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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 II

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March 10, 2025

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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.

**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT  
The Paul & Brenda Gunter  
Revocable Trust UTD March 26, 2019;  
The Estate of Paul D. Gunter**

The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 and The Estate of Paul D. Gunter offer this memorandum of law in support of their motion 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.

**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 Statutory Language Regarding Claims**

Subsection (a) of the nonclaim statute begins with the following in identifying the claims covered by the statute:

**“All claims** against a decedent's estate which arose before the death of the decedent,”

It is difficult to imagine a broader description than “All Claims”.

The subsection continues:

**“including claims of the State and any political subdivision thereof”**

This clause makes it clear there is no government claims exception to “All Claims”

The next clause reads:

**“whether due or to become due”**

This clause makes it clear there is no due date exception to “All Claims”

Next up is:

**“absolute or contingent”**

Every claim is either absolute, or contingent, there are no other possibilities. By adding each of these two categories, which together cover the entire universe of claims, our General Assembly amplified that “All Claims” means exactly what it says.

The General Assembly continues with:

**“liquidated or unliquidated”**

Every claim is either liquidated or unliquidated, there are no other possibilities. By adding each of these two categories, which together cover the entire universe of claims, our General Assembly amplified that “All Claims” means exactly what it says.

Finally the list concludes with:

**“founded on contract, tort, or other legal basis”**

Once again, every claim that exists falls in one of these three categories. This language would also clearly include Plaintiff's claims which they characterize as “title disputes”.

Our General Assembly went to great lengths to make it clear that “All Claims” means all claims without exception.

### **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 three hundred sixty-four days after the Decedent’s death and failed to do so. “

### **Plaintiff's Section 201 Argument**

The Plaintiff argues that despite the language of Section 803 discussed in detail above, the Genral Assembly didn't mean any of those words, but really meant not “All Claims” but “claims as defined in Section 62-1-201(4).” It is curious that our General Assembly didn't just refer to Section 201 if that was their intent, and even more curious that they would have included all of the contrary language discussed above. The general definitions section of the probate code makes it clear that the general provisions must yield to specific later provisions by saying : 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.

It is also a central tenet of statutory construction to give effect to every word of a legislative enactment. Plaintiff's argument reads all of the carefully chosen groups of attributes discussed above out of existence.

### **The March 2 Order**

Judge Maddox issued an Order on March 2, in a motion by another defendant in this matter regarding identical issues. This order adopts the Section 201 argument that Judge McLeod rejected and with utmost respect, these defendants assert that this order is incorrect and a motion to reconsider is being drafted.

### **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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Attorney for Defendant The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019, and  
Defendant The Estate of Paul D. Gunter

March 3, 2023

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.

**Answer of Matthew Cody Gunter  
(Jury Trial Demanded)**

Defendant offers this Answer to the Complaint filed February 2, 2021.

- 1) Each allegation not hereafter expressly admitted or qualified is hereby denied.

**For a First Defense  
(Nonclaim Statute S.C. Code §62-3-803(a))**

- 2) Paul D. Gunter died on July 3, 2019. (See Complaint ¶ 19)
- 3) This action was filed on February 2, 2021. (See Complaint generally)
- 4) February 2, 2021 is more than one year after July 3, 2019.
- 5) 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)
- 6) 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]

7) Therefore, the Plaintiff's action is time barred and should never have been filed.

### Specific Responses

8) The allegations of Paragraphs 1 through 9 are admitted, except the allegation that Paul R. Gunter is the trustee of the trust named as a Defendant in this action, which is denied

9) As to the allegations of Paragraph 10, 35, 63, 84, and 107, Defendant realleges his corresponding responses.

10) The allegations of Paragraph 11 and 13 are admitted.

11) The allegations of Paragraph 12, 14, 31, 57, 61, 62, 78, 82, 83, 101, 105 and 106 are denied as all being premised on Plaintiff's delusional belief that it has a money judgment in its 2018 action. Plaintiffs counsel has no basis for persisting in this delusion since a telephone status conference with Judge McLeod in July of 2021 in which the issuance of an execution of judgment was refused.

12) The allegations of Paragraphs 15, 16 and 17 are admitted

13) As to the allegations of Paragraph 18, the filing of the action is admitted, but the existence of a default is denied.

14) The Allegations of Paragraph 19 are admitted.

15) The Allegations of Paragraph 20 are admitted, except that Plaintiff has abandoned its claim to Property 2 as identified in 20(b).

- 16) The Allegations of Paragraphs 21 and 22 are admitted.
- 17) The Allegations of Paragraphs 23, 24, 25, 26, 27, 28, 29 and 30 are admitted.
- 18) As to the Allegations of Paragraph 32, that a copy of the order is attached is admitted, however, Defendant reiterates the allegations of Paragraph 11 of this answer regarding the absence of any money judgment.
- 19) The Allegations of Paragraph 33 and 34 are admitted, except that Plaintiff has withdrawn its Lis Pendens as to Property 2 as identified in Paragraph 20(b).
- 20) The Allegations of Paragraph 36 are denied and are incorrect on their face as a matter of law, the trustee of a trust controls its property.
- 21) The allegations of Paragraph 37 are denied. Paul R. Gunter is not now, and has not at any time in the past been the trustee of the trust.
- 22) The allegations of paragraphs 38, 41 and 52 regarding Paul R. Gunter are therefore based on a false premise, are immaterial and are denied as such.
- 23) The repetition of the Allegations of Paragraph 37 in Paragraph 39 do not render them any less incorrect and they are denied again.
- 24) The Allegations of Paragraph 40 and 42 are denied.
- 25) As to the Allegations of Paragraphs 43, 44, 45, 46 and 47, the consideration stated in the deed speaks for itself.
- 26) The allegations of Paragraphs 48,49 and 50 are denied.
- 27) The allegations of Paragraph 51 are admitted.
- 28) The allegations of Paragraph 53, 54 and 55 are denied.
- 29) The allegations of Paragraphs 56 and 58 are admitted, except to the extent Paragraph 58 refers to Plaintiff's imaginary Judgment.
- 30) The allegations of Paragraph 59 and 60 are denied.
- 31) The allegations of Paragraphs 62 through 77, 80 and 81 involve a transaction that Defendant

was not involved in, therefore he lacks sufficient information and denies them.

- 32) The allegations of Paragraph 79 are admitted, except to the extent Paragraph 79 refers to Plaintiff's imaginary Judgment.
- 33) The allegations of Paragraph 85 are admitted
- 34) The allegations of Paragraph 86 are admitted except the characterization as a "interested party".
- 35) The allegations of Paragraph 87 and 88 are denied.
- 36) As to the Allegations of Paragraphs 89, 90, 91 and 92, the consideration stated in the deed speaks for itself.
- 37) The allegations of Paragraph 93, 94 and 95 are denied.
- 38) The allegations of Paragraph 96 are admitted.
- 39) The allegations of Paragraph 97, 98 and 99 are denied.
- 40) The allegations of Paragraph 100 are admitted.
- 41) The allegations of Paragraph 102 are admitted, except to the extent Paragraph 102 refers to Plaintiff's imaginary Judgment.
- 42) The allegations of Paragraph 103, 104 and 108 through 115 are denied.

Therefore, Defendant requests that the Court deny the relief sought by the Plaintiff in its time barred complaint.

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Attorney for Defendant Matthew Cody Gunter

July 7, 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.

**Answer of North Edisto Logging, INC  
(Jury Trial Demanded)**

Defendant North Edisto Logging, INC offers this Answer to the Complaint filed February 2, 2021.

- 1) Each allegation not hereafter expressly admitted or qualified is hereby denied.

**Specific Responses**

- 2) The allegations of Paragraphs 1 through 9 are admitted, except the allegation that Paul R. Gunter is the trustee of the trust named as a Defendant in this action, which is denied
- 3) As to the allegations of Paragraph 10, 35, 63, 84, and 107, Defendant realleges his corresponding responses.
- 4) The allegations of Paragraph 11 and 13 are admitted.
- 5) The allegations of Paragraph 12, 14, 31, 57, 61, 62, 78, 82, 83, 101, 105 and 106 are denied as all being premised on Plaintiff's delusional belief that it has a money judgment in its 2018 action. Plaintiffs counsel has no basis for persisting in this delusion since a telephone status

conference with Judge McLeod in July of 2021 in which the issuance of an execution of judgment was refused.

- 6) The allegations of Paragraphs 15, 16 and 17 are admitted
- 7) As to the allegations of Paragraph 18, the filing of the action is admitted, but the existence of a default is denied.
- 8) The Allegations of Paragraph 19 are admitted.
- 9) The Allegations of Paragraph 20 are admitted, except that Plaintiff has abandoned its claim to Property 2 as identified in 20(b).
- 10) The Allegations of Paragraphs 21 and 22 are admitted.
- 11) The Allegations of Paragraphs 23, 24, 25, 26, 27, 28, 29 and 30 are admitted.
- 12) As to the Allegations of Paragraph 32, that a copy of the order is attached is admitted, however, Defendant reiterates the allegations of Paragraph 11 of this answer regarding the absence of any money judgment.
- 13) The Allegations of Paragraph 33 and 34 are admitted, except that Plaintiff has withdrawn its Lis Pendens as to Property 2 as identified in Paragraph 20(b).
- 14) The Allegations of Paragraph 36 are denied and are incorrect on their face as a matter of law, the trustee of a trust controls its property.
- 15) The allegations of Paragraph 37 are denied. Paul R. Gunter is not now, and has not at any time in the past been the trustee of the trust.
- 16) The allegations of paragraphs 38, 41 and 52 regarding Paul R. Gunter are therefore based on a false premise, are immaterial and are denied as such.
- 17) The repetition of the Allegations of Paragraph 37 in Paragraph 39 do not render them any less incorrect and they are denied again.
- 18) The Allegations of Paragraph 40 and 42 are denied.
- 19) As to the Allegations of Paragraphs 43, 44, 45, 46 and 47, the consideration stated in the deed

speaks for itself.

- 20) The allegations of Paragraphs 48,49 and 50 are denied.
- 21) The allegations of Paragraph 51 are admitted.
- 22) The allegations of Paragraph 53, 54 and 55 are denied.
- 23) The allegations of Paragraphs 56 and 58 are admitted, except to the extent Paragraph 58 refers to Plaintiff's imaginary Judgment.
- 24) The allegations of Paragraph 59 and 60 are denied.
- 25) The allegations of Paragraphs 64 are admitted.
- 26) The allegations of Paragraph 65 through 72 are denied.
- 27) The allegations of Paragraph 73 are admitted/
- 28) The allegations of Paragraph 74 through 78 are denied.
- 29) The allegations of Paragraph 79 are admitted, except to the extent Paragraph 79 refers to Plaintiff's imaginary Judgment.
- 30) The allegations of Paragraph 80 and 81 are denied.
- 31) The allegations of Paragraph 85 are admitted
- 32) The allegations of Paragraph 86 are admitted except the characterization as a "interested party".
- 33) The allegations of Paragraph 87 and 88 are denied.
- 34) As to the Allegations of Paragraphs 89, 90, 91 and 92, the consideration stated in the deed speaks for itself.
- 35) The allegations of Paragraph 93, 94 and 95 are denied.
- 36) The allegations of Paragraph 96 are admitted.
- 37) The allegations of Paragraph 97, 98 and 99 are denied.
- 38) The allegations of Paragraph 100 are admitted.
- 39) The allegations of Paragraph 102 are admitted, except to the extent Paragraph 102 refers to

Plaintiff's imaginary Judgment.

40) The allegations of Paragraph 103, 104 and 108 through 115 are denied.

Therefore, Defendant requests that the Court deny the relief sought by the Plaintiff.

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Attorney for Defendant North Edisto Logging, INC

July 7, 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.

**Answer of The Paul & Brenda Gunter Trust  
And The Estate of Paul D. Gunter  
(Jury Trial Demanded)**

Defendants The Paul & Brenda Gunter Trust And The Estate of Paul D. Gunter (Defendants) offer this Answer to the Complaint filed February 2, 2021.

- 1) Each allegation not hereafter expressly admitted or qualified is hereby denied.

**For a First Defense  
(Nonclaim Statute S.C. Code §62-3-803(a))**

- 2) Paul D. Gunter died on July 3, 2019. (See Complaint ¶ 19)
- 3) This action was filed on February 2, 2021. (See Complaint generally)
- 4) February 2, 2021 is more than one year after July 3, 2019.
- 5) 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)

- 6) 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.
- 7) 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]
- 8) Therefore, the Plaintiff's action is time barred and should never have been filed.

**Specific Responses**

- 9) The allegations of Paragraphs 1 through 9 are admitted, except the allegation that Paul R. Gunter is the trustee of the trust named as a Defendant in this action, which is denied
- 10) As to the allegations of Paragraph 10, 35, 63, 84, and 107, Defendant realleges his corresponding responses.
- 11) The allegations of Paragraph 11 and 13 are admitted.
- 12) The allegations of Paragraph 12, 14, 31, 57, 61, 62, 78, 82, 83, 101, 105 and 106 are denied as all being premised on Plaintiff's delusional belief that it has a money judgment in its 2018 action. Plaintiffs counsel has no basis for persisting in this delusion since a telephone status conference with Judge McLeod in July of 2021 in which the issuance of an execution of judgment was refused.
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- 21) The Allegations of Paragraph 36 are denied and are incorrect on their face as a matter of law, the trustee of a trust controls its property.
- 22) The allegations of Paragraph 37 are denied. Paul R. Gunter is not now, and has not at any time in the past been the trustee of the trust.
- 23) The allegations of paragraphs 38, 41 and 52 regarding Paul R. Gunter are therefore based on a false premise, are immaterial and are denied as such.
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- 29) The allegations of Paragraph 53, 54 and 55 are denied.
- 30) The allegations of Paragraphs 56 and 58 are admitted, except to the extent Paragraph 58 refers to Plaintiff's imaginary Judgment.
- 31) The allegations of Paragraph 59 and 60 are denied.
- 32) The allegations of Paragraphs 64 are admitted.
- 33) The allegations of Paragraph 65 through 72 are denied.
- 34) The allegations of Paragraph 73 are admitted/
- 35) The allegations of Paragraph 74 through 78 are denied.
- 36) The allegations of Paragraph 79 are admitted, except to the extent Paragraph 79 refers to Plaintiff's imaginary Judgment.
- 37) The allegations of Paragraph 80 and 81 are denied.
- 38) The allegations of Paragraph 85 are admitted
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- 40) The allegations of Paragraph 87 and 88 are denied.
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- 42) The allegations of Paragraph 93, 94 and 95 are denied.
- 43) The allegations of Paragraph 96 are admitted.
- 44) The allegations of Paragraph 97, 98 and 99 are denied.
- 45) The allegations of Paragraph 100 are admitted.
- 46) The allegations of Paragraph 102 are admitted, except to the extent Paragraph 102 refers to Plaintiff's imaginary Judgment.
- 47) The allegations of Paragraph 103, 104 and 108 through 115 are denied.

Therefore, Defendants request that the Court deny the relief sought by the Plaintiff in its time barred complaint.

s/ D. Randolph Whitt  
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Attorney for Defendants The Paul & Brenda Gunter Trust And The Estate of Paul D. Gunter

July 7, 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.

**JOINT STIPULATIONS  
OF FACTS**

NOW COME Plaintiff John Deere Construction & Forestry Company ("Plaintiff"), and Defendants North Edisto Logging, Inc. ("NEL"), The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 ("Trust"), The Estate of Paul D. Gunter ("Estate"), and Matthew Cody Gunter (collectively, "Defendants"), collectively the "Parties," by and through their respective undersigned counsels, to respectfully submit stipulations of agreed facts. The Parties hereby stipulate to the following uncontested and agreed upon facts and statements for all purposes in this proceeding:

1. On December 20, 2018, Plaintiff filed its verified Complaint in the Court of Common Pleas, Eleventh Judicial Circuit, County of Lexington, bearing case no. 2018-CP-3204329, in part, to obtain a money judgment against NEL and Paul D. Gunter for a debt allegedly owed to Plaintiff ("Collection Lawsuit").
2. As of November 15, 2018, Paul D. Gunter and NEL were indebted to Plaintiff.
3. Neither Paul D. Gunter nor NEL have made a payment on the indebtedness since January 13, 2017.
4. Brenda W. Gunter was Paul D. Gunter's spouse in 2019.
5. Paul Rockford "Rocky" Gunter is Paul D. Gunter's son.

6. Paula Gunter Kneece f/k/a Paula L. Gunter is Paul D. Gunter's daughter.
7. Debra Gunter Rush is Paul D. Gunter's daughter.
8. Matthew Cody Gunter is Paul D. Gunter's grandson.
9. Each of Paul D. Gunter's family members listed above knew about the Collection Lawsuit while it was pending.
10. Before his death, Paul D. Gunter was the 100% owner and President of NEL and controlled all decisions and actions of NEL.
11. Paul D. Gunter died intestate on July 3, 2019.
12. Thereafter, Paul Rockford "Rocky" Gunter became the 100% owner and President of NEL and controlled all decisions and actions of NEL.
13. On March 26, 2019, Paul D. Gunter and Brenda W. Gunter signed the Paul and Brenda Gunter Revocable Trust Agreement ("Revocable Trust").
14. Paul D. Gunter and Brenda W. Gunter are the only Settlers/Trustees of the Revocable Trust.
15. No schedules or amendments to the Revocable Trust exist.
16. In 2019, NEL and Paul D. Gunter transferred the property listed in the attached **Exhibit A** ("Property").
17. 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.
18. 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.
19. On March 26, 2019, Paul D. Gunter voluntarily signed a deed to transfer Property No. 13 to Matthew Cody Gunter.
20. The deeds transferring Property Nos. 1-15 were all recorded on July 11, 2019.
21. No consideration was given to NEL and/or Paul D. Gunter in exchange for any of the transfers of the Property.

Respectfully submitted this 31st day of January, 2024.

