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SC Court of Appeals

IN THE COURT OF APPEALS
STATE OF SOUTH CAROLINA

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	CASE NO.: 2024-CP-32-01682
Timothy Nunally, Mark Nunnally,	)	
	)	ORDER GRANTING
	)	DEFENDANT’S MOTION FOR
Plaintiffs	)	SUMMARY JUDGMENT
	)	
	)	
v.	)	
	)	
Tina Guerry, individually and in her official	)	
capacity as the Lexington County Register of	)	
Deeds,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the Court pursuant to the Defendant’s Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

FACTS

The facts as shown by the affidavit of the Register of Deeds and as presented at this Hearing are as follows:

1. The Plaintiffs attempted to record the document that was attached to their Complaint, which is alleged to be a \$100 million lien on property at least partially owned by the Plaintiffs. The lien is captioned as a lien common law and a writ of attachment.
2. The lien was signed by Plaintiff, Timothy Nunally.
3. The alleged lien states that the lien supersedes mortgages and equity liens.
4. The alleged lien states that anyone who modifies or removes the lien is fully liable for damages.
5. The alleged lien further warns that anyone who attempts to modify, circumvent, and/or negate the lien shall be deemed outlaws and/or felons and shall be prosecuted pursuant to federal statutes.
6. The alleged lien further warns that any judicial action which violates the constitutional rights of the individuals may be sued as a cause of action in civil litigation against those performing those acts without any form of immunity.
7. SC Code section 30-9-30 states as follows:

SECTION 30-9-30. Filing of written instruments concerning real or personal property; false or fraudulent documents.

(A) Except as otherwise provided by statute, each clerk of court and register of deeds in this State shall keep a record, in the office in which he files all conveyances, mortgages, judgments, liens, contracts, and papers relating to real and personal property required by statute to be kept by him, by entering in the record the names of the grantor and grantee, mortgagor and mortgagee, obligor and obligee, or other parties to the written instruments, date of filing, and nature of the instrument immediately upon its lodgment for record. The filing is notice to all persons, sufficient to put them upon inquiry of the purport of the filed instrument and the property affected by the instrument. A return address must be provided on each conveyance, mortgage, judgment, lien, contract, or other document submitted for filing with the clerk of court or register of deeds. A document may be refused for filing if it lacks a complete return address.

(B)(1) If a person presents a conveyance, mortgage, judgment, lien, contract, or other document to the clerk of court or the register of deeds for filing or recording, the clerk of court or the register of deeds may refuse to accept the document for filing if he reasonably believes that the document is materially false or fraudulent or is a sham legal process. Within thirty days of a written notice of such refusal, the person presenting the document may commence a suit in a state court of competent jurisdiction requiring the clerk of court or the register of deeds to accept the document for filing.

(2) If the clerk of court or the register of deeds reasonably believes that a conveyance, mortgage, judgment, lien, contract, or other document is materially false or fraudulent, or is a sham legal process, the clerk of court or the register of deeds may remove the document from the public records after giving thirty days' written notice to the person on whose behalf the document was filed at the return address provided in the document. Within thirty days written notice of the proposed removal, the person providing the notice may commence a suit in a state court of competent jurisdiction preventing the clerk of court or the register of deeds from removing the document.

(3) If a clerk of court or a register of deeds improperly refuses to accept for filing or recording or improperly removes from the public records a conveyance, mortgage, judgment, lien, contract, or other document pursuant to this section, the clerk of court or register of deeds is not liable for damages, personally or in his official capacity, for the improper refusal or removal.

(4) For purposes of this subsection:

(a) "Sham legal process" means a document that is not issued lawfully and that purports to be a judgment, lien, or order of a court or appropriate government entity, or otherwise purports to assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of a person or property.

- (b) "Lawfully issued" means adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a. political subdivision of a state.
8. The Lexington County Register of Deed's (ROD) office reviewed the document and determined that it had reasonable belief that the document should not be recorded pursuant to SC Code section 30-9-30(B)(1) and sent the plaintiffs the letter attached the affidavit of the ROD, Tina Guerry, on file in the case.
 9. As a result of the letter from the ROD, the Plaintiffs filed this lawsuit pursuant to SC Code Section 30-9-30(B)(1) asking this Court to require the ROD to accept document for recording.
 10. The property on which the lien was alleged to attach is the subject of the current foreclosure lawsuit in civil action number 2024-CP-32-01094.
 11. SC Code section 30-9-30 was enacted to give the Clerk of Courts and ROD offices the authority to refuse to record documents when they reasonably believe that the document is materially false fraudulent or is a sham legal process.
 12. The Plaintiffs stated that new proposed lien was to protect the trustee of the property trust.

DISCUSSION

The Plaintiffs attempted to put a \$100 million lien on their own property. The above referenced warnings in the proposed lien by the Plaintiffs in the document were a red flag to the ROD that the document met the definition of 30-9-30(B)(1) and should not be recorded in the ROD for Lexington County. The additional public record information that the Plaintiffs were being foreclosed on the same property on which the proposed lien referenced gave further evidence that the document should not be recorded in the ROD.

The proposed common law lien is not a mortgage, not a mechanics lien, not a HOA lien created by covenants and not a State of Federal tax lien. The Plaintiffs have failed to identify what is the underlying basis for their alleged common law lien. Further, the plaintiffs are attempting to put a lien on property that they at least partially own as shown by the deed attached to this Order. There is no basis in law for a property owner to put a lien on his own property as this creates a form of merger of title in that the Plaintiffs already own the property on which they are attempting to record a lien. If a property owner could put a lien on his own

property, then a property owner could immediately upon obtaining title to property, put a lien on the property to put their lien ahead in priority from any other potential liens being recorded thereafter against the property. This simply cannot be done.

Section 30-9-30(B)(3) also provides that the ROD is not liable for damages personally or in her official capacity for refusing to accept a document for recording pursuant to S.C. Code Section 30-9-30(B)(1).

CONCLUSION

The General Assembly has provided a mechanism to stop materially false or fraudulent or a sham legal process from being recorded in the ROD or filed in the Clerk of Courts office. The Lexington County ROD was doing her job in reviewing the document and deciding that it should not be recorded pursuant to S.C. Code Section 30-9-30 (B)(1).

Based upon the affidavit from the ROD, the evidence presented at the Hearing and from review of the proposed lien, this Court finds that there is no genuine issue of material fact and that the proposed lien meets the requirements of S.C. Code Section 30-9-30(b) and should not be recorded in the ROD office for Lexington County.

Further, this Court finds that the Plaintiffs' allegation for damages against the Defendant is denied as the Plaintiffs have not prevailed and pursuant to S.C. Code 30-9-30 (B)(3) there is no liability personally or in her official capacity for refusing to accept a document for recording.

IT IS SO ORDERED.

Debra R. McCaslin
Judge, Eleventh Judicial Circuit

Lexington, South Carolina
January 17, 2025.



Lexington Common Pleas

Case Caption: Mark Nunnally , plaintiff, et al VS Tina Guerry, individually and as Register of Deeds for Lexington

Case Number: 2024CP3201682

Type: Order/Summary Judgment

So Ordered

Debra R. McCaslin

Electronically signed on 2025-01-23 14:00:34 page 5 of 5

Certificate of Electronic Notification

Recipients
Jeffrey Anderson - Notification transmitted on 01-23-2025 02:02:51 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2024CP3201682

Official File Stamp: 01-23-2025 02:02:43 PM

Court: CIRCUIT COURT

Common Pleas

Lexington

Case Caption: Mark Nunnally , plaintiff, et al VS Tina Guerry,
individually and as Register of Deeds for
Lexington

Document(s) Submitted: Order/Summary Judgment Order/Summary
Judgment

- Exhibit/Filing of Exhibits Exhibit/Filing of
Exhibits

Filed by or on behalf of: Debra Mccaslin

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Jeffrey M. Anderson for Tina Guerry, individually
and as Register of Deeds for Lexington

**The following people have not been served electronically by the Court. Therefore, they must
be served by traditional means:**

Timothy Nannally for Timothy Nannally

Mark Nunally for Mark Nunnally

Mark Nunnally for Mark Nunally

Timothy Nannally for Timothy Nannally

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP3201682

Mark Nunnally et al
PLAINTIFF(S)

Tina Guerry, individually and as Register of Deeds for Lexington
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:

The defendant filed a motion to reconsider the courts order granting summary judgment on January 23, 2025. The court has reviewed the Plaintiffs motion to reconsider and it is hereby denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/24/2025 .

Timothy Nannally for Timothy Nannally
Mark Nunally for Mark Nunnally
Mark Nunnally for Mark Nunally
Timothy Nannally for Timothy Nannally

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.



Lexington Common Pleas

Case Caption: Mark Nunnally , plaintiff, et al VS Tina Guerry, individually and as Register of Deeds for Lexington

Case Number: 2024CP3201682

Type: Order/Electronic Form 4

So Ordered

Debra R. McCaslin

Electronically signed on 2025-01-24 14:25:23 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

Timothy Nunnally, Mark Nunnally
2024 MAR 8 PM 1:44
Plaintiff(s)

vs.

Tina Guerry, individually and in her official capacity as the Lexington Register of Deeds
Defendant(s)

Submitted By: Mark Nunnally
Address: 5681 Grande River Rd.
College Park, GA 30349

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

_____-CP-_____-

2024CP3201682

SC Bar #: _____
Telephone #: _____
Fax #: _____
Other: _____
E-mail: _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Certificate Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____
Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Previous Notice of Intent Case #
20____-NI-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____

- Torts - Personal Injury**
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☒ Other (499) _____

- Administrative Law/Relief**
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____

- Administrative Law/Relief**
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Incapacitated Adult Settlement (790)
☐ Other (799) _____

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____

- Special/Complex/Other**
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Interpleader (690)

- ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____

Date: 5.8.24

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR under ADR Rule 3(b) upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. Cases may also be exempt from ADR under ADR Rule 3(c) upon motion to and approval by the court.
6. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
7. Application of a party to be exempt from payment of neutral fees due to indigency should be filed with the Clerk of Court prior to the scheduling of the ADR conference.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

FILED

2024 MAY -8 PM 4:44
COMMON COURT OF PLEAS
LISA M. CUMER
COUNTY OF LEXINGTON
LEXINGTON SC
STATE OF SOUTH CAROLINA

2024CP3201682

Timothy Nunally, Mark Nunnally,

Plaintiff,

vs.

Tina Guerry, individually and in her official
capacity as the Lexington County Register of
Deeds,

Defendant.

Case No.:

SUMMONS

(Non- Jury)

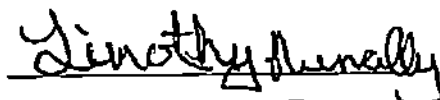
(Petition for Writ of Mandamus)

TO THE ABOVE NAMED DEFENDANT:

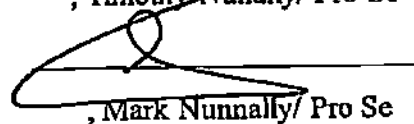
YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or to otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the Plaintiff's at their residence, 5881 Grande River Road, College Park, Georgia, 30349, or to otherwise appear and defend the action pursuant to applicable court rules, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated: May 8, 2024

By:



, Timothy Nunally/ Pro Se



, Mark Nunnally/ Pro Se

COMMON COURT OF PLEAS
COUNTY OF LEXINGTON
STATE OF SOUTH CAROLINA

FILED

2024 MAY -8 PM 4:44

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

Case No. 2024CP3201682

Timothy Nunally, Mark Nunnally,

Plaintiff,

vs.

Tina Guerry, individually and in her official
capacity as the Lexington County Register of
Deeds,

Defendant.

COMPLAINT

(Non- Jury)

(Petition for Writ of Mandamus)

Plaintiff's, Timothy Nunally and Mark Nunnally, complaining of Tina Guerry,
individually and in her official capacity as the Lexington County Register of Deeds
("Defendant" or "Guerry"), alleges as follows:

INTRODUCTION

1. This action arises out of Defendant Tina Guerry's chronic and willful failure and/or neglect to discharge her ministerial duties as the Lexington County Register of Deeds; specifically, to timely record within one month of delivery all deeds of conveyance, mortgages, and other writings concerning the titles to lands in Lexington County ("real estate documents") under the date and in the order of time at which they are delivered to the Office of the Lexington County Register of Deeds ("Lexington ROD").
2. Guerry's chronic and willful failure and/or neglect to timely record real estate documents has caused and will continue to cause substantial harm and potential legal liability to the plaintiffs in this complaint. South Carolina is a race-notice real estate jurisdiction and the real estate documents at issue are valid so as to affect the rights of

subsequent creditors or purchasers, only from the day and hour when they are recorded in the office of the register of deeds.

3. This action is brought to petition the Court to issue a writ of mandamus ordering Guerry to immediately comply with her non-discretionary and ministerial duty under law to file all real estate documents within one month of delivery to the Lexington ROD and to record these documents under the date and in the order of time at which they are delivered.
4. Timothy Nunally and Mark Nunnally are seeking damages for being an aggrieved party to Guerry's willful failure and/or neglect of the duties of her office, and expressly reserves the right to bring subsequent actions for such damages under civil and/or criminal law.

PARTIES AND JURISDICTION

5. Timothy Nunally is the Trustee of the CAN Irrevocable Trust and Mark Nunnally is a Beneficiary of the CAN Irrevocable Trust which exists under the laws of the State of South Carolina.
6. Guerry's chronic and willful failure and/or neglect to timely record real estate documents under the date and in the order of time at which they are delivered to the Lexington ROD has substantially interfered with plaintiff's ability to meet their personal obligations to protect the interests of their legal matters involving their recording of real estate documents; has exposed plaintiff's to potential liability for correcting title problems resulting from Guerry's dereliction of duty; and has caused and will cause plaintiff's to expend valuable time and funds to monitor the status of real estate documents delivered to the Lexington ROD for filing, to respond to status inquiries from third parties who may be involved in the plaintiff's real estate transactions, to re-examine real estate titles after the late filing of real estate

documents to determine if the plaintiff's interests have been compromised or if the plaintiffs have incurred liability due to the late filing, and to take action to correct title problems caused by the late filing.

7. Guerry is the duly elected Register of Deeds for Lexington County, whose elective office was established under the laws of the State of South Carolina and whose budget is provided by the County of Lexington. The Lexington ROD's principal place of business is located at 212 S. Lake Dr. Ste. 301, Lexington, SC, 29072.
8. This Court has jurisdiction over the parties and subject matter of this action and is empowered to grant the relief being sought.

(WRIT OF MANDAMUS)

9. Plaintiffs bring this action pursuant to Rule 65(f) of the South Carolina Rules of Civil Procedure and the common law of the State of South Carolina.
10. Guerry has a statutory duty under South Carolina Code of Laws § 30-5-90 to plaintiffs to timely record within one month of delivery to the Lexington ROD all real estate documents under the date and in the order of time at which they are delivered to the Lexington ROD.
11. Guerry's duty to record is ministerial because it is absolute, certain, and imperative, involving merely the execution of specific duties arising from fixed and designated facts, leaving nothing to the exercise of discretion.
12. Plaintiffs responsibility to supervise the recording of its documents in real estate transactions pursuant to South Carolina law has been significantly frustrated by Guerry's failure to satisfy her statutory duties.
13. Plaintiffs are an aggrieved party with a specific legal interest in the enforcement of the ROD's statutory recording duty.
14. Plaintiffs have no other adequate remedy at law.

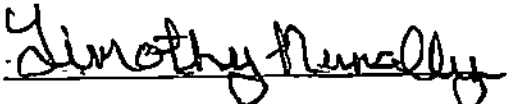
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs petition the Court for the following relief:

- A. That the Court issue a writ of mandamus ordering the Defendant Tina Guerry to immediately file all of the plaintiff's real estate documents that have been delivered to the Lexington ROD and have not been filed within one month of delivery;
- B. That the Court's writ of mandamus also orders the Defendant to mark the recorded real estate documents as being recorded on the same date that they were delivered to the Lexington ROD.
- C. That the Court's writ of mandamus also orders the Defendant to record all of the plaintiff's real estate documents in the order of the times at which they are brought to the Lexington ROD, regardless of whether they are personally delivered or are delivered by U.S. mail or parcel post.
- D. That the Court retain jurisdiction of this matter for a reasonable period of time to monitor the continued operation of the Lexington ROD by Guerry to ensure that Guerry continues to comply with her non-discretionary and ministerial duty under statutory law to timely record within one month of delivery to the Lexington ROD all real estate documents under the date and in the order of time at which they are delivered to the Lexington ROD.
- E. That the Court award Plaintiffs punitive damages, copying fees, transportation cost, court costs, and filing fees as authorized by law, and for;
- F. Such other and further relief as the Court deems just and proper.

(SIGNATURE PAGE FOLLOWS)

Respectfully submitted,



Timothy Nunnally, Pro Se



Mark Nunnally, Pro Se
5681 Grande River Road
College Park, GA, 30349
Tel.: (404) 980-4488

May 8, 2024

Lexington, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS-+
COUNTY OF LEXINGTON	)	
	)	CASE NO.: 2024-CP-32-01682
Timothy Nunnally, Mark Nunnally,	)	
	)	ANSWER OF THE DEFENDANT
Plaintiffs,	)	TINA GUERRY INDIVIDUALLY AND
	)	IN HER CAPACITY AS LEXINGTON
	)	COUNTY REGISTER OF DEEDS
v.	)	
	)	
Tina Guerry, individually and in her official	)	
capacity as the Lexington County Register of	)	
Deeds,	)	
	)	
Defendant.	)	
_____	)	

The Defendant, Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds, (hereinafter “this Defendant”) by and through her undersigned attorneys, answering the Complaint of the Plaintiff alleges as follows:

Each and every allegation not hereinafter specifically admitted is denied.

For A First Defense

1. This Defendant denies as to the allegations contained in Paragraphs 1, 2, 3, and 4 of the Complaint.
2. This Defendant lacks sufficient knowledge and information as to the allegations contained in Paragraph 5 of the Complaint and, therefore, denies Paragraph 5.
3. This Defendant denies as to the allegations contained in Paragraph 6 of the Complaint.
4. This Defendant admits as to the allegations contained in Paragraph 7 of the Complaint.
5. This Defendant denies as to the allegations contained in Paragraphs 8, 9, 10, 11, 12, 13, and 14 of the Complaint.

For A Second Defense

Each and every response is realleged as is repeated verbatim herein.

6. This Defendant has authority to refuse to accept documents for recording pursuant to SC Code section 30-9-30 (B) (1) if this Defendant reasonable believes that the document is materially false or fraudulent or is a sham legal process.
7. The document presented by the Plaintiffs purported to be a \$100,000,000 common law lien on property on which the Plaintiffs had an ownership interest.
8. This Defendant determined that the document presented by the Plaintiffs would not be recorded pursuant to SC Code Section 30-9-30 (B) (1) and the Plaintiffs were so notified by letter from this Defendant mailed April 8, 2024.
9. Pursuant to SC Code Section 30-9-30 (B) (3), this Defendant is not liable personally or in her official capacity for refusing to record the Plaintiffs' document and this Defendant pleads SC Code Section 30-9-30 (B) (3) as a defense.
10. Further this Defendant pleads all relevant Sections of SC Code 30-9-30 as a complete defense to the Plaintiffs' Complaint.

WHEREFORE, this Defendant asks the Court to dismiss this case.

s/Jeff M. Anderson; SC Bar #380
DAVIS FRAWLEY, LLC
140 East Main Street, Lexington, SC 29072
Phone No.: (803) 359-2512
ATTORNEYS FOR THE DEFENDANT
LEXINGTON COUNTY CLERK OF THE COURT

Lexington, South Carolina

May 30, 2024.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF

Lexington**FILED**

JUDICIAL CIRCUIT

CASE NO.: 2024-CP-32-C11682

2024 MAY 17) PM 4:33

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**Timothy A. Guessey, individually and in hisPlaintiff, COMER
CLERK OF COURT
LEXINGTON SC

vs.

Tina Guessey, individually and in her
Official capacity as the Lexington County
Register of Deeds

Defendant.

Plaintiff's Attorney:

, Bar No. _____

Address: _____

Phone: _____ Fax _____

E-mail: _____ Other: _____

Defendant's Attorney:

, Bar No. _____

Address: _____

Phone: _____ Fax _____

E-mail: _____ Other: _____

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**SECTION I: Hearing Information**

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/☐ NO**SECTION II: Motion/Order Type**☒ Written motion attached☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

Date submitted

MAY 17, 2024**SECTION III: Motion Fee**☒ PAID - AMOUNT: \$ 25.00☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☒ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____, 20____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____, 20____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FILED

2024 MAY 17 PM 4:33

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

Case No. 2024CP3201682

Timothy Nunally, Mark Nunnally,
Plaintiff(s),

v.

Tina Guerry, individually and in her official capacity as the
Lexington County Register of Deeds,
Defendant.

**MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON
LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT**

COMES NOW plaintiff's Timothy Nunally, Mark Nunnally and moves this Honorable Court to take judicial notice that a ~~recorded~~ document purporting to be a "FEDERAL COMMON LAW LIEN AND WRIT OF ATTACHMENT" does not fail to constitute a common law lien or writ of attachment in the State of South Carolina and can therefore deliver legitimate power to its holder to be filed and recorded with the Lexington County Register of Deeds, stating in support:

1. Summary Court Judges Bench Book- O. Liens and Encumbrances 1. provides a definition for a "lien".
2. SECTION 15-19-10 South Carolina Code of Laws Unannotated provides a definition for "Issue of Attachments".

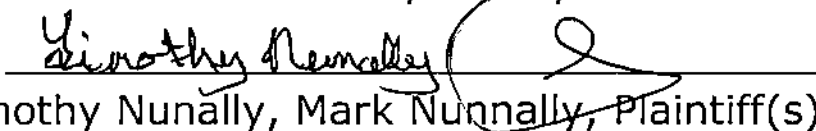
3. 2022 South Carolina Code of Laws Section 36-9-333 provides a definition for "common law lien".
4. Any written device that complies with these definitions imparts facts as matters of public record and are therefore subject to judicial notice.
5. A "lien" is generally defined as a security, charge, claim, or incumbrance against some specific property.
6. A "common law lien" means an interest, other than a security interest or an agricultural lien which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business.
7. A "writ of attachment" is a order that authorizes the seizure of property to secure a debt or obligation.
8. The attached "Common Law Lien" and "Writ of Attachment" document (copy attached as Exhibit "A") that forms the factual issue in this case purports to be a "lien" that is a "FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT ", stating on its face, "FEDERAL COMMON LAW LIEN and NOTICE OF FEDERAL COMMON LAW LEIN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROERTY".
9. The attached "FEDERAL COMMON LAW LIEN and NOTICE OF FEDERAL COMMON LAW LEIN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROERTY" titled "Exhibit B" was filed and recorded with the Clayton County Register of Deeds in the State of Georgia on the 14th day of February and is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
10. The attached "FEDERAL COMMON LAW LIEN and NOTICE OF FEDERAL COMMON LAW LEIN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROERTY" in question "Exhibit A" is a lien and an issue of attachment pursuant to South Carolina law.

11. It is the lienor's signature, the witnesses' signatures, and the notarial act of the Notary that gives life and legal power to the "FEDERAL COMMON LAW LIEN and NOTICE OF FEDERAL COMMON LAW LEIN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROERTY", allowing it to be capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

10. This Court should take judicial notice that the "FEDERAL COMMON LAW LIEN and NOTICE OF FEDERAL COMMON LAW LEIN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROERTY" in question, purporting to be a "lien" that is a "common law lien" and "issue of attachment" do not lack any needed signatures and is not a sham legal document nor fraudulent pursuant to South Carolina law.

WHEREFORE plaintiffs moves this Honorable Court to enter an Order taking judicial notice that the "FEDERAL COMMON LAW LIEN and NOTICE OF FEDERAL COMMON LAW LEIN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROERTY" that forms the gravamen of this case (copy attached as Exhibit "A") is not a sham legal document and that it confers power on its holder (see copy attached as Exhibit "B"), granting such other and further relief as the Court may deem reasonable and just under the circumstances.

RESPECTFULLY SUBMITTED this 17th day of May 2024.


Timothy Nunally, Mark Nunnally, Plaintiff(s)

[Certificate of Service]

“EXHIBIT A”

INDIVIDUAL ACKNOWLEDGEMENT

Type or Title of Document:

**FEDERAL CLAIM OF COMMON LAW LIEN
and
NOTICE OF FEDERAL COMMON LAW LIEN
WRIT OF ATTACHMENT ON
PRIVATE AND/OR REAL, PERSONAL PROPERTY**

Number of pages: (6) Date of document: January 9, 2024

Trust CAN IRREVOCABLE TRUST the OWNER of the private property;

and

the LIENOR.

48 ***** 48

Prepared By:
Mark Anthony Nunnally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 5681 Grande River Road
Atlanta, Georgia State [30349]

LIEN
COMMON LAW
AND
NOTICE OF WRIT OF ATTACHMENT
ON PRIVATE AND/OR REAL, PERSONAL PROPERTY

January 9, 2024

NOTICE TO:

Lexington County Court of Common Pleas; Clerk of Lexington County Court of Common Pleas, and Lexington County Register of Deeds of the State of South Carolina in and for Columbia, South Carolina; and acting Sheriff of Lexington County; and All persons known and unknown who may be similarly situated and all other concerned parties.

You are hereby notified that a FEDERAL COMMON LAW LIEN AND WRIT OF ATTACHMENT - ON PRIVATE AND/OR REAL, PERSONAL PROPERTY is now in effect on a certain parcel of Real Estate now of record in the Name of Timothy Allen Nunally. The LIENOR, on property located in Lexington County, South Carolina State and known as 1759 Willow Creek Drive, Columbia, South Carolina; Clerk of Lexington County Court of Common Pleas of South Carolina State; and more specifically LEGALLY and Lawfully described as:

1759 Willow Creek Drive Columbia, SC
Lat: 34.066370 Long:-81.184940

ALL THAT CERTAIN PIECE, PARCEL, or lot of land, with the improvements thereon, situated, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W on plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975 and recorded in the Office of the RMC for Lexington County in Plat Book 139-G at page 23; Also being shown and delineated on a plat prepared for Dana C. Frost and Terri L. Frost by Belter & Associates, Inc., dated 6/14/1993 and recorded in the Office of the RMC for Lexington County in Plat Book 262 at Page 070. Reference being made to said plat which is incorporated herein by reference for a more accurate and complete description ; all measurements being a little more or less.

This being identical property conveyed to the Mortgagors by Deed of Dana C. Frost and Terri L. Frost dated August 8, 1994 and recorded simultaneously herewith in Deed Book 5145 at Page 97.

Grantee Address: 1759 Willow Creek Drive
Columbia, South Carolina State [29212]

Copy of this **Common Law Lien, Writ of Attachment On Private, And/or Real, and Personal Property** has also been filed with the **Secretary of State of South Carolina Republic.**

Mark Hammond– Secretary of State, South Carolina State

Pursuant to that certain agreement that **LIENOR** Timothy Allen Nunally "CAN IRREVOCABLE" Trust of the property, the **LIENOR**, claims the attachment of the **COMMON LAW LIEN, WRIT OF ATTACHMENT ON REAL AND PRIVATE/PERSONAL PROPERTY** is in the AMOUNT of:

One Hundred Million Dollars (\$100,000,000) for 1759 Willow Creek Drive, Columbia, South Carolina State [29212].

MEMORANDUM OF LAW IN SUPPORT

Writ Of Attachments is but another form of **Common Law Lien** and **supersede mortgages and equity liens, and Deeds of Trust** Drummond Carriage v. Mills, (1878) N.W. 99; Hewitt V. Williams, 47 La. Ann. 742, 17 So. 269; Carr V. Dail, 19 S.E. 235; McMahan V. Ludin 58 N.H. 827, and may be satisfied only when paid and/or property is taken in lieu of the monetary value and fully satisfied by said taking of property.

The ruling of the U.S. Supreme Court in Rich v. Braxton, 158 U.S. 375, specifically forbids judges (Titles of Nobility) from invoking equity jurisdiction to remove common law liens or similar "clouds of title." Furthermore, even if a preponderance of evidence displays the lien to be void or voidable, the equity court (and Title of Nobles) still may not proceed until the moving party asks for and comes "to equity" with "clean hands" based on the "Clean Hands Doctrine" And "Power Of Estoppel", Trice v. Comstock, 57 C.C.A. 646; West V. Washington Sheriff, 153 App. Div. 460, 138 N.Y. Supp. 230.

ANY OFFICIAL WHO ATTEMPTS TO MODIFY OR REMOVE THIS COMMON LAW LIEN IN THE FORM OF WRIT OF ATTACHMENT IS FULLY LIABLE FOR DAMAGES AT LAW PURSUANT TO THE MANDATORY RULINGS OF THE U.S. SUPREME COURT IN BUTZ v. ECOHOMU, 438 U.S. 494, 98 S.Ct. 2894; BELL v. HOOD, 327 U.S. 678; and BIVENS v. UNKNOWN AGENTS, 499 U.S. 388.

This Federal At Law Lien in the form of a Writ Of Attachment(s) shall be valid, notwithstanding any other provision of statute or rule regarding the form or content of a "notice of lien", nor shall it be dischargeable for 100 years, nor extinguishable due to lienor's death whether accidental or purposely, nor dischargeable by lienor's heirs, assigns, or executors.

CAVEAT

Whoever attempts to modify, circumvent, and/or negate this? Federal Common Law Lien, in the form of Writ Of Attachment, shall be deemed outlaws and/or felons and shall be prosecuted pursuant to Title 42, United States Code, Sect. 1983, 1985, and 1986, and Punishable under the **penalties of the common law** at law and applicable sections of Title 18, United States Code.

Demand is made upon all public officials under penalty of Title 42 U.S.C.S. Section 1986 not to modify or remove this lien in any manner.

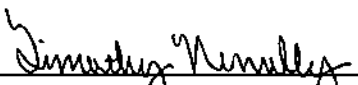
JUDICIAL NOTICE

I HEREBY NOTICE this to all parties and all Court(s) that pursuant to U.S. Supreme Court case **HAFER v. MELO**. No. 90-681, November 1991, any judicial actions which violate the constitutional rights of individuals may be sued as a cause of action in civil litigation against those performing said acts, without any form of immunity.

CONSTITUTIONAL PRIVILEGE - Immunity: State officials sued in their individual capacities are "persons" subject to suits for damages under 42 USC 1983; Eleventh Amendment does not bar such suits in federal court because of the purchase of bond insurance (**Hafer v. Melo**. No. 90-681). page 4001.

Respectfully Submitted in the Name of Justice on

This 9th day of January 2024 .



Timothy Allen Nunally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 1759 Willow Creek Drive
Columbia, South Carolina State [29212]

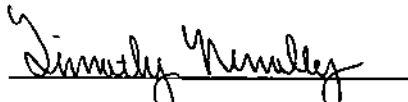
AFFIDAVIT

South Carolina State

County of Lexington

BEFORE ME, the undersigned authority, on this 9th day of January,
2024, did personally appear Timothy Allen Nunally, Trustee, with authority as the LIENOR,
who being first personally and duly sworn, does depose and say that the information contained in
this foregoing Federal Common Law Lien Writ of Attachment of Real and Personal Property is
true and accurate.

Further this affiant sayeth not.


Timothy Allen Nunally

"LIENOR" and "Trustee"



"WITNESS"

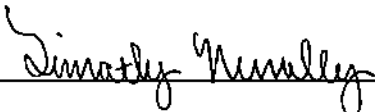
Rosevelt L. Robinson

ACKNOWLEDGEMENT

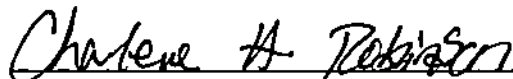
South Carolina State

County of Lexington

The foregoing Federal common Law Lien Writ of Attachment on Real and Personal Property was acknowledged before me this 9th day of January, 2024, by Trustee Timothy Allen Nunally of the private property, did execute same.



Timothy Allen Nunally



Notary

My Commission Expires:

SEAL

“EXHIBIT B”

Prepared By:
Mark Anthony Nunnally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 5681 Grande River Road
Atlanta, Georgia State

LIEN COMMON LAW

AND

NOTICE OF WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROPERTY

February 5, 2024

NOTICE TO:

Superior Court Clayton County; Clerk of Superior Court of Clayton County, and Register of Deeds of Clayton of the State of ~~Georgia~~ ^{Atlanta} in and for Atlanta, Georgia; and acting Sheriff of Clayton County; and All persons known and unknown who may be similarly situated and all other concerned parties.

You are hereby notified that a FEDERAL COMMON LAW LIEN AND WRIT OF ATTACHMENT - ON PRIVATE AND/OR REAL, PERSONAL PROPERTY is now in effect on a certain parcel of Real Estate now of record in the Name of Timothy Allen Nunally. The LIENOR, on property located in Clayton County, Georgia State and known as 5681 Grande River Road, Atlanta, Georgia; Clerk of Superior Court in Clayton County of Georgia State; and more specifically LEGALLY and Lawfully described as:

Located: 5681 Grande River Road, Georgia State [39456]

[Lat = Latitude Long = Longitude]

Lat: 33.6003687 Long: -84.4457561

ALL THAT tract or parcel of land lying and being in Land Lot 90 of the 13 District, Clayton, Georgia, being all of Lot 23, River's Station Subdivision, Phase D, Unit, 1, as per plat recorded in Plat Book 38, pages 104-107, Clayton County, Georgia records, which plat is incorporated herein and made a part hereof by this reference.

(Parcel: 130980C-C009)

**Grantee Address: 5681 Grande River Road
Atlanta, Georgia State**

Copy of this **Common Law Lien, Writ of Attachment** On Private, And/or Real, and Personal Property has also been filed with the **Secretary of State of Georgia Republic**.

Brad Raffensperger– Secretary of State, Georgia State

Pursuant to that certain agreement that **LIENOR** Timothy Allen Nunally "CAN IRREVOCABLE" Trust of the property, the **LIENOR**, claims the attachment of the **COMMON LAW LIEN, WRIT OF ATTACHMENT ON REAL AND PRIVATE/PERSONAL PROPERTY** is in the AMOUNT of:

One Hundred Million Dollars (\$100,000,000) for 5681 Grande River Road, Atlanta, Georgia State [30349].

MEMORANDUM OF LAW IN SUPPORT

Writ Of Attachments is but another form of **Common Law Lien** and **supersede mortgages and equity liens, and Deeds of Trust** Drummond Carriage v. Mills, (1878) N.W. 99; Hewitt V. Williams, 47 La. Ann. 742, 17 So. 269; Carr V. Dail, 19 S.E. 235; McMahan V. Ludin 58 N.H. 827, and may be satisfied only when paid and/or property is taken in lieu of the monetary value and fully satisfied by said taking of property.

The ruling of the U.S. Supreme Court in Rich v. Braxton, 158 U.S. 375, specifically forbids judges (Titles of Nobility) from invoking equity jurisdiction to remove common law liens or similar "clouds of title." Furthermore, even if a preponderance of evidence displays the lien to be void or voidable, the equity court (and Title of Nobles) still may not proceed until the moving party asks for and comes "to equity" with "clean hands" based on the "Clean Hands Doctrine" And "Power Of Estoppel", Trice v. Comstock, 57 C.C.A. 646; West V. Washington Sheriff, 153 App. Div. 460, 138 N.Y. Supp. 230.

ANY OFFICIAL WHO ATTEMPTS TO MODIFY OR REMOVE THIS COMMON LAW LIEN IN THE FORM OF WRIT OF ATTACHMENT IS FULLY LIABLE FOR DAMAGES AT LAW PURSUANT TO THE MANDATORY RULINGS OF THE U.S. SUPREME COURT IN BUTZ v. ECOHOMU, 438 U.S. 494, 98 S.Ct. 2894; BELL v. HOOD, 327 U.S. 678; and BIVENS v. UNKNOWN AGENTS, 499 U.S. 388.

This Federal At Law Lien in the form of a Writ Of Attachment(s) shall be valid, notwithstanding any other provision of statute or rule regarding the form or content of a "notice of lien", nor shall it be dischargeable for 100 years, nor extinguishable due to lienor's death whether accidental or purposely, nor dischargeable by lienor's heirs, assigns, or executors.

CAVEAT

Whoever attempts to modify, circumvent, and/or negate this? Federal Common Law Lien, in the form of Writ Of Attachment, shall be deemed outlaws and/or felons and shall be prosecuted pursuant to Title 42, United States Code, Sect. 1983, 1985, and 1986, and Punishable under the **penalties of the common law** at law and applicable sections of Title 18, United States Code.

Demand is made upon all public officials under penalty of Title 42 U.S.C.S. Section 1986 not to modify or remove this lien in any manner.

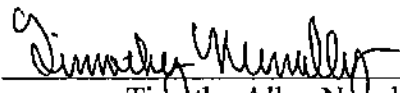
JUDICIAL NOTICE

I HEREBY NOTICE this to all parties and all Court(s) that pursuant to U.S. Supreme Court case HAFFER v. MELO. No. 90-681, November 1991, any judicial actions which violate the constitutional rights of individuals may be sued as a cause of action in civil litigation against those performing said acts, without any form of immunity.

CONSTITUTIONAL PRIVILEGE - Immunity: State officials sued in their individual capacities are "persons" subject to suits for damages under 42 USC 1983; Eleventh Amendment does not bar such suits in federal court because of the purchase of bond insurance (Hafer v. Melo, No. 90-681), page 4001.

Respectfully Submitted in the Name of Justice on

This 5th day of February 20 24.



Timothy Allen Nunally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 5681 Grand River Road
Atlanta, Georgia State

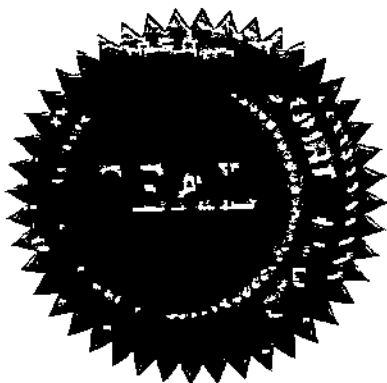
CLERK OF SUPERIOR AND STATE COURTS
ROCKDALE COUNTY, GA

Janice Morris, CSC
Clerk of Superior & State Courts
Rockdale Judicial Circuit
clerkofcourtoffice @rockdalecountyga.gov



Rockdale County Courthouse
922 Court Street, NE
Conyers, Georgia 30012
770-278-7900

I, JANICE MORRIS, CLERK OF SUPERIOR COURT OF ROCKDALE COUNTY, do hereby certify that, as of record in this office, JANICE WILLIAMS, 837 COCHISE TRAIL SE, CONYERS, ROCKDALE COUNTY GA 30094, was on May 23, 2023, duly commissioned and sworn and authorized by the laws of the State of Georgia, as a Notary Public for the State of Georgia, to take proof of acknowledgment of deeds and other instruments in writing to be recorded in said State and to administer oaths and affirmations in said State, said commission to remain in effect for a period of four years, expiring May 22, 2027.



In testimony Whereof, I have hereunto set my hand
and affixed the seal of my said court, this 7th
day of February, 2024.

(Deputy Clerk's Signature)

Deputy Clerk of Superior Court
ROCKDALE County, Georgia

www.rockdaleclerk.com

AFFIDAVIT

FILED
CLAYTON COUNTY, GA

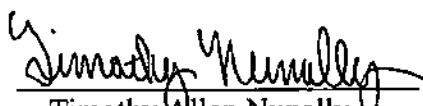
2024 FEB 14 P 4:12

CHANAE J. CLEMONS
CLERK SUPERIOR COURT

Georgia State
County of Clayton

BEFORE ME, the undersigned authority, on this 5th day of February,
2024, did personally appear Timothy Allen Nunally, Trustee, with authority as the
LIENOR, who being first personally and duly sworn, does depose and say that the
information contained in this foregoing Federal Common Law Lien Writ of Attachment
of Real and Personal Property is true and accurate.

Further this affiant sayeth not.



Timothy Allen Nunally
"LIENOR" and "Trustee"

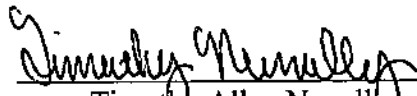


Third Party Witness

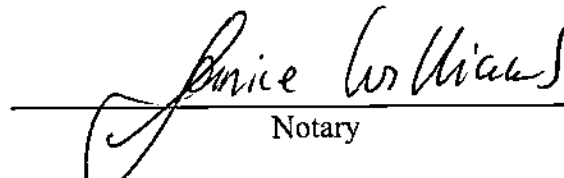
ACKNOWLEDGEMENT

Georgia State
County of Clayton

The foregoing Federal common Law Lien Writ of Attachment on Real and Personal Property was acknowledged before me this 5th day of February, 2024, by Trustee Timothy Allen Nunally of the private property, did execute the same.



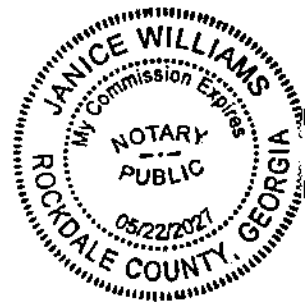
Timothy Allen Nunally



Notary

My Commission Expires: 05/22/2027

SEAL



INDIVIDUAL ACKNOWLEDGEMENT

FILED
CLAYTON COUNTY, GA

Type or Title of Document:

2024 FEB 14 P 4:12

CHAMAE D. CLEMONS
CLERK SUPERIOR COURT

**FEDERAL CLAIM OF COMMON LAW LIEN
and
NOTICE OF FEDERAL COMMON LAW LIEN
WRIT OF ATTACHMENT ON
PRIVATE AND/OR REAL, PERSONAL PROPERTY**

Number of pages: 4 Date of document: February 5, 2024

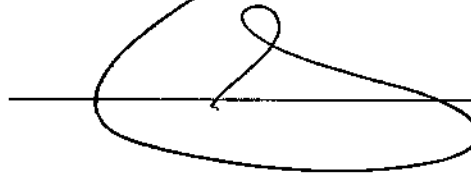
Trust CAN IRREVOCABLE TRUST the OWNER of the private property;
and
the LIENOR.

48 ***** 48

FILED

CERTIFICATE OF SERVICE

2024 MAY 17 PM 3:57
LISA M. COMER
CLERK OF COURT
LEXINGTON
UNDER PENALTIES OF PERJURY the undersigned certifies that a copy of the foregoing was provided by U.S. Certified Mail to Tina Guerry, Lexington County Register of Deeds, 212 S. Lake Dr. Ste. 301, Lexington, SC 29072 the 9th day of May 2024.



Mark Nunnally
5681 Grande River Road
College Park, GA 30349
404 980 4488

STATE OF SOUTH CAROLINA

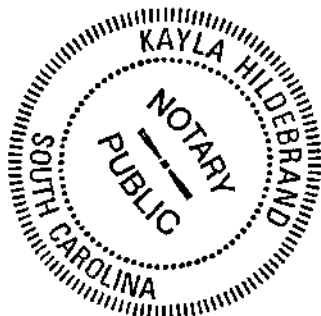
COUNTY OF LEXINGTON

BEFORE ME personally appeared Mark Nunnally who, being by me first duly sworn and identified in accordance with law, did execute the foregoing under penalties of perjury in my presence this 17th day of May 2024.

Kayla Hildebrand

Notary Public

My commission expires: May 1, 2029



Docket #

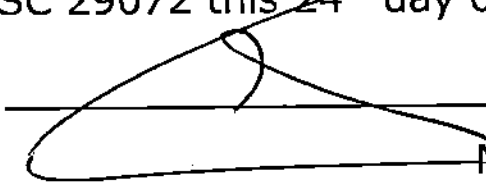
1024CP3201682

FILED

CERTIFICATE OF SERVICE

2024 MAY 24 PM 3: 08

UNDER PENALTIES OF PERJURY the undersigned certifies that a copy of the foregoing was provided by Certified U.S. mail to Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds, 212 S. Lake Dr. Ste. 301 Lexington, SC 29072 this 24th day of May 2024.

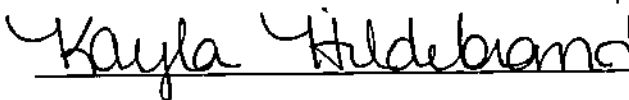

MARK NUNNALLY

5681 GRANDE RIVER RD
ATLANTA, GA 30349-9127
404 735 3770

STATE OF SOUTH CAROLINA

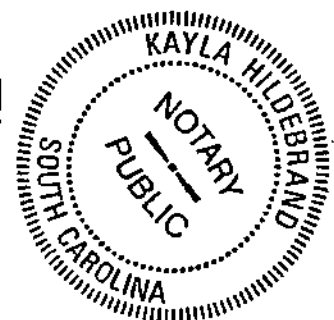
COUNTY OF LEXINGTON

BEFORE ME personally appeared Mark Nunnally who, being by me first duly sworn and identified in accordance with law, did execute the foregoing under penalties of perjury in my presence this 24th day of May 2024.



Notary Public

My commission expires: May 1, 2029



FILED

IN THE COURT OF COMMON PLEAS

2024 MAY 24 PM 3:08

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

LISA L. COMER
CLERK OF COURT
LEXINGTON SC

Case No. 2024-CP-32-01682

Timothy Nunally, Mark Nunnally,

Plaintiff\$,

v.

Tina Guerry, individually and in her official capacity as the Lexington County
Register of Deeds,

Defendant,

_____ /

REQUEST FOR ADMISSIONS

Plaintiffs Timothy Nunally, Mark Nunnally requests Defendant Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds, to admit the truth of the following statements of fact(s):

1. Tina Guerry was and is employed by Lexington County as the Register of Deeds from January of 2017 to the present date of this request made on May 24 2024.
2. On January 9th, 2024, March 7th, 2024, and March 26th, 2024; the Plaintiffs attempted to file and record a Common Law Lien and Notice of Writ of Attachment on Private and/ or Real, Personal Property for our real property located at 1759 Willow Creek Drive in Lexington County..
3. On March 7th, 2024, and March 26th, 2024; the Plaintiffs attempted to file and record a Common Law Lien and Notice of Writ of Attachment on Private and/ or Real, Personal Property for our real property located at 1759 Willow Creek Drive in Lexington County and was refused by your staff member Erin and yourself as well.

4. On March 7th, 2024, and March 26th, 2024; the Plaintiffs attempted to file and record a Common Law Lien and Notice of Writ of Attachment on Private and/ or Real, Personal Property for our real property located at 1759 Willow Creek Drive in Lexington County with your staff members as well as yourself and were told that common law liens are not recognized in your office.

5. On March 7th, 2024 the Plaintiffs attempted to file and record a Common Law Lien and Notice of Writ of Attachment on Private and/ or Real, Personal Property for our real property located at 1759 Willow Creek Drive in Lexington County with Tina Guerry, the Lexington County Register of Deeds who stated that she was "not comfortable with the amount of the lien".

6. In the attached certified letter (Exhibit "C") dated March 26th, 2024 the Plaintiffs advised Tina Guerry to recall that South Carolina recognizes common law liens, and that the lien complies with all the filing requirements of Lexington County South Carolina.

7. In the attached certified letter (Exhibit "C") dated March 26th, 2024 the Plaintiffs advised Tina Guerry that her refusal to file this lien verifies that Tina Guerry: Register of Deeds Lexington County has taken over the Public Office for your Personal use.

8. In the attached certified letter (Exhibit "C") dated March 26th, 2024 the Plaintiffs asked Tina Guerry in her official capacity as the Lexington County Register of Deeds Lexington County to file and record a Common Law Lien and Notice of Writ of Attachment on Private and/ or Real, Personal Property for our real property located at 1759 Willow Creek Drive in Lexington County "As Is".

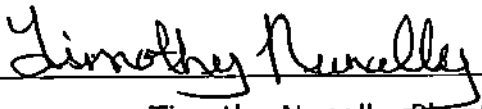
9. In the attached certified letter (Exhibit "C") dated March 26th, 2024 the Plaintiffs attached a \$25 US Postal money order (Exhibit "D") to cover the fees to file and record a Common Law Lien and Notice of Writ of Attachment on Private and/ or Real, Personal Property for our real property located at 1759 Willow Creek Drive in Lexington County "As Is".

10. In the attached letter (Exhibit "E") dated April 8th, 2024 the Plaintiffs received a notice stating that our Common Law Lien and Notice of Writ of

Attachment on Private and/ or Real, Personal Property was refused and would not be filed and recorded due to S.C. Code 30-9-30(B)(1).

11. Tina Guerry has listed the following on her public linkedin web page attached as (Exhibit "F"): The duties of the Lexington County Register of Deeds is to record, preserve and maintain all documents that are related to real properties. The ROD is to ensure all practices are followed as stated in the Code of Law of South Carolina, while operating the office in an efficient manner.

RESPECTFULLY SUBMITTED this 24th day of May 2024.



Timothy Nunnally, Plaintiff



Mark Nunnally

[Certificate of Service]

Exhibit "C"

Exhibit "C":

- is entered into evidence in the case of *case name* on *date*.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of *Exhibit A*.
- No party objects to the admission of this Exhibit *A* into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

March 26, 2024

Mark A Nunnally
5681 Grande River Rd.
Atlanta, GA, 30349

Register of Deeds
Lexington County
212 South Lake Drive
Lexington, SC 29072

RE: Filing Fee for lien on my Real Property in Lexington SC..

Dear Tina Guerry: Register of Deeds Lexington County,

I am writing to file and record a legal common law lien on my Real Property. I have included the filing fee of \$25.00 to file AS IS. I have also included a self stamped and addressed envelope for the lien to be returned to me after it has been recorded .

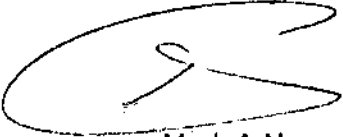
On the 7th of March 2024, I attempted to file and record this properly completed Common Law Lien with Writ of Attachment on my ^{REAL} property located at 1759 Willow Creek Drive in Lexington County. The lien was refused by your staff member Erin, who stated that common law liens are not recognized in your office.

According to the South Carolina Code of Laws Unannotated Section 30-7-70, that decision was made in error. South Carolina recognizes common law liens, and the lien complies with all filing requirements. Refusal to file this lien verifies that Tina Guerry: Register of Deeds Lexington County has taken over the Public Office for your Personal use.

Please file:
AS IS

Thank you for your time and attention to this matter.

Sincerely,



Mark A Nunnally
404-980-4488
markanunnally@gmail.com

Exhibit "D"

Exhibit "D":

- is entered into evidence in the case of *case name* on *date*.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of Exhibit ~~A~~^D
- No party objects to the admission of this Exhibit ~~A~~^D into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs



CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT
FOR IMPORTANT CLAIM
INFORMATION

NOT
NEGOTIABLE

Pay to

Lex. Co. ROR

Address

212 S. Lake Drive Ste. 301

Serial Number

29196875068

Year, Month, Day

Post Office

Amount

Clerk

95

Lexington County S.C.
Drive Ste. 301
29072

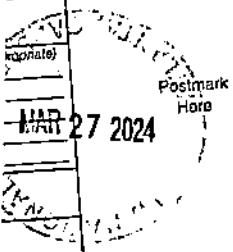
See Reverse for Instructions

\$4.40
\$14.25
\$25.00
\$2.10
\$27.10
\$41.35
\$41.35

1000

35

Chip



AL: US DEBIT
PIN: Verified

US DEBIT

29196875068

Serial Number

Year, Month, Day

Post Office

U.S. Dollars and Cents

Amount

Twents Five Dollars and 00/100

Pay to

Lexington County RUD

Address

212 South Lake Drive
Lexington, SC 29072 Ste. 301

From

Timothy Norrally
5681 Grande River Rd.

Address

9589 0710 5270 1046 1129 07

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

Lexington, SC 29072

Certified Mail Fee \$4.40

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$0.00

☐ Return Receipt (electronic) \$0.00

☐ Certified Mail Restricted Delivery \$0.00

☐ Adult Signature Required \$0.00

☐ Adult Signature Restricted Delivery \$0.00

Postage \$9.85

Total Postage and Fees \$14.25

Sent To
Tina Guerry Registrar of Deeds
212 S. Lake Drive, Suite 301
Lexington, SC 29072

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

Up to \$100.00 included

Certified Mail® \$4.40

Tracking #: 9589 0710 5270 1046 1129 07

Total \$14.25

Grand Total: \$14.25

Debit Card Remit \$14.25

Card Name: MasterCard

Account #: XXXXXXXXXXXX3004

Approval #

Transaction #: 282

Receipt #: 085785

Debit Card Purchase: \$14.25

Card Swiped

In a hurry? Self-service kiosks offer
quick and easy check-out. Any Retail
Associate can show you how.



Exhibit "E"

Exhibit "E":

- is entered into evidence in the case of *case name* on *date*.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of *Exhibit E*.
- No party objects to the admission of this Exhibit E into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

COLUMBIA SC 290

8 APR 2024 PM 3 L



Timothy Nonally
5681 Grande River Rd.
College Park, GA 30349

30349-912781





Lexington County Register of Deeds

Tina Guerry
Registrar of Deeds
212 S. Lake Drive, Suite 301
Lexington, SC 29072

Subject: Fraudulent or Sham Legal Document/s

To: Submitter

The Register of Deeds office of Lexington County will not accept documents for recording pursuant to S.C. Code § 30-9-30(B)(1), filing of written instruments concerning real or personal property; false or fraudulent documents.

This letter serves as written notice that the recording has been refused pursuant to S.C. Code § 30-9-30(B)(1), please note your document has been returned to you unrecorded.

Sincerely,

Tina Guerry

Register of Deeds
212 S. Lake Drive
Lexington, SC 29072

Exhibit "F"

Exhibit "E":

- is entered into evidence in the case of *case name* on *date*.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of *Exhibit "F"*.
- No party objects to the admission of this Exhibit "F" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs



Tina Guerry 

Registrar of Deeds

• Lexington County

 Midlands Technical College

Chapin, South Carolina, United States · Contact info

437 connections

Connect

 Message

More

About

An accomplished New Business Development and Sales individual with a proven track record of performance and profitability in rapidly changing, diverse industries. Focused on client needs and providing service tailored to best meet their business requirements, with a vast knowledge of various industries.

Activity

435 followers

Enhance your own profile by adding a work experience. [Add experience](#) 

Experience

Lexington County Register of Deeds

Lexington County

Jan 2017 - Present · 7 yrs 5 mos

Lexington, South Carolina

The duties of the Lexington County Register of Deeds is to record, preserve and maintain all documents that are related to real properties. The ROD is to ensure all practices are followed as stated in the Code of Law of South Carolina, while operating the office in an efficient manner.

GIS

5 yrs 5 mos

Account Manager

Oct 2014 - Dec 2017 · 3 yrs 3 mos

Senior Business Development Coordinator/Sales

Aug 2012 - Dec 2017 · 5 yrs 5 mos

Chapin, SC

Discover and analyze potential opportunities while developing business requirements necessary to meet each client's expectations.... [...see more](#)

FILED

IN THE COURT OF COMMON PLEAS -5 PM 4:31

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

Case No. 2024-CP-32-01682

Timothy Nunally, Mark Nunnally,

Plaintiff,

v.

Tina Guerry, individually and in her official capacity as the Lexington County
Register of Deeds,

Defendant,

_____ /

REQUEST FOR ADMISSIONS

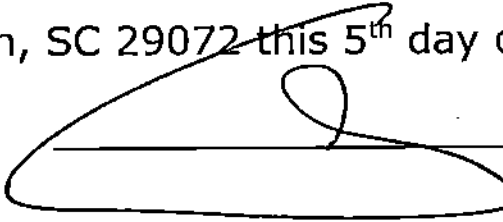
Plaintiffs Timothy Nunally, Mark Nunnally requests Defendant Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds, to admit the truth of the following statements of fact(s):

1. The document attached as Exhibit 1 accurately states Title 44-2-2(a)(1)(C) of the Official Code of Georgia Annotated.
2. The document attached as Exhibit 1 accurately states Section 44-2-2(a)(2) of the Official Code of Georgia Annotated.
3. The document attached as Exhibit 2 accurately states the entire contents of a written lien that was filed in Clayton County Georgia.
4. The document attached as Exhibit 2 accurately states the entire contents of a written lien that was recorded in Clayton County Georgia.

CERTIFICATE OF SERVICE

FILED

UNDER PENALTIES OF PERJURY the undersigned certifies
that a copy of the foregoing was provided by Certified Mail
mail to Tina Guerry, individually and in her official capacity
as the Lexington County Register of Deeds, 212 S. Lake Dr.
Ste. 301 Lexington, SC 29072 this 5th day of July 2024.


MARK NUNNALLY

5681 GRANDE RIVER RD
ATLANTA, GA 30349-9127
404 735 3770

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

BEFORE ME personally appeared Mark Nunnally who, being
by me first duly sworn and identified in accordance with law,
did execute the foregoing under penalties of perjury in my
presence this 5th day of July 2024.

Kayla Hildebrand

Notary Public

My commission expires: MAY 1, 2029



5. The document attached as Exhibit 2 accurately states the entire contents of a written lien that is dated 5 May 2024 signed by Plaintiff Timothy Nunnally and witnessed by two other individuals.

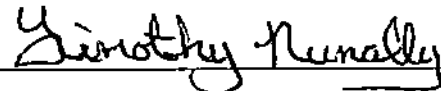
6. The document attached as Exhibit 3 accurately states SECTION 30-5-10 of the South Carolina Code of Laws Unannotated.

7. The document attached as Exhibit C accurately states SECTION 30-5-30(B) of the South Carolina Code of Laws Unannotated.

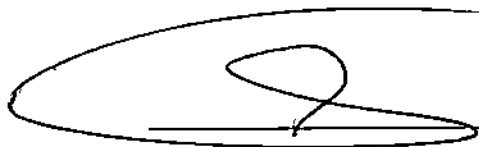
8. On March 7th, 2024, and March 26th, 2024; the Plaintiffs attempted to file and record the document attached as Exhibit 4 written lien in Lexington County with your staff members as well as yourself and were told that the lien is not recognized in your office.

9. The document attached as Exhibit 5 accurately defines a LIEN.

RESPECTFULLY SUBMITTED this 5th day of July 2024.



Timothy Nunnally, Plaintiff



Mark Nunnally, Plaintiff

[Certificate of Service]

Exhibit 1

Document:

O.C.G.A. § 44-2-2



< Previous

Next >

O.C.G.A. § 44-2-2

Copy Citation

Current through the 2023 Regular Session of the General Assembly.

Official Code of Georgia Annotated TITLE 44 Property (Chs. 1 – 16) CHAPTER 2 Recordation and Registration of Deeds and Other Instruments (Arts. 1 – 2) Article 1 Recording (Pts. 1 – 2) PART 1 Recording of Deeds and Other Real Property Transactions (§§ 44-2-1 – 44-2-30)

44-2-2. Duty of clerk to record certain transaction affecting real estate and personal property; priority of recorded instruments; electronic filings; effect of incorrect tax parcel identification number; effect of recording on rights between parties to instruments.

(a)

(1) The clerk of the superior court shall file, index on a computer program designed for such purpose, and permanently record, in the manner provided constructively in Code Sections 15-6-61 and 15-6-66, the following instruments conveying, transferring, encumbering, or affecting real estate and personal property:

(A) Deeds;

(B) Mortgages;

(C) Liens as provided for by law;

(D) Maps or plats relating to real estate in the county; and

(E) State tax executions and state tax execution renewals as provided for in Article 2 of Chapter 3 of Title 48.

(2) As used in this subsection, the term "liens" shall have the same meaning as described in Code Sections 15-19-14, 44-14-320, and 44-14-602 and shall include all liens provided by state or federal statute.

Exhibit 2

AFFIDAVIT

FILED
CLAYTON COUNTY, GA

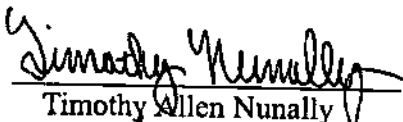
2024 FEB 14 P 4:12

CLAYTON COUNTY
JUDICIAL CIRCUIT COURT

Georgia State
County of Clayton

BEFORE ME, the undersigned authority, on this 5th day of February,
2024, did personally appear Timothy Allen Nunally, Trustee, with authority as the
LIENOR, who being first personally and duly sworn, does depose and say that the
information contained in this foregoing Federal Common Law Lien Writ of Attachment
of Real and Personal Property is true and accurate.

Further this affiant sayeth not.



Timothy Allen Nunally
"LIENOR" and "Trustee"

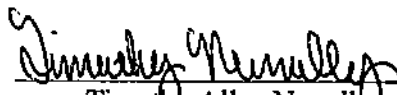


Third Party Witness

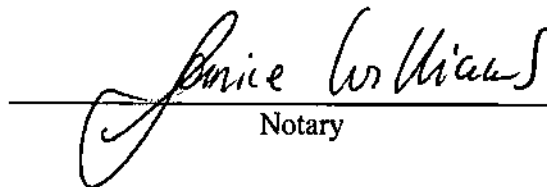
ACKNOWLEDGEMENT

Georgia State
County of Clayton

The foregoing Federal common Law Lien Writ of Attachment on Real and Personal Property was acknowledged before me this 5th day of February, 2024, by Trustee Timothy Allen Nunally of the private property, did execute the same.



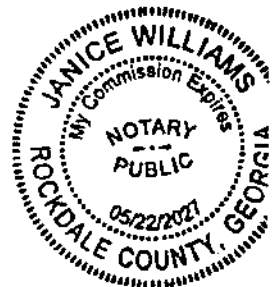
Timothy Allen Nunally



Notary

My Commission Expires: 05/22/2027

SEAL



INDIVIDUAL ACKNOWLEDGEMENT FILED
CLAYTON COUNTY, GA

Type or Title of Document:

2024 FEB 14 P 4: 12

CHAMBERLAIN COUNTY
CLAYTON

FEDERAL CLAIM OF COMMON LAW LIEN
and
NOTICE OF FEDERAL COMMON LAW LIEN
WRIT OF ATTACHMENT ON
PRIVATE AND/OR REAL, PERSONAL PROPERTY

Number of pages: 4 Date of document: February 5, 2024

Trust CAN IRREVOCABLE TRUST the OWNER of the private property;
and
the LIENOR.

48 ***** 48

Prepared By:
Mark Anthony Nunnally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 5681 Grande River Road
Atlanta, Georgia State

LIEN COMMON LAW

AND

NOTICE OF WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROPERTY

February 5, 2024

NOTICE TO:

Superior Court Clayton County; Clerk of Superior Court of Clayton County, and Register of Deeds of Clayton of the State of Georgia in and for Atlanta, Georgia; and acting Sheriff of Clayton County; and All persons known and unknown who may be similarly situated and all other concerned parties.

You are hereby notified that a FEDERAL COMMON LAW LIEN AND WRIT OF ATTACHMENT - ON PRIVATE AND/OR REAL, PERSONAL PROPERTY is now in effect on a certain parcel of Real Estate now of record in the Name of Timothy Allen Nunnally. The LIENOR, on property located in Clayton County, Georgia State and known as 5681 Grande River Road, Atlanta, Georgia; Clerk of Superior Court in Clayton County of Georgia State; and more specifically LEGALLY and Lawfully described as:

Located: 5681 Grande River Road, Georgia State. [39456]

[Lat = Latitude Long = Longitude]

Lat: 33.6003687 Long: -84.4457561

ALL THAT tract or parcel of land lying and being in Land Lot 90 of the 13 District, Clayton, Georgia, being all of Lot 23, River's Station Subdivision, Phase D, Unit, 1, as per plat recorded in Plat Book 38, pages 104-107, Clayton County, Georgia records, which plat is incorporated herein and made a part hereof by this reference.

