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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

Walton J. McLeod, Circuit Judge

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

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John Deere Construction & Forestry Company,  
Plaintiff-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-Appellants.

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APPENDIX TO RECORD ON APPEAL

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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. )

MOTION FOR ORDER TO SHOW  
CAUSE AND MOTION TO EXCLUDE  
EVIDENCE AND FOR SANCTIONS

Plaintiff John Deere Construction & Forestry Company ("Plaintiff") moves the Court pursuant to Rule 37 of the South Carolina Rules of Civil Procedure ("Rules") for an Order requiring 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") to appear before this Court to show cause why they should not be held in contempt for failure to comply with an Order of this Court and for the imposition of sanctions, including excluding certain evidence from use at trial. In support of this Motion, Plaintiff respectfully shows the Court as follows:

1. This action arises out of the transfer of fifteen separate tracts of real property between Defendants between July 11, 2019 and October 10, 2019 (collectively, the "Property"), while Defendants had actual notice of a lawsuit filed by Plaintiff against North Edisto Logging, Inc. and Paul D. Gunter.<sup>1</sup> In its Complaint,

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<sup>1</sup> On December 20, 2018, Plaintiff instituted a proceeding in the Lexington County, South Carolina, Court of Common Pleas for the Eleventh Judicial Circuit, said proceeding bearing File No. 2018-CP-32-04329 ("Lawsuit"), in pertinent part, seeking a monetary judgment for the outstanding indebtedness owing on five separate Loan Contract-Security Agreements executed between January 30, 2014 and September 30, 2015.

Plaintiff alleges that each transfer between Defendants was made for the purpose of delaying, hindering, or defrauding Plaintiff, and each constitutes a conveyance to defraud creditors under S.C. Code § 27-203-10, et seq.

2. On or about October 26, 2022, Plaintiff served Plaintiff's First Set of Interrogatories and Requests for Production of Documents ("Discovery Requests") on Defendants.

3. On or about November 30, 2022, Defendants served Plaintiff with their respective responses to the Discovery Requests.

4. Portions of Defendants' respective responses were incomplete, inadequate, and included unfounded objections, as well as a refusal to provide any proprietary financial or ownership information until such time as a confidentiality agreement was put in place. Defendants provided no documents in their initial response to the Discovery Requests.

5. On or about December 15, 2022, the undersigned attorney for Plaintiff wrote to counsel for Defendants seeking supplementation of Defendants' respective responses to the Discovery Requests ("First Rule 37 Letter"). A copy of the Rule 37 Letter is attached hereto as **Exhibit A** and is incorporated herein by reference. To facilitate the disclosure and production of the requested financial and ownership information, the First Rule 37 Letter enclosed a proposed Protective Order and Confidentiality Agreement ("Protective Order") for Defendants' consideration.

6. On December 22, 2022, the undersigned attorney for Plaintiff wrote to counsel for Defendants seeking to resolve the issues surrounding Defendants' objections to the Discovery Requests. On December 28, 2022, counsel for Defendants agreed to entry of the Protective Order, and advised the undersigned that he was working on "rounding up the financial information covered by the protective order."

7. On February 6, 2023, this Court entered the Protective Order.

8. On February 6, 2023, February 15, 2023, and again on February 22, 2023, the undersigned attorney for Plaintiff wrote to counsel for Defendants

seeking to resolve the issues surrounding Defendants' objections to the Discovery Requests.

9. Counsel for Plaintiff conferred and made good faith attempts to resolve Defendants' objections to the Discovery Requests, but Defendants failed to fully respond to the Discovery Requests.

10. The Discovery Requests, amongst other things, request that Defendants explain the factual basis for their affirmative defenses to Plaintiff's claims for relief and produce any supporting documentation.

11. Pursuant to the First Amended Scheduling Order entered in this case on January 17, 2023, the deadline for all discovery responses and supplementations was February 28, 2023.

12. On March 6, 2023, Plaintiff filed a Motion to Compel, requesting that Defendants be ordered to answer certain interrogatories and requests for production of documents, and requesting attorneys' fees and expenses related to the Motion and any hearing concerning the same.

13. A hearing on Plaintiff's Motion to Compel was held on April 17, 2023, and an Order on Plaintiff's Motion to Compel was entered by this Court on July 14, 2023 ("Order").

14. The Order, in pertinent part, ordered the Defendants to "immediately produce all specific information sought in any Discovery Request that was objected to based on the lack of a confidentiality agreement or protective order." *Order*, p. 3.

15. Importantly, the Order also reserved the right for Plaintiff to seek judicial involvement at a later date as to Defendants' producing all specific information/documents sought in the Discovery Requests as outlined in the First Rule 37 Letter, and in doing so, the Court reminded the parties that "[t]he gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party." *Order*, pp. 3-4.

16. One of the purposes of filing the Motion to Compel was so that Plaintiff could have the benefit of the information and documents it had requested of Defendants in discovery prior to trial.

17. On August 7, 2023, twenty-four (24) days after the entry of the Order, North Edisto Logging, Inc.'s tax returns for the 2018 through 2021 tax years was produced.

18. Having received no other documents required to be provided by the Order, the undersigned attorney for Plaintiff once again wrote to counsel for Defendants seeking supplementation of Defendants' respective responses to the Discovery Requests ("Second Rule 37 Letter"). A copy of the Second Rule 37 Letter, dated August 18, 2023, is attached hereto as **Exhibit B** and is incorporated herein by reference.

19. Between the date the Order was entered and the date of the filing of this Motion, the Defendant has produced the following documents:

a. North Edisto Logging, Inc.'s tax returns for the 2018 through 2021 tax years (some produced on April 13, 2023 and some on August 7, 2023);

b. North Edisto Logging, Inc.'s tax returns for the 2015 tax year (produced on August 28, 2023);

c. Reports from Dun & Bradstreet contained in various emails concerning North Edisto Logging, Inc. in the 2019 and 2020 calendar years (some produced on April 14, 2023, some on August 28, 2023, and some on September 11, 2023);

d. A Mutual Covenants Not to Sue executed by the Defendants in an unrelated matter, in or around December 2021 (produced on April 14, 2023); and

e. Loan documents related to South State Bank loan no. xxxx9671, dated November 28, 2017, in favor of Matthew Cody Gunter, including

Promissory Notes, Modification/Extension Agreement, Mortgage, and a payment history (produced on July 5, 2023).

20. Defendants violated the Order by failing to provide the information and materials subject to the Order "immediately" as required by the Order.

21. Despite the requirements of the Order to "immediately produce all specific information sought in any Discovery Request that was objected to based on the lack of a confidentiality agreement or protective order," the vast majority of the responsive documents actually produced by Defendants were delivered to Plaintiff between August 7, 2023 and September 11, 2023, well after the entry of the Order on July 14, 2023. While some documents were produced as early as April 14, 2023, such documents were largely unresponsive or irrelevant to this litigation.

22. Defendants further violated the Order by failing to provide "all specific information sought in any Discovery Request that was objected to based on the lack of a confidentiality agreement or protective order."

23. By way of illustration, for the time period relevant to this action, Plaintiff has sought, amongst other things, the following information and documents which are subject to the Order's requirement to "immediately produce all specific information sought in any Discovery Request that was objected to based on the lack of a confidentiality agreement or protective order": (i) evidence of the Defendants' income and assets, including all sources of income, revenue, all tangible or intangible assets, (ii) evidence of the Defendants' debt or liabilities, (iii) evidence of every person or entity with an ownership interest in North Edisto Logging, Inc., (iv) evidence of Defendants' financial condition, including copies of any balance sheets, tax returns, financial statements, accounts receivable, inventory lists, mortgages, leases, payroll records and UCC filings, (v) evidence of any parcel of real property or unencumbered asset owned following the transfers subject to this litigation (vi) evidence of the value of all real and personal property held by Defendants prior to and immediately following the transfers subject to this litigation, and (vii) any and all account

statements, including all savings accounts, checking account, loan statements, credit card statements from any financial institution or creditor.

24. As of the date of this Motion, Plaintiff has not received any of the information or documents sought in paragraph 23 above, except for the tax returns identified in paragraph 19 above, nor have the Defendants represented that they have provided all responsive information in their possession, custody, or control.

25. In addition, the majority of Plaintiff's Discovery Requests directed to NEL remain outstanding, and Plaintiff has not received any responsive documentation or information from any of the other defendants in this action who are subject to the Order.

26. By way of illustration, for the time period relevant to this action, Plaintiff has sought, amongst other things, the following information and documents in its Discovery Requests: (i) evidence of any and all transfers of Defendants' assets and (ii) evidence of any person or entity that was in control of or had the authority to control the property subject to this lawsuit, and (iii) any evidence or exhibits that Defendants intend to use at trial.

27. As of the date of this Motion, Plaintiff has not received any documents or information in response to these requests, nor have the Defendants represented that they have provided all responsive information in their possession, custody, or control.

28. Finally, as of the date of this Motion, none of the Defendants provided Plaintiff with a verification of their respective responses to the Interrogatories.

29. As a result of the Defendants' failure to fully respond, Plaintiff is effectively being left to guess what evidence will be presented by Defendants at trial, notwithstanding the Order's requirements, and because of Defendants' failure to comply with the Order, along with the rules mandating full and fair disclosure to avoid guessing games or trial by ambush, Defendants' should be precluded from utilizing any evidence that was the subject of the Order as well as any that was the

subject of the Motion and Rule 37 discussions that have not been provided as of the date of the filing of this Motion.

