacqueline F. Busbee

**EXHIBIT A**

All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in the Steedman Community, Lexington County, South Carolina, being shown as Parcel A, containing 24.78 acres, more or less, Parcel B, containing 28.90 acres, and Parcel C, containing 0.34 acres, more or less, on a plat prepared for Matthew P. Rush, prepared by Yonce Land Surveying, LLC dated May 2, 2019 and recorded simultaneously herewith in Plat Book 20839 Page 2270 in the Lexington County ROD Office. Reference being made to such plat for a more complete and accurate description thereof.

This being a portion of the property conveyed to North Edisto Logging, Inc. by deed of Thomas Clay Chappell dated August 4, 1999 and recorded August 10, 1999 in Deed Book 5392 Page 269 in the Lexington County ROD Office.

Tax Parcel # 010400-03-009

## **EXHIBIT E**

STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

John Deere Construction & Forestry  
Company,

Plaintiff,

vs.

North Edisto Logging, Inc., and Paul  
Gunter,

Defendants. )

Civil Action No. 2018-CP-32-04329

### **ORDER GRANTING SUMMARY JUDGMENT**

This matter came before the Court on the Motion for Summary Judgment filed by Plaintiff John Deere Construction & Forestry Company ("Plaintiff"). A hearing on the motion was held via the Cisco Webex Virtual Courtroom on October 27, 2020. Plaintiff was represented by Paul A. Fanning. Defendants North Edisto Logging, Inc. and Paul D. Gunter ("Defendants") were represented by D. Randolph Whitt, Esq.

Having considered the parties' memoranda and exhibits, the filed affidavits, the arguments heard at the hearing on October 27, 2020, the applicable law, and the parties' proposed orders, this Court grants Plaintiff's Motion for Summary Judgment. The Court presents its findings and conclusions below.

### **STANDARD OF REVIEW**

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the Court should view the evidence in the light most favorable to the non-moving party. Fleming v. Rose, 350 S.C. 488, 493–94, 567 S.E.2d 857, 860 (2002). Naturally, "[a] court considering summary judgment neither makes factual determinations nor

considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth the facts that remain undisputed . . . .” David v. McLeod Reg’l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). Entry of summary judgment is mandated, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish that existence of an element essential to that party’s case. Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 116, 410 S.E.2d 537, 545-546 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 317 (1986)). In that kind of 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.” Id. at 116, 410 S.E.2d at 546. “The moving party is entitled to a judgment as a matter of law because the nonmoving party has not made a sufficient showing on an essential element of their case for which they have the burden of proof.” Id.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff’s Complaint asserts causes of action against the Defendants for breach of contract seeking damages of \$946,378.65 along with interest and attorney’s fees. The claims stem from five commercial contracts relating to the purchase and financing of certain logging equipment and warranty products (the “Contracts”). The Contracts were each secured by the financed equipment described therein (the “Collateral”).

Plaintiff’s Complaint alleges that Defendants entered into five separate loan contracts and accompanying security agreements with Plaintiff between January 30, 2014 and September 30, 2015. Defendants admitted each of the Contracts are valid and enforceable. Defendants also admitted that no payments have been made on any of the Contracts since at least January 2017. On December 10, 2018, Plaintiff sent Defendant a notice of default, notice of acceleration, and

demand for payment in full on the Contracts. Plaintiff sought, and was granted, an Order for Dispossession of the Collateral on June 12, 2019. After providing Defendants written notice of their intent and of Defendants' right to redeem, Plaintiff obtained possession of and sold the Collateral, applying the proceeds from the sale to the balance remaining on the Contracts.

In opposition to Plaintiff's Motion, Defendants claim the Collateral was not sold in a commercially reasonable manner after the Order of Dispossession. Defendants rely solely on the Affidavit of Paula Gunter filed on October 22, 2020, five days prior to the hearing. Ms. Gunter states the sales were unreasonably delayed, duplicate expenses and interest were incurred, and the sale prices were inadequate. No additional evidence was provided by Defendants to support these claims. Defendants have reviewed the line itemed account histories for each of the Contracts, and do not contest that the Transaction Histories accurately account for all payments received from or on behalf of Defendants. Defendants do not deny some amount of money is owed to Plaintiff under the Contracts. Defendants claim, however, they are entitled to certain offsets based on Counterclaims they asserted against Plaintiff including breach of the covenant of good faith and fair dealing, negligent supervision, and a class action claim.

### **ANALYSIS**

Defendants assert in their Counterclaim that Plaintiff's conduct in servicing the loans and in attempting to obtain immediate possession was "based on faulty documents, [and] constitutes a breach of contract in that it violates Plaintiff's duty of good faith and fair dealing under each of the loan contracts that are the basis of this action." Specifically, Defendants allege that, over the course of several financing transactions originated by Flint Equipment Company, an authorized dealer of the Plaintiff's equipment, "documents were submitted giving one set of figures to Defendants and inconsistent set of figures to [Plaintiff]."

This allegation seems to center around only one of the Contracts (Contract 5) for equipment and an accompanying warranty plan. The difference in the “inconsistent figures” appears to be a \$30,000.00 credit for a down payment that was included in the total purchase price (the “Purchase Price”) financed through the Plaintiff, but which was not included in the total amount owed, before applying any down payments, featured on original equipment invoice (the “Invoice”). Defendants admit that they agreed to pay the Purchase Price. Defendants also admit they received the Contract 5 Collateral, along with the warranty package, and there was no issue concerning the receipt of either of those items. Plaintiff’s record show Defendants received service on the Contract 5 Collateral, as required under the warranty plan.

Defendants further allege Plaintiff breached the Contracts by failing to provide an agreed six-month extension of payments. However, Defendants have produced no request for a modification or extension of any of the Contracts, much less an agreement by Plaintiff to modify and extend any of the Contracts.

Defendants’ counterclaim for breach of the covenant of good faith and fair dealing fails to state a claim, as it lacks any allegation of their own contractual performance. Additionally, there is no independent cause of action for the implied covenant of good faith and fair dealing under South Carolina law, and even if there was, there is no issue of fact on the record to establish the elements of breach of the covenant of good faith and fair dealing. See RoTec Servs., Inc. v. Encompass Servs., Inc., 359 S.C. 467, 471–73, 597 S.E.2d 881, 883–84 (Ct. App. 2004) (“implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract”). In sum, there is no breach of good faith and fair dealing without a separate and cognizable claim for breach of contract connected with it. It should also be noted that

Defendants neither sought reconsideration nor appeal of the subject Order of Immediate Dispossession on which they base their purported claims here.

In their Answer and Counterclaim, Defendants allege that Plaintiff negligently failed to supervise the filing of documents associated with their request for immediate possession. There is no evidence on the record to establish the elements of negligent supervision. This counterclaim was considered by Judge Keesley in this case at the June 10, 2019 pre-seizure hearing and he determined the request for immediate possession met the requirements of South Carolina law. Again, this Order was not reconsidered or appealed.

Defendants also allege that Plaintiff negligently failed to supervise the production and execution of the loan documents. However, this counterclaim is a restatement of Defendants' first counterclaim regarding inconsistent figures.

Finally, Defendants failed to assert a cause of action in their counterclaim for a Class Action, and their Counterclaims do not form the basis for a Class Action. Further, there is no evidence on the record to establish a Class Action, and Defendants have failed to present any genuine issues of fact that they have suffered any damages as a result of any actions or inactions on the part of Plaintiff.

### **CONCLUSION**

In light of the facts and circumstances presented to this court, Defendant has failed to show that there is a genuine issue as to any material fact on their counterclaim causes of action. Therefore, this Court is persuaded that Plaintiff is entitled to summary judgment.

Based on the foregoing, **IT IS ORDERED**, that Plaintiff's Motion for Summary Judgment is **GRANTED**.

**AND IT IS SO ORDERED.**

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]



## Lexington Common Pleas

**Case Caption:** John Deere Construction & Forestry Company VS North Edisto Logging Inc , defendant, et al  
**Case Number:** 2018CP3204329  
**Type:** Order/Summary Judgment

It Is So Ordered

s/ Walton J. McLeod

Electronically signed on 2020-12-08 14:43:02 page 7 of 7

## **EXHIBIT E**

STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

John Deere Construction & Forestry  
Company,

Plaintiff,

vs.

North Edisto Logging, Inc., and Paul  
Gunter,

Defendants. )

Civil Action No. 2018-CP-32-04329

### **ORDER GRANTING SUMMARY JUDGMENT**

This matter came before the Court on the Motion for Summary Judgment filed by Plaintiff John Deere Construction & Forestry Company ("Plaintiff"). A hearing on the motion was held via the Cisco Webex Virtual Courtroom on October 27, 2020. Plaintiff was represented by Paul A. Fanning. Defendants North Edisto Logging, Inc. and Paul D. Gunter ("Defendants") were represented by D. Randolph Whitt, Esq.

Having considered the parties' memoranda and exhibits, the filed affidavits, the arguments heard at the hearing on October 27, 2020, the applicable law, and the parties' proposed orders, this Court grants Plaintiff's Motion for Summary Judgment. The Court presents its findings and conclusions below.

### **STANDARD OF REVIEW**

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the Court should view the evidence in the light most favorable to the non-moving party. Fleming v. Rose, 350 S.C. 488, 493–94, 567 S.E.2d 857, 860 (2002). Naturally, "[a] court considering summary judgment neither makes factual determinations nor

considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth the facts that remain undisputed . . . .” David v. McLeod Reg’l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). Entry of summary judgment is mandated, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish that existence of an element essential to that party’s case. Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 116, 410 S.E.2d 537, 545-546 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 317 (1986)). In that kind of 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.” Id. at 116, 410 S.E.2d at 546. “The moving party is entitled to a judgment as a matter of law because the nonmoving party has not made a sufficient showing on an essential element of their case for which they have the burden of proof.” Id.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff’s Complaint asserts causes of action against the Defendants for breach of contract seeking damages of \$946,378.65 along with interest and attorney’s fees. The claims stem from five commercial contracts relating to the purchase and financing of certain logging equipment and warranty products (the “Contracts”). The Contracts were each secured by the financed equipment described therein (the “Collateral”).

Plaintiff’s Complaint alleges that Defendants entered into five separate loan contracts and accompanying security agreements with Plaintiff between January 30, 2014 and September 30, 2015. Defendants admitted each of the Contracts are valid and enforceable. Defendants also admitted that no payments have been made on any of the Contracts since at least January 2017. On December 10, 2018, Plaintiff sent Defendant a notice of default, notice of acceleration, and

demand for payment in full on the Contracts. Plaintiff sought, and was granted, an Order for Dispossession of the Collateral on June 12, 2019. After providing Defendants written notice of their intent and of Defendants' right to redeem, Plaintiff obtained possession of and sold the Collateral, applying the proceeds from the sale to the balance remaining on the Contracts.

In opposition to Plaintiff's Motion, Defendants claim the Collateral was not sold in a commercially reasonable manner after the Order of Dispossession. Defendants rely solely on the Affidavit of Paula Gunter filed on October 22, 2020, five days prior to the hearing. Ms. Gunter states the sales were unreasonably delayed, duplicate expenses and interest were incurred, and the sale prices were inadequate. No additional evidence was provided by Defendants to support these claims. Defendants have reviewed the line itemed account histories for each of the Contracts, and do not contest that the Transaction Histories accurately account for all payments received from or on behalf of Defendants. Defendants do not deny some amount of money is owed to Plaintiff under the Contracts. Defendants claim, however, they are entitled to certain offsets based on Counterclaims they asserted against Plaintiff including breach of the covenant of good faith and fair dealing, negligent supervision, and a class action claim.

### **ANALYSIS**

Defendants assert in their Counterclaim that Plaintiff's conduct in servicing the loans and in attempting to obtain immediate possession was "based on faulty documents, [and] constitutes a breach of contract in that it violates Plaintiff's duty of good faith and fair dealing under each of the loan contracts that are the basis of this action." Specifically, Defendants allege that, over the course of several financing transactions originated by Flint Equipment Company, an authorized dealer of the Plaintiff's equipment, "documents were submitted giving one set of figures to Defendants and inconsistent set of figures to [Plaintiff]."