(Parcel: 130980C-C009)

**Grantee Address: 5681 Grande River Road
Atlanta, Georgia State**

Copy of this **Common Law Lien, Writ of Attachment On Private, And/or Real, and Personal Property** has also been filed with the **Secretary of State of Georgia Republic.**

Brad Raffensperger- Secretary of State, Georgia State

Pursuant to that certain agreement that **LIENOR** Timothy Allen Nunally "CAN IRREVOCABLE" Trust of the property, the **LIENOR**, claims the attachment of the **COMMON LAW LIEN, WRIT OF ATTACHMENT ON REAL AND PRIVATE/PERSONAL PROPERTY** is in the AMOUNT of:

One Hundred Million Dollars (\$100,000,000) for 5681 Grande River Road, Atlanta, Georgia State [30349].

MEMORANDUM OF LAW IN SUPPORT

Writ Of Attachments is but another form of **Common Law Lien** and **supersede mortgages and equity liens, and Deeds of Trust** Drummond Carriage v. Mills, (1878) N.W. 99; Hewitt V. Williams, 47 La. Ann. 742, 17 So. 269; Carr V. Dail, 19 S.E. 235; McMahan V. Ludin 58 N.H. 827, and may be satisfied only when paid and/or property is taken in lieu of the monetary value and fully satisfied by said taking of property.

The ruling of the U.S. Supreme Court in Rich v. Braxton, 158 U.S. 375, specifically forbids judges (Titles of Nobility) from invoking equity jurisdiction to remove common law liens or similar "clouds of title." Furthermore, even if a preponderance of evidence displays the lien to be void or voidable, the equity court (and Title of Nobles) still may not proceed until the moving party asks for and comes "to equity" with "clean hands" based on the "Clean Hands Doctrine" And "Power Of Estoppel", Trice v. Comstock, 57 C.C.A. 646; West V. Washington Sheriff, 153 App. Div. 460, 138 N.Y. Supp. 230.

ANY OFFICIAL WHO ATTEMPTS TO MODIFY OR REMOVE THIS COMMON LAW LIEN IN THE FORM OF WRIT OF ATTACHMENT IS FULLY LIABLE FOR DAMAGES AT LAW PURSUANT TO THE MANDATORY RULINGS OF THE U.S. SUPREME COURT IN BUTZ v. ECOHOMU, 438 U.S. 494, 98 S.Ct. 2894; BELL v. HOOD, 327 U.S. 678; and BIVENS v. UNKNOWN AGENTS, 499 U.S. 388.

This Federal At Law Lien in the form of a Writ Of Attachment(s) shall be valid, notwithstanding any other provision of statute or rule regarding the form or content of a "notice of lien", nor shall it be dischargeable for 100 years, nor extinguishable due to lienor's death whether accidental or purposely, nor dischargeable by lienor's heirs, assigns, or executors.

CAVEAT

Whoever attempts to modify, circumvent, and/or negate this? Federal Common Law Lien, in the form of Writ Of Attachment, shall be deemed outlaws and/or felons and shall be prosecuted pursuant to Title 42, United States Code, Sect. 1983, 1985, and 1986, and Punishable under the **penalties of the common law** at law and applicable sections of Title 18, United States Code.

Demand is made upon all public officials under penalty of Title 42 U.S.C.S. Section 1986 not to modify or remove this lien in any manner.

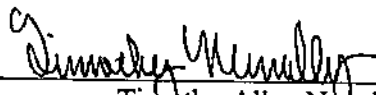
JUDICIAL NOTICE

I HEREBY NOTICE this to all parties and all Court(s) that pursuant to U.S. Supreme Court case **HAFER v. MELO**, No. 90-681, November 1991, any judicial actions which violate the constitutional rights of individuals may be sued as a cause of action in civil litigation against those performing said acts, without any form of immunity.

CONSTITUTIONAL PRIVILEGE - Immunity: State officials sued in their individual capacities are "persons" subject to suits for damages under 42 USC 1983; Eleventh Amendment does not bar such suits in federal court because of the purchase of bond insurance (**Hafer v. Melo**, No. 90-681), page 4001.

Respectfully Submitted in the Name of Justice on

This 5th day of February 2024.



Timothy Allen Nunally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 5681 Grande River Road
Atlanta, Georgia State

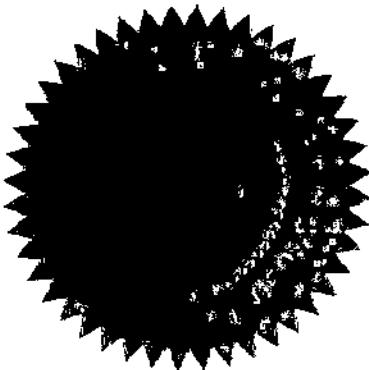
CLERK OF SUPERIOR AND STATE COURTS
ROCKDALE COUNTY, GA

Janice Morris, CSC
Clerk of Superior & State Courts
Rockdale Judicial Circuit
clerkofcourtoffice @rockdalecountyga.gov



Rockdale County Courthouse
922 Court Street, NE
Conyers, Georgia 30012
770-278-7900

I, JANICE MORRIS, CLERK OF SUPERIOR COURT OF ROCKDALE COUNTY, do hereby certify that, as of record in this office, JANICE WILLIAMS, 837 COCHISE TRAIL SE, CONYERS, ROCKDALE COUNTY GA 30094, was on May 23, 2023, duly commissioned and sworn and authorized by the laws of the State of Georgia, as a Notary Public for the State of Georgia, to take proof of acknowledgment of deeds and other instruments in writing to be recorded in said State and to administer oaths and affirmations in said State, said commission to remain in effect for a period of four years, expiring May 22, 2027.



In testimony Whereof, I have hereunto set my hand
and affixed the seal of my said court, this 7th
day of February, 2024.

(Deputy Clerk's Signature)

Deputy Clerk of Superior Court
ROCKDALE County, Georgia

www.rockdaleclerk.com

Exhibit 3

South Carolina Legislature

South Carolina Law > Code of Laws > Title 30

South Carolina Code of Laws Unannotated

Title 30 - Public Records

CHAPTER 5

Recording Generally

SECTION 30-5-5. Qualifications for eligibility to serve as register of deeds; quo warranto actions to determine eligibility.

(A) In order to be eligible to serve or continue to serve as the register of deeds, a person must:

(1) be a citizen of the United States and of this State;

(2) be a qualified elector of the applicable county;

(3) have:

(a) a four-year bachelor's degree from an accredited post-secondary institution; or

(b) at least four years' experience:

(i) in the fields of law, real estate, or accounting; or

(ii) as an employee in a register of deeds office in this State; or

(iii) as a register of deeds in this State; and

(c) for an appointed register of deeds, a person must comply with any county requirements not conflicting with the qualifications in this section and the Constitution of South Carolina; and

(4) not have a pattern of failing to properly record in the time and manner prescribed in Section 30-5-90.

(B) A quo warranto action may be brought in accordance with Section 15-63-60 to determine a person's eligibility to seek the position of register of deeds or continue to serve as register of deeds.

HISTORY: 2022 Act No. 213 (S.1031), Section 1, eff June 22, 2022.

Editor's Note

2022 Act No. 213, Sections 3, 4, provide as follows:

"SECTION 3. Section 30-5-5(A)(3)(a) and (b), as added by this act, do not apply to a person who holds the office of register of deeds on the effective date of this act and during his tenure in office.

"SECTION 4. If a quo warranto action is brought in accordance with Section 15-63-60 alleging (a) a register of deeds has a pattern of failing to record in the time and manner prescribed in Section 30-5-90, and (b) the pattern of failing to record occurred only prior to the effective date of this act, then the register of deeds may assert as an affirmative defense to the action that, on the date the action is filed and for thirty consecutive days thereafter, no properly delivered and executed document remains unrecorded in the office for more than thirty days after its receipt."

SECTION 30-5-10. . Performance of register of deeds' duties by clerk of court in certain counties.

(A) In every county in the State other than Aiken, Anderson, Beaufort, Berkeley, Charleston, Cherokee, Chesterfield, Clarendon, Colleton, Dorchester, Georgetown, Greenville, Horry, Jasper, Kershaw, Lancaster, Lexington, Oconee, Orangeburg, Pickens, Richland, Spartanburg, and Sumter the duties prescribed by law for the register of deeds must be performed by the clerk of court who has all the powers and emoluments given the register of deeds in Aiken, Anderson, Beaufort, Berkeley, Charleston, Cherokee, Chesterfield, Clarendon, Colleton, Dorchester, Georgetown, Greenville, Horry, Jasper, Kershaw, Lancaster, Lexington, Oconee, Orangeburg, Pickens, Richland, Spartanburg, and Sumter counties.

(B) The registers of deeds in Berkeley and Dorchester counties are elected for terms of four years and until a successor is elected in the general election and qualifies.

HISTORY: 1962 Code Section 60-7; 1952 Code Section 60-7; 1942 Code Section 3629; 1932 Code Section 3629; Civ. C. '22 Section 2173; Civ. C. '12 Section 1349; Civ. C. '02 Section 945; 1779 (7) 296; 1839 (11) 115; 1882 (18) 682; 1896 (22) 122; 1908 (25) 1020; 1973 (58) 803, 833; 1975 (59) 147; 1978 Act No. 458, Section 1; 1980 Act No. 329, Section 1; 1985 Act No. 123, Section 1; 1986 Act No. 541, Section 1; 1987 Act No. 153, Section 1; 1987 Act No. 186, Section 1; 1993 Act No. 5, Section 1; 1994 Act No. 294, Section 1; 1996 Act No. 417, Section 1; 1999 Act No. 8, Section 1; 2000 Act No. 272, Section 1; 2001 Act No. 75, Section 1; 2005 Act No. 140, Section 1; 2006 Act No. 299, Section 1, eff May 31, 2006; 2008 Act No. 221, Section 1, eff upon approval (became law without the Governor's signature on May 15, 2008); 2010 Act No. 127, Section 1, eff February 24, 2010; 2013 Act No. 12, Section 1, eff April 23, 2013.

Code Commissioner's Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to "Register of Mesne Conveyances" to "Register of Deeds" wherever appearing in the 1976 Code of Laws.

Effect of Amendment

The 2006 amendment added Colleton County.

The 2008 amendment added Clarendon county.

The 2010 amendment made subsection (A) and (B) designations and in subsection (A) added Lancaster county.

The 2013 amendment, in subsection (A), added two references to Cherokee county.

SECTION 30-5-12. . Appointment of register of deeds for certain counties.

(A) The governing bodies of Anderson, Beaufort, Cherokee, Chesterfield, Clarendon, Colleton, Georgetown, Horry, Jasper, Kershaw, Lancaster, Oconee, Orangeburg, and Pickens counties shall appoint the register of deeds for its county under terms and conditions as it may agree upon.

(B) The governing body of Georgetown County may appoint a register of deeds only after advertising the information concerning the appointment for two weeks before action is taken in a newspaper of general circulation in the county.

HISTORY: 1987 Act No. 153, Section 2; 1993 Act No. 5, Section 2; 1994 Act No. 294, Section 2; 1996 Act No. 417, Section 2; 1999 Act No. 8, Section 2; 2000 Act No. 272, Section 2; 2001 Act No. 75, Section 2; 2005 Act No. 140, Section 2; 2006 Act No. 299, Section 2, eff May 31, 2006; 2008 Act No. 221, Section 1, eff upon approval (became law without the Governor's signature on May 15, 2008); 2010 Act No. 127, Section 2, eff February 24, 2010; 2013 Act No. 12, Section 2, eff April 23, 2013.

Code Commissioner's Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to "Register of Mesne Conveyances" to "Register of Deeds" wherever appearing in the 1976 Code of Laws.

Effect of Amendment

The 2006 amendment added Colleton County.

The 2008 amendment added Clarendon county.

The 2010 amendment made subsection (A) and (B) designations and in subsection (A) added Lancaster county.

The 2013 amendment, in subsection (A), added the reference to Cherokee county.

SECTION 30-5-15. Duties of clerk of court for state tax liens to be performed by register of deeds.

Notwithstanding any other provision of law, in those counties which have a register of deeds, the duties of the clerk of court for the county pertaining to the indexing and filing of state tax liens are hereby devolved upon the register of deeds for the county and the register of deeds shall index and file such liens in his office in the same manner as required of the clerk of court by law.

HISTORY: 1978 Act No. 594, Section 1.

Code Commissioner's Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to "Register of Mesne Conveyances" to "Register of Deeds" wherever appearing in the 1976 Code of Laws.

SECTION 30-5-16. Records of state tax liens before and after August 1, 1978.

On the effective date of Sections 30-5-15 and 30-5-16, in those counties which have a register of deeds, all current records pertaining to state tax liens shall be maintained in the office of the register of deeds unless otherwise directed by the governing body of the county concerned. The register of deeds may begin a new record book of state tax liens beginning with liens filed after August 1, 1978, but such book shall note on the cover that the records of the clerk of court relating to state tax liens are on file in the office of the clerk of court and contain a record of state tax liens which are still effective.

HISTORY: 1978 Act No. 594, Section 2.

Code Commissioner's Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to "Register of Mesne Conveyances" to "Register of Deeds" wherever appearing in the 1976 Code of Laws.

SECTION 30-5-20. Certified copies of recorded instruments; effect of furnishing incorrect copy.

The register of deeds, or his deputy, shall be required, on application, to give a certified copy of any writing recorded in his office, the fees for such copy being first paid in advance, if required or tendered, as the case may be. If the register or his deputy shall furnish an incorrect transcript of any deed recorded, he shall forfeit and pay to the party the damages that may accrue in consequence thereof.

HISTORY: 1962 Code Section 60-8; 1952 Code Section 60-8; 1942 Code Section 3636; 1932 Code Section 3638; Civ. C. '22 Section 2182; Civ. C. '12 Section 1358; Civ. C. '02 Section 951; G. S. 720; R. S. 821; 1698 (2) 138; 1839 (11) 116; 1843 (11) 255; 1947 (45) 150.

Code Commissioner's Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to "Register of Mesne Conveyances" to "Register of Deeds" wherever appearing in the 1976 Code of Laws.

SECTION 30-5-30. Prerequisites to recording.

Except as otherwise provided by statute, before any deed or other instrument in writing can be recorded in this State, it must be acknowledged or proved by the method described in subsection (A)(1), (A)(2), or (B).

(A)(1) The execution of the deed or other instrument must be first proved by the affidavit of a subscribing witness to the instrument, taken before some officer within this State competent to administer an oath. If the affidavit is taken without the limits of this State, it may be taken before:

(a) a commissioner appointed by dedimus issued by the clerk of the court of common pleas of the county in which the instrument is to be recorded;

(b) a commissioner of deeds of this State;

(c) a clerk of a court of record who shall make certificate of the deed or other instrument under his official seal;

(d) a justice of the peace who shall append to the certificate his official seal;

(e) a notary public who shall affix to the deed or other instrument his official seal within the state of his appointment, which is a sufficient authentication of his signature, residence, and official character;

(f) before a minister, ambassador, consul general, consul, or vice consul, or consular agent of the United States of America; or

(g) in the case of any officer or enlisted man of the United States Army, Air Force, Navy, Marine Corps, or Coast Guard on active duty outside the State or any civilian employee of any such organization on active duty outside the continental confines of the United States, any commissioned officer of the Army, Air Force, Navy, Marine

Corps, or Coast Guard, if the probating officer states his rank, branch, and organization.

(2) The Uniform Recognition of Acknowledgments Act must be complied with or the person executing it shall submit an affidavit subscribed to before a person authorized to perform notarial acts herein or by the Uniform Recognition of Acknowledgments Act that the signature on the deed or other instrument is his signature and that the instrument was executed for the uses and purposes stated in the instrument.

(B) A deed or other instrument must be signed by the grantor, mortgagor, vendor, or lessor and the signing must be acknowledged by the grantor, mortgagor, vendor, or lessor in the presence of two witnesses, taken before some officer within this State competent to administer an oath. If the acknowledgment is taken without the limits of this State, it may be taken before:

(1) a commissioner appointed by dedimus issued by the clerk of the court of common pleas of the county in which the instrument is to be recorded;

(2) a commissioner of deeds of this State;

(3) a clerk of a court of record who shall make certificate of the deed or other instrument under his official seal;

(4) a justice of the peace who shall append to the certificate his official seal;

(5) a notary public who shall affix to the deed or other instrument his official seal within the state of his appointment, which is a sufficient authentication of his signature, residence, and official character;

(6) before a minister, ambassador, consul general, consul, or vice consul, or consular agent of the United States of America; or

(7) in the case of any officer or enlisted man of the United States Army, Air Force, Navy, Marine Corps, or Coast Guard on active duty outside the State or any civilian employee of any such organization on active duty outside the continental confines of the United States, any commissioned officer of the Army, Air Force, Navy, Marine Corps, or Coast Guard, if the probating officer states his rank, branch, and organization.

(C) Where the instrument is acknowledged by the grantor or maker, the form of acknowledgement must be in substance as follows:

"South Carolina,

_____ County.

I (here give the name of the official and his official title), do hereby certify that (here give the name of the grantor or maker), personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and (where an official seal is required by law) official seal this the ____ day of ____ (year).

Signature of Officer"

(D) The submission of a land development plan or land use plan is not a prerequisite and must not be required before the execution of a deed transferring undeveloped real property. A local governmental entity may still require the grantee to file a plat at the time the deed is recorded.

HISTORY: 1962 Code Section 60-51; 1952 Code Section 60-51; 1942 Code Section 3632; 1932 Code Section 3632; Civ. C. '22 Section 2176; Civ. C. '12 Section 1352; Civ. C. '02 Section 948; G. S. 768; R. S. 818; 1880 (17) 319; 1889 (20) 367; 1908 (25) 104; 1909 (26) 84; 1910 (26) 621; 1951 (47) 447; 1972 (57) 2393; 1988 Act No. 494, Section 8(10); 1994 Act No. 382, Section 1; 2016 Act No. 144 (H.3972), Section 2, eff March 14, 2016; 2018 Act No. 250 (H.4673), Section 2, eff May 18, 2018.

Effect of Amendment

2016 Act No. 144, Section 2, in (A)(2), inserted the text from former (A)(3); added (D); and made other nonsubstantive changes.

2018 Act No. 250, Section 2, in the first undesignated paragraph, substituted "subsection (A)(1), (A)(2), or (B)" for "subsection (A) or (B)".

SECTION 30-5-35. Derivation clause and address of grantee or mortgagee on deeds and mortgages.

(a) All deeds conveying an interest in land and all mortgages of real estate executed after July 1, 1976, must include a derivation clause in the property description and there must be inscribed on the deed or mortgage the mailing address of the grantee or mortgagee. When the grantor's or mortgagor's title was acquired by deed, the derivation clause must include the name of the grantor and the recording date of that deed. However, when the deed of derivation has been simultaneously executed and delivered and has not then been recorded it is sufficient to set forth in the deed or mortgage the name of the grantor of the deed of derivation and its date and that it is to be recorded. When the grantor's or mortgagor's title was obtained by inheritance or devise, the derivation clause must include the name of the person from whom the title was acquired, the approximate date of acquisition, and, in the case of property acquired under a probated will or administered estate, the probate court in which such estate was filed. However, a derivation clause is not required on a deed or mortgage of property devoted to a utility or railroad purpose of any private or public utility or railroad. Further, a derivation clause is not required on a quitclaim or non-warranty deed of real property.

(b) A clerk of court or register of deeds shall not record any deed or mortgage after July 1, 1976, unless it contains a derivation clause as prescribed in subsection (a); provided, however, that he may record a deed or mortgage without such clause upon a showing satisfactory to him that the necessary information for such clause was not available.

(c) The provisions of this section are intended to be regulatory in nature and will not affect the legality, force, effect or record notice of any instrument recorded in violation hereof.

HISTORY: 1976 Act No. 463, Sections 1-3; 1976 Act No. 691, Section 1; 1977 Act No. 181, Section 1; 1983 Act No. 105, Section 1.

Code Commissioner's Note

1997 Act No. 34, Section 1 directed the Code Commissioner to change all references to "Register of Mesne Conveyances" to "Register of Deeds" wherever appearing in the Code.

Editor's Note

1976 Act No. 463, Section 4, provides as follows:

"All acts requiring derivation clauses for particular counties are repealed."

SECTION 30-5-36. Conveyance of property used for hazardous waste storage or disposal to contain notice of previous use.

When any real property used as a hazardous waste storage or disposal facility permitted under Sections 44-56-10 through 44-56-140 is sold, leased, conveyed or transferred in any manner, the deed or other instrument of transfer shall contain in the legal description in no smaller type than that used in the body of such deed or instrument, the following statement:

Exhibit 4

INDIVIDUAL ACKNOWLEDGEMENT

Type or Title of Document:

FEDERAL CLAIM OF COMMON LAW LIEN
and
NOTICE OF FEDERAL COMMON LAW LIEN
WRIT OF ATTACHMENT ON
PRIVATE AND/OR REAL, PERSONAL PROPERTY

Number of pages: (6) Date of document: January 9, 2024

Trust CAN IRREVOCABLE TRUST the OWNER of the private property;
and
the LIENOR.

48 ***** 48

Prepared By:
Mark Anthony Nunally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 5681 Grande River Road
Atlanta, Georgia State [30349]

LIEN
COMMON LAW
AND
NOTICE OF WRIT OF ATTACHMENT
ON PRIVATE AND/OR REAL, PERSONAL PROPERTY

January 9, 2024

NOTICE TO:

Lexington County Court of Common Pleas; Clerk of Lexington County Court of Common Pleas, and Lexington County Register of Deeds of the State of South Carolina in and for Columbia, South Carolina; and acting Sheriff of Lexington County; and All persons known and unknown who may be similarly situated and all other concerned parties.

You are hereby notified that a FEDERAL COMMON LAW LIEN AND WRIT OF ATTACHMENT - ON PRIVATE AND/OR REAL, PERSONAL PROPERTY is now in effect on a certain parcel of Real Estate now of record in the Name of Timothy Allen Nunally. The LIENOR, on property located in Lexington County, South Carolina State and known as 1759 Willow Creek Drive, Columbia, South Carolina; Clerk of Lexington County Court of Common Pleas of South Carolina State; and more specifically LEGALLY and Lawfully described as:

1759 Willow Creek Drive Columbia, SC
Lat: 34.066370 Long: -81.184940

ALL THAT CERTAIN PIECE, PARCEL, or lot of land, with the improvements thereon, situated, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W on plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975 and recorded in the Office of the RMC for Lexington County in Plat Book 139 -G at page 23; Also being shown and delineated on a plat prepared for Dana C. Frost and Terri L. Frost by Belter & Associates, Inc., dated 6/14/1993 and recorded in the Office of the RMC for Lexington County in Plat Book 262 at Page 070. Reference being made to said plat which is incorporated herein by reference for a more accurate and complete description ; all measurements being a little more or less.

This being identical property conveyed to the Mortgagors by Deed of Dana C. Frost and Terri L. Frost dated August 8, 1994 and recorded simultaneously herewith in Deed Book 5145 at Page 97.

Grantee Address: 1759 Willow Creek Drive
Columbia, South Carolina State [29212]

Copy of this **Common Law Lien, Writ of Attachment On Private, And/or Real, and Personal Property** has also been filed with the **Secretary of State of South Carolina Republic.**

Mark Hammond— Secretary of State, South Carolina State

Pursuant to that certain agreement that **LIENOR** Timothy Allen Nunally "CAN IRREVOCABLE" Trust of the property, the **LIENOR**, claims the attachment of the **COMMON LAW LIEN, WRIT OF ATTACHMENT ON REAL AND PRIVATE/PERSONAL PROPERTY** is in the AMOUNT of:

One Hundred Million Dollars (\$100,000,000) for 1759 Willow Creek Drive, Columbia, South Carolina State [29212].

MEMORANDUM OF LAW IN SUPPORT

Writ Of Attachments is but another form of **Common Law Lien** and supersede mortgages and equity liens, and Deeds of Trust Drummond Carriage v. Mills, (1878) N.W. 99; Hewitt V. Williams, 47 La. Ann. 742, 17 So. 269; Carr V. Dail, 19 S.E. 235; McMahan V. Ludin 58 N.H. 827, and may be satisfied only when paid and/or property is taken in lieu of the monetary value and fully satisfied by said taking of property.

The ruling of the U.S. Supreme Court in Rich v. Braxton, 158 U.S. 375, specifically forbids judges (Titles of Nobility) from invoking equity jurisdiction to remove common law liens or similar "clouds of title." Furthermore, even if a preponderance of evidence displays the lien to be void or voidable, the equity court (and Title of Nobles) still may not proceed until the moving party asks for and comes "to equity" with "clean hands" based on the "Clean Hands Doctrine" And "Power Of Estoppel", Trice v. Comstock, 57 C.C.A. 646; West V. Washington Sheriff, 153 App. Div. 460, 138 N.Y. Supp. 230.

ANY OFFICIAL WHO ATTEMPTS TO MODIFY OR REMOVE THIS COMMON LAW LIEN IN THE FORM OF WRIT OF ATTACHMENT IS FULLY LIABLE FOR DAMAGES AT LAW PURSUANT TO THE MANDATORY RULINGS OF THE U.S. SUPREME COURT IN BUTZ v. ECOHOMU, 438 U.S. 494, 98 S.Ct. 2894; BELL v. HOOD, 327 U.S. 678; and BIVENS v. UNKNOWN AGENTS, 499 U.S. 388.

This Federal At Law Lien in the form of a Writ Of Attachment(s) shall be valid, notwithstanding any other provision of statute or rule regarding the form or content of a "notice of lien", nor shall it be dischargeable for 100 years, nor extinguishable due to lienor's death whether accidental or purposely, nor dischargeable by lienor's heirs, assigns, or executors.

CAVEAT

Whoever attempts to modify, circumvent, and/or negate this Federal Common Law Lien, in the form of Writ Of Attachment, shall be deemed outlaws and/or felons and shall be prosecuted pursuant to Title 42, United States Code, Sect. 1983, 1985, and 1986, and Punishable under the penalties of the common law at law and applicable sections of Title 18, United States Code.

Demand is made upon all public officials under penalty of Title 42 U.S.C.S. Section 1986 not to modify or remove this lien in any manner.

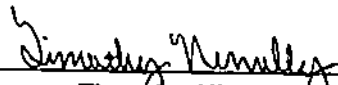
JUDICIAL NOTICE

I HEREBY NOTICE this to all parties and all Court(s) that pursuant to U.S. Supreme Court case *HAFER v. MELO*. No. 90-681, November 1991, any judicial actions which violate the constitutional rights of individuals may be sued as a cause of action in civil litigation against those performing said acts, without any form of immunity.

CONSTITUTIONAL PRIVILEGE - Immunity: State officials sued in their individual capacities are "persons" subject to suits for damages under 42 USC 1983; Eleventh Amendment does not bar such suits in federal court because of the purchase of bond insurance (*Hafer v. Melo*. No. 90-681). page 4001.

Respectfully Submitted in the Name of Justice on

This 9th day of January 2024.



Timothy Allen Nunally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 1759 Willow Creek Drive
Columbia, South Carolina State [29212]

AFFIDAVIT

South Carolina State

County of Lexington

BEFORE ME, the undersigned authority, on this 9th day of January,
2024, did personally appear Timothy Allen Nunally, Trustee, with authority as the LIENOR,
who being first personally and duly sworn, does depose and say that the information contained in
this foregoing Federal Common Law Lien Writ of Attachment of Real and Personal Property is
true and accurate.

Further this affiant sayeth not.

Timothy Nunally

Timothy Allen Nunally

"LIENOR" and "Trustee"

Rosevelt L. Robinson

"WITNESS"

Rosevelt L. Robinson

ACKNOWLEDGEMENT

South Carolina State

County of Lexington

The foregoing Federal common Law Lien Writ of Attachment on Real
and Personal Property was acknowledged before me this 9th day
of January, 2024, by Trustee Timothy Allen Nunally of the private
property, did execute same.

Timothy Nunally
Timothy Allen Nunally

Charlene A. Robinson
Notary

My Commission Expires:

SEAL

Exhibit 5

BLACK'S
LAW DICTIONARY

*Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern*

By

HENRY CAMPBELL BLACK, M. A.

**LIEN. A charge or security or incumbrance upon
property.**

Page 1072

FILED

IN THE COURT OF COMMON PLEAS

2024 AUG 16 AM 10:14

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

LISA H. COMER
CLERK OF COURT
LEXINGTON SC

Case No. 2024-CP-32-01682

Judge McCaslin

Timothy Nunally, Mark Nunnally,

Plaintiff,

v.

Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds,

Defendant,

_____ /

REQUEST FOR ADMISSIONS

Plaintiffs Timothy Nunally, Mark Nunnally requests Defendant Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds to admit the truth of the following statements of fact(s):

1. On July 30th, 2024 at 8:30am, your Attorney Jeff M. Anderson attended an online Lexington County Common Pleas Court hearing that took place with Judge McCaslin and the Plaintiffs Mark Nunnally and Timothy Nunally.

2. On July 30th, 2024 at 8:30am, when your Attorney Jeff M. Anderson attended an online Lexington County Common Pleas Court hearing that took place with Judge McCaslin and the Plaintiffs Mark Nunnally and Timothy Nunally, your Attorney Jeff M. Anderson knew that his duty of candor required him to assist the court in finding the truth, which may include providing legal authority that goes against his own position and your position as well.

3. On July 30th, 2024 at 8:30am, when your Attorney Jeff M. Anderson attended an online Lexington County Common Pleas Court hearing that took place with Judge McCaslin and the Plaintiffs Mark Nunnally and Timothy Nunally, your Attorney Jeff M. Anderson was willing to implement the Model Rules of Professional Conduct 3.3 which states that lawyers cannot make false statements of fact or law to a tribunal, fail to correct false statements, or fail to disclose legal authority that goes against their client's position.

4. Your Attorney Jeff M. Anderson, is an Officer of the court meant to promote the proper administration of justice.
5. "Notary public" and "notary" means a public officer of the state commissioned to perform notarial acts in the State of South Carolina.
6. Notarial acts performed by South Carolina notaries public are official acts that are recognized by the state's laws and regulations.
7. A notarial act is an act that has force and effect of law, meaning that they are enforceable by any agency of jurisdiction (e.g., HHS, DOE, DOJ, NASA, NOAA, State, DOD, Commerce, etc.).
8. According to 22 CFR § 92.4, notarial acts performed by authorized officers of the Department of State are valid and have the same force and effect as acts performed by other authorized people in the United States.
9. According to SC Ann. Code 26-1-5 (5), "Credible witness" means an individual who is personally known to the notary and whom the notary reasonably believes to be honest and reliable for the purpose of confirming to the notary the identity of another individual and the notary believes is not a party to or beneficiary of the transaction.
10. According to SC Ann. Code 26-1-5 (8), "Notarial act", "notary act", and "notarization" mean acts that the laws and regulations of this State authorize notaries public of this State to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.
11. According to SC Ann. Code 26-1-5 (21), "Verification" or "proof" means a notarial act in which a notary certifies that:(a) an individual appeared in person before the notary;(b) the individual was personally known to the notary or identified by the notary through satisfactory evidence;(c) the individual was not a party to or beneficiary of the transaction; and (d) the individual took an oath or gave an affirmation and testified that he is a subscribing witness and as such (i) witnessed the principal who signed the record, or (ii) received the acknowledgement of the principal's signature from the principal who signed the record.
12. According to SC Ann. Code 30-9-30(B)(4)(a) "Sham legal process" means a document that is not issued lawfully and that purports to be a judgment, lien, or order of a court or appropriate government entity, or otherwise purports to assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of a person or property.

13. According to SC Ann. Code (b) "Lawfully issued" means adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political subdivision of a state.

14. A notary public in South Carolina can lawfully issue documents if they follow the state's rules and regulations.

15. The attached Exhibit 1 has at least two "Credible witnesses".

16. The attached Exhibit 1 displays a "Notarial act" that has taken place.

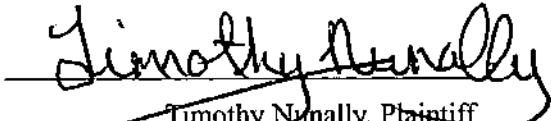
17. The attached Exhibit 1 has "Verification" or "proof" stating that the document was "Lawfully issued" in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political subdivision of a state.

18. On July 30th, 2024 sometime after 8:30 am, when your Attorney Jeff M. Anderson attended an online Lexington County Common Pleas Court hearing that took place with Judge McCaslin and the Plaintiffs Mark Nunnally and Timothy Nunally, your Attorney Jeff M. Anderson stated that the Deed of Distribution used by the Plaintiffs during probate transferred property to themselves and that the Plaintiffs now own the property listed in said Deed of Distribution.

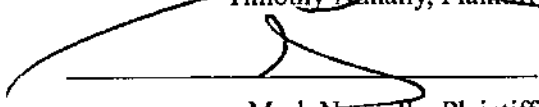
19. A clouded title in South Carolina law means there is a title defect that can make it difficult to transfer ownership of a property from seller to buyer.

20. On July 30th, 2024 sometime after 8:30 am, when your Attorney Jeff M. Anderson attended an online Lexington County Common Pleas Court hearing that took place with Judge McCaslin and the Plaintiffs Mark Nunnally and Timothy Nunally, after he made a remark about the Real Property located at 1759 Willow Creek Drive in Lexington, S.C. being in foreclosure, the Plaintiff Mark Nunnally made an objection based on the grounds of relevance because foreclosure is not a fact in controversy alleged by the Plaintiffs in this case.

RESPECTFULLY SUBMITTED this 16th day of August 2024.



Timothy Nunally, Plaintiff

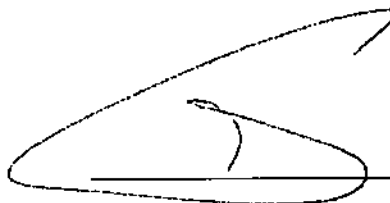


- - Mark Nunnally, Plaintiff

[Certificate of Service]

CERTIFICATE OF SERVICE

UNDER PENALTIES OF PERJURY the undersigned certifies that a copy of the foregoing was provided by Certified U.S. mail to Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds % Attorney Jeff M. Anderson, 140 East Main Street, Post Office Box 489, Lexington, SC 29071-0489 this 16th day of August, 2024.



MARK NUNNALLY

5681 GRANDE RIVER RD

ATLANTA, GA 30349-9127

404 735 3770

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

BEFORE ME personally appeared Mark Nunnally who, being by me first duly sworn and identified in accordance with law, did execute the foregoing under penalties of perjury in my presence this 16th day of August 2024.

Kayla Hildebrand

Notary Public

My commission expires: May 1, 2029

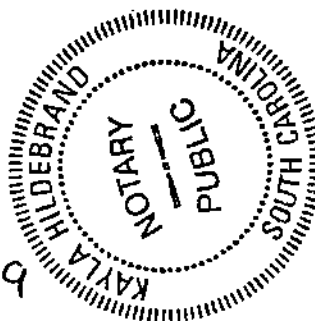


Exhibit "1"

Exhibit "1":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **8/16/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit "1"***.
- No party objects to the admission of this Exhibit "1" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

Prepared By:
Mark Anthony Nunnally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 5681 Grande River Road
Atlanta, Georgia State [30349]

LIEN
COMMON LAW
AND
NOTICE OF WRIT OF ATTACHMENT
ON PRIVATE AND/OR REAL, PERSONAL PROPERTY

January 9, 2024

NOTICE TO:
Lexington County Court of Common Pleas; Clerk of Lexington County Court of Common Pleas, and Lexington County Register of Deeds of the State of South Carolina in and for Columbia, South Carolina; and acting Sheriff of Lexington County; and All persons known and unknown who may be similarly situated and all other concerned parties.

You are hereby notified that a FEDERAL COMMON LAW LIEN AND WRIT OF ATTACHMENT - ON PRIVATE AND/OR REAL, PERSONAL PROPERTY is now in effect on a certain parcel of Real Estate now of record in the Name of Timothy Allen Nunally. The LIENOR, on property located in Lexington County, South Carolina State and known as 1759 Willow Creek Drive, Columbia, South Carolina; Clerk of Lexington County Court of Common Pleas of South Carolina State; and more specifically LEGALLY and Lawfully described as:

1759 Willow Creek Drive Columbia, SC
Lat: 34.066370 Long: -81.184940

ALL THAT CERTAIN PIECE, PARCEL, or lot of land, with the improvements thereon, situated, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W on plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975 and recorded in the Office of the RMC for Lexington County in Plat Book 139-G at page 23; Also being shown and delineated on a plat prepared for Dana C Frost and Terri L. Frost by Belter & Associates, Inc., dated 6/14/1993 and recorded in the Office of the RMC for Lexington County in Plat Book 262 at Page 070. Reference being made to said plat which is incorporated herein by reference for a more accurate and complete description ; all measurements being a little more or less.

This being identical property conveyed to the Mortgagors by Deed of Dana C. Frost and Teri L. Frost dated August 8, 1994 and recorded simultaneously herewith in Deed Book 5145 at Page 97.

Grantee Address: 1759 Willow Creek Drive
Columbia, South Carolina State [29212]

Copy of this **Common Law Lien, Writ of Attachment On Private, And/or Real, and Personal Property** has also been filed with the **Secretary of State of South Carolina Republic.**

Mark Hammond— Secretary of State, South Carolina State

Pursuant to that certain agreement that **LIENOR** Timothy Allen Nunally "CAN IRREVOCABLE" Trust of the property, the **LIENOR**, claims the attachment of the **COMMON LAW LIEN, WRIT OF ATTACHMENT ON REAL AND PRIVATE/PERSONAL PROPERTY** is in the AMOUNT of:

One Hundred Million Dollars (\$100,000,000) for 1759 Willow Creek Drive, Columbia, South Carolina State [29212].

MEMORANDUM OF LAW IN SUPPORT

Writ Of Attachments is but another form of **Common Law Lien** and supersede mortgages and equity liens, and **Deeds of Trust** *Drummond Carriage v. Mills*, (1878) N.W. 99; *Hewitt V. Williams*, 47 La. Ann. 742, 17 So. 269; *Carr V. Dail*, 19 S.E. 235; *McMaham V. Ludin* 58 N.H. 827, and may be satisfied only when paid and/or property is taken in lieu of the monetary value and fully satisfied by said taking of property.

The ruling of the U.S. Supreme Court in *Rich v. Braxton*, 158 U.S. 375, specifically forbids judges (Titles of Nobility) from invoking equity jurisdiction to remove common law liens or similar "clouds of title." Furthermore, even if a preponderance of evidence displays the lien to be void or voidable, the equity court (and Title of Nobles) still may not proceed until the moving party asks for and comes "to equity" with "clean hands" based on the "Clean Hands Doctrine" And "Power Of Estoppel", *Trice v. Comstock*, 57 C.C.A. 646; *West V. Washington Sheriff*, 153 App. Div. 460, 138 N.Y. Supp. 230.

ANY OFFICIAL WHO ATTEMPTS TO MODIFY OR REMOVE THIS COMMON LAW LIEN IN THE FORM OF WRIT OF ATTACHMENT IS FULLY LIABLE FOR DAMAGES AT LAW PURSUANT TO THE MANDATORY RULINGS OF THE U.S. SUPREME COURT IN BUTZ v. ECHOHOMU, 438 U.S. 494, 98 S.Ct. 2894; BELL v. HOOD, 327 U.S. 678; and BIVENS v. UNKNOWN AGENTS, 499 U.S. 388.

This Federal At Law Lien in the form of a Writ Of Attachment(s) shall be valid, notwithstanding any other provision of statute or rule regarding the form or content of a "notice of lien", nor shall it be dischargeable for 100 years, nor extinguishable due to lienor's death whether accidental or purposely, nor dischargeable by lienor's heirs, assigns, or executors.

CAVEAT

Whoever attempts to modify, circumvent, and/or negate this? Federal Common Law Lien, in the form of Writ Of Attachment, shall be deemed outlaws and/or felons and shall be prosecuted pursuant to Title 42, United States Code, Sect. 1983, 1985, and 1986, and Punishable under the **penalties of the common law** at law and applicable sections of Title 18, United States Code.

Demand is made upon all public officials under penalty of Title 42 U.S.C.S. Section 1986 not to modify or remove this lien in any manner.

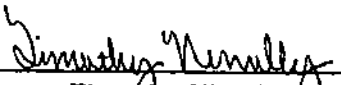
JUDICIAL NOTICE

I HEREBY NOTICE this to all parties and all Court(s) that pursuant to U.S. Supreme Court case **HAFER v. MELO**. No. 90-681, November 1991, any judicial actions which violate the constitutional rights of individuals may be sued as a cause of action in civil litigation against those performing said acts, without any form of immunity.

CONSTITUTIONAL PRIVILEGE - Immunity: State officials sued in their individual capacities are "persons" subject to suits for damages under 42 USC 1983; Eleventh Amendment does not bar such suits in federal court because of the purchase of bond insurance (Hafer v. Melo. No. 90-681). page 4001.

Respectfully Submitted in the Name of Justice on

This 9th day of January 2024.



Timothy Allen Nunally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 1759 Willow Creek Drive
Columbia, South Carolina State [29212]

AFFIDAVIT

South Carolina State

County of Lexington

BEFORE ME, the undersigned authority, on this 9th day of January,
2024, did personally appear Timothy Allen Nunally, Trustee, with authority as the LIENOR,
who being first personally and duly sworn, does depose and say that the information contained in
this foregoing Federal Common Law Lien Writ of Attachment of Real and Personal Property is
true and accurate.

Further this affiant sayeth not.

Timothy Nunally

Timothy Allen Nunally

"LIENOR" and "Trustee"

Rosevelt L. Robinson

"WITNESS"

Rosevelt L. Robinson

ACKNOWLEDGEMENT

South Carolina State

County of Lexington

The foregoing Federal common Law Lien Writ of Attachment on Real
and Personal Property was acknowledged before me this 9th day
of January, 2024, by Trustee Timothy Allen Nunally of the private
property, did execute same.

Timothy Nunally
Timothy Allen Nunally

Chetene A. Robinson
Notary

My Commission Expires:

SEAL

FILED

IN THE COURT OF COMMON PLEAS

2024 AUG 16 AM 10:11

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

LISA M. COMER
CLERK OF COURT
LEXINGTON, SC

Case No. 2024-CP-32-01682

Judge McCaslin

Timothy Nunally, Mark Nunnally,

Plaintiff,

v.

Tina Guerry, individually and in her official capacity as the Lexington County
Register of Deeds,

Defendant,

_____ /

REQUEST FOR ADMISSIONS

Plaintiffs Timothy Nunally, Mark Nunnally requests Defendant's Attorney Jeff M. Anderson to admit the truth of the following statements of fact(s):

1. On July 30th, 2024 at 8:30am, you attended an online Lexington County Common Pleas Court hearing that took place with Judge McCaslin and the Plaintiffs Mark Nunnally and Timothy Nunally.

2. On July 30th, 2024 at 8:30am, when you attended an online Lexington County Common Pleas Court hearing that took place with Judge McCaslin and the Plaintiffs Mark Nunnally and Timothy Nunally, you knew that your duty of candor required you to assist the court in finding the truth, which may include providing legal authority that goes against your own position.

3. On July 30th, 2024 at 8:30am, when you attended an online Lexington County Common Pleas Court hearing that took place with Judge McCaslin and the Plaintiffs Mark Nunnally and Timothy Nunally, you were willing to implement the Model Rules of Professional Conduct 3.3 which states that lawyers cannot make false

statements of fact or law to a tribunal, fail to correct false statements, or fail to disclose legal authority that goes against their client's position.

4. You, Attorney Jeff Anderson, are an Officer of the court meant to promote the proper administration of justice.

5. "Notary public" and "notary" means a public officer of the state commissioned to perform notarial acts in the State of South Carolina.

6. Notarial acts performed by South Carolina notaries public are official acts that are recognized by the state's laws and regulations.

7. A notarial act is an act that has force and effect of law, meaning that they are enforceable by any agency of jurisdiction (e.g., HHS, DOE, DOJ, NASA, NOAA, State, DOD, Commerce, etc.).

8. According to 22 CFR § 92.4, notarial acts performed by authorized officers of the Department of State are valid and have the same force and effect as acts performed by other authorized people in the United States.

9. According to SC Ann. Code 26-1-5 (5), "Credible witness" means an individual who is personally known to the notary and whom the notary reasonably believes to be honest and reliable for the purpose of confirming to the notary the identity of another individual and the notary believes is not a party to or beneficiary of the transaction.

10. According to SC Ann. Code 26-1-5 (8), "Notarial act", "notary act", and "notarization" mean acts that the laws and regulations of this State authorize notaries public of this State to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.

11. According to SC Ann. Code 26-1-5 (21), "Verification" or "proof" means a notarial act in which a notary certifies that:(a) an individual appeared in person before the notary;(b) the individual was personally known to the notary or identified by the notary through satisfactory evidence;(c) the individual was not a party to or beneficiary of the transaction; and (d) the individual took an oath or gave an affirmation and testified that he is a subscribing witness and as such (i)

witnessed the principal who signed the record, or (ii) received the acknowledgement of the principal's signature from the principal who signed the record.

12. According to SC Ann. Code 30-9-30(B)(4)(a) "Sham legal process" means a document that is not issued lawfully and that purports to be a judgment, lien, or order of a court or appropriate government entity, or otherwise purports to assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of a person or property.

13. According to SC Ann. Code (b) "Lawfully issued" means adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political subdivision of a state.

14. A notary public in South Carolina can lawfully issue documents if they follow the state's rules and regulations.

15. The attached Exhibit 1 has at least two "Credible witnesses".

16. The attached Exhibit 1 displays a "Notarial act" that has taken place.

17. The attached Exhibit 1 has "Verification" or "proof" stating that the document was "Lawfully issued" in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political subdivision of a state.

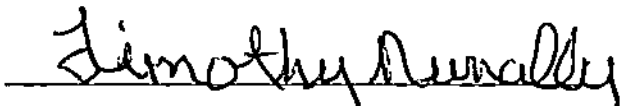
18. On July 30th, 2024 sometime after 8:30 am, when you attended an online Lexington County Common Pleas Court hearing that took place with Judge McCaslin and the Plaintiffs Mark Nunnally and Timothy Nunally, you stated that the Deed of Distribution used by the Plaintiffs during probate transferred property to themselves and that the Plaintiffs now own the property listed in said Deed of Distribution.

19. A clouded title in South Carolina law means there is a title defect that can make it difficult to transfer ownership of a property from seller to buyer.

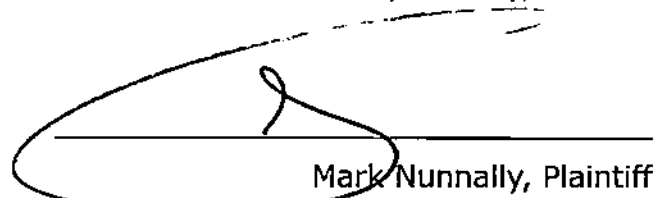
20. On July 30th, 2024 sometime after 8:30 am, when you attended an online Lexington County Common Pleas Court hearing that took place with Judge

McCaslin and the Plaintiffs Mark Nunnally and Timothy Nunally, when you made a remark about the Real Property located at 1759 Willow Creek Drive in Lexington, S.C. being in foreclosure, the Plaintiff Mark Nunnally made an objection based on the grounds of relevance because foreclosure is not a fact in controversy alleged by the Plaintiffs in this case.

RESPECTFULLY SUBMITTED this 16th day of August 2024.



Timothy Nunally, Plaintiff

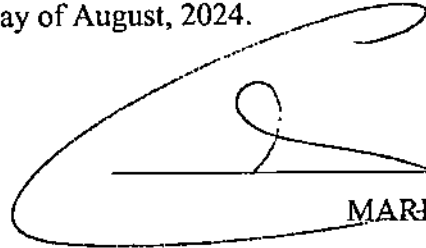


Mark Nunnally, Plaintiff

[Certificate of Service]

CERTIFICATE OF SERVICE

UNDER PENALTIES OF PERJURY the undersigned certifies that a copy of the foregoing was provided by Certified U.S. mail to Jeff M. Anderson, 140 East Main Street, Post Office Box 489, Lexington, SC 29071-0489 this 16th day of August, 2024.


MARK NUNNALLY

5681 GRANDE RIVER RD

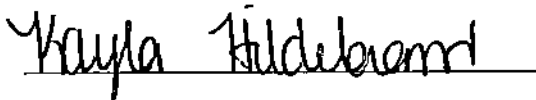
ATLANTA, GA 30349-9127

404 735 3770

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

BEFORE ME personally appeared Mark Nunnally who, being by me first duly sworn and identified in accordance with law, did execute the foregoing under penalties of perjury in my presence this 16th day of August 2024.



Notary Public

My commission expires: May 1, 2029

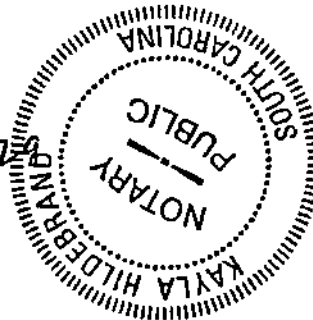


Exhibit “1”

Exhibit “1”:

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **8/16/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit “1”***.
- No party objects to the admission of this Exhibit “1” into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

Prepared By:
Mark Anthony Nunnally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 5681 Grande River Road
Atlanta, Georgia State [30349]

LIEN
COMMON LAW
AND
NOTICE OF WRIT OF ATTACHMENT
ON PRIVATE AND/OR REAL, PERSONAL PROPERTY

January 9, 2024

NOTICE TO:

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Mark Hammond— Secretary of State, South Carolina State

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CAVEAT

Whoever attempts to modify, circumvent, and/or negate this? Federal Common Law Lien, in the form of Writ Of Attachment, shall be deemed outlaws and/or felons and shall be prosecuted pursuant to Title 42, United States Code, Sect. 1983, 1985, and 1986, and Punishable under the **penalties of the common law** at law and applicable sections of Title 18, United States Code.

Demand is made upon all public officials under penalty of Title 42 U.S.C.S. Section 1986 not to modify or remove this lien in any manner.

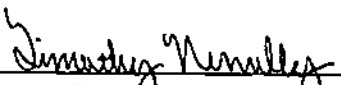
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CONSTITUTIONAL PRIVILEGE - Immunity: State officials sued in their individual capacities are "persons" subject to suits for damages under 42 USC 1983; Eleventh Amendment does not bar such suits in federal court because of the purchase of bond insurance (Hafer v. Melo. No. 90-681). page 4001.

Respectfully Submitted in the Name of Justice on

This 9th day of January 2024.



Timothy Allen Nunally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 1759 Willow Creek Drive
Columbia, South Carolina State [29212]

AFFIDAVIT

South Carolina State

County of Lexington

BEFORE ME, the undersigned authority, on this 9th day of January,
2024, did personally appear Timothy Allen Nunally, Trustee, with authority as the LIENOR,
who being first personally and duly sworn, does depose and say that the information contained in
this foregoing Federal Common Law Lien Writ of Attachment of Real and Personal Property is
true and accurate.

Further this affiant sayeth not.

Timothy Nunally

Timothy Allen Nunally

"LIENOR" and "Trustee"

Rosevelt L. Robinson

"WITNESS"

Rosevelt L. Robinson

ACKNOWLEDGEMENT

South Carolina State

County of Lexington

The foregoing Federal common Law Lien Writ of Attachment on Real
and Personal Property was acknowledged before me this 9th day
of January, 2024, by Trustee Timothy Allen Nunally of the private
property, did execute same.

Timothy Nunally
Timothy Allen Nunally

Charee H. Robinson
Notary

My Commission Expires:

SEAL

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Case No. 2024-CP-32-01682

Judge McCaslin

Timothy Nunally, Mark Nunnally,

Plaintiffs,

v.

Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds,

Defendant,

The Plaintiffs, Timothy Nunally and Mark Nunnally responds as follows:

REQUEST FOR ADMISSIONS

1. There is no underlying debt for the document entitled "Lien Common Law" lien that the Plaintiffs attempted to record in the Register of Deeds (ROD) office for Lexington County.

RESPONSE:

Denied. As stated in "Exhibit A" filed into this case on May 17, 2024, Exhibit 5 filed into this case on July 5, 2024, as well as Exhibit "1" filed twice into this case on August 16, 2024, there is no document entitled "Lien Common Law" lien that the Plaintiffs attempted to record in the Register of Deeds (ROD) office for Lexington County.

2. The document entitled "Lien Common Law" that the Plaintiffs attempted to record in the ROD office for Lexington County is signed by Plaintiff, Timothy Allen Nunally.

RESPONSE:

Denied. As stated in "Exhibit A" filed into this case on May 17, 2024, Exhibit 5 filed into this case on July 5, 2024, as well as Exhibit "1" filed twice into this case on July 5, 2024, there is no document entitled "Lien Common Law" lien that the Plaintiffs attempted to record in the Register of Deeds (ROD) office for Lexington County.

3. The Deed of Distribution of property from the Estate of Carl Alvin Nunally, Sr., recorded in Book 21073 at page 1408 and recorded in Book 21075 at page 5539 in the ROD office for Lexington County with a property address of 1759 Willow Creek Drive, Columbia, SC, has as grantees, Timothy Allen Nunally and Mark Anthony Nunnally.

RESPONSE:

Denied. The Deed of Distribution of property from the Estate of Carl Alvin Nunally, Sr., recorded in Book 21073 at page 1408 and recorded in Book 21075 at page 5539 in the ROD office for Lexington County with a property address of T759 Willow Creek Drive, Columbia, SC, states that transfer was made pursuant to "Decedent's Will".

4. The document entitled "Lien Common Law" that the Plaintiffs attempted to record in the ROD office for Lexington County put a lien on the property referenced in Request to Admit #3.

RESPONSE:

Denied. As stated in "Exhibit A" filed into this case on May 17, 2024, Exhibit 5 filed into this case on July 5, 2024, as well as Exhibit "1" filed twice into this case on July 5, 2024, there is no document entitled "Lien Common Law" lien that the Plaintiffs attempted to record in the Register of Deeds (ROD) office for Lexington County.

5. The property referenced in Request to Admit #3 has had a foreclosure lawsuit (2024-CP-32-01094) filed in which both Plaintiffs in this lawsuit (2024-CP-32-01682) are named Defendants.

RESPONSE:

Objection! Prejudicial. All evidence must have a "probative value", i.e., a tendency to prove something rather than evidence that may have a "prejudicial value", i.e., a tendency to shock, confuse, or mislead. When the prejudicial value outweighs the probative value, the evidence is forbidden by the rules and will be excluded by the Plaintiffs objection on grounds of Prejudice!

Furthermore, Objection based on Relevance has been stated on July 30th, 2024, during the Lexington County Common Pleas Court online hearing held with Judge McCaslin. That objection has also been stated in REQUEST FOR ADMISSIONS, Paragraph 20, filed into this case file on August 16, 2024, at 10:16am for the Defendant as well as the REQUEST FOR ADMISSIONS, Paragraph 20, filed into this case file on August 16, 2024, at 10:12am for the Defendants Attorney. Rule 403 of the Federal Rules of Evidence prohibits any evidence, including relevant evidence, if it wastes time, misleads the jury, causes unnecessary delay, or "needlessly

presents cumulative evidence" which was the basis for the Plaintiffs objection made on grounds of Relevance. In order for testimony to be relevant it must tend to prove or disprove a material fact, i.e., something that can affect the outcome of this case. Therefore, again, Plaintiffs Object to this admission #5 based on grounds of Relevance.

6. The attempted recording of the "Lien Common Law" in the ROD office in Lexington County is an attempt by Plaintiffs to stop and/ or delay the foreclosure lawsuit.

RESPONSE:

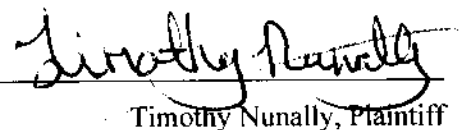
Denied. As stated in "Exhibit A" filed into this case on May 17, 2024, Exhibit 5 filed into this case on July 5, 2024, as well as Exhibit "1" filed twice into this case on July 5, 2024, there is no document entitled "Lien Common Law" lien that the Plaintiffs attempted to record in the Register of Deeds (ROD) office for Lexington County.

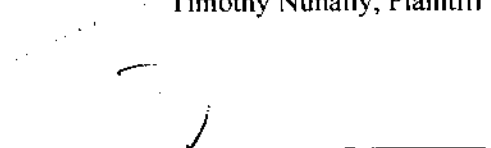
7. Both Plaintiffs consider themselves "Sovereign Citizens" as that phrase has been used throughout the United States.

RESPONSE:

Denied. As stated in the Complaint filed by the Plaintiffs on May 8, 2024, paragraph #5, Timothy Nunally is the Trustee of the CAN Irrevocable Trust and Mark Nunnally is a Beneficiary of the CAN Irrevocable Trust which exists under the laws of the State of South Carolina. Those material facts can also be found in Exhibit 13 of the PLAINTIFFS VERIFIED MEMORANDUM WITH AFFIDAVIT IN SUPPORT OF COMPLAINT, WRIT OF MANDAMUS, AND MOTION FOR JUDICIAL NOTICE filed into this case file on July 25th, 2024, at 5:09pm.

RESPECTFULLY SUBMITTED this 5th day of September 2024.


Timothy Nunally, Plaintiff


Mark Nunnally, Plaintiff

[Certificate of Service]

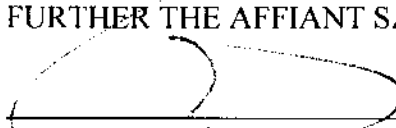
VERIFICATIONS

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

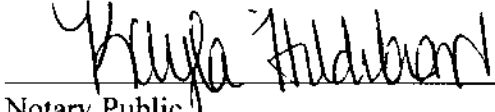
BEFORE ME personally appeared Mark Nunnally who, being by me first duly sworn and identified in accordance with South Carolina law, deposes and says:

1. My name is Mark Nunnally, one of the Plaintiffs herein.
2. I have carefully read the foregoing ~~memorandum~~ ^{response}, and each of the facts alleged therein is true and correct of my own personal knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.


Mark Nunnally

SWORN TO and subscribed in my presence.


Notary Public

exp. May 1, 2029

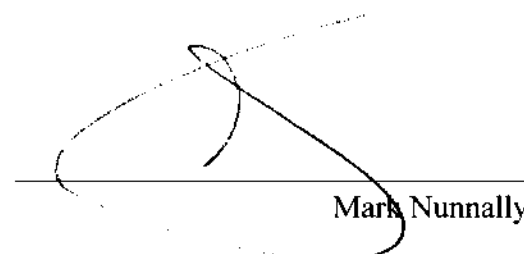
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

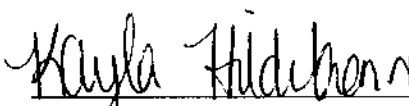
BEFORE ME personally appeared Mark Nunnally who, being by me first duly sworn and identified in accordance with South Carolina law, deposes and says:

1. My name is Mark Nunnally, one of the plaintiffs herein.
2. I have carefully read the foregoing ~~memorandum~~ ^{response}, and each of the facts alleged therein is true and correct of my own personal knowledge.

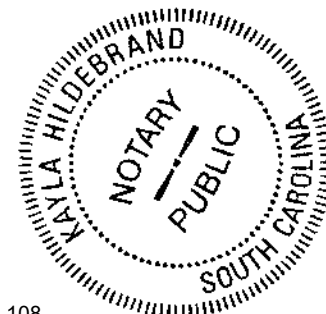
FURTHER THE AFFIANT SAYETH NAUGHT.


Mark Nunnally

SWORN TO and subscribed in my presence.


Notary Public

exp. May 1, 2029



CERTIFICATE OF SERVICE

UNDER PENALTIES OF PERJURY the undersigned certifies that a copy of the foregoing was provided by Certified U.S. mail to Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds c/o Attorney Jeff M. Anderson, 140 East Main Street, Post Office Box 489, Lexington, SC 29071-0489 this 5th day of September 2024.

MARK NUNNALLY

5681 GRANDE RIVER RD
ATLANTA, GA 30349-9127
404 980 4488

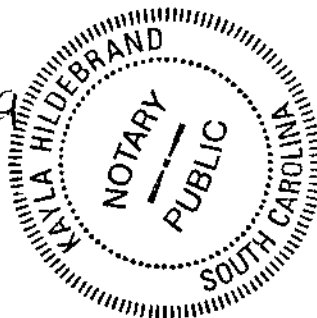
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

BEFORE ME personally appeared Mark Nunnally who, being by me first duly sworn and identified in accordance with law, did execute the foregoing under penalties of perjury in my presence this 5th day of September 2024.

Kayla Hildebrand
Notary Public

My commission expires: MAY 1, 2029



IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Case No. 2024-CP-32-01682

Judge McCaslin

Timothy Nunally, Mark Nunnally,

Plaintiffs,

v.

Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds,

Defendant,

_____ /

FIRST SET OF INTERROGATORIES

Definitions for FIRST SET OF INTERROGATORIES are as follows:

- "Document" means FEDERAL CLAIM OF COMMON LAW LIEN and NOTICE OF FEDERAL COMMON LAW LIEN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROPERTY document.
- "Person" means any natural person, corporation, partnership, or other legal entity.
- "Relevant" means any information that is reasonably calculated to lead to the discovery of admissible evidence.
- "Pleading" means complaints and answers are pleadings.
- "Discovery" means the process of finding facts that may lead to admissible evidence to be placed in the court file or presented at hearings or trial.
- "Reasonable" means of or pertaining to the reasonable man, who is controlled by reason.
- "Fact" means a fact is an established truth, something that is evident, clearly seen, indisputable, beyond doubt.
- "Material fact(s)" means fact(s) tending to prove or disprove some fact in controversy.
- "False" means that which is not true.
- "Fraud" means actionable deceit in an intentional practice.

- “Legal” means not contrary to codified law.
- “Oath” means the solemn oath that is a foundation of Western Jurisprudence and a necessity of our modern legal system, for it is the oath (and the potential violation of that oath) that gives a court power to prevent perjury (falsified testimony) and corruption of other evidence.

Definitions (Continued)

- “Lawfully issued” means adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political subdivision of a state.
- “Credible Witness” means an individual who is personally known to the notary and whom the notary reasonably believes to be honest and reliable for the purpose of confirming to the notary the identity of another individual and the notary believes is not a party to or beneficiary of the transaction.
- “Witness” means a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.
- “Notarial act”, “notary act”, and “notarization” mean acts that the laws and regulations of this State authorize notaries public of this State to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.
- “Notary Public” means a notary public who shall affix to the deed or other instrument his official seal within the state of his appointment, which is a sufficient authentication of his signature, residence, and official character.
- “Propound” means to offer for consideration or discussion.

PLAINTIFFS Timothy Nunally and Mark Nunnally propounds the following interrogatories to Defendant Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds.