30. The Order remains in full force and effect.

31. Defendants have willfully disobeyed the Order of this Court and their disobedience has defeated, impaired, impeded, and prejudiced the rights of Plaintiff. At all times, the Defendants have had the ability to comply with all provisions of the Order.

32. Plaintiff is an interested party acting in good faith in bringing this contempt proceeding.

33. This Court is authorized to exclude evidence and prohibit trial testimony, where there was not a full and fair disclosure, "to prevent a trial from becoming a guessing game or one of ambush for either party." Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 434–35, 673 S.E.2d 448, 457 (2009) (excluding evidence where party failed to provide documents through written discovery, until it was disclosed in the defendant's pre-trial brief); see also Temple v. Tec-Fab, Inc., 370 S.C. 383, 390, 635 S.E.2d 541, 544–45 (Ct. App. 2006), aff'd in part, rev'd in part, 381 S.C. 597, 675 S.E.2d 414 (2009) (affirming the exclusion of evidence where a party failed to provide documents in violation of a court order compelling production of documents until the eve of trial).

34. Pursuant to Rule 37 of the South Carolina Rules of Civil Procedure, Plaintiff is entitled to an Order directing Defendants to appear before the Court to show cause why they should not be punished for contempt of Court for violating the Order.

35. Pursuant to Rule 37(b) of the South Carolina Rules of Civil Procedure and the jurisprudence of the State, Plaintiff is also entitled to an Order refusing to allow the Defendants to use any documents not provided to Plaintiff or submit trial testimony based on information not provided to Plaintiff through discovery, to support their affirmative defenses to Plaintiff's claim for relief at any trial of this case. See Temple v. Tec-Fab, Inc., 370 S.C. 383, 390, 635 S.E.2d 541, 544–

45 (Ct. App. 2006), aff'd in part, rev'd in part, 381 S.C. 597, 675 S.E.2d 414 (2009) (affirming the exclusion of evidence where a party failed to provide documents in violation of a court order compelling production of documents until the eve of trial); see also Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 434–35, 673 S.E.2d 448, 457 (2009) (excluding evidence where party failed to provide documents through written discovery, until it was disclosed in the defendant's pre-trial brief "to prevent a trial from becoming a guessing game or one of ambush for either party");

36. Plaintiff is also entitled under Rule 37(b) to an award of its reasonable attorneys' fees and expenses incurred in connection with preparing, briefing and arguing this Motion.

WHEREFORE, Plaintiff prays the Court as follows:

1. That this verified Motion be treated as an affidavit.
2. That this verified Motion be granted.
3. That the Court issue an Order directing Defendants to appear before the Court to show cause why Defendants should not be punished for contempt of Court.
4. That the Court issue an Order pursuant to Rule 37(b)(2) imposing the following sanctions on Defendants for violating the terms of the Order: refusing to allow the Defendants to support their affirmative defenses to Plaintiff's claims for relief at any trial of this case and precluding Defendants from submitting documents or trial testimony which was subject to disclosure pursuant to the Order but not provided to Plaintiff in discovery.
5. That the Court issue an Order pursuant to Rule 37(b)(2) imposing the following sanctions on Defendants for failing to provide full and complete responses and productions to the Plaintiff's Discovery Requests: refusing to allow the Defendants to support their affirmative defenses to Plaintiff's claims for relief at any trial of this case and precluding Defendants from submitting documents or trial testimony which was requested in Plaintiff's Discovery Requests but not provided.

6. That Defendants be ordered to pay Plaintiff's reasonable attorneys' fees and expenses incurred in connection with this Motion.

7. For such other and further relief as this Court deems appropriate.

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

/s/ Amy H. Wooten

Amy H. Wooten

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

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*Attorneys for Plaintiff*


Raleigh, North Carolina  
September 15, 2023

VERIFICATION

STATE OF NORTH CAROLINA

COUNTY OF WAKE

Amy H. Wooten, being duly sworn, deposes and says that she has read the foregoing MOTION FOR ORDER TO SHOW CAUSE AND MOTION TO EXCLUDE EVIDENCE AND FOR SANCTIONS, and the same is true of her own knowledge, except as to those matters and things stated on information and belief, and, as to those, she believes them to be true.

  
\_\_\_\_\_  
Amy H. Wooten

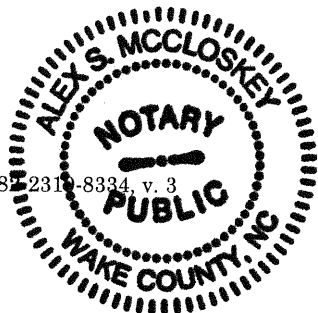
WAKE COUNTY, NORTH CAROLINA

Sworn to (or affirmed) and subscribed before me this day by Amy H. Wooten  
(type/print name of signer)

Date September 14, 2023  
(Official Seal)

  
\_\_\_\_\_  
Signature of Notary Public

My commission expires: March 29, 2028



# EXHIBIT

# A



PAUL A. FANNING, Attorney at Law

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December 15, 2022

VIA EMAIL (dwhitt2001@aol.com)  
ORIGINAL VIA FIRST-CLASS MAIL

Mr. Randolph D. Whitt  
Fleming & Whitt, P.A.  
344 Blossom View Court  
West Columbia, SC 29170

RE: *John Deere Construction & Forestry Company v. North Edisto Logging, Inc., et al.*  
Court File No.: 2021 CP 32-00328 (Lexington County)  
Our File: 070644-00226

Dear Randy:

Please recall that John Deere Construction & Forestry Company ("John Deere") served its First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission (the "Discovery Requests") on North Edisto Logging Inc. ("North Edisto" or "NEL"), The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 ("Trust"), The Estate of Paul D. Gunter ("Estate"), and Matthew Cody Gunter ("Cody Gunter") (collectively, "Defendants") on October 26, 2022.

We received written responses on November 30, 2022, on behalf of Defendants (collectively, the "Discovery Responses"). This letter addresses deficiencies and omissions in the Discovery Responses and is being sent pursuant to Rule 37 of the South Carolina Rules of Civil Procedure in an attempt to resolve these issues prior to our filing a Motion to Compel. The issues addressed in this letter are not an exclusive list of the deficiencies and omissions that may exist in the Discovery Responses. John Deere reserves the right to raise other issues with the Discovery Responses.

Given the deficiencies and omissions in the Discovery Responses provided, it is clear the existing Scheduling Order will need to be modified in order to allow time for these matters to be addressed and resolved prior to the depositions of your clients being taken. To that end, we have prepared a draft Joint Motion to Amend Scheduling Order and Proposed First Amended Scheduling Order (to be completed with the input of all parties), copies of which are enclosed.

ASHEVILLE

GREENVILLE

NEW BERN

RALEIGH

WILMINGTON

www.wardandsmith.com

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WARD AND SMITH, P.A.

Mr. Randolph D. Whitt  
December 15, 2022  
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### **Verification of the Interrogatories**

Each of the Defendants have failed to verify their respective Interrogatory responses in accordance with Rule 33 of the South Carolina Rules of Civil Procedure. John Deere requests that the Defendants provide the required verifications.

### **Specific Discovery Responses by North Edisto**

The numbered paragraphs below correspond to the number of the Interrogatory and Request for Production of Documents to which it pertains:

**Interrogatory No. 4:** The response given fails to provide any facts which relate to the lawsuit, and instead, generally indicates that NEL will testify consistently with the allegations contained in its pleadings. From the response given, it is unclear if NEL has responsive information beyond the facts alleged in its pleadings or if NEL has no information responsive to this Interrogatory beyond what is expressly alleged in its pleadings. John Deere requests that NEL either confirm that it has no information responsive to this Interrogatory beyond what is expressly alleged in its pleadings or that it supplement its response to provide the important facts concerning this lawsuit that are known to or were observed by NEL that are not contained in its pleadings.

**Interrogatory No. 9:** John Deere asked NEL to identify the person that had control of the Property at the time each individual tract was transferred to each Transferee. The response given merely identifies the "then current president of NEL," which does not identify any particular person, and is vague and ambiguous. Please fully answer the question by stating the precise name(s) of the person(s) that had control of the Property at the time of each individual transfer of real property at issue in this lawsuit.

**Interrogatory Nos. 13-15, 18, 24, and 35-37:** In responding to these requests, NEL has objected "to providing any proprietary financial or ownership information" until such time as there is a "confidentiality agreement in place" that covers that information. Enclosed, please find a proposed Consent Motion for Protective Order and a proposed Protective Order and Confidentiality Agreement for NEL's consideration. If acceptable, please have it signed and returned to our office, and once entered, please have NEL provide full and complete responses to each Interrogatory. If not acceptable in the form presented, please provide any requested changes to our attention.

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

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**Interrogatory No. 25:** John Deere asked NEL to identify all facts concerning the transfers of each individual tract of Property. The response given identifies "Attorney Jackie Busbee" as a party with knowledge about the subject Transfers, but fails to identify a single fact or detail about the transaction known by NEL. Please fully answer the question by stating all facts and details known by NEL about each individual transfer at issue in this lawsuit.

**Interrogatory Nos. 29 and 38:** John Deere asked NEL to state the actual value NEL received for each individual tract of Property that are at issue in this lawsuit, as well as identify all other information supporting its calculation of the actual value. The responses given improperly refers John Deere to the "discovery responses provided by Matthew Rush," and fails to provide a detailed response to the Interrogatory. To the extent NEL is in possession of responsive information and/or documentation, please clarify and fully respond to the Interrogatory, and produce those responsive documents. If NEL does not possess responsive information and/or documentation, it should so state in its response.