This allegation seems to center around only one of the Contracts (Contract 5) for equipment and an accompanying warranty plan. The difference in the “inconsistent figures” appears to be a \$30,000.00 credit for a down payment that was included in the total purchase price (the “Purchase Price”) financed through the Plaintiff, but which was not included in the total amount owed, before applying any down payments, featured on original equipment invoice (the “Invoice”). Defendants admit that they agreed to pay the Purchase Price. Defendants also admit they received the Contract 5 Collateral, along with the warranty package, and there was no issue concerning the receipt of either of those items. Plaintiff’s record show Defendants received service on the Contract 5 Collateral, as required under the warranty plan.

Defendants further allege Plaintiff breached the Contracts by failing to provide an agreed six-month extension of payments. However, Defendants have produced no request for a modification or extension of any of the Contracts, much less an agreement by Plaintiff to modify and extend any of the Contracts.

Defendants’ counterclaim for breach of the covenant of good faith and fair dealing fails to state a claim, as it lacks any allegation of their own contractual performance. Additionally, there is no independent cause of action for the implied covenant of good faith and fair dealing under South Carolina law, and even if there was, there is no issue of fact on the record to establish the elements of breach of the covenant of good faith and fair dealing. See RoTec Servs., Inc. v. Encompass Servs., Inc., 359 S.C. 467, 471–73, 597 S.E.2d 881, 883–84 (Ct. App. 2004) (“implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract”). In sum, there is no breach of good faith and fair dealing without a separate and cognizable claim for breach of contract connected with it. It should also be noted that

Defendants neither sought reconsideration nor appeal of the subject Order of Immediate Dispossession on which they base their purported claims here.

In their Answer and Counterclaim, Defendants allege that Plaintiff negligently failed to supervise the filing of documents associated with their request for immediate possession. There is no evidence on the record to establish the elements of negligent supervision. This counterclaim was considered by Judge Keesley in this case at the June 10, 2019 pre-seizure hearing and he determined the request for immediate possession met the requirements of South Carolina law. Again, this Order was not reconsidered or appealed.

Defendants also allege that Plaintiff negligently failed to supervise the production and execution of the loan documents. However, this counterclaim is a restatement of Defendants' first counterclaim regarding inconsistent figures.

Finally, Defendants failed to assert a cause of action in their counterclaim for a Class Action, and their Counterclaims do not form the basis for a Class Action. Further, there is no evidence on the record to establish a Class Action, and Defendants have failed to present any genuine issues of fact that they have suffered any damages as a result of any actions or inactions on the part of Plaintiff.

### **CONCLUSION**

In light of the facts and circumstances presented to this court, Defendant has failed to show that there is a genuine issue as to any material fact on their counterclaim causes of action. Therefore, this Court is persuaded that Plaintiff is entitled to summary judgment.

Based on the foregoing, **IT IS ORDERED**, that Plaintiff's Motion for Summary Judgment is **GRANTED**.

**AND IT IS SO ORDERED.**

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]



## Lexington Common Pleas

**Case Caption:** John Deere Construction & Forestry Company VS North Edisto Logging Inc , defendant, et al  
**Case Number:** 2018CP3204329  
**Type:** Order/Summary Judgment

It Is So Ordered

s/ Walton J. McLeod

Electronically signed on 2020-12-08 14:43:02 page 7 of 7

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
Case No. 2021-CP-32-00328

John Deere Construction & Forestry  
Company,

Plaintiff,

vs.

North Edisto Logging, INC.;  
The Paul & Brenda Gunter  
Revocable Trust UTD March  
26, 2019; The Estate of Paul D.  
Gunter; Matthew P. Rush; and  
Matthew Cody Gunter,

Defendants.

Motion to Dismiss of Matthew Cody Gunter

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE that Matthew Cody Gunter will move before the a Judge of the Court of Common Pleas for Lexington County, South Carolina, at a time and place and manner set by the court, for an Order on the issues set forth herein, pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure (SCRCP) for lack of jurisdiction, or alternatively, failure to state a claim upon which relief can be granted.

Material Facts

Paul D. Gunter died on July 3, 2019. (See Complaint ¶ 19)

This action was filed on February 2, 2021. (See Complaint generally)

February 2, 2021 is more than one year after July 3, 2019.

Defendant Matthew Cody Gunter acquired the property that he owns that is subject to this action by virtue of a deed from Paul D. Gunter. (See Complaint ¶ 26 and ¶ 27)

### The Nonclaim Statute

S.C. Code §62-3-803(a) provides:

#### SECTION 62-3-803. Limitations on presentation of claims.

(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or nonclaim statute; **are barred against** the estate, the personal representative, the decedent's heirs and devisees, and **nonprobate transferees** of the decedent; unless presented within the **earlier of the following**:

- (1) **one year after the decedent's death**; or
- (2) the time provided by Section 62-3-801(b) for creditors who are given actual notice, and within the time provided in Section 62-3-801(a) for all creditors barred by publication. [Emphasis added]

### The Significance of a Nonclaim Statute

The fact that S.C. Code §62-3-803(a) is a nonclaim statute has been conclusively established by our Appellate Courts. See *Estate of Tollison* 320 S.C. 132,135, 63 S.E. 2D 611,613 (S.C. App 1995) (“Section 62-3-803 is a nonclaim statute. See *A. McCoy's, Inc. v Garner*, 281 S.C. 378,315 S.E.2d 812 (Ct.App.1984) (finding former section 21-15-640 a nonclaim statute). Thus, unless the statute is complied with, the creditor's claim is barred. *Id.* “). *Estate of Tollison* was cited with approval by our Supreme Court in *In Re Estate of Hover* 407 S.C. 194, 754 S.E.2d 875(2014).

A nonclaim statute is fundamentally different, and a dramatically stronger bar than a statute of limitations. See *In Re Estate of Hover* (“In contrast to the Bank's characterization, the nonclaim statute is not a general statute of limitations as the two statutes are fundamentally and operationally distinct”)

In *Phillips v. Quick*, 399 S.C. 226, 731 SE 2d 327 (S.C. App. 2012) the S.C. Court of Appeals adopted the following analysis:

[A] nonclaim statute ... grants to every person having a claim of any kind or character against a decedent's estate, the right to file the same in the court having jurisdiction thereof and have the same adjudicated, provided such claim is filed within the time specified in the statute. Unless such claim is filed within the time so allowed by the statute, it is forever barred. The time element is a built-in condition of the said statute and is of the essence of the right of action. Unless the claim is filed within the prescribed time set out in the statute, no enforceable right of action is created. While such statutes limit the time in which a claim may be filed or an action brought, they have nothing in common with and are not to be confused with general statutes of limitation. The former creates a right of action if commenced within the time prescribed by the statute, whereas the latter creates a defense to an action brought after the expiration of the time allowed by law for the bringing of such an action.

Estate of Decker v. Farm Credit Servs. of Mid-Am., ACA, 684 N.E.2d 1137, 1138-39 (Ind.1997) (quoting Donnella v. Crady, 135 Ind.App. 60, 185 N.E.2d 623, 624-25 (1962)).

#### Further Distinctions

One of the straws at which the Plaintiff may clutch is the discovery rule. However, the S.C. Court of Appeals closed off this argument in *Phillips v. Quick*, 399 S.C. 226, 231; 731 SE 2d 327 (S.C. App. 2012) “ Because we find no indication our legislature intended for the discovery rule to apply to the nonclaim statute, we conclude this rule does not extend to section 62-3-803.”

Likewise, equitable considerations are unavailing in this context. See *In Re Estate of Hover* 407 S.C. 194, 754 S.E.2d 875(2014) to the effect that:

Furthermore, even though a decision in favor of the Estate may appear inequitable, equitable considerations are not a factor in the claims-barring analysis. Thus, neither Hover's continued payment on the Note after his mother's death or the act of default in the foreclosure proceedings can "override" or eliminate the nonclaim statute as this statute has been strictly applied in similar circumstances. See *Phillips v. Quick*, 399 S.C. 226, 230, 731 S.E.2d 327, 329 (Ct.App.2012) (“While equitable principles may extend the time for commencing an action under statutes of limitation, nonclaim statutes impose a condition precedent to the enforcement of a right of action and are not subject to equitable exceptions.” (quoting Estate of Decker v. Farm Credit Servs. of Mid-Am., ACA, 684 N.E.2d 1137, 1139 (Ind.1997))); 34 C.J.S. *Executors & Administrators* § 547 (Supp.2013) (“Misleading statements, assurances, or conduct of the representative inducing a creditor to refrain from the due presentation of his or her claim do not estop the representative from contesting the claim because of such a failure to present the claim.”). See generally E.W.H., *Annotation, Effect of Conduct of Personal Representative Preventing Filing of Claims Within Time Allowed by Statute of Nonclaim*, 66 A.L.R. 1415 (1930) (citing state and

federal cases addressing the general rule that no promise on the part of a personal representative is sufficient to prevent the bar of the statute as to a claim not filed within the statutory period).”

The entry of a deficiency judgment on Plaintiffs underlying action also if of no help to them. See *In Re Estate of Hover* 407 S.C. 194, 754 S.E.2d 875(2014) which held that: “Although the deficiency judgment was entered after the claims-filing time limits and arguably "arose after the decedent's death, this fact did not "toll" the time limits of the nonclaim statute as the claim that formed the basis of the deficiency judgment arose long before the deficiency judgment was entered. (Footnote omitted)

### Conclusion

That Defendant Matthew Cody Gunter was a nonprobate transferee of the decedent Paul D. Gunter is established by the deed cited in and attached to the Plaintiff's Complaint. The Complaint also establishes Paul D. Gunter's date of death and that this action was filed more than one year later. S.C. Code §62-3-803(a) therefore serves as an absolute bar against this action as to Defendant Matthew Cody Gunter. No other considerations can save the Plaintiff from the inexorable march of the calender. This action should be dismissed with prejudice as to Defendant Matthew Cody Gunter and the associated Lis Pendens should be vacated and canceled of record,

s/ D. Randolph Whitt  
D. Randolph Whitt  
SC Bar No.13068  
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Attorney for Defendant Matthew Cody Gunter

March 22, 2021

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
Case No. 2021-CP-32-00328

John Deere Construction & Forestry  
Company,

Plaintiff,

vs.

North Edisto Logging, INC.;  
The Paul & Brenda Gunter  
Revocable Trust UTD March  
26, 2019; The Estate of Paul D.  
Gunter; Matthew P. Rush; and  
Matthew Cody Gunter,

Defendants.

Motion to Dismiss of  
The Paul & Brenda Gunter  
Revocable Trust UTD March 26, 2019

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE that The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 will move before the a Judge of the Court of Common Pleas for Lexington County, South Carolina, at a time and place and manner set by the court, for an Order on the issues set forth herein, pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure (SCRCP) for lack of jurisdiction, or alternatively, failure to state a claim upon which relief can be granted.

Material Facts

Paul D. Gunter died on July 3, 2019. (See Complaint ¶ 19)

This action was filed on February 2, 2021. (See Complaint generally)

February 2, 2021 is more than one year after July 3, 2019.

Defendant The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 acquired the property that it owns which are identified in the complaint as Properties 10, 11,12,14 and 15, and that are subject to this action by virtue of deeds from Paul D. Gunter. (See Complaint ¶ 21 a,b,c,e and f and ¶21)

Defendant North Edisto Logging did not have any ownership interest in the properties which are identified in the complaint as Properties 10, 11,12,14 and 15.