1. Identify all persons known to have any knowledge of the facts alleged in your pleadings and regarding each provide their full name and, if known or available to you through the exercise of reasonable diligence, residence and business address, phone numbers, aliases, and all other information reasonably necessary to identify each such person.
2. Identify all persons known to have any knowledge of the facts alleged in your discovery and regarding each provide their full name and, if known or available to you through the exercise of reasonable diligence, residence and business address, phone numbers, aliases, and all other information reasonably necessary to identify each such person.
3. As the Defendant, please state every fact that describes what fraudulent or sham legal document/s are to the South Carolina Lexington County Register of Deeds.
4. As the Defendant, please provide all the supporting facts of what false or fraudulent document/s are to the South Carolina Lexington County Register of Deeds.
5. As the Defendant, please state every fact that supports your claim that the Plaintiffs attempted to file and record fraudulent or sham legal document/s in the South Carolina Lexington County Register of Deeds Office.
6. Did you ever take the oath of office for a register of deeds in Lexington County located in the State of South Carolina on a Tuesday evening on January 3rd, 2017, at 6 p.m. in the Dorothy K. Black Council Chambers on the second floor of the Lexington County Administration building on South Lake Drive in Lexington as stated in the WestMetroNews on March 7, 2016, which provides comprehensive and fair news coverage of Lexington and Lexington County?
7. Did the Defendant take the oath of office for a register of deeds in Lexington County located in the State of South Carolina on a Tuesday evening on January 3rd, 2017, at 6 p.m. in the Dorothy K. Black Council Chambers on the second floor of the Lexington County Administration building on South Lake Drive in Lexington by stating "I, Tina (Middle Name if applicable) Guerry, do solemnly swear (or affirm) that I will faithfully and truly, according to the best of my skill and ability, execute the duties of the office of register of deeds for the county of Lexington, in all things according to law; so help me, God".
8. Has the Defendant's "Goal to carry on a people- oriented public service, while also continually striving to make the Register of Deeds office more efficient and user- friendly" stated in the WestMetroNews on March 7, 2016, ever been achieved during the Defendant's role as the South Carolina Lexington County Register of Deeds?
9. Is the Defendant's "Goal to carry on a people- oriented public service, while also continually striving to make the Register of Deeds office more efficient and user- friendly" stated in the

WestMetroNews on March 7, 2016, still being achieved at the present time by the South Carolina Lexington County Register of Deeds?

10. If the Defendant's "Goal to carry on a people- oriented public service, while also continually striving to make the Register of Deeds office more efficient and user- friendly" stated in the WestMetroNews on March 7, 2016, is still being achieved at the present time as the South Carolina Lexington County Register of Deeds, please provide all facts that support this claim?
11. As the South Carolina Lexington County Register of Deeds, does the Defendant still maintain the stance that "When maintaining major accounts, I know I must listen closely to the clients' needs and be attentive to the details to ensure they are properly served. That's an important quality for the Register of Deeds, who must not only oversee important county documentation for recording such as property deeds, but also to assist people who depend on the services provided through the Register of Deeds Office." as stated in the WestMetroNews on March 7, 2016, which provides comprehensive and fair news coverage of Lexington and Lexington County?
12. As a conservative Republican, is the Defendant still committed to looking out for the taxpayers while making sure the office operates as efficiently as possible – eliminating unnecessary expenses without sacrificing needed services as stated in the WestMetroNews on March 7, 2016, which provides comprehensive and fair news coverage of Lexington and Lexington County?
13. Has the Defendant ever made the statement that "Now more than ever, we need elected leaders who put people over politics, and that's the style of service I hope to offer." in the WestMetroNews on March 7, 2016, which provides comprehensive and fair news coverage of Lexington and Lexington County?
14. Has the Defendant ever made the statement that "My only objective is to be the kind of public servant Lexington County families can be proud of," as stated in the WestMetroNews on March 7, 2016, which provides comprehensive and fair news coverage of Lexington and Lexington County?
15. Is it true that before becoming the Lexington County Register of Deeds, the Defendant was a "businesswoman" as stated in the FITSNews on June 1, 2016 and on June 2, 2016?
16. Is the Defendant aware that Lexington County was one of six counties in South Carolina to elect its register of deeds?
17. Does the Lexington County Register of Deeds Office exist to "record, maintain and preserve all land records for the County and make them readily available for public viewing."?
18. Was the Defendant the primary beneficiary of a brewing scandal involving the Defendants top two competitors – Rich Bolen and Mike Green during the Defendants race to be elected as the Lexington County Register of Deeds?

19. Explain if daily statutory duties are completed by the Defendant when involved in discharging the duties of the Lexington County Register of Deeds?
20. Explain if daily ministerial duties are completed by the Defendant when involved in discharging the duties of the Lexington County Register of Deeds?
21. Please state all facts explaining why the Defendant does not have a statutory duty under South Carolina Code of Laws §30-5-90 to Plaintiffs to timely record within one month of delivery to the Lexington ROD all real estate documents under the date and in the order of time at which they are delivered to the Lexington ROD as stated in paragraph 10 of the Defendant's answer to Plaintiffs complaint.
22. In paragraph 11 of the Defendant's answer to REQUEST FOR ADMISSIONS on June 21, 2024, the Defendant admitted that the duties of the Lexington County Register of Deeds are to record, preserve and maintain all documents that are related to real properties. The ROD is to ensure all practices are followed as stated in the Code of Law of South Carolina, while operating the office in an efficient manner. Is this correct?
23. In Paragraph 2 of the Defendants Answer the Defendant stated that "This Defendant lacks sufficient knowledge and information as to the allegations contained in Paragraph 5 of the Complaint and, therefore, denies Paragraph 5. Is the Defendant aware that those material facts can be found in Exhibit 13 of the PLAINTIFFS VERIFIED MEMORANDUM WITH AFFIDAVIT IN SUPPORT OF COMPLAINT, WRIT OF MANDAMUS, AND MOTION FOR JUDICIAL NOTICE filed into this case file on July 25th, 2024, at 5:09pm?
24. Paragraph 6 of the Defendant's Answer states that the Defendant reasonably believes that the document is materially false. Please state what facts led to the Defendants belief(s).
25. When the Defendant told the Plaintiffs Timothy Nunally and Mark Nunnally on the Thursday March 7th, 2024, at 212 S. Lake Dr. Ste. 301 Lexington, SC 29072 that the Lexington County Register of Deeds did not feel comfortable with the \$100,000,000 lien amount of the FEDERAL CLAIM OF COMMON LAW LIEN and NOTICE OF FEDERAL COMMON LAW LIEN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROPERTY that the Plaintiffs attempted to file, is it because the Defendant was still being a Businesswoman rather than a Lexington County Register of Deeds?
26. Is it true that in paragraph 2 of the Defendant's answer to REQUEST FOR ADMISSIONS on June 21, 2024, the Defendant admitted that she cannot confirm the actual dates listed of when the Plaintiffs attempted to file and record a Common Law Lien and Notice of Writ of Attachment on Private and/ or Real, Personal Property for our real property located at 1759 Willow Creek Drive in Lexington County?

27. Is the Defendant still not able to confirm the actual dates listed of when the Plaintiffs attempted to file and record a Common Law Lien and Notice of Writ of Attachment on Private and/ or Real, Personal Property for our real property located at 1759 Willow Creek Drive in Lexington County?
28. In paragraph 5 of the Defendant's answer to REQUEST FOR ADMISSIONS on June 21, 2024, the Defendant stated that she asked both Plaintiffs if the amount of the lien was correct. Why would the \$100,000,000 lien amount that the Plaintiffs typed into the document the first time the Plaintiffs attempted to file the document not be correct on the Plaintiffs second or any other attempt made to file the same \$100,000,000 lien amount?
29. Explain all the facts that the Defendant used to answer paragraph 7 of the Defendant's answer to the Plaintiffs Complaint.
30. Explain all the facts that the Defendant used to answer paragraph 8 of the Defendant's answer to the Plaintiffs Complaint.
31. Has the Defendant ever made a choice to not believe the force of the \$100,000,000 lien amount in the FEDERAL CLAIM OF COMMON LAW LIEN and NOTICE OF FEDERAL COMMON LAW LIEN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROPERTY that the Plaintiffs attempted to file?
32. Has the Defendant ever made a choice to understand the reasons behind the amount of the \$100,000,000 lien amount in the FEDERAL CLAIM OF COMMON LAW LIEN and NOTICE OF FEDERAL COMMON LAW LIEN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROPERTY that the Plaintiffs attempted to file?
33. Explain all the facts why "Exhibit A" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on May 17, 2024, is not a "Lawfully issued" document.
34. Explain all the facts why "Exhibit A" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on May 17, 2024, does not have a "Credible Witness" for the document.
35. Explain all the facts why "Exhibit A" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on May 17, 2024, does not have two persons who are a "Witness" for the document.
36. In paragraph 3 and paragraph 4 of the Defendant's answer to REQUEST FOR ADMISSIONS on June 21, 2024, did the Defendant truthfully state that the document failed to have two witnesses?
37. Explain all the facts why "Exhibit A" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on May 17, 2024, does not have a "Notarial act", "notary act", or "notarization" for the document.

38. Explain all the facts why "Exhibit A" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on May 17, 2024, does not have a "Notary Public" for the document?
39. In paragraph 3 and paragraph 4 of the Defendant's answer to REQUEST FOR ADMISSIONS on June 21, 2024, did the Defendant truthfully state that the notary's name was not legible?
40. In paragraph 3 of the Defendant's REQUEST TO ADMIT for the Plaintiffs dated August 13, 2024, did The Deed of Distribution of property from the Estate of Carl Alvin Nunally, Sr., recorded in Book 21073 at page 1408 and rerecorded in Book 21075 at page 5539 in the ROD office for Lexington County contain a notary's name that was legible?
41. Does the Lexington County Register of Deeds in South Carolina accept original documents or certified copies from government agencies and out of state courts for recording?
42. Explain all the facts why "Exhibit B" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on February 14, 2024, is not a "Lawfully issued" document.
43. Explain all the facts why "Exhibit B" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on February 14, 2024, does not have a "Credible Witness" for the document.
44. Explain all the facts why "Exhibit B" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on February 14, 2024, does not have two persons who are a "Witness" for the document.
45. Explain all the facts why "Exhibit B" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on February 14, 2024, does not have a "Notarial act", "notary act", or "notarization" for the document.
46. Explain all the facts why "Exhibit B" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on February 14, 2024, does not have a "Notary Public" for the document?
47. Does the Defendant have a pattern of failing to properly record in the time and manner prescribed in the South Carolina Code of Laws Unannotated Section 30-5-90?
48. Has the Defendant been told by any other person, attorney, or lawyer how to answer any of the interrogatories contained within these interrogatories?
49. Have all of the Interrogatories contained herein been answered by the person to whom they are addressed without the assistance, counsel, or coaching of any other person or attorney?
50. Will the Defendant sign these answers under oath, rather than the Defendant's attorney?

RESPECTFULLY SUBMITTED this 5th day of September 2024.

Timothy Nunnally
Timothy Nunnally, Plaintiff

[Signature]
Mark Nunnally, Plaintiff

[Certificate of Service]

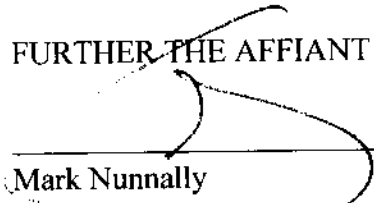
VERIFICATIONS

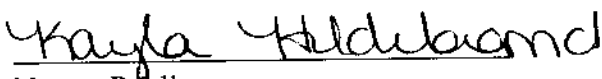
STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

BEFORE ME personally appeared Mark Nunnally who, being by me first duly sworn and identified in accordance with South Carolina law, deposes and says:

1. My name is Mark Nunnally, one of the Plaintiffs herein.
2. I have carefully read the foregoing ~~memorandum~~ ^{interrogatories}, and each of the facts alleged therein is true and correct of my own personal knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.


Mark Nunnally
SWORN TO and subscribed in my presence.


Notary Public
exp: May 1, 2029



STATE OF SOUTH CAROLINA

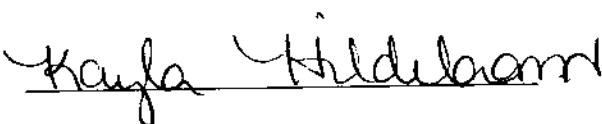
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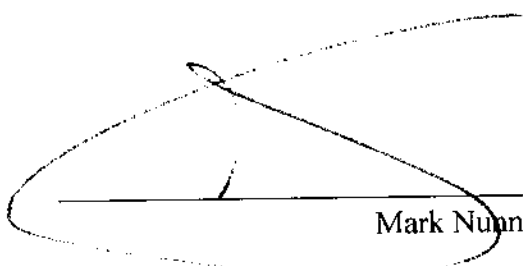
1. My name is Mark Nunnally, one of the plaintiffs herein.
2. I have carefully read the foregoing ~~memorandum~~ ^{interrogatories}, and each of the facts alleged therein is true and correct of my own personal knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.

SWORN TO and subscribed in my presence:

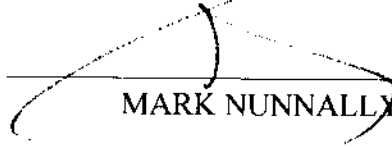

Notary Public
exp: May 1, 2029




Mark Nunnally

CERTIFICATE OF SERVICE

UNDER PENALTIES OF PERJURY the undersigned certifies that a copy of the foregoing was provided by Certified U.S. mail to Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds c/o Attorney Jeff M. Anderson, 140 East Main Street, Post Office Box 489, Lexington, SC 29071-0489 this 5th day of September 2024.

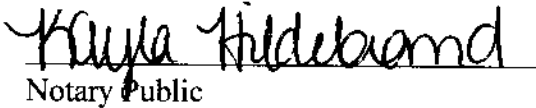

MARK NUNNALLY

5681 GRANDE RIVER RD
ATLANTA, GA 30349-9127
404 980 4488

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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Notary Public

My commission expires: May 1, 2029



IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Case No. 2024-CP-32-01682

Judge McCaslin

Timothy Nunally, Mark Nunnally,

Plaintiffs,

v.

Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds,

Defendant,

The Plaintiffs, Timothy Nunally and Mark Nunnally answers as follows:

INTERROGATORIES RESPONSE 1

1. State what specific Common Law Lien that Plaintiffs have in the property referred in
Request to Admit #6.

Answer:

Plaintiff Timothy Nunally has a specific possessory lien created by contract and common law on the property referred in Request to Admit #6 that is a lien entitled **FEDERAL CLAIM OF COMMON LAW LIEN** and **NOTICE OF FEDERAL COMMON LAW LIEN WRIT OF ATTACHMENT ON PRIVATE AND/ OR REAL, PERSONAL PROPERTY** as stated in "Exhibit A" filed into this case on May 17, 2024, Exhibit 5 filed into this case on July 5, 2024, as well as Exhibit "1" filed twice into this case on August 16, 2024.

2. State specifically the underlying debt that is the basis of the Common Law Lien that the Plaintiffs attempted to record in the ROD office for Lexington County.

Answer:

The valid and enforceable debt owed by the Owner of the property to the Lienor is based on legal obligation, contract, South Carolina Annotated Codes of Law Statutes, and a court order related to the property that arises from the Lienor's performance of a service, delivery of goods, and advancement of money in connection with the property.

3. State who is the debtor of the underlying debt reference in Interrogatory #2.

Answer:

The debtor/ Liencee of the underlying debt reference in Interrogatory #2 is CAN IRREVOCABLE TRUST as stated in "Exhibit A" filed into this case on May 17, 2024, Exhibit 5 filed into this case on July 5, 2024, as well as Exhibit "1" filed twice into this case on July 5, 2024.

4. State who is the debtee of the underlying debt reference in Interrogatory #2

Answer:

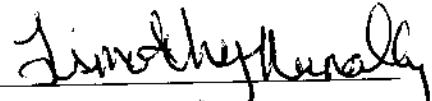
The debtee of the underlying debt reference in Interrogatory #2 is the Trustee/ Lienor of the CAN IRREVOCABLE TRUST, Plaintiff Timothy Nunally as stated in "Exhibit A" filed into this case on May 17, 2024, Exhibit 5 filed into this case on July 5, 2024, as well as Exhibit "1" filed twice into this case on July 5, 2024.

5. State how a \$100,000,000.00 lien was determined in the document that Plaintiffs attempted to record as a Common Law Lien in the ROD office for Lexington County.

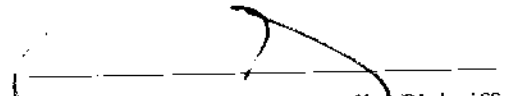
Answer:

A \$100,000,000.00 lien was determined in the document that Plaintiffs attempted to record as a Common Law Lien in the ROD office for Lexington County based on the debt related to the property that arises from the lienor's performance of service, delivery of goods, and advancement of money in connection with the property.

RESPECTFULLY SUBMITTED this 5th day of September 2024.



Timothy Nunnally, Plaintiff



Mark Nunnally, Plaintiff

[Certificate of Service]

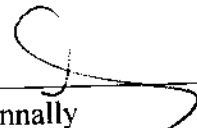
VERIFICATIONS

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

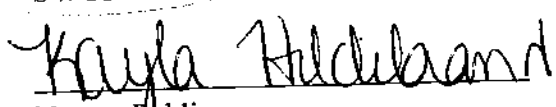
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2. I have carefully read the foregoing ~~memorandum~~ ^{response}, and each of the facts alleged therein is true and correct of my own personal knowledge.

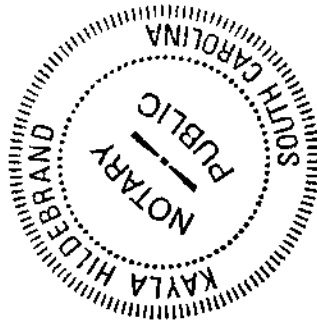
FURTHER THE AFFIANT SAYETH NAUGHT.


Mark Nunnally

SWORN TO and subscribed in my presence.


Notary Public

exp: May 1, 2029



STATE OF SOUTH CAROLINA

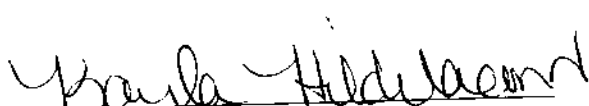
COUNTY OF LEXINGTON

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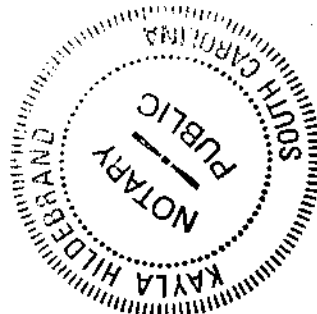
1. My name is Mark Nunnally, one of the plaintiffs herein.
2. I have carefully read the foregoing memorandum, and each of the facts alleged therein is true and correct of my own personal knowledge.

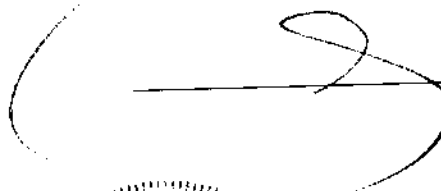
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Notary Public

Exp: May 1, 2029




Mark Nunnally

CERTIFICATE OF SERVICE

UNDER PENALTIES OF PERJURY the undersigned certifies that a copy of the foregoing was provided by Certified U.S. mail to Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds c/o Attorney Jeff M. Anderson, 140 East Main Street, Post Office Box 489, Lexington, SC 29071-0489 this 5th day of September, 2024.

MARK NUNNALLY

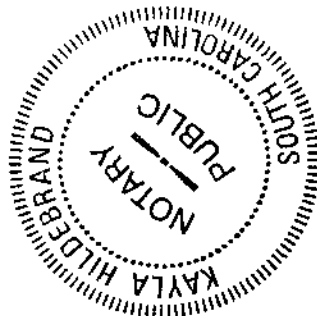
5681 GRANDE RIVER RD
ATLANTA, GA 30349-9127
404 980-4488

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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Kayla Hildebrand
Notary Public

My commission expires: May 1, 2029



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	CASE NO.: 2024-CP-32-01682
Timothy Nunally, Mark Nunnally,	)	
	)	DEFENDANT’S MOTION FOR
Plaintiffs	)	SUMMARY JUDGMENT
	)	
	)	
v.	)	
	)	
Tina Guerry, individually and in her official	)	
capacity as the Lexington County Register of	)	
Deeds,	)	
	)	
Defendant.	)	
_____	)	

NOTICE IS HEREBY GIVEN that the Defendant Lexington County, South Carolina (hereinafter referred to as “Defendant”), by and through its undersigned attorneys, will move before the Presiding Judge for the Lexington County Court of Common Pleas for the Eleventh Judicial Circuit at the Lexington County Courthouse, 205 East Main Street, in Lexington, South Carolina, on the tenth day after service hereof , or as soon as Counsel may be heard, for an Order granting the Defendant Summary Judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. This Motion is made on the grounds that there is no genuine issue of material fact and that the Defendant is entitled to judgment as a matter of law.

The Motion shall be based upon the pleadings and discovery in this matter, statutory and case law of the State of South Carolina, the South Carolina Rules of Civil Procedure, Affidavits to be filed, and such other and further information as the Court may deem relevant.

/s Jeff M. Anderson (SC Bar #380)
 DAVIS FRAWLEY, LLC
 140 East Main Street, Lexington, SC 29072
 Phone No.: (803) 359-2512
 ATTORNEYS FOR THE DEFENDANT TINA
 GUERRY, INDIVIDUALLY AND IN HER
 OFFICIAL CAPACITY AS THE LEXINGTON
 COUNTY REGISTER OF DEEDS

Lexington, South Carolina
 September 17, 2024.

FILED

2024 SEP 30 PM 12:50

LISA M. DICKER
CLERK OF COURT
LEXINGTON SC

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Case No. 2024-CP-32-01682

Judge William Keesley

Timothy Nunally, Mark Nunnally,

Plaintiffs,

v.

Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds,

Defendant,

_____ /

SECOND SET OF INTERROGATORIES

Definitions

- "Time Frame" means if not otherwise stated the time frame shall be the last three years.
- "Document" means FEDERAL CLAIM OF COMMON LAW LIEN and NOTICE OF FEDERAL COMMON LAW LIEN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROPERTY document.
- "Person" means any natural person, corporation, partnership, or other legal entity.
- "Relevant" means any information that is reasonably calculated to lead to the discovery of admissible evidence.
- "Pleading" means complaints and answers are pleadings.
- "Discovery" means the process of finding facts that may lead to admissible evidence to be placed in the court file or presented at hearings or trial.
- "Reasonable" means of or pertaining to the reasonable man, who is controlled by reason.
- "Fact" means a fact is an established truth, something that is evident, clearly seen, indisputable, beyond doubt.
- "Material facts" means facts tending to prove or disprove some fact in controversy.
- "False" means that which is not true.
- "Fraud" means actionable deceit in an intentional practice.
- "Legal" means not contrary to codified law.
- "Oath" means the solemn oath that is a foundation of Western Jurisprudence and a necessity of our modern legal system, for it is the oath (and the potential violation of that oath) that gives a court power to prevent perjury (falsified testimony) and corruption of

other evidence.

Definitions (Continued)

- "Lawfully issued" means adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political subdivision of a state.
- "Credible Witness" means an individual who is personally known to the notary and whom the notary reasonably believes to be honest and reliable for the purpose of confirming to the notary the identity of another individual and the notary believes is not a party to or beneficiary of the transaction.
- "Witness" means a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.
- "Notarial act", "notary act", and "notarization" mean acts that the laws and regulations of this State authorize notaries public of this State to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.
- "Notary Public" means a notary public who shall affix to the deed or other instrument his official seal within the state of his appointment, which is a sufficient authentication of his signature, residence, and official character.
- "Propound" means to offer for consideration or discussion.
- "Client", "Defendant" and/ or "Defendant's" means Attorney Jeff M. Andersons client Tina Gueerry, individually and in her official capacity as the Lexington County Register of Deeds.
- "Attorney" means Attorney Jeff M. Anderson.

PLAINTIFFS Timothy Nunally and Mark Nunnally propounds the following interrogatories to Attorney Jeff M. Anderson.

1. Identify all persons known to have any knowledge of the facts alleged in your client Tina Guerry's, individually and in her official capacity as the Lexington County Register of Deeds, pleadings and with regard to each provide their full name and, if known or available to you through the exercise of reasonable diligence, residence and business address, phone numbers, aliases, and all other information reasonably necessary to identify each such person.
2. Identify all persons known to have any knowledge of the facts alleged in your client Tina Guerry's, individually and in her official capacity as the Lexington County Register of Deeds, discovery and with regard to each provide their full name and, if known or available to you through the exercise of reasonable diligence, residence and business

address, phone numbers, aliases, and all other information reasonably necessary to identify each such person.

3. As the Defendant's Attorney, please state each and every fact that describes what fraudulent or sham legal document/s are to the Defendant.
4. As the Defendant's Attorney, please provide all of the supporting facts of what false or fraudulent document/s are to the Defendant.
5. As the Defendant's Attorney, please state each and every fact that supports your Defendant's claim that the Plaintiffs attempted to file and record fraudulent or sham legal document/s in the South Carolina Lexington County Register of Deeds Office.
6. Did your client ever take the oath of office for a register of deeds in Lexington County located in the State of South Carolina on a Tuesday evening on January 3rd, 2017, at 6 p.m. in the Dorothy K. Black Council Chambers on the second floor of the Lexington County Administration building on South Lake Drive in Lexington as stated in the WestMetroNews on March 7, 2016, which provides comprehensive and fair news coverage of Lexington and Lexington County?
7. Did your client take the oath of office for a register of deeds in Lexington County located in the State of South Carolina on a Tuesday evening on January 3rd, 2017, at 6 p.m. in the Dorothy K. Black Council Chambers on the second floor of the Lexington County Administration building on South Lake Drive in Lexington by stating "I, Tina (Middle Name if applicable) Guerry, do solemnly swear (or affirm) that I will faithfully and truly, according to the best of my skill and ability, execute the duties of the office of register of deeds for the county of Lexington, in all things according to law; so help me, God".
8. Has the Attorney's client "Goal to carry on a people- oriented public service, while also continually striving to make the Register of Deeds office more efficient and user- friendly" stated in the WestMetroNews on March 7, 2016, ever been achieved during the Defendant's role as the South Carolina Lexington County Register of Deeds?
9. Is the Attorney's client "Goal to carry on a people- oriented public service, while also continually striving to make the Register of Deeds office more efficient and user- friendly" stated in the WestMetroNews on March 7, 2016, still being achieved at the present time by the South Carolina Lexington County Register of Deeds?
10. If the Attorney's client "Goal to carry on a people- oriented public service, while also continually striving to make the Register of Deeds office more efficient and user- friendly" stated in the WestMetroNews on March 7, 2016, is still being achieved at the present time as the South Carolina Lexington County Register of Deeds, please provide all facts that support this claim?

11. As the Defendant's Attorney, does the Defendant still maintain the stance that "When maintaining major accounts, I know I must listen closely to the clients' needs and be attentive to the details to ensure they are properly served. That's an important quality for the Register of Deeds, who must not only oversee important county documentation for recording such as property deeds, but also to assist people who depend on the services provided through the Register of Deeds Office." as stated in the WestMetroNews on March 7, 2016, which provides comprehensive and fair news coverage of Lexington and Lexington County?
12. As a conservative Republican, is the Defendant still committed to looking out for the taxpayers while making sure the office operates as efficiently as possible – eliminating unnecessary expenses without sacrificing needed services as stated in the WestMetroNews on March 7, 2016, which provides comprehensive and fair news coverage of Lexington and Lexington County?
13. Has the Defendant ever made the statement that "Now more than ever, we need elected leaders who put people over politics, and that's the style of service I hope to offer." in the WestMetroNews on March 7, 2016, which provides comprehensive and fair news coverage of Lexington and Lexington County?
14. Has the Defendant ever made the statement that "My only objective is to be the kind of public servant Lexington County families can be proud of," as stated in the WestMetroNews on March 7, 2016, which provides comprehensive and fair news coverage of Lexington and Lexington County?
15. Is it true that before becoming the Lexington County Register of Deeds, the Attorney's Defendant was a "businesswoman" as stated in the FITSNews on June 1, 2016 and on June 2, 2016?
16. Is the Defendant's Attorney aware that Lexington County was one of six counties in South Carolina to elect its register of deeds?
17. Does the Lexington County Register of Deeds Office exist to "record, maintain and preserve all land records for the County and make them readily available for public viewing."?
18. Was the Defendant the primary beneficiary of a brewing scandal involving her top two competitors – Rich Bolen and Mike Green during the Defendants race to be elected as the Lexington County Register of Deeds?
19. Explain if daily statutory duties are completed by the Defendant when involved in discharging the duties of the South Carolina Lexington County Register of Deeds.
20. Explain if daily ministerial duties are completed by the Defendant when involved in discharging the duties of the South Carolina Lexington County Register of Deeds.

21. Please state all facts explaining why the Defendant does not have a statutory duty under South Carolina Code of Laws §30-5-90 to Plaintiffs to timely record within one month of delivery to the Lexington ROD all real estate documents under the date and in the order of time at which they are delivered to the Lexington ROD as stated in paragraph 10 of the Defendant's answer to Plaintiffs complaint.
22. In paragraph 11 of the Defendant's answer to REQUEST FOR ADMISSIONS on June 21, 2024, the Defendant admitted that the duties of the South Carolina Lexington County Register of Deeds is to record, preserve and maintain all documents that are related to real properties. The ROD is to ensure all practices are followed as stated in the Code of Law of South Carolina, while operating the office in an efficient manner. Is this correct?
23. Paragraph 6 of the Defendant's Answer states that the Defendant *reasonable* believes that the document is materially false. Please state what facts led the Defendant to her belief(s).
24. When the Defendant told the Plaintiffs Timothy Nunally and Mark Nunnally on the Thursday March 7th, 2024, at 212 S. Lake Dr. Ste. 301 Lexington, SC 29072 that the Lexington County Register of Deeds did not feel comfortable with the \$100,000,000 lien amount of the FEDERAL CLAIM OF COMMON LAW LIEN and NOTICE OF FEDERAL COMMON LAW LIEN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROPERTY that the Plaintiffs attempted to file, is it because the Defendant was still being a Businesswoman rather than a Lexington County Register of Deeds?
25. Is it true that in paragraph 2 of the Defendant's answer to REQUEST FOR ADMISSIONS on June 21, 2024, the Defendant admitted that she cannot confirm the actual dates listed of when the Plaintiffs attempted to file and record a Common Law Lien and Notice of Writ of Attachment on Private and/ or Real, Personal Property for our real property located at 1759 Willow Creek Drive in Lexington County?
26. Is the Defendant still not able to confirm the actual dates listed of when the Plaintiffs attempted to file and record a Common Law Lien and Notice of Writ of Attachment on Private and/ or Real, Personal Property for our real property located at 1759 Willow Creek Drive in Lexington County?
27. Explain all the facts that the Defendant used to answer paragraph 7 of the Defendant's answer to the Plaintiffs Complaint.
28. Explain all the facts that the Defendant used to answer paragraph 8 of the Defendant's answer to the Plaintiffs Complaint.
29. Has the Defendant ever made a choice to not believe the force of the \$100,000,000 lien amount in the **FEDERAL CLAIM OF COMMON LAW LIEN and NOTICE OF FEDERAL COMMON**

**LAW LIEN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL
PROPERTY that the Plaintiffs attempted to file?**

30. Has the Defendant ever made a choice to understand the reasons behind the amount of the \$100,000,000 lien amount in the FEDERAL CLAIM OF COMMON LAW LIEN and NOTICE OF FEDERAL COMMON LAW LIEN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROPERTY that the Plaintiffs attempted to file?
31. Explain all the facts why "Exhibit 1" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on May 17, 2024, is not a "Lawfully issued" document.
32. Explain all the facts why "Exhibit 1" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on May 17, 2024, does not have a "Credible Witness" for the document.
33. Explain all the facts why "Exhibit 1" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on May 17, 2024, does not have two persons who are a "Witness" for the document.
34. In paragraph 3 and paragraph 4 of the Defendant's answer to REQUEST FOR ADMISSIONS on June 21, 2024, did the Defendant truthfully state that the document failed to have two witnesses.
35. Explain all the facts why "Exhibit 1" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on May 17, 2024, does not have a "Notarial act", "notary act", or "notarization" for the document.
36. Explain all the facts why "Exhibit 1" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on May 17, 2024, does not have a "Notary Public" for the document.
37. In paragraph 3 and paragraph 4 of the Defendant's answer to REQUEST FOR ADMISSIONS on June 21, 2024, did the Defendant truthfully state that the notary's name was not legible?
38. In paragraph 3 of the Defendant's REQUEST TO ADMIT for the Plaintiffs dated August 13, 2024, did The Deed of Distribution of property from the Estate of Carl Alvin Nunally, Sr., recorded in Book 21073 at page 1408 and rerecorded in Book 21075 at page 5539 in the ROD office for Lexington County contain a notary's name that was not legible?
39. Does the Lexington County Register of Deeds in South Carolina accept original documents or certified copies from government agencies and out of state courts for recording?
40. Explain all the facts why "Exhibit 2" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on February 14, 2024, is not a "Lawfully issued" document.

Exhibit “1”

Exhibit “1”:

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **9/27/2024**.
 - is a true and accurate copy of the original.
 - is being offered into evidence to prove the purpose of ***Exhibit “1”***.
 - No party objects to the admission of this Exhibit “1” into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

INDIVIDUAL ACKNOWLEDGEMENT

Type or Title of Document:

FEDERAL CLAIM OF COMMON LAW LIEN
and
NOTICE OF FEDERAL COMMON LAW LIEN
WRIT OF ATTACHMENT ON
PRIVATE AND/OR REAL, PERSONAL PROPERTY

Number of pages: (6) Date of document: January 9, 2024

Trust CAN IRREVOCABLE TRUST the OWNER of the private property;
and
the LIENOR.

48 ***** 48

Prepared By:
Mark Anthony Nunally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 5681 Grande River Road
Atlanta, Georgia State [30349]

LIEN
COMMON LAW
AND
NOTICE OF WRIT OF ATTACHMENT
ON PRIVATE AND/OR REAL, PERSONAL PROPERTY

January 9, 2024

NOTICE TO:

Lexington County Court of Common Pleas; Clerk of Lexington County Court of Common Pleas, and Lexington County Register of Deeds of the State of South Carolina in and for Columbia, South Carolina; and acting Sheriff of Lexington County; and All persons known and unknown who may be similarly situated and all other concerned parties.

You are hereby notified that a FEDERAL COMMON LAW LIEN AND WRIT OF ATTACHMENT - ON PRIVATE AND/OR REAL, PERSONAL PROPERTY is now in effect on a certain parcel of Real Estate now of record in the Name of Timothy Allen Nunally. The LIENOR, on property located in Lexington County, South Carolina State and known as 1759 Willow Creek Drive, Columbia, South Carolina; Clerk of Lexington County Court of Common Pleas of South Carolina State; and more specifically LEGALLY and Lawfully described as:

1759 Willow Creek Drive Columbia, SC
Lat: 34.066370 Long: -81.184940

ALL THAT CERTAIN PIECE, PARCEL, or lot of land, with the improvements thereon, situated, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W on plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975 and recorded in the Office of the RMC for Lexington County in Plat Book 139 -G at page 23; Also being shown and delineated on a plat prepared for Dana C. Frost and Terri L. Frost by Belter & Associates, Inc., dated 6/14/1993 and recorded in the Office of the RMC for Lexington County in Plat Book 262 at Page 070. Reference being made to said plat which is incorporated herein by reference for a more accurate and complete description ; all measurements being a little more or less.

This being identical property conveyed to the Mortgagors by Deed of Dana C. Frost and Terri L. Frost dated August 8, 1994 and recorded simultaneously herewith in Deed Book 5145 at Page 97.

Grantee Address: 1759 Willow Creek Drive
Columbia, South Carolina State [29212]

Copy of this **Common Law Lien, Writ of Attachment On Private, And/or Real, and Personal Property** has also been filed with the **Secretary of State of South Carolina Republic**.

Mark Hammond— Secretary of State, South Carolina State

Pursuant to that certain agreement that **LIENOR** Timothy Allen Nunally "CAN IRREVOCABLE" Trust of the property, the **LIENOR**, claims the attachment of the **COMMON LAW LIEN, WRIT OF ATTACHMENT ON REAL AND PRIVATE/PERSONAL PROPERTY** is in the AMOUNT of:

One Hundred Million Dollars (\$100,000,000) for 1759 Willow Creek Drive, Columbia, South Carolina State [29212].

MEMORANDUM OF LAW IN SUPPORT

Writ Of Attachments is but another form of **Common Law Lien** and supersede mortgages and equity liens, and Deeds of Trust Drummond Carriage v. Mills, (1878) N.W. 99; Hewitt V. Williams, 47 La. Ann. 742, 17 So. 269; Carr V. Dail, 19 S.E. 235; McMahan V. Ludin 58 N.H. 827, and may be satisfied only when paid and/or property is taken in lieu of the monetary value and fully satisfied by said taking of property.

The ruling of the U.S. Supreme Court in Rich v. Braxton, 158 U.S. 375, specifically forbids judges (Titles of Nobility) from invoking equity jurisdiction to remove common law liens or similar "clouds of title." Furthermore, even if a preponderance of evidence displays the lien to be void or voidable, the equity court (and Title of Nobles) still may not proceed until the moving party asks for and comes "to equity" with "clean hands" based on the "Clean Hands Doctrine" And "Power Of Estoppel", Trice v. Comstock, 57 C.C.A. 646; West V. Washington Sheriff, 153 App. Div. 460, 138 N.Y. Supp. 230.

ANY OFFICIAL WHO ATTEMPTS TO MODIFY OR REMOVE THIS COMMON LAW LIEN IN THE FORM OF WRIT OF ATTACHMENT IS FULLY LIABLE FOR DAMAGES AT LAW PURSUANT TO THE MANDATORY RULINGS OF THE U.S. SUPREME COURT IN BUTZ v. ECOHOMU, 438 U.S. 494, 98 S.Ct. 2894; BELL v. HOOD, 327 U.S. 678; and BIVENS v. UNKNOWN AGENTS, 499 U.S. 388.

This Federal At Law Lien in the form of a Writ Of Attachment(s) shall be valid, notwithstanding any other provision of statute or rule regarding the form or content of a "notice of lien", nor shall it be dischargeable for 100 years, nor extinguishable due to lienor's death whether accidental or purposely, nor dischargeable by lienor's heirs, assigns, or executors.

CAVEAT

Whoever attempts to modify, circumvent, and/or negate this Federal Common Law Lien, in the form of Writ Of Attachment, shall be deemed outlaws and/or felons and shall be prosecuted pursuant to Title 42, United States Code, Sect. 1983, 1985, and 1986, and Punishable under the penalties of the common law at law and applicable sections of Title 18, United States Code.

Demand is made upon all public officials under penalty of Title 42 U.S.C.S. Section 1986 not to modify or remove this lien in any manner.

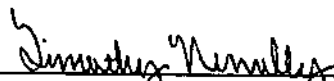
JUDICIAL NOTICE

I HEREBY NOTICE this to all parties and all Court(s) that pursuant to U.S. Supreme Court case *HAFER v. MELO*. No. 90-681, November 1991, any judicial actions which violate the constitutional rights of individuals may be sued as a cause of action in civil litigation against those performing said acts, without any form of immunity.

CONSTITUTIONAL PRIVILEGE - Immunity: State officials sued in their individual capacities are "persons" subject to suits for damages under 42 USC 1983; Eleventh Amendment does not bar such suits in federal court because of the purchase of bond insurance (*Hafer v. Melo*. No. 90-681). page 4001.

Respectfully Submitted in the Name of Justice on

This 9th day of January 2024.



Timothy Allen Nunally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 1759 Willow Creek Drive
Columbia, South Carolina State [29212]

AFFIDAVIT

South Carolina State

County of Lexington

BEFORE ME, the undersigned authority, on this 9th day of January,
2024, did personally appear Timothy Allen Nunally, Trustee, with authority as the LIENOR,
who being first personally and duly sworn, does depose and say that the information contained in
this foregoing Federal Common Law Lien Writ of Attachment of Real and Personal Property is
true and accurate.

Further this affiant sayeth not.

Timothy Nunally
Timothy Allen Nunally

"LIENOR" and "Trustee"

Rosevelt L. Robinson

"WITNESS"

Rosevelt L. Robinson

ACKNOWLEDGEMENT

South Carolina State

County of Lexington

The foregoing Federal common Law Lien Writ of Attachment on Real
and Personal Property was acknowledged before me this 9th day
of January, 2024, by Trustee Timothy Allen Nunally of the private
property, did execute same.

Timothy Nunally
Timothy Allen Nunally

Charlene H. Robinson
Notary

My Commission Expires:

SEAL

Exhibit "2"

Exhibit "2":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **9/27/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit "2"***.
- No party objects to the admission of this Exhibit "2" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

Prepared By:
Mark Anthony Nunnally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 5681 Grande River Road
Atlanta, Georgia State

LIEN COMMON LAW

AND

NOTICE OF WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROPERTY

February 5, 2024

NOTICE TO:

Superior Court Clayton County; Clerk of Superior Court of Clayton County, and Register of Deeds of Clayton of the State of Atlanta in and for Atlanta, Georgia; and acting Sheriff of Clayton County; and All persons known and unknown who may be similarly situated and all other concerned parties.

You are hereby notified that a FEDERAL COMMON LAW LIEN AND WRIT OF ATTACHMENT - ON PRIVATE AND/OR REAL, PERSONAL PROPERTY is now in effect on a certain parcel of Real Estate now of record in the Name of Timothy Allen Nunally. The LIENOR, on property located in Clayton County, Georgia State and known as 5681 Grande River Road, Atlanta, Georgia; Clerk of Superior Court in Clayton County of Georgia State; and more specifically LEGALLY and Lawfully described as:

Located: 5681 Grande River Road, Georgia State [39456]

[Lat = Latitude Long = Longitude]

Lat: 33.6003687 Long: -84.4457561

ALL THAT tract or parcel of land lying and being in Land Lot 90 of the 13 District, Clayton, Georgia, being all of Lot 23, River's Station Subdivision, Phase D, Unit, 1, as per plat recorded in Plat Book 38, pages 104-107, Clayton County, Georgia records, which plat is incorporated herein and made a part hereof by this reference.

(Parcel: 130980C-C009)

**Grantee Address: 5681 Grande River Road
Atlanta, Georgia State**

2024 BOOK 1 PAGE 293

Copy of this **Common Law Lien, Writ of Attachment On Private, And/or Real, and Personal Property** has also been filed with the **Secretary of State of Georgia Republic.**

Brad Raffensperger– Secretary of State, Georgia State

Pursuant to that certain agreement that **LIENOR** Timothy Allen Nunally "CAN IRREVOCABLE" Trust of the property, the **LIENOR**, claims the attachment of the **COMMON LAW LIEN, WRIT OF ATTACHMENT ON REAL AND PRIVATE/PERSONAL PROPERTY** is in the AMOUNT of:

One Hundred Million Dollars (\$100,000,000) for 5681 Grande River Road, Atlanta, Georgia State [30349].

MEMORANDUM OF LAW IN SUPPORT

Writ Of Attachments is but another form of Common Law

Lien and supersede mortgages and equity liens, and Deeds of Trust Drummond Carriage v. Mills, (1878) N.W. 99; Hewitt V. Williams, 47 La. Ann. 742, 17 So. 269; Carr V. Dail, 19 S.E. 235; McMahan V. Ludin 58 N.H. 827, and may be satisfied only when paid and/or property is taken in lieu of the monetary value and fully satisfied by said taking of property.

The ruling of the U.S. Supreme Court in Rich v. Braxton, 158 U.S. 375, specifically forbids judges (Titles of Nobility) from invoking equity jurisdiction to remove common law liens or similar "clouds of title." Furthermore, even if a preponderance of evidence displays the lien to be void or voidable, the equity court (and Title of Nobles) still may not proceed until the moving party asks for and comes "to equity" with "clean hands" based on the "Clean Hands Doctrine" And "Power Of Estoppel", Trice v. Comstock, 57 C.C.A. 646; West V. Washington Sheriff, 153 App. Div. 460, 138 N.Y. Supp. 230.

ANY OFFICIAL WHO ATTEMPTS TO MODIFY OR REMOVE THIS COMMON LAW LIEN IN THE FORM OF WRIT OF ATTACHMENT IS FULLY LIABLE FOR DAMAGES AT LAW PURSUANT TO THE MANDATORY RULINGS OF THE U.S. SUPREME COURT IN BUTZ v. ECOHOMU, 438 U.S. 494, 98 S.Ct. 2894; BELL v. HOOD, 327 U.S. 678; and BIVENS v. UNKNOWN AGENTS, 499 U.S. 388.

This Federal At Law Lien in the form of a Writ Of Attachment(s) shall be valid, notwithstanding any other provision of statute or rule regarding the form or content of a "notice of lien", nor shall it be dischargeable for 100 years; nor extinguishable due to lienor's death whether accidental or purposely, nor dischargeable by lienor's heirs, assigns, or executors.

CAVEAT

Whoever attempts to modify, circumvent, and/or negate this? Federal Common Law Lien, in the form of Writ Of Attachment, shall be deemed outlaws and/or felons and shall be prosecuted pursuant to Title 42, United States Code, Sect. 1983, 1985, and 1986, and Punishable under the **penalties of the common law** at law and applicable sections of Title 18, United States Code.

Demand is made upon all public officials under penalty of Title 42 U.S.C.S. Section 1986 not to modify or remove this lien in any manner.

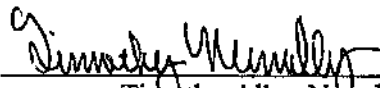
JUDICIAL NOTICE

I HEREBY NOTICE this to all parties and all Court(s) that pursuant to U.S. Supreme Court case HA FER v. MELO. No. 90-681, November 1991, any judicial actions which violate the constitutional rights of individuals may be sued as a cause of action in civil litigation against those performing said acts, without any form of immunity.

CONSTITUTIONAL PRIVILEGE - Immunity: State officials sued in their individual capacities are "persons" subject to suits for damages under 42 USC 1983; Eleventh Amendment does not bar such suits in federal court because of the purchase of bond insurance (Hafer v. Melo. No. 90-681). page 4001.

Respectfully Submitted in the Name of Justice on

This 5th day of February 2024.



Timothy Allen Nunnally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 5681 Grande River Road
Atlanta, Georgia State

AFFIDAVIT

FILED
CLAYTON COUNTY, GA

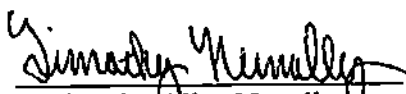
2024 FEB 14 P 4:12

CLAYTON COUNTY
GA

Georgia State
County of Clayton

BEFORE ME, the undersigned authority, on this 5th day of February,
2024, did personally appear Timothy Allen Nunally, Trustee, with authority as the
LIENOR, who being first personally and duly sworn, does depose and say that the
information contained in this foregoing Federal Common Law Lien Writ of Attachment
of Real and Personal Property is true and accurate.

Further this affiant sayeth not.



Timothy Allen Nunally
"LIENOR" and "Trustee"

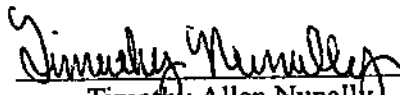


Third Party Witness

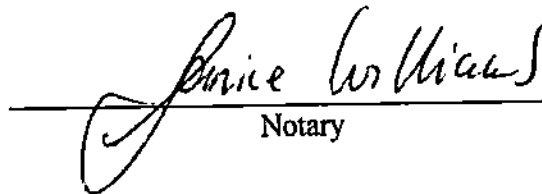
ACKNOWLEDGEMENT

Georgia State
County of Clayton

The foregoing Federal common Law Lien Writ of Attachment on Real and Personal Property was acknowledged before me this 5th day of February, 2024, by Trustee Timothy Allen Nunally of the private property, did execute the same.



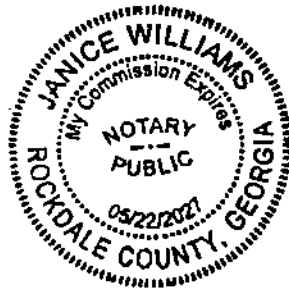
Timothy Allen Nunally



Notary

My Commission Expires: 05/22/2027

SEAL



INDIVIDUAL ACKNOWLEDGEMENT

**FILED
CLAYTON COUNTY, GA**

Type or Title of Document:

2024 FEB 14 P 4:12

**FEDERAL CLAIM OF COMMON LAW LIEN
and
NOTICE OF FEDERAL COMMON LAW LIEN
WRIT OF ATTACHMENT ON
PRIVATE AND/OR REAL, PERSONAL PROPERTY**

Number of pages: 4 Date of document: February 5, 2024

Trust CAN IRREVOCABLE TRUST the OWNER of the private property;
and
the LIENOR.

48 ***** 48

**CLERK OF SUPERIOR AND STATE COURTS
ROCKDALE COUNTY, GA**

Janice Morris, CSC
Clerk of Superior & State Courts
Rockdale Judicial Circuit
clerkofcourtoffice@rockdalecountyga.gov



Rockdale County Courthouse
922 Court Street, NE
Conyers, Georgia 30012
770-278-7900

I, JANICE MORRIS, CLERK OF SUPERIOR COURT OF ROCKDALE COUNTY, do hereby certify that, as of record in this office, JANICE WILLIAMS, 837 COCHISE TRAIL SE, CONYERS, ROCKDALE COUNTY GA 30094, was on May 23, 2023, duly commissioned and sworn and authorized by the laws of the State of Georgia, as a Notary Public for the State of Georgia, to take proof of acknowledgment of deeds and other instruments in writing to be recorded in said State and to administer oaths and affirmations in said State, said commission to remain in effect for a period of four years, expiring May 22, 2027.



In testimony Whereof, I have hereunto set my hand and affixed the seal of my said court, this 7th day of February, 2024.

(Deputy Clerk's Signature)

Deputy Clerk of Superior Court
ROCKDALE County, Georgia

www.rockdaleclerk.com

2024 BOOK 1 PAGE 296

RESPECTFULLY SUBMITTED this 30th day of September 2024.

Timothy Nunally

Timothy Nunally, Plaintiff

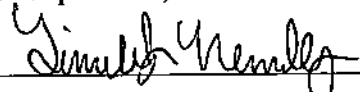
[Signature]

Mark Nunnally

[Certificate of Service]

CERTIFICATE OF SERVICE

UNDER PENALTIES OF PERJURY the undersigned certifies that a copy of the foregoing was provided by Certified U.S. mail to Attorney Jeff M. Anderson, 140 East Main Street, Post Office Box 489, Lexington, SC 29071-0489 this ^{30th} day of September, 2024.


TIMOTHY NUNALLY

5681 GRANDE RIVER RD
ATLANTA, GA 30349-9127

VERIFICATION

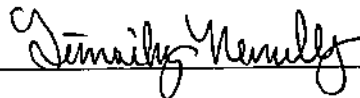
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

BEFORE ME personally appeared Timothy Nunally who, being by me first duly sworn and identified in accordance with South Carolina law, deposes and says:

1. My name is Timothy Nunally, Plaintiff herein.
2. I have read and understood the attached foregoing document, and each fact alleged therein is true and correct of my own personal knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.

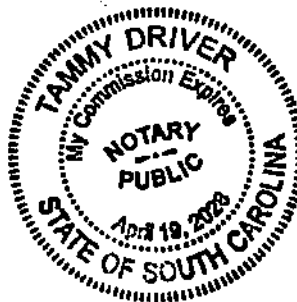

Timothy Nunally, Affiant

SWORN TO and subscribed before me this 30 day of September 2024.


Notary Public

My commission expires:

4-19-28



FILED

2024 SEP 30 PM 12:47

HIS HONORABLE
CLERK OF COURT
LEXINGTON SC

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Case No. 2024-CP-32-01682

Judge William Keesley

Timothy Nunally, Mark Nunnally,

Plaintiffs,

v.

Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds,

Defendant,

_____ /

MOTION TO DEEM REQUEST ADMITTED FOR DEVIOUS RESPONSES

PLAINTIFFS Timothy Nunally, Mark Nunnally, pursuant to South Carolina Rules of Civil Procedure Rule 26 - General Provisions Governing Discovery 26(b) Scope of Discovery and South Carolina Rules of Civil Procedure Rule 36 - Request for Admission 36(b) Effect of Admission, moves this Honorable Court to enter an Order determining insufficient a response of Defendant Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds, (hereinafter Tina) to Plaintiffs REQUEST FOR ADMISSIONS and deeming same admitted for all purposes, stating in support:

1. On or about August 26, 2024 Plaintiffs served Defendant with a REQUEST FOR ADMISSIONS.
2. Tina refused to respond to requested admissions within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact set by the South Carolina Rules of Civil Procedure that control this Honorable Court.
3. The document attached as Exhibit "1" accurately states Rule 26(b) of the South Carolina Rules of Civil Procedure.

4. Unless otherwise limited by order of the court in accordance with these rules, South Carolina Rules of Civil Procedure 26(b) Scope of Discovery, it is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

5. Rule 26 of the Federal Rules of Civil Procedure says, "Relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence."

6. The document attached as Exhibit "2" accurately states Rule 26 of the Federal Rules of Civil Procedure.

7. Each of the items that were requested on or about August 26, 2024 are reasonably calculated to lead to the discovery of admissible evidence in accordance with the general rule governing discovery in this court.

8. Justice and the rules controlling this Honorable Court require that the requested items be admitted forthwith.

9. This court is not a forum for cute tricks nor a stage for clever use of smoke and mirrors word magic to evade responding to lawful discovery requests pursuant to the rules that control this court.

10. Tina's response to plaintiff's request for admissions is nothing short of a word game.

11. The information sought in Paragraph's 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 are reasonably calculated to lead to the discovery of admissible evidence.

12. Tina evaded answering by claiming "This Defendant objects to responding to all Request for Admissions except 15, 16, and 17 on the grounds that the Request are not within the scope of matters as allowed by South Carolina Rules of Civil Procedure 34 and 26 (b) in that the Request ask for admitting prior court proceedings and South Carolina statutory law which are not with the referenced Rules of Procedure."

13. The document attached as Exhibit "3" accurately states Rule 34 of the South Carolina Rules of Civil Procedure.

14. According to South Carolina Rules of Civil Procedure 26 (b) (1) "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter."

15. According to South Carolina Rules of Civil Procedure 36 (a) "A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37 (c), deny the matter or set forth reasons why he cannot admit or deny it."

16. The document attached as Exhibit "4" accurately states Rule 36 (a) and Rule 36 (b) of the South Carolina Rules of Civil Procedure.

17. The document attached as Exhibit "5" accurately states Rule 37 (c) of the South Carolina Rules of Civil Procedure.

18. According to South Carolina Rules of Civil Procedure 36 (b) "Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. "

19. The document attached as Exhibit "6" evidences a phone log kept regarding the movants making a "good faith" effort to resolve this dispute before filing this motion and to so certify in this motion unless the consultation would serve no useful purpose or could not be timely held.

20. The document attached as Exhibit "7" evidences a "Notarized Good Faith Letter" faxed to Tina's Attorney Jeff M. Anderson regarding the movants making a "good faith" effort to resolve this dispute before filing this motion and to so certify in this motion unless the consultation would serve no useful purpose or could not be timely held.

21. The document attached as Exhibit "8" evidences a "Notarized Good Faith Letter" provided by Certified U.S. Next Day Mail to Tina's Attorney Jeff M. Anderson regarding the movants making a "good faith" effort to resolve this dispute before filing this motion and to so certify in this motion unless the consultation would serve no useful purpose or could not be timely held.

22. Tina's resort to word games is in contempt of this Court's lawful authority and should be sanctioned by entry of an Order deeming the requested admission admitted for all purposes.

WHEREFORE plaintiffs Timothy Nunally, Mark Nunnally moves this Honorable Court to enter an Order deeming the request referenced herein admitted for all purposes during the pendency of these proceedings.

RESPECTFULLY SUBMITTED this 30th day of September 2024.

We CERTIFY that a copy of the foregoing was provided by CERTIFIED U.S. Mail to Jeff M. Anderson, 140 East Main Street, Post Office Box 489, Lexington, SC 29071-0489 this 27th day of September, 2024.

[Certificate of Service]

The amendment to South Carolina Court Rules Civil Pleadings and Motions Rule 11(a) requires that a movant make a "good faith" effort to resolve any dispute before filing a motion and to so certify in the motion unless the consultation would serve no useful purpose or could not be timely held.

We CERTIFY that a good faith effort was made to communicate with opposing counsel with a view toward resolving the issues raised by the foregoing motion, however the parties are at an impasse.

Timothy Nunally, Plaintiff

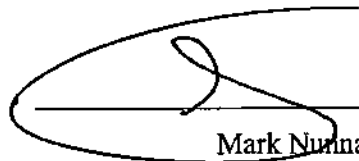

Mark Nunnally, Plaintiff

Exhibit “1”

Exhibit “1”:

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **9/27/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit “1”***.
- No party objects to the admission of this Exhibit “1” into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

S.C. R. Civ. P. 26

Rule 26 - General Provisions Governing Discovery

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. The frequency or intent of use of discovery methods set forth in subdivision (a) shall be limited by the court if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) the discovery is unreasonably burdensome or expensive taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c) of this Rule.

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for the trial by or for another party or by or for that other party's representative

(including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4)

(A) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained by any discovery method subject to subdivisions (b)(4)(B) and (C) of this rule, concerning fees and expenses, and subdivision (b)(4)(D).

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means. A party is not required to disclose nor produce an expert who was only consulted informally, or consulted and not retained or specially employed.

(C) Upon the request of the party seeking discovery, unless the court determines otherwise for good cause shown, or the parties agree otherwise, a party retaining an expert who is subject to deposition shall produce such expert in this state for the purpose of taking his deposition, and the party seeking discovery shall pay the expert a reasonable fee for time and expenses spent in travel and in responding to discovery and upon motion the court may require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(D) Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses. Rule 26(b)(3) and Rule 26(b)(4)(A) protect communications between the party's attorney and any witness designated as an expert, regardless of the

form of the communications, including draft reports, except to the extent that the communications:

- (i) relate to compensation for the expert's study or testimony;
- (ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
- (iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(5) Claims of Privilege or Protection of Trial Preparation Materials.

(A) Information Withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(B) Information Produced. If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The producing party must preserve the information until the claim is resolved.

(6) Electronically Stored Information.

(A) A party need not provide discovery of electronically stored information from sources that the party identifies to the requesting party as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery, including allocation of expenses associated with discovery of the electronically stored information.

(B) On motion or on its own motion, the court shall limit the frequency or extent of discovery otherwise allowed by these rules if the court determines that:

- (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
- (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c).

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the circuit where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense, including one or more of the following:

- (1) that the discovery not be had;
- (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) that the discovery may be had only by a method of discovery other than selected by the party seeking discovery;
- (4) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters;
- (5) that discovery be conducted with no one present except persons designated by the court;
- (6) that a deposition after being sealed be opened only by order of the court;
- (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except that requests for discovery under Rules 31, 33, 34, and 36 shall be deemed to continue from the time of service until the time of trial of the action so that information sought, which comes to the knowledge of a party, or his representative or attorney, after original answers have been submitted, shall be promptly transmitted to the other party.

In addition, a party is under a duty seasonably to supplement his response with respect to any question directly addressed to (1) the identity and location of persons having knowledge of discoverable matters, and (2) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(f) Discovery Conference. At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorneys for any party if the motion includes:

- (1) A statement of the issues as they then appear;
- (2) A proposed plan and schedule of discovery;
- (3) Any limitations proposed to be placed on discovery;
- (4) Any other proposed orders with respect to discovery;
- (5) A statement of any issues relating to discovery of electronically stored information, including the form or forms in which it should be produced;
- (6) A statement of any issues relating to claims of privilege or of protection as trial preparation material, including-if the parties agree on a procedure to assert such claims after production-whether the parties wish to have the court include their agreement in an order; and
- (7) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and his attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires. Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial hearing authorized by Rule 16.

(g) Signing of Discovery Requests, Responses, and Objections. Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state his address. The signature of the attorney or party constitutes a certification in accordance with Rule 11.

(1) Filing, Service and Custody. Except as provided in Rule 30(h), the party requesting discovery shall serve the request on other counsel or parties, but not file the notice or materials or matters discovered. The requesting party shall retain the originals and shall file the originals with the clerk of court when the same are to be used at a hearing or at trial.

(2) Destruction. One year after the final termination of an action in which discovery other than depositions has been taken, the party taking the other discovery or the clerk of court, as the case may be, may destroy or otherwise dispose of the original discovery requests and responses.

S.C. R. Civ. P. 26

Amended effective 4/28/2011; amended by Order dated April 30, 2024.

This is the language of Federal Rule 26(a) as amended August 1, 1983. The second part was added to address the problem of duplicative, redundant, and excessive discovery by encouraging judges to identify instances of needless discovery and to limit the uses of the various discovery devices accordingly. This rule changes State procedure by permitting discovery by deposition upon written questions and also mental and physical examinations.

This is the language of Federal Rule 26(b). It is substantially equivalent to the language of Circuit Court Rule 87B with minor editorial changes. In particular it has the same scope of discovery--"relevant to the subject matter."

This is the language of the Federal Rule 26(b)(2) and authorizes discovery of insurance agreements by any discovery method. Circuit Court Rule 90(e) presently authorizes an interrogatory to discover the names and addresses of all insurance companies which have liability insurance relating to the claim and the numbers and amounts of the policies. Thus, this language does not produce any significant change in existing State practice.

This is the language of Federal Rule 26(b)(3). There is no equivalent Circuit Court Rule on this subject although there is existing common law providing similar protection. This provision is added to clarify and standardize the law on the issue.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

This is a continuation of paragraph (b)(3), of the Federal Rule and provides for the discovery of statements by parties and witnesses. This is comparable to Circuit Court Rule 90(e)(1) which provides for the discovery of the existence of statements taken from witnesses.

Rule 26(b)(4) is based upon the comparable Federal Rule. The language is changed to permit discovery of an expert expected to testify at trial by any means and without any special showing of need. There is also a requirement that the party is not required to disclose an expert casually or informally consulted or one consulted but not specially employed. This is similar to the result reached under the federal rules and its Advisory Notes to 26(b)(4)(B). 26(b)

(4)(C) is changed to require a party producing an expert for deposition to do so in this state. The discovering party is specifically made responsible for reasonable fees and expenses incurred in traveling to this state, as well as the time spent in responding to the discovery.

Note to 1986 Amendment:

This amendment to Rule 26(b)(4)(C) replaces the "manifest injustice" standard with that of "good cause shown" to conform to similar references to the standard for controlling discovery practice in other Rules.

Note to 2024 Amendment:

The amendment adding new paragraph (b)(4)(D) incorporates portions of the 2010 changes to Federal Rule 26(b)(4)(C), which provide additional protection for communications between lawyers and expert witnesses. The amendment will allow a freer exchange of information with an expert in the process of developing her thoughts and opinions and allow the consideration of the mental impressions of a lawyer without having to disclose those. These protections do not apply to the extent the lawyer and the expert communicate about matters that fall within the three exceptions in subdivisions (b)(4)(D)(i), (ii) and (iii).

Note to 1996 Amendment:

Rule 26 is amended to add paragraph (b)(5) requiring a party to notify the other parties that it is withholding information otherwise discoverable on grounds of privilege or work product. The party must also provide sufficient information to enable other parties to evaluate the applicability of the claimed privilege or protection. The rule does not specify the detail required which will depend upon the facts of each case. The rule applies to material otherwise discoverable, and does not require disclosure of information that is privileged. A motion challenging the claim of privilege or work product normally is decided by the court after an in camera inspection of the materials. Non-parties have a similar obligation when responding to a subpoena under Rule 45(d)(2), SCRCP, and there is similar language in the comparable federal rules.

Note to 2011 Amendment:

The amendments to Rules 16, 26, 33, 34, 37 and 45 of the South Carolina Rules of Civil Procedure concerning electronic discovery are substantially similar to the corresponding provisions in the Federal Rules of Civil Procedure. The rules concerning electronic discovery are intended to provide a practical, efficient and cost-effective method to assure reasonable discovery. Pursuit of electronic discovery must relate to the claims and defenses asserted in the pleadings and should serve as a means for facilitating a just and cost-effective resolution of disputes.

This is the language of Federal Rule 26(c). Exactly the same language was recently adopted as Circuit Court Rule 96.