**Request for Production No. 13:** John Deere asked NEL to produce all "other documents concerning or relating in any way to the responses, denials, defenses asserted in [NEL's] Answer." NEL objected to this Request on the basis of it being vague, unfocused, overbroad and unduly burdensome. The Request is neither vague nor overbroad, as it is limited only to those allegations contained in NEL's Answer. To the extent NEL relied on any documents in preparing its Answer, or possesses any documentation that relates to the allegations in its Answer, John Deere requests that NEL produce it. Please withdraw the objection and produce the requested documents.

**Requests for Production Nos. 14-15, and 20:** John Deere asked NEL to produce all documents, including but not limited to bank statements, receipts, canceled checks, and/or evidence of wire transfers, evidencing any consideration received by NEL in exchange for each individual tract of Property at issue in this lawsuit, as well as each and every payment that was received by NEL in exchange for the transfer of any tract of Property. The responses given improperly refer John Deere to the "consideration stated in the applicable deed and discovery responses provided by Matt Rush." The response fails to provide any substantive response to the Request whatsoever. To the extent NEL is in possession of responsive documentation, please clarify and fully respond to the Request, and produce those responsive documents. If NEL does not possess responsive documentation, it should so state in its response.

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

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**Request for Production Nos. 21-22, and 27-29:** In responding to these requests, NEL has objected "to providing any proprietary financial or ownership information" until such time as there is a "confidentiality agreement in place" that covers that information. Enclosed, please find a proposed Protective Order and Confidentiality Agreement for NEL's consideration. If acceptable, please have it signed and returned to our office, and once entered, please have NEL provide full and complete responses to each Interrogatory. If not acceptable in the form presented, please provide any requested changes to our attention.

**Requests for Production No. 25:** John Deere asked your client to produce all "correspondence, agreements, records, and any other documents" concerning the conveyance of Property 4 to Matt Rush. The response given improperly refers John Deere to "[s]ee the discovery responses of Matt Rush." The response fails to provide any substantive response to the Request whatsoever. To the extent North Edisto is in possession of responsive documentation, please clarify and fully respond to the Request, and produce those responsive documents. If NEL does not possess responsive documentation, it should so state in its response.

**Request for Production No. 31:** John Deere asked NEL to produce all "other relevant documents that are not otherwise requested herein." NEL objected to this Request on the basis of it being vague, unfocused, overbroad and unduly burdensome. The Request is not vague or overbroad, nor is it unduly burdensome, as it is clearly limited only to those documents which are "relevant" to the litigation. Please withdraw the objection and produce the requested documents.

### **Specific Discovery Responses by the Trust**

The numbered paragraphs below correspond to the number of the Interrogatory and Request for Production of Documents to which it pertains:

**Interrogatory No. 4:** The response given fails to provide any facts which relate to the lawsuit, and instead, generally indicates that the Trust will testify consistently with the allegations contained in its pleadings. From the response given, it is unclear if the Trust has responsive information beyond the facts alleged in its pleadings or if the Trust has no information responsive to this Interrogatory beyond what is expressly alleged in its pleadings. John Deere requests that the Trust either confirm that it has no information responsive to this Interrogatory beyond what is expressly alleged in its pleadings or that it supplement its response to provide the important facts concerning this lawsuit that are known to or were observed by the Trust that are not contained in its pleadings.

**Interrogatory No. 13:** John Deere asked the Trust to identify and describe its assets during the Relevant Time Period. The Trust objected to this Request on the basis of it being unduly burdensome and not likely to lead to any admissible evidence.

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

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The Request is not unduly burdensome, as it is clearly limited only to those assets of the Trust during the "Relevant Time Period." The assets belonging to the Trust are directly relevant to the claims at issue in this lawsuit, as the Property at issue in this lawsuit was titled in the name of the Trust, and deliberately transferred out without any indication of consideration given or received for either Transfer. The Trust's assets are directly relevant to the issue of consideration, and the extent of the Trust's ownership of the Property. Please withdraw the objection and fully respond to the Interrogatory.

**Interrogatory No. 18:** John Deere asked the Trust to identify all documents evidencing the Trust's relationship with Matt Rush during the Relevant Time Period. The responses given improperly refer John Deere to the "discovery responses provided by Matt Rush," and fail to provide a detailed response to the Interrogatory. To the extent the Trust is in possession of responsive information and/or documentation, please clarify and fully respond to the Interrogatory, and produce those responsive documents. If the Trust does not possess responsive information and/or documentation, it should so state in its response.

**Interrogatory Nos. 19 and 22:** John Deere asked the Trust to identify all facts concerning the transfer of each individual tract of Property, and to state the fair market value of each individual tract of Property. The Trust objected to this Interrogatory on the basis of it being ambiguous and "unclear what property transfer is referred to." The Interrogatory is not ambiguous, as the term "Property" is a defined term, and relates to each individual tract of property at issue in the lawsuit. Please withdraw the objection and fully respond to these Interrogatories.

**Interrogatory Nos. 20 and 21:** John Deere asked the Trust to identify all documents and information provided to the Trust by Matt Rush or that the Trust provided to Matt Rush, as it relates to the transfer of Property 4. The responses given improperly refer John Deere to the "discovery responses provided by Matt Rush," and fails to provide a detailed response to these Interrogatories. To the extent the Trust is in possession of responsive information and/or documentation, please clarify and fully respond to these Interrogatories, and produce those responsive documents. If the Trust does not possess responsive information and/or documentation, it should so state in its responses.

**Interrogatory Nos. 23 and 32:** John Deere asked the Trustee to state the value received for Property 4, and identify all documents and information supporting that calculation, as well as all consideration given to the Trust in exchange for the conveyance of Property 4 to Matt Rush. The responses given improperly refer John Deere to the "consideration stated in the applicable deed" and to the "discovery responses provided by Matt Rush." The responses fail to provide any substantive response to the Interrogatories whatsoever. To the extent the Trust is in possession of responsive information and/or documentation, please clarify and fully respond to

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

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the Interrogatories, and produce those responsive documents. If the Trust does not possess responsive information and/or documentation, it should so state in its responses.

**Interrogatory Nos. 25 and 29:** John Deere asked the Trust to identify all transactions the Trust has engaged in with Matt Rush, related to or similar to the transfer of Property 4, and to identify each and every appraisal that was conducted concerning Property 4. The responses given improperly refer John Deere to the "discovery responses provided by Matt Rush," and fail to provide a detailed response to these Interrogatories. To the extent the Trust is in possession of responsive information and/or documentation, please clarify and fully respond to the interrogatories, and produce those responsive documents. If the Trust does not possess responsive information and/or documentation, it should so state in its responses.

**Interrogatory No. 23:** John Deere asked the Trust to state the value received for Property 4, and identify all documents and information supporting that calculation. The response given improperly refers John Deere to the "consideration stated in the applicable deed and discovery responses provided by Matt Rush." The response fails to provide any substantive response to the Interrogatory whatsoever. To the extent the Trust is in possession of responsive information and/or documentation, please clarify and fully respond to the Interrogatory, and produce those responsive documents. If the Trust does not possess responsive information and/or documentation, it should so state in its response.

**Request for Production No. 13:** John Deere asked the Trust to produce all "other documents concerning or relating in any way to the responses, denials, defenses asserted in [the Trust's] Answer." The Trust objected to this Request on the basis of it being vague, unfocused, overbroad and unduly burdensome. The Request is neither vague nor overbroad, as it is limited only to those allegations contained in the Trust's Answer. To the extent the Trust relied on any documents in preparing its Answer, or possesses any documentation that relates to the allegations in its Answer, John Deere requests that the Trust produce it. Please withdraw the objection and produce the requested documents.

**Requests for Production Nos. 14, 16-17:** John Deere asked the Trust to produce all documents, including but not limited to bank statements, receipts, canceled checks, and/or evidence of wire transfers, evidencing any consideration received by the Trust in exchange for the transfer of Property 4. The responses given improperly refer John Deere to the "consideration stated in the applicable deed and discovery responses provided by Matt Rush." The response fails to provide any substantive response to these Requests whatsoever. To the extent the Trust is in possession of responsive documentation, please clarify and fully respond to the Requests, and

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

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Mr. Randolph D. Whitt  
December 15, 2022  
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produce those responsive documents. If the Trust does not possess responsive documentation, it should so state in its responses.

**Request for Production No. 19:** John Deere asked the Trust to produce all documents concerning the value of the Trust's assets immediately prior to the conveyance of the Trust Property. The responses given object on the basis that the "solvency of the trust is not at issue" and that the Request is unduly burdensome and not likely to lead to any admissible evidence. The Request is not unduly burdensome, as it is clearly limited only to those assets of your client prior to the conveyance of the Trust Property. The assets belonging to the Trust are directly relevant to the claims at issue in this lawsuit, as the Property at issue in this lawsuit was titled in the name of the Trust, and deliberately transferred out without any indication of consideration given or received for either Transfer. The Trust's assets are directly relevant to the issue of consideration, and the extent of the Trust's ownership of the Property. Please withdraw the objection and produce the requested documents.

**Request for Production No. 21:** John Deere asked the Trust to produce all correspondence, agreements, records, and other documents concerning the conveyance of Property 4 to Matt Rush. The response given improperly refers John Deere to the "discovery responses provided by Matt Rush." The response fails to provide any substantive response to the Request whatsoever. To the extent the Trust is in possession of responsive documentation, please clarify and fully respond to the Request, and produce those responsive documents. If the Trust does not possess responsive documentation, it should so state in its response.