**SO STIPULATED:**

/s/ Amy H. Wooten

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North Edisto Logging, Inc., The  
Paul and Brenda Gunter  
Revocable Trust UTD March 26,  
2019, The Estate of Paul D.  
Gunter, and Matthew Cody  
Gunter**

# EXHIBIT A

## Table of Property

| Property No. | Tax Parcel No.                 | Owner of Property on<br>Date Collection<br>Lawsuit<br>Complaint filed | Description                                                                                                        | Tax Value    | Bates #                      |
|--------------|--------------------------------|-----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|--------------|------------------------------|
| 1            | 011418-01-041                  | NEL                                                                   | 252 Sugar Bottom Rd., Leesville, SC<br>- Lot 41 (1.96 acres); Lot 42<br>(2.01 acres) West Fairview<br>Farms, Ph II | \$69,730.00  | Deere000001-<br>Deere000317  |
| 2            | 011417-01-004                  | NEL                                                                   | 319 Sugar Bottom Rd., Leesville, SC<br>- Lot 4 (3.48 acres) Candy Bar<br>Ranches subdivision                       | \$92,317.00  | Deere000318-<br>Deere000608  |
| 3            | 012500-02-002                  | NEL                                                                   | 341 Convent Church Rd., Leesville, SC<br>- Parcel C (10.00 acres)                                                  | \$46,090.00  | Deere000609-<br>Deere000740  |
| 4            | 010400-03-009                  | NEL                                                                   | Steedman Rd., Leesville, SC<br>- Western portion of Tract 2<br>(60.00 acres)                                       | \$135,100.00 | Deere-000741-<br>Deere000931 |
|              |                                | NEL                                                                   | Steedman Rd., Leesville, SC<br>- Tracts A, B & C (54.02 acres)                                                     |              |                              |
| 5            | 010400-03-048                  | NEL                                                                   | Swamp Rabbit Rd., Leesville, SC<br>- Parcel B (15.40 acres)                                                        | \$59,609.00  | Deere000932-<br>Deere001134  |
| 6            | 010400-03-049                  | NEL                                                                   | Swamp Rabbit Rd., Leesville, SC<br>- 15.40 acres                                                                   | \$48,688.00  | Deere001135-<br>Deere001341  |
| 7            | 011300-01-030                  | NEL                                                                   | 1057 Pine Grove Rd., Leesville, SC<br>- Lot A (28.45 acres); Lot B<br>(1.26 acres)                                 | \$48,000.00  | Deere001342-<br>Deere001498  |
| 8            | 010400-03-024                  | NEL                                                                   | 916 N. Edisto Rd., Leesville, SC<br>- Lots 62, 64, 66, and 68 (1.82<br>acres)                                      | \$12,700.00  | Deere001499-<br>Deere001747  |
| 9            | 010400-03-011                  | NEL                                                                   | N. Edisto Rd., Leesville, SC<br>- Parcel A (15.40 acres)                                                           | \$46,843.00  | Deere001748-<br>Deere001945  |
| 10           | 010400-04-022<br>010400-04-037 | Paul D. Gunter                                                        | N. Edisto Rd., Leesville, SC<br>- Parcel B (1.20 acres)                                                            | \$8,400.00   | Deere001946-<br>Deere002113  |
| 11           | 010400-04-010                  | Paul D. Gunter                                                        | 916 N. Edisto Rd., Leesville, SC<br>- Tract A (4.00 acres)                                                         | \$192,858.00 | Deere002114-<br>Deere002285  |
| 12           | 010400-04-009                  | Paul D. Gunter                                                        | 916 N. Edisto Rd., Leesville, SC<br>- Tract B (4.00 acres)                                                         | \$64,059.00  | Deere002286-<br>Deere002400  |
| 13           | 010400-05-021                  | Paul D. Gunter                                                        | N. Edisto Rd., Leesville, SC<br>- Tract B near US Hwy 178<br>(15.83 acres)                                         | \$63,300.00  | Deere002401-<br>Deere002265  |
| 14           | 010400-04-011                  | Paul D. Gunter                                                        | 916 N. Edisto Rd., Leesville, SC<br>- (12.97 acres)                                                                | \$39,450.00  | Deere002566-<br>Deere002735  |
| 15           | 010400-04-015                  | Paul D. Gunter                                                        | 1008 N. Edisto Rd., Leesville, SC                                                                                  | \$24,228.00  | Deere002736-<br>Deere002907  |

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.

### **Merits Order after Bench Trial**

This matter came before the Court for a bench trial on . After hearing witness testimony and arguments of Counsel for all parties, the Court makes the following Order, Findings of Fact and Conclusions of Law.

### **Directed Verdicts<sup>1</sup>**

Under Rule 50 SCRPC, when the evidence in a matter yields only one inference, a directed verdict in favor of the moving party is proper. *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 514 S.E.2d 126 (1999); *Arthurs v. Aiken County*, 338 S.C. 253, 525 S.E.2d 542 (Ct. App. 1999).

As noted below, the parties have stipulated that Paul D. Gunter died on July 3, 2019. This action was filed on February 2, 2021. The date of filing is more than one year after Paul D. Gunter's death. Only a single inference can be drawn about the amount of time that passed between the Death of Paul D. Gunter and the filing of this action, *i.e.* it exceeds one year.

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<sup>1</sup> To the extent any part of this section or in the conclusions of law section constitute findings of fact they are so adopted. Likewise to the extent any of the findings of fact constitute conclusions of law they are so adopted.

In this case, the consequences of this sole inference 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 tenet 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.

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.

Plaintiff has also argued that notwithstanding the expansive definition of claims in Section 804, their 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).

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)

Therefore, the nonclaim statute serves as an absolute bar to Plaintiff's claims against Defendant Matthew Cody Gunter, as a nonprobate transferee of Paul D. Gunter. Likewise any claim against Paul D. Gunter's probate estate are barred. Claims against The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 are also barred as to properties conveyed to the Trust by Paul D. Gunter, those being properties 10, 11, 12, 14 and 15 as listed on Trial Exhibit 52

### **Findings of Fact**

Paul D. Gunter died on July 3, 2019. (See Complaint ¶ 19 and stipulation of the parties)

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 and that is subject to this action by virtue of a deed from Paul D. Gunter. (See Complaint ¶26 and ¶27)  
in this Code:”

The tax value of Parcel 1 in 2019 was \$69,730.00.<sup>2</sup>

The tax value of Parcel 3 in 2019 was \$46,090.00

The tax value of Parcel 5 in 2019 was \$56,609.00

The tax value of Parcel 6 in 2019 was \$48,88.00

The tax value of Parcel 8 in 2019 was \$12,700.00

The tax value of Parcel 9 in 2019 was \$46,843.00

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<sup>2</sup> Each Parcel identification is keyed to Exhibit 52

The total value of these properties, each of which were formerly owned by North Edisto, is \$280,660.00

The 2019 tax value of Parcel 13, which was conveyed by Paul D. Gunter to Matthew Cody Gunter, is \$63,300.00

The parties have stipulated that parcel 13 is subject to an arms length mortgage given in 2017.

### **Conclusions of Law**

#### **S.C. Code 27-23-10(B)**

Plaintiff's reliance on S.C. Code 27-23-10(B) is misplaced, as this section, by its express terms only applies to child support debtors. Since no child support obligations are involved in this litigation, this section has no application here.

### **The Statute of Elizabeth**

A critical element in Plaintiff's claims against North Edisto is the assertion that North Edisto failed to retain sufficient assets to pay its debt to the plaintiff. Although plaintiff has raised the existence of three other lawsuits against North Edisto. None of these actions has resulted in an unsatisfied judgment on any of the claims therein. The absence of an unsatisfied judgment compels the conclusion that either these claims were not valid, or that North Edisto had sufficient assets to pay any amounts that were due under any settlement in the three actions. In either of these alternatives, this evidence weighs against a conclusion the North Edisto lacked assets to pay its debts in an overall sense.

As to the Plaintiff's debt in particular, no judgment has been entered establishing an amount due to the Plaintiff in their 2018 collection action. This action is under appeal, and the S.C. Court of Appeals has exclusive jurisdiction over that action and any determination of what amount, if anything, is due to the Plaintiff.

The tax returns entered in evidence for the period 2018 through 2021 show at least \$2,620,031 in assets in each of the years from the year before the transfers, until the filing of this action. ( Box F, Page 1 of Exhibits 37, 46, 47 and 48).

The tax returns entered in evidence for the period 2018 through 2021 show at least \$5,046,089 in gross income in each of the years from the year before the transfers, until the filing of this action. ( Box F, Page 1 of Exhibits 37, 46, 47 and 48).

The total value of the properties transferred by North Edisto (\$280,660.00) was therefore less than 11% of the lowest asset value shown on the tax returns, and slightly over 5.5% of the lowest year gross income for the relevant period.

The Plaintiff has failed to meet its burden of showing that North Edisto failed to retain sufficient assets after the 2019 transfers, and Plaintiffs claim of constructive fraud fails as a result.

The Plaintiff has also failed to show actual fraudulent intent as to either Paul Gunter or North Edisto.

### **Rule 301 S.C. Rules of Evidence**

Rule 301 provides: In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.(emphasis added). Therefore, regardless of any presumption asserted by the Plaintiffs, the ultimate burden remains theirs.

## **Conclusion**

That Defendants Matthew Cody Gunter and The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 are nonprobate transferees of the decedent Paul D. Gunter is established by the deeds 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 these defendants and The Estate of Paul D. Gunter.

The Plaintiff has failed to prove that North Edisto failed to retain sufficient assets and failed to prove actual fraud on behalf of either Paul D. Gunter or North Edisto.

This action is dismissed with prejudice and the associated *Lis Pendens* shall be vacated and canceled of record.

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

[PROPOSED] ORDER/JUDGMENT

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.

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 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.*

3. 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).

4. The instant action was added to the jury trial roster for a day certain trial the week of February 5, 2024, by the entry of an Order dated November 28, 2023.

5. On February 2, 2024, Plaintiff and Defendants communicated to the undersigned their consent to have the trial proceed as a bench trial in lieu of a jury trial, and on February 5, 2024, reiterated and confirmed on the record their consent to moving forward with a bench trial.

6. Prior to trial, Plaintiff and Defendants filed Joint Stipulations of Facts with the Court on January 31, 2024 ("Parties' Stipulations"). As reference to the Parties' Stipulations were made during the trial, the Court had a copy of the Parties' Stipulations marked as Court's Exhibit No. 1 during the trial without objection.

7. Pursuant to the Parties' Stipulations, the Plaintiff and Defendants stipulated to the following facts:

a. On December 20, 2018, Plaintiff filed its verified Complaint in the Court of Common Pleas, Eleventh Judicial Circuit, County of Lexington, bearing case no. 2018-CP-3204329, in part, to obtain a money judgment against NEL<sup>1</sup> and Paul D. Gunter for a debt allegedly owed to Plaintiff ("Collection Lawsuit").

b. As of November 15, 2018, Paul D. Gunter and NEL were indebted to Plaintiff.

c. Neither Paul D. Gunter nor NEL have made a payment on the indebtedness since January 13, 2017.

d. Brenda W. Gunter was Paul D. Gunter's spouse in 2019.

e. Paul Rockford "Rocky" Gunter is Paul D. Gunter's son.

f. Paula Gunter Kneece f/k/a Paula L. Gunter is Paul D. Gunter's daughter.

g. Debra Gunter Rush is Paul D. Gunter's daughter.

h. Matthew Cody Gunter is Paul D. Gunter's grandson.

i. Each of Paul D. Gunter's family members listed above knew about the Collection Lawsuit while it was pending.

j. Before his death, Paul D. Gunter was the 100% owner and President of NEL and controlled all decisions and actions of NEL.

k. Paul D. Gunter died intestate on July 3, 2019.

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<sup>1</sup> "NEL" is an abbreviation used in the Parties' Stipulations to mean and refer to Defendant North Edisto Logging, Inc.

l. Thereafter, Paul Rockford "Rocky" Gunter became the 100% owner and President of NEL and controlled all decisions and actions of NEL.

m. On March 26, 2019, Paul D. Gunter and Brenda W. Gunter signed the Paul and Brenda Gunter Revocable Trust Agreement ("Revocable Trust").

n. Paul D. Gunter and Brenda W. Gunter are the only Settlers/Trustees of the Revocable Trust.

o. No schedules or amendments to the Revocable Trust exist.

p. In 2019, NEL and Paul D. Gunter transferred the property listed in the attached **Exhibit A** ("Property").

q. 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.

r. 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.

s. On March 26, 2019, Paul D. Gunter voluntarily signed a deed to transfer Property No. 13 to Matthew Cody Gunter.

t. The deeds transferring Property Nos. 1-15 were all recorded on July 11, 2019.

u. No consideration was given to NEL and/or Paul D. Gunter in exchange for any of the transfers of the Property.

8. The following real property was listed in **Exhibit A** to the Parties' Stipulations:

| Property No. | Tax Parcel No. | Owner of Property on Date Collection Lawsuit Complaint filed | Description                                                                                                  | Tax Value    | Bates #                  |
|--------------|----------------|--------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|--------------|--------------------------|
| 1            | 011418-01-041  | NEL                                                          | 252 Sugar Bottom Rd., Leesville, SC<br>- Lot 41 (1.96 acres); Lot 42 (2.01 acres) West Fairview Farms, Ph II | \$69,730.00  | Deere000001-Deere000317  |
| 2            | 011417-01-004  | NEL                                                          | 319 Sugar Bottom Rd., Leesville, SC<br>- Lot 4 (3.48 acres) Candy Bar Ranches subdivision                    | \$92,317.00  | Deere000318-Deere000608  |
| 3            | 012500-02-002  | NEL                                                          | 341 Convent Church Rd., Leesville, SC<br>- Parcel C (10.00 acres)                                            | \$46,090.00  | Deere000609-Deere000740  |
| 4            | 010400-03-009  | NEL                                                          | Steedman Rd., Leesville, SC<br>- Western portion of Tract 2                                                  | \$135,100.00 | Deere-000741-Deere000931 |

| Property No. | Tax Parcel No.                 | Owner of Property on Date Collection Lawsuit Complaint filed | Description                                                                     | Tax Value    | Bates #                 |
|--------------|--------------------------------|--------------------------------------------------------------|---------------------------------------------------------------------------------|--------------|-------------------------|
|              |                                |                                                              | (60.00 acres)                                                                   |              |                         |
|              |                                | NEL                                                          | Steedman Rd., Leesville, SC<br>- Tracts A, B & C (54.02 acres)                  |              |                         |
| 5            | 010400-03-048                  | NEL                                                          | Swamp Rabbit Rd., Leesville, SC<br>- Parcel B (15.40 acres)                     | \$59,609.00  | Deere000932-Deere001134 |
| 6            | 010400-03-049                  | NEL                                                          | Swamp Rabbit Rd., Leesville, SC<br>- 15.40 acres                                | \$48,688.00  | Deere001135-Deere001341 |
| 7            | 011300-01-030                  | NEL                                                          | 1057 Pine Grove Rd., Leesville, SC<br>- Lot A (28.45 acres); Lot B (1.26 acres) | \$48,000.00  | Deere001342-Deere001498 |
| 8            | 010400-03-024                  | NEL                                                          | 916 N. Edisto Rd., Leesville, SC<br>- Lots 62, 64, 66, and 68 (1.82 acres)      | \$12,700.00  | Deere001499-Deere001747 |
| 9            | 010400-03-011                  | NEL                                                          | N. Edisto Rd., Leesville, SC<br>- Parcel A (15.40 acres)                        | \$46,843.00  | Deere001748-Deere001945 |
| 10           | 010400-04-022<br>010400-04-037 | Paul D. Gunter                                               | N. Edisto Rd., Leesville, SC<br>- Parcel B (1.20 acres)                         | \$8,400.00   | Deere001946-Deere002113 |
| 11           | 010400-04-010                  | Paul D. Gunter                                               | 916 N. Edisto Rd., Leesville, SC<br>- Tract A (4.00 acres)                      | \$192,858.00 | Deere002114-Deere002285 |
| 12           | 010400-04-009                  | Paul D. Gunter                                               | 916 N. Edisto Rd., Leesville, SC<br>- Tract B (4.00 acres)                      | \$64,059.00  | Deere002286-Deere002400 |
| 13           | 010400-05-021                  | Paul D. Gunter                                               | N. Edisto Rd., Leesville, SC<br>- Tract B near US Hwy 178 (15.83 acres)         | \$63,300.00  | Deere002401-Deere002265 |
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| 15           | 010400-04-015                  | Paul D. Gunter                                               | 1008 N. Edisto Rd., Leesville, SC                                               | \$24,228.00  | Deere002736-Deere002907 |

9. The transfers that Plaintiff seeks to avoid in this action are the transfers of Property Nos. 1, 3, 5-6, and 8-15 (collectively, "Transfers").

10. The Plaintiff introduced and admitted as exhibits the recorded deeds in to either NEL or Paul D. Gunter and recorded deeds evidencing who the respective grantors and grantees for the Transfers were.

11. The grantor for the transfers of Property Nos. 1, 3, 5-6, and 8-9 is Defendant North Edisto Logging, Inc. ("NEL").

12. Paul D. Gunter was the grantor of the transfers of Property Nos. 10-15.

13. The grantee for the transfers of Property Nos. 1-12 and 14-15 is the Revocable Trust.

14. The grantee for the transfer of Property No. 13 is Matthew Cody Gunter.

15. The Transfers were voluntary transfers to family members of Paul D. Gunter.

16. At the time of the Transfers, NEL and Paul D. Gunter were indebted to Plaintiff.

17. 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").

18. 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).

19. 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).

20. 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.

21. 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).

22. 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.

23. 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.").

24. "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); *Matthews v. Matthews*, 207 S.C. 170, 35 S.E.2d 157 (1945); *Matthews v. Montgomery*, 193 S.C. 118, 7 S.E.2d 841 (1940); *Judy v. Judy*, 403 S.C. 203, 209, 742 S.E.2d 672, 675 (Ct. App. 2013); *First Union Nat. Bank v. Smith*, 314 S.C. 459, 445 S.E.2d 457, 458-59 (Ct. App. 1994).

25. 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).

26. 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.

27. 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)

28. The transferees' failed to meet their burden.

29. 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.

30. 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.

31. Further, the Defendants 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.

32. 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).

33. 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.

34. Even if the transferees 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).

35. 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)).

36. The evidence adduced supports but one conclusion: 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.

37. 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. After all, these grantees/transferees knew about Plaintiff's Collection Lawsuit at the time of the Transfers.

38. As additional evidence fraudulent intent should be imputed to these grantees/transferees, there is the September 29, 2023, title transfer of Property 1 by General Warranty Deed from the Defendant Revocable Trust to Don Juan, et al., for \$53,000.00. This transfer of title occurred after Plaintiff's filing of a *Lis Pendens* against Property 1 and the filing of this lawsuit, and none of the money received from that transfer was remitted to Plaintiff. Defendants made no attempt to explain or justify this transfer.