This is the language of Federal Rule 26(d). There is no equivalent in the Circuit Court Rules. The purpose of the paragraph is to prevent the idea of "priority" in the taking of discovery, resulting in delay. The court however retains power to set the order of discovery if necessary.

This Rule 26(e) is the language of Federal Rule 26(e). A like duty to supplement the special interrogatories permitted under present Circuit Court Rule 90 is imposed by that rule and is substantially the same as the Federal Rule. In these discovery Rules the Federal language is adopted for all discovery except Rule 33(h) standard interrogatories. The Circuit Court Rule 90 provision is retained as to answers to those special interrogatories because the interrogatories are limited in number, the continuing duty to update them is not burdensome, and it preserves the existing State practice.

Note to 1996 Amendment:

Rule 26(e) is amended to make applicable the language of Rule 33(b) on the duty to supplement the standard interrogatories to discovery requests under Rule 31 Depositions Upon Written Questions, Rule 33 Interrogatories to Parties, Rule 34 Production of Documents and Tangible Things, and Rule 36 Request for Admission. Discovery requests under these rules are deemed to be continuing and the responding party must update the answers promptly when new information comes to the attention of the party, a representative of the party or counsel. This duty to supplement does not apply to discovery under Rule 30 Depositions Upon Oral Examination. However, there is an additional duty to provide supplemental information on expert witnesses and witnesses with knowledge of the facts of the case regardless of the form of the discovery request. The obligation to supplement prior discovery responses includes the duty to amend or supplement answers which are found to be incorrect or misleading so former subparagraph (e)(2) has been deleted, as has former subparagraph (e)(3) which is now redundant.

This is the language of Federal Rule 26(f). Its purpose is to prevent discovery abuse by encouraging the court to intervene when abuse occurs, or when an attorney has failed to obtain the cooperation of opposing counsel and should have the assistance of the court. Routine matters should be resolved by Rule 26(c) Motions for protective orders or Rule 37 Motions to compel. The discovery conference is discretionary with the court, and may be combined with a pretrial hearing.

This language is drawn from the first three sentences of Federal Rule 26(g) and has been slightly modified to incorporate reference to Rule 11. The more strict standard of the Federal Rules contained in Rules 11, 16 and 26 has not been adopted.

This paragraph conforms to Circuit Court Rule 97 and provides that, except for videotaped depositions under Rule 30(h), the requesting party retains the original discovery request and response until it is needed for a motion or trial, then it is filed with the court.

Exhibit "2"

Exhibit "2":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **9/27/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit "2"***.
- No party objects to the admission of this Exhibit "2" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

Fed. R. Civ. P. 26

Rule 26 - Duty to Disclose; General Provisions Governing Discovery

(a) REQUIRED DISCLOSURES.

(1) *Initial Disclosure.*

(A) *In General.* Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

- (i)** the name and, if known, the address and telephone number of each individual likely to have discoverable information-along with the subjects of that information-that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
- (ii)** a copy-or a description by category and location-of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;
- (iii)** a computation of each category of damages claimed by the disclosing party-who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and
- (iv)** for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(B) *Proceedings Exempt from Initial Disclosure.* The following proceedings are exempt from initial disclosure:

- (i)** an action for review on an administrative record;
- (ii)** a forfeiture action in rem arising from a federal statute;
- (iii)** a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;
- (iv)** an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;
- (v)** an action to enforce or quash an administrative summons or subpoena;
- (vi)** an action by the United States to recover benefit payments;
- (vii)** an action by the United States to collect on a student loan guaranteed by the United States;

(viii) a proceeding ancillary to a proceeding in another court; and

(ix) an action to enforce an arbitration award.

(C)Time for Initial Disclosures-In General. A party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

(D)Time for Initial Disclosures-For Parties Served or Joined Later. A party that is first served or otherwise joined after the Rule 26(f) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(E)Basis for Initial Disclosure; Unacceptable Excuses. A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2)Disclosure of Expert Testimony.

(A)In General. In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B)Witnesses Who Must Provide a Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report-prepared and signed by the witness-if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

- (i) a complete statement of all opinions the witness will express and the basis and reasons for them;
- (ii) the facts or data considered by the witness in forming them;
- (iii) any exhibits that will be used to summarize or support them;
- (iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;
- (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
- (vi) a statement of the compensation to be paid for the study and testimony in the case.

Exhibit "3"

Exhibit "3":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **9/27/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit "3"***.
- No party objects to the admission of this Exhibit "3" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

S.C. R. Civ. P. 34

Rule 34 - Production of Documents and Things and Entry upon Land for Inspection and Other Purposes

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents, or electronically stored information (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. If objection is made to the requested form or forms for producing electronically stored information (or if no form was specified in the request) the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

Unless the parties otherwise agree, or the court otherwise orders:

(1) If a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and

(2) a party need not produce the same electronically stored information in more than one form.

(c) Persons Not Parties. A person not a party may be compelled to produce documents or things or submit to an inspection only as provided in Rule 45. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

S.C. R. Civ. P. 34

Amended effective 4/28/2011.

This is the language of the current Federal Rule, and is an amended version of the rule which served as a guide for present Circuit Court Rule 88. The major change is that the requirement of good cause is eliminated because it was an erratic and uncertain guide for decisions by the court. It also saves the court having to handle the matter unless there is an objection to the document requests. Thirty days are permitted for a response, and there is provision for an independent action for discovery against persons not parties to the action.

Note to 1993 Amendment:

Rule 34 applies only to production from parties, and was amended specifically to provide that production from non-parties is governed only by Rule 45.

Note to 2011 Amendment:

The amendments to Rules 16, 26, 33, 34, 37 and 45 of the South Carolina Rules of Civil Procedure concerning electronic discovery are substantially similar to the corresponding provisions in the Federal Rules of Civil Procedure. The rules concerning electronic discovery are intended to provide a practical, efficient and cost-effective method to assure reasonable discovery. Pursuit of electronic discovery must relate to the claims and defenses asserted in the pleadings and should serve as a means for facilitating a just and cost-effective resolution of disputes.

Exhibit “4”

Exhibit “4”:

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **9/27/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit “4”***.
- No party objects to the admission of this Exhibit “4” into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

S.C. R. Civ. P. 36

Rule 36 - Request for Admission

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as stipulated in writing by the parties pursuant to Rules 29 and 6(b), the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be

subscribed thereby and the party who obtained the admissions fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose.

(c) Limitation. A party may serve on any other party more than one set of requests to admit, but the total number of all requests to one party shall not exceed twenty requests, including subparts, except by leave of court upon good cause shown. Requests to admit the genuineness of documents or tangible things are not limited to any number of documents or things.

S.C. R. Civ. P. 36

Note to 2001 Amendment:

The second sentence of the second paragraph of Rule 36(a) is amended to reflect the change in Rule 29 allowing the parties, under certain circumstances, to stipulate to extensions.

This is the language of current Federal Rule 36, as well as substantially the language of Circuit Court Rule 89, with the addition of the limitation in 36(c) which is new matter.

Exhibit "5"

Exhibit "5":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **9/27/2024**.
 - is a true and accurate copy of the original.
 - is being offered into evidence to prove the purpose of ***Exhibit "5"***.
 - No party objects to the admission of this Exhibit "5" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

S.C. R. Civ. P. 37

Rule 37 - Failure to Make or Cooperate in Discovery: Sanctions

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition in progress, to the court where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the place where the deposition is being taken.

(2) Motion. If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply With Order.

(1) Sanctions by Court in Circuit Where Deposition Is Taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court the failure may be

considered a contempt of that court.

(2) Sanctions by Court in Which Action Is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply show that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule

33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e) Failure to Participate in the Framing of a Discovery Plan. If a party or his attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party or his attorney to pay to any other party the reasonable expenses, including attorney's fees caused by the failure.

(f) Electronically Stored Information. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as result of the routine, good-faith operation of an electronic information system.

S.C. R. Civ. P. 37

Amended effective 4/28/2011.

This Rule 37 is the language of the Federal Rule with minor changes. The Federal Rule provides that a motion to compel discovery or for sanctions may be brought either in the court where the action is pending or in the place where the discovery or deposition is taken. Thus, if a deposition were being taken in another state or Federal district, the parties do not have to adjourn the deposition and return to the court where the action is pending for assistance. However, this Rule 37 deletes that provision with reference to the deposition of a party. Such motion may be brought only in the court where the action is pending. A motion to compel a witness deponent (not a party) to proceed, however, may be brought in the circuit court in the place where the deposition is being taken, usually the county of residence of the deponent.

Note to 2011 Amendment:

The amendments to Rules 16, 26, 33, 34, 37 and 45 of the South Carolina Rules of Civil Procedure concerning electronic discovery are substantially similar to the corresponding provisions in the Federal Rules of Civil Procedure. The rules concerning electronic discovery are intended to provide a practical, efficient and cost-effective method to assure reasonable discovery. Pursuit of electronic discovery must relate to the claims and defenses asserted in the pleadings and should serve as a means for facilitating a just and cost-effective resolution of disputes.

Exhibit “6”

Exhibit “6”:

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **9/27/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit “6”***.
- No party objects to the admission of this Exhibit “6” into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

Phone Call Log To Attorney Anderson 9.24.25
Called Attorney Jeff M. Anderson @ 1:54pm
On 9.24.24

Mailbox was full. Called
back to seek him through
the receptionist at 1:59pm
2:00pm

2:01pm
Ms Robin - Receptionist. Stated that
Jeff M. Anderson (Attorney) was at
the "office", but in a meeting until possibly
2:30 - 2:45pm

2:56pm
Left Name (Mark Nunnally) : phone
number (404. 980. 4488) with
Davis Frawley Receptionist Robin
to have Attorney Jeff M. Anderson
to return my urgent call.

4:16pm
Spoke with Receptionist Robin - was told
that Attorney Anderson was still in
a meeting. Also told me that our
"Good Faith Letter" fax did not come through
to their fax line.

4:20pm
Spoke with Receptionist Robin who informed me that
Attorney Anderson ¹⁷⁶ was still in meeting, but fax was
received.

Exhibit "7"

Exhibit "7":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **9/27/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit "7"***.
- No party objects to the admission of this Exhibit "7" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

* * * Communication Result Report (Sep. 24. 2024 5:26PM) * * *

1} Speedy Express Shipping & Print
2}

Date/Time: Sep. 24. 2024 5:19PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
0853 Memory TX	8033597478	P. 3	E-3)3)	P. 1-3

Reason for error

M. 1) Hang up or line fail
M. 3) No answer
M. 5) Exceeded max. E-mail size

E. 2) Busy
E. 4) No facsimile connection
E. 6) Destination does not support IP-Fax

FAX COVER PAGE

Date: September 24, 2024 Number of Pages: 3 PagesRecipient(s) Name: Attorney Jeff M AndersonRecipient(s) Phone Number: 803 359 2512, Recipient(s) Fax Number: 803 359 7478Sender(s) Name: Timothy Nunnally, Mark NunnallySender(s) Phone Number: 404 883 4488Subject: GOOD FAITH EFFORT MADE BY PLAINTIFFUrgent: YES!!!Message: Please respond ASAP!!!

* * * Communication Result Report (Sep. 24. 2024 5:27PM) * * *

1) Speedy Express Shipping & Print
2)

Date/Time: Sep. 24. 2024 5:20PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
0854 Memory TX	8033597478	P. 3	OK	

Reason for error

E. 1) Hang up or line fail
E. 3) No answer
E. 5) Exceeded max. E-mail size

E. 2) Busy
E. 4) No facsimile connection
E. 6) Destination does not support IP-Fax

FAX COVER PAGE

Date: September 24, 2024 Number of Pages: 3 PagesRecipient(s) Name: Attorney Jeff M AndersonRecipient(s) Phone Number: 803 359 2512 Recipient(s) Fax Number: 803 359 7478Sender(s) Name: Timothy Nupally, Mark NunnallySender(s) Phone Number: 404 880 4488Subject: GOOD FAITH EFFORT MADE BY PLAINTIFFUrgent: YES!!!Message: Please respond ASAP!!!

FAX COVER PAGE

Date: September 24, 2024

Number of Pages: 3 Pages

Recipient(s) Name: Attorney Jeff M Anderson

Recipient(s) Phone Number: 803 359 2512 Recipient(s) Fax Number: 803 359 7478

Sender(s) Name: Timothy Nunally, Mark Nunnally

Sender(s) Phone Number: 404 980 4488

Subject: GOOD FAITH EFFORT MADE BY PLAINTIFF

Urgent: YES!!!

Message: Please respond ASAP!!!

Davis Frawley
Attorneys at Law
803 359 2512 Office
803 359 7478 Fax
140 E Main St
Lexington, SC 29072
Attention: Attorney Jeff M. Anderson

Letter of Good Faith

Dear Attorney Jeff M. Anderson,

We the Plaintiffs in case number 2024-CP-32-01682 are trying to make an effort of "good faith" to discuss you and your clients' objections to the Plaintiffs REQUEST FOR ADMISSIONS filed into this case on August 26, 2024, at 10:12am. The motion we are about to file regarding the objections made by you, Attorney Jeff M. Anderson and your client Defendant Tina Guerry (individually and in her official capacity as the Lexington County Register of Deeds) is a MOTION TO DEEM REQUEST ADMITTED FOR DEVIOUS RESPONSES. Are there any ideas you may have about how we might resolve our differences without us, the Plaintiffs, filing this motion?

The Plaintiffs are writing down the time we called Attorney Jeff M Anderson, who we spoke to, what we told them, and what they said to the Plaintiffs.

If you agree to cooperate, so that our motion isn't needed, we have gained ground.

If you refuse to cooperate, we want to be certain that you know the Plaintiffs have our notes in case the court wants to confirm that the Plaintiffs made a "good faith" effort to resolve this matter before filing our motion. We are prepared to tell the court what we said to Attorney Jeff M. Anderson and Defendant Tina Guerry (individually and in her official capacity as the Lexington County Register of Deeds), who we spoke to, when, and what you said to the Plaintiffs in response.

It's possible for the Plaintiffs to write down your exact words.

Whether you agree or refuse to agree, Plaintiffs plan to follow-up with a letter (faxed and mailed) that provides an outline of what was said, requesting you, Attorney for the Defendant, to respond to our letter in writing if you have misconstrued the position stated on the phone by Plaintiffs.

Sincerely,

Mark Nunnally, Plaintiff

Case number 2024-CP-32-01682

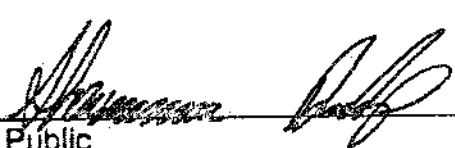
5681 Grande River Road

College Park, GA 30349

VERIFICATION

STATE OF GEORGIA
COUNTY OF CLAYTON

I CERTIFY that Mark Nunnally Plaintiff personally appeared before me, was identified in accordance with the laws of this State, and that he signed the foregoing good faith effort made to communicate with opposing counsel with a view toward resolving the issues raised by the foregoing under penalties of perjury in my presence and attested that the facts contained therein are true and correct.


Notary Public

My commission expires: 04/11/2027



[Certificate of Service]

Exhibit “8”

Exhibit “8”:

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **9/27/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit “8”***.
- No party objects to the admission of this Exhibit “8” into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs



CHURCH STREET
6691 CHURCH ST
RIVERDALE, GA 30274-9997
(800)275-8777

09/24/2024

04:44 PM

Product	Qty	Unit Price	Price
PM Express	1		\$30.45
Flat Rate Env			
Lexington, SC 29072			
Flat Rate			
Signature Requested			
Scheduled Delivery Date			
Wed 09/25/2024 06:00 PM			
Money Back Guarantee			
Tracking #:			
EI999626526US			
Insurance			\$0.00
Up to \$100.00 included			
Total			\$30.45

Grand Total: \$30.45

Debit Card Remit \$30.45

Card Name: MasterCard
Account #: XXXXXXXXXXXX4494
Approval #
Transaction #: 980
Receipt #: 109525
Debit Card Purchase: \$30.45
Card Swiped

Save this receipt as evidence of insurance. For information on filing an insurance claim go to <https://www.usps.com/help/claims.htm> or call 1-800-222-1811

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data rates may apply. You may also visit www.usps.com USPS Tracking or call 1-800-222-1811.

Preview your Mail
Track your Packages
Sign up for FREE @
<https://informedelivery.usps.com>

All sales final on stamps and postage.
Refunds for guaranteed services only.
Thank you for your business.

Tell us about your experience.
Go to: <https://postalexperience.com/Pos>
or scan this code with your mobile device.



or call 1-800-410-7420.

USPS Tracking®

FAQs >

Tracking Number:

Remove X

EI999626526US

Copy

Add to Informed Delivery (<https://informedelivery.usps.com/>)

Scheduled Delivery by

WEDNESDAY

25

September
2024 ⓘ

by

6:00pm ⓘ

Your item was delivered to an individual at the address at 11:29 am on September 26, 2024 in LEXINGTON, SC 29072. The item was signed for by R STEWART.

Feedback

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered

Delivered, Left with Individual

LEXINGTON, SC 29072

September 26, 2024, 11:29 am

See All Tracking History

What Do USPS Tracking Statuses Mean? (<https://faq.usps.com/s/article/Where-is-my-package>)

Text & Email Updates



Proof of Delivery



Davis Frawley
Attorneys at Law
803 359 2512 Office
803 359 7478 Fax
140 E Main St
Lexington, SC 29072
Attention: Attorney Jeff M. Anderson

Letter of Good Faith

Dear Attorney Jeff M. Anderson,

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The Plaintiffs are writing down the time we called Attorney Jeff M Anderson, who we spoke to, what we told them, and what they said to the Plaintiffs.

If you agree to cooperate, so that our motion isn't needed, we have gained ground.

If you refuse to cooperate, we want to be certain that you know the Plaintiffs have our notes in case the court wants to confirm that the Plaintiffs made a "good faith" effort to resolve this matter before filing our motion. We are prepared to tell the court what we said to Attorney Jeff M. Anderson and Defendant Tina Guerry (individually and in her official capacity as the Lexington County Register of Deeds), who we spoke to, when, and what you said to the Plaintiffs in response.

It's possible for the Plaintiffs to write down your exact words.

Whether you agree or refuse to agree, Plaintiffs plan to follow-up with a letter (faxed and mailed) that provides an outline of what was said, requesting you, Attorney for the Defendant, to respond to our letter in writing if you have misconstrued the position stated on the phone by Plaintiffs.

Sincerely,

Mark Nunnally, Plaintiff

Case number 2024-CP-32-01682

5681 Grande River Road

College Park, GA 30349

VERIFICATION

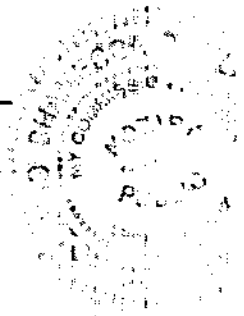
STATE OF GEORGIA
COUNTY OF CLAYTON

I CERTIFY that Mark Nunnally Plaintiff personally appeared before me, was identified in accordance with the laws of this State, and that he signed the foregoing good faith effort made to communicate with opposing counsel with a view toward resolving the issues raised by the foregoing under penalties of perjury in my presence and attested that the facts contained therein are true and correct.



Notary Public

My commission expires: 04/17/2027



CERTIFICATE OF SERVICE

UNDER PENALTIES OF PERJURY the undersigned certifies that a copy of the foregoing was provided by Certified U.S. mail to Attorney Jeff M. Anderson, 140 East Main Street, Post Office Box 489, Lexington, SC 29071-0489 this ~~27th~~^{30th} day of September, 2024.

Timothy Nunally
TIMOTHY NUNALLY

5681 GRANDE RIVER RD
ATLANTA, GA 30349-9127

VERIFICATION

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

BEFORE ME personally appeared Timothy Nunally who, being by me first duly sworn and identified in accordance with South Carolina law, deposes and says:

1. My name is Timothy Nunally, Plaintiff herein.
2. I have read and understood the attached foregoing document, and each fact alleged therein is true and correct of my own personal knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.

Timothy Nunally

Timothy Nunally, Affiant

SWORN TO and subscribed before me this 30 day of September 2024.

Tammy Driver

Notary Public

My commission expires:

4-19-28



FILED

2024 SEP 30 PM 12:30

LISA H. COOPER
CLERK OF COURT
LEXINGTON SC

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Case No. 2024-CP-32-01682

Judge William Keesley

Timothy Nunally, Mark Nunnally,

Plaintiffs,

v.

Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds,

Defendant,

_____ /

THIRD SET OF INTERROGATORIES

Definitions

- "Time Frame" means if not otherwise stated the time frame shall be the last three years.
- "Person" means any natural person, corporation, partnership, or other legal entity.
- "Relevant" means any information that is reasonably calculated to lead to the discovery of admissible evidence.
- "Pleading" means complaints and answers are pleadings.
- "Discovery" means the process of finding facts that may lead to admissible evidence to be placed in the court file or presented at hearings or trial.
- "Reasonable" means of or pertaining to the reasonable man, who is controlled by reason.
- "Fact" means a fact is an established truth, something that is evident, clearly seen, indisputable, beyond doubt.
- "Material facts" means facts tending to prove or disprove some fact in controversy.
- "False" means that which is not true.
- "Fraud" means actionable deceit in an intentional practice.
- "Legal" means not contrary to codified law.
- "Oath" means the solemn oath that is a foundation of Western Jurisprudence and a necessity of our modern legal system, for it is the oath (and the potential violation of that oath) that gives a court power to prevent perjury (falsified testimony) and corruption of other evidence.
- "Lawfully issued" means adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political subdivision of a state.

Definitions (Continued)

- "Credible Witness" means an individual who is personally known to the notary and whom the notary reasonably believes to be honest and reliable for the purpose of confirming to the notary the identity of another individual and the notary believes is not a party to or beneficiary of the transaction.
- "Witness" means a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.
- "Notarial act", "notary act", and "notarization" mean acts that the laws and regulations of this State authorize notaries public of this State to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.
- "Notary Public" means a notary public who shall affix to the deed or other instrument his official seal within the state of his appointment, which is a sufficient authentication of his signature, residence, and official character.
- "Propound" means to offer for consideration or discussion.
- "Client", "Defendant" and/ or "Defendant's" means Attorney Jeff M. Andersons client Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds.
- "Attorney" or "Attorney Anderson" means Attorney Jeff M. Anderson.
- "Lexington County ROD" means the current Lexington County Register of Deeds to date.
- "written instrument" or "instrument" means a written document that records legally binding agreements or acts, and establishes the legal rights, obligations, and duties that come with them.
- "Document" means information that is 1. Inscribed on a physical medium or stored in an electronic or other medium, 2. Retrievable in a perceivable form and 3. Eligible to be recorded in land records.
- "Record" means a document that has been recorded in the official records of a county, such as a deed, mortgage, or easement.
- "Recording" means a tangible medium that stores or records sounds or images, such as a tape, disc, phonograph record, audio or video cassette, wire, film, or other medium.
- "Recordation process" means the process of recording documents that convey an interest in real property, such as deeds, mortgages, leases, and assignments, with the clerk of court or register of deeds with the purpose to ensure that these documents are valid and to provide notice to the public.
- "Common Law" means a body of unwritten laws based on legal precedents established by the courts.
- "Statutory duty" means a legal requirement to perform an action.
- "Ministerial duty" means an act that is performed in accordance with instructions or laws, without the use of personal judgment or discretion that are absolute and involve the execution of a specific duty.
- "Act" means a bill passed by the South Carolina General Assembly and signed by the Governor, that becomes an Act and is assigned an Act number.
- "Law" or "the law" means The South Carolina Code of Laws, South Carolina Constitution, and Federal laws that include statutes, court decisions, and regulations issued by federal administrative agencies.

PLAINTIFFS Timothy Nunally and Mark Nunnally propounds the following interrogatories to Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds.

1. Identify all persons known to have any knowledge of the facts alleged in your pleadings and with regard to each provide their full name and, if known or available to you through the exercise of reasonable diligence, residence and business address, phone numbers, aliases, and all other information reasonably necessary to identify each such person.
2. Identify all persons known to have any knowledge of the facts alleged in your discovery and with regard to each provide their full name and, if known or available to you through the exercise of reasonable diligence, residence and business address, phone numbers, aliases, and all other information reasonably necessary to identify each such person.
3. Is it precise to say that a properly recorded deed is valid between the parties even if it is not recorded in the Lexington County, South Carolina recordation process?
4. Have there been any provisions made at common law, for the recording of deeds or other instruments in the Lexington County, South Carolina recordation process?
5. When no provisions were made at common law in the Lexington County, South Carolina recordation process, did those inactions leave open the possibility of double conveyances by the same person and uncertainties as to ownership?
6. Considering the Lexington County, South Carolina recordation process, were Recording Acts passed so that notice of an instrument might be given to persons subsequently purchasing the property for value or lending money and using the property as security therefore?
7. Is it factual that recording acts dating back to 1698 have provided that bona fide purchasers of real property, who pay consideration, are protected from parties whose claims are not on record at the time of the conveyance to the bona fide purchaser?

8. In the Lexington County, South Carolina recordation process, is it proper to say a bona fide purchaser is one who (1) actually pays the purchase price, (2) acquires legal title to the property, and (3) purchases in good faith without notice of a lien or defect?
9. Does the law assume that the grantee will search the index and discover the interest or claim due to how the recording of a document alerts all future grantees or lenders of the rights of the recorder in the Lexington County, South Carolina recordation process?
10. In the Lexington County, South Carolina recordation process, does the recording act impose a duty on a person about to advance money for the purchase of property, (or loaning money and taking a mortgage on such property) to investigate the records before paying the consideration to ascertain if there are any instruments of record affecting the title?
11. In the Lexington County, South Carolina recordation process, is the purchaser or lender who fails to investigate the records before paying the consideration to ascertain if there are any instruments of record affecting the title bound by what the record shows?
12. Is it correct that in the Lexington County, South Carolina recordation process before a deed may be recorded to impart constructive notice to subsequent purchasers for valuable consideration it must be executed in the presence of and subscribed by at least two witnesses?
13. Must a deed contain a proper probate or acknowledgement in order to be recorded in the Lexington County, South Carolina recordation process?
14. Is there a requirement in the Lexington County, South Carolina recordation process that instruments be acknowledged before recording to ensure the authenticity of the instruments?
15. Is it appropriate to say that in the Lexington County, South Carolina recordation process, proper execution and acknowledgement/probate are essential, because an improperly executed instrument does not give constructive notice of its existence?

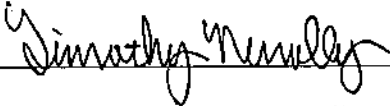
16. In the Lexington County, South Carolina recordation process, in a strict sense, filing is notice to all persons to put them upon inquiry of the purport of the instrument so filed and the property affected by the instrument, correct?
17. In the Lexington County, South Carolina recordation process, is it a fact that subsequent purchasers and creditors have constructive notice of instruments properly filed of record?
18. In the Lexington County, South Carolina recordation process, is it a fact that a party is deemed to have notice of an instrument and its contents from the date it is recorded?
19. In the Lexington County, South Carolina recordation process, is it a necessary and inseparable part of the recordation that the recorder, upon filing of a deed, mortgage or other written instrument, to enter it upon the proper indexes?
20. In the Lexington County, South Carolina recordation process, is it appropriate to say that the entries into the indexes required to be made are notice to all persons sufficient to put them upon inquiry as to the purport and effect of the deed, mortgage, or other written instrument unless the filing of the instrument for record is entered as required in the indexes?
21. In the Lexington County, South Carolina recordation process, does the clear construction of S.C. Code §30-9-40 that proper indexing supplies inquiry notice of an instrument, while recordation without proper indexing supplies no notice at all dictate any of your statutory duties as the Lexington County ROD?
22. In the Lexington County, South Carolina recordation process, is it legitimate to say that a document must be properly recorded before it will furnish constructive notice or inquiry notice?
23. In the Lexington County, South Carolina recordation process, is it accurate that property owners are charged with constructive notice of instruments recorded in the chain of title?
24. In the Lexington County, South Carolina recordation process, is it precise to say that S.C. Code §30-9-10 provides that reference to the land records is by means of two indexes, both containing only the year, name of the parties and record and page in alphabetical arrangement according to the names of the parties who

execute the document and according to the names of the parties to whom they are executed?

25. In the Lexington County, South Carolina recordation process, is the notice of an instrument notice of its whole contents?
26. In the Lexington County, South Carolina recordation process, is it precise to say that due diligence requires that each page of the instrument be reviewed because the law imputes to purchasers and creditors notice of all provisions in each instrument?
27. In the Lexington County, South Carolina recordation process, is it factual that the law imputes to a purchaser notice of recitals in any properly recorded instrument in writing which forms a link in the chain of title to the property about to be acquired?
28. In the case of documents filed on the same date and time in the Lexington County, South Carolina recordation process, does S.C. Code §30-7-10 and §30-9-40 mandate that legal priority be given to the document indexed first?
29. In the Lexington County, South Carolina recordation process, if the instrument is not recorded in the correct name or in the correct county, does it provide constructive notice?
30. In the Lexington County, South Carolina recordation process, can a delay in recording cause problems?
31. In the Lexington County, South Carolina recordation process, is a purchaser not bound to search title prior to his grantor's acquisition of title for prior grants out by his grantor?
32. Is it within the Lexington County ROD's authority to refuse to perform her duty based on her opinion that a filing lacks legal merit or is untimely?
33. Is the Lexington County ROD's duty not discretionary?
34. Does the Lexington County Register of Deeds have the authority to reject a filing based on something that appears to be true but is not or even because the filing has perceived failures?
35. Does the Lexington County Register of Deeds, without express constitutional or statutory authority, have the ability to exercise any judicial functions?

36. Does the Lexington County Register of Deeds see herself as being prohibited to perform any action contingent on deciding a question of law?
37. In the Lexington County, South Carolina recordation process, does the clear construction of S.C. Statute 1698(2)137, which states that "An Act to Prevent Deceits by Double Mortgages and Conveyances of Lands, Negroes, and Chattels, &c., required recording sales and mortgages of "negroes, goods, or chattels" in the secretary's office and reaffirmed the basic division between the recording of real property (land) by the register and the recording of personal property by the secretary" still stand as a statute in the Lexington, South Carolina recordation process?
38. Has the Defendant been told by any other person, attorney, or lawyer how to answer any of the interrogatories contained within these interrogatories?
39. Have all of the Interrogatories contained herein been answered by the person to whom they are addressed without the assistance, counsel, or coaching of any other person or attorney?
40. Will the Defendant sign these answers under oath, rather than the Defendant's attorney?

RESPECTFULLY SUBMITTED this 30th day of September 2024.

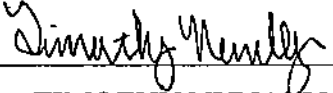

Timothy Nunally, Plaintiff


Mark Nunnally, Plaintiff

[Certificate of Service]

CERTIFICATE OF SERVICE

UNDER PENALTIES OF PERJURY the undersigned certifies that a copy of the foregoing was provided by Certified U.S. mail to Attorney Jeff M. Anderson, 140 East Main Street, Post Office Box 489, Lexington, SC 29071-0489 this ^{30th} ~~27th~~ day of September, 2024.



TIMOTHY NUNALLY

5681 GRANDE RIVER RD

ATLANTA, GA 30349-9127

VERIFICATION

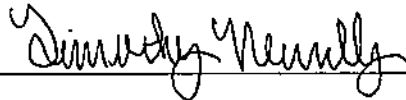
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

BEFORE ME personally appeared Timothy Nunally who, being by me first duly sworn and identified in accordance with South Carolina law, deposes and says:

1. My name is Timothy Nunally, Plaintiff herein.
2. I have read and understood the attached foregoing document, and each fact alleged therein is true and correct of my own personal knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.



Timothy Nunally, Affiant

SWORN TO and subscribed before me this 30th day of September 2024.



Notary Public

My commission expires:

4-19-2028



IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FILED

2024 OCT -9 PM 4: 00

**LISA W. JONES
CLERK OF COURT
LEXINGTON, SC
Case No. 2024-CP-32-01682**

Judge Keesley

Timothy Nunally, Mark Nunnally,

Plaintiffs,

v.

Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds,

Defendant,

_____ /

MEMORANDUM OPPOSING SUMMARY JUDGMENT MOTION

PLAINTIFFS Timothy Nunally, Mark Nunnally files this memorandum in opposition to Defendant Tina Guerry's motion for summary judgment, stating:

ISSUE

1) The issue for the court is whether Judge Keesley could conclude from evidence adduced that the Defendant Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds, set forth specific facts showing that there is not a genuine material fact issue for trial.

2) If the Court can not reach this conclusion, Defendant's summary judgment motion should be denied.

ARGUMENT

3) The foregoing issue has not been adjudicated.

4) No evidence has yet been presented on the record to contradict Plaintiffs allegations in regard to the foregoing issue.

5) Plaintiffs have a motion before the Court TO DEEM REQUEST ADMITTED FOR DEVIOUS RESPONSES.

6) “Following the initiation of the adjudication, discovery shall begin at, and be completed by, such time as the Adjudicator directs.” S.C. Code Regs. § § 9-100.230.A.

7) “As with any negligence action, plaintiff must establish (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach.” *Crolley v. Hutchins*, 300 S.C. 355, 387 S.E.2d 716 (Ct.App. 1989). *Pryor v. Northwest Apartments, Ltd.*, 321 S.C. 524, 528 (S.C. Ct. App. 1996).

8) Plaintiffs have not completed discovery.

9) “ Unless otherwise ordered by the Adjudicator, parties may obtain discovery by one or more of the following methods:1. Interrogatories (R. 9-100.233);” S.C. Code Regs. § § 9-100.230.B.

10) “A party is under a duty to supplement in a timely fashion a response with respect to any question directly addressed to:1. the identity and location of persons having knowledge of discoverable matters” S.C. Code Regs. § § 9-100.232.A.

11) “Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney or other representative making them. Answers and objections shall be made within thirty (30) days after the service of the interrogatories. The party submitting the interrogatories may move for an order under R. 9-100.239 [Sanctions for Failure to Comply] with respect to any objection or other failure to answer an interrogatory.” S.C. Code Regs. § § 9-100.233.

12) “ the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served.” S.C. Code Regs. § § 9-100.233.2.

13) “The party serving the interrogatory shall be afforded reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. The specification shall include sufficient detail to permit the interrogating party to locate and

identify the individual records from which the answer may be ascertained.” S.C. Code Regs. § § 9-100.233.8.

14) Plaintiffs have served Three Written Interrogatories upon the Defendant and Defendant's Attorney which have yet to be answered separately and fully in writing under oath or affirmation.

15) "[I]t is not within the Clerk of Court's authority to refuse to perform her duty based on her opinion that a filing lacks legal merit or is untimely." Barnes v. State 433 S.C. 399 (S.C. 2021).

16) The Defendant has not stated her “belief” why the instrument presented by the Plaintiffs is not in proper recordable form and why the document is a fraudulent or sham document as set forth in SC Code Section 30-9-30(B)(1).

17) "ultimate or conclusory facts and conclusions of law, as well as statements made 'on information and belief,' cannot be utilized on a summary-judgment motion" McMillan Pazdan Smith, LLC v. Mattison, No. 6079, 19 (S.C. Ct. App. Aug. 7, 2024).

18) Summary judgment is not proper where discovery has not yet been closed.

19) “South Carolina Rules of Civil Procedure Rule 56(c) states summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter of law.” Smith v. Jones (In re Estate of Smith), 796 S.E.2d 158, 160 (S.C. Ct. App. 2016).

20) “Rule 56(f) of the South Carolina Rules of Civil Procedure provides parties an easy mechanism for notifying the circuit court in advance of a scheduled hearing of the party's need for additional time in which to complete discovery before defending a motion for summary judgment.” Smith v. Jones (In re Estate of Smith), 796 S.E.2d 158, 162-63 (S.C. Ct. App. 2016).

21) The Defendants AMENDED AFFIDAVIT OF TINA GUERRY falsely states that there is a “Lien” against certain property in Lexington County that is owned by both Plaintiffs, however; there is a “Lien” against certain property in Lexington County that is trust res of the CAN Irrevocable Private Trust as previously stated by the Plaintiffs in the Defendants discovery.

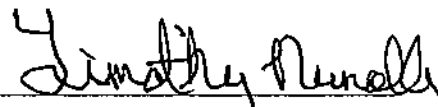
22) "As noted by the majority, summary judgment is proper only when it is clear that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." Pryor v. Northwest Apartments, Ltd., 321 S.C. 524, 530 (S.C. Ct. App. 1996).

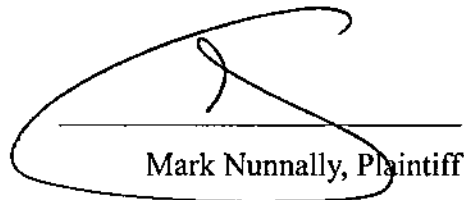
23) "Since it is a drastic remedy, summary judgment 'should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.' " Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (quoting Watson v. Southern Ry. Co., 420 F.Supp. 483, 486 (D.S.C.1975)). Smith v. Jones (In re Estate of Smith), 796 S.E.2d 158, 164 (S.C. Ct. App. 2016).

24) "Rule 56(c), SCRPC. In determining whether triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. Koester v. Carolina Rental Center, 313 S.C. 490, 443 S.E.2d 392 (1994)." Pryor v. Northwest Apartments, Ltd., 321 S.C. 524, 530 (S.C. Ct. App. 1996).

24) Plaintiffs have a right to have this Court judicially determine whether the Defendant, individually and in her official capacity as the Lexington County Register of Deeds, breached her duties; and summary judgment is not proper until that judicial determination has been made.

WHEREFORE Plaintiffs move this Honorable Court to enter an Order denying Defendant's motion for summary judgment and granting such further relief as the Court may deem reasonable under the circumstances.


Timothy Nunnally, Plaintiff


Mark Nunnally, Plaintiff

[Certificate of Service]

Exhibit "1"

Exhibit "1":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **10/9/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit "1"***.
- No party objects to the admission of this Exhibit "1" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

S.C. Code Regs. § § 9-100.232

Section 9-100.232 - Discovery: Supplementation of Response

A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement the response to include information thereafter acquired, as follows:

A. A party is under a duty to supplement in a timely fashion a response with respect to any question directly addressed to:

- 1.** the identity and location of persons having knowledge of discoverable matters, and
- 2.** the identity of each person expected to be called as an expert witness, the subject matter on which the person is expected to testify, and the substance of the testimony.

B. A party is under a duty to amend in a timely fashion a response if the party later obtains information upon the basis of which:

- 1.** the party knows the response was incorrect when made, or
- 2.** the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

C. An additional duty to supplement responses may be imposed by order of the Adjudicator or by agreement of the parties or prior to the hearing through new requests for supplementation of prior responses.

S.C. Code Regs. § 9-100.232

Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

Exhibit "2"

Exhibit "2":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **10/9/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit "2"***.
- No party objects to the admission of this Exhibit "2" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

S.C. Code Regs. § § 9-100.230

Section 9-100.230 - Discovery: General

A. Following the initiation of the adjudication, discovery shall begin at, and be completed by, such time as the Adjudicator directs.

B. Unless otherwise ordered by the Adjudicator, parties may obtain discovery by one or more of the following methods:

1. Interrogatories (R. 9-100.233);
2. Depositions upon oral examination or written questions (R. 9-100.234);
3. Requests for production of documents or things for inspection or other purposes (R. 9-100.235);
4. Requests for admission (R. 9-100.236); or
5. Any other method permitted by the Adjudicator.

C. Unless the Adjudicator upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, the methods of discovery may be used in any sequence. The fact that a party is conducting discovery shall not operate to delay any other party's discovery.

S.C. Code Regs. § 9-100.230

Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

Exhibit “3”

Exhibit “3”:

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **10/9/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit “3”***.
- No party objects to the admission of this Exhibit “3” into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

S.C. R. Civ. P. 56

Rule 56 - Summary Judgment

(a) **For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) **For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) **Motions and Proceedings Thereon.** The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party may serve opposing affidavits not later than two days before the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) **Case Not Fully Adjudicated on Motion.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) **Form of Affidavits; Further Testimony; Defense Required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) **When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a

continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

S.C. R. Civ. P. 56

This is the language of Federal Rule 56. Present Circuit Court Rule 44, Summary Judgment, is substantially the same as the Federal Rule except for the following:

Rule 56(d) Case Not Fully Adjudicated on Motion, does not appear in the present Circuit Court Rule. This Rule makes the findings of uncontested facts discretionary with the court rather than mandatory; but is valuable in disposing of uncontested issues at trial.

Present Circuit Court Rule 44 has minor textual matters that do not appear in the Federal Rule. Paragraphs (a) and (b) of the Circuit Court Rule have the concluding phrase, "notice of motion shall state the grounds for the motion", which is rendered unnecessary by Rule 7(b). The second sentence of Rule 56(e) permits other relevant materials to be considered by the court, and is a needed addition.

Note to 1986 Amendment:

This change conforms the time for serving affidavits in opposition to a motion for summary judgment with the general standard in Rule 6(d).

Exhibit "4"

Exhibit "4":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **10/9/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of **Exhibit "4"**.
- No party objects to the admission of this Exhibit "4" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

Pryor v. Northwest Apartments, Ltd.

321 S.C. 524 (S.C. Ct. App. 1996) • 469 S.E.2d 630
Decided Apr 15, 1996

2493

Heard February 6, 1996

525 Decided April 15, 1996 *525

Appeal from Lancaster County; Paul E. Short,
Circuit Court Judge.

D. Michael Henthorne and Michael E. Atwater,
both of *McMehan Associates*, Columbia, for
appellant.

J.R. Murphy and William R. Calhoun, Jr., both of
Sweeny, Wingate, Murphy Barrow, Columbia, for
respondents.

526 *526

CONNOR, Judge:

Regina Pryor appeals the trial court's order granting the summary judgment motion of Northwest Apartments and Boyd Management in this slip and fall case. We affirm.

Summary judgment is proper only when no genuine issue of material fact exists. Rule 56(c), SCRPC. In determining whether an issue of fact exists, the evidence and all its inferences must be viewed in the light most favorable to the non-moving party. *Koester v. Carolina Rental Center, Inc.*, 313 S.C. 490, 443 S.E.2d 392 (1994). Moreover,

[a] party opposing a properly supported motion for summary judgment . . . may not rest on the mere allegations or denials of his pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact. Thus, the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment.

Bravis v. Dunbar, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct.App. 1994) (citations omitted). *527

FACTS

The evidence, in the light most favorable to Pryor, is as follows. Pryor resided in an apartment building owned by Northwest Apartments, Ltd., and Boyd Management (collectively Northwest). On the night of February 1, 1991, Pryor was walking from her apartment to the parking area for the building. A truck in front of the paved walk partially blocked the entrance to the parking lot. Pryor walked through an unpaved common area and slipped on a patch of mud covered with pine straw, breaking her leg. She could have taken several alternate routes around the muddy area.¹

¹ Pryor testified she could have walked around a dumpster. Also, she could have walked between the parked cars, but chose not to because she didn't want to brush up against them.

The ground was wet that night because it had rained earlier. Pryor knew the muddy common area was dangerously slick when wet because her

mother had previously fallen nearby. The night Pryor fell, the mud had been covered with pine straw. Pryor knew the straw had been placed over the mud, but did not know another tenant had put it there. Northwest, on the other hand, knew a resident had raked the pine straw over the bare spots.

ISSUES

Pryor sued Northwest alleging, among other things, negligent failure to properly maintain the common area and failure to warn of a dangerous condition. Northwest moved for summary judgment, arguing it had no duty to warn Pryor the wet common area presented a dangerous condition. Moreover, Northwest argued even if it had a duty, Pryor assumed the risk of her injuries. The trial court granted the summary judgment, agreeing Northwest had no duty and Pryor had assumed the risk. Pryor now appeals that ruling.

DISCUSSION

Pryor first argues the trial judge erred in applying the law to the facts in this case. She points out the judge analyzed this case under *Meadows v. Heritage Village Church Missionary Fellowship, Inc.*, 305 S.C. 375, 409 S.E.2d 349 (1991), which involved a premises liability action against a hotel.

Pryor asserts the judge should have analyzed the 528 case under *528 the South Carolina Residential Landlord and Tenant Act (RLTA), S.C. Code Ann. §§ 27-40-10 through 27-40-940 (1991 Supp. 1995).

This is an action sounding in negligence under the RLTA. See *Watson v. Sellers*, 299 S.C. 426, 385 S.E.2d 369 (Ct.App. 1989) (the RLTA creates a right in tort for breach of a duty owed by the landlord to the tenant).² As with any negligence action, plaintiff must establish (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach.

Crolley v. Hutchins, 300 S.C. 355, 387 S.E.2d 716 (Ct.App. 1989). Section 27-40-440(a)(3) of the RLTA sets out the applicable duty of care:

² Northwest argues Pryor has abandoned any argument she may have had under the RLTA by failing to specifically raise the issue in her memorandum in opposition to Northwest's motion for summary judgment. Northwest further argues the issue is not preserved for appeal because the trial court did not expressly rule on it and Pryor failed to raise the issue in a Rule 59(e) motion to alter or amend the judgment. However, Pryor's pleadings clearly asserted the RLTA was applicable to the facts of this case. Moreover, the trial court implicitly ruled on and rejected this argument in finding Northwest had no duty to warn of dangerous conditions existing on its property.

(a) A landlord shall:

* * * * *

(3) keep all common areas of the premises in a *reasonably safe condition*, and, for premises containing more than four dwelling units, keep in a reasonably clean condition.

S.C. Code Ann. § 27-40-440(a)(3) (1991) (emphasis added). The RLTA creates a new cause of action not found at common law. *Watson v. Sellers*. However, we must look to the common law for guidance in analyzing new causes of action. In *Meadows v. Heritage Village Church Missionary Fellowship, Inc.*, 305 S.C. 375, 409 S.E.2d 349 (1991), a premises liability action, the Supreme Court addressed the duties owed to invitees by possessors of land. Under the facts of that case, Meadows, a hotel guest, was walking from the hotel parking lot to the hotel. Because the gravel path back to the hotel was flooded, Meadows decided to walk across the grass. She 529 slipped on the *529 wet grass and fell. Even though the route across the grass was the shortest

way to the hotel, there were at least two alternate routes Meadows could have taken. The *Meadows* court held the operator of a parking lot could not insure the safety of all who used the lot, but owed a duty to keep the premises used by invitees in a *reasonably safe condition*. We note this is the same duty of care defined in the RLTA. *Meadows* also held a possessor of land had no duty to warn an invitee of an open and obvious natural condition. *Id.* at 378, 409 S.E.2d at 351. Applying these principles to the facts before us, there is no evidence Northwest breached its statutory duty to keep the premises in a reasonably safe condition. Moreover, Northwest owed no duty to warn of open and obvious natural conditions. A landlord cannot serve as an insurer of the safety of every tenant. The facts of this case are very similar to those in *Meadows*, except here, the naturally occurring condition (mud) was immaterially altered by a tenant who had raked pine straw that had fallen nearby. Furthermore here, as in *Meadows*, the landlord could not foresee Pryor would choose to walk on the mud and pine straw rather than taking an alternate route. Accordingly, there was no evidence the landlord breached his duty of care. Summary judgment was therefore proper as a matter of law. Although the trial judge based his finding on a lack of duty, we may affirm on any ground appearing in the record. Rule 220(c), SCACR.

Pryor next argues the trial judge erred in granting summary judgment because discovery requests were outstanding. However, Pryor did not ask the court to continue the case so that discovery could be completed. Therefore this issue is not preserved for our review. *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995) (but for a very few exceptional situations, an appellate court cannot address an issue that was not raised to and ruled on by the trial court).³

³ Because we affirm the grant of summary judgment on the basis that there is no evidence, even in the light most favorable

to Pryor, that Northwest breached its duty of care, we need not address Pryor's argument on assumption of the risk.

Affirmed.

HOWELL, C.J. concurs and CURETON, J., dissents in separate opinion.

530 *530

CURETON, Judge, dissenting.

I respectfully dissent. As noted by the majority, summary judgment is proper only when it is clear that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Koester v. Carolina Rental Center*, 313 S.C. 490, 443 S.E.2d 392 (1994). Moreover, even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Id.* I believe the question of whether Northwest Apartments had a duty to warn Pryor of a perilous condition and whether Pryor voluntarily assumed the risk of being injured are disputed questions of fact and summary judgment was therefore inappropriate.

The facts, viewed in the light most favorable to Pryor are as follows. Pryor was a tenant in an apartment development owned by Northwest. The apartment building has a paved walk, situated perpendicular to the long axis of the building, which leads directly to a parking area. On the night of February 1, 1991, Pryor was walking from her apartment to the parking area when she found her access to the parking lot blocked by a truck parked in a parking space situated directly in front of the paved walk. Pryor attempted to walk through an unpaved common area but slipped on an area of mud devoid of grass but covered with

pine straw. The ground had become wet due to an earlier rainfall. Pryor suffered a broken leg as a result of her fall.

The majority correctly concludes that this is a negligence action sounding in tort under the Residential Landlord and Tenant Act. S.C. Code Ann. § 27-40-10 *et. seq.* (Rev. 1991); *See Watson v. Sellers*, 299 S.C. 426, 385 S.E.2d 369 (Ct.App. 1989) (the RLTA creates a right in tort for breach of a duty owed by the landlord to the tenant). The majority also notes that under the RLTA, a landlord must keep all common areas of the premises in a reasonably safe condition. S.C. Code Ann. § 27-40-440(a)(3) (Rev. 1991).

The majority concludes the trial court properly granted summary judgment against Pryor because,
531 under the applicable *531 statutes and case law, there exists no evidence Northwest breached its duty of care to Pryor. In reaching this conclusion, the majority likens the facts of this case to those of *Meadows v. Heritage Village Church Missionary Fellowship, Inc.*, 305 S.C. 375, 409 S.E.2d 349 (1991). I think the cases are distinguishable despite certain similarities between the two.

In *Meadows*, the issue was whether a premises owner has a duty to warn an invitee of the danger inherent in walking on wet grass. 305 S.C. 375, 409 S.E.2d 349. The plaintiff in *Meadows* decided to walk to the hotel from a parking lot across a grassy area because a gravel path had been flooded during a rainstorm. 305 S.C. at 376, 409 S.E.2d at 350. The *Meadows* plaintiff took the shortest path back to the hotel despite the availability of at least two other routes: a paved driveway and a sidewalk. 305 S.C. 375, 409 S.E.2d 349. Our Supreme Court held that (1) a possessor of land has no duty to warn an invitee of a natural condition, the peril of which is obvious; (2) the plaintiff did not show that the landowner could have reasonably foreseen that she would try to cross wet grass instead of using another way back to the hotel from the parking lot; and (3) the

plaintiff knew and appreciated the danger inherent in walking across the wet grass, and therefore assumed the risk of injury. *Id.*

Here, although the majority concludes that an otherwise naturally occurring condition (the muddy spot where Pryor was injured) was only "immaterially" altered by a resident who raked pine straw over the area, the fact that the area had been altered in such a manner gives rise to the inference that the condition was rendered neither naturally occurring nor obviously dangerous. Indeed, since Northwest was on notice that the area was dangerously muddy and that a resident had raked pine straw over the mud, a jury could have concluded Northwest had a duty to at least warn residents that the pine straw was not placed over the mud as a remedial measure. Moreover, based on Pryor's testimony that she would not have fallen on the muddy spot had it not been for the pine straw, a jury could have concluded Northwest negligently acquiesced in making an otherwise naturally occurring and obviously dangerous condition both latent and more dangerous. I think that by concluding the placing of pine straw over the muddy area was an "immaterial" alteration of a natural condition, the

532 *532 majority has impermissibly viewed the evidence in the light most favorable to Northwest.

Further, I disagree with the majority's opinion that Northwest could not have foreseen Pryor would choose to walk through the common area rather than take an alternate route. Despite the majority's conclusion to the contrary, the evidence in this case gives rise to at least the inference that Pryor took the only route reasonably available to her on the night in question. The majority states Pryor could have chosen either to walk between parked cars or to walk around a dumpster. However, Pryor testified she initially tried to walk between the truck parked in front of the paved walk and another vehicle, but the mirrors on the truck were so wide that she could not go through. She also testified she did not feel it was feasible to walk under the mirrors. As to walking around the

dumpster, Pryor testified she would have had to leave the paved area in any case, and that her mother had previously slipped on mud while walking in that area. Moreover, it is uncontested Northwest was aware Pryor's mother had fallen in the area near the dumpster and that the truck which blocked Pryor's access to the parking lot was parked in an established parking space.

I would also hold the trial court erred in finding, as a matter of law, that Pryor voluntarily assumed the risk of injury in choosing to walk across the common area. A defense based on the doctrine of assumption of the risk requires a showing that the plaintiff (1) had knowledge of the facts constituting a dangerous condition; (2) knew the condition was dangerous; (3) appreciated the nature and extent of the danger; and (4) voluntarily exposed herself to the danger. *Senn v. Sun Printing Co.*, 295 S.C. 169, 367 S.E.2d 456 (Ct.App. 1988); see *Hoeffner v. The Citadel*, 311 S.C. 361, 429 S.E.2d 190 (1993) (the defense of assumption of the risk applies where the plaintiff assumes a risk of harm arising from the defendant's negligent or reckless conduct); *Mayer v. Paxton*, 313 S.C. 109, 437 S.E.2d 66 (1993) (in the absence of express consent to assume the risk, the plaintiff's consent can be implied where he understands and appreciates a known danger created by the defendant, and then freely and voluntarily exposes himself to it). Whether a party has assumed the risk of injury is ordinarily a question of fact to be determined by the jury and

533 only rarely *533 becomes a question of law for the court. *Smalls v. Pioneer Mach.*, 316 S.C. 479, 450 S.E.2d 609 (Ct.App. 1994); *Wallace v. Owens-Illinois, Inc.*, 300 S.C. 518, 389 S.E.2d 155 (Ct.App. 1989).

It is uncontested Pryor knew, prior to the accident, that the common area was dangerously slick when wet due to the lack of grass in some areas. However, on the night of her accident, the muddy area she knew to be dangerous had been covered with pine straw. Pryor testified that while she knew before her accident that pine straw had been placed over spots in the common area, she was unaware the pine straw was placed there by another resident until after her fall. Pryor further testified Northwest was aware the pine straw had been placed over the bare spots by the resident.

Viewing the evidence and all reasonable inferences in the light most favorable to Pryor, she could have assumed Northwest placed the pine straw in the common area as a remedial measure. Thus, there exists a factual dispute as to whether Pryor knew and appreciated the nature and extent of the peril in which she placed herself on the night of her fall. I would hold the trial court erred in failing to submit the issue to the jury for determination.

Because I would reverse the trial court's decision to grant Northwest's motion for summary judgement, I will not address Pryor's remaining argument on appeal.

Exhibit "5"

Exhibit "5":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **10/9/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit "5"***.
- No party objects to the admission of this Exhibit "5" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

Smith v. Jones (In re Estate of Smith)

796 S.E.2d 158 (S.C. Ct. App. 2016) · 419 S.C. 111
Decided Dec 21, 2016

Appellate Case No. 2013-002810 Opinion No.
5462

12-21-2016

In the MATTER OF the ESTATE OF Eris Singletary SMITH In re: Eris Gail Smith, Appellant, v. Judy Smith Jones, Jacquelyn Brown, James Ervin Smith, Timothy David Smith, Jamie Smith, and Mikie Smith, Defendants, Of whom Judy Smith Jones is the Respondent.

C. Mitchell Brown and William C. Wood, Jr., both of Nelson Mullins Riley & Scarborough, LLP, of Columbia, and Gary Ivan Finklea, of Finklea Law Firm, of Florence, for Appellant. Jon Rene Josey and Jeffrey L. Payne, both of Turner Padgett Graham & Laney, PA, of Florence; and Robert E. Lee, of Robert E. Lee, LLC, of Marion, for Respondent.

KONDUROS, J.

C. Mitchell Brown and William C. Wood, Jr., both of Nelson Mullins Riley & Scarborough, LLP, of Columbia, and Gary Ivan Finklea, of Finklea Law Firm, of Florence, for Appellant.

Jon Rene Josey and Jeffrey L. Payne, both of Turner Padgett Graham & Laney, PA, of Florence; and Robert E. Lee, of Robert E. Lee, LLC, of Marion, for Respondent.

113 KONDUROS, J.:*113 Eris Gail Smith (Smith) appeals the circuit court's order granting summary judgment to her sister, Judy Jones (Jones), in this dispute over the will of their deceased mother, Eris Singletary Smith (the Testator). On appeal, Smith

argues (1) the circuit court prematurely granted summary judgment before the parties had a full and fair opportunity to complete discovery and (2) summary judgment was improper because genuine issues of material fact existed regarding the presence of undue influence and fraudulent inducement in the execution of the Testator's purported will. We affirm.*114

FACTS/PROCEDURAL HISTORY

The Testator died on March 11, 2013. On March 13, 2013, Jones submitted a petition to be appointed as the Testator's personal representative (PR) and to probate the Testator's October 18, 2011 will (the Lee Will), which the Testator executed with the assistance of attorney Robert E. Lee. The Lee Will appointed Jones as the PR of the Testator's estate and Rebecca Jones Cain (Becky), the Testator's granddaughter and Jones's daughter, as the alternate PR. The Lee Will divided the residue of the Testator's estate into six equal shares—a share for each of the Testator's five surviving children and a share to be inherited and split by two of her grandsons, Jamie and Mikie Smith. Two witnesses, attorney Cyrus Sloan and receptionist Brittany Hooks, and the Testator signed the Lee Will and a self-proving affidavit on October 18, 2011.

On April 1, 2013, Smith filed with the probate court a petition challenging the Lee Will as the product of undue influence and fraudulent inducement. Smith also submitted a petition to be appointed as the PR of the Testator's estate and to probate a different will the Testator had executed with the assistance attorney Frederick A. Hoefer,

II, on March 30, 2011 (the Hoefer Will). The Hoefer Will appointed Smith as the PR of the Testator's estate, appointed Hoefer as the alternate PR, and divided the Testator's home and the residue of the estate equally between the Testator's five surviving children. On May 14, 2013, the claim was removed from the probate court to the circuit court.

On May 31, 2013, Jones moved for summary judgment on Smith's petition, arguing Smith failed to produce any evidence the Testator was unduly influenced or fraudulently induced into signing the Lee will. In support of her motion, Jones submitted a memorandum, the Lee will, a sworn affidavit from Lee, and the depositions of Hooks and Sloan. In opposition, Smith submitted the Hoefer will, Smith's deposition, and the deposition of Pam Jordan, Lee's paralegal, who was also Jones's daughter and the Testator's granddaughter.

On August 7, 2013, the circuit court held a hearing on the summary judgment motion. At the hearing, Smith informed the circuit court she had
 115 scheduled several depositions for *115 September 11, 2013, and asked the circuit court to grant a continuance and defer summary judgment until she had an opportunity to conduct them. Smith
 160 argued the depositions *160 of several of the Testator's caregivers would demonstrate the Testator thought she was going to Lee's office to execute only a healthcare power of attorney and was taken there by Jones's daughter, Becky, "under the guise of a brunch." According to Smith, the evidence would show the Testator would not have allowed Lee to draft a will for her, because she believed Lee improperly handled the will of her deceased son, Wayne. Smith also contended the Testator did not realize she was executing a will, and the Testator told people the Hoefer Will was her will.

The circuit court rejected Smith's request for additional time to conduct depositions, orally granted Jones's summary judgment motion, and requested Jones prepare an order. The circuit court

determined no genuine issue of material fact existed because no affidavits were submitted from caregivers or others demonstrating "there was some type of influence that overcame [the Testator's] will" when she executed the Lee Will.

On August 29, 2013, Smith filed a supplemental memorandum in opposition to summary judgment and an affidavit from her counsel concerning the need for a continuance. In the affidavit, Smith's counsel asserted summary judgment was premature because the parties had not had a full and fair opportunity to complete discovery. According to counsel, the parties initiated discovery as soon as the matter was filed and everyone involved had been diligent in prosecuting the case. Counsel stated the case was filed on April 1, 2013; the first round of depositions was held on May 1, 2013; the second round of depositions was held on May 17, 2013; and the third round of depositions was scheduled for September 11, 2013. Counsel explained that before the September 11, 2013 depositions, he "wanted to have an opportunity to thoroughly review the depositions taken in May and analyze the elements of proof, applicable law [,] and other issues prior to the next round of fact witness [depositions]." Counsel listed the testimony he expected the September 11, 2013 depositions to elicit and explained he expected the scheduled depositions to support Smith's fraudulent
 116 inducement claims.*116 On October 8, 2013, Smith submitted to the circuit court copies of the September 11, 2013 examinations under oath (EUOs) of Mary Alice Tompkins, Sharon Graham, Rachell Pringle, Janet Altman, Hoyt Leggette Smith, and Karen Deas McCall. With the EUOs, Smith's attorney submitted a letter explaining his client requested he depose the witnesses even though the circuit court granted Jones's summary judgment motion. The letter stated the EUOs supported the arguments Smith made at the summary judgment hearing. Jones objected to the EUOs.

On October 22, 2013, the circuit court signed a written order granting summary judgment to Jones and appointing Jones as PR of the Testator's estate. The written order states Jones offered Lee's affidavit and Sloan's and Hooks's depositions in opposition to the motion. The order does not mention the submission of the EUOs and does not say whether the circuit court considered the EUOs in rendering its decision. Smith filed a motion to reconsider which was denied. This appeal followed.

STANDARD OF REVIEW

"In reviewing the grant of summary judgment motion, the [appellate court] applies the same standard as the trial court under Rule 56(c), SCRPC...." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438–39 (2003). Rule 56(c) states summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter of law. Rule 56(c), SCRPC. "In determining whether any triable issue of fact exists, the evidence and all inferences which can *reasonably* be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Grimsley v. S.C. Law Enft Div.*, 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015). "Even though courts are required to view the facts in the light most favorable to the nonmoving party, to survive a motion for summary judgment, 'it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not
161 genuine.' " *Id.* (quoting *161 *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). "The party seeking summary judgment has the burden of clearly establishing the absence
117 of a *117 genuine issue of material fact." *Bennett v. Inv'rs Title Ins. Co.*, 370 S.C. 578, 588–89, 635 S.E.2d 649, 654 (Ct. App. 2006). If the moving party is successful, the nonmoving party must then come forward with specific facts showing there is a genuine issue for trial. *Id.*

LAW/ANALYSIS

Smith argues the circuit court erred in granted Jones's motion for summary judgment because genuine issues of material fact existed regarding the propriety of the making of the Lee will. We disagree.

"Generally, in cases where a will has been set aside for undue influence, there has been evidence either of threats, force, and/or restricted visitation, or of an existing fiduciary relationship." *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 333 (2003). "For a will to be invalidated for undue influence, the influence must be the kind of mental coercion which destroys the free agency of the creator and constrains him to do things which are against his free will, and that he would not have done if he had been left to his own judgment and volition." *Id.* "Where the testator has an unhampered opportunity to revoke a will or codicil subsequent to the operation of undue influence upon him, but does not change it, the court as a general rule considers the effect of undue influence destroyed." *Id.* at 217, 578 S.E.2d at 333–34. Furthermore, the "mere showing of opportunity or motive does not create an issue of fact regarding undue influence." *Wilson v. Dallas*, 403 S.C. 411, 437, 743 S.E.2d 746, 760 (2013).