**Request for Production No. 27:** John Deere asked the Trust to produce all "other relevant documents that are not otherwise requested herein." The Trust objected to this Request on the basis of it being vague, unfocused, overbroad and unduly burdensome. The Request is not vague or overbroad, nor is it unduly burdensome, as it is clearly limited only to those documents which are "relevant" to the litigation. Please withdraw the objection and produce the requested documents.

### **Specific Discovery Responses by Cody Gunter**

The numbered paragraphs below correspond to the number of the Interrogatory and Request for Production of Documents to which it pertains:

**Interrogatory No. 4:** The response given fails to provide any facts which relate to the lawsuit, and instead, generally indicates that Mr. Gunter will testify consistently with the allegations contained in its pleadings. From the response given, it is unclear if Mr. Gunter has responsive information beyond the facts alleged in his pleadings or if Mr. Gunter has no information responsive to this Interrogatory beyond what is expressly alleged in his pleadings. John Deere requests that Mr. Gunter either confirm that he has no information responsive to this Interrogatory beyond what is

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Mr. Randolph D. Whitt  
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Page 8

expressly alleged in his pleadings or that he supplement his response to provide the important facts concerning this lawsuit that are known to or were observed by him that are not contained in his pleadings.

**Interrogatory No. 8:** John Deere asked Mr. Gunter to identify all facts concerning the transfer of Property 13 to Mr. Gunter. The responses given identifies "Attorney Jackie Busbee" as a party with knowledge about the subject transfer, but fails to identify a single fact or detail about the transaction known by Mr. Gunter. Please fully answer the question by stating all facts and details known by Mr. Gunter about the transfer of Property 13.

**Interrogatory No. 11:** John Deere asked Mr. Gunter to state the fair market value of Property 13, and identify all documents and other information supporting such calculation. The response given indicates the value is believed to be only \$3,000 per acre by itself, because it is landlocked, but fails to provide any supporting information as to how that value was identified. Please fully answer the question by stating all information and documents which support Mr. Gunter's valuation of Property 13.

**Request for Production Nos. 3 and 13:** John Deere asked Mr. Gunter to produce all "other documents concerning the matters set forth in the Pleadings in this action," as well as the "responses, denials, defenses asserted in [his] Answer." Mr. Gunter objected to this Request on the basis of it being vague, unfocused, overbroad, and unduly burdensome. The Request is neither vague nor overbroad, as it is limited only to those allegations contained in Mr. Gunter's Answer and the Complaint. To the extent Mr. Gunter relied on any documents in preparing his Answer, or possesses any documentation that relates to the allegations in his Answer, John Deere requests that Mr. Gunter produce those documents. Please withdraw the objections and produce the requested documents.

**Request for Production No. 20:** John Deere asked Mr. Gunter to produce all "other relevant documents that are not otherwise requested herein." Mr. Gunter objected to this Request on the basis of it being vague, unfocused, overbroad, and unduly burdensome. The Request is not vague or overbroad, nor is it unduly burdensome, as it is clearly limited only to those documents which are "relevant" to the litigation. Please withdraw the objection and produce the requested documents.

### **Specific Discovery Responses by the Estate**

The Estate has objected to the entirety of the Interrogatories and Request for Production served on it by John Deere, alleging the Estate is an "inchoate entity without any independent existence," and that no personal representative has been appointed. The Estate further objects to the references to "Paul D. Gunter" as an inappropriate attempt to impose upon the allegedly nonexistent estate a duty to respond on behalf of a deceased nonparty." The Estate is a named defendant in this lawsuit, and the transfers at issue in

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Mr. Randolph D. Whitt  
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Page 9

this lawsuit were carried out both prior to, and after the death of, Paul D. Gunter ("Decedent"). To the extent the transfers were executed on the Decedent's behalf, or on behalf of his Estate (whether or not a formal proceeding existed), the facts surrounding those transfers is both highly relevant and material to the claims in this lawsuit. Whether a formal estate proceeding was opened or not is irrelevant, as a representative of the Estate clearly took action to record deeds and transfer property to other named Defendants, after the Decedent passed. The Estate cannot rely on its claim that the Estate lacks an "independent existence" and does not have an appointed "personal representative," as a way to avoid its obligations to respond to the Discovery Responses, under the South Carolina Rules of Civil Procedure. Please withdraw the objection and fully respond to the interrogatories and produce the requested documents, as required under the South Carolina Rules of Civil Procedure.

Please let us know by December 20, 2022, whether your clients would like to meet and confer concerning the issues raised in this letter or whether they will provide full and complete responses without the need to confer. If we have not heard from you by December 20, 2022, that your clients wish to meet and confer or that they are providing full responses, we will understand they are not inclined to resolve these discovery matters without court intervention and will begin preparing a Motion to Compel at that time.

Yours truly,

DocuSigned by:  
*Paul A. Fanning*  
57948E75B957437...

Paul A. Fanning

cc: John Deere Construction & Forestry Company (via email)  
Amy H. Wooten, Esq. (via email)  
ND:4883-0044-0132, v. 1

# EXHIBIT B

751 Corporate Center Drive  
Suite 300 (27607)  
Post Office Box 33009  
Raleigh, NC 27636-3009

P: 919.277.9130  
F: 919.277.9177  
ahwooten@wardandsmith.com

August 18, 2023

VIA EMAIL ([dwhitt2001@aol.com](mailto:dwhitt2001@aol.com))  
ORIGINAL VIA FIRST-CLASS MAIL

Mr. Randolph D. Whitt  
Fleming & Whitt, P.A.  
344 Blossom View Court  
West Columbia, SC 29170

RE: *John Deere Construction & Forestry Company v. North Edisto Logging, Inc., et al.*  
Court File No.: 2021 CP 32-00328 (Lexington County)  
Our File: 070644-00226

Dear Randy:

As you know, John Deere Construction & Forestry Company ("John Deere") served its First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission (the "Discovery Requests") on North Edisto Logging Inc. ("North Edisto" or "NEL"), The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 ("Trust"), The Estate of Paul D. Gunter ("Estate"), and Matthew Cody Gunter ("Cody Gunter") (collectively, "Defendants") on October 26, 2022. We received written responses on November 30, 2022, on behalf of Defendants (collectively, the "Discovery Responses"). However, as you also know, there were several deficiencies and omissions in the Discovery Responses and we sent a written request on December 15, 2022, pursuant to Rule 37 of the South Carolina Rules of Civil Procedure, in an attempt to resolve these issues prior to our filing a Motion to Compel on March 6, 2023 ("Rule 37 Letter"). In addition, in an effort to resolve the concerns raised by Defendants, the parties entered into that Protective Order and Confidentiality Agreement entered on February 6, 2023 ("Protective Order").

On July 14, 2023, the Court entered an Order granting in part Plaintiff's Motion to Compel ("Compel Order"). In pertinent part, that Order requires Defendants to "immediately produce all specific information sought in any Discovery Request that was objected to based on the lack of a confidentiality agreement or protective order." *Compel Order*, p. 3.

Since the entry of the Compel Order only the following items have been provided to Plaintiff: (i) NEL's tax returns for the 2018 through 2021 tax years, and (ii) loan documents related to Cody Gunter's loan with South State Bank.

Mr. Randolph D. Whitt  
August 18, 2023  
Page 2

Despite the requirements of the Compel Order to "immediately produce all specific information sought in any Discovery Request that was objected to based on the lack of a confidentiality agreement or protective order," the following Discovery Requests directed to NEL remain outstanding:

- Interrogatory Nos. 13-15, 18, 24, and 35-37; and
- Request for Production Nos. 21-22, and 27-29.

In addition to those matters specifically addressed by the Compel Order, the following matters identified in the Rule 37 Letter continue to remain unresolved by Defendants:

- 1) All Defendants: Each of the Defendants have failed to verify their respective Interrogatory responses in accordance with Rule 33 of the South Carolina Rules of Civil Procedure.
- 2) NEL:
  - a. Interrogatory Nos. 4, 9, 25, 29, and 38; and
  - b. Request for Production Nos. 13, 14-15, 20, 25, and 31.
- 3) Trust:
  - a. Interrogatory Nos. 4, 13, 18-23, 25, 29, and 32;
  - b. Request for Production Nos. 13-14, 16-17, 19, 21, and 27.
- 4) Cody Gunter:
  - a. Interrogatory Nos. 4, 8, and 11; and
  - b. Request for Production Nos. 3, 13, and 20.
- 5) Estate: The Estate has not responded to a single Interrogatory or Request for Production

As you know, while the Compel Order does not specifically direct the immediate response to these unresolved requests, the Compel Order does make it clear that it has reserved its ruling on these remaining items, and grants John Deere the ability to seek leave to petition the court's involvement at a later date. (Compel Order, p. 3). Further, the Court specifically reminded the parties that "[t]he gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party" and that boilerplate objections like the ones presented in Defendants' Discovery Responses, such as "'irrelevant' and 'not reasonably calculated to lead to admissible evidence,'" are strictly prohibited without more. *Id.*

WARD AND SMITH, P.A.

Mr. Randolph D. Whitt  
August 18, 2023  
Page 3

Please let us know by August 30, 2023, whether your clients would like to meet and confer concerning the issues raised in this letter or whether they will provide full and complete responses without the need to confer. If we have not heard from you by August 30, 2023, that your clients wish to meet and confer or that they are providing full responses, we will understand they are not inclined to resolve these discovery matters without further court intervention and will proceed accordingly.