### The Nonclaim Statute

S.C. Code §62-3-803(a) provides:

#### SECTION 62-3-803. Limitations on presentation of claims.

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- (1) **one year after the decedent's death**; or
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### The Significance of a Nonclaim Statute

The fact that S.C. Code §62-3-803(a) is a nonclaim statute has been conclusively established by our Appellate Courts. See Estate of Tollison 320 S.C. 132,135, 63 S.E. 2D 611,613 (S.C. App 1995) (“Section 62-3-803 is a nonclaim statute. See A. McCoy's, Inc. v Garner, 281 S.C. 378,315 S.E.2d 812 (Ct.App.1984) (finding former section 21-15-640 a nonclaim statute). Thus, unless the statute is complied with, the creditor's claim is barred. Id. “). Estate of Tollison was cited with approval by our Supreme

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One of the straws at which the Plaintiff may clutch is the discovery rule. However, the S.C. Court of Appeals closed off this argument in *Phillips v. Quick*, 399 S.C. 226, 231; 731 SE 2d 327 (S.C. App. 2012) “Because we find no indication our legislature intended for the discovery rule to apply to the nonclaim statute, we conclude this rule does not extend to section 62-3-803.”

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Furthermore, even though a decision in favor of the Estate may appear inequitable, equitable considerations are not a factor in the claims-barring analysis. Thus, neither Hover's continued payment on the Note after his mother's death or the act of default in the foreclosure proceedings can "override" or eliminate the nonclaim statute as this statute has been strictly applied in similar circumstances. See Phillips v. Quick, 399 S.C. 226, 230, 731 S.E.2d 327, 329 (Ct.App.2012) (“While equitable principles may extend the time for commencing an action under statutes of limitation, nonclaim statutes impose a

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The entry of a deficiency judgment on Plaintiffs underlying action also if of no help to them.

See In Re Estate of Hover 407 S.C. 194, 754 S.E.2d 875(2014) which held that: "Although the deficiency judgment was entered after the claims-filing time limits and arguably "arose after the decedent's death, this fact did not "toll" the time limits of the nonclaim statute as the claim that formed the basis of the deficiency judgment arose long before the deficiency judgment was entered. (Footnote omitted)

#### Conclusion

That Defendant The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 was a nonprobate transferee of the decedent Paul D. Gunter as to the properties which are identified in the complaint as Properties 10, 11,12,14 and 15. is established by the deed cited in and attached to the Plaintiff's Complaint and the allegations of the complaint itself. The Complaint also establishes Paul D. Gunter's date of death and that this action was filed more than one year later. S.C. Code §62-3-803(a) therefore serves as an absolute bar against this action as to Defendant The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 . No other considerations can save the Plaintiff from the inexorable march of the calendar.

This action should be dismissed with prejudice as to Defendant The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 relating to the properties which are identified in the complaint as Properties 10, 11,12,14 and 15 and the associated Lis Pendens should be vacated and canceled of record as to the

properties which are identified in the complaint as Properties 10, 11,12,14 and 15.

s/ D. Randolph Whitt  
D. Randolph Whitt  
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Attorney for Defendant The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019

March 24, 2021

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
Case No. 2021-CP-32-00328

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vs.

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The Paul & Brenda Gunter  
Revocable Trust UTD March  
26, 2019; The Estate of Paul D.  
Gunter; Matthew P. Rush; and  
Matthew Cody Gunter,

Defendants.

Motion to Dismiss of  
The Estate of Paul D. Gunter

NOTICE OF MOTION

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deficiency judgment was entered after the claims-filing time limits and arguably "arose after the decedent's death, this fact did not "toll" the time limits of the nonclaim statute as the claim that formed the basis of the deficiency judgment arose long before the deficiency judgment was entered. (Footnote omitted)

### Conclusion

That Defendant The Estate of Paul D. Gunter was a probate estate of the decedent Paul D. Gunter as contemplated by S.C. Code §62-3-803(a) as is established by the allegations of the complaint itself. The Complaint also establishes Paul D. Gunter's date of death and that this action was filed more than one year later. S.C. Code §62-3-803(a) therefore serves as an absolute bar against this action as to Defendant The Estate of Paul D. Gunter . No other considerations can save the Plaintiff from the inexorable march of the calender. This action should be dismissed with prejudice as to Defendant The Estate of Paul D. Gunter and the associated Lis Pendens should be vacated and canceled of record.

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Attorney for Defendant The Estate of Paul D. Gunter

March 25, 2021

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
Case No. 2021-CP-32-00328

John Deere Construction & Forestry  
Company,

Plaintiff,

vs.

North Edisto Logging, INC.;  
The Paul & Brenda Gunter  
Revocable Trust UTD March  
26, 2019; The Estate of Paul D.  
Gunter; Matthew P. Rush; and  
Matthew Cody Gunter,

Defendants.

Motion to Dismiss of  
North Edisto Logging, INC.

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE that North Edisto Logging, INC. will move before a Judge of the Court of Common Pleas for Lexington County, South Carolina, at a time and place and manner set by the court, for an Order on the issues set forth herein, pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure (SCRCP) dismissing the claims against it for failure to state a claim upon which relief can be granted and striking certain allegations under Rule 12(f).

Material Facts

Plaintiff purports to plead four causes of action, all based on fraud (see Claims for Relief 1-4, pages 8-14 of the complaint)

In these claims paragraphs 36, 37,39,40,42,43,44,45,47,48,50,52,53,54,55,58,64,65,66,67,69,70,72, 74,

75,76,79, 85, 87,88,89,90,92,93,95,97,98, 99, 102,108,109,110,111,112,113 and 114 are qualified with the disclaimer"upon information and belief".

Three of the paragraphs between 36 and 115 are not substantive, being reallagations of previous material.

Paragraphs 60,61,62, 81,82,83,104,105,106 and 115 are claims of entitlement to various remedies and also not substantive of the basis for any such entitlement.

Therefore of the 67 substantive paragraphs, 46 which comprise 68.6 percent of the total are made "upon information and belief"

Of the remaining 21 allegations, paragraphs 38,41 and 110 relate to Rocky Gunter in the mistaken belief that he is the trustee of The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019.

The original trustees of The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019. were Paul D. and Brenda Gunter. Upon Paul's death, Brenda became the sole trustee and remains so as of the present.

#### Rule 9(b) SCRCF

Rule 9(b) SCRCF provides: (b) Fraud, Mistake, Condition of Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. ...

A Pleading which is 68.6 percent "upon information and belief" cannot satisfy the particularity requirement, see e.g. *Munro v. Lucy Activewear, Inc.*, 899 F.3d 585, 590-91 (8th Cir. 2018) ("Munro relies on the phrase "on information and belief" to allege that Lucy intentionally provided false promises. He argues the fact that Lucy broke its promises is proof that Lucy never intended to keep those promises in the first place. We disagree. Munro's complaint does not set forth any supporting facts showing that Lucy intended to defraud him when the promises were made. Thus, he has not adequately alleged fraud under Minnesota law, and the district court did not err in dismissing his claim.")

South Carolina Courts have also been sceptical of the use of "upon information and belief" *Dawkins v. Fields* 345 S.C. 23, 545 S.E.2d 515 (2003) (Assertions made "upon information and belief" insufficient to meet the standards of SCRCF Rule 56(e), even in a verified complaint)

## Rule 12(f) SCRPC

Rule 12(f) SCRPC provides:

(f) Motion to Strike. Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter. (emphasis added)

The Plaintiff's allegations relating to Rocky Gunter are premised on their misconception that he is the trustee of The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019. Because Rocky Gunter is not the trustee, allegations regarding his familial relationship to Paul Gunter, his knowledge, state of mind etc. are immaterial and should be stricken under Rule 12(f).

## Conclusion

This action should be dismissed for failure to state a claim as to Defendant North Edisto Logging, INC. and the associated Lis Pendens should be vacated and canceled of record. In the event Plaintiff is given an opportunity to amend their complaint, the allegations based on the incorrect premise that Rocky Gunter is the trustee of The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 should be stricken under Ruler 12(f)

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March 26, 2021

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT  
CASE NO. 2021-CP-32-00328

JOHN DEERE CONSTRUCTION & )  
FORESTRY COMPANY, )  
Plaintiff )

v. )

NORTH EDISTO LOGGING, INC.; )  
THE PAUL & BRENDA GUNTER )  
REVOCABLE TRUST UTD MARCH )  
26, 2019; The ESTATE of PAUL D. )  
GUNTER; MATTHEW P. RUSH; )  
and MATTHEW CODY GUNTER, )  
Defendants )

**MEMORANDUM OF LAW IN  
OPPOSITION TO MOTIONS TO  
DISMISS and MOTION TO STRIKE**

Plaintiff John Deere Construction & Forestry Company ("Plaintiff"), by and through its undersigned counsel, submits this Memorandum of Law in Opposition to the Motions to Dismiss filed by Defendants North Edisto Logging, Inc. ("NEL"), The Paul & Brenda Gunter Revocable Trust Utd March 26, 2019 ("Trust"), The Estate of Paul D. Gunter ("Estate"), Matthew P. Rush ("Matthew Rush"), and Matthew Cody Gunter ("Cody Gunter") (collectively, "Defendants").

**STATEMENT OF THE CASE**

On January 14, 2021, Plaintiff filed three separate Lis Pendens with the Lexington County Clerk of Court, concerning the property at issue in this lawsuit, bearing File Nos. 2021-LP-32-00006, 2021-LP-32-00007, and 2021-LP-32-00008 (collectively, the "Lis Pendens"), attached to the Complaint collectively as Exhibit F. Plaintiff filed a verified Complaint (the "Complaint") against Defendants on February 2, 2021, containing three separate claims for relief against Defendants for fraudulent conveyance and a fourth claim for relief for punitive damages.

The Complaint alleges, among other things, that NEL and the Trust, together with Paul D. Gunter ("Paul Gunter") and/or the Estate, defrauded and deceived Plaintiff, by transferring fifteen separate tracts of real estate and concealing

those transactions from its creditors, including Plaintiff. NEL and Paul Gunter and/or the Trust (collectively, "Grantors") perpetrated this fraud by transferring title to fifteen tracts of real estate for less than fair market value while they were aware of and defending litigation filed by Plaintiff against NEL, Paul Gunter and/or the Estate. Defendants' calculated and fraudulent behavior forms the basis for Plaintiff's claims for fraudulent transfers.

The Complaint was served on NEL, the Estate, the Trust, and Cody Gunter on February 26, 2021, and on Matthew Rush on February 28, 2021, as evidenced by the Lexington County Sheriff's Affidavits of Service filed herein. On March 22, 2021 Cody Gunter filed a Motion to Dismiss (the "Cody Gunter Motion") pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure ("Rules"). On March 24, 2021, Matthew Rush filed an Answer to Plaintiff's Complaint (the "Rush Answer"), and the Trust filed a Motion to Dismiss (the "Trust Motion") pursuant to Rule 12(b) of the Rules. On March 25, 2021 the Estate filed a Motion to Dismiss (the "Estate Motion") pursuant to Rule 12(b) of the Rules. On March 26, 2021 NEL filed a Motion to Dismiss (the "NEL Motion") pursuant to Rule 12(b) of the Rules. On April 14, 2021 Matthew Rush filed a Motion to Dismiss (the "Rush Motion") pursuant to Rules 12(b)(1), 12(b)(2) and 12(b)(6) of the Rules. The Cody Gunter Motion, Trust Motion, Estate Motion, NEL Motion, and Rush Motion are hereinafter collectively referred to as the "Motions to Dismiss."

Pursuant to their respective Motions to Dismiss, Defendants Cody Gunter, the Estate, and the Trust each assert only one ground for dismissal: that S.C. Code § 62-3-803(a) (the "nonclaim statute") provides for an absolute bar of Plaintiff's claims. The Rush Motion asserts three grounds for dismissal: that (1) the nonclaim statute provides for an absolute bar to Plaintiff's claim, (2) Matthew Rush is a bona fide purchaser under S.C. Code § 27-23-40, and (3) Plaintiff's Complaint lacks sufficient facts under Rule 8(a) of the Rules. The only ground for dismissal asserted by the NEL Motion is that Plaintiff has not allegedly pled fraud with the requisite particularity under Rule 9(b) of the Rules. In addition, the NEL Motion also seeks to

strike any allegations concerning Paul Rocky Gunter ("Rocky Gunter") pursuant to Rule 12(f) of the Rules.