39. Evidence that Defendant NEL retained sufficient property to pay its indebtedness to Plaintiff was absent. Zach Hartje testified about the indebtedness owing to Plaintiff at the time of the Transfers and at the time of the trial. Mr. Hartje also testified 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.

40. Evidence that Paul D. Gunter, or his estate, retained sufficient property to pay its indebtedness to Plaintiff was likewise absent.

41. 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.

42. The 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).

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

- a.i.1. Title transfer of Property Nos. 1, 3, 5-6, and 8-15 shall be and hereby is avoided and set aside as fraudulent, or constructively fraudulent, under S.C. Code § 27-23-10, *et seq.*
- a.i.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.
- a.i.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.
- a.i.4. For purposes of this Order/Judgment, the indebtedness owing to Plaintiff may be resolved by:
- a.i.4.a. payment in full;
  - a.i.4.b. a final and non-appealable court order;
  - a.i.4.c. release;
  - a.i.4.d. consent of the Plaintiff; and/or
  - a.i.4.e. the posting of a cash bond in the amount of twice the value of Property Nos. 1, 3, 5-6, and 8-15, from which the indebtedness owing to Plaintiff may be paid when awarded.
- a.i.5. If and when the indebtedness owing to Plaintiff is determined by a Court with jurisdiction, then Plaintiff may apply to this Court for further disposition of Property Nos. 1, 3, 5-6, and 8-15.
- a.i.6. Plaintiff shall have and recover from the Defendants, jointly and severally, the costs of this action.

**AND IT IS SO ORDERED.**

---

The Honorable Walton J. McLeod  
Presiding Circuit Court Judge

\_\_\_\_\_, 2024

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 RECONSIDERATION**

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

**NOTICE OF MOTION**

**YOU WILL PLEASE TAKE NOTICE** that the Defendants listed above will move before the Hon. Walton J. McLeod, Judge of the Court of Common Pleas for Lexington County, South Carolina, at a time and place and manner set by the court, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure (SCRCP) for an Order reconsidering the Order filed March 7, 2024 on the issues set forth herein, because the court overlooked or misapprehended the points of law raised herein.

**The Nonclaim Statute**

The March 7 Order does not rule on, or address Defendants' argument regarding the Plaintiff's action being barred absolutely time barred by the Nonclaim Statute, S.C. Code Ann. § 62-3-803(a).

### **Burden Shifting**

The March 7 Order also misapprehended the implications of a rebuttable presumption under South Carolina Law.

Rule 301 South Carolina Rules of Evidence provides: “In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.(emphasis added)”.

Therefore, regardless of any presumption asserted by the Plaintiffs, the ultimate burden remains theirs, and the March 7 Order's conclusion to the contrary is erroneous.

### **Hearsay**

The March 7 Order's conclusion that testimony of Paula Kneece about her father's health was hearsay is erroneous in multiple respects. First no contemporaneous objection was made on this basis. Moreover, even if a timely objection had been made, SCRE 803(3) regarding a declarant's “Then Existing Mental, Emotional, or Physical Condition” would apply. Finally Ms. Kneece's testimony was also based her involvement with her father's treatment for his ultimately fatal illness.

### **Conclusion**

Therefore, the March 7 Order should be vacated, for the reasons stated above

All of which is respectfully submitted.

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Attorney for Movants

March 18, 2024

RECEIVED

Aug 09 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Hon. Walton J McLeod, Circuit Judge

Case No. 2021-CP-32-00328  
Appellate Case No. \_\_\_\_\_

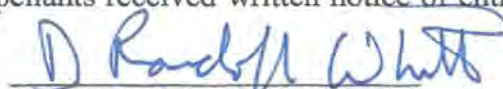
John Deere Construction & Forestry Company, Respondent  
v.

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.

NOTICE OF APPEAL

North Edisto Logging, INC.; The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019; The Estate of Paul D. Gunter; and Matthew Cody Gunter appeal the order of the Honorable Walton J McLeod dated March 7, 2024 and filed March 7, 2024. A motion under Rule 59 SCRCP was timely filed and served on Monday, March 18, 2024. Appellants received written notice of entry of the order denying this motion on July 12, 2024.



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August 9, 2024

Attorney for Appellants

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Hon. Walton J McLeod, Circuit Judge

Case No. 2021-CP-32-00328  
Appellate Case No. \_\_\_\_\_

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.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent listed above via emailing a copy of it  
on August 9, 2024, addressed to their attorney of record as follows:

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August 9, 2024

STATE OF SOUTH CAROLINA            ) SOUTH CAROLINA CIRCUIT COURT 11  
COUNTY OF LEXINGTON            ) DOCKET NO.: 2021-CP-32-00328

JOHN DEERE CONSTRUCTION & FORESTRY COMPANY  
Plaintiff,  
versus  
NORTH EDISTO LOGGING, INC., ET AL  
Defendant(s).)

H E A R I N G

BEFORE THE HONORABLE JUDGE WALTON J. McLEOD, IV

DATE:                   FEBRUARY 5, 2024  
LOCATION:               SOUTH CAROLINA CIRCUIT COURT 11  
JUDGE:                 JUDGE WALTON J. McLEOD, IV  
TRANSCRIBED BY: CATE NEUHAUSER

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16 344 Blossom View Ct.

17 West Columbia, SC 29170

18 Attorney for the Defendant(s).

19

20

21 Also Present:

22 Zach Hartje, Esquire of John Deere

23

24

25

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

1 THE COURT: All right. How's everybody this morning?

2 MR. WHITT: Very good, Your Honor.

3 MS. WOOTEN: Good.

4 MR. WHITT: Happy to have found a place to park out  
5 there.

6 THE COURT: Yeah. I didn't quite realize I think they  
7 summoned in the matter of John Deere Construction vs.  
8 Northeastern Logging and others. This is a case that was on  
9 the jury trial roster for today. We had a lengthy status  
10 conference kind of pre-trial hearing on Friday. We're, you  
11 know, we had a lot of evidentiary questions. And I frankly  
12 just told the attorneys it'd be a little bit easier to let us  
13 deal with some of the stuff if we're in a bench trial context  
14 that kind of lowers the evidentiary potential prejudices  
15 involved. And I imagine everybody's okay with just moving  
16 forward with the bench trial today and being heard?

17 MR. WHITT: That's correct, Your Honor.

18 THE COURT: All right. Also allows us to start now  
19 verse if we're lucky, we'd start at 2:00 today with aspect  
20 jury selections will go on for a while upstairs.

21 Is the -- are the plaintiffs ready to proceed?

22 MR. FANNING: Yes, Your Honor. I think it may benefit  
23 to go over some of the evidentiary issues that we discussed  
24 on Friday. There was at least one that was held open over  
25 the weekend the Dun and Bradstreet reports.

1 THE COURT: Okay. The Dun and Bradstreet stuff?

2 MR. FANNING: Correct, Your Honor.

3 THE COURT: I -- Mr. Whitt sent us some comments on  
4 getting that in. The Dun and Bradstreet essentially gives  
5 information about the, I'll just say, I don't know if health  
6 is the proper word but --

7 MR. WHITT: Credit, credit worthiness. It's credit  
8 worthiness.

9 THE COURT: Yes. It is. I think the analogy you made  
10 on Friday is sort of like the Better Business Bureau but for  
11 company?

12 MR. WHITT: Well --

13 THE COURT: Or financial?

14 MR. WHITT: Experian, TransUnion, and Equifax.

15 THE COURT: Okay.

16 MR. WHITT: Are an individual person. Credit rating  
17 agency,

18 THE COURT: I'll be -- I'll be frank to you. I mean,  
19 in light of our current capacity, I'm much more inclined to  
20 hear it and just take it for what I think it's worth. And  
21 obviously you can object to it. And if a witness testifies  
22 about you're free to cross examine on it. I don't think  
23 there's gonna be any damage to either party by me having any  
24 sort of testimony about Dun and Bradstreet, what role it  
25 played, if any, in th so this saga.

1           So that -- I don't want to, you're certainly free to  
2    respond Mr. Fanning however you like, but inclination is I  
3    just don't see much harm in me hearing about it. In light of  
4    the current circumstances.

5           MR. FANNING: Totally understand and respect that. We  
6    will raise objection at the appropriate time.

7           THE COURT: That's wife. That'll be fine.

8           MR. FANNING: Thank you.

9           THE COURT: How many witnesses do you intend to call?

10          MR. FANNING: One, Your Honor.

11          THE COURT: All right. And you have how many witnesses  
12   today, Mr. Whitt?

13          MR. WHITT: Your Honor, I think part of that'll depend  
14   on what the plaintiff brings up in their care.

15          THE COURT: Fair enough.

16          MR. WHITT: I've got two here with me. We've got one  
17   more that we might need to summon, Rocky Gunter is out  
18   running the business right now.

19          THE COURT: Okay.

20          MR. WHITT: We might need to summon him this afternoon  
21   if we need him. But ---

22          THE COURT: Okay.

23          MR. WHITT: I'd like to see what we're responding to  
24   before we make that decision.

25          THE COURT: All right. All right. So my apologies,

1 I'm not getting on my phone to talk with anyone. The State  
2 is now set up where I have to use an app to get into my  
3 computer. And I waited too long while I was talking with  
4 y'all. So I'm start the process over so I can I use my  
5 computer today.

6 All right. Is that going to work here or not, okay.  
7 All right. Well, even though we're in a bench trial setting,  
8 I'd be happy to hear any sort of brief opening from the  
9 parties if they're willing to do it.

10 MR. FANNING: Thank you, Your Honor. Paul Fanning here  
11 on behalf of John Deere, John Deere Construction & Forestry  
12 Company, the plaintiff in this matter. And if I may, a  
13 little bit of housekeeping. I've got a chart that is going  
14 to help everybody kind of have everything in one place, as  
15 far as these properties go. It's an exhibit in the notebook  
16 that I'm also going to hand out. But I thought it'd be good  
17 to go ahead and give the parties and the Judge another  
18 choice.

19 Your Honor, this is a case, which is a fraudulent  
20 conveyance case. And John Deere is a creditor of North  
21 Edisto Logging and the late Paul Gunter. And there were some  
22 transfers of real estate in 2019, that occurred, right after  
23 John Deere had filed suit against North Edisto Logging and  
24 Paul Gunter.

25 The transfers that are at issue in the case are listed

1 here on the chart. They are -- they're listed 20  
2 properties. But on the right hand side, we added a column  
3 just to notate which ones are really an issue here. There  
4 have been some properties that have come off over the course  
5 of the litigation and there are some properties that were not  
6 involved in the complaint filed in this lawsuit, but there'll  
7 be relevant testimony. So that's -- that's number one.

8 Number two, is I've got some notebooks here of all of  
9 the exhibits that we put in the pre-trial brief. And I'd  
10 like to hand those off now so that we can kind of go through  
11 everything. It makes it very easy having a bench trial, that  
12 way everybody is on the same page.

13 Okay. And just -- just for reference, Your Honor. The  
14 chart that I talked about is -- is actually Exhibit 52. We  
15 just blew it up on bigger paper, so it'd be easier for  
16 everybody to read and refer to.

17 THE COURT: I presume that your witness will be  
18 referencing the various exhibits in the binder?

19 MR. WHITT: Yes, sir. That's correct.

20 THE COURT: Okay. And obviously, Mr. Whitt, you have a  
21 copy of this binder as well.

22 MR. WHITT: I do, materials. It was -- I do, Your  
23 Honor. And it is largely just the same things that were in  
24 the list that we looked at, some on Friday with trial  
25 conference.

1 THE COURT: Okay. All right.

2 MR. WHITT: There's some of it, I have some objections  
3 to at the appropriate time. But I've -- I think I've seen,  
4 I've seen everything in there already.

5 THE COURT: Okay. Go ahead, sir.

6 MR. FANNING: Thank you, Your Honor. In looking at the  
7 chart, I will -- I thought it'd be helpful to just kind of  
8 get an idea of what we're talking about here. Property 1 is  
9 a property in this county and it's on Sugar Bottom Road. And  
10 you've got the property description, the owner at the time,  
11 the property description, the deed -- we're going to  
12 introduce you to evidence the deed into that owner, and then  
13 the deed out from that owner to a trust that we'll testify  
14 about, and also the sale price, and the tax value in 2019.  
15 And on the right hand side, whether it's really an issue in  
16 this lawsuit anymore or not.

17 Okay. So going down to Number 2, that property was --  
18 is not an issue anymore. That is a property that although it  
19 was encumbered by our lis pendents, which we filed in January  
20 of 2021. It was sold after that, and the buyer elected to  
21 pay money over this settlement agreement on record in the  
22 case; and that property is no longer at issue. Number 3  
23 is on Convent Church Road 10 Acres, that property is subject  
24 to this action. And the same information is provided.

25 Property 4 is no longer an issue in this case. This is

1 property that was deeded eventually to Matt Rush. And he was  
2 a defendant in this lawsuit up until last week, and he was  
3 dismissed from the lawsuit. Reason that, that is relevant  
4 is, it is likely others, a transfer of property from either  
5 North Edisto Logging in this case or Paul Gunter himself to  
6 this trust that we'll talk about.

7 The fifth property was owned by North Edisto Logging.  
8 We use N-E-L for short. Don't think that needs explaining  
9 that property is subject to this lawsuit.

10 Property 6 likewise ---

11 THE COURT: Just for my benefit. Just when each, Line  
12 5, the Swamp Rabbit Road property and sale price 2000 shares  
13 at the price was transferred for \$1 with the tax value in  
14 2019, 59,000 and change. Okay?

15 MR. FANNING: Correct. Yes, Your Honor.

16 And property number six, likewise, pretty similar.  
17 Property 7 is irrelevant, but it's no longer at issue in this  
18 action. Property number 7 was deeded out just before our lis  
19 pendents was filed. And some -- some consideration was paid.  
20 And we just didn't -- we didn't feel like, it wasn't a family  
21 member. There was some consideration. We didn't include it  
22 -- or we didn't include it in this lawsuit. We just didn't  
23 know at the time that, that property had already been  
24 conveyed. So it wasn't attached by our lis pendents or  
25 encumbered by our lis pendents.

1           And property number 8 is 916 North Edisto Road. That  
2   is either part of or adjacent to the north Edisto Logging  
3   property. And that is the issue in this case.

4           Number 9, likewise is adjacent to, I believe, is  
5   adjacent to the business that is still at issue.

6           So the first nine properties you will notice were all  
7   owned at the time by North Edisto Logging and were  
8   transferred all of them into a trust. A revocable trust  
9   entitled The Paul and Brenda Gunter Revocable Trust, dated  
10   March 26th, 2019. The deeds on all of these were signed on  
11   the same day that the trust was formed. The deeds were  
12   recorded after Paul Gunter died. He died on July 3rd of  
13   2019. And the deeds were actually recorded July 10, a week  
14   later.

15          The 10 through 20 properties, these were all owned by  
16   Paul D. Gunter individually, in his own name at the time, in  
17   2019, before he transferred them to the trust. With the  
18   exception of one property, which is Property 13.

19          So out of the 15 properties that were at issue in this  
20   case, one property was transferred by a separate deed, not to  
21   the trust, but to Matthew Cody Gunter, who's here in the  
22   courtroom today. That's Property Number 13. So 10, 11, and  
23   12 are either part of or adjacent to the operation or the  
24   residents in possibly in one case. Property 14 likewise.

25          And reading the chart correctly, I said July 10, I

1     meant July 11th. Charts got it right, I got it wrong.

2             So when you go down to the bottom of the last page of  
3     the chart there, there are Properties 16 through 20. And  
4     these were properties that were owned by Paul Gunter,  
5     individually. But in a deed in 2019, it looks like that  
6     property was sold to Southeast Forest Products, Inc. For a  
7     total purchase price of \$750,000. It's not issue in the  
8     lawsuit, we're not seeking to avoid that transaction, because  
9     consideration was paid, it is not to an insider. But it is  
10    relevant to the acts and conduct of the parties in  
11    transferring assets out at a time when they were indebted to  
12    John Deere and others. That makes sense?

13            THE COURT: Okay.

14            MR. FANNING: Next, Your Honor, I'd like to go through  
15    the stipulations. And just say they're handy -- all these  
16    are filed, of course. Do you need a copy?

17            MR. WHITT: Yes, I would. I would always like a copy  
18    of anything you got.

19            THE COURT: Thank you.

20            MR. WHITT: Thank you.

21            MR. FANNING: Of course these were filed last  
22    Wednesday. And I'd like to go through each of these because  
23    then I want to go through the elements that need to be proven  
24    in the case. And we can -- we can walk through those.

25            So the first one is on December 20th of 2018. John

1 Deere filed the collection lawsuit against North Edisto  
2 Logging and Paul D. Gunter. And that was for a debt that's  
3 referenced in that lawsuit. And there's no -- it's  
4 stipulated that, that was filed that, that was a lawsuit or  
5 money owed.

6 Number two, in November 15, You know, it goes on to say  
7 Paul D. Gunter and North Edisto Logging were indebted to the  
8 Plaintiff. So that's an element and it's important and it's  
9 stipulated to. Neither Paul D. Gunter nor North Edisto  
10 Logging made a payment on the indebtedness since January 13  
11 of 2017. So by the time the lawsuit was filed, they hadn't  
12 made a payment on the indebtedness since January, at least  
13 January. The most recent payment was January of 2017.

14 Brenda W. Gunter was Paul D. Gunter's wife in 2019.  
15 Paul Rockford goes by Rocky Gunter, is his son, Paul D.  
16 Gunter's son. Paul Gunter's niece, who's here, is formally  
17 known as Paula L Gunter is Paul D. Gunter's daughter.  
18 Gunter, who is also here, is Paul D. Gunter's grandson. Each  
19 of the family members knew about the collection lawsuit while  
20 it was pending.

21 Before his death, Paul was the 100 percent owner and  
22 president of North Edisto Logging and control of all the  
23 decisions and actions of North Edisto Logging. He died  
24 intestate July 3rd of 2019. Thereafter, Rocky Gunter became  
25 the 100 percent owner and president of North Edisto Logging

1 and controlled all decisions and actions of North Edisto  
2 Logging.

3 As I stated before, March 26, 2019, Paul D. Gunter and  
4 Brenda W. Gunter signed the Paul and Brenda Gunter Revocable  
5 Trust Agreement, which we'll talk about today. Paul D.  
6 Gunter and Brenda W. Gunter are the sole settlors under that  
7 trust document. They're also the sole trustees under the  
8 revocable trust. We will be submitting the trust document,  
9 talking about the trust document, but there are no schedules  
10 or amendments to it.