No evidence in the record, including information contained in the EUOs, indicate the Testator was the victim of threats, force, or restricted visitation.¹ Smith indicated she was the primary caregiver for the Testator in October of 2011 as Jones was frequently busy caring for her young grandchildren. While our courts have found a parent and child may have a fiduciary relationship with one another, Jones was not with the Testator when she made the Lee Will and no allegations were made that Jones coerced the Testator or substituted her judgment for that of the Testator.
118 Lee and Sloan both attest *118 to the Testator's willingness and capacity to execute the Lee will, and both attorneys indicate they met privately with

the Testator when discussing her will. Additionally, Smith admits the Testator had the opportunity to change the Lee Will had she so desired. Accordingly, we conclude Jones demonstrated the absence of a genuine issue of material fact as to Smith's undue influence claim, and Smith failed to produce contrary evidence beyond mere allegations.

¹ Smith conceded at oral argument any additional discovery information she hoped obtain was essentially contained in the EUOs, which were before the court when summary judgment was granted.

"To recover on a claim for fraud in the inducement, the plaintiff must show the defendant made a false representation relating to a present or preexisting fact, the defendant intended to deceive the plaintiff, and the plaintiff had a right to rely on the false representation." *Smith v. Hastie*, 367 S.C. 410, 416, 626 S.E.2d 13, 16 (Ct. App. 2005). "Similarly, the intent to deceive is an essential element of an action for fraud." *Id.*

Lee's affidavit indicates the Testator came to his office on October 18, 2011 to discuss her will. He asked the Testator to write down what she wanted in her will and to sign and date those notes. Her handwritten notes, attached to Lee's affidavit, indicate the Testator wanted her estate to be divided into sixths with one share going to each of her surviving children and one share to be divided between her grandsons, Jamie and Mikie. She also wrote her personal representative should be Judy Jones with Pam Jordan as a secondary alternate. These changes were made to the will previously on file with Lee's office and given back to the Testator for her to review with attorney Sloan. Sloan's handwritten notes from his meeting with the Testator, also attached to Lee's affidavit, indicate they discussed her medications, her deceased husband, the identity of her six children and her two grandsons, Jamie and Mikie. The notes also generally outline the larger items in her estate. The Testator signed the will before witnesses Sloan and Hooks.

Finally, Lee's office made some revisions, at the Testator's request, to a memorandum previously on file with them regarding the distribution of her personal property. She reviewed the changes and the memorandum is initialed by her on each page and signed and dated at the end, October 18, 2011.

119 *119 Sloan's deposition reflects he met with the Testator on October 18 at Lee's request to review her will. The two of them sat in a room and went through the will paragraph by paragraph. Sloan testified she appeared competent and under no duress. Additionally, Sloan testified the Testator corrected his assumption that Jamie and Mikie were the children of her deceased son, Wayne. His notes reflect this information that Jamie and Mikie are the children of James Ervin Smith.

Smith submitted her deposition indicating the Testator had stated on numerous occasions that she would never use attorney Lee to prepare a will because she believed something about Wayne's will had been handled improperly. She also testified the Testator said she was a "nervous jerk" after having been to Lee's office and indicated she did not know what she had done or signed. Smith stated the Testator thought she was going to Lee's office to execute a healthcare power of attorney and was tricked into executing the Lee Will. Smith also stated the Testator called Lee's office to obtain a copy of the will but was never provided with one. The EUOs submitted by Smith essentially state the same or similar information.

The record demonstrates the Testator changed her will to provide for two of her grandchildren to whom she had been particularly close after their father's divorce. Smith admits this was something the Testator had considered doing in the past. Lee's affidavit and Sloan's testimony indicate the Testator knew and understood she was creating a will, not simply signing a healthcare power of attorney as Smith maintains. The Testator's handwritten notes from that day indicate creating a will was her desire and she desired to appoint Jones as her personal representative. Additionally, Sloan's notes reflect his discussion with her was

about the distribution of her estate, not a healthcare power of attorney, she was competent, and she knew she was allotting one-sixth of her estate to Jamie and Mikie. Furthermore, Smith maintains the Testator disliked and distrusted Lee. Yet Smith maintains the Testator went to him for a healthcare power of attorney and not a will. If the Testator's dislike was so intense, it is illogical to believe she would go to him for either legal document.*120 The evidence presented by Jones regarding the propriety of the making of the Lee Will demonstrates the absence of a genuine issue of material fact as to Smith's fraudulent inducement claim. Against that backdrop, the inferences Smith asks us to draw are not reasonable and the alleged conduct or statements she relies upon do not create a *genuine* issue of material fact to support her fraudulent inducement claim.

Accordingly, we affirm the circuit court's grant of summary judgment in Jones's favor as to Smith's claims for undue influence and fraud in the inducement.²

² I decline to address Smith's argument regarding the prematurity of summary judgment based on a lack of time to complete discovery. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to address remaining issues when decision regarding a prior issue is dispositive).

AFFIRMED.

FEW, A.J., concurring in a separate opinion, and LOCKEMY, C.J., dissenting in a separate opinion.

FEW, A.J., concurring:

I concur in the majority opinion. I write separately to explain my position that the circuit court acted within its discretion to refuse to continue the summary judgment hearing to allow for additional discovery. The summary judgment order should also be affirmed on this basis.

Rule 56(f) of the South Carolina Rules of Civil Procedure provides parties an easy mechanism for notifying the circuit court in advance of a scheduled hearing of the party's need for additional time in which to complete *163 discovery before defending a motion for summary judgment. Pursuant to Rule 56(f), the non-moving party or counsel may submit an affidavit stating the reasons "he cannot ... present by affidavit facts essential to justify his opposition" to the motion. In this case, Appellant did not comply with Rule 56(f).³ When a party seeks *121 additional time, but fails to comply with the Rule setting forth the procedure for requesting additional time, an appellate court should be very hesitant to say the trial court abused its discretion in denying the request.

³ Rule 56(f) contemplates an affidavit will be filed at or before the hearing. See *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 321, 548 S.E.2d 854, 856–57 (2001) ("disagree[ing] ... with the Court of Appeals' conclusion that the trial court abused its discretion in refusing to permit Doe's attorney to file Rule 56(f), SCRPC affidavits after the hearing" and stating, "Rule 56(f) requires the party opposing summary judgment to at least present affidavits explaining why he needs more time for discovery"). Here, Appellant filed an affidavit explaining why further discovery was needed more than three weeks *after* the summary judgment hearing.

When the defendants in *Baughman v. American Telephone and Telegraph Company* filed motions for summary judgment, the plaintiffs sought additional time to locate "a medical expert who could testify to the necessary degree of medical certainty." 306 S.C. 101, 104, 410 S.E.2d 537, 539 (1991). After the circuit court granted a motion for partial summary judgment as to medical causation, the plaintiffs submitted a letter from "a recently-discovered expert witness ... in which she made a preliminary assessment of the case and

recommended further study." 306 S.C. at 105, 410 S.E.2d at 539. The supreme court characterized a subsequent letter from the same expert as "highlight[ing] the need for further testing and analysis of Plaintiffs' medical conditions." 306 S.C. at 113, 410 S.E.2d at 544. In finding the circuit courts' order granting "partial summary judgment on the personal injury claims was premature," 306 S.C. at 112, 410 S.E.2d at 544, the supreme court made several other observations about *Baughman* that clearly distinguish it from this case. First, the court noted "the complexity of these cases" and that "proof of causation is especially difficult in actions seeking recovery for prolonged exposure to toxic substances." 306 S.C. at 113, 410 S.E.2d at 544. Second, relying on the defendants' exclusive possession of certain information, the court stated, "Plaintiffs had not yet received satisfactory responses to their interrogatories regarding the substances emitted from the Nassau plant, information critical to their obtaining expert opinion evidence concerning causation." *Id.* Finally, the court found, "Plaintiffs have demonstrated a likelihood that further discovery will uncover additional evidence relevant to the issue of medical causation." 306 S.C. at 112, 410 S.E.2d at 544.

In this case, on the other hand, the issues are simple, Appellant had within her control all of the information she needed to defend the motion, and
 122 the time requested for more *122 discovery was not necessary to "uncover additional evidence," but rather only to document existing evidence. While there were depositions set for shortly after the hearing, it would have been a routine task for Appellant to obtain and file affidavits from the same witnesses setting forth the evidence Appellant wished to present in defense of the motion. Nevertheless, Appellant chose to proceed in the hope the circuit court would not enforce the Rules of Civil Procedure. The Rules, however, are designed to be enforced, *Ex parte Wilson*, 367 S.C. 7, 15, 625 S.E.2d 205, 209 (2005) ("If a rule's language is plain, unambiguous, and conveys a

clear meaning, ... the stated meaning should be enforced."), and we have repeatedly stated we allow trial judges the discretion in which to do so, *see, e.g., Fairchild v. S.C. Dep't of Transp.*, 398 S.C. 90, 108, 727 S.E.2d 407, 416 (2012) ("A trial court's rulings in matters related to discovery generally will not be disturbed on appeal in the absence of a clear abuse of discretion.").

The circuit court correctly enforced a plainly-written rule, and therefore, its decision to deny additional time in which to complete discovery was within its discretion.

LOCKEMY, C.J., dissenting:

I respectfully dissent and would reverse the order granting summary judgment and remand this case for trial on both issues.

164 *164 "A motion for a continuance is addressed to the sound discretion of the trial [court], whose judgment will be reversed only on showing an abuse of discretion." *Crout v. S.C. Nat. Bank*, 278 S.C. 120, 123, 293 S.E.2d 422, 423 (1982).

"Since it is a drastic remedy, summary judgment 'should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.' " *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (quoting *Watson v. Southern Ry. Co.*, 420 F.Supp. 483, 486 (D.S.C.1975)). "This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Id.*; *see also Robertson v. First Union Nat. Bank*, 350 S.C. 339, 346–47, 565 S.E.2d 309, 313 (Ct. App. 2002) ("Generally, it is not premature for the
 123 trial court to grant summary *123 judgment after all relevant parties have been deposed because the litigants have had a full and fair opportunity to develop the record in the case."). "The non-moving party in a motion for summary judgment must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged

in a fishing expedition." *Schmidt v. Courtney*, 357 S.C. 310, 322, 592 S.E.2d 326, 333 (Ct. App. 2003) (internal quotation marks omitted).

Should it appear from the affidavits of a party opposing the [summary judgment] motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.

Rule 56(f), SCRCP. "Rule 56(f) requires the party opposing summary judgment to at least present affidavits explaining why he needs more time for discovery. The rule does not apply in the situation ... where no affidavits [are] filed whatsoever." *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 321, 548 S.E.2d 854, 857 (2001); *but see Baughman*, 306 S.C. at 112 n.4, 410 S.E.2d at 544 n.4 (stating although the plaintiffs "did not file an affidavit invoking [Rule 56(f)], other courts have not mandated strict compliance with the technical requirements of Rule 56(f) where ... the need for further discovery is otherwise made known to the trial court").

Our appellate courts have indicated a trial court should deny a request for further discovery before granting summary judgment where the request came a year or more after the case was filed, where the request came after the expiration of the discovery deadline, or where the opposing party failed to demonstrate further discovery would create a genuine issue of material fact. *See e.g., Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 55, 677 S.E.2d 32, 36 (Ct. App. 2009) (finding the trial court did not err in hearing the defendants' summary judgment motion because the discovery deadlines had expired and the plaintiff was afforded a full and fair opportunity to conduct discovery; and noting the plaintiff failed to demonstrate further discovery

would uncover additional relevant evidence or
124 create a genuine issue of material fact); *124 *CEL Products, LLC v. Rozelle*, 357 S.C. 125, 131, 591 S.E.2d 643, 646 (Ct. App. 2004) (finding the plaintiff was not entitled to further discovery before the trial court granted summary judgment to the defendant where the plaintiff failed to demonstrate further discovery would be beneficial, the case was approximately twenty-one months old when the defendant filed its summary judgment motion, and the plaintiff's ability to sustain her claims should not have hinged upon speculative deposition evidence that might be obtained).

However, the *Batson* court held the circuit court abused its discretion by granting summary judgment before the plaintiff had a full and fair opportunity to complete discovery. 345 S.C. at 322, 548 S.E.2d at 857. In *Batson*, the parent of a child who was sexually molested filed a lawsuit against the child's abuser and the abuser's mother. *Id.* at 318, 548 S.E.2d at 855. In determining the trial court abused its discretion, our supreme court noted the plaintiff was not dilatory in pursuing discovery; several depositions—including the depositions of the abuser and his mother—were
165 scheduled for the week following the *165 hearing; and even though the delay was not attributable to the defendant, it was not solely attributable to the plaintiff. *Id.* at 322, 548 S.E.2d at 857.

I would find the circuit court abused its discretion by denying Smith's motion for a continuance and prematurely granting summary judgment to Jones in its first and only order in this case. Although I recognize the circuit court had discretion to grant or deny the motion for a continuance, I believe the court should have given Smith time to conduct the depositions scheduled the month after the date of the hearing. The circuit court granted summary judgment to Jones merely five months after the case was filed, three months after the case was removed from the probate court, and two months after Jones filed her summary judgment motion. Further, nothing in the record suggests that a

scheduling order was in place, that the circuit court previously ordered the parties to complete discovery within a certain time period, or that the circuit court had granted discovery extensions.

In addition, Smith's counsel explained further discovery would show the existence of a genuine issue of material fact, and he submitted a Rule 56(f) affidavit explaining the need for further discovery. In the affidavit, Smith's counsel
 125 asserted *125 summary judgment was premature because the parties had not had a full and fair opportunity to complete discovery, the parties initiated discovery as soon as the matter was filed, and everyone involved had been diligent in prosecuting the case. Counsel explained the case was filed on April 1, 2013; the first round of depositions was held on May 1, 2013; the second round of depositions was held on May 17, 2013; and the third round of depositions was scheduled for September 11, 2013. Counsel stated he wanted an opportunity to thoroughly review the May

depositions and analyze the applicable law before conducting the September 11, 2013 depositions. In the affidavit, Smith's counsel stated he expected the witnesses' testimony to support Smith's claims, and he listed the testimony he expected the depositions to elicit.

Like the plaintiff in *Batson*, Smith was not dilatory in pursuing discovery. Also, as in *Batson*, the depositions of several witnesses—including the Testator's caregivers—were scheduled to be conducted soon after the summary judgment hearing. Neither of these two facts is disputed. Accordingly, I believe Smith demonstrated she did not have a full and fair opportunity for discovery and the circuit court abused its discretion by denying her motion for a continuance and prematurely granting summary judgment to Jones.

Exhibit "6"

Exhibit "6":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **10/9/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit "6"***.
- No party objects to the admission of this Exhibit "6" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

trial and the resultant adjudication of the issues presented there is a statement that a motion for a new trial was filed and passed upon, but no such pleading appears in the papers filed in this court. Furthermore—and this is of vital importance—the papers filed here are not authenticated by the certificate of the clerk of the trial court, as required by statute, as copies or in whole a transcript of the record of the proceedings in such court. This is a fatal omission; for that there be an authenticated record of the proceedings in the district court filed with a petition in error in the supreme court is jurisdictional, and if lacking, the petition in error will be dismissed. (*Otis v. Butters*, 46 Neb. 492; *Moore v. Waterman*, 40 Neb. 498; *McDonald v. Grabow*, 46 Neb. 406; *Union P. R. Co. v. Kinney*, 47 Neb. 396; *Wachsmuth v. Orient Ins. Co. of Hartford*, 49 Neb. 590; *Binspahr v. Exchange Nat. Bank of Hastings*, 49 Neb. 557.)

DISMISSED.

DRUMMOND CARRIAGE COMPANY ET AL. V. GEORGE T. MILLS.

FILED APRIL 8, 1898. No. 7846.

1. **Appeal Bond: JUDGMENT AGAINST SURETIES.** Upon the rendition of a judgment against appellant in the district court, that court has no such jurisdiction of the person of the surety in the appeal undertaking that it may render the same judgment against him that it may against the appellant. *Selby v. McQuillan*, 45 Neb. 512, followed.
2. **Bailment: LIEN OF BAILEE FOR SERVICES.** By operation of the common law, in the absence of any specific agreement, every person who has bestowed labor and skill on a chattel bailed to him for the purpose, and has thereby increased its value, has a lien on such chattel and may retain it until paid his reasonable charges for his services.
3. —: —. Such rule of the common law is in force in this state.
4. —: —: **STATUTORY LIENS.** The common-law lien to which we have just referred may, by force of special facts or circum-

Drummond Carriage Co. v. Mills.

stances, override or be superior to prior contractual or statutory liens.

5. **Chattel Mortgages: TITLE.** In this state the title to mortgaged chattels remains in the mortgagor until foreclosure of the mortgage.

6. ———: **LIEN OF BAILEE FOR REPAIRS: PRIORITY.** A physician gave a mortgage on a buggy of which he retained possession and used it in his business. It was of the recitals of the mortgage that he should not so negligently or improperly use or care for the property as to subject it to probable loss or material depreciation in value, and the mortgagee had knowledge that the buggy at times needed repairing, and had seen it at one time left at the shop to be repaired. The mortgagor, without the knowledge of the mortgagee, left the buggy with a carriage company for needed repairs. The company repaired the buggy and retained possession thereof to enforce a claimed lien for, or the payment of its reasonable charges for, such repairing. The mortgagee instituted an action of replevin against the carriage company to obtain possession of the buggy, asserting right thereto under and by virtue of his mortgage lien. *Held*, That the mortgage lien was subordinate to the common-law lien, since the recitals of the mortgage and the facts and circumstances disclosed that the mortgagor had at least implied authority from the mortgagee to have the repairs made.

ERROR from the district court of Douglas county.
Tried below before AMBROSSE, J. *Reversed*.

B. N. Robertson, for plaintiffs in error.

W. H. De France, contra.

HARRISON, C. J.

This, an action of replevin, was instituted by defendant in error March 22, 1894, before a justice of the peace in Douglas county to recover the possession of a "Breton buggy," and in a trial he was given judgment for the relief demanded. An appeal was perfected to the district court, wherein the defendant in error was again successful. He there obtained judgment against the carriage company and also against the surety on the appeal undertaking. The carriage company and the surety on the appeal bond present the case to this court for review.

It is contended for the party who signed the appeal

undertaking that the district court had no jurisdiction to render the judgment it did against him. The question presented was discussed and determined in the case of *Selby v. McQuillan*, reported in 45 Neb. 512, and it was stated that the district court, on the rendition of a judgment against an appellant, had no jurisdiction to render a like judgment against the surety in the appeal bond; and, following the doctrine then announced, we must hold that the judgment against the surety in this case was without the jurisdiction of the court and cannot stand.

The trial in the district court was without a jury and on an agreed statement of the facts as follows:

"That W. P. Wilcox was, on and prior to July 1, 1891, a physician engaged in the actual practice of his profession in the city of Omaha, Nebraska; that on September 12, 1889, said Wilcox purchased a physician's phaeton, or carriage, from the defendant, and that from the date of its purchase until on or about the 13th day of May, 1892, the said Dr. Wilcox used the said carriage in his professional business as a physician and surgeon; that on July 1, 1891, said Dr. W. P. Wilcox made, executed, and delivered, for a valuable consideration, being money actually loaned, his certain promissory note to the plaintiff for \$350, due one year after date; that no payments have been made on said note, and the same is due. To secure said note the said Dr. W. P. Wilcox made and delivered a chattel mortgage to plaintiff covering the said physician's phaeton, or carriage, a horse and harness. The said mortgage was filed in the office of the county clerk of Douglas county, Nebraska, in accordance with law, on the 3d day of August, 1891, a copy of which is hereto attached and made a part of this stipulation, marked 'Exhibit A.'

"The plaintiff was well acquainted with the buggy in controversy and knew at the time he took his mortgage that it was used by Dr. Wilcox in his business as a physician. Dr. Wilcox and the plaintiff rode out in the buggy quite frequently in the evenings. The plaintiff

was with Dr. Wilcox at the office of the Drummond Carriage Works, defendant, at one time previous to May, 1892, after his mortgage was given, and when Dr. Wilcox run the buggy in there for repairs, which bill of repairs was paid by Dr. Wilcox. About the 13th of May, 1892, said Dr. Wilcox took the buggy mentioned in the mortgage, and in controversy herein, to the defendant for repairs, and, pursuant to agreement between the defendant and Dr. Wilcox, the buggy was to be repaired. The bill for the same agreed upon was \$60, to be paid in cash when the work was done. A copy of the memorandum of repairs to be done, and which were actually done, on the carriage, is hereto attached, marked 'Exhibit B' and made a part of this stipulation. The original was, on or about May 13, 1892, mailed by defendant to Dr. Wilcox. The repairs done on the buggy were reasonably necessary for the careful preservation of the carriage, and the bill for the same is well and reasonably worth \$60, no part of which has been paid. The buggy was completed, and the bill was due on the 1st of July, 1892. The plaintiff is a resident of Omaha, Nebraska, and has resided therein ever since the 12th day of September, 1889.

"About the 1st of June, 1892, said Dr. W. P. Wilcox left the city of Omaha for Colorado, to be gone an indefinite period of time. Said Dr. Wilcox was absent from the city from about the 1st of June, 1892, until about the 15th of March, 1894. During the time of said Wilcox' absence from the city, as aforesaid, the plaintiff supposed the buggy was in the barn of the father of said Wilcox, and did not know different until about the 21st of March, 1894, when he was notified by said Wilcox that the said buggy was in the possession of the defendant. In the meantime, the plaintiff had made no inquiries about the whereabouts of the buggy, neither had he made any inquiries about the horse and harness, and when this action was commenced the plaintiff did not know where the horse and harness were. Plaintiff never has pressed the said Wilcox for the money secured by the

note and chattel mortgage and never calculated to do so. While Dr. Wilcox was using the buggy in his professional business, he had all his repairing done at the carriage works of the defendant, and the buggy was in the defendant's shop for repairs, and the defendant did small repair work on the buggy twelve different times between the date of its purchase, September 12, 1889, and May 1, 1891. The first actual knowledge that the plaintiff had of the buggy being in the possession of the defendant was obtained from the said Dr. Wilcox on or about March 21, 1894. Immediately after said notification, plaintiff demanded possession of said buggy from defendant, and upon refusal of defendant to deliver up the possession of said buggy to plaintiff, plaintiff commenced this cause of action. The defendant made no inquiries of Wilcox when he took the buggy to its place of business for repairs, as to whether the buggy was incumbered or not, nor did the said Wilcox say anything about it to the defendant. The buggy has been in the continuous possession of the defendant from the spring of 1892. The defendant is a corporation duly organized under the laws of Nebraska, and engaged in the manufacture and sale and general repair work of wagons, carriages, and other kinds of vehicles. The defendant, when demand was made on it for the possession of the buggy, refused to deliver the same to the plaintiff until its bill for repairs, as above stated, was paid, and then and there notified the plaintiff that it claimed a lien upon said buggy for the work and labor and material performed and used in repairing said buggy. The value of the buggy was \$75 at the commencement of this action. The defendant and all the officers thereof, at the times when said repairs were agreed upon and made, had no actual knowledge of said mortgage, nor were they aware of the existence of such a mortgage until the month of March, 1894."

It is urged by counsel for the carriage company that it had a lien by force of law on the buggy for the amount of its bill of charges for repairing the buggy, which contin-

ued so long as it retained possession of the buggy under a claim of lien for such services. The principle invoked is, if property is delivered to a person to be by his skill and labor or by adding thereto property of his, enhanced in value, and he performs the labor or adds his own property to that delivered and thereby increases the value of the latter, he may retain possession of it until paid for his labor or materials. This is a doctrine of the common law, and the right is usually denominated a common-law lien, and it exists under a state of facts such as we have just detailed, unless there is a contract inconsistent with such lien, or some modifying circumstances which are in conflict with any such right, or disclose an intent not to claim the right. "A mechanic of any kind has a lien upon all personal property for manufacture or repairs, while it remains in his possession. * * * A carriage-maker for repairs upon a carriage." (See 6 Wait, Actions & Defenses 149, and cases cited.) Persons have by common law the right to detain goods on which they have bestowed labor, until the reasonable charges therefor are paid. (2 Kent, Commentaries 635.) In the absence of specific agreement, if a party has bestowed labor and skill on a chattel bailed to him for such purpose and thereby improved it, he has by general law a lien on it for the reasonable value of his labor or the right to retain it until paid for such skill and labor. (*Bevan v. Waters*, 3 C. & P. [Eng.] 520; *Scarfe v. Morgan*, 4 M. & W. [Eng.] 270; *Lord v. Jones*, 24 Me., 439, 41 Am. Dec. 391; *Grimmell v. Cook*, 3 Hill [N. Y.] 491. This right rests on principles of natural equity and commercial necessity. (2 Kent, Commentaries 634.) No lien exists at common law for the agistment of cattle (*Chapman v. Allen*, 2 Cro. Car. [Eng.] 271; *Jackson v. Cummins*, 5 M. & W. [Eng.] 342; *Wallace v. Woodgate*, 1 C. & P. [Eng.] 575); nor in favor of one to whom a horse has been delivered to be stabled, taken care of, fed, and kept (*Judson v. Etheridge*, 1 C. M. [Eng.] 742). In such cases, a lien for the charges will only arise by virtue of a statute or special agreement in

the nature of a pledge. * * * "The case of an agister does not fall within that principle inasmuch as the agister does not confer any additional value on the article, either by the exertion of any skill of his own or indirectly, by means of any instrument in his possession." (*White v. Smith*, 43 Am. Rep. [N. J.] 347; *Jackson v. Cummins*, *supra*.)

We refer to the agister's lien for the purpose of directing attention to the fact that it is not a lien which has been recognized as arising by force of the general or common law or as having any existence at common law, but has its origin in, or is the creature of, statutory provision, and that the reasoning employed and rules announced by this court in reference to agister's liens are not forceful or applicable herein in regard to the lien claimed. The legislature of the territory, when the state was a territory, passed the following act: "So much of the common law of England as is applicable and not inconsistent with the constitution of the United States, with the organic law of this territory, or with any law passed or to be passed by the legislature of this territory is adopted and declared to be law within said territory." (Compiled Statutes, ch. 15, sec. 1.) The right to the common-law lien would exist in this state unless inconsistent with our statutory law, and we cannot discover wherein it is inconsistent with, or has been abrogated by, statute, hence must determine it in force. In regard to the recognition and enforcement of common-law rules, it is said by this court in the opinion in the case of *Wilson v. Burnstead*, 12 Neb. 1: "In the application of the principles of the common law, where the precedents are unanimous in the support of a proposition, there is no safety but in a strict adherence to such precedents. If the court will not follow established rules, rights are sacrificed, and lawyers and litigants are left in doubt and uncertainty while there is no certainty in regard to what, upon a given state of facts, the decision of the court will be." We must conclude that a common-law lien existed in favor of the

carriage company for the amount due it for the repair of the buggy; and it remains further to determine whether it took precedence of the lien of defendant in error's chattel mortgage. The lien of the mortgage was created and perfected by the filing prescribed by law, long prior to the services, etc., of the carriage company in repairing the buggy, and there is no dispute in regard to time of attachment of either lien.

It now becomes necessary to allude again to some of the facts which appeared of evidence in the cause, more especially to bring out distinctly the position occupied by defendant in error relative to any repairs which became necessary to the useful existence of the buggy, and its possible future appropriation to the satisfaction of the indebtedness, the payment of which was secured by the chattel mortgage. The mortgage provided in terms that until default by the mortgagor in the performance of specified conditions or until the happening of certain indicated events, he should keep possession of the mortgaged property, and one of the enumerated events by the occurrence of which the mortgagee should at his option be entitled to take possession thereof was this: "If the said party of the first part [the mortgagor] shall so negligently or improperly use or care for said property as to subject the same to probable loss or material depreciation of the value thereof—" from which it seems probable that it was in contemplation of the parties that the mortgagor would, of course at his own proper cost and charge have the buggy repaired, if necessary, during the time of its use by him and the existence of the mortgage. It was also of the evidence that defendant in error saw the buggy and rode in it frequently, and had knowledge of its being repaired by the carriage company at least once when he was present and it was run into the carriage company's place of business to be by it repaired.

We may now turn to the rules of law which we deem applicable to the state of facts developed in evidence herein. The legal title to the buggy was in the mort-

gagor. He was the owner thereof. The mortgagee had but a lien thereon. (*Musser v. King*, 40 Neb. 892; *Randall v. Persons*, 42 Neb. 607; *Camp v. Pollock*, 45 Neb. 771; *Gould v. Armagost*, 46 Neb. 897.) It may be said that a lien which arises by force of the common law may be, under special circumstances, superior to prior existing contractual or statutory liens on the same property. In *Darlington, Personal Property* p. 48, it is stated on this subject: "And though in general a lien cannot be created without authority of the owner, liens for repairs take precedence of prior mortgages where such repairs were necessary for purposes within the intention of the mortgage; *e. g.*, repairs on vessels or carriages, which the mortgagor was to continue to use." A lien on property by operation of the common law may have precedence of an existing mortgage. (Jones, *Chattel Mortgages* sec. 474; Herman, *Chattel Mortgages* 308.) In the case of *White v. Smith*, 15 Vroom [N. J.] 105, 43 Am. Rep. 347, it was said: "*Williams v. Allsup*, 10 C. B. [N. S.] 417, is the leading case on this subject. In that case the plaintiff, a shipwright, retained a vessel for his charges for repairs, as against a mortgagee under a prior mortgage. The mortgage had been recorded pursuant to the merchants' shipping act. The vessel was left in the mortgagor's possession and control for use, and was condemned as unseaworthy. The shipwright's charges were for necessary repairs, made by the mortgagor's direction, without the knowledge of the mortgagee. The court sustained the shipwright's lien for repairs, against the claim of the mortgagee. The course of reasoning which led to this result, as expressed in the opinions of the judges, is as follows: Erle, C. J., said: 'I put my decision on the ground that the mortgagee, having allowed the mortgagor to continue in the apparent ownership of the vessel, making it a source of profit and a means of earning wherewithal to pay off the mortgage debt, the relation so created by implication entitles the mortgagor to do all that may be necessary to keep her in an efficient

state for that purpose. The case states that the vessel had been condemned as unseaworthy by the government surveyor, and so was in a condition to be utterly unable to earn freight or be an available security or any source of profit at all. Under these circumstances, the mortgagor did that which was obviously for the advantage of all parties interested. He puts her into the hands of the defendant to be repaired, and according to all ordinary usage, the defendant ought to have a right of lien on the ship so that those who are interested in the ship, and who will be benefited by the repairs, should not be allowed to take her out of his hands without paying for them. * * * It is to be observed that the money expended in repairs adds to the value of the ship; and looking to the rights and interests of the parties generally, it cannot be doubted that it is much to the advantage of the mortgagee that the mortgagor should be held to have power to confer a right of lien on the ship for repairs necessary to keep her seaworthy.' Willes, J., said: 'By the permission of the mortgagees the mortgagor has the use of the vessel. He has therefore a right to use her in the way in which vessels are ordinarily used. Upon the facts which appear on this case, this vessel could not be so used unless these repairs had been done to her. The state of the things therefore, seems to involve the right of the mortgagor to get the vessel repaired, not on the credit of the mortgagees, but upon the ordinary terms, subject to the shipwright's lien. It seems to me that the case is the same as if the mortgagees had been present when the order for repairs was given.' Byles, J., said: 'As it is obvious that every ship will, from time to time, require repairs, it seems but reasonable, under circumstances like these, to infer that the mortgagor had authority from the mortgagees to cause such repairs as should become necessary to be done, upon the usual and ordinary terms. Now what are the usual and ordinary terms? Why, that the person by whom the repairs are ordered should alone be liable personally, but

Stenger Benevolent Ass'n v. Stenger.

that the shipwright should have a lien upon the ship for the work and labor he has expended on her. Nor are the mortgagees at all prejudicially affected thereby. They have a property augmented in value by the amount of the repairs.' " (See also *Scott v. Delahunt*, 5 Lans. [N. Y.] 372; *Hammond v. Danielson*, 126 Mass. 294; *Tucker v. Werner*, 21 N. Y. Supp. 264; *Corning v. Ashley*, 4 N. Y. Supp. 255, affirmed. See 24 N. E. Rep. 1100.) We are not holding that in all cases, or generally, the common-law lien will override and be superior to the prior chattel mortgage lien, but that in cases where the mortgagor can be said to have expressed or implied authority from the mortgagee to procure repairs to be made on the mortgaged property it will be so. The carriage company was entitled to its lien, and it was superior to the lien of the chattel mortgage; hence the judgment of the district court was wrong and must be reversed.

REVERSED AND REMANDED.

RAGAN, C., dissents.

STENGER BENEVOLENT ASSOCIATION V. CAROLINE
STENGER.

FILED APRIL 8, 1898. No. 7966.

1. **Married Women: CONTRACTS.** The disability of a married woman to enter into contracts still exists in this state, except to the extent it has been removed by legislative enactments.
2. ———: ———: **SEPARATE ESTATE.** She may contract with parties generally or with her husband, but it must be in reference to her separate property, trade, or business, or upon the faith and credit thereof and with the intent to charge her separate estate.
3. ———: ———: ———. Whether the contract is of the nature just indicated is a question of fact.
4. ———: ———: ———. In an action predicated upon promissory notes executed and delivered by a woman to her husband during the existence of the marital tie, if the coverture is pleaded in de-

Exhibit "7"

Exhibit "7":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **10/9/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit "7"***.
- No party objects to the admission of this Exhibit "7" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

CARR v. DAIL

114 N.C. 284 (N.C. 1894) · 19 S.E. 235

Decided Feb 1, 1894

(February Term, 1894.)

Mortgage — Mortgage in Possession — Right of Mortgage to Crops — Priority of Agricultural Lien.

Where a mortgagor was allowed to remain in possession and during such possession executed an agricultural lien under which he obtained advances in aid of the cultivation of the crop, and upon a suit for foreclosure the lands and rents were put into the hands of a receiver: *Held*, that, although the agricultural lien was improperly registered, it was good as between the lienor and mortgagor, and that equity would not subject the rents in the hands of the receiver to the payment of the mortgage indebtedness, except in subordination to the claim of such lienor, to be reimbursed to the extent of the advances made in aid of cultivation of the crops up to the time of the sequestration.

ACTION, heard before *Bryan, J.*, at November Term, 1893, of GREENE, upon an agreed statement of facts, of which a sufficient synopsis is given in the opinion of *Chief Justice Shepherd*.

The interpleader, Parker, who claimed a lien for advances to the mortgagor while in possession, but whose mortgage was improperly registered, appealed from the judgment declaring his mortgage (285) invalid as against the plaintiff mortgagee.

George M. Lindsay for plaintiffs.

T. C. Wooten for defendants.

(Syllabus by SHEPHERD, C. J.)

SHEPHERD, C. J.

In the case of *Killebrew v. Hines*, 104 N.C. 182, we had occasion to discuss at some length the rights of a mortgagee to the crops cultivated by a mortgagor in possession. We then declared, in accordance with well-settled principles, that a mortgagor in possession is the owner of the crops; that the mortgagee has no legal property rights therein, and that even when he enters he holds them as a mere incident to his right to the possession of the land. In such a case he is held to a strict account and the crops are only chargeable in equity with the mortgage indebtedness when the land is insufficient in value to discharge it. "Equity makes the mortgage, as between the mortgagor and mortgagee, a charge upon the rents and profits whenever the mortgagor is insolvent and the security is inadequate. In this respect it is said by some authorities that 'the land with all its produce' is regarded as a security for the mortgage debt, as between the mortgagor and mortgagee, and where the security of the land is hazardous or already insufficient, a receiver may be appointed for the purpose of subjecting the rents and profits of the mortgaged land, thus charging the produce with an equity, though up to the time of sequestration there was no lien upon it." It was also stated in the opinion that though the products might be so subjected they could not be said to be encumbered so as to give a preference to a mortgagee as against another creditor who had previously obtained an express lien upon the same. We further observed that "even after entry or sequestration, where the mortgagor has been permitted to remain in possession and cultivate the

soil, the lien for advances in aid of the cultivation of the (286) crops must prevail. We put this on the ground that this implied agreement to remain in possession must be presumed to have been made with reference to the general law, and it provides that the agricultural lien shall be superior to all others, except that of the landlord. Another reason is that equity will not charge the crops so as to defeat the superior equity of the lienee, who has borne the expense of their cultivation and production. To hold that under such circumstances the mortgagee may enter and appropriate to his exclusive use the entire crop would be dealing a fatal blow to a numerous class of agriculturists in this State, many of whom are so unfortunate as to have their lands encumbered by mortgages."

Applying these principles to the case before us, we are of the opinion that there was error on the part of the court in ruling that the interpleader, Parker, was entitled to no relief. It does not appear that there were any proceedings to foreclose, as to the land on which this crop was cultivated, until 27 March, 1893; nor does it appear that the crops were then sought to be sequestered. The mortgagor, therefore, up to the time of the entry of the mortgagee, was occupying the land under an implied agreement that he might cultivate it for that year, and in pursuance thereof had obtained supplies from Parker, and had presumably at the time of the entry actually planted the crops. It may be true that this implied agreement might be revoked as between the mortgagor and mortgagee, but until this was done by entry or proceedings to sequester, Parker had a right to deal with the mortgagor as one entitled to the possession of the land, at least to the extent of being protected by way of his agricultural lien for the amount of the advances already made. The mortgage of Parker, according to the facts agreed, was executed in January, 1893, for the purpose of securing (287) such advances, and, although improperly registered, was an effectual lien between the parties. The decree permitting the entry of the mortgagee was modified in a few weeks after it

was made and the land and its future products were put into the hands of receivers, who are now in possession of the rents, awaiting the direction of
 186 the court. *186 During his brief period of possession it does not appear that the mortgagee made any advances whatever, and all that he did, so far as the record discloses, was to adopt the tenants in possession as his own. He now prays the Court to turn over to him all of the said rents without paying to the said Parker the advances made by him in aid of their production. Nothing but some express provisions of law can authorize the Court to give its sanction to so inequitable a result, and we are glad to say that we have found nothing in our decisions or statutes which deprives the interpleader of his right to be reimbursed for advances made during the possession of the mortgagor.

As the case now stands, in view of the modification of the decree of the court putting the possession of the land and the crops into the hands of the receivers, we cannot regard the possession of the tenants, as against the interpleader, Parker, as the possession of the mortgagee, and the present action must therefore be considered as a proceeding on the part of the mortgagee to charge the said rents with an equitable lien, the proceeds of the land having been found insufficient to discharge the mortgage indebtedness. In other words, he prays the equitable aid of the Court to place him in the same position which he would have occupied had he been in the possession of the land at the time of the maturity of the crops and had thereby acquired the actual possession of the latter. The question is, Shall this be done to the prejudice (288) of Parker's claim to be reimbursed the amount advanced by him while the mortgagor was in possession? As we have said, Parker now has an effectual lien as against the mortgagor. The mortgagee has no lien whatever, and we do not see how the Court can *create* a lien in his favor as against Parker without contravening one of the fundamental principles of our jurisprudence embodied in the maxim "that he who seeks must

do equity." Even had the mortgagee been permitted to remain in possession it would be questionable whether he could defeat the rights of Parker, but where, as in this case, he neither has the possession of the land nor crops, and is seeking equitable relief, we think it very clear that his relief must be subordinated to the superior claim of the said interpleader. Had the agricultural lien been registered there can be no doubt as to Parker being entitled to relief (Laws 1889, ch. 476), and for the reasons given the want of registration, under the peculiar circumstances of this case, cannot, as against the mortgagee, change the result.

Spruill v. Arrington, 109 N.C. 192, cited by plaintiffs' counsel, is easily distinguishable from this in that the entry was made by a purchaser under a decree of foreclosure, there was a change
187 of possession, *187 and furthermore the act of 1889 was enacted after the execution of the agricultural lien, and therefore inapplicable.

The judgment must be reversed and the rights of the parties adjusted according to the principles declared in this opinion.

Reversed.

Cited: Hinton v. Walston, 115 N.C. 9; *Credle v. Ayers*, 126 N.C. 14.

(289)

Exhibit "8"

Exhibit "8":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **10/9/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit "8"***.
- No party objects to the admission of this Exhibit "8" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

BUTZ ET AL.
v.
ECONOMOU ET AL.

No. 76-709.

Supreme Court of United States.

Argued November 7, 1977.

Decided June 29, 1978.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

480 *480 Deputy Solicitor General Friedman argued the cause for petitioners. With him on the briefs were Solicitor General McCree, Assistant Attorney General Babcock, Robert E. Kopp, and Barbara L. Herwig.

David C. Buxbaum argued the cause and filed a brief for respondents.

MR. JUSTICE WHITE delivered the opinion of the Court.

481 This case concerns the personal immunity of federal officials in the Executive Branch from claims for damages arising from their violations of citizens' constitutional rights. Respondent^[1] filed suit against a number of officials in the Department of Agriculture claiming that they had instituted an investigation and an administrative proceeding against him in retaliation for his criticism of that agency. The District Court dismissed the action on the ground that the individual defendants, as federal officials, were entitled to absolute immunity for all discretionary acts within the scope of their authority. The Court of Appeals reversed, holding that the defendants were entitled only to the qualified immunity available to their counterparts in state government. *Economou v. U. S. Department of Agriculture*, 535 F. 2d 688 (1976). Because of *481 the importance of immunity doctrine to both the vindication of constitutional guarantees and the effective functioning of government, we granted certiorari. 429 U. S. 1089.

I

Respondent controls Arthur N. Economou and Co., Inc., which was at one time registered with the Department of Agriculture as a commodity futures commission merchant. Most of respondent's factual allegations in this lawsuit focus on an earlier administrative proceeding in which the Department of Agriculture sought to revoke or suspend the company's registration. On February 19, 1970, following an audit, the Department of Agriculture issued an administrative complaint alleging that respondent, while a registered merchant, had willfully failed to maintain the minimum financial requirements prescribed by the Department. After another audit, an amended complaint was issued on June 22, 1970. A hearing was held before the Chief Hearing Examiner of the Department, who filed a recommendation sustaining the administrative complaint. The Judicial Officer of the Department, to whom the Secretary had delegated his decisional authority in enforcement proceedings, affirmed the Chief Hearing Examiner's decision. On respondent's petition for review, the Court of Appeals for the Second Circuit vacated the order of the Judicial Officer. It reasoned that "the essential finding of willfulness . . . was made in a proceeding instituted without the customary warning letter, which the Judicial Officer conceded might well have resulted in prompt correction of the claimed insufficiencies." *Economou v. U. S. Department of Agriculture*, 494 F. 2d 519 (1974).

482 While the administrative complaint was pending before the Judicial Officer, respondent filed this lawsuit in Federal District Court. Respondent sought initially to enjoin the progress of the administrative proceeding, but he was unsuccessful in that regard. On March 31, 1975, respondent filed a second *482 amended complaint seeking damages. Named as defendants were the individuals who had served as Secretary and Assistant Secretary of Agriculture during the relevant events; the Judicial Officer and Chief Hearing Examiner; several officials in the Commodity Exchange Authority;^[2] the Agriculture Department attorney who had prosecuted the enforcement proceeding; and several of the auditors who had investigated respondent or were witnesses against respondent.^[3]

The complaint stated that prior to the issuance of the administrative complaints respondent had been "sharply critical of the staff and operations of Defendants and carried on a vociferous campaign for the reform of Defendant Commodity Exchange Authority to obtain more effective regulation of commodity trading." App. 157-158. The complaint also stated that, some time prior to the issuance of the February 19 complaint, respondent and his company had ceased to engage in activities regulated by the defendants. The complaint charged that each of the administrative complaints had been issued without the notice or warning required by law; that the defendants had furnished the complaints "to interested persons and others without furnishing respondent's answers as well"; and that following the issuance of the amended complaint, the defendants had issued a "deceptive" press release that "falsely indicated to the public that [respondent's] financial resources had deteriorated, when Defendants knew that their statement was untrue and so acknowledge[d] previously that said assertion was untrue." *Ibid.*^[4]

483 The complaint then presented 10 "causes of action," some *483 of which purported to state claims for damages under the United States Constitution. For example, the first "cause of action" alleged that respondent had been denied due process of law because the defendants had instituted unauthorized proceedings against him without proper notice and with the knowledge that respondent was no longer subject to their regulatory jurisdiction. The third "cause of action" stated that by means of such actions "the Defendants discouraged and chilled the campaign of criticism [plaintiff] directed against them, and thereby deprived the [plaintiff] of [his] rights to free expression guaranteed by the First Amendment of the United States Constitution."^[5]

The defendants moved to dismiss the complaint on the ground that "as to the individual defendants it is barred by the doctrine of official immunity" *Id.*, at 163. The defendants relied on an affidavit submitted earlier in the litigation by the attorney who had prosecuted the original administrative complaint against respondent. He stated that the Secretary of Agriculture had had no involvement with the case and that each of the other named defendants had acted "within the course of his official duties." *Id.*, at 142-149.

484 The District Court, apparently relying on the plurality opinion in Barr v. Matteo, 360 U. S. 564 (1959), held that the individual defendants would be entitled to immunity if they could show that "their alleged unconstitutional acts were *484 within the outer perimeter of their authority and discretionary." App. to Pet. for Cert. 25a. After examining the nature of the acts alleged in the complaint, the District Court concluded: "Since the individual defendants have shown that their alleged unconstitutional acts were both within the scope of their authority and discretionary, we dismiss the second amended complaint as to them."^[6] *Id.*, at 28a.

The Court of Appeals for the Second Circuit reversed the District Court's judgment of dismissal with respect to the individual defendants. Economou v. U. S. Department of Agriculture, 535 F. 2d 688 (1976). The Court of Appeals reasoned that Barr v. Matteo, *supra*, did not "represen[t] the last word in this evolving area," 535 F. 2d, at 691, because principles governing the immunity of officials of the Executive Branch had been elucidated in later decisions dealing with constitutional claims against state officials. *E. g.*, Pierson v. Ray, 386 U. S. 547 (1967); Scheuer v. Rhodes, 416 U. S. 232 (1974); Wood v. Strickland, 420 U. S. 308 (1975). These opinions were understood to establish that officials of the Executive Branch exercising discretionary functions did not need the protection of an absolute immunity from suit, but only a qualified immunity based on good faith and reasonable grounds. The Court of Appeals rejected a proposed distinction between suits against state officials sued pursuant to 42 U. S. C. § 1983 and suits against federal officials under the Constitution, noting that "[o]ther circuits have also concluded that the Supreme Court's development of official immunity doctrine in § 1983 suits against state officials applies with equal force to federal officers sued on a cause of action derived directly from the Constitution, since both types of suits serve the same function of protecting citizens against violations of their constitutional rights by government officials." 535 F. 2d, at 695 n. 7. The Court of Appeals recognized *485 that under Imbler v. Pachtman, 424 U. S. 409 (1976), state prosecutors were entitled to absolute immunity from § 1983 damages liability but reasoned that Agriculture Department officials performing analogous functions did not require such an immunity because their cases turned more on documentary proof than on the veracity of witnesses and because their work did not generally involve the same constraints of time and information present in criminal cases. 535 F. 2d, at 696 n. 8. The court concluded that all of the defendants were "adequately protected by permitting them to avail themselves of the defense of qualified 'good faith, reasonable grounds' immunity of the type approved by the Supreme Court in Scheuer and Wood." *Id.*, at 696. After noting that summary judgment would be available to the defendants if there were no genuine factual issues for trial, the Court of Appeals remanded the case for further proceedings.

The single submission by the United States on behalf of petitioners is that all of the federal officials sued in this case are absolutely immune from any liability for damages even if in the course of enforcing the relevant statutes they infringed respondent's constitutional rights and even if the violation was knowing and deliberate. Although the position is earnestly and ably presented by the United States, we are quite sure that it is unsound and consequently reject it.

In *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971), the victim of an arrest and search claimed to be violative of the Fourth Amendment brought suit for damages against the responsible federal agents. Repeating the declaration in *Marbury v. Madison*, 1 Cranch 137, 163 (1803), that "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws," 403 U. S. at 397, and stating that "[h]istorically, damages have been regarded as the ordinary remedy for an invasion of personal interests in liberty," *id.*, at 395, we rejected the claim that the plaintiff's remedy lay only in the state court under state law, with the Fourth Amendment operating merely to nullify a defense of federal authorization. We held that a violation of the Fourth Amendment by federal agents gives rise to a cause of action for damages consequent upon the unconstitutional conduct. *Ibid.*^[7]

Bivens established that compensable injury to a constitutionally protected interest could be vindicated by a suit for damages invoking the general federal-question jurisdiction of the federal courts,^[8] but we reserved the question whether the agents involved were "immune from liability by virtue of their official position," and remanded the case for that determination. On remand, the Court of Appeals for the Second Circuit, as has every other Court of Appeals that has faced the question,^[9] held that the agents were not absolutely immune and that the public interest would be sufficiently protected by according the agents and their superiors a qualified immunity.

In our view, the Courts of Appeals have reached sound results. We cannot agree with the United States that our prior cases are to the contrary and support the rule it now urges us to embrace. Indeed, as we see it, the Government's submission is contrary to the course of decision in this Court from the very early days of the Republic.

The Government places principal reliance on *Barr v. Matteo*, 360 U. S. 564 (1959). In that case, the acting director of an agency had been sued for malicious defamation by two employees whose suspension for misconduct he had announced in a press release. The defendant claimed an absolute or qualified privilege, but the trial court rejected both and the jury returned a verdict for plaintiff.

In the 1958 Term,^[10] the Court granted certiorari in *Barr* "to determine whether in the circumstances of this case petitioner's claim of absolute privilege should have stood as a bar to maintenance of the suit despite the allegations of malice made in the complaint." *Id.*, at 569. The Court was divided in reversing the judgment of the Court of Appeals, and there was no opinion for the Court.^[11] The plurality opinion inquired whether the conduct complained of was among those "matters committed by law to [the official's] control" and concluded, after an analysis of the specific circumstances, that the press release was within the "outer perimeter of [his] line of duty" and was "an appropriate exercise of the discretion which an officer of that rank must possess if the public service is to function effectively." *Id.*, at 575. The plurality then held that under *Spalding v. Vilas*, 161 U. S. 483 (1896), the act was privileged and that the officer could not be held liable for the tort of defamation despite the allegations of malice.^[12] *Barr* clearly held that a false and damaging publication, the issuance of which was otherwise within the official's authority, was not itself actionable and would not become so by being issued maliciously. The Court did not choose to discuss whether the director's privilege would be defeated by showing that he was without reasonable grounds for believing his release was true or that he knew that it was false, although the issue was in the case as it came from the Court of Appeals.^[13]

*489 *Barr* does not control this case. It did not address the liability of the acting director had his conduct not been within the outer limits of his duties, but from the care with which the Court inquired into the scope of his authority, it may be inferred that had the release been unauthorized, and surely if the issuance of press releases had been expressly forbidden by statute, the claim of absolute immunity would not have been upheld. The inference is supported by the fact that MR. JUSTICE STEWART, although agreeing with the principles announced by Mr. Justice Harlan, dissented and would have rejected the immunity claim because the press release, in his view, was not action in the line of duty. 360 U. S. at 592. It is apparent also that a quite different question would have been presented had the officer ignored an express statutory or constitutional limitation on his authority.

Barr did not, therefore, purport to depart from the general rule, which long prevailed, that a federal official may not with impunity ignore the limitations which the controlling law has placed on his powers. The immunity of federal executive officials began as a means of protecting them in the execution of their federal statutory duties from criminal or civil actions based on state law. See Osborn v. Bank of the United States, 9 Wheat. 738, 865-866 (1824).^[14] A federal *490 official who acted outside of his federal statutory authority would be held strictly liable for his trespassory acts. For example, Little v. Barreme, 2 Cranch 170 (1804), held the commander of an American warship liable in damages for the seizure of a Danish cargo ship on the high seas. Congress had directed the President to intercept any vessels reasonably suspected of being en route to a French port, but the President had authorized the seizure of suspected vessels whether going to or from French ports, and the Danish vessel seized was en route from a forbidden destination. The Court, speaking through Mr. Chief Justice Marshall, held that the President's instructions could not "change the nature of the transaction, or legalize an act which, without those instructions, would have been a plain trespass." *Id.*, at 179. Although there was probable cause to believe that the ship was engaged in traffic with the French, the seizure at issue was not among that class of seizures that the Executive had been authorized by statute to effect. See also Wise v. Withers, 3 Cranch 331 (1806).

Bates v. Clark, 95 U. S. 204 (1877), was a similar case. The relevant statute directed seizures of alcoholic beverages in Indian country, but the seizure at issue, which was made upon the orders of a superior, was not made in Indian country. The "objection fatal to all this class of defenses is that in that locality [the seizing officers] were utterly without any authority in the premises" and hence were answerable in damages. *Id.*, at 209.

As these cases demonstrate, a federal official was protected for action tortious under state law only if his acts were authorized by controlling federal law. "To make out his defence he must show that his authority was sufficient in law to protect him." Cunningham v. Macon & Brunswick R. Co., 109 U. S. 446, 452 (1883); Belknap v. Schild, 161 U. S. 10, 19 (1896). Since an unconstitutional act, even if authorized by statute, was viewed as not authorized in contemplation of *491 law, there could be no immunity defense.^[15] See United States v. Lee, 106 U. S. 196, 218-223 (1882); Virginia Coupon Cases, 114 U. S. 269, 285-292 (1885).^[16]

In both Barreme and Bates, the officers did not merely mistakenly conclude that the circumstances warranted a particular seizure, but failed to observe the limitations on their authority by making seizures not within the category or type of seizures they were authorized to make. Kendall v. Stokes, 3 How. 87 (1845), addressed a different situation. The case involved a suit against the Postmaster General for erroneously suspending payments to a creditor of the Post Office. Examining and, if necessary, suspending payments to creditors were among the Postmaster's normal duties, and it appeared that he had simply made a mistake in the exercise of the discretion conferred upon him. He was held not liable in damages since "a public officer, acting to the best of his judgment and from a sense of duty, in a matter of account with an individual [is not] liable in an action for an error of judgment." *Id.*, at 97-98. Having "the right to examine into this account" and the right to suspend it in the proper circumstances, *id.*, at 98, the officer was not liable in damages if he fell into error, provided, however, that he acted "from a sense of public duty and without malice." *Id.*, at 99.

492 Four years later, in a case involving military discipline, the Court issued a similar ruling, exculpating the defendant *492 officer because of the failure to prove that he had exceeded his jurisdiction or had exercised it in a malicious or willfully erroneous manner: "[I]t is not enough to show he committed an error of judgment, but it must have been a malicious and wilful error." Wilkes v. Dinsman, 7 How. 89, 131 (1849).

In Spalding v. Vilas, 161 U. S. 483 (1896), on which the Government relies, the principal issue was whether the malicious motive of an officer would render him liable in damages for injury inflicted by his official act that otherwise was within the scope of his authority. The Postmaster General was sued for circulating among the postmasters a notice that assertedly injured the reputation of the plaintiff and interfered with his contractual relationships. The Court first inquired as to the Postmaster General's authority to issue the notice. In doing so, it "recognize[d] a distinction between action taken by the head of a Department in reference to matters which are manifestly or palpably beyond his authority, and action having more or less connection with the general matters committed by law to his control or supervision." *Id.*, at 498. Concluding that the circular issued by the Postmaster General "was not unauthorized by law, nor beyond the scope of his official duties," the Court then addressed the major question in the case—whether the action could be "maintained because of the allegation that what the officer did was done maliciously?" *Id.*, at 493. Its holding was that the head of a department could not be "held liable to a civil suit for damages on account of official communications made by him pursuant to an act of Congress, and in respect of matters within his authority," however improper his motives might have been. *Id.*, at 498. Because the Postmaster

General in issuing the circular in question "did not exceed his authority, nor pass the line of his duty," *id.*, at 499, it was irrelevant that he might have acted maliciously.^[17]

493 *493 *Spalding* made clear that a malicious intent will not subject a public officer to liability for performing his authorized
duties as to which he would otherwise not be subject to damages liability.^[18] But *Spalding* did not involve conduct manifestly
or otherwise beyond the authority of the official, nor did it involve a mistake of either law or fact in construing or applying the
494 statute.^[19] It did not purport to immunize officials *494 who ignore limitations on their authority imposed by law. Although the
"manifestly or palpably" standard for examining the reach of official power may have been suggested as a gloss on
Barreme, *Bates*, *Kendall*, and *Wilkes*, none of those cases was overruled.^[20] It is also evident that *Spalding* presented no
claim that the officer was liable in damages because he had acted in violation of a limitation placed upon his conduct by the
United States Constitution. If any inference is to be drawn from *Spalding* in any of these respects, it is that the official would
not be excused from liability if he failed to observe obvious statutory or constitutional limitations on his powers or if his
conduct was a manifestly erroneous application of the statute.

Insofar as cases in this Court dealing with the immunity or privilege of federal officers are concerned,^[21] this is where the
matter stood until *Barr v. Matteo*. There, as we have set out above, immunity was granted even though the publication
495 contained a factual error, which was not the case in *Spalding*. The plurality opinion and judgment in *Barr* also appear— *495
although without any discussion of the matter—to have extended absolute immunity to an officer who was authorized to
issue press releases, who was assumed to know that the press release he issued was false and who therefore was
deliberately misusing his authority. Accepting this extension of immunity with respect to state tort claims, however, we are
confident that *Barr* did not purport to protect an official who has not only committed a wrong under local law, but also
violated those fundamental principles of fairness embodied in the Constitution.^[22] Whatever level of protection from state
interference is appropriate for federal officials executing their duties under federal law, it cannot be doubted that these
officials, even when acting pursuant to congressional authorization, are subject to the restraints imposed by the Federal
Constitution.

The liability of officials who have exceeded constitutional limits was not confronted in either *Barr* or *Spalding*. Neither of
those cases supports the Government's position. Beyond that, however, neither case purported to abolish the liability of
federal officers for actions manifestly beyond their line of duty; and if they are accountable when they stray beyond the plain
limits of their statutory authority, it would be incongruous to hold that they may nevertheless willfully or knowingly violate
constitutional rights without fear of liability.

496 Although it is true that the Court has not dealt with this *496 issue with respect to federal officers,^[23] we have several times
addressed the immunity of state officers when sued under 42 U. S. C. § 1983 for alleged violations of constitutional rights.
These decisions are instructive for present purposes.

III

Pierson v. Ray, 386 U. S. 547 (1967), decided that § 1983 was not intended to abrogate the immunity of state judges which
existed under the common law and which the Court had held applicable to federal judges in *Bradley v. Fisher*, 13 Wall. 335
(1872). *Pierson* also presented the issue "whether immunity was available to that segment of the executive branch of a state
government that is . . . most frequently exposed to situations which can give rise to claims under § 1983—the local police
officer." *Scheuer v. Rhodes*, 416 U. S. at 244-245. Relying on the common law, we held that police officers were entitled to a
defense of "good faith and probable cause," even though an arrest might subsequently be proved to be unconstitutional. We
observed, however, that "[t]he common law has never granted police officers an absolute and unqualified immunity, and the
officers in this case do not claim that they are entitled to one." 386 U. S., at 555.

In *Scheuer v. Rhodes*, *supra*, the issue was whether "higher officers of the executive branch" of state governments were
immune from liability under § 1983 for violations of constitutionally protected rights. 416 U. S., at 246. There, the Governor
of a State, the senior and subordinate officers of the state National Guard, and a state university president had been sued
497 on the allegation that they had suppressed a civil disturbance *497 in an unconstitutional manner. We explained that the
doctrine of official immunity from § 1983 liability, although not constitutionally grounded and essentially a matter of statutory
construction, was based on two mutually dependent rationales:

"(1) the injustice, particularly in the absence of bad faith, of subjecting to liability an officer who is required, by the legal obligations of his position, to exercise discretion; (2) the danger that the threat of such liability would deter his willingness to execute his office with the decisiveness and the judgment required by the public good." 416 U. S., at 240.

The opinion also recognized that executive branch officers must often act swiftly and on the basis of factual information supplied by others, constraints which become even more acute in the "atmosphere of confusion, ambiguity, and swiftly moving events" created by a civil disturbance. *Id.*, at 246-247. Although quoting at length from *Barr v. Matteo*,^[24] we did not believe that there was a need for absolute immunity from § 1983 liability for these high-ranking state officials. Rather the considerations discussed above indicated:

498 "[I]n varying scope, a qualified immunity is available to officers of the executive branch of government, the variation being dependent upon the scope of discretion and responsibilities of the office and all the circumstances as they reasonably appeared at the time of the action on which liability is sought to be based. It is the *498 existence of reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with good-faith belief, that affords a basis for qualified immunity of executive officers for acts performed in the course of official conduct." 416 U. S., at 247-248.

Subsequent decisions have applied the *Scheuer* standard in other contexts. In *Wood v. Strickland*, 420 U. S. 308 (1975), school administrators were held entitled to claim a similar qualified immunity. A school board member would lose his immunity from a § 1983 suit only if "he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the student." 420 U. S., at 322. In *O'Connor v. Donaldson*, 422 U. S. 563 (1975), we applied the same standard to the superintendent of a state hospital. In *Procunier v. Navarette*, 434 U. S. 555 (1978), we held that prison administrators would be adequately protected by the qualified immunity outlined in *Scheuer* and *Wood*. We emphasized, however, that, at least in the absence of some showing of malice, an official would not be held liable in damages under § 1983 unless the constitutional right he was alleged to have violated was "clearly established" at the time of the violation.

499 None of these decisions with respect to state officials furnishes any support for the submission of the United States that federal officials are absolutely immune from liability for their constitutional transgressions. On the contrary, with impressive unanimity, the Federal Courts of Appeals have concluded that federal officials should receive no greater degree of protection from constitutional claims than their counterparts in state government.^[25] Subsequent to *Scheuer*, the *499 Court of Appeals for the Fourth Circuit concluded that "[a]lthough *Scheuer* involved a suit against state executive officers, the court's discussion of the qualified nature of executive immunity would appear to be equally applicable to federal executive officers." *States Marine Lines v. Shultz*, 498 F. 2d 1146, 1159 (1974). In the view of the Court of Appeals for the Second Circuit,

"it would be 'incongruous and confusing, to say the least' to develop different standards of immunity for state officials sued under § 1983 and federal officers sued on similar grounds under causes of action founded directly on the Constitution." *Economou v. U. S. Dept. of Agriculture*, 535 F. 2d, at 695 n. 7., quoting *Bivens v. Six Unknown Fed. Narcotics Agents*, 456 F. 2d 1339, 1346-1347 (CA2 1972) (on remand).^[26]

The Court of Appeals for the Ninth Circuit has reasoned:

500 "[Defendants] offer no significant reason for distinguishing, as far as the immunity doctrine is concerned, between litigation under § 1983 against state officers and actions against federal officers alleging violation of constitutional rights under the general federal question statute. In contrast, the practical advantage of having just one federal *500 immunity doctrine for suits arising under federal law is self-evident. Further, the rights at stake in a suit brought directly under the Bill of Rights are no less worthy of full protection than the constitutional and statutory rights protected by § 1983." *Mark v. Groff*, 521 F. 2d 1376, 1380 (1975).

Other courts have reached similar conclusions. *E. g.*, *Apton v. Wilson*, 165 U. S. App. D. C. 22, 506 F. 2d 83 (1974); *Brubaker v. King*, 505 F. 2d 534 (CA7 1974); see *Weir v. Muller*, 527 F. 2d 872 (CA5 1976); *Paton v. La Prade*, 524 F. 2d 862 (CA3 1975); *Jones v. United States*, 536 F. 2d 269 (CA8 1976); *G. M. Leasing Corp. v. United States*, 560 F. 2d 1011 (CA10 1977).^[27]

We agree with the perception of these courts that, in the absence of congressional direction to the contrary, there is no basis for according to federal officials a higher degree of immunity from liability when sued for a constitutional infringement as authorized by *Bivens* than is accorded state officials when sued for the identical violation under § 1983. The constitutional injuries made actionable by § 1983 are of no greater magnitude than those for which federal officials may be responsible. The pressures and uncertainties facing decisionmakers in state government are little if at all different from those affecting federal officials.^[28] We see no sense *501 in holding a state governor liable but immunizing the head of a federal department; in holding the administrator of a federal hospital immune where the superintendent of a state hospital would be liable; in protecting the warden of a federal prison where the warden of a state prison would be vulnerable; or in distinguishing between state and federal police participating in the same investigation. Surely, federal officials should enjoy no greater zone of protection when they violate federal constitutional rules than do state officers.