The matters before the Court are the Defendants' Motions to Dismiss and Motion to Strike, each of which should be denied with prejudice, for the following reasons:

- South Carolina's nonclaim Statute does not apply to Plaintiff's claims or the facts of this case.
- The Complaint's claims for fraudulent conveyance are pled with sufficient particularity.
- Defendant Matthew Rush's assertion that he is a bona fide purchaser for value, is insufficient to dismiss Plaintiff's Complaint.
- Plaintiff's allegations that Rocky Gunter acted as trustee of the Trust are relevant and should not be stricken.

### **STATEMENT OF FACTS**

The evidence in this civil action, including the verified Complaint, sets forth the following facts:

Plaintiff made loans to NEL and Paul Gunter in 2014 and 2015. (*Compl.* ¶ 11). After default, Plaintiff made written demand for payment by letter dated November 7, 2017, and again through counsel on December 10, 2018. (*Id.* ¶¶ 14-16). On December 20, 2018, Plaintiff filed a collection lawsuit in this Court bearing civil action number 2018-CP-32-04329 (the "2018 Lawsuit"). (*Id.* ¶ 18). Paul Gunter passed away on July 3, 2019, in Lexington County, South Carolina. (*Id.* ¶ 19).

When the 2018 Lawsuit was filed, NEL and Paul Gunter, together, owned fifteen (15) separate tracts of real estate more particularly described in Plaintiff's Complaint, and identified therein as the Property. (*Id.* ¶ 21). After the 2018 Lawsuit was filed, the Property was transferred to the Trust, Cody Gunter and/or Matthew Rush, and upon information and belief, was not exchanged for fair market value. (*Id.* ¶¶ 24, 26, 43-45, 47, 66-69, 89-92). The transfer of the Property was not disclosed to, or was concealed from, Plaintiff. (*Id.* ¶¶ 48, 70, 93, 98).

On December 8, 2020, this Court granted Summary Judgment to Plaintiff in the 2018 Lawsuit against NEL and Paul Gunter, jointly and severally, in the aggregate principal amount of \$946,378.65, plus interest, attorney's fees, and court costs (the "Judgment"). (*Id.* ¶ 31).

### **STANDARD OF REVIEW**

It is well-settled that, when reviewing a motion to dismiss under Rule 12(b)(6) of the Rules, the trial court must "base its ruling solely on allegations set forth in the complaint." *Rice-Marko v. Wachovia Corp.*, 398 S.C. 301, 307, 728 S.E.2d 61, 64–65 (S.C. Ct. App. 2012). The trial court must construe the complaint in a light most favorable to the nonmovant, "with every doubt resolved in his behalf," and determine "if 'facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.'" *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (S.C. 2007) (citation omitted). In addition, when resolving a motion to dismiss under Rule 12(b)(6), it is a well settled principle that "the court is limited to a consideration of the allegations contained within the four corners of the complaint." *Charleston Cty. Sch. Dist. v. Harrell*, 393 S.C. 552, 559, 713 S.E.2d 604, 608 (S.C. 2011); *see also Patterson v. Witter*, 425 S.C. 213, 235, 821 S.E.2d 677, 689 (2018)(determining the court may review documents attached to the complaint).

### **ARGUMENT**

Defendants' Motions to Dismiss should be denied for the following reasons: (1) they incorrectly apply the South Carolina nonclaim statute, (2) the allegations in the Complaint are pled with sufficient particularity, and (3) Matthew Rush's defense that he is a bona fide purchaser for value is not ripe for deciding under Rule 12(b). Defendant NEL's Motion to Strike allegations concerning Rocky Gunter should also be denied, as they are directly relevant to this action.

**I. South Carolina's Nonclaim Statute does not apply to Plaintiff's claims.**

Defendants' reliance on South Carolina's nonclaim statute does not apply to the facts of this case.

**A. *Plaintiff's claims are specifically exempt under the plain language of South Carolina's Probate Code.***

In bringing their Motions to Dismiss, Defendants take the position that claims predicated on title disputes are subject to South Carolina's nonclaim statute, which is codified in South Carolina's Probate Code ("Probate Code") at S.C. Code Ann. § 62-3-803(a). Incorrectly, Defendants ignore the Probate Code's definition of "claims."

South Carolina's nonclaim statute states that "[a]ll claims against a decedent's estate which arose before the death of the decedent" are barred unless presented within the earlier of: (1) one year after the decedent's death or (2) specific times allotted under the Probate Code not pertinent here. S.C. Code Ann. § 62-3-803(a) (emphasis added). The nonclaim statute is part of the Probate Code. Section 62-1-201(4) of the Probate Code defines "Claims" as follows:

Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in this Code:

\*\*\*

(4) 'Claims', in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

*Id.* (emphasis added). In short, the Probate Code is clearly and unequivocally excludes demands or disputes over title to property from the definition of "claims", and neither the nonclaim statute itself nor Article 3 of the Probate Code (where that

statute is codified) vary the definition of "claims" contained in § 62-1-201(4); *see also In re Estate of Hover*, 407 S.C. at 203, 754 S.E.2d at 880 (holding that "claims" under the nonclaim statute references "debts or demands" that might have been brought against the decedent for the recovery of "money" out of the general funds of the estate).

Every case to which Defendants cite to support their Motions to Dismiss involve claims seeking monetary relief. *See, e.g., In re Estate of Hover*, 407 S.C. 194, 754 S.E.2d 875 (applying nonclaim statute to claim for a monetary deficiency judgment); *Phillips v. Quick*, 399 S.C. 226, 228, 731 S.E.2d 327, 328 (S.C. Ct. App. 2012) (applying nonclaim statute to claim to recover funds allegedly converted); *Matter of Estate of Tollison*, 320 S.C. 132, 134, 463 S.E.2d 611, 612–13 (S.C. Ct. App. 1995) (considering claim made to probate court concerning recovery of settlement funds); *McCoy's, Inc. v. Garner*, 281 S.C. 378, 379, 315 S.E.2d 812, 813 (S.C. Ct. App. 1984) (reviewing claim for recovery of alleged debt owed by the deceased). The Motions to Dismiss do not reference a single case in which the nonclaim statute was applied to bar a claim involving a demand or dispute over title.

Though the plain language of the Probate Code itself is clear regarding that exclusion, case law expressly discussing the exclusion of title disputes from the definition of "claims" under the Probate Code is limited. It appears the South Carolina Court of Appeals had not addressed the specific issue until it did so in an unpublished opinion issued in July of last year. *See Matter of Estate of Tims*, Op. No. 2018-001605, 2021 WL 3076685 (S.C. Ct. App. filed July 21, 2021). In *Estate of Tims*, the appellant asked the Court to find that the trial court erred by finding that a dispute involving title to real property was not barred by the nonclaim statute. *Id.* The Court declined to find error and affirmed the trial court's ruling. *Id.* at \*6. In doing so, the Court cited to § 62-1-201(4) and noted that it "explicitly excludes" from the definition of claims "disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate." *Id.* at \*3.

Because Plaintiff's claims in this case are claims to set aside the transfer of title to fifteen (15) separate parcels of real estate that were fraudulently transferred during the 2018 Lawsuit, they necessarily constitute disputes regarding transfer of title to certain real estate.<sup>1</sup> Since title disputes are not subject to the nonclaim statute, the Motions to Dismiss filed on that ground, should be denied with prejudice.

***B. No probate action ever existed for Plaintiff to present its claims.***

No probate action was ever opened by the Estate for Plaintiff to file a claim under the nonclaim statute. The nonclaim statute acts as a bar to claims which are not "presented" within its time constraints. S.C. Code § 62-3-803(a). The Probate Code makes it clear that "[c]laims against a decedent's estate must be presented" by filing a claim "in the form prescribed by rule, with the probate court in which the decedent's estate is under administration." S.C. Code § 62-3-804(1)(a); *see also In re Est. of Hover*, 407 S.C. 194, 205, 754 S.E.2d 875, 881 (2014)(holding that a creditor may recover from an estate which "requires the claim to be presented in the probate court within the time limits of the nonclaim statute").

Our case is distinguishable from the factual backdrop of the cases on which Defendants rely in their Motions to Dismiss, because there is no probate action in which Plaintiff could present its claims. In each of Defendants' cases, there was an open estate file for the decedent that provided creditors the opportunity for filing claims. *See In re Estate of Hover*, 407 S.C. at 198, 754 S.E.2d at 877; *Phillips*, 399 S.C. at 228, 731 S.E.2d at 328; *Matter of Estate of Tollison*, 320 S.C. at 134, 463 S.E.2d at 612; *Garner*, 281 S.C. at 379, 315 S.E.2d at 813. In each of those cases, the creditor had an opportunity to file a claim with the probate court. *Id.* Here, Paul Gunter died intestate, and no estate file was ever opened with the probate court, leaving Plaintiff with no opportunity to file claims under the Probate Code.

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<sup>1</sup> Plaintiff did pursue monetary claims against decedent Paul Gunter in the 2018 Lawsuit. Those monetary claims were reduced to Judgment against NEL, Paul Gunter and/or the Estate on December 8, 2020, and are not at issue in this lawsuit.

Additionally, Defendants' supporting cases each indicate that the administrator provided creditors with notice of the administration of the estate, which put them on notice of a deadline to file their claims. *See In re Estate of Hover*, 407 S.C. at 198-99, 754 S.E.2d at 877; *Phillips*, 399 S.C. at 228, 731 S.E.2d at 328; *Matter of Estate of Tollison*, 320 S.C. at 134, 463 S.E.2d at 612; *Garner*, 281 S.C. at 379, 315 S.E.2d at 813. Plaintiff was not provided any notice by the Estate, and as such, was not able or required to conform to the deadlines in the nonclaim statute. Accordingly, the Motions to Dismiss filed by the Trust, the Estate, Cody Gunter and Matthew Rush, should be denied with prejudice.

## **II. The Complaint's claims for Fraudulent Conveyance are pled with sufficient particularity.**

When viewed in a light most favorable to Plaintiff, the allegations of Plaintiff's Complaint are sufficient to place Defendants on notice of the conduct complained of and pled with the requisite particularity under Rules 8 and 9 of the Rules. Defendants NEL and Matthew Rush's baseless claims that the allegations of the Complaint are insufficient, are lacking and without merit.

It is well settled that the "principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial." *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 574, 743 S.E.2d 778, 785 (S.C. 2013) (considering the purpose of a pleading is to "place the adversary on notice as to what the issues are"). To that end, the general pleading standard applicable to civil actions pending in the Court of Common Pleas simply requires causes of action to contain "a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends." Rule 8, SCRCP. For claims of fraud, Rule 9(b) requires that the claimant plead the "circumstances constituting fraud . . . with particularity" but does not require that "[m]alice, intent, knowledge, and other condition of mind of a person" be pled with particularity, allowing instead general averments to be made. Rule 9(b), SCRCP (emphasis added).

Under the Statute of Elizabeth, a transfer may be set aside as fraudulent under two scenarios: (1) when it was made by the grantor "with the actual intent of defrauding creditors where that intent is imputable to the grantee, even though there is a valuable consideration," or (2) when it was made "without actual intent to defraud the grantor's creditors, but without valuable consideration." *Albertson v. Robinson*, 371 S.C. 311, 316, 638 S.E.2d 81, 83 (S.C. Ct. App. 2006); *see also S.C. Code* § 27-23-10.