Yours truly,



Amy H. Wooten

cc: John Deere Construction & Forestry Company (via email)  
Paul A. Fanning, Esq. (via email)

ND:4867-4010-9944, v. 2

STATE OF SOUTH CAROLINA  
 COUNTY OF LEXINGTON

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

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

ORDER GRANTING PLAINTIFF'S  
 MOTION FOR ORDER TO SHOW  
 CAUSE AND MOTION TO EXCLUDE  
 EVIDENCE AND FOR SANCTIONS

This matter came before the Court upon Plaintiff John Deere Construction & Forestry Company's Motion for Order to Show Cause and Motion to Exclude Evidence and for Sanctions, which was filed on September 15, 2023. A hearing was conducted on November 13, 2023. Plaintiff was represented by Amy H. Wooten, Esquire and Paul A. Fanning, Esquire admitted *Pro Hac Vice*. Defendants Matthew Cody Gunter, North Edisto Logging, Inc., The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019, and The Estate of Paul D. Gunter were represented by D. Randolph Whitt, Esquire. Defendant Matthew P. Rush was represented by James R. Snell, Jr., Esquire.

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

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

3. Plaintiff John Deere Construction & Forestry Company filed its verified Motion for Order to Show Cause and Motion to Exclude Evidence and for Sanctions on September 15, 2023 (the "Verified Motion") against Defendants Matthew Cody Gunter, North Edisto Logging, Inc., The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019, The Estate of Paul D. Gunter and Matthew P. Rush.

4. The Court accepts the Verified Motion as an affidavit and incorporates the factual allegations as Findings of Fact to support entry of this Order.

5. Defendants did not file any pleading or affidavit in response to the Verified Motion.

6. Defendants did not appear, except through their counsel, at hearing on the Verified Motion.

7. This Court is authorized to exclude evidence and prohibit trial testimony, where there was not a full and fair disclosure, to prevent a trial from becoming a guessing game or one of ambush for any party.

8. Pursuant to Rule 37(b) of the South Carolina Rules of Civil Procedure and the jurisprudence of the State, Plaintiff is entitled to an Order refusing to allow the Defendants Matthew Cody Gunter, North Edisto Logging, Inc., The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019, and The Estate of Paul D. Gunter to use any documents not provided by Defendants to Plaintiff or to submit trial testimony based on information not provided by Defendants to Plaintiff through discovery, to support their affirmative defenses to Plaintiff's claim for relief at any trial of this case.

9. During the November 13th hearing, Defendants' counsel represented they had produced all documents and responses and did not object to entry of an order limiting their ability to use or refer to same or to submit any trial testimony based on information not provided by Defendants to Plaintiff through discovery.

10. Under Rule 37(b) Plaintiff is entitled to an award of its reasonable attorneys' fees and expenses incurred in connection with preparing, briefing and arguing this Motion.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:**

1. Plaintiff's Verified Motion is accepted and treated as an affidavit.  
2. Plaintiff's Verified Motion is hereby granted.  
3. Pursuant to Rule 37(b)(2), Defendants Matthew Cody Gunter, North Edisto Logging, Inc., The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019, and The Estate of Paul D. Gunter may not use or submit for trial any documents they did not provide to Plaintiff before the filing of the Verified Motion nor submit trial testimony based on information they did not provide to Plaintiff through discovery before the filing of the Verified Motion, to support their affirmative defenses to Plaintiff's claim for relief at any trial of this case.

4. Defendants Matthew Cody Gunter, North Edisto Logging, Inc., The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019, and The Estate of Paul D. Gunter, jointly and severally, shall pay Plaintiff's reasonable attorneys' fees and expenses incurred in connection with this Motion. Plaintiff is invited to prepare an affidavit of same for cross-examination by Defendants' counsel. If agreement as to the reasonableness of the amount is lacking, Defendants shall be entitled to a hearing on the amount of reasonable attorneys' fees and expenses to be awarded. Defendants shall pay said amount within ten (10) days of the entry of the consent or court ruling setting said amount, whichever comes first.

**AND IT IS SO ORDERED.**

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The Honorable Diane Goodstein  
Presiding Circuit Court Judge

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



Lexington Common Pleas

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

It is so Ordered!

s/Diane S. Goodstein

Electronically signed on 2023-11-29 16:30:24 page 4 of 4

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.

**RULE 60(a) MOTION of  
MATTHEW CODY GUNTER**

**NOTICE OF MOTION**

**YOU WILL PLEASE TAKE NOTICE that Matthew Cody Gunter 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, for an Order on the issues set forth herein, pursuant to Rule 60(a) of the South Carolina Rules of Civil Procedure (SCRCP) to correct a clerical error in the Order filed June 22, 2022.**

**Request for Expedited Hearing**

The clerical error in the order described above has influenced two orders on motions for summary judgment in this matter and motions to reconsider each of these orders will be filed in a matter of days.

A ruling on this motion is critical to the motions to reconsider.

### **The Clerical Error**

Page 5 of June 22 Order contains the sentence: “This Court agrees.” which follows a statement of the Plaintiff’s argument regarding an exception to the definition of claims applicable to the nonclaim statute. Defendant Matthew Cody Gunter respectfully asserts that the sentence in question should have read “disagrees” rather than “agrees”.

The Plaintiff has repeatedly made these three words a central part of their argument in the summary judgment motions in this case. The following language appears in Plaintiff’s December 30, 2022 memorandum and again in both of the two memoranda filed March 3, 2023 : “On June 22, 2022, the Honorable Walton J. McLeod, IV entered an Order denying the Motions to Dismiss, including Defendant’s 12(b) Motion ("Order"). The Order, in pertinent part, agrees that the Nonclaim Statute "does not apply to disputes regarding transfer of title to real estate." (Order at p. 5).”

### **The Rest of the Order on the Motion to Dismiss**

The entire substance of the Order, except for the three words, clearly indicates that the court rejected the narrow restrictive definition of claims advocated by the Plaintiff and rather adopted the expansive definition proposed by this defendant.

The 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 June 22 Order also contained the following reasoning:

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 Influence of the Clerical Error**

Both Judge Maddox's and Judge Keesley's Orders were influenced by the clerical error and Plaintiff's argument based on the error. The Order Filed March 2, 2023 contains paragraph 10 which states : "10. On June 22, 2022, the Honorable Walton J. McLeod, IV entered an Order denying the Motions to Dismiss ("Order"). The Order, in pertinent part, states that the Nonclaim Statute "does not apply to disputes regarding transfer of title to real estate." (Order at p. 5)." The Form 4 Order filed on March 8, 2023 by Judge Keesley characterizes the June 22 Order as one which "which appears to contain conflicting language" and refers to the March 2 Order and notes that "if this court were to rule

that the nonclaim statute is a bar, it would create an untenable position.”

### **Conclusion**

The clerical error has prejudiced this defendant by influencing both of the adverse summary Judgment rulings. Rule 60(a) allows for the correction of this error, which has been opportunistically seized upon by Plaintiff in the summary judgment motions.

s/ D. Randolph Whitt  
D. Randolph Whitt  
SC Bar No.13068  
344 Blossom View Ct.  
West Columbia, SC 29170  
(803) 422-2176 Tel  
dwhitt2001@aol.com

Attorney for Defendant Matthew Cody Gunter

March 9, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
John Deere Construction & Forestry Company,	)	Case No.: 2021-CP-32-00328
	)	
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	)	<b>RULE 60(a) MOTION FOR MATTHEW RUSH</b>
	)	
Defendants.	)	
_____	)	

YOU WILL PLEASE TAKE NOTICE that Matthew Rush will move before The Honorable Walton J. McLeod, IV of the Court of Common Pleas for Lexington County, South Carolina at a time, place, and manner set by the court for a Hearing on the issues set forth herein, pursuant to Rule 60(a) of the South Carolina Rules of Civil Procedure (SCRCP) to correct a clerical error in the Order filed June 22, 2022 following a Hearing on Defendant’s Motion to Dismiss pursuant to Rule 12(b).

**REQUEST FOR EXPEDITED HEARING**

The clerical error in the above-described Order has influenced two subsequent Motions for Summary Judgment in this matter.

**THE CLERICAL ERROR**

Page five (5) of the Order contained the sentence, “This Court agrees.” Following a statement of the Plaintiff’s argument regarding an exception to the definition of claims

applicable to the Nonclaim Statute. Defendant Matthew Rush respectfully asserts that the sentence in question should have read “disagrees” rather than “agrees”.

The Plaintiff has repeatedly made these three words a central part of their argument in the proceeding Motions for Summary Judgment made by Defendants. The following language appears in Plaintiff’s December 30, 2022 Memorandum in Opposition and again in two (2) Memorandums in Opposition filed on March 3, 2023, “On June 22, 2022, the Honorable Walton J. McLeod, IV entered an Order denying the Motions to Dismiss, including Defendant’s 12(b) Motion (“Order”). The Order, in pertinent part, agrees that the Nonclaim Statute ‘does not apply to disputes regarding transfer of title to real estate.’” (Order p. 5).

### **THE REST OF THE ORDER**

The entire substance of the Order, except for the three words in question, clearly indicates that the Court rejected the narrowly restrictive definition of claims advocated by Plaintiff and adopted the expansive definition proposed by Defendants under the Nonclaim Statute. The 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 restriction 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 June 22, 2022 Order also contains the following reasoning:

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 Code specifically excludes “estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be including 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 required, 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 §62-2-803. 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 the 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 INFLUENCE OF THE CLERICAL ERROR**

Both the Honorable Cordell Maddox, Jr. and the Honorable William P. Keesley’s Orders were influence by the clerical error and Plaintiff’s argument based on that error. The Order filed March 2, 2023 by the Honorable Cordell Maddox, Jr. contains, “On June 22, 2022, the Honorable Walton J. McLeod, IV entered an Order denying the Motion to Dismiss (“Order”). The Order, in pertinent part, states that the Nonclaim Statute ‘does not apply to disputes regarding transfer of title to real estate.’” Order pg. 5. The Form 4 Order filed on March 8, 2023 by the Honorable William P. Keesley characterized the June 22, 2022 Order as one “which appears to contain conflicting language” and refers to the March 2, 2023 Order, nothing that “if this court were to rule that the nonclaim statute is a bar, it would create an untenable position.”