The Government argues that the cases involving state officials are distinguishable because they reflect the need to preserve the effectiveness of the right of action authorized by § 1983. But as we discuss more fully below, the cause of action recognized in *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971), would similarly be "drained of meaning" if federal officials were entitled to absolute immunity for their constitutional transgressions. Cf. *Scheuer v. Rhodes*, 416 U. S., at 248.

Moreover, the Government's analysis would place undue emphasis on the congressional origins of the cause of action in determining the level of immunity. It has been observed more than once that the law of privilege as a defense to damages actions against officers of Government has "in large *502 part been of judicial making." *Barr v. Matteo*, 360 U. S., at 569; *Doe v. McMillan*, 412 U. S. 306, 318 (1973). Section 1 of the Civil Rights Act of 1871^[29]—the predecessor of § 1983—said nothing about immunity for state officials. It mandated that any person who under color of state law subjected another to the deprivation of his constitutional rights would be liable to the injured party in an action at law.^[30] This *503 Court nevertheless ascertained and announced what it deemed to be the appropriate type of immunity from § 1983 liability in a variety of contexts. *Pierson v. Ray*, 386 U. S. 547 (1967); *Imbler v. Pachtman*, 424 U. S. 409 (1976); *Scheuer v. Rhodes*, *supra*. The federal courts are equally competent to determine the appropriate level of immunity where the suit is a direct claim under the Federal Constitution against a federal officer.

The presence or absence of congressional authorization for suits against federal officials is, of course, relevant to the question whether to infer a right of action for damages for a particular violation of the Constitution. In *Bivens*, the Court noted the "absence of affirmative action by Congress" and therefore looked for "special factors counselling hesitation." 403 U. S., at 396. Absent congressional authorization, a court may also be impelled to think more carefully about whether the type of injury sustained by the plaintiff is normally compensable in damages, *id.*, at 397, and whether the courts are qualified to handle the types of questions raised by the plaintiff's claim, see *id.*, at 409 (Harlan, J., concurring in judgment).

But once this analysis is completed, there is no reason to return again to the absence of congressional authorization in resolving the question of immunity. Having determined that the plaintiff is entitled to a remedy in damages for a constitutional violation, the court then must address how best to reconcile the plaintiff's right to compensation with the need to protect the decisionmaking processes of an executive department. Since our decision in *Scheuer* was intended to guide the federal courts in resolving this tension in the myriad factual situations in which it might arise, we see no reason why it should not supply the governing principles for resolving this dilemma in the case of federal officials. The Court's opinion in *Scheuer* relied on precedents dealing with federal as well as state officials, analyzed the issue of executive immunity *504 in terms of general policy considerations, and stated its conclusion, quoted *supra*, in the same universal terms. The analysis presented in that case cannot be limited to actions against state officials.

Accordingly, without congressional directions to the contrary, we deem it untenable to draw a distinction for purposes of immunity law between suits brought against state officials under § 1983 and suits brought directly under the Constitution against federal officials. The § 1983 action was provided to vindicate federal constitutional rights. That Congress decided, after the passage of the Fourteenth Amendment, to enact legislation specifically requiring state officials to respond in federal court for their failures to observe the constitutional limitations on their powers is hardly a reason for excusing their federal counterparts for the identical constitutional transgressions. To create a system in which the Bill of Rights monitors more closely the conduct of state officials than it does that of federal officials is to stand the constitutional design on its head.

IV

As we have said, the decision in *Bivens* established that a citizen suffering a compensable injury to a constitutionally protected interest could invoke the general federal-question jurisdiction of the district courts to obtain an award of monetary damages against the responsible federal official. As Mr. Justice Harlan, concurring in the judgment, pointed out, the action for damages recognized in *Bivens* could be a vital means of providing redress for persons whose constitutional rights have been violated. The barrier of sovereign immunity is frequently impenetrable.^[31] Injunctive or declaratory relief is useless to a person who has already been injured. "For *505 people in *Bivens*' shoes, it is damages or nothing." 403 U. S., at 410.

Our opinion in *Bivens* put aside the immunity question; but we could not have contemplated that immunity would be absolute.^[32] If, as the Government argues, all officials exercising discretion were exempt from personal liability, a suit under the Constitution could provide no redress to the injured citizen, nor would it in any degree deter federal officials from committing constitutional wrongs. Moreover, no compensation would be available from the Government, for the Tort Claims Act prohibits recovery for injuries stemming from discretionary acts, even when that discretion has been abused.^[33]

The extension of absolute immunity from damages liability to all federal executive officials would seriously erode the protection provided by basic constitutional guarantees. The broad authority possessed by these officials enables them to direct their subordinates to undertake a wide range of projects—including some which may infringe such important personal interests as liberty, property, and free speech. It makes *506 little sense to hold that a Government agent is liable for warrantless and forcible entry into a citizen's house in pursuit of evidence, but that an official of higher rank who actually orders such a burglary is immune simply because of his greater authority. Indeed, the greater power of such officials affords a greater potential for a regime of lawless conduct. Extensive Government operations offer opportunities for unconstitutional action on a massive scale. In situations of abuse, an action for damages against the responsible official can be an important means of vindicating constitutional guarantees.

Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law:

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it." *United States v. Lee*, 106 U. S., at 220.

See also *Marbury v. Madison*, 1 Cranch 137 (1803); *Scheuer v. Rhodes*, 416 U. S., at 239-240. In light of this principle, federal officials who seek absolute exemption from personal liability for unconstitutional conduct must bear the burden of showing that public policy requires an exemption of that scope.

This is not to say that considerations of public policy fail to support a limited immunity for federal executive officials. We consider here, as we did in *Scheuer*, the need to protect officials who are required to exercise their discretion and the related public interest in encouraging the vigorous exercise of official authority. Yet *Scheuer* and other cases have recognized that it is not unfair to hold liable the official who knows or should know he is acting outside the law, and that insisting on an awareness of clearly established constitutional limits will not *507 unduly interfere with the exercise of official judgment. We therefore hold that, in a suit for damages arising from unconstitutional action, federal executive officials exercising discretion are entitled only to the qualified immunity specified in *Scheuer*, subject to those exceptional situations where it is demonstrated that absolute immunity is essential for the conduct of the public business.^[34]

The *Scheuer* principle of only qualified immunity for constitutional violations is consistent with *Barr v. Matteo*, 360 U. S. 564 (1959), *Spalding v. Vilas*, 161 U. S. 483 (1896), and *Kendall v. Stokes*, 3 How. 87 (1847). Federal officials will not be liable for mere mistakes in judgment, whether the mistake is one of fact or one of law. But we see no substantial basis for holding, as the United States would have us do, that executive officers generally may with impunity discharge their duties in a way that is known to them to violate the United States Constitution or in a manner that they should know transgresses a clearly established constitutional rule. The principle should prove as workable in suits against federal officials as it has in the context of suits against state officials. Insubstantial lawsuits can be quickly terminated by federal courts alert to the possibilities of artful pleading. Unless the complaint states a compensable claim for relief under the Federal Constitution, it should not survive *508 a motion to dismiss. Moreover, the Court recognized in *Scheuer* that damages suits concerning constitutional violations need not proceed to trial, but can be terminated on a properly supported motion for summary judgment based on the defense of immunity.^[35] See 416 U. S., at 250. In responding to such a motion, plaintiffs may not play dog in the manger; and firm application of the Federal Rules of Civil Procedure will ensure that federal officials are not harassed by frivolous lawsuits.

Although a qualified immunity from damages liability should be the general rule for executive officials charged with constitutional violations, our decisions recognize that there are some officials whose special functions require a full exemption from liability. *E. g.*, *Bradley v. Fisher*, 13 Wall. 335 (1872); *Imbler v. Pachtman*, 424 U. S. 409 (1976). In each case, we have undertaken "a considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it." *Id.*, at 421.

509 In *Bradley v. Fisher*, the Court analyzed the need for absolute immunity to protect judges from lawsuits claiming that their decisions had been tainted by improper motives. The Court began by noting that the principle of immunity for acts done by judges "in the exercise of their judicial functions" had been "the settled doctrine of the English courts for many centuries, and has never been denied, that we are aware of, in the courts of this country." 13 Wall., at 347. The Court explained that the value of this rule was proved by experience. *509 Judges were often called to decide "[c]ontroversies involving not merely great pecuniary interests, but the liberty and character of the parties, and consequently exciting the deepest feelings." *Id.*, at 348. Such adjudications invariably produced at least one losing party, who would "accep[t] anything but the soundness of the decision in explanation of the action of the judge." *Ibid.* "Just in proportion to the strength of his convictions of the correctness of his own view of the case is he apt to complain of the judgment against him, and from complaints of the judgment to pass to the ascription of improper motives to the judge." *Ibid.* If a civil action could be maintained against a judge by virtue of an allegation of malice, judges would lose "that independence without which no judiciary can either be respectable or useful." *Id.*, at 347. Thus, judges were held to be immune from civil suit "for malice or corruption in their action whilst exercising their judicial functions within the general scope of their jurisdiction." *Id.*, at 354.^[36]

510 The principle of *Bradley* was extended to federal prosecutors through the summary affirmance in *Yaselli v. Goff*, 275 U. S. 503 (1927), aff'g 12 F. 2d 396 (CA2 1926). The Court of Appeals in that case discussed in detail the common-law precedents extending absolute immunity to parties participating in the judicial process: judges, grand jurors, petit jurors, advocates, and witnesses. Grand jurors had received absolute immunity "'lest they should be biased with the fear of being *510 harassed by a vicious suit for acting according to their consciences (the danger of which might easily be insinuated where powerful men are warmly engaged in a cause and thoroughly prepossessed of the justice of the side which they espouse).'" *Id.*, at 403, quoting 1 W. Hawkins, *Pleas of the Crown* 349 (6th ed. 1787). The court then reasoned that "'[t]he public prosecutor, in deciding whether a particular prosecution shall be instituted or followed up, performs much the same function as a grand jury.'" 12 F. 2d, at 404, quoting *Smith v. Parman*, 101 Kan. 115, 116, 165 P. 663 (1917). The court held the prosecutor in that case immune from suit for malicious prosecution and this Court, citing *Bradley v. Fisher*, supra, affirmed.

We recently reaffirmed the holding of *Yaselli v. Goff* in *Imbler v. Pachtman*, supra, a suit against a state prosecutor under § 1983. The Court's examination of the leading precedents led to the conclusion that "[t]he common-law immunity of a prosecutor is based upon the same considerations that underlie the common-law immunities of judges and grand jurors acting within the scope of their duties." 424 U. S., at 422-423. The prosecutor's role in the criminal justice system was likely to provoke "with some frequency" retaliatory suits by angry defendants. *Id.*, at 425. A qualified immunity might have an adverse effect on the functioning of the criminal justice system, not only by discouraging the initiation of prosecutions, see *id.*, at 426 n. 24, but also by affecting the prosecutor's conduct of the trial.

"Attaining the system's goal of accurately determining guilt or innocence requires that both the prosecution and the defense have wide discretion in the conduct of the trial and the presentation of evidence. . . . If prosecutors were hampered in exercising their judgment as to the use of . . . witnesses by concern about resulting personal liability, the triers of fact in criminal cases often would be denied relevant evidence." *Id.*, at 426.

511 *511 In light of these and other practical considerations, the Court held that the defendant in that case was entitled to absolute immunity with respect to his activities as an advocate, "activities [which] were intimately associated with the judicial phase of the criminal process, and thus were functions to which the reasons for absolute immunity apply with full force." *Id.*, at 430.^[37]

Despite these precedents, the Court of Appeals concluded that all of the defendants in this case—including the Chief Hearing Examiner, Judicial Officer, and prosecuting attorney—were entitled to only a qualified immunity. The Court of

Appeals reasoned that officials within the Executive Branch generally have more circumscribed discretion and pointed out that, unlike a judge, officials of the Executive Branch would face no conflict of interest if their legal representation was provided by the Executive Branch. The Court of Appeals recognized that "some of the Agriculture Department officials may be analogized to criminal prosecutors, in that they initiated the proceedings against [respondent], and presented evidence therein," 535 F. 2d, at 696 n. 8, but found that attorneys in administrative proceedings did not face the same "serious constraints of time and even information" which this Court has found to be present frequently in criminal cases. See Imbler v. Pachtman, 424 U. S., at 425.

512 We think that the Court of Appeals placed undue emphasis on the fact that the officials sued here are—from an administrative perspective—employees of the Executive Branch. Judges have absolute immunity not because of their particular location within the Government but because of the special nature of their responsibilities. This point is underlined by the fact that prosecutors—themselves members of the Executive *512 Branch—are also absolutely immune. "It is the functional comparability of their judgments to those of the judge that has resulted in both grand jurors and prosecutors being referred to as 'quasi-judicial' officers, and their immunities being termed 'quasi-judicial' as well." *Id.*, at 423 n. 20.

The cluster of immunities protecting the various participants in judge-supervised trials stems from the characteristics of the judicial process rather than its location. As the *Bradley* Court suggested, 13 Wall., at 348-349, controversies sufficiently intense to erupt in litigation are not easily capped by a judicial decree. The loser in one forum will frequently seek another, charging the participants in the first with unconstitutional animus. See Pierson v. Ray, 386 U. S., at 554. Absolute immunity is thus necessary to assure that judges, advocates, and witnesses can perform their respective functions without harassment or intimidation.

At the same time, the safeguards built into the judicial process tend to reduce the need for private damages actions as a means of controlling unconstitutional conduct. The insulation of the judge from political influence, the importance of precedent in resolving controversies, the adversary nature of the process, and the correctability of error on appeal are just a few of the many checks on malicious action by judges.^[38] Advocates are restrained not only by their professional obligations, but by the knowledge that their assertions will be contested by their adversaries in open court. Jurors are carefully screened to remove all possibility of bias. Witnesses are, of course, subject to the rigors of cross-examination and the penalty of perjury. Because these features of the judicial process tend to enhance the reliability of information and the impartiality of the decisionmaking process, there is a less pressing need for individual suits to correct constitutional error.

513 We think that adjudication within a federal administrative *513 agency shares enough of the characteristics of the judicial process that those who participate in such adjudication should also be immune from suits for damages. The conflicts which federal hearing examiners seek to resolve are every bit as fractious as those which come to court. As the *Bradley* opinion points out: "When the controversy involves questions affecting large amounts of property or relates to a matter of general public concern, or touches the interests of numerous parties, the disappointment occasioned by an adverse decision, often finds vent in imputations of [malice]." 13 Wall., at 348. Moreover, federal administrative law requires that agency adjudication contain many of the same safeguards as are available in the judicial process. The proceedings are adversary in nature. See 5 U. S. C. § 555 (b) (1976 ed.). They are conducted before a trier of fact insulated from political influence. See § 554 (d). A party is entitled to present his case by oral or documentary evidence, § 556 (d), and the transcript of testimony and exhibits together with the pleadings constitute the exclusive record for decision. § 556 (e). The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record. § 557 (c).

514 There can be little doubt that the role of the modern federal hearing examiner or administrative law judge within this framework is "functionally comparable" to that of a judge. His powers are often, if not generally, comparable to those of a trial judge: He may issue subpoenas, rule on proffers of evidence, regulate the course of the hearing, and make or recommend decisions. See § 556 (c). More importantly, the process of agency adjudication is currently structured so as to assure that the hearing examiner exercises his independent judgment on the evidence before him, free from pressures by the parties or other officials within the agency. Prior to the Administrative Procedure Act, there was considerable concern that persons hearing administrative cases at the trial level could not exercise independent judgment because *514 they were required to perform prosecutorial and investigative functions as well as their judicial work, see, e. g., Wong Yang Sung v. McGrath, 339 U. S. 33, 36-41 (1950), and because they were often subordinate to executive officials within the agency, see Ramspeck v. Federal Trial Examiners Conference, 345 U. S. 128, 131 (1953). Since the securing of fair and competent hearing personnel was viewed as "the heart of formal administrative adjudication," Final Report of the Attorney General's Committee on Administrative Procedure 46 (1941), the Administrative Procedure Act contains a number of provisions designed to guarantee the independence of hearing examiners. They may not perform duties inconsistent with their duties

as hearing examiners. 5 U. S. C. § 3105 (1976 ed.). When conducting a hearing under § 5 of the APA, 5 U. S. C. § 554 (1976 ed.), a hearing examiner is not responsible to, or subject to the supervision or direction of, employees or agents engaged in the performance of investigative or prosecution functions for the agency. 5 U. S. C. § 554 (d) (2) (1976 ed.). Nor may a hearing examiner consult any person or party, including other agency officials, concerning a fact at issue in the hearing, unless on notice and opportunity for all parties to participate. § 554 (d) (1). Hearing examiners must be assigned to cases in rotation so far as is practicable. § 3105. They may be removed only for good cause established and determined by the Civil Service Commission after a hearing on the record. § 7521. Their pay is also controlled by the Civil Service Commission.

In light of these safeguards, we think that the risk of an unconstitutional act by one presiding at an agency hearing is clearly outweighed by the importance of preserving the independent judgment of these men and women. We therefore hold that persons subject to these restraints and performing adjudicatory functions within a federal agency are entitled to absolute immunity from damages liability for their judicial acts. Those who complain of error in such proceedings must seek agency or judicial review.

- 515 *515 We also believe that agency officials performing certain functions analogous to those of a prosecutor should be able to claim absolute immunity with respect to such acts. The decision to initiate administrative proceedings against an individual or corporation is very much like the prosecutor's decision to initiate or move forward with a criminal prosecution. An agency official, like a prosecutor, may have broad discretion in deciding whether a proceeding should be brought and what sanctions should be sought. The Commodity Futures Trading Commission, for example, may initiate proceedings whenever it has "reason to believe" that any person "is violating or has violated any of the provisions of this chapter or of the rules, regulations, or orders of the Commission." 7 U. S. C. § 9 (1976 ed.). A range of sanctions is open to it. *Ibid*.

The discretion which executive officials exercise with respect to the initiation of administrative proceedings might be distorted if their immunity from damages arising from that decision was less than complete. Cf. *Imbler v. Pachtman*, 424 U. S., at 426 n. 24. While there is not likely to be anyone willing and legally able to seek damages from the officials if they do not authorize the administrative proceeding, cf. *id.*, at 438 (WHITE, J., concurring in judgment), there is a serious danger that the decision to authorize proceedings will provoke a retaliatory response. An individual targeted by an administrative proceeding will react angrily and may seek vengeance in the courts. A corporation will muster all of its financial and legal resources in an effort to prevent administrative sanctions. "When millions may turn on regulatory decisions, there is a strong incentive to counter-attack."^[39]

- 516 The defendant in an enforcement proceeding has ample opportunity to challenge the legality of the proceeding. An administrator's decision to proceed with a case is subject to scrutiny in the proceeding itself. The respondent may present his evidence to an impartial trier of fact and obtain an independent judgment as to whether the prosecution is justified. His claims that the proceeding is unconstitutional may also be heard by the courts. Indeed, respondent in this case was able to quash the administrative order entered against him by means of judicial review. See *Economou v. U. S. Department of Agriculture*, 494 F. 2d 519 (CA2 1974).

We believe that agency officials must make the decision to move forward with an administrative proceeding free from intimidation or harassment. Because the legal remedies already available to the defendant in such a proceeding provide sufficient checks on agency zeal, we hold that those officials who are responsible for the decision to initiate or continue a proceeding subject to agency adjudication are entitled to absolute immunity from damages liability for their parts in that decision.

- 517 We turn finally to the role of an agency attorney in conducting a trial and presenting evidence on the record to the trier of fact. We can see no substantial difference between the function of the agency attorney in presenting evidence in an agency hearing and the function of the prosecutor who brings evidence before a court.^[40] In either case, the evidence *517 will be subject to attack through cross-examination, rebuttal, or reinterpretation by opposing counsel. Evidence which is false or unpersuasive should be rejected upon analysis by an impartial trier of fact. If agency attorneys were held personally liable in damages as guarantors of the quality of their evidence, they might hesitate to bring forward some witnesses or documents. "This is particularly so because it is very difficult if not impossible for attorneys to be absolutely certain of the objective truth or falsity of the testimony which they present." *Imbler v. Pachtman*, *supra*, at 440 (WHITE, J., concurring in judgment). Apart from the possible unfairness to agency personnel, the agency would often be denied relevant evidence. Cf. *Imbler v. Pachtman*, *supra*, at 426. Administrative agencies can act in the public interest only if they can adjudicate on the basis of a

complete record. We therefore hold that an agency attorney who arranges for the presentation of evidence on the record in the course of an adjudication is absolutely immune from suits based on the introduction of such evidence.

VI

There remains the task of applying the foregoing principles to the claims against the particular petitioner-defendants involved in this case. Rather than attempt this here in the first instance, we vacate the judgment of the Court of Appeals and remand the case to that court with instructions to remand the case to the District Court for further proceedings consistent with this opinion.

So ordered.

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE STEVENS join, concurring in part and dissenting in part.

518 I concur in that part of the Court's judgment which affords absolute immunity to those persons performing adjudicatory functions within a federal agency, *ante*, at 514, *518 those who are responsible for the decision to initiate or continue a proceeding subject to agency adjudication, *ante*, at 516, and those agency personnel who present evidence on the record in the course of an adjudication, *ante*, at 517. I cannot agree, however, with the Court's conclusion that in a suit for damages arising from allegedly unconstitutional action federal executive officials, regardless of their rank or the scope of their responsibilities, are entitled to only qualified immunity even when acting within the outer limits of their authority. The Court's protestations to the contrary notwithstanding, this decision seriously misconstrues our prior decisions, finds little support as a matter of logic or precedent, and perhaps most importantly, will, I fear, seriously "dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties," Gregoire v. Biddle, 177 F.2d 579, 581 (CA2 1949) (Learned Hand, J.).

Most noticeable is the Court's unnaturally constrained reading of the landmark case of Spalding v. Vilas, 161 U. S. 483 (1896). The Court in that case did indeed hold that the actions taken by the Postmaster General were within the authority conferred upon him by Congress, and went on to hold that even though he had acted maliciously in carrying out the duties conferred upon him by Congress he was protected by official immunity. But the Court left no doubt that it would have reached the same result had it been alleged the official acts were unconstitutional.

519 "We are of the opinion that the same general considerations of public policy and convenience which demand for judges of courts of superior jurisdiction immunity from civil suits for damages arising from acts done by them in the course of the performance of their judicial functions, apply to a large extent to official communications made by heads of Executive Departments when engaged in the discharge of duties imposed upon them by law. The interests of the people require that due protection be *519 accorded to them in respect of their official acts." *Id.*, at 498.

The Court today attempts to explain away that language by observing that *Spalding* indicated no intention to overrule Kendall v. Stokes, 3 How. 87 (1845), or Wilkes v. Dinsman, 7 How. 89 (1849). See *ante*, at 493 n. 18. But as the Court itself observes, the Postmaster General was held *not* "liable in an action for an error of judgment" in Kendall, *supra*, at 98. The Court in Wilkes, *supra*, likewise exonerated the defendant. The Court did indicate in dictum in both those cases that a federal officer might be liable if he acted with malice, Kendall, *supra*, at 99; Wilkes, *supra*, at 131, but the holding in *Spalding* was, as even the Court is forced to admit today, see *ante*, at 492-493, directly contrary to those cases on that point. In short, *Spalding* clearly and inescapably stands for the proposition that high-ranking executive officials acting within the outer limits of their authority are absolutely immune from suit.

Indeed, the language from *Spalding* quoted above unquestionably applies with equal force in the case at bar. No one seriously contends that the Secretary of Agriculture or the Assistant Secretary, who are being sued for \$32 million in damages, had wandered completely off the official reservation in authorizing prosecution of respondent for violation of regulations promulgated by the Secretary for the regulation of "futures commission merchants," 7 U. S. C. § 6 (1976 ed.). This is precisely what the Secretary and his assistants were empowered and required to do. That they would on occasion be mistaken in their judgment that a particular merchant had in fact violated the regulations is a necessary concomitant of any known system of administrative adjudication; that they acted "maliciously" gives no support to respondent's claim against them unless we are to overrule *Spalding*.

520 The Court's attempt to distinguish *Spalding* may be predicated *520 on a simpler but equally erroneous concept of immunity. At one point the Court observes that even under *Spalding* "an executive officer would be vulnerable if he took action 'manifestly or palpably' beyond his authority or ignored a clear limitation on his enforcement powers." *Ante*, at 493 n. 18. From that proposition, which is undeniably accurate, the Court appears to conclude that anytime a plaintiff can paint his grievance in constitutional colors, the official is subject to damages unless he can prove he acted in good faith. After all, Congress would never "authorize" an official to engage in unconstitutional conduct. That this notion in fact underlines the Court's decision is strongly suggested by its discussion of numerous cases which supposedly support its position, but all of which in fact deal not with the question of what level of immunity a federal official may claim when acting within the outer limits of his authority, but rather with the question of whether he was in fact so acting. See *ante*, at 489-491.

Putting to one side the illogic and impracticability of distinguishing between constitutional and common-law claims for purposes of immunity, which will be discussed shortly, this sort of immunity analysis badly misses the mark. It amounts to saying that an official has immunity until someone alleges he has acted unconstitutionally. But that is no immunity at all: The "immunity" disappears at the very moment when it is needed. The critical inquiry in determining whether an official is entitled to claim immunity is not whether someone has in fact been injured by his action; that is part of the plaintiff's case in chief. The immunity defense turns on whether the action was one taken "when engaged in the discharge of duties imposed upon [the official] by law," *Spalding*, 161 U. S., at 498, or in other words, whether the official was acting within the outer bounds of his authority. Only if the immunity inquiry is approached in this manner does it have any meaning. That such a rule may occasionally result in individual injustices has never been doubted, but at least until *521 today, immunity has been accorded nevertheless. As Judge Learned Hand said in *Gregoire v. Biddle*, 177 F. 2d, at 581:

"The justification for doing so is that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. Again and again the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to it to satisfy a jury of his good faith. There must indeed be means of punishing public officers who have been truant to their duties; but that is quite another matter from exposing such as have been honestly mistaken to suit by anyone who has suffered from their errors. As is so often the case, the answer must be found in a balance between the evils inevitable in either alternative. In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation. . . ."

Indeed, in that very case Judge Hand laid bare the folly of approaching the question of immunity in the manner suggested today by the Court.

522 "The decisions have, indeed, always imposed as a limitation upon the immunity that the official's act must have been within the scope of his powers; and it can be argued that official powers, since they exist only for the public good, never cover occasions where the public good is not their aim, and hence that to exercise a power dishonestly is necessarily to overstep its bounds. A moment's reflection shows, however, that that cannot be the meaning of the limitation without defeating the *522 whole doctrine. What is meant by saying that the officer must be acting within his power cannot be more than that the occasion must be such as would have justified the act, if he had been using his power for any of the purposes on whose account it was vested in him. . . ." *Ibid*.

Barr v. Matteo, 360 U. S. 564 (1959), unfortunately fares little better at the Court's hand than *Spalding*. Here the Court at least recognizes and reaffirms the minimum proposition for which *Barr* stands—that executive officials are absolutely immune at least from actions predicated on common-law claims as long as they are acting within the outer limits of their authority. See *ante*, at 495. *Barr* is distinguished, however, on the ground that it did not involve a violation of "those fundamental principles of fairness embodied in the Constitution." *Ibid*. But if we allow a mere allegation of unconstitutionality, obviously unproved at the time made, to require a Cabinet-level official, charged with the enforcement of the responsibilities to which the complaint pertains, to lay aside his duties and defend such an action on the merits, the defense of official immunity will have been abolished in fact if not in form. The ease with which a constitutional claim may be pleaded in a case such as this, where a violation of statutory or judicial limits on agency action may be readily converted by any legal neophyte into a claim of denial of procedural due process under the Fifth Amendment, will assure that. The fact that the claim fails when put to trial will not prevent the consumption of time, effort, and money on the part of the defendant official in

defending his actions on the merits. The result can only be damage to the "interests of the people," *Spalding, supra*, at 498, which "require[s] that due protection be accorded to [Cabinet officials] in respect of their official acts."

523 It likewise cannot seriously be argued that an official will be less deterred by the threat of liability for unconstitutional *523 conduct than for activities which might constitute a common-law tort. The fear that inhibits is that of a long, involved lawsuit and a significant money judgment, not the fear of liability for a certain type of claim. Thus, even viewing the question functionally—indeed, *especially* viewing the question functionally—the basis for a distinction between constitutional and common-law torts in this context is open to serious question. Even the logical justification for raising such a novel distinction is far from clear. That the Framers thought some rights sufficiently susceptible of legislative derogation that they should be enshrined in the Constitution does not necessarily indicate that the Framers likewise intended to establish an immutable hierarchy of rights in terms of their importance to individuals. The most heinous common-law tort surely cannot be less important to, or have less of an impact on, the aggrieved individual than a mere technical violation of a constitutional proscription.

The Court purports to find support for this distinction, and therefore this result, in the principles supposedly underlying *Marbury v. Madison*, 1 Cranch 137 (1803) and *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971), and the fact that cognate state officials are not afforded absolute immunity for actions brought under 42 U. S. C. § 1983.

Undoubtedly these rationales have some superficial appeal, but none withstands careful analysis. *Marbury v. Madison, supra*, leaves no doubt that the high position of a Government official does not insulate his actions from judicial review. But that case, like numerous others which have followed, involved equitable-type relief by way of mandamus or injunction. In the present case, respondent sought damages in the amount of \$32 million. There is undoubtedly force to the argument that injunctive relief, in these cases where a court determines that an official defendant has violated a legal right of the plaintiff, 524 sets the matter right only as to the future. But there is at least as much force to the argument *524 that the threat of injunctive relief without the possibility of damages in the case of a Cabinet official is a better tailoring of the competing need to vindicate individual rights, on the one hand, and the equally vital need, on the other, that federal officials exercising discretion will be unafraid to take vigorous action to protect the public interest.

The Court also suggests in sweeping terms that the cause of action recognized in *Bivens* would be "drained of meaning" if federal officials were entitled to absolute immunity for their constitutional transgressions." *Ante*, at 501. But *Bivens* is a slender reed on which to rely when abrogating official immunity for Cabinet-level officials. In the first place, those officials most susceptible to claims under *Bivens* have historically been given only a qualified immunity. As the Court observed in *Pierson v. Ray*, 386 U. S. 547, 555 (1967), "[t]he common law has never granted police officers an absolute and unqualified immunity. . . ." In any event, it certainly does not follow that a grant of absolute immunity to the Secretary and Assistant Secretary of Agriculture requires a like grant to federal law enforcement officials. But even more importantly, on the federal side, when Congress thinks redress of grievances is appropriate, it can and generally does waive sovereign immunity, allowing an action directly against the United States. This allows redress for deprivations of rights, while at the same time limiting the outside influences which might inhibit an official in the free and considered exercise of his official powers. In fact, Congress, making just these sorts of judgments with respect to the very causes of action which the Court suggests require abrogation of absolute immunity, has amended the Federal Tort Claims Act, see 28 U. S. C. § 2680 (h) (1976 ed.), to allow suits against the United States on the basis of certain intentional torts if committed by federal "investigative or law enforcement officers."

525 The Court also looks to the question of immunity of state officials for causes arising under § 1983 and, quoting a concurring *525 opinion in *Anderson v. Nosser*, 438 F. 2d 183, 205 (CA5 1971), to the effect that there should not be "one law for Athens and another for Rome," finds no reason why those principles should not likewise apply when federal officers are the target. Homilies cannot replace analysis in this difficult area, however. And even a moment's reflection on the nature of the *Bivens*-type action and the purposes of § 1983, as made abundantly clear in this Court's prior cases, supplies a compelling reason for distinguishing between the two different situations. In the first place, as made clear above, a grant of absolute immunity to high-ranking executive officials on the federal side would not eviscerate the cause of action recognized in *Bivens*. The officials who are the most likely defendants in a *Bivens*-type action have generally been accorded only a qualified immunity. But more importantly, Congress has expressly waived sovereign immunity for this type of suit. This permits a direct action against the Government, while limiting those risks which might "dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties." And the Federal Government can internally supervise and check its own officers. The Federal Government is not so situated that it can control state officials or strike

this same balance, however. Hence the necessity of § 1983 and the differing standards of immunity. As the Court observed in District of Columbia v. Carter, 409 U. S. 418 (1973):

"Although there are threads of many thoughts running through the debates on the 1871 Act, it seems clear that § 1 of the Act, with which we are here concerned, was designed primarily in response to unwillingness or inability of the state governments to enforce their own laws against those violating the civil rights of others." *Id.*, at 426.

526 "[T]he [basic] rationale underlying Congress' decision not to enact legislation similar to § 1983 with respect to *526 federal officials [was] the assumption that the Federal Government could keep its own officers under control. . . ." *Id.*, at 429-430.

The Court attempts to avoid the force of this argument by suggesting that the statute which vests federal courts with general federal-question jurisdiction is basically the equivalent of § 1983. *Ante*, at 502 n. 30. But that suggestion evinces a basic misunderstanding of the difference between a statute which vests jurisdiction in federal courts, which are, as a constitutional matter, courts of limited jurisdiction, and a statute, or even a constitutional provision, which creates a private right of action. As even the Court's analysis in *Bivens* made clear, a statute giving jurisdiction to federal courts does not, in and of itself, create a right of action. And to date, the Court has not held that the Constitution itself creates a private right of action for damages except when federal law enforcement officials arrest someone and search his premises in violation of the Fourth Amendment. Thus, the Court's attempt to equate § 1983 and 28 U. S. C. § 1331 (1976 ed.) simply fails, and its further observation—that there should be no difference in immunity between state and federal officials—remains subject to serious doubt.

My biggest concern, however, is not with the illogic or impracticality of today's decision, but rather with the potential for disruption of Government that it invites. The steady increase in litigation, much of it directed against governmental officials and virtually all of which could be framed in constitutional terms, cannot escape the notice of even the most casual observer. From 1961 to 1977, the number of cases brought in the federal courts under civil rights statutes increased from 296 to 13,113. See Director of the Administrative Office of the United States Courts Ann. Rep. 189, Table 11 (1977); Ann. Rep. 173, Table 17 (1976). It simply defies logic and common experience to suggest that officials will not have this in the back of their minds when considering *527 what official course to pursue. It likewise strains credulity to suggest that this threat will only inhibit officials from taking action which they should not take in any event. It is the cases in which the grounds for action are doubtful, or in which the actor is timid, which will be affected by today's decision.

The Court, of course, recognizes this problem and suggests two solutions. First, judges, ever alert to the artful pleader, supposedly will weed out insubstantial claims. *Ante*, at 507. That, I fear, shows more optimism than prescience. Indeed, this very case, unquestionably frivolous in the extreme, belies any hope in that direction. And summary judgment on affidavits and the like is even more inappropriate when the central, and perhaps only, inquiry is the official's state of mind. See C. Wright, *Law of Federal Courts* 493 (3d ed. 1976) (It "is not feasible to resolve on motion for summary judgment cases involving state of mind"); Subin v. Goldsmith, 224 F. 2d 753 (CA2 1955).

528 The second solution offered by the Court is even less satisfactory. The Court holds that in those special circumstances "where it is demonstrated that absolute immunity is essential for the conduct of the public business," absolute immunity will be extended. *Ante*, at 507. But this is a form of "absolute immunity" which in truth exists in name only. If, for example, the Secretary of Agriculture may never know until inquiry by a trial court whether there is a possibility that vexatious constitutional litigation will interfere with his decisionmaking process, the Secretary will obviously think not only twice but thrice about whether to prosecute a litigious commodities merchant who has played fast and loose with the regulations for his own profit. Careful consideration of the rights of every individual subject to his jurisdiction is one thing; a timorous reluctance to prosecute any of such individuals who have a reputation for using litigation as a defense weapon is quite another. Since Cabinet officials are mortal, *528 it is not likely that we shall get the precise judgmental balance desired in each of them, and it is because of these very human failings that the principles of Spalding, 161 U. S., at 498, dictate that absolute immunity be accorded once it be concluded by a court that a high-level executive official was "engaged in the discharge of duties imposed upon [him] by law."^[1]

Today's opinion has shouldered a formidable task insofar as it seeks to justify the rejection of the views of the first Mr. Justice Harlan expressed in his opinion for the Court in Spalding v. Vilas, *supra*, and those of the second Mr. Justice Harlan expressed in his opinions in Barr v. Matteo, 360 U. S. 564 (1959), and its companion case of Howard v. Lyons, 360 U. S.

593 (1959). In terms of juridical jousting, if not in terms of placement in the judicial hierarchy, it has taken on at least as formidable a task when it disregards the powerful statement of Judge Learned Hand in Gregoire v. Biddle, 177 F. 2d 579 (CA2 1949).

529 *529 History will surely not condemn the Court for its effort to achieve a more finely ground product from the judicial mill, a product which would both retain the necessary ability of public officials to govern and yet assure redress to those who are the victims of official wrongs. But if such a system of redress for official wrongs was indeed capable of being achieved in practice, it surely would not have been rejected by this Court speaking through the first Mr. Justice Harlan in 1896, by this Court speaking through the second Mr. Justice Harlan in 1959, and by Judge Learned Hand speaking for the Court of Appeals for the Second Circuit in 1948. These judges were not inexperienced neophytes who lacked the vision or the ability to define immunity doctrine to accomplish that result had they thought it possible. Nor were they obsequious toadies in their attitude toward high-ranking officials of coordinate branches of the Federal Government. But they did see with more prescience than the Court does today, that there are inevitable trade-offs in connection with any doctrine of official liability and immunity. They forthrightly accepted the possibility that an occasional failure to redress a claim of official wrongdoing would result from the doctrine of absolute immunity which they espoused, viewing it as a lesser evil than the impairment of the ability of responsible public officials to govern.

But while I believe that history will look approvingly on the motives of the Court in reaching the result it does today, I do not believe that history will be charitable in its judgment of the all but inevitable result of the doctrine espoused by the Court in this case. That doctrine seeks to gain and hold a middle ground which, with all deference, I believe the teachings of those who were at least our equals suggest cannot long be held. That part of the Court's present opinion from which I dissent will, I fear, result in one of two evils, either one of which is markedly worse than the effect of according absolute immunity to the
530 Secretary and the Assistant Secretary in this *530 case. The first of these evils would be a significant impairment of the ability of responsible public officials to carry out the duties imposed upon them by law. If that evil is to be avoided after today, it can be avoided only by a necessarily unprincipled and erratic judicial "screening" of claims such as those made in this case, an adherence to the form of the law while departing from its substance. Either one of these evils is far worse than the occasional failure to award damages caused by official wrongdoing, frankly and openly justified by the rule of Spalding v. Vilas, Barr v. Matteo, and Gregoire v. Biddle.

[1] The individual Arthur N. Economou, his corporation Arthur N. Economou and Co., and another corporation which he heads, the American Board of Trade, Inc., were all plaintiffs in this action and are all respondents in this Court. For convenience, however, we refer to Arthur N. Economou and his interests in the singular, as "respondent."

[2] These individuals included the Administrator of the Commodity Exchange Authority, the Director of its Compliance Division, the Deputy Director of its Registration and Audit Division, and the Regional Administrator for the New York Region.

[3] Also named as defendants were the United States, the Department of Agriculture and the Commodity Exchange Authority.

[4] More detailed allegations concerning many of the incidents charged in the complaint were contained in an affidavit filed by respondent in connection with his earlier efforts to obtain injunctive relief.

[5] In the second "cause of action," respondent stated that the defendants had issued administrative orders "illegal and punitive in nature" against him when he was no longer subject to their authority. The fourth "cause of action" alleged, *inter alia*, that respondent's rights to due process of law and to privacy as guaranteed by the Federal Constitution had been infringed by the furnishing of the administrative complaints to interested persons without respondent's answers. The fifth "cause of action" similarly alleged as a violation of due process that defendants had issued a press release containing facts the defendants knew or should have known were false. Respondent's remaining "causes of action" allege common-law torts: abuse of legal process, malicious prosecution, invasion of privacy, negligence, and trespass.

[6] The District Court held that the complaint was barred as to the Government agency defendants by the doctrine of sovereign immunity.

[7] Although we had noted in Bell v. Hood, 327 U. S. 678 (1946), that "where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief," *id.*, at 684, the specific question faced in *Bivens* had been reserved.

[8] The Court's opinion in *Bivens* concerned only a Fourth Amendment claim and therefore did not discuss what other personal interests were similarly protected by provisions of the Constitution. We do not consider that issue here. *Cf. Doe v. McMillan*, 412 U. S. 306, 325 (1973).

[9] Black v. United States, 534 F. 2d 524 (CA2 1976); States Marine Lines v. Shultz, 498 F. 2d 1146 (CA4 1974); Mark v. Groff, 521 F. 2d 1376 (CA9 1975); G. M. Leasing Corp. v. United States, 560 F. 2d 1011 (CA10 1977); Anton v. Wilson, 165 U. S. App. D. C. 22, 506 F. 2d

83 (1974); see Paton v. La Prade, 524 F. 2d 862 (CA3 1975); Wejr v. Muller, 527 F. 2d 872 (CA5 1976); Brubaker v. King, 505 F. 2d 534 (CA7 1974); Jones v. United States, 536 F. 2d 269 (CA8 1976).

[10] The case had been before the Court once before, during the 1957 Term. After the trial, the defendant had appealed only the denial of an absolute privilege. The Court of Appeals affirmed the judgment against him on the ground that the press release exceeded his authority. Barr v. Matteo, 100 U. S. App. D. C. 319, 244 F. 2d 767 (1957). This Court vacated that judgment, 355 U. S. 171 (1957), directing the Court of Appeals to consider the qualified-privilege question. This the Court of Appeals did, 103 U. S. App. D. C. 176, 256 F. 2d 890 (1958), holding as this Court described it, that "the press release was protected by a qualified privilege, but that there was evidence from which a jury could reasonably conclude that petitioner had acted maliciously, or had spoken with lack of reasonable grounds for believing that his statement was true, and that either conclusion would defeat the qualified privilege." 360 U. S., at 569. Because the case was remanded for a new trial, the defendant sought certiorari a second time.

[11] Mr. Justice Harlan's opinion in Barr was joined by three other Justices. The majority was formed through the concurrence in the judgment of Mr. Justice Black, who emphasized in a separate opinion the strong public interest in encouraging federal employees to ventilate their ideas about how the Government should be run. *Id.*, at 576.

[12] The Court wrote a similar opinion and entered a similar judgment in a companion case, Howard v. Lyons, 360 U. S. 593 (1959). There a complaint for defamation under state law alleged the publication of a deliberate and knowing falsehood by a federal officer. Judgment was entered for the officer before trial on the ground that the release was within the limits of his authority. The judgment was reversed in part by the Court of Appeals on the ground that in some respects the defendant was entitled to only a qualified privilege. This Court reversed, ruling that Barr controlled.

[13] See n. 10, *supra*. The question presented in the Government's petition for certiorari was broadly framed:

"Whether the absolute immunity from defamation suits, accorded officials of the Government with respect to acts done within the scope of their official authority, extends to statements to the press by high policy-making officers, below cabinet or comparable rank, concerning matters committed by law to their control or supervision." Pet. for Cert. in Barr v. Matteo, O. T. 1958, No. 350, p. 2.

This question might be viewed as subsuming the question whether the official's immunity extended to situations in which the official had no reasonable grounds for believing that a statement was true.

[14] Mr. Chief Justice Marshall explained:

"An officer, for example, is ordered to arrest an individual. It is not necessary, nor is it usual, to say that he shall not be punished for obeying this order. His security is implied in the order itself. It is no unusual thing for an act of congress to imply, without expressing, this very exemption from State control The collectors of the revenue, the carriers of the mail, the mint establishment, and all those institutions which are public in their nature, are examples in point. It has never been doubted that all who are employed in them are protected while in the line of duty; and yet this protection is not expressed in any act of congress. It is incidental to, and is implied in, the several acts by which these institutions are created, and is secured to the individuals employed in them by the judicial power alone"

[15] Indeed, there appears to have been some doubt as to whether even an Act of Congress would immunize federal officials from suits seeking damages for constitutional violations. See Milligan v. Hovey, 17 F. Cas. 380 (No. 9,605) (CC Ind. 1871); Griffin v. Wilcox, 21 Ind. 370, 372-373 (1863). See generally Engdahl, Immunity and Accountability for Positive Governmental Wrongs, 44 U. Colo. L. Rev. 1, 50-51 (1972).

[16] While the Virginia Coupon Cases, like United States v. Lee, involved a suit for the return of specific property, the principles espoused therein are equally applicable to a suit for damages and were later so applied. Atchison, Topeka & Santa Fe R. Co. v. O'Connor, 223 U. S. 280, 287 (1912).

[17] An individual might be viewed as acting maliciously where "the circumstances show that he is not disagreeably impressed by the fact that his action injuriously affects the claims of particular individuals." 161 U. S., at 499.

[18] In addressing the liability of the Postmaster General, the Court referred to Bradley v. Fisher, 13 Wall. 335 (1872), which the Court described as holding that "judges of courts of superior or general jurisdiction [are] not liable to civil suits for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." 161 U. S., at 493. The Court was of the view that "the same general considerations of public policy and convenience which demand for judges of courts of superior jurisdiction immunity from civil suits for damages arising from acts done by them in the course of the performance of their judicial functions, apply to a large extent to official communications made by heads of Executive Departments when engaged in the discharge of duties imposed upon them by law." *Id.*, at 498. The Court plainly applied Bradley v. Fisher principles in holding that proof of malice would not subject an executive officer to liability for performing an act which he was authorized to perform by federal law. These principles, however, were not said to be completely applicable; and, as indicated in the text, the Court revealed no intention to overrule Kendall v. Stokes or Wilkes or to immunize an officer from liability for a willful misapplication of his authority. Also, on the face of the Spalding opinion, it would appear that an executive officer would be vulnerable if he took action "manifestly or palpably" beyond his authority or ignored a clear limitation on his enforcement powers.

[19] MR. JUSTICE BRENNAN, dissenting in Barr v. Matteo, 360 U. S., at 587 n. 3, emphasized this point:

"The suit in *Spalding* seems to have been as much, if not more, a suit for malicious interference with advantageous relationships as a libel suit. The Court reviewed the facts and found no false statement. See 161 U. S., at 487-493. The case may stand for no more than the proposition that where a Cabinet officer publishes a statement, not factually inaccurate, relating to a matter within his Department's competence, he cannot be charged with improper motives in publication. The Court's opinion leaned heavily on the fact that the contents of the statement (which were not on their face defamatory) were quite accurate, in support of its conclusion that publishing the statement was within the officer's discretion, foreclosing inquiry into his motives. *Id.*, at 489-493."

The *Barr* plurality did not disagree with this characterization of the law-suit in *Spalding*. See also Gray, *Private Wrongs of Public Servants*, 47 Calif. L. Rev. 303, 336 (1959).

[20] Indeed, *Barreme* and *Bates* were cited with approval in a decision that was under submission with *Spalding* and was handed down a scant month before the judgment in *Spalding* was announced. *Belknap v. Schild*, 161 U. S. 10, 18 (1896).

[21] During the period prior to *Barr*, the lower federal courts broadly extended *Spalding* in according absolute immunity to federal officials sued for common-law torts. *E. g.*, *Jones v. Kennedy*, 73 App. D. C. 292, 121 F. 2d 40, cert. denied, 314 U. S. 665 (1941); *Papagianakis v. The Samos*, 186 F. 2d 257 (CA4 1950), cert. denied, 341 U. S. 921 (1951). See cases collected in Gray, *supra* n. 19, at 337-338.

[22] We view this case, in its present posture, as concerned only with constitutional issues. The District Court memorandum focused exclusively on respondent's constitutional claims. It appears from the language and reasoning of its opinion that the Court of Appeals was also essentially concerned with respondent's constitutional claims. See, *e. g.*, 535 F. 2d, at 695 n. 7. The Second Circuit has subsequently read *Economou* as limited to that context. See *Huntington Towers, Ltd. v. Franklin Nat. Bank*, 559 F. 2d 863, 870, and n. 2 (1977), cert. denied *sub nom.* *Huntington Towers, Ltd. v. Federal Reserve Bank of N. Y.*, 434 U. S. 1012 (1978). The argument before us as well has focused on respondent's constitutional claims, and our holding is so limited.

[23] *Doc v. McMillan*, 412 U. S. 306 (1973), did involve a constitutional claim for invasion of privacy—but in the special context of the Speech or Debate Clause. The Court held that the executive officials would be immune from suit only to the extent that the legislators at whose behest they printed and distributed the documents could claim the protection of the Speech or Debate Clause.

[24] 416 U. S., at 247, quoting *Barr v. Matteo*, 360 U. S., at 573-574. The Court spoke of *Barr v. Matteo* as arising "[i]n a context other than a § 1983 suit." 416 U. S., at 247. Elsewhere in the opinion, however, the Court discussed *Barr* as arising "in the somewhat parallel context of the privilege of public officers from defamation actions." 416 U. S., at 242. The Court also relied on *Spalding v. Vilas*, 161 U. S. 483 (1896), without mentioning that that decision concerned federal officials. 416 U. S., at 242 n. 7, 246 n. 8.

[25] As early as 1971, Judge, now Attorney General, Bell, concurring specially in a judgment of the Court of Appeals for the Fifth Circuit, recorded his "continuing belief that all police and ancillary personnel in this nation, whether state or federal, should be subject to the same accountability under law for their conduct." *Anderson v. Nossner*, 438 F. 2d 183, 205 (1971). He objected to the notion that there should be "one law for Athens and another for Rome." *Ibid.* It appears from a recent decision that the Fifth Circuit has abandoned the view he criticized. See *Weir v. Muller*, 527 F. 2d 872 (1976).

[26] Courts and judges have noted the "incongruity" that would arise if officials of the District of Columbia, who are not subject to § 1983, were given absolute immunity while their counterparts in state government received qualified immunity. *Bivens v. Six Unknown Fed. Narcotics Agents*, 456 F. 2d, at 1347; *Carter v. Carlson*, 144 U. S. App. D. C. 388, 401, 447 F. 2d 358, 371 (1971) (Nichols, J., concurring), *rev'd on other grounds sub nom.* *District of Columbia v. Carter*, 409 U. S. 418 (1973).

[27] The First and Sixth Circuits have recently accorded immunity to federal officials sued for common-law torts, without discussion of their views with respect to constitutional claims. *Berberian v. Gibney*, 514 F. 2d 790 (CA1 1975); *Mandel v. Nouse*, 509 F. 2d 1031 (CA6 1975).

[28] In *Apton v. Wilson*, 165 U. S. App. D. C. 22, 32, 506 F. 2d 83, 93 (1974), Judge Leventhal compared the Governor of a State with the highest officers of a federal executive department:

"The difference in office is relevant, for immunity depends in part upon 'scope of discretion and responsibilities of the office,' *Scheuer v. Rhodes*, *supra*, 416 U. S., at 247. . . . But the difference is not conclusive in this case. Like the highest executive officer of a state, the head of a Federal executive department has broad discretionary authority. Each is called upon to act under circumstances where judgments are tentative and an unambiguously optimal course of action can be ascertained only in retrospect. Both officials have functions and responsibilities concerned with maintaining the public order; these may impel both officials to make decisions 'in an atmosphere of confusion, ambiguity, and swiftly moving events.' *Scheuer v. Rhodes*, *supra*, 416 U. S., at 247. . . . Having a wider territorial responsibility than the head of a state government, a Federal cabinet officer may be entitled to consult fewer sources and expend less effort inquiring into the circumstances of a localized problem. But these considerations go to the showing an officer vested with a qualified immunity must make in support of 'good faith belief,' they do not make the qualified immunity itself inappropriate. The head of an executive department, no less than the chief executive of a state, is adequately protected by a qualified immunity."

[29] Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, provided in pertinent part:

"[A]ny person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law"

[30] The purpose of § 1 of the Civil Rights Act was not to abolish the immunities available at common law, see *Pierson v. Ray*, 386 U. S. 547, 554 (1967), but to insure that federal courts would have jurisdiction of constitutional claims against state officials. We explained in *District of Columbia v. Carter*, 409 U. S., at 427-428:

"At the time this Act was adopted, . . . there existed no general federal-question jurisdiction in the lower federal courts. Rather, Congress relied on the state courts to vindicate essential rights arising under the Constitution and federal laws." *Zwickler v. Koota*, 389 U. S. 241, 245 (1967). With the growing awareness that this reliance had been misplaced, however, Congress recognized the need for original federal court jurisdiction as a means to provide at least indirect federal control over the unconstitutional actions of state officials." (Footnotes omitted.)

The situation with respect to federal officials was entirely different: They were already subject to judicial control through the state courts, which were not particularly sympathetic to federal officials, or through the removal jurisdiction of the federal courts. See generally *Willingham v. Morgan*, 395 U. S. 402 (1969); *Tennessee v. Davis*, 100 U. S. 257 (1880). Moreover, in 1875 Congress vested the circuit courts with general federal-question jurisdiction, which encompassed many suits against federal officials. 18 Stat. 470. Thus, the absence of a statute similar to § 1983 pertaining to federal officials cannot be the basis for an inference about the level of immunity appropriate to federal officials.

[31] At the time of the *Bivens* decision, the Federal Tort Claims Act prohibited recovery against the Government for

"Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights." 28 U. S. C. § 2680 (h).

The statute was subsequently amended in light of *Bivens* to lift the bar against some of these claims when arising from the act of federal law enforcement officers. See 28 U. S. C. § 2680 (h) (1976 ed.).

[32] Mr. Justice Harlan, the author of the plurality opinion in *Barr*, noted that although "interests in efficient law enforcement . . . argue for a protective zone with respect to many types of Fourth Amendment violations. . . at the very least . . . a remedy would be available for the most flagrant and patently unjustified sorts of police conduct." *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S., at 411 (concurring in judgment).

[33] Pursuant to 28 U. S. C. § 2680 (1976 ed.), the Government is immune from

"(a) Any claim . . . based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused."

See generally *Dalehite v. United States*, 346 U. S. 15 (1953).

[34] The Government argued in *Bivens* that the plaintiff should be relegated to his traditional remedy at state law. "In this scheme the Fourth Amendment would serve merely to limit the extent to which the agents could defend the state law tort suit by asserting that their actions were a valid exercise of federal power: if the agents were shown to have violated the Fourth Amendment, such a defense would be lost to them and they would stand before the state law merely as private individuals." 403 U. S., at 390-391. Although, as this passage makes clear, traditional doctrine did not accord immunity to officials who transgressed constitutional limits, we believe that federal officials sued by such traditional means should similarly be entitled to a *Scheuer* immunity.

[35] The defendant official may also be able to assert on summary judgment some other common-law or constitutional privilege. For example, in this case the defendant officials may be able to argue that their issuance of the press release was privileged as an accurate report on a matter of public record in an administrative proceeding. See Handler & Klein, The Defense of Privilege in Defamation Suits Against Government Executive Officials, 74 Harv. L. Rev. 44, 61-62, 75-76 (1960). Of course, we do not decide this issue at this time.

[36] In *Pierson v. Ray*, 386 U. S. 547 (1967), we recognized that state judges sued on constitutional claims pursuant to § 1983 could claim a similar absolute immunity. The Court reasoned:

"It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation." *Id.*, at 554.

[37] The *Imbler* Court specifically reserved the question "whether like or similar reasons require immunity for those aspects of the prosecutor's responsibility that cast him in the role of an administrator or investigative officer rather than that of advocate." 424 U. S., at 430-431.

[38] See generally Handler & Klein, *supra* n. 35, at 54-55.

[39] *Expeditions Unlimited Aquatic Enterprises, Inc. v. Smithsonian Institution*, 184 U. S. App. D. C. 397, 401, 566 F. 2d 289, 293 (1977), cert. pending, No. 76-418.

[40] That prosecutors act under "serious constraints of time and even information" was not central to our decision in *Imbler*, for the same might be said of a wide variety of state and federal officials who enjoy only qualified immunity. See *Scheuer v. Rhodes*, 416 U. S., at 246-247. Nor do we think that administrative enforcement proceedings may be distinguished from criminal prosecutions on the ground that the former often turn on documentary proof. The key point is that administrative personnel, like prosecutors, "often must decide, especially in cases of wide public interest, whether to proceed to trial where there is a sharp conflict in the evidence." *Imbler*, 424 U. S., at 426 n. 24. The complexity and quantity of documentary proof that may be adduced in a full-scale enforcement proceeding may make this decision even more difficult than the decision to prosecute a suspect.

[*] The ultimate irony of today's decision is that in the area of common-law official immunity, a body of law fashioned and applied by judges, absolute immunity within the federal system is extended only to judges and prosecutors functioning in the judicial system. See *Bradley v. Fisher*, 13 Wall. 335 (1872); *Yaselli v. Goff*, 12 F. 2d 396 (CA2 1926), summarily aff'd, 275 U. S. 503 (1927). Similarly, where this Court has interpreted 42 U. S. C. § 1983 in the light of common-law doctrines of official immunity, again only judges and prosecutors are accorded absolute immunity. See *Pierson v. Ray*, 386 U. S. 547 (1967); *Stump v. Sparkman*, 435 U. S. 349 (1978); *Imbler v. Pachtman*, 424 U. S. 409 (1976). If one were to hazard an informed guess as to why such a distinction in treatment between judges and prosecutors, on the one hand, and other public officials on the other, obtains, mine would be that those who decide the common law know through personal experience the sort of pressures that might exist for such decisionmakers in the absence of absolute immunity, but may not know or may have forgotten that similar pressures exist in the case of nonjudicial public officials to whom difficult decisions are committed. But the cynical among us might not unreasonably feel that this is simply another unfortunate example of judges treating those who are not part of the judicial machinery as "lesser breeds without the law."

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Exhibit "9"

Exhibit "9":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **10/9/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit "9"***.
- No party objects to the admission of this Exhibit "9" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

Hafer v. Melo

502 U.S. 21 (1991) · 112 S. Ct. 358 · 116 L. Ed. 2d 301
Decided Nov 5, 1991

CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD
CIRCUIT

No. 90-681

Argued October 15, 1991 Decided November 5,
1991

After petitioner Hafer, the newly elected Auditor General of Pennsylvania, discharged respondents from their jobs in her office, they sued her for, *inter alia*, monetary damages under 42 U.S.C. § 1983. The District Court dismissed the latter claims under *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71, in which the Court held that state officials "acting in their official capacities" are outside the class of "persons" subject to liability under § 1983. In reversing this ruling, the Court of Appeals found that respondents sought damages from Hafer in her personal capacity and held that, because she acted under color of state law, respondents could maintain a § 1983 individual-capacity suit against her.

Held: State officers may be held personally liable for damages under § 1983 based upon actions taken in their official capacities. Pp. 3-10.

(a) The above-quoted language from *Will* does not establish that Hafer may not be held personally liable under § 1983 because she "act[ed]" in her official capacity. The claims considered in *Will* were official-capacity claims, and the phrase "acting in their official capacities" is best understood as a reference to the capacity in which the state officer is sued, not the capacity in which the officer inflicts the alleged injury. Pp. 3-5.

(b) State officials, sued in their individual capacities, are "persons" within the meaning of § 1983. Unlike official-capacity defendants — who are not "persons" because they assume the identity of the government that employs them, *Will*, *supra*, at 71 — officers sued in their personal capacity come to the court as individuals, and thus fit comfortably within the statutory term "person," *cf.* 491 U.S., at 71, n. 10. Moreover, § 1983's authorization of suits to redress deprivations of civil rights by persons acting "under color of" state law means that Hafer may be liable for discharging respondents precisely because of her authority as Auditor General. Her assertion that acts that are both within the official's authority and necessary to the performance of governmental functions (including the employment decisions at issue) should be considered acts of the State that cannot give rise to a personal-capacity action is unpersuasive. That contention ignores this Court's holding that § 1983 was enacted to enforce provisions of the Fourteenth Amendment against those who carry a badge of a State and represent it in some capacity, *22 whether they act in accordance with their authority or misuse it. *Scheuer v. Rhodes*, 416 U.S. 232, 243. Furthermore, Hafer's theory would absolutely immunize state officials from personal liability under § 1983 solely by virtue of the "official" nature of their acts, in contravention of this Court's immunity decisions. *See, e.g., Scheuer, supra*. Pp. 27-29.

(c) The Eleventh Amendment does not bar § 1983 personal-capacity suits against state officials in federal court. *Id.*, at 237, 238. *Will's* language concerning suits against state officials cannot be read as establishing the limits of liability under the Amendment, since *Will* arose from a suit in state court, and considered the Amendment only because the fact that Congress did not intend to override state immunity when it enacted § 1983 was relevant to statutory construction. 491 U.S., at 66. Although imposing personal liability on state officers may hamper their performance of public duties, such concerns are properly addressed within the framework of this Court's personal immunity jurisprudence. Pp. 29-31.

912 F.2d 628 (CA3 1990), affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which all other Members joined, except THOMAS, J., who took no part in the consideration or decision of the case.

Jerome R. Richter argued the cause for petitioner. With him on the briefs was *Goncer M. Krestal*.

William Goldstein argued the cause for respondents. With him on the brief was *Edward H. Rubenstone*.—

— Page 22 *Richard Ruda* filed a brief for the National Association of Counties et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Andrew J. Pincus*, *John A. Powell*, and *Steven R. Shapiro*; for the American Federation of Labor and Congress of Industrial Organizations by *Robert M. Weinberg*, *Walter Kamiat*, and *Laurence Gold*; for *Kenneth W. Fultz* by *Cletus P. Lyman*; and for *Nancy Haberstroh* by *Stephen R. Kaplan*.

JUSTICE O'CONNOR delivered the opinion of the Court.

In *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989), we held that state officials "acting in their official capacities" are outside the class of "persons" subject to liability *23 under 42 U.S.C. § 1983. 491 U.S., at 71. Petitioner takes this language to mean that § 1988 does not authorize suits against state officers for damages arising from official acts. We reject this reading of *Will*, and hold that state officials sued in their individual capacities are "persons" for purposes of § 1983.

I

In 1988, petitioner Barbara Hafer sought election to the post of Auditor General of Pennsylvania. Respondents allege that, during the campaign, United States Attorney James West gave Hafer a list of 21 employees in the Auditor General's Office who secured their jobs through payments to a former employee of the office. App. 10. They further allege that Hafer publicly promised to fire all employees on the list if elected. *Ibid*

Hafer won the election. Shortly after becoming Auditor General, she dismissed 18 employees, including named respondent James Melo, Jr., on the basis that they "bought" their jobs. Melo and seven other terminated employees sued Hafer and West in Federal District Court. They asserted state and federal claims, including a claim under § 1983, and sought monetary damages. Carl Gurley and the remaining respondents in this case also lost their jobs with the Auditor General soon after Hafer took office. These respondents allege that Hafer discharged them because of their Democratic political affiliation and support for her opponent in the 1988 election. *Id.*, at 28, 35, 40. They too filed suit against Hafer, seeking monetary damages and reinstatement under § 1983.