Plaintiff's claims for fraudulent transfer meet the pleading standards set by Rules 8 and 9(b) because they plead with the requisite particularity all of the essential elements for fraudulent transfer. In pertinent part, the Complaint alleges as follows:

- The Grantors owned and controlled the Property when they were indebted to Plaintiff (Comp. ¶¶ 20-21, 36, 64, 85);
- The Grantors transferred title to the Property when the 2018 Lawsuit was pending against them (Comp. ¶¶ 24-26, 28-29);
- NEL, Paul Gunter, and/or the Estate were indebted to Plaintiff at the time of the transfers (Comp. ¶¶ 11-12, 31, 49-51, 56, 94, 100);
- NEL, Paul Gunter, and /or Rocky Gunter were in control of the Trust at the time of the transfers (Comp. ¶¶ 37-40);
- The Property was transferred for less than a reasonably equivalent value and/or without consideration (Comp. ¶¶ 43-47, 66-69, 89-92);
- The Grantors transferred the Property for the purpose of defrauding creditors and avoiding Plaintiff's judgment lien (Comp. ¶¶ 54-55, 108);
- At the time of the transfer of the Property, NEL, Paul Gunter, and/or the Estate had been sued by Plaintiff (Comp. ¶¶ 51, 73, 96); and
- Defendants and Rocky Gunter each had knowledge of the 2018 Lawsuit filed against NEL, Paul Gunter, and/or the Estate at the time of the transfers (Comp. ¶¶ 41, 87, 109, 112).

These allegations, particularly when viewed in the light most favorable to Plaintiff and when resolving every doubt in its favor as is required on a Motion to

Dismiss, pass muster under Rules 8 and 9(b). The allegations are sufficient to place Defendants on notice of the conduct complained of and plead with the requisite particularity the essential elements of a claim under the Statute of Elizabeth. *Plyler*, 373 S.C. at 645, 647 S.E.2d at 192 (citation omitted).

Because the Complaint alleges the transfers were made without valuable consideration, the Complaint is not even required to plead actual intent to defraud the grantor's creditors. Further, Rule 9(b) does not require that intent, knowledge, or other conditions of the grantor's mind be plead with particularity, and even if it did, Plaintiff's Complaint describes numerous "badges of fraud", each sufficient to place Defendants on notice that the transfer of title was an attempt by Defendants to avoid Plaintiff's Judgment lien.

In support of its argument for dismissal, NEL cites to an Eighth Circuit Court of Appeals' opinion for the proposition that a complaint cannot plead with sufficient particularity if it relies on the phrase "upon information and belief." *See Munro v. Lucy Activewear, Inc.*, 899 F.3d 585, 591 (8th Cir. 2018). NEL's reliance on *Munro* is misplaced. The holding of *Munro* is narrowly tailored to that Court's review of fraud under Minnesota federal law. *See Munro*, 899 F.3d at 591. NEL also relies on a 2003 South Carolina Supreme Court to advance its argument regarding the use of "upon information and belief." Specifically, it relies on *Dawkins v. Fields*. *See Dawkins v. Fields*, 354 S.C. 58, 68, 580 S.E.2d 433, 438 (S.C. 2003). However, *Dawkins*' skepticism of the use of the phrase "upon information and belief" is – rightly so – expressed in the context of motions brought under Rule 56 of the Rules. *Id.* Use of that phrase at summary judgment should be viewed with skepticism because "[a]llegations made upon information and belief do not meet the 'personal knowledge' requirements of Rule 56(e)," *id.*, and because the court on a Rule 56 motion is considering the evidence. Its review is not limited to the Complaint's allegations, as is the case here on NEL's Rule 12 motion.

Because Plaintiff has sufficiently pled the essential elements of fraudulent transfer in accord with the requirements of Rules 8 and 9(b), Defendants' NEL and Matthew Rush's Motions to Dismiss should be denied.

**III. Defendant Matthew Rush's assertion that he is a bona fide purchaser for value, is insufficient to dismiss Plaintiff's Complaint.**

Defendant Matthew Rush's claim he is a bona fide purchaser for value is a mixed question of law and fact for a judge or jury to decide. Defendant Matthew Rush's alleged defense of being a bona fide purchaser for value is not ripe for deciding on a Rule 12 Motion to Dismiss. As discussed supra, Court's review is limited to the four corners of Plaintiff's Complaint which must be reviewed in a light most favorable to the nonmovant. *Harrell*, 393 S.C. at 559, 713 S.E.2d at 608; *Plyler*, 373 S.C. at 645, 647 S.E.2d at 192. As more fully shown herein, Plaintiff's Complaint pleads all of the essential elements of the Statute of Elizabeth, sufficient to survive Rule 12(b)(6) review.

Here, Defendant Matthew Rush claims he was a bona fide purchaser for value under S.C. Code § 27-23-40, alleging \$60,000 paid in consideration for the subject property as indicated on Exhibit D attached to Plaintiff's Complaint. As discussed earlier, the Statute of Elizabeth allows transfers to be set aside regardless of whether consideration was paid. *See Albertson v. Robinson*, 371 S.C. at 316, 638 S.E.2d at 83. Plaintiff's Complaint clearly alleges that (i) the transfer of the subject property to Matthew Rush was "not made for fair market value," (ii) neither NEL nor the Trust "received reasonably equivalent value in exchange" for the transfer, and (iii) upon information and belief, "no consideration was given to [NEL] in exchange for the transfer." (Comp. ¶¶66-69).

Matthew Rush seeks to inject the unfounded conclusion that the alleged payment identified in the deed was (i) actually paid in exchange for title and (ii) sufficient consideration for the subject property. However, determination of whether sufficient consideration has been paid in exchange for title to the subject real estate

is a fact intensive inquiry, which far exceeds the limited scope of review under a Rule 12 Motion to Dismiss – which is limited to the four corners of Plaintiff's Complaint. *Harrell*, 393 S.C. at 559, 713 S.E.2d at 608.

In addition, Defendant Matthew Rush attempts to claim Plaintiff's Complaint fails to establish "actual intent to defraud" for an alleged failure to "meet the clear and convincing evidence standard." (Rush Motion). But, Matthew Rush erroneously applies a "clear and convincing" evidence standard to a Rule 12 review which requires nothing more than allegations sufficient to place Defendants on notice of what the issues are, and only a general averment to fraudulent intent. *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. at 574, 743 S.E.2d at 785; Rule 9(b), SCRCF. This Court's review under Rule 12 of the Rules is limited to the four corners of the Complaint, which has adequately pled allegations which, especially when viewed in a light most favorable to Plaintiff, establish fraud.

For these reasons, Defendant Matthew Rush's Motion to Dismiss should be denied.

#### **IV. Plaintiff's allegations that Rocky Gunter acted as trustee of the Trust are relevant and should not be stricken.**

Defendant NEL asserts that Rocky Gunter is not the trustee of the Trust, and as such, allegations regarding his familial relationship to his father Paul Gunter, and his knowledge, state of mind, etc. should be stricken under Rule 12(f) as being immaterial.

Rule 12(f) of the Rules allows a court to strike from any pleading any "immaterial" content. Rule 12(f), SCRCF. A motion to strike under Rule 12(f) is "within the trial court's discretion and will not be reversed absent an abuse of discretion." *Manios v. Nelson, Mullins, Riley & Scarborough, LLP*, 389 S.C. 126, 143, 697 S.E.2d 644, 653 (S.C. Ct. App. 2010).

As indicated in Plaintiff's Complaint, the First Rush Deed (as that term is defined in the Complaint) was recorded with the Lexington County Register of Deeds office on October 10, 2019, transferring rights in Property 4 (as that term is

defined in the Complaint) from the Trust to Matthew Rush. A cursory review of the First Rush Deed, will show that Rocky Gunter in fact signed the First Rush Deed as "Trustee" of the Trust. In addition, it is clear that Rocky Gunter executed the Second Rush Deed (as that term is defined in the Complaint) on behalf of Defendant NEL, further transferring rights in Property 4 to Matthew Rush. Rocky Gunter's execution of those deeds on behalf of both the Trust and NEL, shows a direct involvement with the alleged fraudulent transfers. Considering Rocky Gunter's familial connection to Paul Gunter, and personal involvement with the NEL business, any allegations concerning his knowledge and involvement in the fraudulent scheme is wholly material and relevant. As such, Defendant NEL's motion to strike allegations pursuant to Rule 12(f) of the SCRPC concerning Rocky Gunter should be denied.

### CONCLUSION

Wherefore, based on the foregoing, Plaintiff respectfully requests that the Court deny Defendants' pending Motions to Dismiss and Defendant NEL's Motion to Strike with prejudice.

John Deere Construction & Forestry Company, by  
and through its attorneys:

/s/ Amy H. Wooten

Amy H. Wooten

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March 11, 2022

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT  
CASE NO. 2021-CP-32-00328

JOHN DEERE CONSTRUCTION & )  
FORESTRY COMPANY, )  
Plaintiff )

v. )

NORTH EDISTO LOGGING, INC.; )  
THE PAUL & BRENDA GUNTER )  
REVOCABLE TRUST UTD MARCH )  
26, 2019; The ESTATE of PAUL D. )  
GUNTER; MATTHEW P. RUSH; )  
and MATTHEW CODY GUNTER, )  
Defendants )

**CERTIFICATE OF SERVICE**

I hereby certify that on March 11, 2022 the foregoing MEMORANDUM OF LAW IN OPPOSITION TO MOTIONS TO DISMISS and MOTION TO STRIKE was filed with the Court electronically and was therefore served electronically on the following persons:

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March 11, 2022

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
Case No. 2021-CP-32-00328

John Deere Construction & Forestry  
Company,

Plaintiff,

vs.

North Edisto Logging, INC.;  
The Paul & Brenda Gunter  
Revocable Trust UTD March  
26, 2019; The Estate of Paul D.  
Gunter; Matthew P. Rush; and  
Matthew Cody Gunter,

Defendants.

MOTION FOR SUMMARY JUDGMENT  
MATTHEW CODY GUNTER

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE that Matthew Cody Gunter will move before the a Judge of the Court of Common Pleas for Lexington County, South Carolina, at a time and place and manner set by the court, for an Order on the issues set forth herein, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure (SCRCP) because there are no material issues of fact and movant is entitled to judgement as a matter of law.

Request for Expedited Hearing

Plaintiff's action and Lis Pendens are the only impediments preventing Matthew Cody Gunter from closing a loan of nearly \$2 Million, for construction of poultry production facilities. A contract already exists for purchase of the resulting production. All regulatory approvals have been granted. The lender has approved the loan and is ready to disburse, but for Plaintiff's slander against Matthew Cody Gunter's

title to the real property involved.

#### Material Facts

Paul D. Gunter died on July 3, 2019. (See Complaint ¶ 19)

This action was filed on February 2, 2021. (See Complaint generally)

February 2, 2021 is more than one year after July 3, 2019.

Defendant Matthew Cody Gunter acquired the property that he owns that is subject to this action by virtue of a deed from Paul D. Gunter. (See Complaint ¶ 26 and ¶ 27)

#### Standard for Summary Judgment

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the Court should view the evidence in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493–94, 567 S.E.2d 857, 860 (2002). Naturally, “[a] court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth the facts that remain undisputed . . . .” *David v. McLeod Reg’l M&L Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). Entry of summary judgment is mandated, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish that existence of an element essential to that party’s case. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-546 (1991) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 317 (1986)). In that kind of 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.” *Id.* at 116,

410 S.E.2d at 546. “The moving party is entitled to a judgment as a matter of law because the nonmoving party has not made a sufficient showing on an essential element of their case for which they have the burden of proof.” Id.

### The Nonclaim Statute

S.C. Code §62-3-803(a) provides:

#### SECTION 62-3-803. Limitations on presentation of claims.

(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or nonclaim statute; **are barred against** the estate, the personal representative, the decedent's heirs and devisees, and **nonprobate transferees** of the decedent; unless presented within the **earlier of the following**:

- (1) **one year after the decedent's death**; or
- (2) the time provided by Section 62-3-801(b) for creditors who are given actual notice, and within the time provided in Section 62-3-801(a) for all creditors barred by publication. [Emphasis added]

### The Significance of a Nonclaim Statute

The fact that S.C. Code §62-3-803(a) is a nonclaim statute has been conclusively established by our Appellate Courts. See *Estate of Tollison* 320 S.C. 132,135, 63 S.E. 2D 611,613 (S.C. App 1995) (“Section 62-3-803 is a nonclaim statute. See *A. McCoy's, Inc. v Garner*, 281 S.C. 378,315 S.E.2d 812 (Ct.App.1984) (finding former section 21-15-640 a nonclaim statute). Thus, unless the statute is complied with, the creditor's claim is barred. Id. “). *Estate of Tollison* was cited with approval by our Supreme Court in *In Re Estate of Hover* 407 S.C. 194, 754 S.E.2d 875(2014).