### **CONCLUSION**

The clerical error has prejudiced this Defendant by influencing both the adverse Summary Judgment rulings. Rule 60(a), SCRPC, allows for the correction of this error, which has been opportunistically seized upon by Plaintiff in the Summary Judgment Motions.

John Deere Const. & Forestry Co. v. North Edisto Logging, Inc. et al.  
2021-CP-32-00328

March 10, 2023  
Lexington, SC

/s/ Anna E. Sharpe  
Anna E. Sharpe  
SC Bar No. 109277  
Attorney for Defendant Matthew Rush  
The Law Office of James R. Snell, Jr., LLC  
123 Harmon Street  
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(803) 359-3301

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  
MATTHEW CODY GUNTER**

**NOTICE OF MOTION**

**YOU WILL PLEASE TAKE NOTICE that the Defendant Matthew Cody Gunter will move before the Hon. J. Cordell Maddox Jr. 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, 2 2023 on the issues set forth herein, because the court overlooked or misapprehended the points of law raised herein.**

**The Order on the Motion to Dismiss**

The March 2, 2023 Order, in Paragraph 10, states:

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

However, in the June 22 Order, the full sentence is : “**Plaintiff argues** that the South Carolina Nonclaim Statute does not apply to disputes regarding transfer of title to real estate.” (emphasis added).

The full sentence is followed by the following three words: “This Court agrees.” However, both this Defendant and Defendant Matthew Rush have filed motions under Rule 60(a) because the rest of the substance of the June 22, 2023 Order makes it clear that the court did not agree with the Plaintiff and the this sentence should have read: This Court **dis**agrees. This Defendant requests that this court wait for Judge McLeod's ruling on the Rule 60(a) motions before ruling on this motion for reconsideration.

### **The Plain Language of 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 June 22 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 General 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 June 22 Order also contained the following reasoning:

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 Influence of the March 2 Order**

The Form 4 Order on summary judgment motions filed by the other defendants in this action filed on March 8, 2023 by Judge Keesley characterizes the June 22 Order as one which “which appears to contain conflicting language” and refers to the March 2 Order and notes that “if this court were to rule that the nonclaim statute is a bar, it would create an untenable position.”

### **Conclusion**

Therefore, plaintiff request that when a ruling on the Rule 60(a) motions is known, and the intent of Judge McLeod's order is clear, this Court grant reconsideration of the March 2 Order and enter an order granting the motion for summary judgment based on the operation of the nonclaim statute

All of which is respectfully submitted.

s/ D. Randolph Whitt  
D. Randolph Whitt  
SC Bar No.13068  
344 Blossom View Ct.  
West Columbia, SC 29170  
(803) 422-2176 Tel  
dwhitt2001@aol.com

Attorney for Defendant Matthew Cody Gunter

March 13 , 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.

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

**NOTICE OF MOTION**

**YOU WILL PLEASE TAKE NOTICE** that the Defendants **The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019** and **The Estate of Paul D. Gunter** will move before the Hon. William P. Keesley 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 8, 2023 on the issues set forth herein, because the court overlooked or misapprehended the points of law raised herein.

**The March 8 Order**

The March 8 Order relies upon conflicting language in Judge McLeod's order and the Order filed by Judge Maddox. Each of these orders are subject to being modified, Judge McLeod's order by a Rule

60(a) motion, which will have the result of resolving the conflicting language and Judge Maddox's order by a motion to reconsider, based in part on the expected clarification of Judge McLeod's order.

### **The Order on the Motion to Dismiss**

Judge Maddox's March 2, 2023 Order, in Paragraph 10, states:

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

However, in the June 22 Order, the full sentence is : “**Plaintiff argues** that the South Carolina Nonclaim Statute does not apply to disputes regarding transfer of title to real estate.” (emphasis added).

The full sentence is followed by the following three words: “This Court agrees.” However, both this Defendant and Defendant Matthew Rush have filed motions under Rule 60(a) because the rest of the substance of the June 22, 2023 Order makes it clear that the court did not agree with the Plaintiff and the this sentence should have read: This Court **dis**agrees. This Defendant requests that this court wait for Judge McLeod's ruling on the Rule 60(a) motions before ruling on this motion for reconsideration.

### **Conflicting Rulings**

These Defendants believe strongly that the result of the 60(a) motions will be that Judge McLeod changes the single word “agrees” to “disagrees”, rather than disavowing the detailed narrative and reasoning in the rest of the order. As a result, a conflict between the orders as they currently stand is unavoidable, However, in the event Judge Maddox reconsiders his order, which was influenced by the disagrees/agrees dilemma, then conflict can be avoided.

### **The Completeness of the Record**

Perhaps the only thing that the parties in this action agree on is that there is no further relevant factual information to be obtained on the points relevant to this issue.

### Conclusion

Therefore, these defendants request that when a ruling on the Rule 60(a) motions is known, and the intent of Judge McLeod's order is clear, this Court grant reconsideration of the March 8 Order and enter an order granting the motion for summary judgment based on the operation of the nonclaim statute.

All of which is respectfully submitted.

s/ D. Randolph Whitt  
D. Randolph Whitt  
SC Bar No.13068  
344 Blossom View Ct.  
West Columbia, SC 29170  
(803) 422-2176 Tel  
dwhitt2001@aol.com

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

March 18 , 2023



or omission and holds that granting relief pursuant to Rule 60(a) would be improper in this instance. As such, the Court hereby **DENIES** the Motions.

**AND IT IS SO ORDERED.**

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

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

It Is So Ordered

s/ Walton J. McLeod

Electronically signed on 2023-06-16 14:36:32 page 3 of 3

John Deere Construction & Forestry Company  
PLAINTIFF(S)

North Edisto Logging Inc et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

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

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

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

Two defendants, the Trust and the Estate, filed a motion seeking to alter or amend an order issued on March 8, 2023. Having reconsidered the matter, the motion is respectfully denied. However, the court's ruling of March 8, 2023, does not prevent these defendants from seeking summary judgment again should there be a material change in circumstances, including one where prior orders of other judges are modified. Please see page 2.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/27/2023 .

Paul Fanning for John Deere Construction & Forestry Company

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---

The gist of the motion is that this court should wait until alleged inconsistencies are resolved concerning rulings on the nonclaim statute made by Judges Maddox and McLeod in separate orders, which are addressed in this court's March 8 order. Judge McLeod's order was filed on June 22, 2022. It read, in part: "Plaintiff's claims in this case seek to set aside the transfer of title to fifteen (15) separate parcels of real estate that are alleged have been fraudulently transferred during the 2018 Lawsuit. Plaintiff argues that the South Carolina Nonclaim Statute does not apply to disputes regarding transfer of title to real estate. This Court agrees." These defendant contend that Judge McLeod intended to write that he disagreed. A Rule 60 motion was filed asserting that this alleged clerical error should be corrected. Since the filing of the motion now before this court, Judge McLeod filed an order on June 16, 2023, denying the Rule 60 motion and declining to modify his order.

Judge Maddox's order denying summary judgment bought by defendant Gunter was entered on March 2, 2023. A reconsideration motion was filed on March 13, 2023. This court does not see an order from that reconsideration motion listed on the online index.

The present motion reads: "The March 8 Order relies upon conflicting language in Judge McLeod's order and the Order filed by Judge Maddox. Each of these orders are subject to being modified, Judge McLeod's order by a Rule 60(a) motion, which will have the result of resolving the conflicting language and Judge Maddox's order by a motion to reconsider, based in part on the expected clarification of Judge McLeod's order. The Order on the Motion to Dismiss Judge Maddox's March 2, 2023 Order, in Paragraph 10, states:

10. On June 22, 2022, the Honorable Walton J. McLeod, IV entered an Order denying the Motions to Dismiss ('Order'). The Order, in pertinent part, states that the Nonclaim Statute 'does not apply to disputes regarding transfer of title to real estate' (Order at p. 5). However, in the June 22 Order, the full sentence is : 'Plaintiff argues that the South Carolina Nonclaim Statute does not apply to disputes regarding transfer of title to real estate.' (emphasis added). The full sentence is followed by the following three words: 'This Court agrees.' However, both his Defendant and Defendant Matthew Rush have filed motions under Rule 60(a) because the rest of the substance of the June 22, 2023 Order makes it clear that the court did not agree with the Plaintiff and [] this sentence should have read: This Court disagrees. This Defendant requests that this court wait for Judge McLeod's ruling on the Rule 60(a) motions before ruling on this motion for reconsideration."

In the interim since the hearing on the present motion, Judge McLeod elected not to accept this argument and declined to modify his order. After reviewing the notes from the hearing, this court does not see an indication that a continuance was requested. There is no basis to alter or amend this court's order of March 8, 2023 in this regard.

These defendants also challenge the statement in the March 8 order about completeness of the record, stating that both sides agree that the record is sufficiently complete for resolution of the issues being raised. The court respectfully declines to modify that section of the order. The previous argument seems to belie the assertion in this argument.