11 In 2019, the properties that I've -- that I've  
12 described in the chart, there's no -- there's no issue about  
13 those being transferred, just as they are represented to in  
14 the property chart. The chart is actually, with the  
15 exception of 16 through 20. The one to the southeast forest  
16 products for sale, with the exception of that -- those  
17 properties, The chart is -- is an Exhibit A to the stipulated  
18 facts.

19 As I said before -- well no, I didn't say this.  
20 Property 13 is encumbered by a mortgage in favor of South  
21 State Bank recording -- recorded in the Register of Deeds  
22 office in December of 2017. Also on March 26th, 2019, Paul  
23 as president and North Edisto Logging, and individually,  
24 voluntarily signed deeds to transfer properties, 1 through 15  
25 except 13. That's the one, Property 13, that he transferred

1 to Matthew Cody Gunter. The deeds transferring, all of them  
2 were recorded on July 11th, 2019. No consideration was given  
3 to North Edisto Logging and/or Paul D. Gunter in exchange for  
4 any of the transfers of the property stipulated.

5 So those are the stipulations. The only -- the only  
6 one that I would add is an uncontested fact that the -- the  
7 control of the properties never changed before and after the  
8 transfers. It remained controlled by the same people. And  
9 that's an uncontested fact.

10 MR. WHITT: Your Honor, I don't think that was supposed  
11 to be an uncontested fact. So we may have to -- we may have  
12 to look at that further.

13 THE COURT: What number are you reading from there, Mr.  
14 Fanning?

15 MR. FANNING: It's not on the stipulation.

16 THE COURT: Okay.

17 MR. WHITT: It's not on the stipulation.

18 MR. FANNING: It is on the pre-trial briefs.

19 MR. WHITT: And one thing we had talked about was  
20 collating pre-trial briefs with the stipulations to make sure  
21 they matched up. But ---

22 THE COURT: Well, just for the moment, we'll just say  
23 that, that's his assertion. And it's not a line from the  
24 stipulation of fact.

25 MR. WHITT: Understood, Your Honor.

1 MR. FANNING: Yeah. Well, then -- then that was very  
2 much my mistake, because we put -- we prepared an amended  
3 stipulation to add that and at the request of Mr. Whitt, and  
4 sent it to him.

5 THE COURT: That doesn't mean it's not -- doesn't mean  
6 you get your witness testimony about it or anything like  
7 that. I'm just letting him say what he wants to say on that  
8 matter.

9 MR. FANNING: Thank you, Your Honor. Now I'd like to  
10 go through -- now that we've done the stipulations, we'd like  
11 to talk about the statute, a little bit of lis pendens and  
12 the elements that are required. And that is behind Tab 51,  
13 Your Honor, of the second notebook, Notebook Number 2.

14 THE COURT: All right.

15 MR. FANNING: Yeah. Just -- just referring to the  
16 pretrial briefs, Your Honor. Mr. Whitt said, defenders do  
17 not contest the assertion set forth in Item G, Item H, Item  
18 L, and Item K. And Item K is control and use of the property  
19 did not change after the transfer.

20 MR. WHITT: Your Honor, item came may have ended up on  
21 the wrong list. But I think your suggestion though, we'll  
22 state our respective position on merits of that when we get  
23 to it has ---

24 THE COURT: You'll have an opportunity to respond to  
25 this and then we'll get into witness testimony.

1 MR. WHITT: Thank you.

2 THE COURT: But as with any other opening statement,  
3 you're just telling me what you expect the evidence will  
4 show.

5 MR. FANNING: Yes, Your Honor. When you're ready, Your  
6 Honor.

7 THE COURT: I think I'm ready.

8 MR. FANNING: Okay. Yeah. So, you know, this is a --  
9 this is a fraudulent conveyance case. The elements are set  
10 forth in a pretty old statute. We've got some cases over the  
11 years that have interpreted that statute and Ms. Wooten more  
12 artfully than I can do, went through this on Friday. But I  
13 think it's important to kind of set the stage because we've  
14 gone through the stipulations.

15 So two ways that these transfers can be avoided. One  
16 is actual fraud. The other is constructive fraud. Actual  
17 fraud requires certain elements. Number one, that transfer  
18 was made by the grantor with the actual intent of defrauding  
19 his creditors. The way we do that is we look at the badges  
20 of fraud that are set forth in the statute. And based on the  
21 stipulations and because we're dealing with an inner family  
22 exchange, burden shifting applies. And the badges of fraud,  
23 establish actual intent through badges one, two, three, four,  
24 seven, eight, and ten.

25 What that means is then -- well, I'll get to that. The

1 second element is that the grantor was indebted at the time  
2 of the transfer and that's a stipulated element. That's  
3 stipulation number -- Paragraph 2.

4 THE COURT: Okay.

5 MR. FANNING: The third element is that the grantor is  
6 intent is imputable to the grantee. And this is stipulated  
7 to as well. Each of the family members knew about the  
8 lawsuit and they're imputed with that knowledge.  
9 When you have an a voluntary inter-family exchange, then the  
10 burden shifts to the defendants, and they have to prove clear  
11 and convincing evidence.

12 Two elements, number one they have to prove transferee  
13 has a burden of establishing valuable consideration of the  
14 transaction. And that it's already been stipulated that  
15 there's been no consideration in the transaction. So they  
16 have to meet both of those, they could not meet the first.  
17 So the element of intent, actual intent for fraudulent  
18 transfers, by stipulation has been met.

19 The second element that they would need to prove, if  
20 they were able to prove the first, would be establishing the  
21 bona fides of the transaction that was in good faith, that  
22 clear and convincing evidence. In this particular case, even  
23 if they could meet this, the consideration element, which  
24 they cannot, then they would have to prove through evidence  
25 that it was in good faith. And they can't prove that by

1 virtue of the exclusion or they haven't given us any evidence  
2 or discovery and they can't testify about that, which they  
3 did not supply in the case.

4 So that's the fraudulent piece and I'm happy to go  
5 through the badges of fraud. Ms. Wooten is artfully telling  
6 me that I messed up. They can't do that where they knew  
7 about the (indiscernible), they knew that -- that the  
8 indebtedness was owing. They knew that John Deere was owed  
9 money.

10 So the first way to avoid transfers have been met. The  
11 second one is the constructive fraud theory. And there are  
12 three elements there. Number one indebtedness, which has  
13 been stipulated to in the first two paragraphs, stipulations.  
14 Number two, the conveyance was voluntary, and that is  
15 stipulated to in Paragraphs 18 and 19. And number three,  
16 that the grantor failed to retain sufficient property to pay  
17 the indebtedness to plaintiff in full. Not merely at the  
18 time of the transfer, but in the final analysis when the  
19 creditor seeks to collect the debt.

20 So we've got an analysis that looking at when the  
21 transfer occurred in 2019, but we also have to look at today.  
22 If we were to get to the constructive fraud theory, which we  
23 don't based on the evidence that is before the court and can  
24 be put before the court, they cannot meet that burden. So  
25 kind of walk through those elements of statute of lis

1 pendens.

2 Your Honor, ready to call Mr. Hartje to the stand when  
3 you're ready.

4 THE COURT: All right. Mr. Whitt, do you want to give  
5 a brief summation as well?

6 MR. WHITT: Your Honor, I'll try to be brief.  
7 Sometimes that's easier said than done. Your Honor, there  
8 are a number of issues that we have as well. I think the  
9 elements of the statute lis pendens are not as -- not as sort  
10 of straightforward as -- as Mr. Fanning has indicated. And  
11 he seemed to be saying that the absence of consideration --  
12 and if you look at the -- his chart that he's done, Exhibit  
13 51. He seems to assert that the absence of consideration is  
14 the end of the road. And that when you have a transfer to a  
15 family member, or a voluntary conveyance, as it's called,  
16 that -- that's the end -- the end of the inquiry.

17 But I'd like to direct your attention to Albertson  
18 versus Robinson, which is South Carolina Supreme Court. It's  
19 2006, the opinion number is 4161. That's Albertson, like the  
20 grocery store, and Robinson. One of the things that is  
21 clearly stated in that case, is the absence of consideration  
22 does not end our inquiry when transfer is made without  
23 valuable consideration. Transfer will be set aside when the  
24 creditor establishes, not transferee, the grantor was  
25 indebted, the conveyance was voluntary, and the grantor

1 failed to retain sufficient property.

2           So the sufficient property question is one that's going  
3 to be very important in this because these weren't transfers  
4 to family members. They were voluntary transfers. They were  
5 not arm's length, valuable consideration paid. But the third  
6 element where we have the retention of sufficient property,  
7 certainly as to North Edisto, has ample property to pay some  
8 amount. And I want to sort of redirect to, and some of the  
9 exhibits have gone -- fallen back into a rut that I thought  
10 we had gotten out of on Friday, of acting like there's been  
11 an established amount that's due to John Deere in the action  
12 that's on appeal before the Court of Appeals.

13           I think the payoff chart has made its way back into the  
14 exhibit. It's where they state some amount that they've come  
15 up with from somewhere that's never been blessed by an ---

16           THE COURT: If I could interject here. I think, I take  
17 that not as relevant for the specific amounts but relatively  
18 -- relevant for that I transfer was made. I mean, I think  
19 what we discussed on Friday is the purpose of this proceeding  
20 is not to determine the amount owed or what will -- actually  
21 was paid, specifically. But that a transaction occurred  
22 under certain circumstances. I think so just to be clear,  
23 whether something was sold for \$1 or \$50,000, that's really  
24 not the end game for today.

25           Wouldn't that be fair to say?

1 MR. FANNING: Yes, sir, Your Honor.

2 THE COURT: Okay.

3 MR. WHITT: And Your Honor, what John Deere's records  
4 reflect about what they contend is to you in the other action  
5 has no bearing on anything, because it's not been -- It's  
6 nothing more than a contention.

7 THE COURT: Okay.

8 MR. WHITT: There's no judgment, there's no  
9 adjudication of what John Deere is owed in their 2018.

10 THE COURT: Well, there was an adjudication that is on  
11 appeal.

12 MR. WHITT: Your Honor, we all know what one of the ---

13 THE COURT: I don't want to go down a rabbit hole with  
14 either, Mr. Whitt. But let me be clear. I mean, the purpose  
15 of this proceeding is to just, I think, ascertain whether or  
16 not the plaintiff's claim meets the elements of the statute  
17 of lis pendens.

18 MR. WHITT: Absolutely, Your Honor. And one of those  
19 elements is, did we -- did we retained sufficient property to  
20 pay a judgment somewhere down the road when there is a  
21 judgment in that other action. Because there's no judgment  
22 gonna be determined in this action and how much is due.

23 THE COURT: Okay. All right.

24 MR. WHITT: Your Honor, the other ---

25 MR. FANNING: Your Honor, may I respond just briefly?

1 THE COURT: Specifically.

2 MR. FANNING: I don't think we get there. But if we get to  
3 testimony where Mr. Whitt's clients argue that they have  
4 enough money to pay the judgment, if they have enough  
5 property, enough assets to pay the judgment, we necessarily  
6 have to know what John Deere is owed. So I mean, you can't -  
7 - you can't exclude that evidence, if that's what you're  
8 trying to prove.

9 I don't think we get there. I don't think we get to  
10 that element based on my prior argument, but I just want to  
11 put that in your mind. You can't say we've got enough money  
12 to pay your judgment without knowing how much judgment is.  
13 And it's not a judgment. It's indebtedness. You don't have  
14 to have a judgment, you just have to have an indebtedness.  
15 The indebtedness stipulated to. The amount of the  
16 indebtedness is going to be determined some day, at some  
17 point in time. But for purposes of today, you have to know  
18 what books and records or John Deere shows.

19 THE COURT: Mr. Whitt?

20 MR. WHITT: Your Honor, I'll -- we could go back and  
21 forth on that.

22 THE COURT: We're trying to keep things germane to  
23 specific inquiry today.

24 MR. FANNING: I'll forbear anymore.

25 THE COURT: I recognize that there are other matters

1 hanging in the appellate courts and there will -- even if the  
2 plaintiff's case were to be successful, it doesn't solve all  
3 the questions for the future.

4 MR. WHITT: Absolutely, Your Honor.

5 THE COURT: So I'm gonna try to keep us in the  
6 guardrails of a specific inquiry today, but I understand that  
7 there is crossover. Let's just try to limit the crossover,  
8 as much as possible to avoid confusion.

9 MR. WHITT: Understood, Your Honor. And moving on to  
10 fresh ground. One of the other issues that we've got is the  
11 timeliness of these claims, as to the trust, the estate, and  
12 Matthew Cody Gunter. So that's of our remaining defendants.  
13 That's everybody, but North Edisto.

14 THE COURT: And you're just reasserting that for the  
15 record?

16 MR. WHITT: I'm just on the record reasserting what we  
17 talked about at the pre-trial conference. That our assertion  
18 is, as to the -- those three defendants. This action was not  
19 timely brought. Your Honor alluded to you had, had an order  
20 on that early in this case. So we're ---

21 THE COURT: The record will reflect that you reasserted  
22 that ground and objection, and we will keep moving forward.

23 MR. WHITT: Thank you, sir.

24 THE COURT: All right.

25 MR. WHITT: And Your Honor, that's -- that's where

1 we're headed. I think that's the end of the things that are  
2 on our mind. And I think it's time to get somebody on the  
3 witness.

4 THE COURT: Okay. Fair enough. You may call your  
5 first witness.

6 MR. FANNING: Thank you, Your Honor. John Deere would  
7 like to call Zachary Hartje to the stand.  
8 Whereupon,

9 ZACHARY HARTJE,  
10 first being duly sworn, on oath, was questioned and  
11 testified as follows:

12 E X A M I N A T I O N

13 WITNESS HARTJE: Zachary Hartje,  
14 H-A-R-T-J-E.

15 THE COURT: H-A-R-T-J-E. Proceed.

16 MR. FANNING: Thank you, Your  
17 Honor.

18 BY MR. FANNING:

19 Q. Mr. Hartje, you've stated your name. Where do  
20 you live?

21 A. I live in Urbandale, Iowa.

22 Q. And who is your present employer?

23 A. I work for Deere Credit Services, Inc. Doing  
24 Business as John Deere financial. And that's a  
25 servicing agent for John Deere Construction &

1 Forestry Company.

2 Q. What is your -- what is your title, Mr. Hartje?

3 A. Senior litigation administrator.

4 Q. Do you have any special education after high  
5 school?

6 A. I do. I -- I have a -- I have a law degree. I  
7 earned that from Drake University in 2013.

8 Q. Are you a practicing attorney?

9 A. I'm not.

10 Q. Have you been in the last several years?

11 A. I haven't.

12 Q. Explained to me what your title is presently at  
13 John Deere.

14 A. Senior litigation administrator.

15 Q. And let's talk about the entities. Is there a  
16 parent company?

17 A. There is, Deere and Company.

18 Q. Okay. And is -- is -- how does John Deere  
19 Construction & Forestry Company fit into the  
20 parent company?

21 A. John Deere Construction & Forester Company is a  
22 subsidiary of Deere and Company. And John Deere  
23 Construction & Forestry Company is the  
24 manufacturer of the construction of forestry  
25 equipment. And it's also the lender for finance

1 contracts that finance that type of equipment.

2 Q. Have you always been a senior litigation  
3 administrator?

4 A. I have not.

5 Q. And what other positions have you held at John  
6 Deere?

7 A. I have also held positions in retail credit, and  
8 retail credit, my responsibilities in that  
9 department included reviewing financial  
10 statements, reviewing the credit worthiness of  
11 credit applicants, and determining if their  
12 credit worthy where we can reach a credit  
13 approval.

14 Q. Any other positions with John Deere?

15 A. I was also a litigation administrator prior to  
16 joining the retail credit group

17 Q. Was it -- as a -- were you a dealer relationship  
18 manager?

19 A. Yep. That ---

20 Q. Retail credit side?

21 A. Dealer relationship manager was my title in  
22 retail credit.

23 Q. So would you make decisions about whether to  
24 extend credit?

25 A. Yes, I would.

1 Q. Would you help assess credit risk?

2 A. Yes, I would.

3 Q. And would you influence the credit terms that are  
4 extended to borrowers?

5 A. Yes, I would. I would review the -- the relevant  
6 credit information for that specific credit  
7 application. And then I would issue either an  
8 approval, a counter offer which could include  
9 different repayment terms, different down payment  
10 terms, additional security, structure the loan in  
11 a creative kind of way to reach credit approval,  
12 or deny the application.

13 Q. Are there certain records of a borrower or a  
14 prospective borrower that are required by John  
15 Deere, to be supplied in order to make those  
16 types of decisions?

17 A. Yes. Typically we require financial statements.  
18 And those financial statements could include and  
19 are not limited to balance sheet, income  
20 statement, tax returns. Sometimes we request  
21 work in progress reports, accounts receivable, it  
22 really depends on that specific credit of what's  
23 required.

24 Q. Any credit -- credit references?

25 A. Credit references, bank readings, those could be

1           -- could be included as well.

2    Q.    How about bank statements?

3    A.    Bank statements could be included as well.

4    Q.    And would -- is there are a certain threshold or  
5           monetary dollar amount that those records would  
6           be required?

7    A.    Yeah. When I was in retail credit, the threshold  
8           for requiring more detailed financial information  
9           such as what I just mentioned, that threshold was  
10          \$800,000 in credit exposure.

11   Q.    So anything over \$800,000 would require the  
12          supply of that type of documentation.

13   A.    That's correct. That's our credit policy.

14   Q.    Is that an industry standard; to your knowledge?

15   A.    To my knowledge, that is an industry standard.

16   Q.    What -- what department are you in presently?

17   A.    I'm in the litigation and recovery department.

18   Q.    Okay. And in that -- in that position, are you  
19          responsible for -- or what are your  
20          responsibilities?

21   A.    Yeah. I manage defaulted loans. And it -- it's  
22          a wide spectrum of -- of what's managed. So a  
23          lot of what I manage, these are accounts that are  
24          forwarded either from collections or the  
25          repossession group. And they're forwarded on to

1 me because collection efforts and repossession  
2 efforts have been exhausted.

3 And those accounts that are transferred to  
4 me, I'm at the stage where I need to engage  
5 outside counsel and file the appropriate lawsuit  
6 either recover collateral or recover a debt. I  
7 also would manage deficiency loans as well. And  
8 deficiency loan, that would be an amount that's  
9 owing after liquidation of the collateral.