A nonclaim statute is fundamentally different, and a dramatically stronger bar than a statute of limitations. See *In Re Estate of Hover* (“In contrast to the Bank's characterization, the nonclaim statute is not a general statute of limitations as the two statutes are fundamentally and operationally distinct”)

In Phillips v. Quick, 399 S.C. 226, 731 SE 2d 327 (S.C. App. 2012) the S.C. Court of Appeals adopted the following analysis:

[A] nonclaim statute ... grants to every person having a claim of any kind or character against a decedent's estate, the right to file the same in the court having jurisdiction thereof and have the same adjudicated, provided such claim is filed within the time specified in the statute. Unless such claim is filed within the time so allowed by the statute, it is forever barred. The time element is a built-in condition of the said statute and is of the essence of the right of action. Unless the claim is filed within the prescribed time set out in the statute, no enforceable right of action is created. While such statutes limit the time in which a claim may be filed or an action brought, they have nothing in common with and are not to be confused with general statutes of limitation. The former creates a right of action if commenced within the time prescribed by the statute, whereas the latter creates a defense to an action brought after the expiration of the time allowed by law for the bringing of such an action.  
Estate of Decker v. Farm Credit Servs. of Mid-Am., ACA, 684 N.E.2d 1137, 1138-39 (Ind.1997) (quoting Donnella v. Crady, 135 Ind.App. 60, 185 N.E.2d 623, 624-25 (1962)).

#### The Order on the Motion to Dismiss

An Order filed on June 22, 2022 provides:

“The Court finds a central tenant of the rules of statutory construction is that every word of the legislative enactment should be given credence. Adopting the restrictive Section 201 definition of claims would read many of the words of Section 804 out of existence and render them meaningless. The context and specifics of Section 804 also compel the conclusion that an expansive definition of claims is intended for the nonclaim statute.”

The order further provides :

“While, Paul Gunter died intestate, and no estate file has been opened with the probate court, the Court finds Plaintiff had ample opportunity to file claims under the Probate Code. S.C. Code §62-3-203(a)(6) allows a creditor to open an estate forty-five days after the death of the decedent. Additionally, S.C. Code §62-3-804(1)(b) references “a creditor seeking appointment as personal representative pursuant to Section 62-3-203(a)(6).” Therefore, Plaintiff arguably had an

opportunity to assert its claim in a probate proceeding any time between forty-six days and threehundred sixty-four days after the Decedent's death and failed to do so. “

### The Nonclaim Statute Applies to Fraud Claims

Plaintiff argues that notwithstanding the expansive definition of claims in Section 804, the claims are still somehow excluded because of the alleged fraud. This is at odds with the language of the statute which expressly includes claims based on “contract, tort, or other legal basis” without any indication that any subclass of these three categories are excluded. Adding the phrase “except fraud claims” would have been a simple way to convey this intent, if that had been the will of the General Assembly. The absence of such a phrase strongly indicates that no such intent existed and that neither fraud claims, nor anything else was meant to be excluded.

There is also no hint of a fraud exception in the case law. A claim for misappropriation of funds held in a Uniform Gift to Minors Act account was barred in *Phillips v. Quick*, 399 S.C. 226, 731 SE 2d 327 (S.C. App. 2012). Claims for both fraud and constructive fraud were barred in *In Re Estate of Hover* 407 S.C. 194, 754 S.E.2d 875(2014).

### Further Distinctions

One of the straws at which the Plaintiff may clutch is the discovery rule. However, the S.C. Court of Appeals closed off this argument in *Phillips v. Quick*, 399 S.C. 226, 231; 731 SE 2d 327 (S.C. App. 2012) “Because we find no indication our legislature intended for the discovery rule to apply to the nonclaim statute, we conclude this rule does not extend to section 62-3-803.”

Likewise, equitable considerations are unavailing in this context. See *In Re Estate of Hover* 407 S.C. 194, 754 S.E.2d 875(2014) to the effect that:

Furthermore, even though a decision in favor of the Estate may appear inequitable, equitable considerations are not a factor in the claims-barring analysis. Thus, neither Hover's continued payment on the Note after his mother's death or the act of default in the foreclosure proceedings can "override" or eliminate the nonclaim statute as this statute has been strictly applied in similar circumstances. See Phillips v. Quick, 399 S.C. 226, 230, 731 S.E.2d 327, 329 (Ct.App.2012) ("While equitable principles may extend the time for commencing an action under statutes of limitation, nonclaim statutes impose a condition precedent to the enforcement of a right of action and are not subject to equitable exceptions." (quoting Estate of Decker v. Farm Credit Servs. of Mid-Am, ACA, 684 N.E.2d 1137, 1139 (Ind.1997))); 34 C.J.S. Executors & Administrators § 547 (Supp.2013) ("Misleading statements, assurances, or conduct of the representative inducing a creditor to refrain from the due presentation of his or her claim do not estop the representative from contesting the claim because of such a failure to present the claim."). See generally E.W.H., Annotation, Effect of Conduct of Personal Representative Preventing Filing of Claims Within Time Allowed by Statute of Nonclaim, 66 A.L.R. 1415 (1930) (citing state and federal cases addressing the general rule that no promise on the part of a personal representative is sufficient to prevent the bar of the statute as to a claim not filed within the statutory period)."

The entry of a deficiency judgment on Plaintiffs underlying action also if of no help to them.

See In Re Estate of Hover 407 S.C. 194, 754 S.E.2d 875(2014) which held that: "Although the deficiency judgment was entered after the claims-filing time limits and arguably "arose after the decedent's death, this fact did not "toll" the time limits of the nonclaim statute as the claim that formed the basis of the deficiency judgment arose long before the deficiency judgment was entered. (Footnote omitted)

### Conclusion

That Defendant Matthew Cody Gunter is a nonprobate transferee of the decedent Paul D. Gunter is established by the deed cited in and attached to the Plaintiff's Complaint. The Complaint also establishes Paul D. Gunter's date of death and that this action was filed more than one year later. S.C. Code §62-3-803(a) therefore serves as an absolute bar against this action as to Defendant Matthew Cody Gunter. No other considerations can save the Plaintiff from the inexorable march of the calendar. There are no factual issues regarding the timeliness of Plaintiff's claims. The timeliness of Plaintiff's claims is an essential element, and failure on this point renders all other issues moot. There being no disputed material facts and Defendant Matthew Cody Gunter is entitled to judgment as a matter of law, because of the Plaintiff's failure on an essential element of their claim, that it was timely filed. A

judgment should be entered dismissing this action with prejudice as to Defendant Matthew Cody Gunter and the associated Lis Pendens should be vacated and canceled of record,

s/ D. Randolph Whitt  
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Attorney for Defendant Matthew Cody Gunter

November 4, 2022

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT  
CASE NO. 2021-CP-32-00328

JOHN DEERE CONSTRUCTION & )  
FORESTRY COMPANY, )  
Plaintiff, )  
 )  
v. )

NORTH EDISTO LOGGING, INC.; )  
THE PAUL & BRENDA GUNTER )  
REVOCABLE TRUST UTD MARCH )  
26, 2019; The ESTATE of PAUL D. )  
GUNTER; MATTHEW P. RUSH; )  
and MATTHEW CODY GUNTER, )  
Defendants. )

**MEMORANDUM OF LAW IN  
OPPOSITION TO MOTION FOR  
SUMMARY JUDGMENT OF  
DEFENDANT MATTHEW CODY  
GUNTER**

COMES NOW Plaintiff John Deere Construction & Forestry Company ("Plaintiff"), by and through its undersigned counsel, and respectfully submits this Memorandum of Law in Opposition to the Motion for Summary Judgment ("Motion") filed by Defendant Matthew Cody Gunter ("Cody Gunter" or "Defendant") pursuant to Rule 56 of the South Carolina Rules of Civil Procedure ("Rules"). For the following reasons, Defendant's Motion should be DENIED.

**STATEMENT OF THE CASE**

This fraudulent transfer of real property case arises out of the conveyance of fifteen (15) separate tracts of real property by Defendants North Edisto Logging, Inc. ("NEL") and The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 ("Trust") together with Defendant Paul D. Gunter ("Paul Gunter") and/or the Estate of Paul D. Gunter ("Estate") (collectively, the "Grantors"), along with the alleged concealment of those transactions from the Grantors' creditors. Plaintiff filed a verified Complaint ("Complaint") against the Grantors and Defendant on February 2, 2021. The Complaint alleges, among other things, that the Grantors perpetrated this fraudulent conveyance by transferring title to the fifteen (15) tracts of real property, including a tract to Defendant, for less than fair market value while Grantors were aware of and defending a collection lawsuit that Plaintiff had

instituted in the Lexington County Court of Common Pleas for the Eleventh Judicial Circuit in a case bearing File No. 2018-CP-32-04329 ("2018 Lawsuit"). (*See* Compl. generally). The Grantors and Defendant's calculated and fraudulent behavior forms the basis for Plaintiff's claims in the Complaint.

As to Defendant, the Complaint contains a claim for relief for Fraudulent Conveyance of Property 13<sup>1</sup> pursuant to S.C. Code Ann. § 27-23-10, *et seq.* and a claim for relief for Punitive Damages pursuant to S.C. Code Ann. § 15-32-510, *et seq.* (*See* Compl., Third and Fourth Claims for Relief, respectively). Attached to the Complaint, collectively as Exhibit F, are three separate Lis Pendens bearing File Nos. 2021-LP-32-00006, 2021-LP-32-00007<sup>2</sup>, and 2021-LP-32-00008 (collectively, the "Lis Pendens") that Plaintiff filed on January 14, 2021, with the Lexington County Clerk of Court, concerning the property at issue in the Complaint.

On March 22, 2021, Defendant filed a Motion to Dismiss the Complaint pursuant to Rule 12(b)(1), or in the alternative, Rule 12(b)(6) of the Rules ("12(b) Motion"). The remaining Defendants filed similar motions in this action between March 24, 2021 and April 14, 2021 (collectively with the 12(b) Motion, the "Motions to Dismiss"). The 12(b) Motion sought dismissal of the Complaint on the sole ground that South Carolina's Nonclaim Statute, which is codified in South Carolina's Probate Code ("Probate Code") at S.C. Code Ann. § 62-3-803(a), served as an absolute bar to Plaintiff's claims against Defendant because Paul Gunter died on July 3, 2019, and the Complaint was filed on February 2, 2021, more than one year after July 3, 2019. (*See e.g.*, Motion to Dismiss of Matthew Cody Gunter). In opposing the Motions to Dismiss, including the 12(b) Motion, Plaintiff argued that title disputes are not subject to the Nonclaim Statute, citing to the plain language of the Probate Code. (*See* Memorandum of Law in Opposition to Motions to Dismiss and Motion to Strike, pp. 4-7).

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<sup>1</sup> The Complaint defines Property 13 as being "All of that real property known as Tract B near US Highway 178 consisting of 15.83 acres, more or less, more commonly referred to as North Edisto Road, Leesville, South Carolina, bearing Tax Parcel ID No. 010400-05-021, and being more particularly described in that General Warranty Deed recorded in Book 10439, Page 328 in the Lexington County Register of Deeds office." (*See* Compl., ¶ 21.d.)

<sup>2</sup> This Lis Pendens concerns Property 13. (*See* Compl., ¶ 33.b.).

On June 22, 2022, the Honorable Walton J. McLeod, IV entered an Order denying the Motions to Dismiss, including Defendant's 12(b) Motion ("Order"). The Order, in pertinent part, agrees that the Nonclaim Statute "does not apply to disputes regarding transfer of title to real estate." (*Order* at p. 5).