Lexington Common Pleas

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

**Case Number:** 2021CP3200328

**Type:** Order/Electronic Form 4

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2023-07-27 12:21:04 page 3 of 3

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE  
CASE NO. 2021-CP-32-00328**

John Deere Construction & Forestry Company  
PLAINTIFF(S)

North Edisto Logging Inc et al  
DEFENDANT(S)

<b>Submitted by:</b>	<b>Attorney for :</b> <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (*CHECK REASON*):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (*CHECK REASON*):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**  
 Affirmed;  Reversed;  Remanded;  Other

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

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

**ORDER INFORMATION**

**This Court denied Defendant Cody Gunter’s Motion to Reconsider on March 2, 2023. Defendant Gunter then filed a Motion to Reconsider on March 13, 2023. After careful consideration and review, this Motion to Reconsider is hereby DENIED.**

This order  ends  does not end the case.

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





Lexington Common Pleas

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

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2023-08-01 13:12:45 page 3 of 3

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 of MATTHEW CODY GUNTER TO  
DISMISS FOR FAILURE TO JOIN  
A NECESSARY PARTY  
AND FOR SUMMARY JUDGMENT**

**NOTICE OF MOTION**

**YOU WILL PLEASE TAKE NOTICE that Matthew Cody Gunter will move before a Judge of the Court of Common Pleas for Lexington County, South Carolina, at a time and place and manner set by the court, for an Order on the issues set forth herein, pursuant to Rule 19 and Rule 56 of the South Carolina Rules of Civil Procedure (SCRCP) because Plaintiff has failed to join a necessary party in this action, and there are no material issues of fact, and movant is entitled to judgement as a matter of law.**

**Material Facts**

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

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

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

Defendant 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)

Paul Gunter granted a mortgage in 2017 to South State Bank that encumbers the property identified as Property 13 in the Complaint.

The South State mortgage has a face amount of \$400,000.00 Dollars, and a future advance clause.

The original amount disbursed on this mortgage was \$200,000 Dollars, and the current balance is over \$140,000.00.

The value of Property 13 is at most \$65,000.00 and it is completely implausible that the value of the property exceeds the amount of the perfected first mortgage lien.

Therefore, there was no equity in Property 13 after the mortgage was perfected.

There was no equity in Property 13 when it was transferred to Cody Gunter.

There was no equity in Property 13 when plaintiff's action was filed.

There is no equity in Property 13 today.

All payments that were made on the mortgage were made by this defendant.

### **Failure to Join a Necessary Party**

Even though Plaintiff performed a title search on Property 13, it inexplicably failed to name the holder of the perfected first mortgage lien on the property. Plaintiff has failed to make any effort to correct this failing after it was pointed out by this Defendant.

SCRC19(a) provides: A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise

inconsistent obligations by reason of his claimed interest.

Further, “[t]he principle behind this Rule is that whenever possible persons materially interested in the action should be joined so that they may be heard and a complete determination had.” Rule 19, SCRCF note

Joinder of the holder of the perfected first mortgage lien will not deprive this court of jurisdiction and the mortgage holder is subject to service of process.

In *Slatton v. Slatton*, 289 S.C. 128, 130, 345 S.E.2d 248, 249 (1986), our Supreme Court held that the record titleholder of an automobile was a necessary party in a family court action seeking transfer of the vehicle from one spouse to the other. The continued authority of *Slatton* was reaffirmed in *Ex Parte Government Employee's Ins. Co.*, 644 S.E.2d 699, 373 S.C. 132 (S.C. 2007).

The holder of a perfected mortgage on Property 13 is clearly a necessary party and if Plaintiff continues to refuse to join them, the action should be dismissed as to Property 13.

### **Standard for Summary Judgment**

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

(citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 317 (1986)). In that kind of situation, “there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Id.* at 116, 410 S.E.2d at 546. “The moving party is entitled to a judgment as a matter of law because the nonmoving party has not made a sufficient showing on an essential element of their case for which they have the burden of proof.” *Id.*

### **The Absence of Equity in Property 13**

Paragraph 102 of the Complaint Plaintiff alleges there “is equity in Property 13 capable of satisfying a portion of the Judgment.” This allegation acknowledges the fundamental truth that a fraudulent transfer action must have an economic impact, because the property in question is capable of satisfying part of the underlying debt.

In the instant case, this essential element is indisputably missing. There was no equity in 2017 when the mortgage was perfected. There was no equity in December 2018 when Plaintiff’s first action against North Edisto was filed. There was no equity in 2019 when Property 13 was deeded to this defendant. There was no equity in 2021 when Plaintiff’s current action was filed. There is no equity today.

As stated above, the failure of an essential element of Plaintiff’s claim is a basis for summary judgment, without regard to the evidence, or lack thereof on any other element. Plaintiff’s malicious desire to harm everyone who is associated with North Edisto in any way cannot substitute for an economically rational basis for their claim. No further discovery, or any other event will change the fact that Property 13 is worth substantially less than the lien of the perfected first mortgage.

### **The Nonclaim Statute**

This Defendant also renews his motion for summary judgment based on the nonclaim statute.

S.C. Code §62-3-803(a) provides:

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

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

(1) **one year after the decedent's death**; or

(2) the time provided by Section 62-3-801(b) for creditors who are given actual notice, and within the time provided in Section 62-3-801(a) for all creditors barred by publication. [Emphasis added]

### The Significance of a Nonclaim Statute

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

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

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

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

**confused with general statutes of limitation.** The former creates a right of action if commenced within the time prescribed by the statute, whereas the latter creates a defense to an action brought after the expiration of the time allowed by law for the bringing of such an action.

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

### **The Order on the Motion to Dismiss**

An Order filed on June 22, 2022 provides:

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

The order further provides :

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

### **The Nonclaim Statute Applies to Fraud Claims**

Plaintiff argues that notwithstanding the expansive definition of claims in Section 804, the claims are still somehow excluded because of the alleged fraud. This is at odds with the language of the

statute which expressly includes claims based on “ contract, tort, or other legal basis” without any indication that any subclass of these three categories are excluded. Adding the phrase “except fraud claims” would have been a simple way to convey this intent, if that had been the will of the General Assembly. The absence of such a phrase strongly indicates that no such intent existed and that neither fraud claims, nor anything else was meant to be excluded.

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

### **Further Distinctions**

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

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

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

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

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

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

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

### **Conclusion**

The holder of a perfected mortgage on Property13 is clearly a necessary party to this action and if Plaintiff continues to refuse to join them, the action should be dismissed as to Property 13.

Two independent grounds exist for granting summary judgment as to Plaintiff's claim as to Property 13, the lack of equity in the property and the lack of a timely filed action under the nonclaim statute. No further discovery or any other future development will alter the factual basis for these

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

s/ D. Randolph Whitt  
D. Randolph Whitt  
SC Bar No.13068  
344 Blossom View Ct.  
West Columbia, SC 29170  
(803) 422-2176 Tel  
dwhitt2001@aol.com

Attorney for Defendant Matthew Cody Gunter

September 18, 2023

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )  
)  
JOHN DEERE CONSTRUCTION )  
& FORESTRY COMPANY, )  
)  
Plaintiff, )  
)  
VS. )  
)  
NORTH EDISTO LOGGING, )  
INC.; THE PAUL AND BRENDA )  
GUNTER REVOCABLE TRUST )  
UTD MARCH 26, 2019; THE )  
ESTATE OF PAUL D. GUNTER; )  
MATTHEW P. RUSH; AND )  
MATTHEW CODY GUNTER, )  
)  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No.: 2021-CP-32-00328

**MOTION FOR SUMMARY JUDGMENT  
FOR DEFENDANT MATTHEW P. RUSH**

**NOTICE OF MOTION**

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

**MATERIAL FACTS**

Paul D. Gunter died on July 3, 2019. See Complaint ¶ 19. Plaintiff filed this action on February 2, 2021. See Complaint generally. Plaintiff files this action more than (1) year after the death of Paul D. Gunter. Defendant Matthew P. Rush acquired ownership of property subject to this action by the virtue of Quit-Claim Deed from North Edisto, Inc. on July 10, 2019 and the

Paul and Brenda Gunter Revocable Trust on October 9, 2019, both recorded on October 10, 2019 with the Lexington County Register of Deeds. See Complaint ¶ 28 and ¶ 29.

### STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the Court should view the evidence in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493-94, 5674 S.E.2d 1, 5 (2006). Entry of summary judgment is mandated, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish that existence of an element essential to the party's case. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 317 (1986)). In that kind of situation, "there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. *Id.* At 116, 410 S.E.2d at 546. "The moving party is entitled to a judgment as a matter of law because the nonmoving party has not made a sufficient showing on an essential element of their case for which they have the burden of proof." *Id.*

### THE NONCLAIM STATUTE

Under S.C. Code §62-3-803, titled "Limitations on presentation of claims", subsection (a) provides as follows:

- (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 §62-3-801(b) for creditors who are given actual notice, and within the time provided §62-3-801(a) for all creditors barred by publication. [*Emphasis added.*]

Though not applicable in this case, S.C. Code §62-3-803(b), for reference to S.C. Code §62-3-803(a)(2), provides as follows:

- (b) A claim described in subsection (a) which is barred by the nonclaim statute of the decedent's domicile before the giving of notice to creditors in the State is barred in this State.