10 Q. And do you have a portfolio of these types of  
11 loans ---

12 A. I do.

13 Q. --- that you're responsible for?

14 A. I do. I have a portfolio of accounts from, it's  
15 at a customer level, and it's based on geography.  
16 And I manage South Carolina portfolio.

17 Q. What other geographic areas do you manage now?

18 A. I have North Carolina. I also have all the way  
19 up through the East Coast, every state on the  
20 East Coast. And I have a couple states in the  
21 Midwest as well. Wisconsin, Michigan, Illinois,  
22 and then down south through South Carolina and  
23 eastward from there.

24 Q. Is North Edisto Logging account part of your  
25 portfolio?

1 A. Yes, it is.

2 Q. Are you responsible for that account?

3 A. Yes, I am.

4 Q. That relationship?

5 A. Yes, I am.

6 Q. And are you familiar with the books and records  
7 of John Deere as they relate to North Edisto  
8 Logging?

9 A. Yes, I am.

10 Q. Is there -- so does John Deere sell directly to  
11 consumers or is there a dealer network?

12 A. How the sale process works is, the customer will  
13 purchase from a dealer group. And they'll work  
14 with the dealer to select the equipment. If  
15 there's any add ons or service agreements or any  
16 type of additional warranties. That type of  
17 stuff is handled at a dealer level.

18 And the customer will also work with the  
19 dealer on financing and the dealership will  
20 submit or they'll obtain a credit application  
21 from the customer. And the dealer can submit  
22 credit applications through really any lender  
23 that will take this type of financing, and one of  
24 those lenders would include something that's  
25 serviced through John Deere financial.

1           The lender like I said, it would be John  
2           Deere Construction & Forestry Company, but the  
3           company that I work for services those loans.  
4           And so if a credit application is sent through  
5           the dealer to John Deere Financial, then it's at  
6           that point that I would review the -- those  
7           credit applications and see if we can reach an  
8           approval.       And then once an approval is  
9           obtained, then the dealer is able to print the  
10          appropriate security agreement or loan agreement  
11          and have the customer execute those documents.  
12          And one thing that John Deere does, is we do file  
13          a financing statement with the Secretary of  
14          State. And that's similar to what would happen  
15          at a car dealership, which would be a title that  
16          would be handled there.

17   Q.     So -- just so we've got the -- the company  
18           straight, you've got Deere and Company is the  
19           parent, correct?

20   A.     That's correct.

21   Q.     And then John Deere Construction & Forestry is a  
22           manufacturer, a subsidiary of Deere and Company?

23   A.     That's correct.

24   Q.     And they manufacture construction and forestry  
25           equipment?

1 A. That's correct.

2 Q. And then is John Deere Financial or Deere Credit  
3 Services, are they also a subsidiary of Deere and  
4 Company?

5 A. Yes.

6 Q. Okay. So it's all under the parent of Deere and  
7 Company?

8 A. That's right. Yep. All of those are structured  
9 under the Deere and Company umbrella.

10 Q. Have you worked with any equipment dealers in the  
11 South Carolina area?

12 A. Yeah. I have worked with dealers in that area.

13 Q. And are the other dealers independent from Deere  
14 and Company?

15 A. Yes. They are technically independently owned  
16 and controlled. They are separate legal entities  
17 from John Deere. They're not a part of the Deere  
18 and Company umbrella.

19 Q. So kind of like a distributorship. Owned  
20 separately?

21 A. Right.

22 Q. Aside -- so as far as the financing piece --  
23 strike that.

24 What happens when a loan goes into default?

25 Can you briefly describe kind of how that process

1 goes through and gets to your division?

2 A. Yeah, absolutely. Typically when an account is  
3 in default, we have early stage collections team  
4 that will manage those accounts that are less  
5 than 60 days past due. And we have a dialer  
6 system where it's an automated call system, where  
7 outbound calls will be placed. And the early  
8 stage collections team, they will also send  
9 letters as well.

10 And then, once a collection efforts have  
11 been exhausted at the early stage, then those  
12 accounts are forwarded to the advanced collection  
13 team. And then it's that team that will make the  
14 decision to forward it to the repossession team,  
15 if the customer is unable to bring the account  
16 current. And if the customer isn't able to bring  
17 the account current, then those accounts get  
18 forwarded, like I said to repossession.

19 And that team is strictly the goal is to  
20 secure the collateral through -- through  
21 repossession efforts. And once those efforts are  
22 exhausted, that's at that point where those  
23 accounts are transitioned over to my team.

24 Q. So we're here about North Edisto Logging. And  
25 you've already testified that you're familiar

1 with that company and they're in your portfolio.

2 A. Yep.

3 Q. Can you generally describe that business as you  
4 understand it?

5 A. Yeah. My understanding of North Edisto Logging,  
6 Inc. was created in 1965 by Paul D. Gunter. And  
7 at the time it was created Paul D. Gunter was 100  
8 percent owner of that corporation. He held 100  
9 percent stock. And they became incorporated or  
10 they registered with the Secretary of State in  
11 the early 1980s. And it's a logging company.

12 And they've been a John Deere Financial  
13 customer since the early 2000s. And they have  
14 had over 20 loans that have been paid off. And  
15 we also have the five loans that are subject to  
16 these lawsuits that haven't been paid off.

17 Q. Okay. And are you familiar with what family  
18 members work for North Edisto Logging?

19 A. Yes, I am. So my understanding is Rocky Gunter  
20 took over ownership from Paul D. Gunter. And  
21 Rocky is Paul Rockford Gunter and he's the  
22 current 100 percent owner for the company. And  
23 then there's Brenda Gunter, who is the bookkeeper  
24 for the company. And then there's also various  
25 grandchildren, including Matthew Cody Gunter,

1           that is a crew foreman and involved in the day to  
2           day operations.

3    Q.    After Brenda Gunter, did book work, who took over  
4           from her?

5    A.    Paula Gunter

6    Q.    And is Paula Paul D. Gunter's daughter?

7    A.    Yes, she is.

8    Q.    I've seen -- is there a -- are there any other  
9           family members that work at North Edisto Logging?

10   A.    There's Brenda Gunter as you'd mentioned, she's  
11          the -- she's the spouse of the late Paul D.  
12          Gunter.

13   Q.    Okay. So in -- as part of your job, are you  
14          familiar with the five loans that are part of the  
15          collection lawsuit?

16   A.    Yes, I am.

17   Q.    And when were those loans made?

18   A.    Those loans originated in 2014 and 2015.

19   Q.    And what were the purpose of those loans?

20   A.    Those loans financed various logging equipment.  
21          Logging equipment that was financed that includes  
22          an excavator, a log loader, a buncher, and a  
23          scatter.

24   Q.    And when was that relationship transferred into  
25          the into your department, the litigation and

1 recovery department?

2 A. That relationship was transferred in late 2018,  
3 November 2018.

4 Q. When was the first time that demand was made on  
5 those?

6 A. There was a notice of acceleration and default  
7 letter that went out on November 7th of 2017.

8 Q. And the last payment on those loans?

9 A. Last payment was January of 2017. And those  
10 loans, prior to that last payment those loans  
11 were in default in 2016.

12 Q. Did John Deere Construction & Forestry file a  
13 lawsuit against North Edisto Logging and Paul D.  
14 Gunter in December of 2018?

15 A. Yes. A collection lawsuit was filed December  
16 20th of 2018.

17 MR. FANNING: Your Honor, I don't  
18 want to go too far, but I was going to  
19 hand him the complaint and ask him to  
20 identify it. I don't think that runs  
21 past where we're going.

22 THE COURT: I don't see any harm  
23 in identifying what the circumstances  
24 of the debt are. I mean, just we're  
25 not here to look at specific numbers.

1                   We're not really litigating any action  
2                   here.

3                   MR. WHITT: No objection here.

4                   It's a public document.

5                   THE COURT: All right. Fair  
6                   enough.

7 BY MR. FANNING:

8 Q.       Mr. Hartje, can you identify that document?

9 A.       Yes. This is the collection complaint that was  
10           filed December 20th of 2018. And it was in  
11           Lexington County, John Deere Construction &  
12           Forestry company versus North Edisto Logging Inc.  
13           And Paul D. Gunter. The purpose of this  
14           complaint was to get a court order to recover  
15           equipment that was financed and also for the  
16           indebtedness.

17 Q.       And was the equipment recovered?

18 A.       Yes. The equipment was recovered in July of  
19           2019. And then it sold in late 2019 and early  
20           2020. And there were some -- there was an  
21           indebtedness only after sale of that equipment --  
22           of that repossessed equipment.

23 Q.       And as that indebtedness has been paid?

24 A.       No, it hasn't.

25                   MR. FANNING: Can I have just a

1 minute, Your Honor?

2 Your Honor, can I approach?

3 THE COURT: Sure.

4 MR. FANNING: Mr. Hartje, can you  
5 identify what I have marked as Exhibit  
6 4?

7 (Exhibit No. 4 marked for examination.)

8 WITNESS HARTJE: Yes. This is an  
9 order granting summary judgment filed  
10 December 8th of 2020.

11 BY MR. FANNING:

12 Q. And is that related to the collection lawsuit?

13 A. Yes, it is.

14 Q. And just to clarify that, that order is on appeal  
15 with the Court of Appeals, correct?

16 A. That's -- that's my understanding. Yes.

17 Q. Has the order been overturned?

18 A. Not as far as I'm aware.

19 Q. Has any bond has been posted?

20 A. Not as far as I'm aware.

21 Q. As of today, do you know what the indebtedness is  
22 on the five contracts?

23 A. Yes. Indebtedness is \$1.1 million.

24 Q. At the time that John Deere had filed the  
25 collection lawsuit. Did John Deere understand

1           that it was the only creditor of North Edisto  
2           Logging and Paul D. Gunter?

3     A.     No. My understanding is there -- there were  
4           other lawsuits pending for the recovery of monies  
5           owed. And there were three other lawsuits  
6           specifically that were pending at the same time  
7           that the John Deere lawsuit was filed and  
8           pending.

9     Q.     How did John Deere come to find out about these  
10           other lawsuits?

11    A.     Well, it's --it's public information.

12    Q.     Mr. Hartje, I have -- I have handed to you what I  
13           have marked as Exhibit Number 5.

14                   (Exhibit No. 5 marked for examination.)

15    BY MR. FANNING:

16    Q.     Can you identify that document?

17    A.     Yes. This is a -- this is a complaint. Flint  
18           Equipment Company the plaintiff and North Edisto  
19           Logging Inc. And Paul Gunter are the defendants.  
20           And this was filed January 9th of 2018.

21    Q.     And was that going on at the time that John Deere  
22           filed the lawsuit, the collection lawsuit?

23    A.     Yes, it was.

24    Q.     And is -- what type of a lawsuit is that?

25    A.     This is to recover goods and services in the

1 amount of \$10,000.

2 Q. Is there a collection complaint?

3 A. It does appear to be that.

4 Q. Is Flint Equipment one of the independent dealers  
5 for John Deere?

6 A. Flint? Flint Equipment is an independent dealer.  
7 That is correct.

8 MR. FANNING: Mr. Hartje, I have  
9 handed you a document I have marked as  
10 Exhibit Number 6.  
11 (Exhibit No. 6 marked for examination.)

12 BY MR. FANNING:

13 Q. Can you identify that document?

14 A. Yes. This is -- is a collection complaint from  
15 Chili's Truck Center Inc. [phonetic] versus North  
16 Edisto Logging Inc. And this was filed January  
17 15th, 2019. And it seeks the recovery of roughly  
18 \$11,000 for goods and services.

19 Q. And is that a filing here in Lexington County?

20 A. Yes, it is.

21 Q. So that's also a collection complaint?

22 A. Yes, it is.

23 MR. FANNING: Mr. Hartje, I have  
24 handed you what I have marked as  
25 Exhibit Number 7.

1 (Exhibit No. 7 marked for examination.)

2 BY MR. FANNING:

3 Q. Can you identify that document?

4 A. Yes. This appears to be another collection  
5 complaint. And it's filed by Blanchard Machinery  
6 Company versus North Edisto Logging, Inc. And  
7 this was filed October 8th of 2019. And this  
8 seeks to recover approximately \$158,000. And  
9 this also is for goods and services.

10 Q. As far as this lawsuit that we're here on today,  
11 can you explain how you discovered the transfers  
12 that are at issue here?

13 A. Yeah. So one of the things I do in my role is I  
14 investigate property and assets that are owned by  
15 a defaulted customer. And I discovered in  
16 January of 2021, that a whole bunch of property  
17 in Lexington County was transferred to the Paul  
18 and Brenda Revocable Trust, those transfers were  
19 made in March of 2019.

20 And I also discovered on the Lexington  
21 County site, that there was no other property  
22 that was owned on that site, as of the date that  
23 I did that research. I also noticed that each of  
24 those transfers were for no consideration. They  
25 had \$1 associated as the sale price.

1                   And this was all ongoing while we had our  
2                   collection case pending.

3       Q.       Thank you.

4                   MR. FANNING: Your Honor, what I  
5                   would like to do to streamline this,  
6                   what I intend to do is hand up deeds to  
7                   have Mr. Hartje identify the deeds.  
8                   And I think it'd be helpful if we did  
9                   it in conjunction with the property  
10                  chart, so we can just say Property 1,  
11                  Property 2, Property 3. Would that be  
12                  all right?

13                  THE COURT: All right. And  
14                  basically, you want to admit the deeds?

15                  MR. FANNING: Correct.

16                  THE COURT: So for example, you'll  
17                  probably get one, two, then to three,  
18                  then to five when your property  
19                  transfer chart?

20                  MR. FANNING: That's a good  
21                  question.

22                  THE COURT: You're not going to  
23                  put in one that didn't have any  
24                  bearing?

25                  MR. FANNING: No, I will.

1 THE COURT: You will?

2 THE COURT: Yes. Because it goes  
3 to the conduct.

4 THE COURT: Okay. Fair enough. I  
5 remember you saying that for the  
6 purpose of showing the transfer not the  
7 amount.

8 MR. FANNING: Correct. Let's see  
9 here. Randy, this is 8.

10 (Exhibit No. 8 marked for examination.)

11 BY MR. FANNING:

12 Q. Mr. Hartje, I've handed you an exhibit I've  
13 marked as Number 8. Can you identify that  
14 document?

15 A. Yes. This appears to be a limited warranty deed  
16 from 2008.

17 Q. And who is it from and who is it to? Who are the  
18 grantors and on the one side and the grantee on  
19 the other?

20 A. Yeah. The grantor is American General Financial  
21 Services Inc. And then the grantee is North  
22 Edisto Logging Inc.

23 Q. And which property does that relate to?

24 If you will read the -- the deed in, book  
25 and page please?

1                   MR. WHITT: Your Honor, did we  
2                   give up on the last question and ask a  
3                   new one?

4                   THE COURT: I think he's reviewing  
5                   the deed for specifically what property  
6                   it apply to; is that correct?

7                   MR. FANNING: Correct.

8                   THE COURT: Let me ask y'all a  
9                   quick question.

10                                           (SIDEBAR)

11                   MR. FANNING: Randy that would be Exhibit Number 8  
12                   through 20 in the notebook. And ---

13                   THE COURT: Do you have a spare copy of your notebook?

14                   MR. FANNING: Yes. We do

15                   THE COURT: Well, it may make sense for them to just  
16                   hand you one of those notebooks.

17                   While you're doing that I'm just gonna step off, my  
18                   knee here is a little bit aggravated.

19                                           (Off the record at 10:51 a.m.)

20                                           (On the record at 10:54 a.m.)

21                   THE COURT: All right. Are we ready to proceed?

22                   MR. FANNING: Yes, Your Honor. And Mr. Whitt and I  
23                   have talked and we have -- we have stipulated that Exhibits  
24                   number 8 through 20 which are designed to show per property  
25                   the deed into either Mr. Paul Gunter or North Edisto Logging

1 Inc. Are public record, they are what they are, and so we  
2 don't have to have those identified one at a time.

3 THE COURT: Okay. Perfect. So Plaintiff's Exhibits 8  
4 through 20 to be admitted without objection?

5 MR. WHITT: Without objection, Your Honor.

6 (Plaintiff's Exhibits No. 9-20 marked for examination.)

7 THE COURT: And Madam Court Reporter, of course we're -  
8 - we get ahead of ourselves and you're missing something  
9 please let us know.

10 THE COURT REPORTER: Yes, sir.

11 MR. FANNING: I need just a minute to get them all in  
12 order.

13 THE COURT: Now, just while you're doing that. We've -  
14 - we've made reference to these joint stipulation of facts  
15 which were filed on June 21st, realize the part of the file  
16 record. I think I'm going to make them a Court Exhibit as  
17 well since we're referring to them. They're not evidence,  
18 they're just, I want it being in the record.

19 MR. WHITT: No objection here, Your Honor.

20 THE COURT: Madam Court Reporter, that will be Court's  
21 Exhibit 1.

22 (Court's Exhibit No. 1 marked for examination.)

23 THE COURT: Okay. Y'all beat me to it.

24 MR. FANNING: The chart's also in the notebook. It's  
25 52 in the notebook.

1 (CROSS TALK)

2 THE COURT: All right. We ready to roll on?

3 MR. FANNING: Yes, sir.

4 THE COURT: Okay. You ready?

5 MR. WHITT: Yes, sir.

6 THE COURT: Ma'am?

7 MS. WOOTEN: Yes, sorry.

8 BY MR. FANNING:

9 Q. Mr. Hartje, I have handed you what I marked as  
10 Exhibit 21. Can you identify that document?

11 A. Yeah. This is a general warranty deed. And this  
12 transfers property from Paul D. Gunter and North  
13 Edisto Logging Inc. Those are the two grantors  
14 and then the grantee on this is Paul and Brenda  
15 Gunter Revocable Trust, March 26th, 2019.

16 Q. And how many properties are described in that  
17 deed?

18 A. There's over 20 described in here.

19 Q. And what is the date that, that was signed?

20 A. This was signed on March 26th of 2019.

21 Q. And is that one of the deeds that you discovered  
22 in your asset investigation?

23 A. This was discovered through an abstract title.  
24 So I ordered an abstract title to better  
25 understand the chain of title. And really

1 through the chain of title, that's how the in  
2 deeds were identified, as well as this deed. And  
3 this deed transfers the property subject to this  
4 litigation to the revocable trust.