After consolidating the Melo and Gurley actions, the District Court dismissed all claims. In relevant part, the court held that the § 1983 claims against

Hafer were barred because, under *Will*, she could not be held liable for employment decisions made in her official capacity as Auditor General. *24

The Court of Appeals for the Third Circuit reversed this portion of the District Court's decision. 912 F.2d 628 (1990). As to claims for reinstatement brought against Hafer in her official capacity, the court rested on our statement in *Will* that state officials sued for injunctive relief in their official capacities are "persons" subject to liability under § 1983. *See Will, supra*, at 71, n. 10. Turning to respondents' monetary claims, the court found that six members of the Gurley group had expressly sought damages from Hafer in her personal capacity. The remaining plaintiffs "although not as explicit, signified a similar intent." 912 F.2d, at 636. The court found this critical. While Hafer's power to hire and fire derived from her position as Auditor General, it said, a suit for damages based on the exercise of this authority could be brought against Hafer in her personal capacity. Because Hafer acted under color of state law, respondents could maintain a § 1983 individual-capacity suit against her.

— The Third Circuit looked to the proceedings below to determine whether certain respondents brought their claims for damages against Hafer in her official capacity or her personal capacity. 912 F.2d 628, 635-636 (1990). Several other Courts of Appeals adhere to this practice. *See Conner v. Reinhard*, 847 F.2d 384, 394, n. 8 (CA7), *cert. denied*, 488 U.S. 856 (1988); *Houston v. Reich*, 932 F.2d 883, 885 (CA10 1991); *Lundgren v. McDaniel*, 814 F.2d 600, 603-604 (CA11 1987). Still others impose a more rigid pleading requirement. *See Wells v. Brown*, 891 F.2d 591, 592 (CA6 1989) (§ 1983 plaintiff must specifically plead that suit for damages is brought against state official in individual capacity); *Nix v. Norman*, 879 F.2d 429, 431 (CA8 1989) (same). Because this issue is not properly before us, we simply reiterate the Third Circuit's view

that "[i]t is obviously preferable for the plaintiff to be specific in the first instance to avoid any ambiguity," 912 F.2d, at 636, n. 7. See this Court's Rule 14.1(a) ("Only the questions set forth in the petition, or fairly included therein, will be considered by the Court").

We granted certiorari, 498 U.S. 1118 (1991), to address the question whether state officers may be held personally liable for damages under § 1983 based upon actions taken in their official capacities. *25 II

In *Kentucky v. Graham*, 473 U.S. 159 (1985), the Court sought to eliminate lingering confusion about the distinction between personal- and official-capacity suits. We emphasized that official-capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Id.*, at 165 (quoting *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 690, n. 55 (1978)). A suit against a state official in her official capacity therefore should be treated as a suit against the State. 473 U.S., at 166. Indeed, when an official sued in this capacity in federal court dies or leaves office, her successor automatically assumes her role in the litigation. See Fed. Rule Civ. Proc. 25(d)(1); Fed. Rule App. Proc. 43(c)(1); this Court's Rule 35.3. Because the real party in interest in an official-capacity suit is the governmental entity, and not the named official, "the entity's 'policy or custom' must have played a part in the violation of federal law." *Graham*, *supra*, at 166 (quoting *Monell*, *supra*, at 694). For the same reason, the only immunities available to the defendant in an official-capacity action are those that the governmental entity possesses. 473 U.S., at 167.

Personal-capacity suits, on the other hand, seek to impose individual liability upon a government officer for actions taken under color of state law. Thus, "[o]n the merits, to establish *personal* liability in a § 1983 action, it is enough to show that the official, acting under color of state law,

caused the deprivation of a federal right." *Id.*, at 166. While the plaintiff in a personal-capacity suit need not establish a connection to governmental "policy or custom," officials sued in their personal capacities, unlike those sued in their official capacities, may assert personal immunity defenses such as objectively reasonable reliance on existing law. *Id.*, at 166-167.

Our decision in *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989), turned in part on these differences between *26 personal- and official-capacity actions. The principal issue in *Will* was whether States are "persons" subject to suit under § 1983. Section 1983 provides, in relevant part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured. . . ."

The Court held that interpreting the words "[e]very person" to exclude the States accorded with the most natural reading of the law, with its legislative history, and with the rule that Congress must clearly state its intention to alter "the federal balance" when it seeks to do so. *Will*, *supra*, at 65 (quoting *United States v. Bass*, 404 U.S. 336, 349 (1971)).

The Court then addressed the related question whether state officials, sued for monetary relief in their official capacities, are persons under § 1983. We held that they are not. Although "state officials literally are persons," an official-capacity suit against a state officer "is not a suit against the official, but rather is a suit against the official's office. As such, it is no different from a suit against the State itself." 491 U.S., at 71 (citation omitted).

Summarizing our holding, we said: "[N]either a State nor its officials acting in their official capacities are 'persons' under § 1983." *Ibid.* Hafer relies on this recapitulation for the proposition that she may not be held personally liable under § 1983 for discharging respondents, because she "act[ed]" in her official capacity as Auditor General of Pennsylvania. Of course, the claims considered in *Will* were official-capacity claims; the phrase "acting in their official capacities" is best understood as a reference to the capacity in which the state officer is sued, not the capacity in which the officer inflicts the alleged injury. To the extent that *Will* *27 allows the construction Hafer suggests, however, we now eliminate that ambiguity.

A

Will itself make clear that the distinction between official-capacity suits and personal-capacity suits is more than "a mere pleading device." *Ibid.* State officers sued for damages in their official capacity are not "persons" for purposes of the suit, because they assume the identity of the government that employs them. *Ibid.* By contrast, officers sued in their personal capacity come to court as individuals. A government official in the role of personal-capacity defendant thus fits comfortably within the statutory term "person." Cf. *id.*, at 71, n. 10 ("[A] state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because 'official-capacity actions for prospective relief are not treated as actions against the State'") (quoting *Graham*, 473 U.S., at 167, n. 14).

Hafer seeks to overcome the distinction between official- and personal-capacity suits by arguing that § 1983 liability turns not on the capacity in which state officials are sued, but on the capacity in which they acted when injuring the plaintiff. Under *Will*, she asserts, state officials may not be held liable in their personal capacity for actions they take in their official capacity. Although one Court of Appeals has endorsed this view, *see*

Cowan v. University of Louisville School of Medicine, 900 F.2d 936, 942-943 (CA6 1990), we find it both unpersuasive as an interpretation of § 1983 and foreclosed by our prior decisions.

Through § 1983, Congress sought "to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position." *Monroe v. Pape*, 365 U.S. 167, 172 (1961). Accordingly, it authorized suits to redress deprivations of civil rights by persons acting "under color of any [state] statute, ordinance, regulation, custom, or usage." 42 U.S.C. § 1983. The requirement of action under color of state law means that Hafer may be liable for *28 discharging respondents precisely because of her authority as Auditor General. We cannot accept the novel proposition that this same official authority insulates Hafer from suit.

In an effort to limit the scope of her argument, Hafer distinguishes between two categories of acts taken under color of state law: those outside the official's authority or not essential to the operation of state government, and those both within the official's authority and necessary to the performance of governmental functions. Only the former group, she asserts, can subject state officials to personal liability under § 1983; the latter group (including the employment decisions at issue in this case) should be considered acts of the State that cannot give rise to a personal-capacity action.

The distinction Hafer urges finds no support in the broad language of § 1983. To the contrary, it ignores our holding that Congress enacted § 1983 "to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it." *Scheuer v. Rhodes*, 416 U.S. 232, 243 (1974) (quoting *Monroe v. Pape*, *supra*, at 171-172). Because of that intent, we have held that, in § 1983 actions, the statutory requirement of action "under color of" state law is

just as broad as the Fourteenth Amendment's "state action" requirement. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 929 (1982).

Furthermore, Hafer's distinction cannot be reconciled with our decisions regarding immunity of government officers otherwise personally liable for acts done in the course of their official duties. Her theory would absolutely immunize state officials from personal liability for acts within their authority and necessary to fulfilling governmental responsibilities. Yet our cases do not extend absolute immunity to all officers who engage in necessary official acts. Rather, immunity from suit under § 1983 is "predicated upon a considered inquiry into the immunity
29 historically accorded the relevant *29 official at common law and the interests behind it," *Imbler v. Pachtman*, 424 U.S. 409, 421 (1976), and officials seeking absolute immunity must show that such immunity is justified for the governmental function at issue, *Burns v. Reed*, 500 U.S. 478, 486-487 (1991).

This Court has refused to extend absolute immunity beyond a very limited class of officials, including the President of the United States, legislators carrying out their legislative functions, and judges carrying out their judicial functions, "whose special functions or constitutional status requires complete protection from suit." *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982). State executive officials are not entitled to absolute immunity for their official actions. *Scheuer v. Rhodes*, *supra*. In several instances, moreover, we have concluded that no more than a qualified immunity attaches to administrative employment decisions, even if the same official has absolute immunity when performing other functions. See *Forrester v. White*, 484 U.S. 219 (1988) (dismissal of court employee by state judge); *Harlow v. Fitzgerald*, *supra*, (discharge of Air Force employee, allegedly orchestrated by senior White House aides) (*Bivens* action); *Davis v. Passman*, 442 U.S. 228 (1979) (dismissal of congressional

aide) (*Bivens* action). That Hafer may assert personal immunity within the framework of these cases in no way supports her argument here.

B

Hafer further asks us to read *Will's* language concerning suits against state officials as establishing the limits of liability under the Eleventh Amendment. She asserts that imposing personal liability on officeholders may infringe on state sovereignty by rendering government less effective; thus, she argues, the Eleventh Amendment forbids personal-capacity suits
30 against state officials in federal court. *30

Most certainly, *Will's* holding does not rest directly on the Eleventh Amendment. Whereas the Eleventh Amendment bars suits in federal court "by private parties seeking to impose a liability which must be paid from public funds in the state treasury," *Edelman v. Jordan*, 415 U.S. 651, 663 (1974), *Will* arose from a suit in state court. We considered the Eleventh Amendment in *Will* only because the fact that Congress did not intend to override state immunity when it enacted § 1983 was relevant to statutory construction: "Given that a principal purpose behind the enactment of § 1983 was to provide a federal forum for civil rights claims," Congress' failure to authorize suits against States in federal courts suggested that it also did not intend to authorize such claims in state courts. 491 U.S., at 66.

To the extent that Hafer argues from the Eleventh Amendment itself, she makes a claim that failed in *Scheuer v. Rhodes*, *supra*. In *Scheuer*, personal representatives of the estates of three students who died at Kent State University in May, 1970, sought damages from the Governor of Ohio and other state officials. The District Court dismissed their complaints on the theory that the suits, although brought against state officials in their personal capacities, were in substance actions against the State of Ohio, and therefore barred by the Eleventh Amendment.

We rejected this view. "[S]ince *Ex parte Young*, 209 U.S. 123 (1908)," we said, "it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law." *Scheuer*, *supra*, at 237. While the doctrine of *Ex parte Young* does not apply where a plaintiff seeks damages from the public treasury, damages awards against individual defendants in federal courts "are a permissible remedy in some circumstances notwithstanding the fact that they hold public office." 416 U.S., at 238. That is, the Eleventh Amendment does not
 31 erect a barrier *31 against suits to impose "individual and personal liability" on state officials under § 1983. *Ibid*.

To be sure, imposing personal liability on state officers may hamper their performance of public duties. But such concerns are properly addressed within the framework of our personal immunity jurisprudence. *See Forrester v. White*, *supra*, at 223. Insofar as respondents seek damages against Hafer personally, the Eleventh Amendment does not restrict their ability to sue in federal court.

We hold that state officials, sued in their individual capacities, are "persons" within the meaning of § 1983. The Eleventh Amendment does not bar such suits, nor are state officers absolutely immune from personal liability under § 1983 solely by virtue of the "official" nature of their acts.

The judgment of the Court of Appeals is

Affirmed.

JUSTICE THOMAS took no part in the consideration or decision of this case.

32 *32

Exhibit "10"

Exhibit "10":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **10/9/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of **Exhibit "10"**.
- No party objects to the admission of this Exhibit "10" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

42 U.S.C. § 1983

Section 1983 - Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983

R.S. §1979; Pub. L. 96-170, §1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104-317, §309, 110 Stat. 3853.

EDITORIAL NOTES

CODIFICATIONR.S. §1979 derived from act Apr. 20, 1871, ch. 22, §1, 17 Stat. 13. Section was formerly classified to section 43 of Title 8, Aliens and Nationality.

AMENDMENTS1996- Pub. L. 104-317 inserted before period at end of first sentence ", except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable". 1979-Pub. L. 96-170 inserted "or the District of Columbia" after "Territory", and provisions relating to Acts of Congress applicable solely to the District of Columbia.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1979 AMENDMENT Amendment by Pub. L. 96-170 applicable with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after Dec. 29, 1979, see section 3 of Pub. L. 96-170, set out as a note under section 1343 of Title 28, Judiciary and Judicial Procedure.

Exhibit "11"

Exhibit "11":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **10/9/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit "11"***.
- No party objects to the admission of this Exhibit "11" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

42 U.S.C. § 1985

Section 1985 - Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985

R.S. §1980.

EDITORIAL NOTES

CODIFICATION*R.S. §1980 derived from acts July 31, 1861, ch. 33, 12 Stat. 284; Apr. 20, 1871, ch. 22, §2, 17 Stat. 13. Section was formerly classified to section 47 of Title 8, Aliens and Nationality.*

Exhibit "12"

Exhibit "12":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **10/9/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit "12"***.
- No party objects to the admission of this Exhibit "10" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

42 U.S.C. § 1986

Section 1986 - Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

42 U.S.C. § 1986

R.S. §1981.

EDITORIAL NOTES

CODIFICATIONR.S. §1981 derived from act Apr. 20, 1871, ch. 22, §6, 17 Stat. 15. Section was formerly classified to section 48 of Title 8, Aliens and Nationality.

VERIFICATIONS

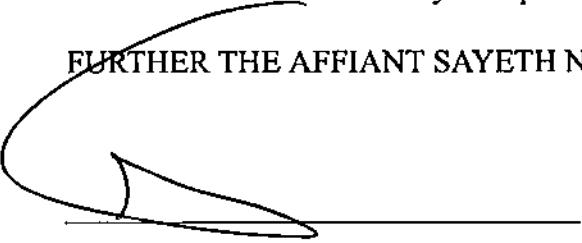
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

BEFORE ME personally appeared Mark Nunnally who, being by me first duly sworn and identified in accordance with South Carolina law, deposes and says:

1. My name is Mark Nunnally, one of the Plaintiffs herein.
2. I have carefully read the foregoing memorandum, and each of the facts alleged therein is true and correct of my own personal knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.



Mark Nunnally

SWORN TO and subscribed in my presence.

Kayla Hildebrand

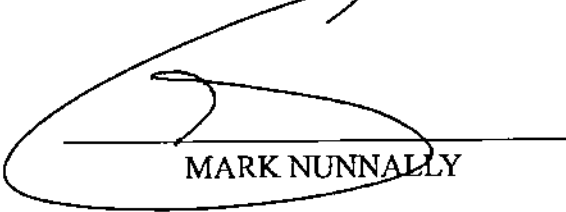
Notary Public

exp: May 1, 2029



CERTIFICATE OF SERVICE

UNDER PENALTIES OF PERJURY the undersigned certifies that a copy of the foregoing was provided by Certified U.S. mail to Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds c/o Attorney Jeff M. Anderson, 140 East Main Street, Post Office Box 489, Lexington, SC 29071-0489 this 5th day of September, 2024.


MARK NUNNALLY

5681 GRANDE RIVER RD

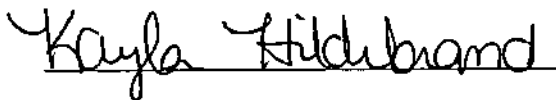
ATLANTA, GA 30349-9127

404 980-4488

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

BEFORE ME personally appeared Mark Nunnally who, being by me first duly sworn and identified in accordance with law, did execute the foregoing under penalties of perjury in my presence this 9th day of October 2024.



Notary Public

My commission expires: May 1, 2029



FILED

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

2024 OCT 24 PM 1:33

**LISA M. COMER
CLERK OF COURT
LEXINGTON SC
Case No. 2024-CP-32-01682**

Judge McCaslin

Timothy Nunally, Mark Nunnally,

Plaintiffs,

v.

Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds,

Defendant,

_____ /

Motion for Enforcement of Discovery

PLAINTIFFS Timothy Nunally and Mark Nunnally moves this Honorable Court for an Order compelling Defendant Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds, to answer Plaintiffs FIRST SET INTERROGATORIES for the Plaintiffs discovery pursuant to S.C. R. Civ. P. 37, stating in support:

1. On or about 5 September 2024 Plaintiffs served the Defendant with Exhibit "1", Plaintiffs FIRST SET INTERROGATORIES.

2. The Deponent Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds, has failed to answer the questions propounded in the Plaintiffs FIRST SET INTERROGATORIES for the Plaintiffs discovery pursuant to S.C. R. Civ. P. 33.

3. According to Exhibit "2", S.C. R. Civ. P. 33 (a), any party may serve upon any other party written interrogatories to be answered by the party served.

4. According to Exhibit "2", S.C. R. Civ. P. 33 (a), each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer.

5. Rule 33 - Interrogatories to Parties, S.C. R. Civ. P. 33 ("The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant").

6. Rule 33 - Interrogatories to Parties, S.C. R. Civ. P. 33 ("The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.").

7. If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.

Rule 37 - Failure to Make or Cooperate in Discovery: Sanctions, S.C. R. Civ. P. 37

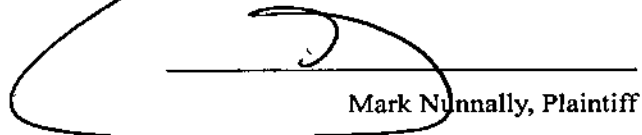
8. Each of the items requested are reasonably calculated to lead to the discovery of admissible evidence in accordance with the general rule governing discovery in this court.

9. Justice and the rules controlling this Honorable Court require that the written interrogatories to be answered by the party served be produced forthwith.

WHEREFORE Plaintiffs move this Honorable Court to enter an ORDER compelling Defendant to answer Plaintiffs FIRST SET INTERROGATORIES in accordance with the rules.

RESPECTFULLY SUBMITTED this 24th day of October 2024.

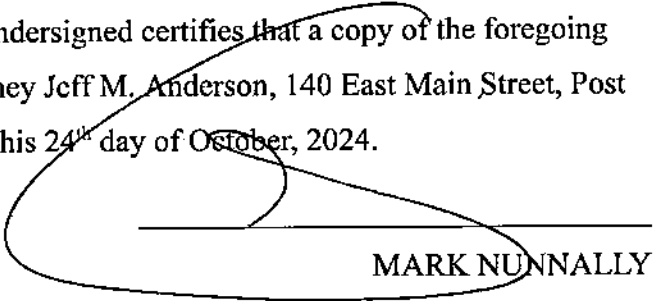

Timothy Nunally, Plaintiff


Mark Nunnally, Plaintiff

[Certificate of Service]

CERTIFICATE OF SERVICE

UNDER PENALTIES OF PERJURY the undersigned certifies that a copy of the foregoing was provided by Certified U.S. mail to Attorney Jeff M. Anderson, 140 East Main Street, Post Office Box 489, Lexington, SC 29071-0489 this 24th day of October, 2024.


MARK NUNNALLY

5681 GRANDE RIVER RD
ATLANTA, GA 30349-9127

VERIFICATION

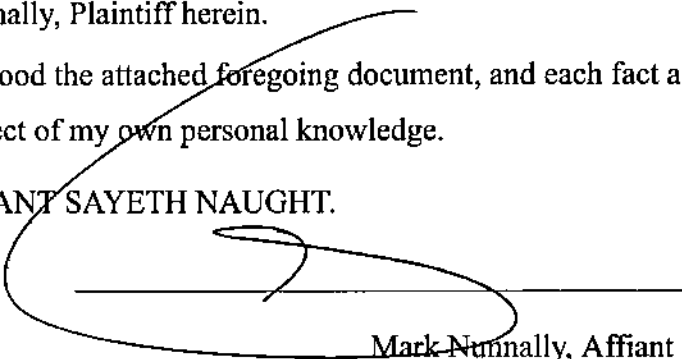
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

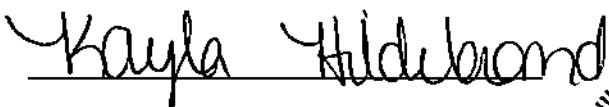
BEFORE ME personally appeared Mark Nunnally who, being by me first duly sworn and identified in accordance with South Carolina law, deposes and says:

1. My name is Mark Nunnally, Plaintiff herein.
2. I have read and understood the attached foregoing document, and each fact alleged therein is true and correct of my own personal knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.


Mark Nunnally, Affiant

SWORN TO and subscribed before me this 24th day of October 2024.


Notary Public

My commission expires:

May 1, 2026

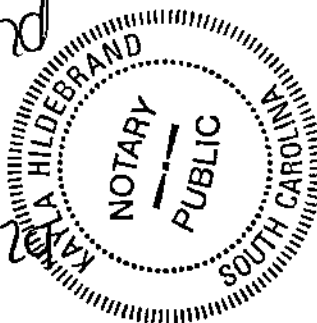


Exhibit "1"

Exhibit "1":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **10/24/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit "1"***.
- No party objects to the admission of this Exhibit "1" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF LI

Timothy Nunally, Mark Nunnally,

Plaintiffs,

v.

Tina Guerry, individually and in her office.

Deeds,

Defendant,

FIRST SET OF INT

Definitions for FIRST SET OF INTERROGATC

- "Document" means FEDERAL CLAIM OF C
FEDERAL COMMON LAW LIEN WRIT OF A
PERSONAL PROPERTY document.
- "Person" means any natural person, corporation
- "Relevant" means any information that is reasor
of admissible evidence.
- "Pleading" means complaints and answers are pleadings.
- "Discovery" means the process of finding facts that may lead to admissible evidence to
be placed in the court file or presented at hearings or trial.
- "Reasonable" means of or pertaining to the reasonable man, who is controlled by reason.
- "Fact" means a fact is an established truth, something that is evident, clearly seen,
indisputable, beyond doubt.
- "Material fact(s)" means fact(s) tending to prove or disprove some fact in controversy.
- "False" means that which is not true.
- "Fraud" means actionable deceit in an intentional practice.

U.S. Postal Service CERTIFIED MAIL RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

Postmark Here

Certified Mail Fee \$4.10

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$2.80

☐ Return Receipt (electronic) \$2.80

☐ Certified Mail Restricted Delivery \$3.50

☐ Adult Signature Required \$3.50

☐ Adult Signature Restricted Delivery \$3.50

Postage \$4.10

Total Postage and Fees \$4.10

Sent To _____

Street and Apt. No., or PO Box No. _____

City, State, ZIP+4® _____

PS Form 3800, January 2023 See www.usps.com for instructions

Return Receipt \$4.10

Tracking #: 9590 9402 6953 4064 3731 21 \$11.82

Total \$11.82

Grand Total: \$61.82

Debit Card Remit
Card Name: MasterCard
Account #: XXXXXXXXXX4494
Approval #
Transaction #: 581
Processing #: 091089

- “Legal” means not contrary to codified law.
- “Oath” means the solemn oath that is a foundation of Western Jurisprudence and a necessity of our modern legal system, for it is the oath (and the potential violation of that oath) that gives a court power to prevent perjury (falsified testimony) and corruption of other evidence.

Definitions (Continued)

- "Lawfully issued" means adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political subdivision of a state.
- "Credible Witness" means an individual who is personally known to the notary and whom the notary reasonably believes to be honest and reliable for the purpose of confirming to the notary the identity of another individual and the notary believes is not a party to or beneficiary of the transaction.
- “Witness” means a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.
- "Notarial act", "notary act", and "notarization" mean acts that the laws and regulations of this State authorize notaries public of this State to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.
- “Notary Public” means a notary public who shall affix to the deed or other instrument his official seal within the state of his appointment, which is a sufficient authentication of his signature, residence, and official character.
- “Propound” means to offer for consideration or discussion.

PLAINTIFFS Timothy Nunally and Mark Nunnally propounds the following interrogatories to Defendant Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds.

1. Identify all persons known to have any knowledge of the facts alleged in your pleadings and regarding each provide their full name and, if known or available to you through the exercise of reasonable diligence, residence and business address, phone numbers, aliases, and all other information reasonably necessary to identify each such person.
2. Identify all persons known to have any knowledge of the facts alleged in your discovery and regarding each provide their full name and, if known or available to you through the exercise of reasonable diligence, residence and business address, phone numbers, aliases, and all other information reasonably necessary to identify each such person.
3. As the Defendant, please state every fact that describes what fraudulent or sham legal document/s are to the South Carolina Lexington County Register of Deeds.
4. As the Defendant, please provide all the supporting facts of what false or fraudulent document/s are to the South Carolina Lexington County Register of Deeds.
5. As the Defendant, please state every fact that supports your claim that the Plaintiffs attempted to file and record fraudulent or sham legal document/s in the South Carolina Lexington County Register of Deeds Office.
6. Did you ever take the oath of office for a register of deeds in Lexington County located in the State of South Carolina on a Tuesday evening on January 3rd, 2017, at 6 p.m. in the Dorothy K. Black Council Chambers on the second floor of the Lexington County Administration building on South Lake Drive in Lexington as stated in the WestMetroNews on March 7, 2016, which provides comprehensive and fair news coverage of Lexington and Lexington County?
7. Did the Defendant take the oath of office for a register of deeds in Lexington County located in the State of South Carolina on a Tuesday evening on January 3rd, 2017, at 6 p.m. in the Dorothy K. Black Council Chambers on the second floor of the Lexington County Administration building on South Lake Drive in Lexington by stating "I, Tina (Middle Name if applicable) Guerry, do solemnly swear (or affirm) that I will faithfully and truly, according to the best of my skill and ability, execute the duties of the office of register of deeds for the county of Lexington, in all things according to law; so help me, God".
8. Has the Defendant's "Goal to carry on a people- oriented public service, while also continually striving to make the Register of Deeds office more efficient and user- friendly" stated in the WestMetroNews on March 7, 2016, ever been achieved during the Defendant's role as the South Carolina Lexington County Register of Deeds?
9. Is the Defendant's "Goal to carry on a people- oriented public service, while also continually striving to make the Register of Deeds office more efficient and user- friendly" stated in the

WestMetroNews on March 7, 2016, still being achieved at the present time by the South Carolina Lexington County Register of Deeds?

10. If the Defendant's "Goal to carry on a people- oriented public service, while also continually striving to make the Register of Deeds office more efficient and user- friendly" stated in the WestMetroNews on March 7, 2016, is still being achieved at the present time as the South Carolina Lexington County Register of Deeds, please provide all facts that support this claim?
11. As the South Carolina Lexington County Register of Deeds, does the Defendant still maintain the stance that "When maintaining major accounts, I know I must listen closely to the clients' needs and be attentive to the details to ensure they are properly served. That's an important quality for the Register of Deeds, who must not only oversee important county documentation for recording such as property deeds, but also to assist people who depend on the services provided through the Register of Deeds Office." as stated in the WestMetroNews on March 7, 2016, which provides comprehensive and fair news coverage of Lexington and Lexington County?
12. As a conservative Republican, is the Defendant still committed to looking out for the taxpayers while making sure the office operates as efficiently as possible – eliminating unnecessary expenses without sacrificing needed services as stated in the WestMetroNews on March 7, 2016, which provides comprehensive and fair news coverage of Lexington and Lexington County?
13. Has the Defendant ever made the statement that "Now more than ever, we need elected leaders who put people over politics, and that's the style of service I hope to offer." in the WestMetroNews on March 7, 2016, which provides comprehensive and fair news coverage of Lexington and Lexington County?
14. Has the Defendant ever made the statement that "My only objective is to be the kind of public servant Lexington County families can be proud of," as stated in the WestMetroNews on March 7, 2016, which provides comprehensive and fair news coverage of Lexington and Lexington County?
15. Is it true that before becoming the Lexington County Register of Deeds, the Defendant was a "businesswoman" as stated in the FITSNews on June 1, 2016 and on June 2, 2016?
16. Is the Defendant aware that Lexington County was one of six counties in South Carolina to elect its register of deeds?
17. Does the Lexington County Register of Deeds Office exist to "record, maintain and preserve all land records for the County and make them readily available for public viewing."?
18. Was the Defendant the primary beneficiary of a brewing scandal involving the Defendants top two competitors – Rich Bolen and Mike Green during the Defendants race to be elected as the Lexington County Register of Deeds?

19. Explain if daily statutory duties are completed by the Defendant when involved in discharging the duties of the Lexington County Register of Deeds?
20. Explain if daily ministerial duties are completed by the Defendant when involved in discharging the duties of the Lexington County Register of Deeds?
21. Please state all facts explaining why the Defendant does not have a statutory duty under South Carolina Code of Laws §30-5-90 to Plaintiffs to timely record within one month of delivery to the Lexington ROD all real estate documents under the date and in the order of time at which they are delivered to the Lexington ROD as stated in paragraph 10 of the Defendant's answer to Plaintiffs complaint.
22. In paragraph 11 of the Defendant's answer to REQUEST FOR ADMISSIONS on June 21, 2024, the Defendant admitted that the duties of the Lexington County Register of Deeds are to record, preserve and maintain all documents that are related to real properties. The ROD is to ensure all practices are followed as stated in the Code of Law of South Carolina, while operating the office in an efficient manner. Is this correct?
23. In Paragraph 2 of the Defendants Answer the Defendant stated that "This Defendant lacks sufficient knowledge and information as to the allegations contained in Paragraph 5 of the Complaint and, therefore, denies Paragraph 5. Is the Defendant aware that those material facts can be found in Exhibit 13 of the PLAINTIFFS VERIFIED MEMORANDUM WITH AFFIDAVIT IN SUPPORT OF COMPLAINT, WRIT OF MANDAMUS, AND MOTION FOR JUDICIAL NOTICE filed into this case file on July 25th, 2024, at 5:09pm?
24. Paragraph 6 of the Defendant's Answer states that the Defendant reasonably believes that the document is materially false. Please state what facts led to the Defendants belief(s).
25. When the Defendant told the Plaintiffs Timothy Nunally and Mark Nunnally on the Thursday March 7th, 2024, at 212 S. Lake Dr. Ste. 301 Lexington, SC 29072 that the Lexington County Register of Deeds did not feel comfortable with the \$100,000,000 lien amount of the FEDERAL CLAIM OF COMMON LAW LIEN and NOTICE OF FEDERAL COMMON LAW LIEN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROPERTY that the Plaintiffs attempted to file, is it because the Defendant was still being a Businesswoman rather than a Lexington County Register of Deeds?
26. Is it true that in paragraph 2 of the Defendant's answer to REQUEST FOR ADMISSIONS on June 21, 2024, the Defendant admitted that she cannot confirm the actual dates listed of when the Plaintiffs attempted to file and record a Common Law Lien and Notice of Writ of Attachment on Private and/ or Real, Personal Property for our real property located at 1759 Willow Creek Drive in Lexington County?

27. Is the Defendant still not able to confirm the actual dates listed of when the Plaintiffs attempted to file and record a Common Law Lien and Notice of Writ of Attachment on Private and/ or Real, Personal Property for our real property located at 1759 Willow Creek Drive in Lexington County?
28. In paragraph 5 of the Defendant's answer to REQUEST FOR ADMISSIONS on June 21, 2024, the Defendant stated that she asked both Plaintiffs if the amount of the lien was correct. Why would the \$100,000,000 lien amount that the Plaintiffs typed into the document the first time the Plaintiffs attempted to file the document not be correct on the Plaintiffs second or any other attempt made to file the same \$100,000,000 lien amount?
29. Explain all the facts that the Defendant used to answer paragraph 7 of the Defendant's answer to the Plaintiffs Complaint.
30. Explain all the facts that the Defendant used to answer paragraph 8 of the Defendant's answer to the Plaintiffs Complaint.
31. Has the Defendant ever made a choice to not believe the force of the \$100,000,000 lien amount in the FEDERAL CLAIM OF COMMON LAW LIEN and NOTICE OF FEDERAL COMMON LAW LIEN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROPERTY that the Plaintiffs attempted to file?
32. Has the Defendant ever made a choice to understand the reasons behind the amount of the \$100,000,000 lien amount in the FEDERAL CLAIM OF COMMON LAW LIEN and NOTICE OF FEDERAL COMMON LAW LIEN WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROPERTY that the Plaintiffs attempted to file?
33. Explain all the facts why "Exhibit A" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on May 17, 2024, is not a "Lawfully issued" document.
34. Explain all the facts why "Exhibit A" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on May 17, 2024, does not have a "Credible Witness" for the document.
35. Explain all the facts why "Exhibit A" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on May 17, 2024, does not have two persons who are a "Witness" for the document.
36. In paragraph 3 and paragraph 4 of the Defendant's answer to REQUEST FOR ADMISSIONS on June 21, 2024, did the Defendant truthfully state that the document failed to have two witnesses?
37. Explain all the facts why "Exhibit A" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on May 17, 2024, does not have a "Notarial act", "notary act", or "notarization" for the document.

38. Explain all the facts why "Exhibit A" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on May 17, 2024, does not have a "Notary Public" for the document?
39. In paragraph 3 and paragraph 4 of the Defendant's answer to REQUEST FOR ADMISSIONS on June 21, 2024, did the Defendant truthfully state that the notary's name was not legible?
40. In paragraph 3 of the Defendant's REQUEST TO ADMIT for the Plaintiffs dated August 13, 2024, did The Deed of Distribution of property from the Estate of Carl Alvin Nunally, Sr., recorded in Book 21073 at page 1408 and rerecorded in Book 21075 at page 5539 in the ROD office for Lexington County contain a notary's name that was legible?
41. Does the Lexington County Register of Deeds in South Carolina accept original documents or certified copies from government agencies and out of state courts for recording?
42. Explain all the facts why "Exhibit B" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on February 14, 2024, is not a "Lawfully issued" document.
43. Explain all the facts why "Exhibit B" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on February 14, 2024, does not have a "Credible Witness" for the document.
44. Explain all the facts why "Exhibit B" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on February 14, 2024, does not have two persons who are a "Witness" for the document.
45. Explain all the facts why "Exhibit B" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on February 14, 2024, does not have a "Notarial act", "notary act", or "notarization" for the document.
46. Explain all the facts why "Exhibit B" of the MOTION FOR JUDICIAL NOTICE OF FEDERAL COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT filed by the Plaintiffs on February 14, 2024, does not have a "Notary Public" for the document?
47. Does the Defendant have a pattern of failing to properly record in the time and manner prescribed in the South Carolina Code of Laws Unannotated Section 30-5-90?
48. Has the Defendant been told by any other person, attorney, or lawyer how to answer any of the interrogatories contained within these interrogatories?
49. Have all of the Interrogatories contained herein been answered by the person to whom they are addressed without the assistance, counsel, or coaching of any other person or attorney?
50. Will the Defendant sign these answers under oath, rather than the Defendant's attorney?

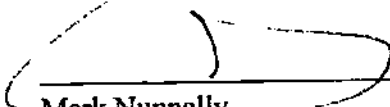
VERIFICATIONS

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

BEFORE ME personally appeared Mark Nunnally who, being by me first duly sworn and identified in accordance with South Carolina law, deposes and says:

1. My name is Mark Nunnally, one of the Plaintiffs herein.
2. I have carefully read the foregoing ^{interrogatories} ~~memorandum~~, and each of the facts alleged therein is true and correct of my own personal knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.


Mark Nunnally

SWORN TO and subscribed in my presence.


Notary Public
exp: May 1, 2019



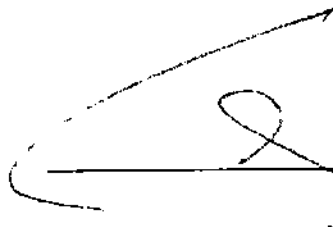
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

BEFORE ME personally appeared Mark Nunnally who, being by me first duly sworn and identified in accordance with South Carolina law, deposes and says:

1. My name is Mark Nunnally, one of the plaintiffs herein.
2. I have carefully read the foregoing ^{interrogatories} ~~memorandum~~, and each of the facts alleged therein is true and correct of my own personal knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.


Mark Nunnally

SWORN TO and subscribed in my presence.


Notary Public
exp: May 1, 2019



CERTIFICATE OF SERVICE

UNDER PENALTIES OF PERJURY the undersigned certifies that a copy of the foregoing was provided by Certified U.S. mail to Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds c/o Attorney Jeff M. Anderson, 140 East Main Street, Post Office Box 489, Lexington, SC 29071-0489 this 5th day of September 2024.

MARK NUNNALLY

5681 GRANDE RIVER RD
ATLANTA, GA 30349-9127
404 980 4488

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

BEFORE ME personally appeared Mark Nunnally who, being by me first duly sworn and identified in accordance with law, did execute the foregoing under penalties of perjury in my presence this 5th day of September 2024.

Kayla Hildebrand
Notary Public

My commission expires:
May 1, 2029



Exhibit "2"

Exhibit "2":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **10/24/2024**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit "2"***.
- No party objects to the admission of this Exhibit "2" into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

S.C. R. Civ. P. 33

Rule 33 - Interrogatories to Parties

(a)Availability; Procedures for Use. Except as limited by paragraph (b)(9), any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(b)Standard Interrogatories. In all cases the following standard interrogatories may be served by one party upon another unless otherwise ordered by the court for good cause shown. The interrogatories shall be deemed to continue from the time of service, until the time of trial of the action so that information sought, which comes to the knowledge of a party, or his representative or attorney, after original answers to interrogatories have been submitted, shall be promptly transmitted to the other party.

(1) Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

(2) Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

(3) In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

(4) Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

(5) Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

(6) List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

(7) For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

(8) [Defendants only.] If the defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

(9) Limitations. In addition to the standard interrogatories authorized by this paragraph, the court may order additional interrogatories for good cause shown in any case. In all actions in which the amount in controversy is not less than \$25,000, and in all actions for declaratory or injunctive relief, or actions before the family court, a party may serve additional interrogatories including more than one set of interrogatories upon any other party; but the total number of general interrogatories to any one party shall not exceed fifty questions including subparts, except by leave of court upon good cause shown.

(c) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(d) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial hearing or other later time.

S.C. R. Civ. P. 33

Amended by Order dated February 5, 2009; further amended effective 4/28/2011; amended by Order effective 5/1/2019.

This Rule 33(a) is the language of current Federal Rule except the first line. This language permits interrogatories to any party, not just an adverse party, and increases the time within which a party may object or respond to 30 days.

Rule 33 - Interrogatories to Parties S.C. R. Civ. P. 33

Rule 33(b)(5) amends present Circuit Court Rule 90 to require an "itemized" statement of all special damages exclusive of pain and suffering. 33(b)(8) is amended to make clear that in certain cases additional interrogatories are permitted beyond the standard interrogatories. Paragraphs 33(b)(1) through (4) and (6) are verbatim the standard interrogatories permitted by present Circuit Court Rule 90(e)(A) through (D) and (F). Paragraph (b)(7) is new and provides for a summary of the facts known to the witnesses in the case. The rule requires a detailed summary so as to avoid the problem encountered with the interrogatories directed to experts in Federal Rule 26(b)(4)(A)(i) which often results in a short, vague summary of expected testimony. On the other hand, it is limited to important facts known or observed by the witness so that the summary is restricted to the actual knowledge of the witness. Paragraph (b)(8) is added to provide for additional special interrogatories to parties in complex cases. The \$10,000 limitation follows the approach set by present Circuit Court Rule 87J. The limit of fifty such interrogatories follows present local rules of the Federal courts.

Note to 1985 Amendment:

The changes to Rule 33(b)(8) raise the amount in controversy necessary to authorize general interrogatories as a matter of course from \$10,000 to \$25,000. The rule is clarified to permit up to fifty general interrogatories in addition to the seven standard interrogatories.

Note to 1988 Amendment:

Rule 33(b)(8) is amended to make clear that the court has the discretion to permit additional interrogatories in any case for good cause shown.

Note to 2008 Amendment:

This amendment added section (b)(8) relating to defendants.

Note to 2019 Amendment:

The amendment to paragraph (b)(9) permits parties in actions before the family court to serve additional interrogatories when engaging in discovery under Rule 25 of the South Carolina Family Court Rules.

This Rule 33(c) is the Federal Rule and permits the party responding to discovery interrogatories to supply the documents from which the information can be obtained when the burden of extracting the information is the same for either party. It places on the requesting party the burden of obtaining the information if he specially needs it.

Note to 2011 Amendment:

The amendments to Rules 16, 26, 33, 34, 37 and 45 of the South Carolina Rules of Civil Procedure concerning electronic discovery are substantially similar to the corresponding provisions in the Federal Rules of Civil Procedure. The rules concerning electronic discovery are intended to provide a practical, efficient and cost-effective method to assure reasonable discovery. Pursuit of electronic discovery must relate to the claims and defenses asserted in the pleadings and should serve as a means for facilitating a just and cost-effective resolution of disputes.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

Timothy Nunally, Mark Nunnally,)

Plaintiffs)

v.)

Tina Guerry, individually and in her official)
capacity as the Lexington County Register of)
Deeds,)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2024-CP-32-01682

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

This matter is before the Court pursuant to the Defendant's Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. The facts of this case are very simple and do not need the voluminous and frivolous discovery that the Plaintiffs have requested.

The facts as shown by the affidavit of the Register of Deeds and as will be presented at this Hearing are as follows:

1. The Plaintiffs attempted to record the document that was attached to their Complaint, which is alleged to be a \$100 million lien on property at least partially owned by the Plaintiffs. The lien is captioned as a lien common law and a writ of attachment.
2. The lien was signed by Plaintiff, Timothy Nunally.
3. The alleged lien states that the lien supersedes mortgages and equity liens.
4. The alleged lien states that anyone who modifies or removes the lien is fully liable for damages.
5. The alleged lien further warns that anyone who attempts to modify, circumvent, and/or negate the lien shall be deemed outlaws and/or felons and shall be prosecuted pursuant to federal statutes.
6. The alleged lien further warns that any judicial action which violates the constitutional rights of the individuals may be sued as a cause of action in civil litigation against those performing those acts without any form of immunity.

7. SC Code section 30-9-30 states as follows:

SECTION 30-9-30.Filing of written instruments concerning real or personal property; false or fraud documents.

(A) Except as otherwise provided by statute, each clerk of court and register of deeds in this State shall keep a record, in the office in which he files all conveyances, mortgages, judgments, liens, contracts, and papers relating to real and personal property required by statute to be kept by him, by entering in the record the names of the grantor and grantee, mortgagor and mortgagee, obligor and obligee, or other parties to the written instruments, date of filing, and nature of the instrument immediately upon its lodgment for record. The filing is notice to all persons, sufficient to put them upon inquiry of the purport of the filed instrument and the property affected by the instrument. A return address must be provided on each conveyance, mortgage, judgment, lien, contract, or other document submitted for filing with the clerk of court or register of deeds. A document may be refused for filing if it lacks a complete return address.

(B)(1) If a person presents a conveyance, mortgage, judgment, lien, contract, or other document to the clerk of court or the register of deeds for filing or recording, the clerk of court or the register of deeds may refuse to accept the document for filing if he reasonably believes that the document is materially false or fraudulent or is a sham legal process. Within thirty days of a written notice of such refusal, the person presenting the document may commence a suit in a state court of competent jurisdiction requiring the clerk of court or the register of deeds to accept the document for filing.

(2) If the clerk of court or the register of deeds reasonably believes that a conveyance, mortgage, judgment, lien, contract, or other document is materially false or fraudulent, or is a sham legal process, the clerk of court or the register of deeds may remove the document from the public records after giving thirty days' written notice to the person on whose behalf the document was filed at the return address provided in the document. Within thirty days written notice of the proposed removal, the person providing the notice may commence a suit in a state court of competent jurisdiction preventing the clerk of court or the register of deeds from removing the document.

(3) If a clerk of court or a register of deeds improperly refuses to accept for filing or recording or improperly removes from the public records a conveyance, mortgage, judgment, lien, contract, or other document pursuant to this section, the clerk of court or register of deeds is not liable for damages, personally or in his official capacity, for the improper refusal or removal.

(4) For purposes of this subsection:

(a) "Sham legal process" means a document that is not issued lawfully and that purports to be a judgment, lien, or order of a court or appropriate government entity, or otherwise purports to assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of a person or property.

(b) "Lawfully issued" means adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political subdivision of a state.

8. The Lexington County ROD reviewed the document and determined that it had reasonable belief that the document should not be recorded pursuant to SC Code section 30-9-30 (B) (1) and sent the plaintiffs the letter attached the affidavit of the ROD, Tina Guerry, on file in the case and a copy of which is attached hereto.
9. The property on which the lien was alleged to attach is the subject of the current foreclosure lawsuit in civil action number 2024-CP-32-01094.
10. SC Code section 30-9-30 was enacted to give the Clerk of Courts and ROD offices the authority to refuse to record documents when they reasonably believe that the document is materially false fraudulent or is a sham legal process.
11. The Plaintiffs have not given any response to a discovery question as to what underlying lien did the Plaintiffs have on their own property.

Argument

The Plaintiffs attempted to put a \$100 million lien on their own property. The above referenced warnings by the Plaintiffs in the document were a red flag to the ROD that the document met the definition of 30-9-30 (B)(1). The additional public record information that the Plaintiffs were being foreclosed on a mortgage that they inherited gave further evidence that the document should not be recorded. It would have been easy for the ROD to simply record the document and let someone else worry about its validity but the ROD was trying to follow the law set forth in 30-9-30 (B)(1) and not record documents that should not be recorded. It should be noted that the 30-9-30 (B)(2) allows the ROD to remove any document that has been recorded that is reasonably believed to violate the statute.

The alleged common law lien is not a mortgage, not a mechanics lien, not a HOA lien created by covenants and not a State or Federal tax lien. The Plaintiffs have failed to identify what is the underlying basis for their alleged common law lien. Further, the Plaintiffs are attempting to put a lien on property that they at least partially own. There is no basis in law for a property owner to put a lien on his own property as this creates a form of merger of title in that the Plaintiffs already own the property on which they are attempting to record a lien. A lien cannot serve any purpose on property already owned by Plaintiffs. Liens give possible

rights to property but no further rights can be obtained more than ownership. If a property owner could put a lien on his own property, then a property owner could immediately upon obtaining title to property, put a lien on the property to put their lien ahead in priority from any other potential liens being recorded thereafter against the property. This simply cannot be done.

Section 30-9-30 (B) (3) also provides that the ROD is not personally or in her official capacity.

Discovery

The Plaintiffs continue to send needless and frivolous discovery to the Defendant, none of which has any bearing as to whether the document should be recorded. The above statute provides for a simple remedy if a document is not accepted for recording and it is a Hearing in Circuit Court to determine if the document should be recorded. Upon review of the document, this Court can make a decision whether the document should be recorded. Nothing else is needed.

Conclusion

The general assembly has provided an mechanism to stop false or fraudulent or a sham legal process from being recorded in the ROD or filed in the Clerk of Courts office. The Lexington County ROD was doing her job in reviewing the document and deciding that it should not be recorded pursuant to 30-9-30 (B) (1). It is submitted that, upon review of the document, this Court should make the same determination.

/s Jeff M. Anderson (SC Bar #380)

DAVIS FRAWLEY, LLC

140 East Main Street, Lexington, SC 29072

Phone No.: (803) 359-2512

ATTORNEYS FOR THE DEFENDANT TINA
GUERRY, INDIVIDUALLY AND IN HER
OFFICIAL CAPACITY AS THE LEXINGTON
COUNTY REGISTER OF DEEDS

Lexington, South Carolina
January 3, 2025.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT

Case No.: 2024-CP-32-01682

Timothy Nunally, Mark Nunnally,

Plaintiffs,

vs.

Tina Guerry individually and in her official
capacity as the Lexington County Register of
Deeds

Defendant.

AFFIDAVIT OF TINA GUERRY

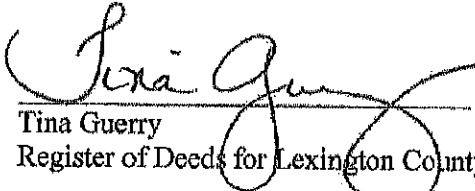
Personally appeared before me, Tina Guerry, who being duly sworn, states as follows:

1. I hold the office of Register of Deeds for Lexington County.
2. In this position, I am responsible for determining if a documents presented is in proper recordable form and that the documents is not a fraudulent or sham document as set forth in SC Code Section 30-9-30 (B) (1).
3. The document presented for recording by the plaintiffs and referenced and attached to their pleading represents that it is a \$100 million lien and notice of writ of attachment (hereafter "Lien") against certain property in Lexington County that is owned by both Plaintiffs.
4. The alleged Lien was signed by plaintiff, Timothy Nunally.
5. The alleged Lien states that is supersedes mortgages and equity liens.
6. The alleged Lien warns that anyone who modifies or removes the lien is fully liable for damages.
7. The alleged Lien further warns that whoever attempts to modify, circumvent and/or negate the Lien shall be deemed outlaws and/or felons and shall be prosecuted pursuant to Federal statutes.
8. The alleged Lien further warns that any judicial actions which violate the constitutional rights of the individuals may be sued as a cause of action in civil litigation against those performing those acts without any form of immunity.

9. After reviewing the alleged Lien, my office determined that it had reasonable belief that the alleged Lien should not be allowed to be recorded in the Lexington County Register of Deeds office pursuant to SC Code Section 30-9-30 (B) (1).

10. The attached notice was mailed to the Plaintiff, Timothy Nunally on April 8, 2024.

Furthermore, affiant sayeth not.


Tina Guerry
Register of Deeds for Lexington County

Sworn to me this 23rd day of September, 2024.


Alyson M. Rickenbaker
Notary Public for South Carolina

My Commission Expires: 3/11/2026

Certificate of Electronic Notification

Recipients

Jeffrey Anderson - Notification transmitted on 01-17-2025 10:40:59 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2024CP3201682

Official File Stamp: 01-17-2025 10:37:58 AM

Court: CIRCUIT COURT

Common Pleas

Lexington

Case Caption: Mark Nunnally , plaintiff, et al VS Tina Guerry,
individually and as Register of Deeds for
Lexington

Event(s):

Order/Order Cover Sheet \$25.00

Document(s) Submitted: Proposed Order/Summary Judgment

- Exhibit/Filing of Exhibits

Filed by or on behalf of: Jeffrey M. Anderson

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Jeffrey M. Anderson for Tina Guerry, individually
and as Register of Deeds for Lexington

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Timothy Nannally for Timothy Nannally

Mark Nunally for Mark Nunnally

Mark Nunnally for Mark Nunally

Timothy Nannally for Timothy Nannally

FILED

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

2025 JAN 17 PM 3:19

LISA H. COMER
CLERK OF COURT
LEXINGTON SC

Case No. 2024-CP-32-01682

Judge McCaslin

Timothy Nunally, Mark Nunnally,

Plaintiff(s),

v.

Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds,

Defendant,

PLAINTIFFS VERIFIED MEMORANDUM OF LAW WITH AFFIDAVIT

IN SUPPORT OF PLAINTIFFS MOTION TO RECONSIDER

COME NOW plaintiffs Timothy Nunally and Mark Nunnally, by and through in pro se, to file and record this memorandum in support of law for motion to reconsider, stating:

ISSUE

1. The issue for the Court is that matters of the record in this case show that there are still genuine issues as to material facts that preclude a summary judgment as a matter of law.
2. The plaintiffs allege that the erroneous decision was materially harmful to the plaintiffs and their ability to properly and lawfully continue discovery for trial.
3. Legal authorities in South Carolina law including the South Carolina Constitution, state laws, and federal laws that support the facts are cited in this memorandum by the plaintiffs.
4. If the judge could reach this conclusion, plaintiffs request for a motion to reconsider should be granted to properly and lawfully continue discovery for trial.

LEGAL STANDARD

Rule 59(e), SCRPC, allows a court to alter or amend a judgment upon a party's timely motion. Under South Carolina law, a motion to reconsider is appropriate in two basic situations. First, "[a] party may wish to file such a motion when [he] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Second, "[a] party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. *Id.*" Third, *Rule 56(e), SCRPC*, states that "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Lastly, *Rule 56(c), SCRPC*, further states that "judgment sought" shall not be rendered forthwith if there exist "genuine issue as to any material fact" that precludes a judgment as a matter of fact and law.

ARGUMENT

I. Plaintiffs Motion to Reconsider is Proper Under Rule 56, SCRPC.

As an initial matter, plaintiffs Motion to Reconsider does identify points of law and fact that the Court misunderstood, did not fully consider, or failed to rule upon in granting the defendant's Motion for Summary Judgement. The foregoing issue has been adjudicated while genuine issues of material fact still exist on the record of the case in favor of the plaintiffs. *Rule 56(c) of the South Carolina Rules of Civil Procedure* provides that the moving party is entitled to summary judgment "if the [evidence before the court] show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459 (S.C. 2023) "(a) Summary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, (1986)

These factors (See Motion at 3-10.) suggest why the plaintiffs have not abandoned the theory of their pleadings at summary judgment. "On appeal from summary judgment, the reviewing court must consider the facts and inferences in the light most favorable to the nonmoving party." *Stratos v. King*, 282 S.C. 501, 319 S.E. (2d) 356 (Ct. App. 1984). "The

judgment may be affirmed only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” S.C.R. Civ. P. 56.

II. Plaintiffs Motion to Reconsider is Proper Under Rule 56 (e), SCRPC.

Once moving party carries its initial burden, opposing party must, under Rule 56(e), "do more than simply show that there is some metaphysical doubt as to the material facts" but "must come forward with `specific facts showing that there is a genuine issue for trial.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L.Ed. (2d) 538, 552 (1986) (emphasis in original). Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." Watson v. Southern Ry. Co., 420 F. Supp. 483, 486 (D.S.C. 1975); see also Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E. (2d) 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.

III. The Court Improperly Granted Defendant's Motion For Summary Judgment.

The Court improperly granted the defendant's Motion for Summary Judgment based on well-established principles of fact and law in South Carolina. The Court's Judgment presents a Court ruling that is incorrect or flawed, based on a misinterpretation of the law, improper application of legal principles, or a clear mistake in the facts of the case, potentially allowing for appeal to a higher court to review and potentially overturn the decision. Plaintiffs arguments have bearing on this Court's holding, and plaintiffs Motion to Reconsider should not be denied as a matter of fact and law.

a. The Trustee's Lien, Decedent's Will with Pour Over Provision, Deed of Distribution, and Decedent's Certification of Trust Are Authentic And Legal Instruments.

Plaintiffs argue that the Court's Order granting summary judgment contains "clear error of law" in interpreting and enforcing the above referenced legal instruments each individually entered into this case months before the decision for Summary Judgment was made. Plaintiffs present eight arguments related to the Court's interpretation of the plaintiffs

instruments, all of which are relevant to the Court's Order. (See Motion at 3-10.) Critical to this ruling, plaintiffs argue that the referenced instruments are fully legal and not ambiguous.

The instruments referenced provide proof of the plaintiffs interest in the res of the CAN IRREVOCABLE TRUST. "The judicial function of a court of law is to enforce contracts as made by the parties and not to re-write or distort, under the guise of judicial construction, the terms of an unambiguous contract." *Dobyns v. S.C. Dept. of Parks, Recreation & Tourism*, 325 S.C. 97, 103, 480 S.E.2d 81, 84 (1997). Further, "[i]n the enforcement of an agreement, the court does not have the authority to modify terms that are clear and unambiguous on their face." *Messer v. Messer*, 359 S.C. 614, 621, 598 S.E.2d 310, 314 (Ct. App. 2004).

As the South Carolina Supreme Court has stated, and as explicitly recognized by the Court in its Order:

It is elementary... that the function of the courts is to adjudge and enforce contracts as they are written and entered into by the parties. The court cannot make them for the parties. When such contracts are capable of clear interpretation, the court cannot exercise its discretion as to the wisdom of such contract or substitute its own for that which was agreed upon where its provisions are clear, unambiguous and free from doubt. *Mid-Continent Refrigerator Co. v. Dean*, 256 S.C. 99, 101, 180 S.E.2d 892, 893-94 (1971) (quoting *Charles v. Canal Ins. Co.*, 238 S.C. 600, 121 S.E.2d 200 (1961))

Further, plaintiffs contend that the Court did not allow the parties a reasonable opportunity to conduct discovery on the issue of the defendant's intention to exercise a ministerial duty and power based on reasonable grounds to believe that must therefore believe in the probability that certain facts or a certain situation exists pursuant to SC Code section 62-7-104 (b) (1) (2) (3), and did not properly consider the referenced instruments to determine their meaning, authenticity, attestation, and official legal certification. However, it is a basic principle of contract interpretation that "[i]n determining the intent of the parties, the court looks to the language of the contract and if this language is unambiguous, it alone determines the contract's force and effect." *Valley Pub. Serv. Auth. v. Beech Island Rural Cmty. Water Dist.*, 319 S.C. 488, 493, 462 S.E.2d 296, 299 (Ct. App. 1995).

The Court stated that the Court examined the language of the referenced instruments, determined that the instruments were unclear, ambiguous, or simply did not exist and did not enforce the provisions of the instruments and contracts as written. Consequently, the Court was required or permitted to look inside of the four corners of the referenced instruments. Plaintiffs objected at the January 7th, 2025, Summary Judgement hearing simply because the

Deed of Distribution referenced by the defense does not make a transfer to the plaintiffs as an inheritance as stated in the hearing by Attorney Jeff M Daniels and Judge McCaslin. The transfer was made “pursuant to the Decedent’s Will” as stated on the official Deed of Distribution located in the Lexington County Register of Deeds BK: 21073 PG:1408-1410, and Lexington County Register of Deeds BK: 21075 PG: 5539-5541. Accordingly, the Court incorrectly found that the referenced instruments were unclear, ambiguous, or simply did not exist, and plaintiffs Motion for Reconsideration should not be denied as a matter of fact and law. *Please see Attached Exhibits 1-4.*

b. Defendant Failed To Provide Plaintiffs With Timely Discovery In Satisfaction Of Its Obligation Under Rule 26 - General Provisions Governing Discovery.

On 07 January 2025, plaintiffs moved the court to enter an Order determining the defendant’s insufficient response filed into the record by the defendant with a timestamp of 2024 May 30 10:33 AM to be admitted for devious responses pursuant to “(b) Scope of Discovery.” *Rule 26 - General Provisions Governing Discovery*, S.C. R. Civ. P. 26.

Plaintiffs also argued that the defendant did not provide plaintiffs with “all information requested by plaintiffs discovery” and did not engage in a mutual effort to provide knowledge of her “reasonable belief” to plaintiffs regarding the trustee’s unfiled and unrecorded possessory lien. (Motion at 10.) The Plaintiffs discovery was never completed. These assertions are plainly true.

Plaintiffs assertion that the defendant has not provided the requested discovery has had no effect on the Court’s ruling as the referenced instruments are legally enforceable, they are unambiguous, and provides the terms for the instruments presented by the plaintiffs. (Motion at 3.) Accordingly, plaintiffs Motion to Reconsider should not be denied as a matter of fact and law.

c. Plaintiffs Remaining Assertions Constituting Lawful Grounds For Relief.

Finally, plaintiffs provide citations to rules, statutes and case law that control the Court.:

- “We take this opportunity to remind the clerks of court of their ministerial duty to docket filings irrespective of potential procedural flaws that may exist.” *Miller v. State*, 377 S.C. 99, 102, 659 S.E.2d 492, 493 (2008)
- “In order to prevail on a theory of negligence, the plaintiff must establish three elements: (1) that the defendant owed him a duty of care; (2) that by some act or

omission the defendant breached that duty; and (3) that as a proximate result of the breach, the plaintiff suffered damage.” Russell v. City of Columbia, 301 S.C. 117, 390 S.E. (2d) 463 (Ct. App. 1989). Unless the plaintiff establishes all three elements, his case fails. *Id.*

- “The defendant's breach of the duty of care is a question of fact.” See McVey v. Whittington, 248 S.C. 447, 151 S.E. (2d) 92 (1966).
- “This duty is not discretionary. See 21 C.J.S. Courts § 335 (2021).” Barnes v. State, 859 S.E.2d 260, 261 (S.C. 2021)
- In order to resist a defendant's motion for summary judgment, the plaintiff, as the party with the burden of proof at trial, must present affirmative evidence which, at the very least, places the fact of breach in dispute. See Hammond v. Scott, 268 S.C. 137, 232 S.E. (2d) 336 (1977); Dyer v. Moss 284 S.C. 208, 325 S.E. (2d) 69 (Ct. App. 1985).
- “[I]t is not within the Clerk of Court's authority to refuse to perform her duty based on her opinion that a filing lacks legal merit or is untimely.” Barnes v. State, 859 S.E.2d 260, 261 (S.C. 2021)
- “Unless specifically authorized by statute or a court rule, a clerk of court may not exercise any judicial power reserved for a judge. *Id.*” Barnes v. State, 859 S.E.2d 260, 261 (S.C. 2021)
- “(“The clerk cannot, without express constitutional or statutory authority, exercise any judicial functions.”).” Barnes v. State, 859 S.E.2d 260, 261 (S.C. 2021)
- “This includes the prohibition of performing any action contingent on deciding a question of law. *Id.*” Barnes v. State, 859 S.E.2d 260, 261 (S.C. 2021)
- “(“It follows that a clerk of court cannot ordinarily determine questions of law.”).” Barnes v. State, 859 S.E.2d 260, 261 (S.C. 2021)
- “Accordingly, a clerk of court does not have the authority to reject a filing based on ostensible or perceived failures, including whether the document is contained on the proper form.” Barnes v. State, 859 S.E.2d 260, 261 (S.C. 2021)
- “Because the clerk's role is ministerial in this respect, the clerk shall not be “concerned with the merit of the papers or with their effect and interpretation” *Id.* § 337.” Barnes v. State, 859 S.E.2d 260, 261 (S.C. 2021)
- Stated differently, “[a] clerk of court may not reject a pleading for lack of conformity with requirements of form; only a judge may do that.” Hooker v.

Sivley, 187 F.3d 680, 682 (5th Cir. 1999) ; see also Gorod v. Tabachnick, 428 Mass. 1001, 696 N.E.2d 547, 548 (1998)

- “See Mose v. State, 420 S.C. 500, 507, 803 S.E.2d 718, 721 (2017) (holding “the [PCR] application is deemed ‘filed’ when it is delivered to and received by the Clerk of Court” (citing Gary v. State, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001))). ” Barnes v. State, 859 S.E.2d 260, 262 (S.C. 2021)
- “The clerk of court’s ministerial duties required the clerk to accept the application for filing, give it the appropriate docket number, and distribute it as required by law. See S.C. Code Ann. § 17-27-40 (2014)” Barnes v. State, 859 S.E.2d 260, 262 (S.C. 2021)
- “The clerk of court’s error in returning the November 2010 application is compounded by the fact that Section 17-27-70(a) of the South Carolina Code (2014) requires, “[i]n considering the application, the court shall take account of substance, regardless of defects of form.”” Barnes v. State, 859 S.E.2d 260, 262 (S.C. 2021)
- “While the General Assembly has deferred to the Court in prescribing the contents of the form, see S.C. Code Ann. § 17-27-50 (2014), nothing in our statutory provisions confers authority upon the clerk of court to unilaterally reject a PCR application even if the applicant used the wrong form.” Barnes v. State, 859 S.E.2d 260, 262 (S.C. 2021)
- “Instead, that determination is quintessentially a question of law reserved for a judge, who must consider such a question in light of the flexible pleading and amendment provisions of the South Carolina Rules of Civil Procedure.” Barnes v. State, 859 S.E.2d 260, 262 (S.C. 2021)
- “If the clerk of court had executed its ministerial function properly, the PCR court would have had the opportunity to consider the substance of the allegations and could have exercised flexibility in order to mitigate against a procedural default, especially one involving a pro se incarcerated litigant.” Barnes v. State, 859 S.E.2d 260, 262 (S.C. 2021)
- “Rule 15(a), SCRPC (providing “leave [to amend a pleading] shall be freely given when justice so requires”).” Barnes v. State, 859 S.E.2d 260, 262 (S.C. 2021)

All of these arguments constitute grounds for relief under Rule 56 (c) SCRPC, Rule 56(e) SCRPC, and Rule 59(e) SCRPC. These assertions present, or allege, an error of law by the Court, and raise issues that the Court did not fully consider. Therefore, because plaintiffs have

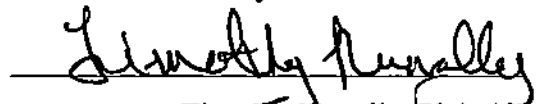
not failed to identify any error of law or any argument not considered by the Court, the plaintiffs Motion to Reconsider should not be denied as a matter of fact and law.