On November 4, 2022, Defendant filed his Motion pursuant to Rule 56. The Plaintiff now timely files its Memorandum of Law in Opposition to Defendant's Motion and respectfully submits that Defendant's Motion should be denied for the following reasons:

- **There is no genuine issue of material fact that S.C. Code Ann. § 62-3-803(a) does not apply to demands or disputes regarding title to specific assets alleged to be included in the estate.**
- *There is no genuine issue of material fact that Plaintiff's claims against Defendant constitute demands/disputes regarding title to specific assets alleged to be included in the estate and therefore are exempt from the application of S.C. Code Ann. § 62-3-803(a).*

### **STATEMENT OF UNDISPUTED FACTS**

The evidence in this civil action, including the Complaint, establishes the following undisputed facts:

Plaintiff made loans to NEL and Paul Gunter in 2014 and 2015. (Compl. ¶ 11; Answer of Matthew Cody Gunter ¶ 10). Notice of default, notice of acceleration, and demand for payment in full of the loans was made by Plaintiff by letter dated November 7, 2017, and again through counsel on December 10, 2018. (Compl. ¶¶ 15-16; Answer ¶ 12). On December 20, 2018, Plaintiff filed the 2018 Lawsuit, seeking a monetary judgment against NEL and Paul Gunter, jointly and severally. (Compl. ¶ 18; Answer ¶ 13). When the 2018 Lawsuit was filed, NEL and Paul Gunter, together, owned fifteen (15) separate tracts of real property more particularly described in Plaintiff's Complaint, and identified therein as the Property. (Compl. ¶¶ 20-21; Answer ¶¶ 15-16). After the 2018 Lawsuit was filed, the Property was transferred to

the Trust, Defendant, and/or Matthew Rush, and according to the language contained in the deeds themselves, was not exchanged for fair market value. (Compl. ¶¶ 24-30, 46, 68, 91; Answer ¶¶ 17, 25, 36).

Paul Gunter passed away on July 3, 2019, in Lexington County, South Carolina. (*Id.* ¶ 19). Thereafter, on July 11, 2019, Paul Gunter, through his estate, transferred Property 13 to Defendant by a General Warranty Deed dated March 26, 2019 and recorded in Book 20824, Page 5896 in the Lexington County Register of Deeds (the "Cody Gunter Deed"). (Compl. ¶ 26; Answer ¶ 17). A copy of the Cody Gunter Deed is attached as Exhibit C to the Complaint. (Compl., ¶ 27, Exhibit C; Answer ¶ 17).

On December 8, 2020, the Honorable Walton J. McLeod, IV entered Summary Judgment in favor of Plaintiff in the 2018 Lawsuit against NEL and Paul Gunter ("Judgment"). (Compl. ¶¶ 31-32, Exhibit E; Answer ¶ 18).

### **STANDARD OF REVIEW**

Summary judgment is appropriate "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. Rule 56(c), SCRPC. "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (S.C. 2001).

The standard of review on a motion for summary judgment is well settled. The moving party may discharge its burden of proof by showing an "absence of evidence to support the nonmoving party's case," and need not specifically "negat[e] the opponent's claim." *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (S.C. Ct. App. 2004). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Sides*, 362 S.C. at 255, 607 S.E.2d at 364.

## ARGUMENT

As it is undisputed that title to Property 13 was transferred to Defendant during the pendency of the 2018 lawsuit, (see Compl. ¶¶ 26-27, Exhibit C; Answer ¶ 17), the issues to be resolved in ruling on Defendant's Motion are whether: (1) the Nonclaim Statute applies to "demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate", S.C. Code Ann. § 62-1-201(4), and (2) Plaintiff's claims against Defendant constitute such demands/disputes and therefore are exempt from the Nonclaim Statute. As there is no genuine issue of material fact that title disputes are not subject to the Nonclaim Statute and further that Plaintiff's claims against Defendant constitute such demands/disputes, Defendant's Motion should be DENIED.

**A. *There is no genuine issue of material fact that S.C. Code Ann. § 62-3-803(a) does not apply to demands or disputes regarding title to specific assets alleged to be included in the estate.***

The plain language of S. C. Code Ann. § 62-1-201(4) makes clear that its definition of "Claims" applies to the Nonclaim Statute and therefore that the Nonclaim Statute does not apply to demands or disputes regarding title to specific assets alleged to be included in the estate.

In interpreting statutory language, "the cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Books-A-Million, Inc. v. S.C. Dep't of Revenue*, 880 S.E.2d 476 (S.C. 2022) (quoting *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993)). In *Books-A-Million*, the South Carolina Supreme Court, quoting a prior opinion, noted that "the best evidence of legislative intent is the text of the statute". *Id.* (quoting *Creswick v. Univ. of S.C.*, 434 S.C. 77, 82, 862 S.E. 2d 706, 708 (2021)); see also *Wade v. State*, 348 S.C. 255, 259, 559 S.E. 843, 844 (2002). "A court must apply the plain meaning of a statute where its language is unambiguous and conveys a clear meaning." *Id.*; see also *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000). In such circumstances, "the rules of statutory interpretation are not needed, and the Court

has no right to impose another meaning." *State v. Taylor*, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022); *Pope v. Gordon*, 359 S.C. 572, 581, 598 S.E.2d 288, 293 (S.C. Ct. App. 2004). The plain language of the statute "must be construed in light of its intended purpose," with the Court giving the words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.*; see also *Pope*, 359 S.C. at 581, 598 S.E.2d at 293 (holding that "legislative intent must prevail if it reasonably can be discovered in the language used . . . [when] construed in the light of the intended purpose of the statute"). Importantly, the court should not focus on any particular part, section or provision, but "should consider the language of the statute as a whole." *Taylor*, 436 S.C. at 34, 870 S.E.2d at 171.

Here, the legislature's intent to exempt from the Nonclaims Statute claims involving title disputes, such as disputes regarding the transfer of title to real property, is clearly defined in the Probate Code. Accordingly, there is no need to speculate as to how the legislature may have drafted the Nonclaim Statute differently or to resort to subtle or forced constructions of its plain written language.

At the beginning of the Probate Code's general definitions, the legislature saw fit to state the following: "Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, **and** unless the context otherwise requires, in this Code". S.C. Code Ann. § 62-1-201 (emphasis added). This language makes clear that the general definitions apply throughout the Probate Code, of which the Nonclaim Statute is a part, and that those additional definitions apply subject to additional definitions contained in later articles unless the context in the Probate Code otherwise requires. What the language does not state or support is that the general definitions do not apply in circumstances where additional definitions are lacking. That is, if there are no additional definitions in a given article or part, the "and unless the context otherwise requires" language does not apply. If the legislature had intended for the "unless the context otherwise requires" language to apply in the absence of additional definitions in a given article or part, the legislature could (and presumably would) have stated as follows: "Subject to additional definitions contained in the subsequent articles

which are applicable to specific articles or parts, or unless the context otherwise requires, in this Code". It did not.

The Probate Code's general definitions defines the word "Claims" as follows:

(4) 'Claims', in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. **The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.**

S.C. Code Ann. § 62-1-201(4) (emphasis added).

The Nonclaim Statute states in pertinent part:

All claims<sup>3</sup> against a decedent's estate which arose before the death of the decedent, including claims of the State and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute or limitations or nonclaim statute; are barred against the estate, the personal representative, the decedent's heirs and devisees, and nonprobate transferees of the decedent; unless presented within the earlier of the following:

(1) one year after the decedent's death

\*\*\*

S.C. Code Ann. § 62-3-803(a) (emphasis added). The Nonclaim Statute does not contain any additional definitions. The defined terms it contains are all found in the general definitions. *See e.g.*, S.C. Code Ann. § 62-1-201(4) ("Claims"), (8) ("Devisee"), (11) ("Estate"), (20) ("Heirs"), (28) ("Mortgage"), (33) ("Personal representative"), (36)

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<sup>3</sup> While the use of "claims" here is not capitalized, this has no bearing on whether it is the defined term of claims utilized in Section 62-2-201(4). This is clear from the reference in the Nonclaim Statute to a number of other terms defined in the general definitions that are likewise not capitalized like "protected person", "conservator", and "estate" by way of example. *See e.g.*, S.C. Code. Ann. 62-2-201(38), (6), and (11).

("Proceeding"), (42) ("Security Interest"), and (45) ("State"). In the absence of additional definitions, the language of § 62-2-201 is clear: the general definition of "claims", including its carve out for title disputes, is the definition of claims that applies to the Nonclaim Statute. And when that definition is applied, the Probate Code clearly and unequivocally excludes from the Nonclaim Statute demands or disputes over title to specific assets alleged to be included in the estate such as title to real property as is the case in the instant Complaint.

Though the plain language of the Probate Code itself is clear regarding the exclusion, case law expressly discussing the exclusion of title disputes from the definition of "claims" under the Probate Code, and more specifically the Nonclaim Statute, is limited. It appears that there are only two cases that touch on the specific issue, and while both may serve as persuasive authority for this Honorable Court's consideration, neither are binding authority upon it.

The first is a South Carolina Supreme Court opinion where *in dicta* the Court noted in a footnote in a matter involving a dispute related to a gun as well as money that "[b]ecause the estate asserts no interest in the gun, the issue of title to the gun is not subject matter related to the estate of the decedent," and "[t]he jurisdiction of the probate court extends to subject matter related to estates of decedents." *Matter of Howard*, 315 S.C. 356, 364, 434 S.E.2d 254, 259 (1993). The Court went on to note that

Had the estate asserted an interest in the gun, the result would be the same. The definition of 'claims' in the Probate Code expressly excludes disputes regarding title of a decedent to specific assets alleged to be included in the estate. S.C. Code Ann. § 62-1-201(4) (1986). Therefore, the dispute about title to the gun is not a 'claim' that could be presented to the probate court under Section 62-3-806.

*Id.*, n. 8.

The second is an unpublished opinion that the South Carolina Court of Appeals issued in July of 2021 when it appears to have addressed the issue for the first time. See *Matter of Estate of Tims*, Op. No. 2018-001605, 2021 WL 3076685 (S.C.

Ct. App. filed July 21, 2021)<sup>4</sup>. In *Estate of Tims*, the appellant asked the Court to find that the trial court erred by finding that a dispute involving title to real property was not barred by the Nonclaim Statute. *Id.* The Court declined to find error and affirmed the trial court's ruling. *Id.* at \*6. In doing so, the Court cited to § 62-1-201(4) and noted that it "explicitly excludes" from the definition of claims "disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate." *Id.* at \*3. The Court ultimately found that the action did not fall within the definition of claims under § 62-2-201(4) because it was a dispute regarding title to a specific asset and went on to reference *Matter of Howard*, 315 S.C. at 364 n.8, 434 S.E.2d at 259 n.8. *Id.* The Court also agreed with the circuit court that "actions for specific assets are not barred because they are not actions or liabilities against Decedent's estate, but disputes over ownership of specific assets in the hands of the personal representative(s)." *Id.*

As there is no genuine issue of material fact that title disputes are exempt from the Nonclaim Statute, Defendant's Motion should be DENIED.

***B. There is no genuine issue of material fact that Plaintiff's claims against Defendant constitute demands/disputes regarding title to specific assets alleged to be included in the estate and therefore are exempt from the application of S.C. Code Ann. § 62-3-803(a).***

The allegations of Plaintiff's claims against Defendant make clear that those claims constitute demands/disputes regarding title to specific assets alleged to be included in the estate, and are therefore exempt from the Nonclaim Statute regardless of whether those claims sound in contract, tort, or otherwise.