5 THE COURT: And when you say  
6 abstract title, you mean -- just me  
7 here. So you mean what specifically?  
8 Search of grantor and grantees of  
9 multiple properties reference and a  
10 deed?

11 MR. FANNING: Right.

12 THE COURT: Okay.

13 MR. FANNING: Yeah.

14 THE COURT: Just making sure we  
15 understood abstract when you say it.

16 MR. FANNING: Yeah.

17 THE COURT: I thought so. I know  
18 the term abstractor, but make sure I  
19 understood there.

20 BY MR. FANNING:

21 Q. Was that a title search of all the properties  
22 owned by North Edisto Logging and Paul Gunter at  
23 the time?

24 A. Yes.

25 Q. Did -- when you discovered these deeds, did you

1 find anything that was unusual about them?

2 A. What I found unusual was the fact that the Trust  
3 has a date of March 26th, 2019. And that's the  
4 date that all this property was transferred,  
5 which is also dated March 26th, 2019. And that  
6 was also in the midst of our collection suit,  
7 which again, that was filed in late 2018.

8 Q. So the timing was unusual?

9 A. Correct.

10 Q. About the grantor grantee, was that unusual to  
11 you?

12 A. That was unusual to me.

13 Q. The fact that they were all signed on the same  
14 day, was that unusual?

15 A. That was unusual to me.

16 Q. Did you make note of any consideration or excise  
17 taxes?

18 A. Based on this deed, I -- I haven't seen any  
19 consideration. It says consideration in the  
20 affidavit of consideration is transferring to my  
21 entity.

22 Q. And that stood out to you at the time?

23 A. It did.

24 Q. Mr. Hartje, I have handed to you what I have  
25 marked as Exhibit Number 22. Can you identify

1           that please?

2     A.     Yes. This is a general warranty deed. And the  
3           grantor is Paul Gunter and the grantee is Matthew  
4           Cody Gunter.

5     Q.     Is that same date?

6     A.     This is signed March 26th.

7     Q.     2019?

8     A.     2019.

9     Q.     And what is the consideration in the affidavit of  
10           consideration?

11    A.     It says, love and affection for my grandson.

12    Q.     When was the first time that John Deere found out  
13           about these transfers?

14    A.     This was the first time I found out about  
15           transfers in the trust.

16    Q.     And when -- when was that?

17    A.     This was in January of 2021.

18    Q.     Were any of these transfers disclosed to Deere at  
19           any time before that?

20    A.     No, they weren't. Like I said before, you know,  
21           in January 2021, when I was on the Lexington  
22           County website, property search tool. That was  
23           the first time I found out about these transfers.

24                   MR. FANNING: Can I have a pause  
25           here for efficiency?

1 THE COURT: Certainly.

2 MR. WHITT: I'm always in favor of  
3 efficiency.

4 MR. FANNING: We have the tax  
5 bills in 2019 for the properties that  
6 are relevant to the action. And they  
7 are in Exhibits 23 through 35. And  
8 they're straight from the tax office.

9 MR. WHITT: No objection to the  
10 tax files.

11 THE COURT: Once again, this is  
12 just to be clear, Exhibits 20 through  
13 35 would be the tax bills for the  
14 property's previously admitted,  
15 Exhibits 8 through 20?

16 MR. FANNING: Correct.

17 THE COURT: They would be  
18 corresponding tax bills to previously  
19 admitted exhibits. That's without  
20 objection, Mr. Whitt?

21 MR. WHITT: That is without  
22 objection.

23 THE COURT: Plaintiff's Exhibits  
24 23 through 35 will be admitted into  
25 evidence.

1 (Plaintiff's Exhibit No. 23-35 marked for examination.)

2 BY MR. FANNING:

3 Q. Mr. Hartje, have you reviewed the tax bills for  
4 these properties?

5 A. I have.

6 Q. And just for efficiency sake, the tax bills for  
7 each of these properties, does that have the tax  
8 value listed as a given year?

9 A. Yes, it does.

10 Q. In this particular case, the tax value as of  
11 2019?

12 A. Yes, it does.

13 Q. And property chart, which is Exhibit Number 52,  
14 but below blown up. Does that list out for each  
15 of the properties the tax value for each of the  
16 properties?

17 A. Yes, it does. It has tax value as of 2019.

18 Q. So the tax value of the nine properties from  
19 North Edisto Logging to the trust, roughly more  
20 than half a million dollars?

21 A. That's correct. Tax value, that's correct.

22 Q. And the six properties that were owned by Paul  
23 Davis Gunter, about \$400,000 tax value?

24 A. That's correct. Yeah, between the two -- between  
25 the two grantors, it's \$900,000 total tax value.

1                   MR. FANNING: Okay. Mr. Hartje, I  
2                   handed you what I have marked as  
3                   Exhibit Number 36.

4                   (Exhibit No. 36 marked for examination.)

5 BY MR. FANNING:

6 Q. Can you identify that document?

7 A. This is the Paul and Brenda Gunter Revocable  
8 Trust agreement.

9 Q. And when was the first time you received a copy  
10 of that document?

11 A. First time I've seen this was during the  
12 discovery process of this litigation today.

13 Q. And can you identify who the settlors are here?

14 A. Paul D. Gunter and Brenda Gunter.

15 Q. And who are the trustees?

16 A. Paul D. Gunter and Brenda Gunter.

17 Q. There any beneficiaries designated?

18 A. No, there are not.

19 Q. The trust refers to a Schedule A, property to be  
20 transferred. Does it not?

21 A. It does.

22 Q. Is there a Schedule A?

23 A. There's no schedules associated with this trust.

24 Q. Any amendments, modifications, or other documents  
25 related to the trust?

1 A. I haven't seen any amendments or modifications.

2 Q. The trust refers to a last will and testament.

3 Have you seen any last will and testament for

4 Paul D. Gunter?

5 A. I have not.

6 Q. Was this trust disclosed to the year before this

7 lawsuit?

8 A. No, it wasn't.

9 Q. Was the existence of this trust concealed from

10 Deere?

11 A. I believe so.

12 MR. FANNING: Mr Hartje, I've

13 handed to you what I've marked as

14 Exhibit Number 49.

15 (Exhibit No. 49 marked for examination.)

16 BY MR. FANNING:

17 Q. Can you identify that document?

18 A. Yeah. This is a general warranty deed. Where --

19 where the revocable trust transferred a piece of

20 property to a grantee, Victor Rivera Don Juan

21 [phonetic], for \$53,000.

22 Q. And when was that deed recorded?

23 A. September 29th, 2023.

24 Q. So just a few months ago?

25 A. That's correct.

1 Q. And is that property, Property Number 1 on the  
2 chart?

3 A. Yes, it is. It's 252 Sugar Bottom Road,  
4 Leesville, South Carolina.

5 Q. And so despite this lawsuit, and despite this lis  
6 pendens that attached to that property, the trust  
7 sold that property in September of 2023; is that  
8 correct?

9 A. That's correct.

10 Q. Did the trust or anybody else tell you about  
11 this?

12 A. No.

13 Q. When did you first discover this deed?

14 A. Couple days ago.

15 Q. Was that deed recorded when we had a motion for  
16 sanctions pending in this court?

17 A. Yes, it was.

18 Q. Did you or -- or John Deere get any money?

19 A. No. No, we did not.

20 Q. And so nobody else at John Deere knew about this  
21 deed?

22 A. No. No.

23 MR. FANNING: Mr. Hartje, I've  
24 handed you what I marked as Exhibit  
25 Number 37.

1 (Exhibit No. 37 marked for examination.)

2 BY MR. FANNING:

3 Q. Can you identify that document?

4 A. This appears to be a tax return for 2019.

5 Q. Who is the taxpayer?

6 A. North Edisto Logging Inc.

7 Q. And who -- who signed the tax return? Or who is  
8 the officer listed?

9 A. Paul R. Gunter as President.

10 Q. And on the front page of that document, the  
11 ordinary business income or loss is stated. Can  
12 you -- can you read that number?

13 A. Yeah. It's reported as a loss in the amount of  
14 \$1,036,942.

15 Q. Okay.

16 MR. WHITT: Your Honor, while we  
17 have a brief pause in the action here.  
18 One thing I would like to bring to the  
19 Court's attention, is this is one of  
20 the documents that was produced  
21 pursuant to the confidentiality  
22 agreement. It's marked confidential.  
23 I think there's a method for the  
24 clerk's office to have those documents,  
25 part of the file but not sealed file

1           that's viewable for the public.

2           So I would just ask that anything  
3           that's marked confidential in the  
4           exhibits in this case, if you could  
5           coordinate with the clerk's office.

6           THE COURT: And we're referring to  
7           Exhibit 47 or?

8           MR. WHITT: Thirty-seven is the  
9           one ---

10          THE COURT: Thirty-seven.

11          MR. WHITT: --- that is currently  
12          on the docket there. There's, I think,  
13          more to come.

14          THE COURT: Okay.

15          MR. WHITT: And just ---

16          THE COURT: Let's keep a running  
17          tally, Mr. Whitt, of those exhibit  
18          numbers and the clerk of the court can  
19          certainly ensure that those are not  
20          able to be clicked on the court  
21          management system by anyone from the  
22          general public.

23          MR. WHITT: Much appreciated, Your  
24          Honor.

25          MR. FANNING: Your Honor, can I

1 ask for a brief comfort break?

2 THE COURT: Sure.

3 MR. FANNING: We're almost done.

4 Just want to ---

5 THE COURT: I don't know how many  
6 of the tax documents intend to go but  
7 we'll go off the record this time.

8 (Off the record at 11:16 a.m.)

9 (On the record at 11:29 a.m.)

10 MR. FANNING: Your Honor, I have  
11 no further question for Mr. Hartje.

12 THE COURT: All right. Cross  
13 examination?

14 CROSS EXAMINATION

15 BY MR. WHITT:

16 Q. Mr. Hartje, let's start right where we were,  
17 which is Exhibit 37. That's one of the tax  
18 returns. So grab your -- grab your copy of that.

19 A. Yep. I have it.

20 Q. Sorry?

21 A. I have Exhibit 37.

22 Q. Okay. Good. You testified about Line 21, that  
23 document that shows a loss. Tell me what Line 6  
24 discloses?

25 A. It has total income \$4 million.

1 Q. And towards the top there's a box labeled F, see  
2 that?

3 A. I do.

4 Q. What -- what -- what does that box state that it  
5 is and what amount is there?

6 A. F says total assets and then the amount says  
7 roughly 2.7 million.

8 Q. And in our tour through this document, how about  
9 box 1-A? What is that? What is it? What does  
10 it disclose?

11 A. 1-A says gross receipts or sales 6.15 million.

12 Q. Okay. And I'd like to go to -- do you also have  
13 a copy of what's been labeled Exhibit 46?

14 MR. WHITT: Does he have that  
15 already Paul?

16 WITNESS HARTJE: No, sir. I  
17 don't.

18 BY MR. WHITT:

19 Q. Well, in that case, we need to get you a copy of  
20 it. Okay.

21 MR. FANNING: I've got a copy.

22 MR. WHITT: Okay. Well, I'd like  
23 to hang onto mine.

24 Your Honor, may I approach?

25 THE COURT: Yes, sir.

1 (Exhibit 46 marked for examination.)

2 BY MR. WHITT:

3 Q. As I'm sure you can tell, that's also a tax  
4 return, that's 2018. As it is labeled in the  
5 upper corner where the date is. I'd like to hit  
6 the same tour that we did on the other tax -- tax  
7 return. Let's start with Box F. What is -- what  
8 is that and what's the amount?

9 A. F says total assets 3.5 million.

10 Q. And how about gross receipts; that's 1-A?

11 A. 6.69 million.

12 Q. Income, Line 6?

13 A. 2.5 million.

14 Q. And to be fair, we'll go back to where you  
15 started on the other one, that's Line 21.

16 A. Yep, ordinary business income loss 481,000.

17 MR. WHITT: And then Paul, we need  
18 47 as well.

19 MR. FANNING: Okay.

20 MR. WHITT: Thank you.

21 MR. FANNING: 47.

22 (Exhibit 47 marked for examination.)

23 BY MR. WHITT:

24 Q. The tax return that is the 2020 tax return as you  
25 can see from the upper right hand corner. So box

1 F on that return?

2 A. Total assets 2.6 million.

3 Q. And gross receipts?

4 A. 5.3 million.

5 Q. Total income, Line 6?

6 A. 4.3 million.

7 Q. And the Line 21?

8 A. Loss of 75,000.

9 MR. WHITT: Okay. 48. This is

10 Exhibit 48.

11 (Exhibit 48 marked for examination.)

12 BY MR. WHITT:

13 Q. Okay. Box F?

14 A. 3.3 million.

15 Q. Gross receipts?

16 A. 5 million.

17 Q. Line 6, total income?

18 A. 4.2 million.

19 Q. And Line 21?

20 A. Loss of 431,000.

21 Q. And down at the bottom of the first page of -- of

22 Exhibit 48. What is the date that it's given?

23 That's the date that return was prepared?

24 A. Looks to be October 13th, 2022.

25 Q. Okay. So that was after your last in this action

1 was filed?

2 A. Yes.

3 MR. WHITT: Okay. Your Honor, I'd  
4 like to ask that those additional tax  
5 returns. I think there's three of  
6 them, in addition to the one that we  
7 had previously, that those be admitted  
8 in evidence and that they all be  
9 treated as confidential, as we  
10 discussed by the clerk's office.

11 THE COURT: So 37 was admitted.  
12 You're asking for 46, 47, 48?

13 MR. WHITT: That is correct, Your  
14 Honor.

15 THE COURT: And objection, Mr.  
16 Fanning?

17 MR. FANNING: No objection.

18 THE COURT: Defendant's Exhibit  
19 46, 47, 48, I am admitting those.

20 BY MR. WHITT:

21 Q. Mr. Hartje, I'm looking at those documents as a  
22 group. Can you discern any substantial trend in  
23 say, the gross income or the line six total  
24 income figures?

25 A. I guess when I look at these tax returns, I see

1 operating losses on all four. That's a trend  
2 that I see.

3 Q. Understood. And how does the amount of the --  
4 how does amount of the 2021 loss compare with  
5 the one from 36? Which is I think your -- your  
6 starting point?

7 A. The 2019?

8 Q. Yes.

9 A. That -- can you restate the question?

10 Q. How does the loss, Line 21, from 2021 compare  
11 with the loss in 2019?

12 A. The 2021 loss was 431,000 and the loss in 2019  
13 was slightly over a million.

14 Q. So less than half?

15 A. Yes.

16 Q. And 46, also less than half?

17 A. Yes. It appears that way.

18 Q. 47?

19 A. \$75,000 loss.

20 Q. So less than ten percent?

21 A. It would appear that way.

22 Q. And as far as the gross receipts go, you have 5  
23 million in 2021.

24 A. That's correct.

25 Q. You have 5.3 in 2020.

1 A. That's correct.

2 Q. You have 6.6, almost 6.7 in 2018.

3 A. That's correct.

4 Q. And then 2019, you have 6.1.

5 A. That's correct.

6 Q. So to me that looks like -- the data, that's  
7 somewhere between five and six million. I'm not  
8 seeing much, much change amongst those four  
9 numbers. Is that a fair assessment?

10 A. I -- I would agree with that I suppose. It's  
11 pretty consistent in terms of gross receipts and  
12 sales. It's between five and six million each of  
13 those four tax years.

14 MR. WHITT: Go to a different set  
15 of information. I'm Back to the chart,  
16 Exhibit 52 in its smaller version.  
17 (Exhibit No. 52 marked for examination.)

18 BY MR. WHITT:

19 Q. And we've all got these enormous copies. I  
20 believe you testified that the tax value in  
21 aggregate of those properties was in the range of  
22 \$900,000?

23 A. Yes.

24 Q. Take -- take a look at that again and make sure.  
25 Make sure that I'm accurately.

1 A. Are you asking me to add all those numbers up?

2 Q. I'm just asking you, earlier you testified it was  
3 about \$900,000. As I recall?

4 A. Uh-huh.

5 Q. I just -- look at that again, and make sure  
6 you're still you're still good with us starting  
7 from \$900,000 being a total of all those tax  
8 values.

9 A. Yeah. I'm good with 900,000 as it was a 2019 tax  
10 value.

11 Q. Okay. Well, then let's look at the properties  
12 that are no longer part of this lawsuit.

13 A. Okay.

14 Q. On that -- on that list. And let's start with  
15 the group of 16 through 20, which are on the last  
16 page.

17 A. Okay.

18 Q. So what is the tax value stated for 16 through  
19 20?

20 A. 407,000.

21 Q. So with what's left in this action 900,000, now  
22 we're down to roughly half a million. What's  
23 left, because that property is out of our  
24 consideration for the property that's actually an  
25 issue in this lawsuit.

1 A. So those properties aren't a part of -- so that  
2 wasn't included in the 900,000. And that --  
3 those properties aren't included in this lawsuit  
4 either.

5 Q. Well.

6 A. Those really aren't in question. Those ---

7 Q. Well ---

8 A. --- 16 through 20.

9 Q. Help me with -- well, let's go through the other  
10 ones that are not included. You've got Property  
11 4, which is also not included in that. And it  
12 looks like the tax value for those two parcels  
13 are 135,000.

14 A. Correct.

15 Q. And are you indicating that, that's not part of  
16 your \$900,000 figure as well?

17 A. Those were included in the 900,000.

18 Q. Okay. So if we take that out of 900,000, we're  
19 down to 765. If I've done that math correctly  
20 and quickly in my head. So 900,000 minus 135 is  
21 765.

22 A. I agree with that.

23 Q. Okay. Let's look at Property 2, which is also  
24 out of the picture. And the tax value is 92,317.

25 A. That's correct.

1 Q. So that needs to come out of the 900,000 as well.  
2 If we're talking about the property, the value of  
3 the property, that's still part of this  
4 litigation.

5 A. That's correct.

6 Q. So, again, based on my quick in-my-head  
7 calculation, 765 minus 92 gets us to 673. So  
8 that -- you don't be on board with that?

9 A. For 2019 tax value. Yes.

10 Q. Of the property that is still involved in this  
11 litigation.

12 Let's look at property number seven, which  
13 is also identified as no longer being part of  
14 this action. So it looks like the tax value of  
15 that parcel is 66,700.