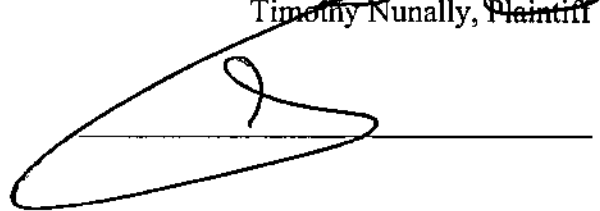
CONCLUSION

Plaintiffs have demonstrated that the Court erred in granting the defendant's Motion for Summary Judgment. The points raised in the plaintiffs Motion to Reconsider have not been fully considered by the Court. Therefore, plaintiffs respectfully request that the plaintiffs Motion to Reconsider not be denied as a matter of fact and law.

WHEREFORE plaintiffs move this Honorable Court to enter an Order rescinding its Order of 07 JAN 2025 nunc pro tunc and permitting plaintiff to continue with discovery and to proceed to trial, granting such other and further relief as the Court may deem reasonable and just under the circumstances.

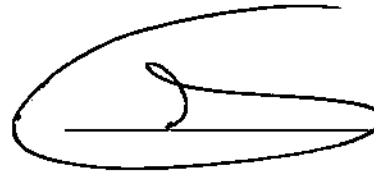
RESPECTFULLY SUBMITTED this 17th day of JANUARY 2025.


Timothy Nunnally, Plaintiff


Mark Nunnally, Plaintiff

[Certificate of Service]

I CERTIFY that a copy of the foregoing and the attached affidavits were provided by the U.S. Mail to Attorney Jeff Daniels, addressed at 212 S. Lake Dr. Ste. 301 Lexington, SC 29072 this 17th day of January 2025.

A handwritten signature in black ink, appearing to be 'Mark Nunnally', written over a horizontal line.

Mark Nunnally

5681 Grande River Road

College Park, GA 30349

404-980-4488

VERIFICATIONS

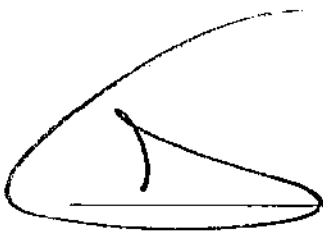
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

BEFORE ME personally appeared Mark Nunnally who, being by me first duly sworn and identified in accordance with South Carolina law, deposes and says:

1. My name is Mark Nunnally, one of the plaintiffs herein.
2. I have carefully read the foregoing memorandum, and each of the facts alleged therein is true and correct of my own personal knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.


Mark Nunnally

SWORN TO and subscribed in my presence.

Kayla Hildebrand
Notary Public
Exp: May 1, 2029

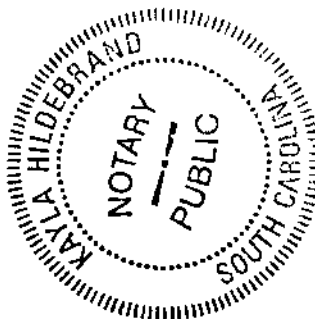


Exhibit "1"

Exhibit "1":

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **1/17/2025**.
 - is a true and accurate copy of the original.
 - is being offered into evidence to prove the purpose of ***Exhibit "1"***.
 - No party objects to the admission of this Exhibit "1" into evidence.

Prepared By:
Mark Anthony Nunnally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 5681 Grande River Road
Atlanta, Georgia State

LIEN COMMON LAW

AND

NOTICE OF WRIT OF ATTACHMENT ON PRIVATE AND/OR REAL, PERSONAL PROPERTY

February 5, 2024

NOTICE TO:

Superior Court Clayton County; Clerk of Superior Court of Clayton County, and Register of Deeds of Clayton of the State of ~~Atlanta~~ ^{Georgia} in and for Atlanta, Georgia; and acting Sheriff of Clayton County; and All persons known and unknown who may be similarly situated and all other concerned parties.

You are hereby notified that a FEDERAL COMMON LAW LIEN AND WRIT OF ATTACHMENT - ON PRIVATE AND/OR REAL, PERSONAL PROPERTY is now in effect on a certain parcel of Real Estate now of record in the Name of Timothy Allen Nunally. The **LIENOR**, on property located in Clayton County, Georgia State and known as 5681 Grande River Road, Atlanta, Georgia; Clerk of Superior Court in Clayton County of Georgia State; and more specifically **LEGALLY** and **Lawfully** described as:

Located: 5681 Grande River Road, Georgia State [39456]

[Lat = Latitude Long = Longitude]

Lat: 33.6003687 Long: -84.4457561

ALL THAT tract or parcel of land lying and being in Land Lot 90 of the 13 District, Clayton, Georgia, being all of Lot 23, River's Station Subdivision, Phase D, Unit, 1, as per plat recorded in Plat Book 38, pages 104-107, Clayton County, Georgia records, which plat is incorporated herein and made a part hereof by this reference.

(Parcel: 130980C-C009)

*Grantee Address: 5681 Grande River Road
Atlanta, Georgia State*

Copy of this **Common Law Lien, Writ of Attachment** On Private, And/or Real, and Personal Property has also been filed with the **Secretary of State of Georgia Republic**.

Brad Raffensperger– Secretary of State, Georgia State

Pursuant to that certain agreement that **LIENOR** Timothy Allen Nunally "CAN IRREVOCABLE" Trust of the property, the **LIENOR**, claims the attachment of the **COMMON LAW LIEN, WRIT OF ATTACHMENT ON REAL AND PRIVATE/PERSONAL PROPERTY** is in the AMOUNT of:

One Hundred Million Dollars (\$100,000,000) for 5681 Grande River Road, Atlanta, Georgia State [30349].

MEMORANDUM OF LAW IN SUPPORT

Writ Of Attachments is but another form of **Common Law Lien** and **supersede mortgages and equity liens, and Deeds of Trust** Drummond Carriage v. Mills, (1878) N.W. 99; Hewitt V. Williams, 47 La. Ann. 742, 17 So. 269; Carr V. Dail, 19 S.E. 235; McMahan V. Ludin 58 N.H. 827, and may be satisfied only when paid and/or property is taken in lieu of the monetary value and fully satisfied by said taking of property.

The ruling of the U.S. Supreme Court in Rich v. Braxton, 158 U.S. 375, specifically forbids judges (Titles of Nobility) from invoking equity jurisdiction to remove common law liens or similar "clouds of title." Furthermore, even if a preponderance of evidence displays the lien to be void or voidable, the equity court (and Title of Nobles) still may not proceed until the moving party asks for and comes "to equity" with "clean hands" based on the "Clean Hands Doctrine" And "Power Of Estoppel", Trice v. Comstock, 57 C.C.A. 646; West V. Washington Sheriff, 153 App. Div. 460, 138 N.Y. Supp. 230.

ANY OFFICIAL WHO ATTEMPTS TO MODIFY OR REMOVE THIS COMMON LAW LIEN IN THE FORM OF WRIT OF ATTACHMENT IS FULLY LIABLE FOR DAMAGES AT LAW PURSUANT TO THE MANDATORY RULINGS OF THE U.S. SUPREME COURT IN BUTZ v. ECOHOMU, 438 U.S. 494, 98 S.Ct. 2894; BELL v. HOOD, 327 U.S. 678; and BIVENS v. UNKNOWN AGENTS, 499 U.S. 388.

This Federal At Law Lien in the form of a Writ Of Attachment(s) shall be valid, notwithstanding any other provision of statute or rule regarding the form or content of a "notice of lien", nor shall it be dischargeable for 100 years, nor extinguishable due to lienor's death whether accidental or purposely, nor dischargeable by lienor's heirs, assigns, or executors.

CAVEAT

Whoever attempts to modify, circumvent, and/or negate this? Federal Common Law Lien, in the form of Writ Of Attachment, shall be deemed outlaws and/or felons and shall be prosecuted pursuant to Title 42, United States Code, Sect. 1983, 1985, and 1986, and Punishable under the **penalties of the common law** at law and applicable sections of Title 18, United States Code.

Demand is made upon all public officials under penalty of Title 42 U.S.C.S. Section 1986 not to modify or remove this lien in any manner.

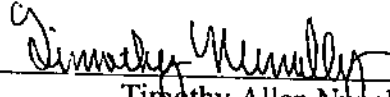
JUDICIAL NOTICE

I HEREBY NOTICE this to all parties and all Court(s) that pursuant to U.S. Supreme Court case **HAFER v. MELO**. No. 90-681, November 1991, any judicial actions which violate the constitutional rights of individuals may be sued as a cause of action in civil litigation against those performing said acts, without any form of immunity.

CONSTITUTIONAL PRIVILEGE - Immunity: State officials sued in their individual capacities are "persons" subject to suits for damages under 42 USC 1983; Eleventh Amendment does not bar such suits in federal court because of the purchase of bond insurance (Hafer v. Melo, No. 90-681), page 4001.

Respectfully Submitted in the Name of Justice on

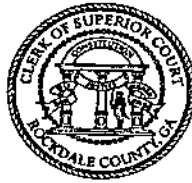
This 5th day of February 20 24.



Timothy Allen Nunnally
Nonresident/ Non Domestic
First Class, U.S. Delivery
c/o 5681 Grande River Road
Atlanta, Georgia State

CLERK OF SUPERIOR AND STATE COURTS
ROCKDALE COUNTY, GA

Janice Morris, CSC
Clerk of Superior & State Courts
Rockdale Judicial Circuit
clerkofcourtoffice @rockdalecountyga.gov



Rockdale County Courthouse
922 Court Street, NE
Conyers, Georgia 30012
770-278-7900

I, JANICE MORRIS, CLERK OF SUPERIOR COURT OF ROCKDALE COUNTY, do hereby certify that, as of record in this office, JANICE WILLIAMS, 837 COCHISE TRAIL SE, CONYERS, ROCKDALE COUNTY GA 30094, was on May 23, 2023, duly commissioned and sworn and authorized by the laws of the State of Georgia, as a Notary Public for the State of Georgia, to take proof of acknowledgment of deeds and other instruments in writing to be recorded in said State and to administer oaths and affirmations in said State, said commission to remain in effect for a period of four years, expiring May 22, 2027.



In testimony Whereof, I have hereunto set my hand and affixed the seal of my said court, this 7th day of February, 2024.

(Deputy Clerk's Signature)

Deputy Clerk of Superior Court
ROCKDALE County, Georgia

www.rockdaleclerk.com

AFFIDAVIT

FILED
CLAYTON COUNTY, GA

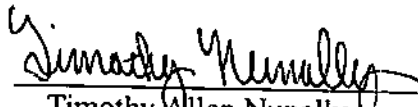
2024 FEB 14 P 4:12

CLAUDE L. LEMMONS
JUDGE, CLAYTON COUNTY COURT

Georgia State
County of Clayton

BEFORE ME, the undersigned authority, on this 5th day of February, 2024, did personally appear Timothy Allen Nunally, Trustee, with authority as the LIENOR, who being first personally and duly sworn, does depose and say that the information contained in this foregoing Federal Common Law Lien Writ of Attachment of Real and Personal Property is true and accurate.

Further this affiant sayeth not.



Timothy Allen Nunally
"LIENOR" and "Trustee"

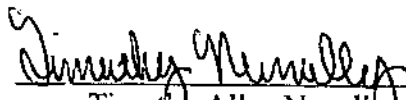


Third Party Witness

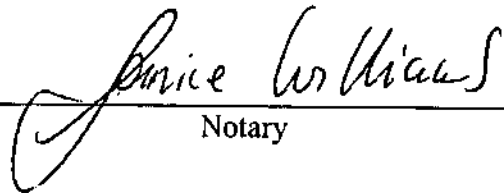
ACKNOWLEDGEMENT

Georgia State
County of Clayton

The foregoing Federal common Law Lien Writ of Attachment on Real and Personal Property was acknowledged before me this 5th day of February, 2024, by Trustee Timothy Allen Nunally of the private property, did execute the same.



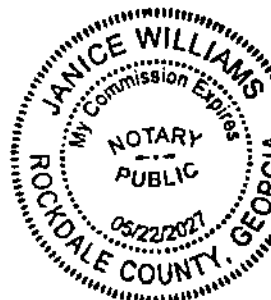
Timothy Allen Nunally



Notary

My Commission Expires: 05/22/2027

SEAL



INDIVIDUAL ACKNOWLEDGEMENT

FILED
CLAYTON COUNTY, GA

Type or Title of Document:

2024 FEB 14 P 4:12

CLAYTON COUNTY, GA
CLAYTON COUNTY, GA

FEDERAL CLAIM OF COMMON LAW LIEN
and
NOTICE OF FEDERAL COMMON LAW LIEN
WRIT OF ATTACHMENT ON
PRIVATE AND/OR REAL, PERSONAL PROPERTY

Number of pages: 4 Date of document: February 5, 2024

Trust CAN IRREVOCABLE TRUST the OWNER of the private property;
and
the LIENOR.

48 ***** 48

Exhibit “2”

Exhibit “2”:

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **1/17/2025**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit “2”***.
- No party objects to the admission of this Exhibit “2” into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

LAST WILL AND TESTAMENT

of

Carl Alvin Nunnally Sr

A TRUE COPY:

ATTEST:

I Carl Alvin Nunnally Sr also known as Carl Alvin Nunnally Sr hereby declare that this instrument is my Will and that it cancels my entire prior Wills.

DEBTS

My Executor shall pay from the residue of my testamentary exempt probate estate as an expense of administration all estates, inheritance or other death taxes, if any from the exemption including interest and penalties by reason of my death if liable from the exemption. If any property passing by reason of my death shall be subject to mortgage or lien or pledge, my Executor or replacement Trustee shall have complete discretion whether or not to pay such debt or allow the recipient to take such interest subject to such encumbrance. Any life insurance proceeds payable by reason of my death and collectable by my replacement trustee shall not be subject to any payments due under this article as fully as other assets in my estate. 100% of my Estate shall go to Mark Anthony Nunnally; Timothy Allen Nunnally the beneficiary(s) or to the Trust for its operation at discretion of Trustee.

DEFINITIONS

As used in the Will, the words "Executor" and "Replacement Trustee" shall include a named fiduciary or successor thereto, references by gender shall include the masculine and the feminine with singular and plural and *vice versa* where appropriate.

POUOVER PROVISION

I give all of the remainder of my property to the TRUST, dated June 30, 2020, to be held and disposed of as though the same had been a part of the original corpus thereof. I now as Trustee of the CARL ALVIN NUNNALLY REVOCABLE LIVING TRUST transfer all property [Latitude and Longitude

description of each property], rights, title and interest including but not limited to bank accounts, and all other assets listed in schedule "A" into the "CAN IRREVOCABLE TRUST"; description in particular here and finalized by contract to the same

CAN IRREVOCABLE TRUST.

EXECUTOR

A I Appoint Timothy Allen Nunnally eldest son as Executor of my estate. If Carl Alvin Nunnally should be or become unable or unwilling to so serve, I instead appoint the next willing and able Successor Executor as Executor. For purposes of this document, "Successor Executor" shall mean: Timothy Allen Nunnally youngest son. If all of the above named Executors' are unwilling or unable to so serve, a court of competent jurisdiction shall appoint a suitable person to serve as Executor with the explicit approval of the Trustee. If not approved, then such Trustee shall appoint the next Executor exclusively.

B No executor or Trustee shall be required to furnish bond or to file any inventory or accounting of my estate or any trust estate in any court.

C I hereby vest in my Excutor, in the administration of any property in my estate, all the powers set forth in the Trust [SCC 62-7-101] or its successor, to the extent applicable, all of the provisions thereof being hereby stated as reference, except such powers the exercise of which would cause my estate to lose all or a part of the tax benefit afforded by the marital deduction of federal or state law.

This 1st day of May 2021.

TESTATOR

TRUSTEE:

Carl Alvin Nunnally

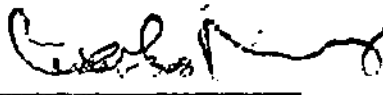
Carl Alvin Nunnally

Witness:

Ronnie Damm
Debbie Bay

SOUTH CAROLINA SELF-PROVING AFFIDAVIT

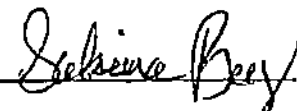
I, Carl Nunally, the Testator, sign my name to this Instrument this 1st day of May, 2021, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator's Signature 

We, Ronnie Demmes and Sakina Bey, the witnesses, sign our names to this instrument, being duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his/her Last Will and that he/she signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the Testator, hereby signs this Last Will as witness to the Testator's signing, and that to the best of our knowledge the Testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Witness's Signature 

Print Name Ronnie Demmes

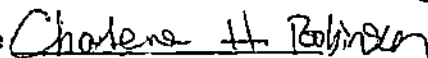
Witness's Signature 

Print Name Sakina Bey

NOTARY ACKNOWLEDGMENT

County of Richland
State of South Carolina

Subscribed, sworn to and acknowledged before me by Carl Nunally, the Testator and subscribed and sworn to before me by Ronnie Demmes, and Sakina Bey, this 1st day of May, 2021.

Notary Signature 

Print Name Charlene H. Robinson



Exhibit “3”

Exhibit “3”:

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **1/17/2025**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit “3”***.
- No party objects to the admission of this Exhibit “3” into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

Re-record to add Trustee Title

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF LEXINGTON) DEED OF DISTRIBUTION
(Real Property Only)
IN THE MATTER OF:) NOT A WARRANTY DEED
CARL ALVIN NUNALLY, SR.
(Decedent)) CASE NUMBER 2022ES3201253

The undersigned states as follows:

Decedent died on SEPTEMBER 4TH, 2021 ; and probate of the Estate is being administered in the Probate Court for LEXINGTON County, South Carolina, in File

2022ES3201253.

I was appointed Personal Representative (s) on 28TH day of MARCH 2023.

Decedent owned real property described as follows:

Tax Map Number: 2734-01-003

Street/Property Address: 1759 Willow Creek Road, Columbia, SC 29210

Legal Description: Located: 1759 Willow Creek Drive Columbia, SC

Lat 34.066370 Long: -81.184940

ALL THAT CERTAIN PIECE, PARCEL, or lot of land, with the improvements thereon, situated, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W on plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975 and recorded in the Office of the RMC for Lexington County in Plat Book 139-G at page 23; Also being shown and delineated on a plat prepared for Dana C. Frost and Terri L. Frost by Belter & Associates, Inc., dated 6/14/1993 and recorded in the Office of the RMC for Lexington County in Plat Book 262 at Page 070. Reference being made to said plat which is incorporated herein by reference for a more accurate and complete description ; all measurements being a little more or less.

This being identical property conveyed to the Mortgagors by Deed of Dana C. Frost and Terri L. Frost dated August 8, 1994 and recorded simultaneously herewith in Deed Book 5145 at Page 97.

This transfer is made pursuant to:

☒ Decedent's Will

Intestacy Statute: SCPC 62-2-103

Private Family Agreement: SCPC 62-3-912

Disclaimer by: _____

Probate Court Order issued on _____

Other: _____



2023031779 BK: 21073 PG: 1408 - 1410 3 PGS

DEED OF DISTRIBUTION

Rec: \$15.00 Cnty: \$0.00 State: \$0.00

September 6, 2023 02:29:15 PM

FILED IN LEXINGTON COUNTY, SC

Tina Quarry



2023034409 BK: 21075 PG: 5539 - 5541 3 PGS

DEED OF DISTRIBUTION

Rec: \$15.00 Cnty: \$0.00 State: \$0.00

September 27, 2023 11:10:36 AM

FILED IN LEXINGTON COUNTY, SC

Tina Quarry

FORM #400ES (1/2016)

Page 1 of 3

In accordance with the laws of the State of South Carolina, the Personal Representative(s) does/do hereby release all of the Personal Representative's(s') right, title and interest, including statutory and/or testamentary powers, over the real property described to the beneficiaries named below:

Name: TIMOTHY ALLEN NUNALLY
Address: 4499 PERSIAN COURT
SNELLVILLE GA 30078

Name: MARK ANTHONY NUNNALLY
Address: 5681 GRANE RIVER RD
COLLEGE PARK GA 30349

IN WITNESS WHEREOF the undersigned, as Personal Representative(s) of the above Estate, has executed this Deed of Distribution, on this 30TH day of MAY, 2023 .

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness: Charlene H. Robinson
Print Name: Charlene H. Robinson

Witness : Rosevelt L. Robinson
Print Name: Rosevelt L. Robinson

Estate of: CARL ALVIN NUNALLY, SR.

Signature of Personal Representative: Timothy Nunally a P.R. & Trustee
Print Name: Timothy Nunally

If applicable, Signature of Co-Personal Representative:

Print Name: _____

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF LEXINGTON

I, Charlene H. Robinson, Notary Public, a notary for the State of South Carolina do hereby certify that

Timothy Nunally
as Personal Representative(s) of the Estate of CARL ALVIN NUNALLY, SR., personally appeared before me this day and acknowledged the due execution of the foregoing Deed of Distribution.

Witness my hand and seal this the day of May 30th, 2023

Charlene H. Robinson (SEAL)

(Signature of Notary Public)

Charlene H. Robinson
(Print name of Notary Public)

Notary Public for State of South Carolina

My Commission Expires: 1/20/2025

Exhibit “4”

Exhibit “4”:

- is entered into evidence in the case of **Case No. 2024-CP-32-01682** on **1/17/2025**.
 - is a true and accurate copy of the original.
- is being offered into evidence to prove the purpose of ***Exhibit “4”***.
- No party objects to the admission of this Exhibit “4” into evidence.

Timothy Nunally, Mark Nunnally
Plaintiffs

Prepared By:
Carl Alvin Nunnally
Nonresident/Non Domestic
First Class, U.S. Delivery
C/o 1759 Willow Creek Dr.
Columbia, South Carolina State [29212]

CERTIFICATION **of** **TRUST**

PART 1.

This Private Trust(s) shall be known as first
CARL ALVIN NUNNALLY REVOCABLE LIVING TRUST agreement
and second
CAN IRREVOCABLE TRUST agreement

PART 2. Declaration of Trusts

Carl Alvin Nunnally called the Grantor and Trustee declares that he has transferred and delivered to the Trust all rights, title and interest in all or any property formerly in the names: Carl Alvin Nunnally. The trustee hereby acknowledges receipt of the trust property and transfers all assets listed in Schedule "A" to *CAN IRREVOCABLE TRUST agreement* and agrees to hold the trust property in trust, according to this Certification of Trust established. The recording of this "Certification of Trust" serves to announce the existence of a trust titled:

"CARL ALVIN NUNNALLY REVOCABLE LIVING TRUST"

And

"CAN IRREVOCABLE TRUST"

The Testator or Grantor may add property to the trust or convey assets to another trust.

IN WITNESS WHEREOF, the undersigned **Carl Alvin Nunnally**, as Trustee therein, has hereunto set his hand and seal on this the 6th day of June 2020.

WITNESS:

Timothy Allen Nunnally
Trustee - Timothy Allen Nunnally

Carl Alvin Nunnally
Testator/Trustee/Grantor

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

South Carolina STATE }
Lexington COUNTY }

Before me, the undersigned authority, a Notary Public in and for said County in said State, personally appeared before me **Carl Alvin Nunnally**, personally proved on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and that their signature on the instrument is the person, of which executed the instrument.

GIVEN under my hand and seal of office, this the 30th day of June 2020.

Charlene H. Robinson
NOTARY PUBLIC

My Commission Expires: 1/28/2025

SEAL

LIST OF ENTRUSTED EXEMPT ASSETS

(Schedule A)

- 15 All furniture, furnishings, fixtures and personal items now and hereafter located in all real property referred to in this Article and attachments, or in any other location, it being the intention of the Testator to transfer all, or substantially all of the assets, present and future, to a Trust in order to have no probate estate.
- 16 All life insurance policies on Testator's live, and otherwise policies in this Trust, identifying numbers of accounts of which are: _____
- 17 All bank accounts identifying copies of which are attached. WELLS FARGO BANK ACCOUNT(s) xxx xxx xxx 7328; COLUMBIA POST OFFICE CREDIT UNION account: xxx xxx xxx 2416.
- 18 All real property, private, personal referred to by Longitude and Latitude and land description as follows. [Lat = Latitude Long = Longitude]

Located: 1759 Willow Creek Drive Columbia, SC

Lat: 34.066370 Long: -81.184940

ALL THAT CERTAIN PIECE, PARCEL, or lot of land, with the improvements thereon, situated, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W on plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975 and recorded in the Office of the RMC for Lexington County in Plat Book 139-G at page 23; Also being shown and delineated on a plat prepared for Dana C. Frost and Terri L. Frost by Belter & Associates, Inc., dated 6/14/1993 and recorded in the Office of the RMC for Lexington County in Plat Book 262 at Page 070. Reference being made to said plat which is incorporated herein by reference for a more accurate and complete description ; all measurements being a little more or less.

This being identical property conveyed to the Mortgagors by Deed of Dana C. Frost and Terri L. Frost dated August 8, 1994 and recorded simultaneously herewith in Deed Book 5145 at Page 97.

AND

Located: 6277 Sea Harbor Drive, Orlando, FL 32821

Lat: 28.415960 Long: -81.462680

LOT 17, BLOCK 238 UNIT 16, FREDERICK TOWN, INTERLACHEN LAKES ESTATES, as recorded in Plat Book 5, Page 4 of the Public Records of Putnam County, Florida, and as recorded on July 28, 1988 in Book 0529, Page 0150.

AND

Located: 5681 Grande River Rd.

College Park, GA 30349

Lat: 33.600350 Long: -84.445790

19 All stocks, bonds, and other securities, identifying copies of which are attached.

20 All Business Tax ID numbers: _____.

21 Common Law Lien on property(s) located at:

1759 Willow Creek Drive Columbia, SC

Lat: 33.978380 Long: -80.960140.

6277 Sea Harbor Drive Orlando, FL 32821

Lat: 28.415960 Long: -81.462680

5681 Grande River Rd. College Park, GA

Lat: 33.600350 Long: -84.445790

Vehicles are as such:

07 DODGE Caliber SW VIN: 1B3HB48B47D515582

12 CADILLAC SRX 4D LUX 4D VIN: 3GYFNAE39CS654474



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
CINCINNATI OH 45999-0023

Date of this notice: 02-11-2021

Employer Identification Number:
86-6498773

Form: SS-4

Number of this notice: CP 575 B

CAN IRRV TR
CARL ALVIN NUNNALLY TTEE
1759 WILLOW CREEK DRIVE
COLUMBIA, SC 29212

For assistance you may call us at:
1-800-829-4933

IF YOU WRITE, ATTACH THE
STUB AT THE END OF THIS NOTICE.

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 86-6498773. This EIN will identify your estate or trust. If you are not the applicant, please contact the individual who is handling the estate or trust for you. Please keep this notice in your permanent records.

When filing tax documents, payments, and related correspondence, it is very important that you use your EIN and complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information is not correct as shown above, please make the correction using the attached tear off stub and return it to us.

Based on the information received from you or your representative, you must file the following form(s) by the date(s) shown.

Form 1041

04/15/2022

If you have questions about the form(s) or the due date(s) shown, you can call us at the phone number or write to us at the address shown at the top of this notice. If you need help in determining your annual accounting period (tax year), see Publication 538, *Accounting Periods and Methods*.

We assigned you a tax classification based on information obtained from you or your representative. It is not a legal determination of your tax classification, and is not binding on the IRS. If you want a legal determination of your tax classification, you may request a private letter ruling from the IRS under the guidelines in Revenue Procedure 2004-1, 2004-1 I.R.B. 1 (or superseding Revenue Procedure for the year at issue). Note: Certain tax classification elections can be requested by filing Form 8832, *Entity Classification Election*. See Form 8832 and its instructions for additional information.

To obtain tax forms and publications, including those referenced in this notice, visit our Web site at www.irs.gov. If you do not have access to the Internet, call 1-800-829-3676 (TTY/TDD 1-800-829-4059) or visit your local IRS office.

IMPORTANT REMINDERS:

- * Keep a copy of this notice in your permanent records. **This notice is issued only one time and the IRS will not be able to generate a duplicate copy for you.** You may give a copy of this document to anyone asking for proof of your EIN.
- * Use this EIN and your name exactly as they appear at the top of this notice on all your federal tax forms.
- * Refer to this EIN on your tax-related correspondence and documents.

If you have questions about your EIN, you can call us at the phone number or write to us at the address shown at the top of this notice. If you write, please tear off the stub at the bottom of this notice and send it along with your letter. If you do not need to write us, do not complete and return the stub.

Your name control associated with this EIN is CANI. You will need to provide this information, along with your EIN, if you file your returns electronically.

Thank you for your cooperation.

Keep this part for your records.

CP 575 B (Rev. 7-2007)

Return this part with any correspondence so we may identify your account. Please correct any errors in your name or address.

CP 575 B

999999999999

Your Telephone Number Best Time to Call
() -

DATE OF THIS NOTICE: 02-11-2021
EMPLOYER IDENTIFICATION NUMBER: 86-6498773
FORM: SS-4 NOBOD

INTERNAL REVENUE SERVICE
CINCINNATI OH 45999-0023
[Barcode]

CAN IRRV TR
CARL ALVIN NUNNALLY TTEE
1759 WILLOW CREEK DRIVE
COLUMBIA, SC 29212

FILED
THE COURT OF COMMON PLEAS
2025 JAN 17 PM 3:18
STATE OF SOUTH CAROLINA
LISA M. COMER
CLERK OF COURT
COUNTY OF LEXINGTON
LEXINGTON SC

Case No. 2024-CP-32-01682

Judge McCaslin

Timothy Nunally, Mark Nunnally,

Plaintiffs,

v.

Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds,

Defendant,

_____ /

MOTION TO RECONSIDER

PLAINTIFFS Timothy Nunally and Mark Nunnally moves this Honorable Court to reconsider and rescind its Order of 07 January 2025 granting defendant's motion for summary judgment and states:

1. There remain on the record of this action genuine issues of material fact that should preclude entry of summary judgment.

2. In reviewing the grant of a summary judgment motion, the Court applies the same standard as the trial court under Rule 56(c), SCRCP: “summary judgment is proper when ‘there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.’” Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 114-15 410 S.E.2d 537, 545 (1991).

3. On 07 January 2025, plaintiffs alleged that their cause of action was due to the defendant's lacking a duty of care owed to plaintiffs, the breach of ministerial duties, all while unlawfully depriving the plaintiffs as parties to the CAN IRREVOCABLE TRUST of their inalienable rights and liberties to provide protection of the trust in accordance with *S.C. Code Ann. §62-7-709(2023).Reimbursement of expenses.* (“(2)(b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest”), resulting in the plaintiffs inability to file and record a possessory lien in the Lexington County Register of Deeds Office for reimbursement of expenses incurred by the trustee dating back to January 9, 2024 as evidenced in the lien itself pursuant to *S.C. Code Ann. §62-7-709(2023).Reimbursement of expenses.* (2)(b).

4. On 07 January 2025, plaintiffs moved the court to take imperative judicial notice of the trustee Timothy Nunally's officially certified, authenticated, and attested COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT known now and hereinafter as “Exhibit B” that was placed against the CAN IRREVOCABLE TRUST was filed into the record of Case No. 2024-CP-32-01682 with Judge McCaslin having a time-stamp of 2024 May 17 PM 4:34, wherefore plaintiffs moved the court to adhere to *Rule 201 - Judicial Notice of Adjudicative Facts*, S.C. R. Evid 201 (“(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.”). ~~The officially certified, authenticated, and attested COMMON LAW LIEN AND NOTICE OF WRIT OF ATTACHMENT against the CAN IRREVOCABLE TRUST evidence reviewed by Judge McCaslin is included in this motion as Exhibit 1.~~

5. South Carolina, like all states, has adopted a version of the Uniform Testamentary Additions to Trust Act, which specifically authorizes the pour-over procedure of the Decedent's will found entered into the record of Case No. 2024-CP-32-01682 with Judge McCaslin as evidence in the plaintiffs verified memorandum as Exhibit 1B (hereinafter referred to as the “will”), with a time-stamp of 2024 JUL 20 PM 5:09, wherefore pursuant to *S.C. Code Ann. §62-2-510(2023). Additions to trusts.* (A) “A devise made by a will to the trustee of a trust to a trust is valid so long as: (1) the trust is identified in the testator's will and its terms are set forth in: (a) a written instrument (other than a will) executed before, concurrently with, or after the execution

of the testator's will but not later than the testator's death." ~~The "will" evidence reviewed by Judge McCaslin is included in this motion as Exhibit 2.~~

6. The Deed of Distribution document entered in as evidence at the 07 JAN 2025 hearing by the defense in Case No. 2024-CP-32-01682 with Judge McCaslin states that pursuant to S.C. Code Ann. §62-2-510(2023), "(A) If distribution in kind is made, the personal representative must execute a deed of distribution with respect to real property and such other necessary or appropriate instrument of conveyance with respect to personal property, assigning, transferring, or releasing the assets to the distributee as evidence of the distributee's title to the property." The Deed of Distribution evidenced also recorded that "This transfer is made pursuant to: Decedent's Will." Stating further that the transfer was performed "In accordance with the laws of the State of South Carolina." This Deed of Distribution document evidence ~~included in this motion as Exhibit 3~~ proves that the plaintiffs did not inherit the res of the CAN IRREVOCABLE TRUST as stated by Judge McCaslin and Attorney Jeff M Anderson at the Summary Judgment hearing.

7. The "will" is in full compliance with S.C. Code Ann. §62-2-510(2023). Additions to trusts. (D) "Unless the testator's will provides otherwise, the property so devised: (1) is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given; and (2) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before or after the death of the testator."

8. Pursuant to S.C. Code Ann. §62-7-1013. Certification of trust. (j) In a transaction involving title to real property, the certificate of trust must be executed and acknowledged in a manner that permits its recordation in the Office of the Register of Deeds or Clerk of Court in the county in which the real property is located. The trustee's acknowledgement of receipt of the trust property and the transfers of all assets to the CAN IRREVOCABLE TRUST agreement and the trustee's agreement to hold the trust property in trust, according to the Certification of Trust established is ~~included as evidence in this motion as Exhibit 4~~ ^{Proof} proving that the plaintiffs do not own the property located at 1759 Willow Creek Drive in Lexington, South Carolina.

9. Pursuant to S.C. Code Ann. §37-3-303. Notice to cosigners and similar., (1) “A natural person, other than the spouse of the debtor, is not obligated as a cosigner, comaker, guarantor, indorser, surety, or similar party with respect to a consumer loan, unless before or contemporaneously with signing any separate agreement of obligation or any writing setting forth the terms of the debtor's agreement, the person receives a separate written notice that contains a completed identification of the debt he may have to pay and reasonably informs him of his obligation with respect to it.” Pursuant to S.C. Code Ann. §37-3-303. Notice to cosigners and similar., plaintiffs are not obligated to any consumer loan that involves any of the Decedent’s real property or otherwise in the State of South Carolina.

10. The defendant’s “reasonable belief” has not yet been communicated to the plaintiffs wherefore the plaintiffs failed to be the following in this case, “(b), a person has knowledge of a fact if the person:(1) has actual knowledge of it;(2) has received a notice or notification of it; or(3) from all the facts and circumstances known to the person at the time in question, has reason to know it.” S.C. Code § 62-7-104. The plaintiffs seek proper knowledge of the defendant's “reasonable belief” pursuant to SC Code section 62-7-104 (b) (1) (2) (3).

~~12. Transcripts from the Summary Judgment hearing held on 07 JAN 2025 are included in this motion as Exhibit 5.~~

11. The foregoing constitutes genuine issues of material fact.

12. The foregoing issues go to the heart of this controversy.

11. The foregoing issue has been erroneously decided by this Court.

WHEREFORE plaintiffs move this Honorable Court to enter an Order rescinding its Order of 07 January 2025 *nunc pro tunc* and permitting plaintiffs to continue with discovery and to proceed to trial, granting such other and further relief as the Court may deem reasonable and just under the circumstances.

RESPECTFULLY SUBMITTED this 17th day of JANUARY 2025.

Timothy Nunally

Timothy Nunally, Plaintiff

[Signature]

Mark Nunally, Plaintiff

I CERTIFY that a copy of the foregoing and the attached affidavits were provided by U.S. Mail to Tina Guerry, individually and in her official capacity as the Lexington County Register of Deeds, addressed to them at 212 S. Lake Dr. Ste. 301 Lexington, SC 29072 this 25th day of July 2024.

[Signature]

Mark Nunally

5681 Grande River Road

College Park, GA 30349

404-980-4488

[Certificate of Service]

1 State of South Carolina) Court of Common Pleas
 2 County of Lexington) Eleventh Judicial Circuit
 3
 4 Timothy Nunnally,) Transcript of Record
 Mark Nunnally,)
 5)
 Plaintiff,)
 6)
 vs.) 2024-CP-32-01682
 7)
 Tina Guerry, individually,)
 8 and in her Official)
 Capacity as the Lexington)
 9 County Register of Deeds,)
 10 Defendant.)
 11
 12 January 7, 2025
 13 Lexington, South Carolina
 14 B E F O R E:
 15 The Honorable Debra R. McCaslin, Judge
 16
 A P P E A R A N C E S:
 17 Mark Nunnally, Pro Se Plaintiff
 18 Timothy Nunnally, Pro Se Plaintiff
 19 Jeffrey M. Anderson, Esquire
 20
 REPORTED BY:
 21 Stacy S. Johnson, RPR
 22 Circuit Court Reporter
 23
 24
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I N D E X

PAGE

Certificate of Reporter

20

E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held January 7,
2 2025, beginning at 9:56 AM.)

3 THE COURT: All right. The next case is Mark
4 Nunnally versus Tina Guerry, as Register of Deeds.

5 Mr. Anderson, how are you?

6 MR. ANDERSON: Good. Good. How are you?

7 THE COURT: Good.

8 Is Mr. Nunnally here?

9 Can we call Mr. Nunnally's name, please? Or is
10 this Mr. Nunnally?

11 MR. TIMOTHY NUNNALLY: Yes, ma'am.

12 THE COURT: Are you Mark Nunnally?

13 MR. MARK NUNNALLY: I am Mark Nunnally.

14 THE COURT: Okay.

15 MR. MARK NUNNALLY: Yes, Judge. Good morning.

16 THE COURT: Good morning.

17 All right. I've got several motions, all of them
18 by the plaintiff, and I have one -- I've got two --
19 four by the plaintiff and then I've got Mr. Anderson's
20 Motion for Summary Judgment.

21 If you don't mind, Mr. Anderson, I'm gonna let
22 the plaintiff go through their motions and then I'll
23 hear from you on the summary judgment.

24 All right. Mr. Nunnally, hold on just one
25 second.

1 All right. The first motion I have is a Motion
2 for Judicial Notice of Federal Common Law Lien and
3 Notice of Writ of Attachment. I'll be happy to hear
4 from you on it.

5 MR. MARK NUNNALLY: Yes, ma'am.

6 This motion was put in for the Court to be able
7 to take judicial notice of the fact that a lien that
8 was filed here in Lexington County or attempted to be
9 filed here in Lexington County, the same had already
10 been done in another county, in another state. The
11 judicial notice was to put forth that that fact was
12 apparent and that that lien that was a common law lien
13 writ of attachment was not a sham legal document, nor
14 was it materially false, nor was it fraudulent, and if
15 it has been, if it is, if it was, that has yet to be
16 proven, especially by way of a reasonable belief.

17 Attempts, numerous, have been put forth in
18 regards to being able to understand exactly what is
19 this reasonable belief based on 31-30(B)(1) I believe
20 is it of the South Carolina Code of Laws. This is
21 something that is left up to the duty of the Register
22 of Deeds in Lexington County. We have put forth that
23 question numerous times by way of numerous attempts
24 through numerous discovery methods to be able to
25 understand that belief and until this particular moment

1 in time we have yet to understand what it is, whether
2 it is reasonable and whether it is something that is
3 supported by that of fact and law. Therefore, these
4 motions have been put forth for those particular
5 purposes and reasons; hence, to take judicial notice
6 that what was attempted has, in fact, already been
7 done. Why? Because it is not a sham legal document,
8 because it is not materially false, nor is it
9 fraudulent. There is a trustee involved, there is
10 also a trust involved and there is also the res of a
11 trust involved.

12 THE COURT: Who's the trust?

13 MR. MARK NUNNALLY: The trust is the CAN
14 Irrevocable Trust, Your Honor.

15 THE COURT: All right. You can go ahead.
16 Is that all for that motion?

17 MR. MARK NUNNALLY: For the motion to take
18 judicial notice?

19 THE COURT: For the Court to take Federal notice?

20 MR. MARK NUNNALLY: Yes, ma'am.

21 THE COURT: Anything from you, Mr. Anderson?

22 MR. ANDERSON: Your Honor, may it please the
23 Court? I don't know if you've had a chance to read my
24 memorandum.

25 THE COURT: I did.

1 MR. ANDERSON: Okay.

2 THE COURT: It kind of addresses all of the
3 these. I didn't know if you wanted to respond now or
4 you just want to respond with your summary judgment
5 motion.

6 MR. ANDERSON: I can just wait. That will be
7 fine.

8 THE COURT: Perfect. Thank you.

9 All right. The next motion that I have,
10 Mr. Nunnally, is a Motion to Deem Requests Admitted
11 for Devious Responses. I'll be happy to hear from
12 you on that.

13 MR. MARK NUNNALLY: Yes, ma'am. This particular
14 motion as you can see filed on September 30, 2024, was
15 filed in regards to Rule 26 South Carolina Rules of
16 Civil Procedure, as well as the general provisions
17 governing discovery in which us as plaintiffs have a
18 right to be able to get. We haven't gotten discovery
19 by way of interrogatories, discovery by ways of
20 requests for admissions, but nowhere does it state
21 in the rules that we have been able to find as the
22 plaintiffs where it is not within our power as
23 plaintiffs to be able to utilize those rules of
24 discovery put forth by South Carolina law and have
25 yet to be answered.

1 For us to understand what this reasonable
2 belief is, we're gonna need these interrogatories
3 to be answered and we're gonna need that request for
4 admittance to be admitted to. Without these happening
5 we're not gonna be able to get down to exactly what
6 we need to get down to, the facts that support the
7 law, that supports everything that we're here for
8 to get this particular lien filed and recorded, as
9 well as a Writ of Mandamus to make the officer of the
10 court, Register of Deeds, Tina Guerry, do what she was
11 responsible for doing in regards to her duty. At this
12 particular point, that duty has been breached and we
13 do not know why.

14 Now if it's because of the amount of the lien
15 as we've been able to assess by way of summary
16 judgment, we haven't found that the Register of Deeds
17 in Lexington County is charged with the substance of
18 the lien, only the format. But if there is something
19 that shows and states that that is, in fact, what she's
20 charged with, making sure that the substance needs to
21 what the substance needs to be, she hasn't said, she
22 hasn't stated.

23 THE COURT: All right. Now I want to make sure
24 that I've got this right. You want the Court to take
25 notice that there's -- because you want to put a

1 hundred million dollar lien on the property located
2 at 1759 Willow Creek Drive; is that correct?

3 MR. MARK NUNNALLY: That there is. Yes, ma'am.

4 THE COURT: And do you own that property?

5 MR. MARK NUNNALLY: No, we don't.

6 THE COURT: Who owns it?

7 MR. MARK NUNNALLY: The Trust. It's the res of
8 the trust, Your Honor.

9 THE COURT: The CAN trust owns that property?

10 MR. MARK NUNNALLY: That's correct.

11 THE COURT: And what interest do you have in
12 putting a lien on it?

13 MR. MARK NUNNALLY: I'm a beneficiary. I'm not
14 putting a lien on it, the trustee is.

15 THE COURT: Okay. And this is the trustee?
16 Who are you?

17 MR. TIMOTHY NUNNALLY: Timothy Nunnally.

18 THE COURT: Okay. You're Timothy Nunnally.
19 Were you here yesterday?

20 MR. TIMOTHY NUNNALLY: No. No ma'am.

21 THE COURT: Okay. I just wanted to make sure.

22 All right. I understand and I understand your
23 request for responses. I guess they responded and you
24 didn't like their response.

25 MR. MARK NUNNALLY: They have not respond and we

1 don't like them not responding because the rule says
2 you have to.

3 THE COURT: All right. Let me hear your Motion
4 for Enforcement of Discovery. That kind of runs hand
5 in hand with the request to produce.

6 MR. MARK NUNNALLY: Yes, ma'am, it does. Yes,
7 Your Honor.

8 THE COURT: All right. Let me hear from you on
9 that one.

10 MR. MARK NUNNALLY: The Motion for Enforcement of
11 Discovery was filed on October 24th of this year in
12 regards, once again, for us to be able to get down
13 to the particular point of what is this reasonable
14 belief that Tina Guerry in her professional and
15 nonprofessional capacity has regarding this lien. We
16 don't know.

17 THE COURT: Okay.

18 All right. I think that covers all of your
19 motions. Am I missing any?

20 MR. MARK NUNNALLY: No, ma'am. No, ma'am. I
21 don't think so. I think that that is everything on
22 the record for the record by the record, Your Honor.

23 THE COURT: Yeah, that's everything that I see
24 filed.

25 All right. Let's hear from Mr. Anderson.

1 Mr. Anderson, your responses -- or really your
2 summary judgment is what I read, but if you could go
3 ahead.

4 MR. ANDERSON: Okay. Your Honor, just -- just
5 briefly, one thing that plaintiffs haven't mentioned is
6 the facts around this case. This is a case where they
7 inherited some property. He says he doesn't own it.
8 I -- I can hand up the certified copy of the deed that
9 says he does own it if the Court would like to see.

10 THE COURT: Okay. Who inherited?

11 MR. ANDERSON: The deed of distribution says the
12 entities involved are Timothy Allen Nunnally and Mark
13 Anthony Nunnally.

14 THE COURT: Okay. So both of them?

15 MR. ANDERSON: Yes.

16 THE COURT: Okay.

17 MR. ANDERSON: But now I think -- I think there's
18 another property owner somewhere. There's lot of
19 states involved, maybe another interest, I'm not
20 positive about that, but they at least own parts or
21 some of the property.

22 Your Honor, this is a case where they inherited
23 the property. The property had a mortgage on it at the
24 time they inherited. They don't want to talk about
25 that, but that's important in this case because they

1 haven't mentioned what the -- what the lien that
2 they're trying to file is.

3 THE COURT: For --

4 MR. ANDERSON: It's a lien against the property
5 that they own, and just cutting to the chase, they
6 can't put more of a lien on property they already own.
7 They already own it. You can't -- you can't put more
8 -- I mean, the reason you put a lien on property is so
9 that you might sell it and get something out of it.
10 They already own it, so --

11 THE COURT: Yeah, but what I read was --

12 MR. MARK NUNNALLY: Objection, Your Honor.
13 Objection. The reason we put this lien on this
14 property is so that this trustee right here is able
15 to go ahead and get compensated for the fiduciary
16 responsibilities he's putting forth. This is not a
17 trust that's bringing in income and I think that
18 Mr. Anderson knows that, so I think that this talk
19 about --

20 MR. ANDERSON: Your Honor, that's irrelevant. I
21 don't know anything he just said.

22 THE COURT: Yeah, let's let him speak, okay? You
23 can sit down.

24 But it looks to me like the lien that they want
25 is to get around the mortgage and --

1 MR. ANDERSON: It appears that way to me, and I
2 brought that up and they get mad when I bring that up,
3 but the lien -- the lien -- and I know it's in my memo,
4 but I think it's important to know this, the ROD, they
5 -- they record most documents, but the statute was
6 enacted to keep documents just like this from being
7 recorded and clouding titles to property. It's been
8 done all over the United States and our General
9 Assembly said Mr. ROD, you have the authority -- and
10 Clerk of Courts have authority to look at documents and
11 say this doesn't look right and that gives them thirty
12 days -- once they tell them they're not recording, it
13 gives them thirty days to come and ask this Court to do
14 that, and that's what they're doing here today.

15 On the discovery, before I -- on the discovery,
16 I've answered some of the discovery, but I've gotten
17 all this in the last several months and half of those
18 are asking me about what Tina Guerry said during her
19 campaign for office. I'm just not gonna -- those
20 aren't relevant. I'm not gonna -- I'm not gonna answer
21 those.

22 So discovery -- this is about a piece of a
23 document. This Court -- the Court could look at this
24 document and decide for herself whether it should be
25 recorded or not, but what this document does is it says

1 this Writ of Attachment is a lien that supercedes
2 mortgages and equity liens and deeds of trust. It also
3 says any official who attempts to modify or remove this
4 common law being in the form of Writ of Attachment is
5 fully liable for damages at law pursuant to the
6 mandatory rulings of the United States Supreme Court in
7 a -- in a certain case.

8 It also says that this lien is good for -- is not
9 dischargeable for a hundred years. It also says
10 whoever attempts to modify, circumvent or negate this
11 Federal common law lien, shall be deemed outlaws and
12 felons -- and/or felons and shall be prosecuted
13 pursuant to Title 42, 1983, 1985, 1986. Any judicial
14 action which violates the constitutional rights of an
15 individual may be sued as a cause of action in civil
16 litigation against those performing those acts and the
17 amendment does not bar such suits in Federal court
18 because of the purchase of bond insurance.

19 The ROD looked at this document and said this
20 doesn't look right and it's a hundred million dollars
21 and then -- then she found out that it was on their own
22 property.

23 So this statute, as I stated in my memorandum, is
24 designed for this particular case and I think the --
25 I've got a copy of the foreclosure pleadings here if

1 the Court wants to see them.

2 THE COURT: So it went into foreclosure?

3 MR. ANDERSON: It's in foreclosure right now.

4 THE COURT: Okay.

5 MR. ANDERSON: It's in foreclosure right now. In
6 fact, I looked on the roster, I think you have a
7 hearing on it tomorrow.

8 THE COURT: I do?

9 MR. ANDERSON: You do. So I think it's all tied
10 together. I've asked them what the lien is, what is
11 the common law lien, what's the underlying debt,
12 who's the debtor, what are they owed for. It's not a
13 mechanics lien, it's not a mortgage, it's not a tax
14 lien. I don't know what it is, but they're hanging
15 their hat on a common law lien, but they won't tell me
16 what it really is.

17 But the basis -- or the bottom line is they're
18 putting a lien on property that they own. They say
19 they don't own it, but the Deed of Distribution says
20 they do. And they think -- they didn't have a lawyer
21 apparently involved. They may have meant to put it in
22 a trust, I do not know, but the Deed of Distribution
23 says two grantees, the two men sitting here.

24 THE COURT: So there's not anything about any
25 kind of trust anywhere?

1 MR. ANDERSON: I see a mention of that, but I
2 can't -- I can't find it.

3 THE COURT: Other than their -- in their answer.

4 MR. ANDERSON: They put on the deed -- I can hand
5 this up, on the Deed of Distribution, they -- they
6 re-recorded it to add trustee title, but then it did
7 nothing. It says grantees are Timothy Allen Nunnally
8 and Mark Anthony Nunnally. They may have meant to do
9 that, I don't know, but they didn't, and they obviously
10 didn't want it on this if I'm correct.

11 THE COURT: Krystal, am I hearing some
12 foreclosure or is that Judge Spence?

13 THE CLERK: I believe that would be Judge Spence.

14 THE COURT: Yeah, it must be Judge Spence.

15 MR. ANDERSON: Maybe it is. I saw it on some
16 roster, I think.

17 THE COURT: That's -- okay. It's on the roster
18 because I know he's holding court this week.

19 MR. ANDERSON: Yes. That's probably, Judge
20 Spence. That's probably him.

21 But, Your Honor, this -- this is the very case
22 that the Statute 30-9-30 was designed for, the gifts of
23 discretion. There's no liability for the -- for the
24 ROD, they -- they don't want to hold them personally
25 liable, there's no liability in the statute clearly

1 that deals with that. The -- and really this should be
2 a simple matter. We don't need all this discovery. We
3 don't need all the things they've talked about.

4 MR. MARK NUNNALLY: Objection, Your Honor. In
5 order for us to be able to --

6 THE COURT: Let's let him -- let's let him speak,
7 okay? This is his argument. I let you talk and he let
8 you talk. I'll give you an opportunity to respond.

9 MR. ANDERSON: The statute's designed for the ROD
10 to make a decision or the Clerk of Court, whichever one
11 it is, and -- and if the other side does not agree with
12 it to come to this Court and let this Court look at it.
13 It's not designed to have discovery about all the stuff
14 we're -- all this stuff. It's just a simple document.
15 If you think it should be recorded, we'll record it.
16 If it don't -- if you agree with us that it shouldn't
17 be recorded, file suit. It clouds the system. We --
18 we think you should rule that way.

19 THE COURT: Okay. Thank you.

20 All right. Anything else, Mr. Nunnally?

21 MR. MARK NUNNALLY: Yes, there is something else,
22 Your Honor. This is not the last document that he has
23 just shown you, this Deed of Distribution. There was
24 another document after that that has been filed as to
25 where me and the trustee here has accepted this land

1 and then once we've accepted it, it's now back in the
2 trust where it has always been. Deed of Distribution
3 is a particular format that we went through as a result
4 of going through probate court and we did what we was
5 supposed to do on that end.

6 But is that my property? No, I'm telling you
7 it's not. Is it his? If you need him to tell you no,
8 he can do that, and if you need --

9 THE COURT: So neither one of you-all own the
10 property?

11 MR. MARK NUNNALLY: I'm sorry?

12 THE COURT: Neither one of you-all own the
13 property?

14 MR. MARK NUNNALLY: Neither one of us own --

15 THE COURT: So what are you doing here?

16 MR. MARK NUNNALLY: I'm sorry?

17 THE COURT: So what are you doing here?

18 MR. MARK NUNNALLY: We're trying to get some
19 questions answered in discovery and a lien filed,
20 Your Honor, is what we're doing here.

21 THE COURT: Why a hundred -- tell me why you need
22 a hundred million dollar lien against this property.
23 Why is that reasonable?

24 MR. MARK NUNNALLY: Well, it's reasonable because
25 it's his figure to put on it. If he's going to be

1 doing all of these fiduciary responsibilities, how long
2 is he gonna do it for? A day? Ten days? Ten years?
3 Is it gonna be a hundred? We don't know, but what we
4 do want to make sure is he's compensated. He has that
5 right.

6 THE COURT: Okay. Anything else?

7 MR. MARK NUNNALLY: Not at the moment. No,
8 ma'am.

9 THE COURT: Okay. Mr. Anderson, I'm gonna grant
10 your summary judgment motion. Would you please put a
11 proposed order in my box? And the reason being, this
12 is a hundred million dollar lien. The testimony that
13 I get is that this property's in trust. I see no
14 evidence of a trust. They own the property. There's
15 certainly no liability according to the statute for the
16 Register of Deeds to be sued.

17 Mr. Anderson is correct. The only issue to be
18 ruled upon is whether this Court thinks that lien, your
19 lien, should be filed, and I say no.

20 So if you would please draw me up an order, okay?

21 Thank you.

22 MR. ANDERSON: Thank you, Your Honor.

23 THE COURT: Thank you, Mr. Nunnally.

24 MR. MARK NUNNALLY: And just by the way, Judge,
25 have you seen the will that was entered in in this case

1 that does tie in with the trust? Are you familiar with
2 that document that was probated?

3 THE COURT: I don't have the probated. If you'd
4 like to add it to the file --

5 MR. MARK NUNNALLY: It's already been added.

6 THE COURT: Oh, it's on the summons and
7 complaint? Then I have it and I've read it.

8 MR. MARK NUNNALLY: Okay. And it did, in fact,
9 tell you everything that you -- okay.

10 MR. ANDERSON: Your Honor, just for the record,
11 did you want a copy of the deed I keep referring to for
12 the record, for the file?

13 THE COURT: Yeah, what I want you -- I do want it
14 for the file, but I really want it attached to the
15 order.

16 MR. ANDERSON: Okay.

17 THE COURT: Can you do that?

18 MR. ANDERSON: I can do that. Yes, ma'am.

19 THE COURT: Thank you.

20 MR. ANDERSON: Do you want the basis for the
21 order sort of what I have in my memorandum?

22 THE COURT: Exactly.

23 (Whereupon, the proceedings were concluded at
24 10:18 AM.)

25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing
is a true, accurate and complete transcript of record
of all the proceedings had and the evidence introduced
in the hearing of the captioned case in Circuit Court
on the 7th day of January, 2025.

This transcript may contain quoted material.
Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

July 3, 2025

/s/ Stacy S. Johnson
STACY S. JOHNSON RPR
CIRCUIT COURT REPORTER

Re-record to add Trustee Title

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF LEXINGTON) DEED OF DISTRIBUTION
(Real Property Only)
IN THE MATTER OF:) NOT A WARRANTY DEED
CARL ALVIN NUNALLY, SR.
(Decedent)) CASE NUMBER: 2022ES3201253
The undersigned states as follows:

Decedent died on SEPTEMBER 4TH, 2021 ; and probate of the Estate is being administered in the Probate Court for LEXINGTON County, South Carolina, in File # 2022ES3201253.

I was appointed Personal Representative (s) on 28TH day of MARCH 2023.
Decedent owned real property described as follows:
Tax Map Number: 2734-01-003
Street/Property Address: 1759 Willow Creek Road, Columbia, SC 29210
Legal Description: Located: 1759 Willow Creek Drive Columbia, SC
Lat 34.066370 Long: -81.184940

ALL THAT CERTAIN PIECE, PARCEL, or lot of land, with the improvements thereon, situated, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W on plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975 and recorded in the Office of the RMC for Lexington County in Plat Book 139-G at page 23; Also being shown and delineated on a plat prepared for Dana C. Frost and Terri L. Frost by Belter & Associates, Inc., dated 6/11/1993 and recorded in the Office of the RMC for Lexington County in Plat Book 262 at Page 070. Reference being made to said plat which is incorporated herein by reference for a more accurate and complete description ; all measurements being a little more or less.

This being identical property conveyed to the Mortgagors by Deed of Dana C. Frost and Terri L. Frost dated August 8, 1994 and recorded simultaneously herewith in Deed Book 5145 at Page 97.

This transfer is made pursuant to:

☒ Decedent's Will
Intestacy Statute: SCPC 62-2-103
Private Family Agreement: SCPC 62-3-912
Disclaimer by: _____
Probate Court Order issued on _____
Other: _____

2023031779 BK: 21073 PG: 1408 - 1410 3 PGS
DEED OF DISTRIBUTION
Rec: \$15.00 Cnty: \$0.00 State: \$0.00
September 6, 2023 02:29:15 PM
FILED IN LEXINGTON COUNTY, SC

2023034409 BK: 21075 PG: 5539 - 5541 3 PGS
DEED OF DISTRIBUTION
Rec: \$15.00 Cnty: \$0.00 State: \$0.00
September 27, 2023 11:10:36 AM
FILED IN LEXINGTON COUNTY, SC

FORM #400ES (1/2016)

TRUE CERTIFIED COPY
Lexington County Register of Deeds

Page 1 of 3

By: [Signature]
Deputy Registrar
Date: 12/20/24 No. of pgs. 1/3

RECEIVED SEP 06 2023 RECEIVED SEP 27 2023

In accordance with the laws of the State of South Carolina, the Personal Representative(s) does/do hereby release all of the Personal Representative's(s') right, title and interest, including statutory and/or testamentary powers, over the real property described to the beneficiaries named below:

Name: TIMOTHY ALLEN NUNALLY
Address: 4499 PERSIAN COURT
SNELLVILLE GA 30078

Name: MARK ANTHONY NUNNALLY
Address: 5681 GRANE RIVER RD
COLLEGE PARK GA 30349

IN WITNESS WHEREOF the undersigned, as Personal Representative(s) of the above Estate, has executed this Deed of Distribution, on this 30TH day of MAY, 2023 .

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness: Charlene H. Robinson
Print Name: Charlene H. Robinson

Witness: Rosevelt L. Robinson
Print Name: Rosevelt L. Robinson

Estate of: CARL ALVIN NUNALLY, SR.

Signature of Personal Representative: Timothy Nunally as P.R. & Trustee

Print Name: Timothy Nunally

If applicable, Signature of Co-Personal Representative:

Print Name: _____

TRUE CERTIFIED COPY

Lexington County Register of Deeds

By: Curtis A. Collins
Deputy Registrar

Date: 12/20/24 No. of pgs. 2 of 3

STATE OF SOUTH CAROLINA)
)
)

ACKNOWLEDGMENT

COUNTY OF LEXINGTON

I, Charlene H. Robinson, Notary Public, a notary for the State of South Carolina do hereby certify that

Timothy Nunally
as Personal Representative(s) of the Estate of CARL ALVIN NUNALLY, SR., personally appeared before me this day and acknowledged the due execution of the foregoing Deed of Distribution.

Witness my hand and seal this the day of May 30th, 2023

Charlene H. Robinson (SEAL)

Charlene H. Robinson
(Signature of Notary Public)

(Print name of Notary Public)

Notary Public for State of South Carolina

My Commission Expires: 1/20/2025

TRUE CERTIFIED COPY

Lexington County Register of Deeds

By: Gina A. Collins

Deputy Registrar

Date: 12/20/24 No. of pgs. 3 of 3

Re-record to add Trustee Title

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Lexington County Register of Deeds

Page 1 of 3

By: [Signature]
Deputy Registrar
Date: 12/20/24 of pgs. 1/3

RECEIVED SEP 06 2023 RECEIVED SEP 27 2023

In accordance with the laws of the State of South Carolina, the Personal Representative(s) does/do hereby release all of the Personal Representative's(s') right, title and interest, including statutory and/or testamentary powers, over the real property described to the beneficiaries named below:

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Witness: Charlene H. Robinson
Print Name: Charlene H. Robinson

Witness: Rosevelt L. Robinson
Print Name: Rosevelt L. Robinson

Estate of: CARL ALVIN NUNALLY, SR.

Signature of Personal Representative: Timothy Nunally as P.R. & Trustee

Print Name: Timothy Nunally

If applicable, Signature of Co-Personal Representative:

Print Name: _____

TRUE CERTIFIED COPY

Lexington County Register of Deeds

By: Curtis A. Collins
Deputy Registrar

Date: 12/20/24 No. of pgs. 2 of 3

STATE OF SOUTH CAROLINA)
)
)

ACKNOWLEDGMENT

COUNTY OF LEXINGTON

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Timothy Nunally
as Personal Representative(s) of the Estate of CARL ALVIN NUNALLY, SR., personally appeared before me this day and acknowledged the due execution of the foregoing Deed of Distribution.

Witness my hand and seal this the day of May 30th, 2023

Charlene H. Robinson (SEAL)

Charlene H. Robinson (Signature of Notary Public)

(Print name of Notary Public)

Notary Public for State of South Carolina

My Commission Expires: 1/20/2025

TRUE CERTIFIED COPY

Lexington County Register of Deeds

By: Cristina A. Collins

Deputy Registrar

Date: 12/20/24 No. of pgs. 3 of 3