While Defendant is correct that Plaintiff's claim is for fraudulent conveyance, he incorrectly applies the definition of "claims" applicable to the Nonclaim Statute. Defendant argues that the Nonclaim Statute has a broad definition of claims that excepts fraud claims while ignoring wholesale the following

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<sup>4</sup> Plaintiff recognizes this opinion, as an unpublished opinion, has no precedential value and does not present this opinion as if it has such value. However, as this case appears to be the only time the Court of Appeals has considered the issue, it is presented for the persuasive authority it may offer.

part of the definition of "claims": "The term [claims] does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate." S.C. Code Ann. § 62-1-201(4). That part of the definition of claims follows a portion of the definition where the legislature specifically makes reference to the inclusion of liabilities "whether arising in contract, in tort, or otherwise". *Id.*

It is telling that not a single case to which Defendant cites to support his Motion involves demands or disputes regarding title to specific assets. Rather, each pertains to demands/disputes regarding the recovery of monetary relief. *See, e.g., In re Estate of Hover*, 407 S.C. 194, 754 S.E.2d 875 (applying the Nonclaim Statute to claim for a monetary deficiency judgment); *Phillips v. Quick*, 399 S.C. 226, 228, 731 S.E.2d 327, 328 (S.C. Ct. App. 2012) (applying the Nonclaim Statute to claim to recover funds allegedly converted); *Matter of Estate of Tollison*, 320 S.C. 132, 134, 463 S.E.2d 611, 612–13 (S.C. Ct. App. 1995) (considering claim made to probate court concerning recovery of settlement funds). The Motion does not reference a single case in which the Nonclaim Statute was applied to bar a claim involving a demand or dispute over title.

Because Plaintiff's claims in this case seek an order setting aside the transfer of title to fifteen (15) separate parcels of real property that are alleged to be included in the estate, including Property 13 to Defendant, they necessarily constitute demands/disputes regarding transfer of title that are exempt from the Nonclaim Statute, making the theory of liability in which those claims sound (tort, contract, or otherwise) immaterial to the analysis.<sup>5</sup> Since title disputes are not subject to the Nonclaim Statute, Defendant's Motion should be DENIED.

### CONCLUSION

Wherefore, based on the foregoing, Plaintiff respectfully requests that the Court DENY Defendant's Motion for Summary Judgment with prejudice.

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<sup>5</sup> Plaintiff did pursue monetary claims against decedent Paul Gunter in the 2018 Lawsuit. Those monetary claims were reduced to Judgment against NEL, Paul Gunter and/or the Estate on December 8, 2020, and are not at issue in this lawsuit.

John Deere Construction & Forestry Company, by  
and through its attorneys:

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Raleigh, North Carolina  
December 30th, 2022

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
Case No. 2021-CP-32-00328

John Deere Construction & Forestry  
Company,

Plaintiff,

vs.

North Edisto Logging, INC.;  
The Paul & Brenda Gunter  
Revocable Trust UTD March  
26, 2019; The Estate of Paul D.  
Gunter; Matthew P. Rush; and  
Matthew Cody Gunter,

Defendants.

MOTION FOR SUMMARY JUDGMENT

The Paul & Brenda Gunter  
Revocable Trust UTD March 26, 2019;  
The Estate of Paul D. Gunter

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE that The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 and The Estate of Paul D. Gunter will move before the a Judge of the Court of Common Pleas for Lexington County, South Carolina, at a time and place and manner set by the court, for an Order on the issues set forth herein, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure (SCRCP) because there are no material issues of fact and movant is entitled to judgment as a matter of law.

Material Facts

Paul D. Gunter died on July 3, 2019. (See Complaint ¶ 19)

This action was filed on February 2, 2021. (See Complaint generally)

February 2, 2021 is more than one year after July 3, 2019.

Defendant The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 acquired the property that it owns that is subject to this action by virtue of a deed from Paul D. Gunter. (See Complaint ¶ 25 )

Defendant The Estate of Paul D. Gunter is an estate as contemplated by S.C. Code §62-3-803.(See Complaint generally )

#### Standard for Summary Judgment

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the Court should view the evidence in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493–94, 567 S.E.2d 857, 860 (2002). Naturally, “[a] court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth the facts that remain undisputed . . . .” *David v. McLeod Reg’l Mdl. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). Entry of summary judgment is mandated, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish that existence of an element essential to that party’s case. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-546 (1991) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 317 (1986)). In that kind of 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.” *Id.* at 116, 410 S.E.2d at 546. “The moving party is entitled to a judgment as a matter of law because the nonmoving party has not made a sufficient showing on an essential element of their case for which

they have the burden of proof.” Id.

### The Nonclaim Statute

S.C. Code §62-3-803(a) provides:

#### SECTION 62-3-803. Limitations on presentation of claims.

(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or nonclaim statute; **are barred against the estate**, the personal representative, the decedent's heirs and devisees, and **nonprobate transferees** of the decedent; unless presented within the **earlier of the following**:

- (1) **one year after the decedent's death**; or
- (2) the time provided by Section 62-3-801(b) for creditors who are given actual notice, and within the time provided in Section 62-3-801(a) for all creditors barred by publication. [Emphasis added]

### The Significance of a Nonclaim Statute

The fact that S.C. Code §62-3-803(a) is a nonclaim statute has been conclusively established by our Appellate Courts. See Estate of Tollison 320 S.C. 132,135, 63 S.E. 2D 611,613 (S.C. App 1995) (“Section 62-3-803 is a nonclaim statute. See A. McCoy's, Inc. v Garner, 281 S.C. 378,315 S.E.2d 812 (Ct.App.1984) (finding former section 21-15-640 a nonclaim statute). Thus, unless the statute is complied with, the creditor's claim is barred. Id. “). Estate of Tollison was cited with approval by our Supreme Court in In Re Estate of Hover 407 S.C. 194, 754 S.E.2d 875(2014).

A nonclaim statute is fundamentally different, and a dramatically stronger bar than a statute of limitations. See In Re Estate of Hover (“In contrast to the Bank's characterization, the nonclaim statute is not a general statute of limitations as the two statutes are fundamentally and operationally distinct”)

In Phillips v. Quick, 399 S.C. 226, 731 SE 2d 327 (S.C. App. 2012) the S.C. Court of Appeals adopted the following analysis:

[A] nonclaim statute ... grants to every person having a claim of any kind or character against a decedent's estate, the right to file the same in the court having jurisdiction thereof and have the same adjudicated, provided such claim is filed within the time specified in the statute. Unless such claim is filed within the time so allowed by the statute, it is forever barred. The time element is a built-in condition of the said statute and is of the essence of the right of action. Unless the claim is filed within the prescribed time set out in the statute, no enforceable right of action is created. While such statutes limit the time in which a claim may be filed or an action brought, they have nothing in common with and are not to be confused with general statutes of limitation. The former creates a right of action if commenced within the time prescribed by the statute, whereas the latter creates a defense to an action brought after the expiration of the time allowed by law for the bringing of such an action.

Estate of Decker v. Farm Credit Servs. of Mid-Am., ACA, 684 N.E.2d 1137, 1138-39 (Ind.1997) (quoting Donnella v. Crady, 135 Ind.App. 60, 185 N.E.2d 623, 624-25 (1962)).

### The Order on the Motion to Dismiss

An Order filed on June 22, 2022 provides:

“The Court finds a central tenant of the rules of statutory construction is that every word of the legislative enactment should be given credence. Adopting the restrictive Section 201 definition of claims would read many of the words of Section 804 out of existence and render them meaningless. The context and specifics of Section 804 also compel the conclusion that an expansive definition of claims is intended for the nonclaim statute.”

The order further provides :

“While, Paul Gunter died intestate, and no estate file has been opened with the probate court, the Court finds Plaintiff had ample opportunity to file claims under the Probate Code. S.C. Code §62-3-203(a)(6) allows a creditor to open an estate forty-five days after the death of the decedent. Additionally, S.C. Code §62-3-804(1)(b) references “a creditor seeking appointment as personal representative pursuant to Section 62-3-203(a)(6).” Therefore, Plaintiff arguably had an opportunity to assert its claim in a probate proceeding any time between forty-six days and threehundred sixty-four days after the Decedent’s death and failed to do so. “

## The Nonclaim Statute Applies to Fraud Claims

Plaintiff argues that notwithstanding the expansive definition of claims in Section 803, the claims are still somehow excluded because of the alleged fraud. This is at odds with the language of the statute which expressly includes claims based on “contract, tort, or other legal basis” without any indication that any subclass of these three categories are excluded. Adding the phrase “except fraud claims” would have been a simple way to convey this intent, if that had been the will of the General Assembly. The absence of such a phrase strongly indicates that no such intent existed and that neither fraud claims, nor anything else was meant to be excluded.

There is also no hint of a fraud exception in the case law. A claim for misappropriation of funds held in a Uniform Gift to Minors Act account was barred in *Phillips v. Quick*, 399 S.C. 226, 731 SE 2d 327 (S.C. App. 2012). Claims for both fraud and constructive fraud were barred in *In Re Estate of Hover* 407 S.C. 194, 754 S.E.2d 875(2014).

### Further Distinctions

One of the straws at which the Plaintiff may clutch is the discovery rule. However, the S.C. Court of Appeals closed off this argument in *Phillips v. Quick*, 399 S.C. 226, 231; 731 SE 2d 327 (S.C. App. 2012) “Because we find no indication our legislature intended for the discovery rule to apply to the nonclaim statute, we conclude this rule does not extend to section 62-3-803.”

Likewise, equitable considerations are unavailing in this context. See *In Re Estate of Hover* 407 S.C. 194, 754 S.E.2d 875(2014) to the effect that:

Furthermore, even though a decision in favor of the Estate may appear inequitable, equitable considerations are not a factor in the claims-barring analysis. Thus, neither Hover's continued payment on the Note after his mother's death or the act of default in the foreclosure proceedings can "override" or eliminate the nonclaim statute as this statute has been strictly applied in similar circumstances. See *Phillips v. Quick*, 399 S.C. 226, 230, 731 S.E.2d 327, 329 (Ct.App.2012) (“While equitable principles may extend the time for commencing an action under statutes of limitation, nonclaim statutes impose a

condition precedent to the enforcement of a right of action and are not subject to equitable exceptions." (quoting Estate of Decker v. Farm Credit Servs. of Mid-Am, ACA, 684 N.E.2d 1137, 1139 (Ind.1997)); 34 C.J.S. Executors & Administrators § 547 (Supp.2013) ("Misleading statements, assurances, or conduct of the representative inducing a creditor to refrain from the due presentation of his or her claim do not estop the representative from contesting the claim because of such a failure to present the claim."). See generally E.W.H., Annotation, Effect of Conduct of Personal Representative Preventing Filing of Claims Within Time Allowed by Statute of Nonclaim, 66 A.L.R. 1415 (1930) (citing state and federal cases addressing the general rule that no promise on the part of a personal representative is sufficient to prevent the bar of the statute as to a claim not filed within the statutory period)."

The entry of a deficiency judgment on Plaintiffs underlying action also if of no help to them.

See In Re Estate of Hover 407 S.C. 194, 754 S.E.2d 875(2014) which held that: "Although the deficiency judgment was entered after the claims-filing time limits and arguably "arose after the decedent's death, this fact did not "toll" the time limits of the nonclaim statute as the claim that formed the basis of the deficiency judgment arose long before the deficiency judgment was entered. (Footnote omitted)

#### Conclusion

That Defendant The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 is a nonprobate transferee of the decedent Paul D. Gunter is established by the deeds cited in and attached to the Plaintiff's Complaint. The Defendant The Estate of Paul D. Gunter is an estate as contemplated by S.C. Code §62-3-803. The Complaint also establishes Paul D. Gunter's date of death and that this action was filed more than one year later. S.C. Code §62-3-803(a) therefore serves as an absolute bar against this action as to these Defendants . No other considerations can save the Plaintiff from the inexorable march of the calendar.

There are no factual issues regarding the timeliness of Plaintiff's claims. The timeliness of Plaintiff's claims is an essential element, and failure on this point renders all other issues moot. There being no disputed material facts and these Defendants are entitled to judgment as a matter of law, because of the Plaintiff's failure on an essential element of their claim, that it was timely filed. A judgment should

be entered dismissing this action with prejudice as to these Defendants and the associated Lis Pendens should be vacated and canceled of record,

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January 13, 2023