16 A. This -- yeah. that's the tax value.

17 Q. And you see the red node to the right of it on  
18 the chart indicating it's no longer part of this  
19 action?

20 A. That's correct.

21 Q. So if we deduct that number out, that's 66,000 or  
22 around numbers. So we're down to 697. We were  
23 at 673. We deduct 66, now we're at 607.

24 A. I don't believe this one was a part of action.

1 Q. Well, would you like to take a minute and --  
2 because I feel like we're a little -- we got a  
3 lot of numbers floating around here. Would you  
4 like to take a minute, just run through again and  
5 come up -- come up with a total of what your  
6 testimony is, that the tax values are for the  
7 2019 properties that are still in this -- in this  
8 litigation?

9 A. What I testified to, was at the time I researched  
10 and identified the properties, that was the tax  
11 value at the time was 900,000.

12 Q. Understood. And I'm asking you for a different  
13 answer based off the same information of what's  
14 the tax value of the properties that are still  
15 part of this -- of this litigation.

16 A. I'd have to have current tax values.

17 Q. No, no. In 2019. My question is very specific.  
18 The 2019 tax values of the property that's still  
19 part of this litigation. So basically, we just  
20 need to take the chart and make the appropriate  
21 subtractions. I just don't know what all you had  
22 included and not included in your \$900,000  
23 figures. So I'm just giving you an opportunity  
24 to sort -- sort all that out.

1                   THE COURT: Do you understand the  
2 question?

3                   WITNESS HARTJE: I don't  
4 understand.

5                   THE COURT: Okay. Are you asking  
6 him to just add up the taxable values?

7                   MR. WHITT: I'm just -- he  
8 testified to a number before.

9                   THE COURT: Okay.

10                  MR. WHITT: I'd like to get the  
11 number with those deductions made. I  
12 don't know what was in and out on  
13 900,000. So I attempted to kind of go  
14 through it. But now there's another  
15 one that we're sort of not sure whether  
16 it was in or out.

17                  THE COURT: Okay. If I understood  
18 your question, it appears you're asking  
19 him to add up the taxable values of all  
20 the pending, at issue properties in  
21 Exhibit 52?

22                  MR. WHITT: Yes, Your Honor.

23                  THE COURT: Okay. Do you have a  
24 calculator?

1 MR. WHITT: Your Honor, I do not  
2 on my person because you've exceeded my  
3 doing math in my head possibility. So.

4 WITNESS HARTJE: I don't have one  
5 either, didn't expect to need one.

6 THE COURT: Madam Court Reporter,  
7 do you have a calculator down there  
8 other than your computer? I mean,  
9 under the circumstances if you want to  
10 use your phone if that would assist  
11 you.

12 WITNESS HARTJE: My phone is at  
13 the counsel table.

14 THE COURT: Well, that --  
15 typically witnesses don't bring their  
16 phone to the witness stand, but.

17 (CROSS TALK)

18 THE COURT: Sure. WITNESS  
19 HARTJE: Mr. Whitt, I may so you want  
20 me to add every property that has a yes  
21 in question. You want me to add all  
22 those numbers up then?

23 BY MR. WHITT:

24 Q. That's correct.

25 A. Is that correct? Okay. I'm just going to do

1 round numbers just for simplicity's sake.

2 Q. That's completely fair.

3 A. Yeah. Okay. I come up with 671,000.

4 Q. Okay. Thanks. Thank you for doing that. And I  
5 think that's -- with your qualification of what  
6 was in and out that seems to -- that seems to  
7 track with what -- what we've got here.

8 As part of your testimony, you looked at a  
9 number of or you discussed a number of complaints  
10 that had been filed. And I will find you the  
11 exhibit number. I believe that was -- so Exhibit  
12 5 was the complaint from a lawsuit, Flint  
13 Equipment Company versus North Edisto Logging,  
14 that's 2018CP320079. You recall testifying about  
15 that complaint and having found that complaint as  
16 part of your research?

17 A. Yes. I don't have that exhibit in front of me,  
18 but I'm familiar with that complaint.

19 Q. Did you, in the course of your further research,  
20 learn what the disposition of that lawsuit was?

21 A. I do know the disposition of that.

22 Q. Okay. What was the disposition that your --  
23 based on your knowledge, what was the disposition  
24 of that -- that lawsuit?

25 A. Mutual walkaway.

1 THE COURT: I've never heard that,  
2 mutual walkaway. Okay.

3 MR. WHITT: That's it, Your Honor.  
4 It's the older lawyers used to call  
5 that a dog and fall, but old fighting  
6 references are out of favor these days.  
7 So, mutual walkaway is the -- is the  
8 term, term.

9 BY MR. WHITT:

10 Q. Exhibit 6 was Chili's Truck Center. They're also  
11 2018. Also CP32, that was 3881. Are you aware  
12 of what the ultimate disposition of that case  
13 was?

14 A. I'm not.

15 Q. Well, I have that document right here.

16 MR. FANNING: Your Honor, we would  
17 object. This was not produced in  
18 discovery.

19 THE COURT: What are we looking at  
20 here?

21 MR. WHITT: I'm sorry?

22 THE COURT: What are we looking  
23 at?

24 MR. WHITT: Your Honor, it's --  
25 it's the order form for order

1 dismissing the lawsuit that the  
2 complaint was earlier referred to.

3 THE COURT: In a separate case

4 MR. WHITT: Yeah. The complaint  
5 in that action was entered into  
6 evidence in this case. This is a form  
7 for and the document from the ADR in  
8 that case indicating that, that case  
9 was also a mutual walkaway.

10 THE COURT: Well, let's just fully  
11 settled through mediation.

12 MR. WHITT: Yes, Your Honor.

13 MR. FANNING: Mr. Hartje doesn't  
14 have any personal knowledge of this.  
15 First time we've seen it. I don't know  
16 what the terms are. I haven't seen a  
17 settlement agreement.

18 THE COURT: See also, I -- maybe -  
19 - I don't understand what mutual  
20 walkaway is. Settled and mutual  
21 walkaway don't to me sound like the  
22 same thing. Settled means agreement.  
23 Mutual walkaway means we're both  
24 walking away from this mess.

25 MR. WHITT: And, Your Honor, I

1 think that's what the facts were in  
2 that case. The document, however,  
3 should come in to show what public  
4 record reflects about that particular  
5 loss.

6 THE COURT: How is it relevant?

7 MR. WHITT: That it ended without  
8 there being a judgment against North  
9 Edisto. Because the reason these were  
10 admitted in the first place was to show  
11 that there were a whole raft of  
12 lawsuits against my client in 2018 and  
13 2019.

14 THE COURT: Okay.

15 MR. WHITT: And the rest of the  
16 story is, is that all of those lawsuits  
17 have been resolved and there's not a  
18 single judgment against North Edisto  
19 arising out of any of them.

20 THE COURT: Okay. Well.

21 MR. FANNING: And there's not a  
22 single shred of how much was paid.

23 THE COURT: Well, no. The only  
24 thing I can agree to. We've kind of,  
25 Mr. Whitt, well, I think you've got a

1           little bit of a personal touch on what  
2           this document provides. But I will  
3           certainly -- if there's a document  
4           about Chili's Trucking Truck Center in  
5           evidence versus North Edisto Logging,  
6           if the complaint is in evidence, I have  
7           no problem with the form for, that just  
8           shows the case was settled. But as far  
9           as what the terms, I mean, by the very  
10          nature of mediation, the terms would be  
11          confidential anyway.

12                 Well, I take that back. The  
13          negotiations, whatever was said at the  
14          mediation, we don't know why it settle.  
15          We only know that it did settle. And  
16          this -- this form -- form has nothing  
17          to do with the settlement terms. So I  
18          don't want to speculate about what the  
19          terms were.

20                 MR. WHITT: And Your Honor, at  
21          this point, I'm happy to limit it to --  
22          -

23                 THE COURT: Case settled.

24                 MR. WHITT: --- there was no  
25          judgment entered against North Edisto.

1 THE COURT: Okay. Well by that --  
2 in that case.

3 MR. WHITT: Right, in that case.

4 THE COURT: It shows that it was  
5 fully settled through alternative  
6 dispute resolution.

7 MR. WHITT: In that case.

8 THE COURT: That's fine. You can  
9 -- you can call this Defendants Exhibit  
10 what?

11 MR. WHITT: Yeah. I'm not sure  
12 where we are.

13 THE COURT: You actually were  
14 using their set. Well, this is  
15 something that is not in the binder.  
16 So I'd say you're a Defendants 1.

17 MR. WHITT: That works, that works  
18 for me.

19 THE COURT: All right.

20 MR. WHITT: The only thing I was  
21 going to suggest is, and again, to the  
22 extent you want to do this, the exhibit  
23 that this relates to, I think was  
24 seven. So would you like to call it 7-A?

25 MR. FANNING: Six.

1 THE COURT: Madam Court Reporter,  
2 is that okay with you?

3 THE COURT REPORTER: All right.

4 MR. WHITT: 6-A.

5 THE COURT: Defendant's, -- well,  
6 6-A. Okay.

7 (Exhibit 6-A marked for examination.)

8 BY MR. WHITT:

9 Q. Well, Mr. Hartje to go back. Now that we've  
10 established what happened. Why would your  
11 research not have disclosed what happened in that  
12 lawsuit?

13 A. Are you referencing Chili's ---

14 Q. Yes.

15 A. --- lawsuit? I don't have an answer for that.

16 Q. Okay. Fair enough. I mean, it seems that with  
17 the research that you did, looking at public  
18 records that's in public records. Seems -- seems  
19 that would have been found, but let's move on to  
20 the case against Flint Equipment Company. That  
21 is Number 5. That was 2018CP30079.

22 In your research to the public records, are  
23 you aware of what happened with that case?

24 A. I'm aware of the mutual walkaway.

1 Q. Okay. So we got two -- have -- you're aware of  
2 two out of three of those cases being a mutual  
3 walkaway? Of five, six and seven?

4 A. Based on my research, I'm only aware of one being  
5 a mutual walkaway.

6 Q. Well, I thought we determined that Blanchard --  
7 well, I'm sorry. Okay. So we now have the last  
8 one of the three is Blanchard Equipment, which is  
9 seven. That's 2018CP324018. What are you aware  
10 about as far as the disposition of that case?

11 A. I believe that one was a settlement.

12 Q. And that there was no judgment that resulted  
13 against North Edisto as a result of that action?

14 A. I don't know that to be true.

15 Q. Well ---

16 A. Whether there was a judgment.

17 Q. If there was settled -- there are two different  
18 things it would be in the public record. There  
19 would be either a judgment or some sort of  
20 dismissal or some other document ending the case.

21 A. I don't have any first hand knowledge of that.

22 Q. Okay. Well, I -- I've ---

23 THE COURT: I suspect Mr. Whitt  
24 does. I'm not looking at another form  
25 four.

1                   MR. WHITT: Actually, Your Honor,  
2                   this is just a ---

3                   MR. FANNING: Objection for the  
4                   record, Your Honor.

5                   THE COURT: All right. So  
6                   objection is overruled. Being that  
7                   this is another case it is -- and  
8                   appears to be in the binder of exhibits  
9                   here. But just to be clear, this  
10                  appears more to be of a mutual walkaway  
11                  to the stipulation dismissal filed by  
12                  the parties.

13                  MR. WHITT: Yes, Your Honor.

14                  THE COURT: Okay.

15                  MR. WHITT: And that I would say  
16                  we could identify as 7-A because the  
17                  one that it's -- it's associated with  
18                  is 7.

19                  THE COURT: All right. Subject to  
20                  objection, this will be -- I have to  
21                  call it Defendant's Exhibit 7-A, I  
22                  believe, because you're putting it in.

23                  MR. FANNING: Your Honor, we would  
24                  just raise our objection. Mr. Hartje  
25                  doesn't have any personal knowledge

1           about any of this. He can't  
2           authenticate what this is.

3           THE COURT: I understand your  
4           objection, Mr. Fanning. I'm gonna  
5           allow it just because there is  
6           documents in the record pertaining to  
7           this case. And it's -- however, the --  
8           the cause of his lack of personal  
9           knowledge of it today. I suspect there  
10          ain't too much questions that's gonna  
11          come out of it.

12          (Exhibit 7-A marked for examination.)

13          MR. WHITT: Your Honor, I'm done  
14          with those.

15          THE COURT: Okay.

16          MR. WHITT: That document -- we  
17          established before that he's not sure  
18          about why some of these things didn't  
19          turn up in his -- in his research in  
20          the public records.

21   By MR. WHITT:

22   Q.     Mr. Hartje, in your portfolio of defaulted loans  
23           that you're responsible for, how many defaulted  
24           loans do you have now?

25   A.     It's hard to give you an exact number.

- 1 Q. Understood. Is it 100?
- 2 A. I'd say roughly 300 ---
- 3 Q. 300.
- 4 A. --- in my folio.
- 5 Q. Understood. And I understand that is a dynamic
- 6 figure changes over time, I just want to get a
- 7 ballpark for roughly 300. Is that essentially
- 8 the level that you would have had in 2019?
- 9 A. I don't recall.
- 10 Q. Well, do you recall it changing dramatically as
- 11 they're being more now or less now or?
- 12 A. So I wasn't in this department in 2019.
- 13 Q. Understood. So 300 defaulted loans. Do you have
- 14 any idea how many defaulted loans there are that
- 15 are in other people's portfolios?
- 16 A. I don't.
- 17 Q. And in those 300 defaulted loans, how many
- 18 notifications have you gotten, say in the last
- 19 month from the customer in those cases about
- 20 transferring a piece of property?
- 21 A. None.
- 22 Q. And how many notifications have you got about one
- 23 of those customers creating a trust?
- 24 A. None in the last month.
- 25 Q. Well, let's broaden it out to a longer time

1 frame. In the last year, how many of those  
2 debtors, those customers, have notified you about  
3 selling a piece of property?

4 A. I've had a -- I've had a handful, I'd say 10.

5 Q. Okay.

6 MR. FANNING: Your Honor, I'm  
7 trying to follow the line of  
8 questioning, but I don't see the  
9 relevance to this case.

10 MR. WHITT: Well, Your Honor, the  
11 relevance was the witness testified  
12 that various things were unusual about  
13 not knowing about transactions and  
14 other things. I'm showing that it's --  
15 it's really not that unusual that  
16 debtors don't call John Deere up and  
17 say, Hey, we're selling a piece of  
18 property. There was a characterization  
19 of it being unusual, I think none in  
20 the last month and over a longer period  
21 of time, out of 300 loans, provide some  
22 context of whether it's really that  
23 unusual or not.

24 THE COURT: Okay. I also recall,  
25 there was more context on the

1           unusualality that had to do with the  
2           people who were involved as grantors  
3           and grantees as well. I haven't heard  
4           any questioning about the 10 people  
5           that did report was there any  
6           relationships of note?

7                     MR. WHITT: Your Honor, I'm -- I'm  
8           happy to ask that questions.

9   BY MR. WHITT:

10   Q.     Mr. Hartje, of those ten, what do you recall  
11           about relationships between the debtor/customer  
12           and anybody that they might have been related to?

13   A.     These would have been judgment debtors. So the  
14           ones that reported property being sold would have  
15           been judgment debtors.

16   Q.     So those would be situations where you already  
17           had a judgement?

18   A.     Correct.

19   Q.     And you acknowledge that you don't have a  
20           judgment in this case?

21                     MR. FANNING: Objection, Your  
22           Honor. Can't talk about that.

23                     THE COURT: Well, it's -- it's  
24           just us here. He can answer the  
25           question.

1                   WITNESS HARTJE: It's hard -- it's  
2                   hard -- it's hard to say. And then the  
3                   it says order, granting motion for  
4                   summary judgment.

5                   MR. WHITT: Understood, and we've  
6                   all -- yeah. Judge, you're aware of  
7                   all the issues with that.

8                   THE COURT: We have a case that is  
9                   on appeal. We have a summary judgement  
10                  order that was entered may or may not  
11                  get upheld. If it doesn't, we'll cross  
12                  that bridge, we get to it.

13                  MR. WHITT: Understood, Your  
14                  Honor.

15 BY MR. WHITT:

16 Q.       Mr. Hartje, I'd also like to ask you about, from  
17           your experience. And is there any John Deere  
18           standard for how long, what is the timeline once  
19           a lot -- once a loan goes into default, what is  
20           your personal experience or if there's any John  
21           Deere guideline or policy? What is the timeline  
22           that's supposed to occur between being in default  
23           and legal action being filed?

24 A.       It's hard to say. There's no standard for that.

25 Q.       So there's no John Deere standard. What is your

1           experience about what the time frame generally is  
2           for going from default to having instituted your  
3           first legal action?

4    A.     It really depends.  It's very situational.

5    Q.     Just to circle back some of the things that  
6           beginning.  You indicated you have a law degree.  
7           I assume that you are not admitted to practice in  
8           South Carolina because you indicated you weren't  
9           practicing in any capacity at this point.  So is  
10          it -- is it fair to say you're not admitted to  
11          practice in South Carolina?

12   A.     That's right, that's correct.

13   Q.     Do you have any kind of accounting or finance  
14          degree?

15   A.     I don't.

16   Q.     What -- what is your undergraduate degree in?

17   A.     Criminal justice.

18                   MR. WHITT:  Your Honor, if I may  
19                   confirm with my clients for just a  
20                   second?

21                   THE COURT:  Very well.  Mr. Whitt,  
22                   if you'd like y'all can even step out.

23                   MR. WHITT:  Okay, Your Honor.

24                   That might just be ---

25                   THE COURT:  Sort of stand easier -

1                   --

2                   MR. WHITT: --- a short break.

3                   THE COURT: It's just -- just us.

4                   Y'all can.

5                   (Off the record at 12:07 p.m.)

6                   (On the record at 12:14 p.m.)

7                   THE COURT: Yes, sir.

8                   MR. WHITT: Your Honor, just --  
9                   just briefly, I'm almost done.

10       BY MR. WHITT:

11       Q.       Mr. Hartje as part of your research did you learn  
12               about there being a mortgage on the property that  
13               is number 13 in the list? And that's the  
14               property that's owned by Matthew Cody Gunter?

15       A.       I did not.

16       Q.       Are you aware that in the stipulation that, that  
17               identifies that in fact, there is a mortgage that  
18               covers that -- that property?

19       A.       I'm aware of that now, yeah. Yes.

20       Q.       And is it John Deere's policy, as part of what  
21               you do when you're liquidating or attempting to  
22               collect a debt, is it part of your policy or  
23               procedure to go after assets that cannot be sold  
24               for any cash recovery to John Deere?