### **THE SIGNIFICANCE FOR THE NONCLAIM STATUTE**

The fact that S.C. Code §62-3-803(a) is a nonclaim statute has been conclusively established by South Carolina Appellate Courts. See *Estate of Tollison*, 320 S.C. 132, 463 S.E.2d 611, 613 (Ct.App. 1995) (“Section 62-3-803 is a nonclaim statute. See *A. McCoy’s, Inc. v. Garner*, 281 S.C. 378, 315 S.E.2d 812 (Ct.App. 1984) (Finding former Section 21-15-640 a nonclaim statute). Thus, unless the statute is complied with, the creditor’s claim is barred. *Estate of Tollison*, has been further approved by the Supreme Court of the State of South Carolina in *In Re Estate of Hover. Id.*; *In Re Estate of Hover*, 407 S.C. 194, 754 S.E.2d 875 (2014).

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

In *Phillips v. Quick*, the South Carolina Court of Appeals adopted the following analysis:

[A] nonclaim statute...grants to every person having a claim of any kind or character against a decedent’s estate, the right to file the same in the court having jurisdiction thereof and have the same adjudicated, provided such claim is filed within the time specified in the statute. Unless such claim is filed within the time so slowed by the statute, it is forever barred. The time element is a built-on condition of the said statute and is of the essence of the right of action. **Unless the claim is filed within the prescribed time set out in the statute, no enforceable right of action is created.** While such statutes limit the time in which a claim may be filed or an action brought, they have

nothing in common with and are not to be confused with general statutes of limitation. The former created a right of action of commenced within the time prescribed by the statute, whereas the latter creates a defense of an action brought after the expiration of the time allowed by law for the bringing of such an action. *Estate of Decker v. Farm Credit Servs. Of Mid-Am.*, 684 N.E.2d 1137, 1138-39 (ind. 1997) (quoting *Donnella v. Crady*, 135 Ind.App. 60, 185 N.E.2d 623, 624-25 (1962)). [*Emphasis added*].

*Phillips v. Quick*, 399 S.C. 226, 731 S.E.2d 327 (Ct.App. 2012).

### **THE ORDER ON DEFENDANT’S MOTION TO DISMISS**

An order in response to Defendant’s Motion to Dismiss which was filed on June 22, 2022 by the Honorable Judge McLeod provides as follows:

The court finds a central tenant of the rules of statutory construction in that every word of the legislative enactment should be given credence. Adopting the restrictive Section 201 definition of claims would reach many of the words of Section 803 out of existence and render them meaningless. The context and specifics of Section 803 also compel the conclusion that an expansive definition of claims is intended for the nonclaim statute.

The same 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 §62-3-203(a)(6).” Therefore, Plaintiff arguably had an opportunity to assert its claim in probate proceeding any time between forty-six days and three hundred sixty-four days after the Decedent’s death and failed to do so.”

### **THE NONCLAIM STATUTE’S APPLICATION TO FRAUD CLAIMS**

Plaintiff argues that, notwithstanding the expansive definition of claims in Section 803, the Plaintiff’s claims are an exception to the nonclaims statute because of the alleged fraud. This is at direct odds with the language of the nonclaim statute, which explicitly includes claims based on “contract, tort or other legal basis” without any stated exception. S.C. Code §63-2-803(a). If the will of the General Assembly was to include an exception to the nonclaims statute for fraud

claims, addition of the simple phrase “except in the case of fraud claims” would have easily conveyed this intent. The absence of such a phrase strongly indicates that no such intent existed and that fraud claims or any other type of claim were not intended to be an exception to the nonclaims statute.

### FURTHER DISTINCTIONS

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

Likewise, equitable considerations are unavailing in this context to the effect that:

Furthermore, even though a decision in favor of the Estate may appear inequitable, equitable considerations are not a factor in the claims-barring analysis. Thus, neither Hover’s continued payment on the Note after his mother’s death or the fact of default in the foreclosure proceedings can “override” or eliminate the nonclaim statute as this statute has been strictly applied in similar circumstances. See *Phillips v. Quick*, 339 S.C. 226, 230, 731 S.E.2d 327, 329 (Ct.App. 2012) (“While equitable principles may extend the time for commencing an action under statutes of limitation, nonclaim statutes impose a condition precedent to the enforcement of a right of action and are not subject to equitable exceptions.” (quoting *Estate of Decker v. Farm Credit Servs. Of Mid-Am, ACA*, 684 N.E.2d 1137, 1139 (Ind. 1997))); 34 C.J.S *Executors & Administrators* §547 (Supp. 2013) (“Misleading statements, assurances, or conduct of the representative including a creditor to refrain from the due presentation of his or her claim do not estop the representative from contesting the claim because of such a failure to present the claim.”); see generally E.W.H., Annotation, *Effect of Conduct of Personal Representative Preventing Filing of Claims Within Time Allowed by Statute of Nonclaim*, 66 A.L.R 1415 (1930) (citing state and federal cases addressing the general rule that no promise on the part of a person representative is sufficient to prevent the bar of the statute as to a claim not filed within the statutory period).

*In Re Estate of Hover*, 407 S.C. 194, 754 S.E.2d 875 (2014).

The entry of a deficiency judgment on Plaintiff’s underlying action is of no help to them, as provided in *Hover*, “Although the deficiency judgment was entered after claims-filing time

limits and arguable ‘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 arose long before the deficiency judgment was entered.” *Id.* (Footnote omitted).

### CONCLUSION

That Defendant Matthew P. Rush is a nonprobate transferee of the decedent Paul D. Gunter is established by the deed cited in and attached to the Plaintiff’s Complaint. The Complaint also establishes Paul D. Gunter’s date of death and that this action was filed more than one (1) year later. S.C. Code §62-3-803(a) therefore serves as an absolute bar against this action as to Defendant Matthew P. Rush. 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 claim. The timeliness of Plaintiff’s claim is an essential element of any civil action and failure on this point renders all other issues moot. There being no disputed material facts, Defendant Matthew P. Rush is entitled to judgment as a matter of law. A judgment should be entered dismissing this action with prejudice as to Defendant Matthew P. Rush and the associated Lis Pendens should be vacated and canceled of record.

October 26, 2023  
Lexington, South Carolina

s/ James R. Snell, Jr.  
James R. Snell, Jr. (Bar No. 72663)  
Law Office of James Snell, Jr., LLC  
123 Harmon Street  
Lexington, South Carolina 29072  
803-359-3301

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

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

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

ORDER DENYING DEFENDANT  
MATTHEW CODY GUNTER'S  
MOTIONS TO DISMISS AND FOR  
SUMMARY JUDGMENT

This matter came before the Court upon Motion to Dismiss and Motion for Summary Judgment by Defendant Matthew Cody Gunter, which was filed on September 18, 2023 ("Dispositive Motions"). A hearing was conducted on November 13, 2023. Plaintiff was represented by Amy H. Wooten, Esquire and Paul A. Fanning, Esquire admitted *Pro Hac Vice*. Defendants Matthew Cody Gunter, North Edisto Logging, Inc., The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019, and The Estate of Paul D. Gunter were represented by D. Randolph Whitt, Esquire. Defendant Matthew P. Rush was represented by James R. Snell, Jr., Esquire.

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

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

3. This Court entered the First Amended Scheduling Order in this case on January 17, 2023 (the "Scheduling Order"). No party has sought to amend or modify the Scheduling Order. The Scheduling Order requires all dispositive motions to be filed by May 30, 2023.

4. Defendant Matthew Cody Gunter filed the Dispositive Motions on September 18, 2023.

5. The Dispositive Motions were filed after the Scheduling Order's deadline to file dispositive motions and for that reason the Dispositive Motions will not be considered by this Court and will be denied.

**IT IS THEREFORE ORDERED** that Defendant Matthew Cody Gunter's September 18, 2023 Motion to Dismiss and Motion for Summary Judgment are hereby denied for the reasons outlined hereinabove.

**AND IT IS SO ORDERED.**

---

The Honorable Diane Goodstein  
Presiding Circuit Court Judge

\_\_\_\_\_, 2023  
ND:4854-2526-2480, v. 2



Lexington Common Pleas

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

It is so Ordered!

s/Diane S. Goodstein

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

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

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

ORDER DENYING DEFENDANT  
MATTHEW P. RUSH'S MOTION  
FOR SUMMARY JUDGMENT

This matter came before the Court upon Motion for Summary Judgment by Defendant Matthew P. Rush, which was filed on October 26, 2023 (the "Dispositive Motion"). A hearing was conducted on November 13, 2023. Plaintiff was represented by Amy H. Wooten, Esquire and Paul A. Fanning, Esquire admitted *Pro Hac Vice*. Defendants Matthew Cody Gunter, North Edisto Logging, Inc., The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019, and The Estate of Paul D. Gunter were represented by D. Randolph Whitt, Esquire. Defendant Matthew P. Rush was represented by James R. Snell, Jr., Esquire.

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

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

3. This Court entered the First Amended Scheduling Order in this case on January 17, 2023 (the "Scheduling Order"). No party has sought to amend or modify the Scheduling Order. The Scheduling Order requires all dispositive motions to be filed by May 30, 2023.

4. Defendant Matthew Rush filed the Dispositive Motion on October 26, 2023.

5. The Dispositive Motion was filed after the Scheduling Order's deadline to file dispositive motions and for that reason the Dispositive Motion will not be considered by this Court and will be denied.

**IT IS THEREFORE ORDERED** that Defendant Matthew Rush's October 26, 2023 Motion for Summary Judgment is hereby denied for the reasons outlined hereinabove.

**AND IT IS SO ORDERED.**

---

The Honorable Diane Goodstein  
Presiding Circuit Court Judge

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

ND:4861-8489-0256, v. 3



Lexington Common Pleas

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

It is so Ordered!

s/Diane S. Goodstein

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