25       A.       It depends.

1 Q. Well, tell me a situation where your -- what your  
2 motivation would be because we're talking about  
3 dollars here. And if you can't recover any  
4 dollars from a particular asset, what would be  
5 your motivation? Why would you prefer an asset  
6 that fell in that category?

7 A. If there was equity.

8 Q. And my premise is, that if there was a situation  
9 where there's not any equity in the property.

10 A. We wouldn't take any enforcement steps, but we  
11 would still have a judgment on file.

12 MR. WHITT: I understood that,  
13 that was my question. Is that you --  
14 you've answered my -- my question.  
15 That's all I have.

16 THE COURT: Any redirect?

17 MR. FANNING: Yes, Your Honor.

18 Thank you.

19 CROSS EXAMINATION

20 BY MR. FANNING:

21 Q. The Blanchard Equipment settlement, Mr. Whitt  
22 asked you about a stipulation of dismissal. Are  
23 you aware, have you seen a settlement agreement?

24 A. I have not seen a settlement agreement.

25 Q. Do you know the terms under which this case was

1 dismissed?

2 A. My understanding is there's a repayment that  
3 matures in October of this year, October 2024.  
4 It's a confession of judgment.

5 Q. And thank you. So it is your understanding that  
6 North Edisto Logging signed a confession of  
7 judgment in favor of Blanchard Machinery Company?

8 A. That is my understanding.

9 Q. And Blanchard Machinery -- or North Edisto  
10 Logging is making payments on an indebtedness?

11 A. That's my understanding. Yes.

12 Q. And this stipulation of dismissal is dated August  
13 2022?

14 A. That's the Blanchard one or?

15 Q. Yes, the Blanchard.

16 A. Yeah. August of 2022.

17 Q. And the Flint Equipment indebtedness, when was  
18 that resolved? If you know.

19 A. I don't specifically recall.

20 MR. FANNING: We -- do we have  
21 anything? Do we have anything on  
22 Flint?

23 MR. WHITT: Yes. I didn't realize  
24 you were directing that question to me.  
25 I think ---

1 MR. FANNING: You may have had one  
2 and I just don't have it.

3 Do you have any anything up there  
4 from Flint, dismissing the Flint case?

5 WITNESS HARTJE: I don't. Just  
6 the Blanchard Machinery one.

7 MR. WHITT: Mr. Hartje, we may  
8 have talked about that. I'm not seeing  
9 this one either.

10 THE COURT: I think that may be  
11 the one that Mr. Hartje agree or  
12 characterized as the mutual walkaway.  
13 I know I did.

14 BY MR. FANNING:

15 Q. In your research, Mr. Hartje, your asset  
16 research, were you able to identify any real  
17 estate owned by North Edisto Logging that's not  
18 included in this chart?

19 A. No, I was not.

20 Q. So they don't own any other real estate in the  
21 state?

22 A. As far as I'm aware, that's correct.

23 Q. And Paul D. Gunter, the trust, as far as you  
24 know, not -- they don't own any other real  
25 estate. You found none in the public record?

1 A. That's right, other than what was transferred to  
2 them.

3 Q. What was the last time you received financials  
4 from North Edisto Logging?

5 A. It would have been in 2014 or 2015 when we  
6 extended additional credit to them.

7 Q. Under the five loans that's part of the  
8 collection lawsuit?

9 A. That's correct.

10 Q. But you haven't gotten any financials from North  
11 Edisto Logging since then?

12 A. That's correct.

13 Q. So in order to extend credit or assess risk, you  
14 testified earlier that you would need to see a  
15 lot of financials, balance sheets, income  
16 statements, tax return, well, tax returns, bank  
17 statements, reference, credit references; is that  
18 correct?

19 A. That's correct.

20 Q. And you haven't received any of that in this  
21 lawsuit, have you?

22 A. Just tax returns through this lawsuit.

23 Q. So when you're looking at the tax returns, and  
24 there's a number where it says assets, total  
25 assets, does that include any liens or debts?

1       A.       As far as I'm aware, no.

2                   MR. FANNING:  No further  
3                   questions.

4                   THE COURT:  Any re-cross?

5                   MR. WHITT:  No.  Nothing here,  
6                   Your Honor.

7                   THE COURT:  All right.  You're  
8                   dismissed, step down.

9                   WITNESS HARTJE:  We're gonna take  
10                  these two.

11                  THE COURT:  Take what?

12                  WITNESS HARTJE:  Take all these  
13                  documents, these exhibits.

14                  THE COURT:  Take them back to the  
15                  lawyer, see how -- do you have any  
16                  other witnesses?

17                  MR. FANNING:  We do not, Your  
18                  Honor.  We're going to move for  
19                  admissibility of the exhibits though.

20                  THE COURT:  Okay.

21                  MS. WOOTEN:  There were a few, I just want to make sure

22       --

23                  THE COURT:  You want to clarify what is and what is  
24       not?

25                  MS. WOOTEN:  Yes, Your Honor.

1 THE COURT: That good.

2 MR. WHITT: I know some of them were batched together  
3 and got admitted. But just to make sure for the record,  
4 Plaintiff would like to ensure, move into -- moving into  
5 evidence 1, 4, 5, 6, 7, 21, 22, 36, 49, 37.

6 THE COURT: 21, 22, 36, 49?

7 MS. WOOTEN: And 37, Your Honor.

8 THE COURT: 37. Plus, we had some batches that were  
9 admitted in there in groups.

10 MS. WOOTEN: Yes. And those were already admitted.  
11 Without objection.

12 THE COURT: Right.

13 MS. WOOTEN: Those were 20 to 28 and 23-35, Your Honor.

14 THE COURT: Right.

15 MS. WOOTEN: Oh, I'm sorry. 8 through 20, Your Honor.  
16 Not 20, 8 through 20.

17 THE COURT: 20 were previously moved and admitted into  
18 evidence without objection.

19 MS. WOOTEN: So just to recap, 8 through 20 were  
20 previously moved and admitted into evidence without objection  
21 and 23-35

22 THE COURT: Correct.

23 MS. WOOTEN: So the ones that we're moving into  
24 evidence are 1, 4, 5, 6, 7, 21, 22, 36, 49, and 37.

1 THE COURT: Okay. Mr. Whitt, that your understanding  
2 as well?

3 MS. WOOTEN: 52.

4 THE COURT: 52 is the -- yes.

5 MR. WHITT: Yes. Yes, Your Honor. Right.

6 THE COURT: From your standpoint. I know you moved in  
7 46, 47, 48.

8 MR. WHITT: That's correct.

9 THE COURT: As well as the alphas. The alphas were 7,  
10 8 or whichever exhibits had an A next to them, which were  
11 those?

12 MR. WHITT: That was, I believe, five, six and seven,  
13 because that's the three complaints in the other civil  
14 actions.

15 (Exhibit No. 8-A marked for examination.)

16 THE COURT: All right. Okay. So I think that we've  
17 made the evidence clear for the record. I just want to make  
18 sure that the court reporter has all those exhibits.

19 THE COURT REPORTER: Yes, Your Honor.

20 MS. WOOTEN: And just for the record, Your Honor, was  
21 the -- on Mr. Fanning's redirect of our witness. And so I  
22 don't think because of the ordering there, that our objection  
23 was noted for the record to five days introduction. I  
24 understand it's coming in. But just want that objection  
25 noted.

1 THE COURT: All right. So noted.

2 MS. WOOTEN: Thank you, Your Honor.

3 THE COURT: All right. So y'all finished your case,  
4 essentially. Do you intend to put up witnesses in light of  
5 what we heard today?

6 MR. WHITT: Your Honor, I do. I do think I'm gonna  
7 have some witness testimony.

8 THE COURT: Okay. Y'all approach real quick. 12:25.

9 (SIDEBAR OFF RECORD)

10 THE COURT: All right. You want to call your first  
11 witness.

12 MR. WHITT: Your Honor, Matthew Cody Gunter.

13 Your Honor, could we take a short break before we put  
14 Mr. Gunter on the stand?

15 THE COURT: Okay.

16 WITNESS GUNTER: Just -- I'm sorry. Your Honor, sorry.  
17 I'm sorry. I just wanted to use the restroom. Thank you,  
18 sir.

19 THE COURT: Go ahead, we'll wait.

20 (Off the record at 12:33 p.m.)

21 (On the record at 12:37 p.m.)

22 Whereupon,

23 MATTHEW CODY GUNTER,

24 first being duly sworn, on oath, was questioned and  
25 testified as follows:

1 EXAMINATION

2 WITNESS GUNTER: My name is  
3 Matthew Cody Gunter. Gunter is G-U-N-  
4 T-E-R.

5 BY MR. WHITT:

6 Q. Mr. Gunter, what's your relationship to Paul D.  
7 Gunter?

8 A. It was my granddaddy.

9 Q. And you've heard testimony about Property 13.  
10 What is your connection with property that's  
11 identified as number 13 in this list that we've  
12 all been looking at?

13 A. Yes, sir. So involved with the mortgage of other  
14 remaining properties. And I've been paying that  
15 mortgage since I incurred it.

16 Q. And do you own any unrelated properties that are  
17 adjacent to what's described as Property 13?

18 A. Yes, sir. I'm -- I own a total of, right at 80  
19 acres around it in different parcels.

20 Q. And you're current on your payments on the  
21 mortgage to South State?

22 A. Yes, sir. I am.

23 Q. And they've not filed any kind of an action  
24 against you regarding that mortgage?

25 A. No, sir. They have not.

1 MR. WHITT: Your Honor, I think  
2 that's -- I think that's all I had.

3 THE COURT: Any cross examination?

4 MR. FANNING: No, Your Honor.

5 THE COURT: All right. Witness  
6 please be sat down. Thank you, Mr.  
7 Gunter.

8 WITNESS GUNTER: Yes, sir.

9 THE COURT: All right.

10 MR. WHITT: Your Honor, Paula  
11 Kneece, formally Paula Gunter.

12 THE COURT: All right.

13 Whereupon,

14 PAULA KNEECE,  
15 first being duly sworn, on oath, was questioned and  
16 testified as follows:

17 EXAMINATION

18 WITNESS KNEECE: I'm Paula Gunter  
19 Kneece, K-N-E-E-C-E.

20 By MR. WHITT:

21 Q. Ms. Kneece, still hard for me to -- hard for me  
22 to get that right. I apologize. What was your  
23 relationship to Paul Gunter?

24 A. That's my daddy.

25 Q. And Paul R Gunter is your brother?

1 A. Yes.

2 Q. And he, it has been stipulated he passed away on  
3 July 3rd, 2019; is that correct?

4 A. That's correct.

5 Q. And before that, were you involved in any medical  
6 treatment that he had?

7 A. Yes. I would take him to the doctor.

8 Q. And as a result of that, what is your knowledge  
9 of how long he knew he was in bad health?

10 A. He was diagnosed in October of '18 with stage  
11 four colon cancer, not a good outlook. We tried  
12 two different types of chemo. And neither one  
13 worked. So the cancer was spreading. You know,  
14 we were grasping at straws to save his life, and  
15 just do what you can do. And he was a candidate  
16 for amino therapy, but cancer progressed so much  
17 that -- I mean, it was told, you know, early on  
18 to get his affairs in order, he wouldn't have  
19 much time left.

20 Q. And all of that pre-dated March of 2019, when the  
21 deeds and the trust document were executed?

22 A. Yes.

23 MR. WHITT: Your Honor, that's all  
24 I have.

25 THE COURT: Any cross examination?

1 MR. FANNING: No, Your Honor.

2 THE COURT: All right. Witness  
3 may step down.

4 WITNESS KNEECE: Thank you.

5 THE COURT: Any other witnesses?

6 MR. WHITT: Your Honor, that's it.

7 Obviously, this was your trial. We've  
8 already done some direct verdict  
9 motions and I think I understood from  
10 our colloquy earlier that we're just  
11 going to address all of that by  
12 submitting proposed orders.

13 THE COURT: I appreciate you bringing that up, because  
14 we came up and, you know, this is all stuff we discussed on  
15 Friday. But typically in a bench trial, I give the attorneys  
16 a chance to make some closing statements, just so I can have  
17 my notes fully clear. But I intend to ask for proposed  
18 orders from the parties. Proposed order that specifically  
19 deals with the issue of today. The conveyance under the  
20 statute of frauds.

21 From the plaintiff standpoint, how it meets the  
22 elements and addresses, Mr. Whitt's defenses. And for Mr.  
23 Whitt, vice versa. Frankly, it doesn't -- I'm more  
24 interested in, frankly, being laser focused on the soul  
25 issues here.

1 I recognize there are some collateral things going on.  
2 But that's really not the matter for today. And I'll be  
3 happy to hear summations at this point. But you don't have  
4 to for that matter. I've heard the evidence. I mean, all  
5 things considered. It's sort of, we have a joint stipulation  
6 of facts which has made, a court exhibit, we've had exhibits  
7 evidence for both sides, we're heard testimony from John  
8 Deere's corporate designee for the purpose of this trial.  
9 We've also heard from both Matthew Cody and Paula Gunter  
10 Kneece, as far as. Well, we've heard from them as far as how  
11 that goes and the statute of lis pendens, I'll defer to Mr.  
12 Whitt to make that argument.

13 But yeah. Anything else you want to add Mr. Fanning?

14 MS. WOOTEN: Your Honor, maybe I --

15 THE COURT: I'll come back to you.

16 MR. WHITT: And Your Honor, just from my standpoint, I  
17 would be perfectly happy if Mr. Fanning's amenable, to just  
18 submitting our proposed orders. We talked at length on  
19 Friday and I think the proposed orders are really where the  
20 rubber is going to meet the road here, rather than rehashing  
21 all the arguments that we've presented to you several times.

22 THE COURT: Okay.

23 MR. WHITT: Be fine with me just to submit the proposed  
24 order and put all of that in writing in the form of an order.

25 THE COURT: Sure. Yes, ma'am.

1 MS. WOOTEN: Your Honor, Plaintiff has no objections to  
2 that.

3 THE COURT: Okay. Today is February 5th. Frankly, I  
4 don't want to, I mean, we want to be judicious here. But we  
5 also don't want to, I'm not asking for it within the week or  
6 anything, but is 15 days, that would put us out February  
7 20th. That's -- I'll tell you what, I'll defer. I'll say 15  
8 days, but the lawyers agree that a later time is appropriate.  
9 That's fine by me. So we'll just temporarily say February  
10 20th.

11 MR. WHITT: And Your Honor, just for the logistics of  
12 this. We email these to Ms. Mullen ---

13 THE COURT: Email them.

14 MR. WHITT: --- as a Word document?

15 THE COURT: Email them and what I would like y'all to  
16 do is coordinate a time. That way the other said doesn't  
17 just say, say, well, I disagree with the order, etc. But  
18 that'll be fine.

19 Let me ask you this now. Y'all mediated this case,  
20 correct?

21 MR. WHITT: We ---

22 THE COURT: Back in December?

23 MR. WHITT: We did, Your Honor.

24 THE COURT: Long mediation or short mediation?

25 MR. WHITT: I would say I've had -- I've had shorter,

1 but it was not the longest one by a lot.

2 THE COURT: Well, I would encourage y'all that --  
3 you're here today, to the extent that you're willing and able  
4 to talk some more, you know, with -- with any bench trial,  
5 with the jury, you never know what's gonna happen, and  
6 certainly with a bench trial, you know, I prefer for parties  
7 to figure out ways to resolve cases on their own because  
8 typically, both parties end up being unhappy with the court's  
9 ruling.

10 I mean, that's just the nature of what we do. So I  
11 would encourage y'all to continue to try to keep the  
12 communication channels open. I know that the collection  
13 matter is on appeal with the Court of Appeals, although I  
14 think it's getting, gotta be getting kind of close to  
15 decision time.

16 MR. WHITT: Your Honor, we argued it a couple of months  
17 ago, some of the other things argued that day had been  
18 decided. But that doesn't mean a whole lot. In my  
19 experience.

20 THE COURT: I mean, ultimately, the primary victim, the  
21 end game issue is the debt itself. And to the extent that  
22 y'all can work on trying to resolve that debt, I know you did  
23 it early with other creditors. Mutual walkaways that we  
24 heard about today.

25 MR. WHITT: Your Honor, we'd be on board for mutual

1 walkaway here. I suspect Mr. Fanning ---

2 THE COURT: Everyone likes to have a little finality  
3 and certainty to it. However the case ends up. So I would  
4 ask if y'all are able to do so try to keep working on a  
5 potential resolution in the next, you know, month or so. If  
6 I can help with that process, just let me know. I mean. But  
7 the only way for a settlement to work is for both sides to  
8 frankly feel a little bit unhappy with the result.

9 So I mean, that means John Deere would have to be  
10 willing to probably do something they don't want to do and  
11 Defendants would have to be willing to do something they  
12 don't feels great either. But that's the nature of  
13 settlements.

14 MR. WHITT: Your Honor, understand. Understood. And  
15 you know, we've -- we've, the lawyers have had a good  
16 relationship. I've talked with both these lawyers over the  
17 phone and I haven't hung up on either one.

18 THE COURT: Who was the mediator on this case?

19 MR. WHITT: Your Honor, Robert Cooke and Saluda, I  
20 think, Batesburg [phonetic].

21 THE COURT: Yeah. Very nice. All right. Anything  
22 else? Anything else for the record?

23 MR. WHITT: Not a thing, Your Honor.

24 THE COURT: Thank you.

25 MS. WOOTEN: Thank you, Your Honor.

1 MR. FANNING: Thank you.

2 THE COURT: If y'all could just double-check with the  
3 court reporter, make sure she's got everything that she  
4 needs.

5 MR. FANNING: Yes.

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24 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT 12:49  
25 P.M)

## 1 CERTIFICATE OF TRANSCRIBER

2 I, Cate Neuhauser, a court-approved  
3 transcriber, do hereby certify that I transcribed the  
4 electronic recording of the foregoing proceedings in  
5 Docket No. 2021-CP-32-00328 held on February 5, 2024,  
6 before the Honorable Judge Walton J. McLeod, IV, and that  
7 said transcript is true and correct, all to the best of my  
8 knowledge and ability.

9 I further certify that I am not related to nor  
10 the employee of any of the parties hereto, nor related  
11 to or employed by any attorney or counsel employed by  
12 the parties hereto, nor interested in the outcome of  
13 this action.

14

15

16

17 February 11, 2024

18 Cate Neuhauser

19 *Cate C. Neuhauser*

20 Transcriber

21

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