

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF COMMON PLEAS NONJURY

3

4 KELLUM W. ALLEN,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 ANN MARIE WATSON,)
8 DEFENDANT.) 2024-CP-40-827

9

10 December 16th, 2024

11

12 B E F O R E:

13

14 THE HONORABLE PATRICK C. FANT, III, Judge.

15 A P P E A R A N C E S:

16 JAMES DAVIS
17 ESQ.
Attorney for the Plaintiff

18

19 ROBERT P. WOOD
ESQ.
Attorney for the Defendant

20

21

22

23 Transcribed by Pamela E. Green, from
24 WebEx

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

(WHEREUPON, there were no exhibits marked or
testimony taken during this hearing.)

1 P R O C E E D I N G S

2
3 THE COURT: All right. This is 2024-CP-40-00827,
4 Kellum Allen versus Ann Marie Watson.

5 The first motion that I have is a motion for
6 protective order filed on behalf of Judge Allen.

7 I guess I, I would ask y'all, because, you know, I, I
8 always tell everybody, you know, it's black and white to
9 me, it's color to y'all. Y'all've lived through this.
10 Y'all also know which filings -- I, I mean it may be that
11 there's a better order to go in than, than the one that
12 they are filed.

13 So, I will defer to y'all concerning that, Mr. Davis
14 and Mr. Wood.

15 Okay?

16 MR. DAVIS: Your Honor, Randy Davis. I appreciate
17 your comments there.

18 I've got with me Mr. Allen who's in the room with me,
19 also his son who practices law with him, David Allen, and
20 also my paralegal who's helping me on the computer here.
21 So, that's -- those are the parties we have here.

22 In reference to what -- your comment about the order
23 here, the, the motion -- that protective order was filed
24 arising out of pleadings that was filed in the case.

25 You know, I would suggest that probably the first

1 thing would be plaintiff's motion to dismiss the, the
2 counterclaims based on 12(b)(6) would be probably first
3 and then maybe the protective order and then there's a
4 motion to strike some pleadings. Then there's a -- Bob
5 Wood's motion for summary judgment and that would be
6 the -- there's a, there's a motion to establish jury or
7 nonjury could, could be the last item as I see it. It
8 might be -- I think would probably be what I would say
9 kind of a proper order of matters.

10 THE COURT: Okay. And does everybody agree, as far
11 as the motion to refer to the master, that, that is, at
12 least at this point, is moot based on the counterclaims
13 or, at the very least, that -- I mean --.

14 MR. DAVIS: Our motion was, because of -- we don't
15 know whether the counterclaims are gonna stand that,
16 because it's specific performance, we thought it should be
17 referred to the master based on our pleadings. But
18 we understand, you know, the Court's gonna make a decision
19 about Mr. Wood's counterclaims. That may change---

20 THE COURT: All right.

21 MR. DAVIS: ---things.

22 THE COURT: I got you.

23 Okay. So -- and I, and I heard you going through
24 these. But just -- I've, I've got number -- I guess it's
25 four through 10. If you will tell me again just by

1 number.

2 Are, are you looking -- do you have a roster in front
3 of you?

4 MR. DAVIS: Let me see here. Just one second. Yep.

5 THE COURT: Perfect.

6 MR. DAVIS: The, the -- I'm looking -- I have a stack
7 of papers here and I was looking for that.

8 THE COURT: That's fine and I've got them.

9 MR. DAVIS: Let me see.

10 THE COURT: My, my, my paralegal put all this stuff
11 together. But I'm gonna have to find them each time I
12 guess that we --.

13 MR. DAVIS: I would say the motion---

14 THE COURT: I have---

15 MR. DAVIS: I would say the motion for -- the
16 12(b)(6) motion should be -- would be first and let's see
17 what Mr. Woods says about that.

18 THE COURT: That would be number, number seven?

19 MR. WOOD: Your Honor, I'm, I'm Bob Wood. I guess
20 you'll my face before you know it.

21 I don't think I mind that. I've, I've got the same
22 issue I think everybody has, which is our numbers are not
23 all consistent. I've got everything in front of me. So
24 it's just a matter of me getting to the number.

25 I certainly remember their 12(b)(6) motion and,

1 actually, I don't mind doing that a bit. I think the
2 number one issue for today is gonna turn out to be has
3 Judge Allen created a genuine issue of material fact as to
4 whether or not Ms. Mullis was his client in the summer
5 that we're talking about. You're gonna find that
6 everything is gonna turn on that.

7 We've got, in my view, irrefutable evidence that can
8 not be disputed that shows that she was his client that
9 summer. If that is an issue of fact, then that will
10 change things. I don't know how he could refute this
11 evidence. But that's, that's the critical issue. So when
12 we get to this 12(b) step -- 12(b)(6), you'll see me refer
13 to that a lot.

14 But, but the order doesn't matter to me. I, I do
15 agree with you, Your Honor, that the, the, the motion to
16 refer certainly, certainly should be denied at least
17 without prejudice at this point. We have asserted
18 compulsory legal counterclaims that go directly to the
19 enforceability of the land sale contract. And, therefore,
20 certainly the first thing you do should not be to strike
21 the demand for a jury trial. That'd be a mistake.

22 But, anyway, I --

23 THE COURT: And I'm very---

24 MR. WOOD: -- don't mind doing the 12(b)(6) first---

25 THE COURT: And I'm---

1 MR. WOOD: ---Your Honor.

2 THE COURT: And I'm very well aware of that.

3 Okay.

4 MR. DAVIS: Let's me -- Your Honor, if I may, let me
5 respond to what Mr. Wood indicated about what the main
6 issue in this case is.

7 I want to make it clear so the Court knows, in this
8 case, affidavit's been filed by the plaintiff indicating
9 that he was not the defendant's lawyer at the time this
10 land option was entered into. Plus we have---

11 THE COURT: And I read that --

12 MR. DAVIS: Okay. And I have also---

13 THE COURT: -- Mr. Davis and I'm---

14 MR. DAVIS: This would be an affidavit or been
15 submitted affidavit from Barbara Seymour indicating that,
16 that she -- she indicated that he was not her lawyer at
17 the time of this land option and, and she, in her capacity
18 as an expert, was deputy counsel for the South Carolina
19 Supreme Court disciplinary board.

20 So, it's -- she's a person that has some wisdom in
21 this area. So that is a -- there's an issue there. But
22 back on the --.

23 THE COURT: And Desa Ballard has, has given an
24 opinion on, on---

25 MR. DAVIS: That's correct.

1 THE COURT: ---behalf of the, the defendant.

2 So, I, I, I guess one other question, and then we're
3 gonna dive into this, is just really -- I've had this come
4 up several times really in these summary judgment motions
5 is whether or not there is really, I, I guess, been a full
6 and, and fair opportunity to complete a discovery or
7 whether or not the summary judgment would be premature.

8 And I guess I, I would just ask that at the onset
9 before y'all spend the next hour, hour and a half in
10 arguing, which I -- I'm -- I am here. I mean that's what
11 I get paid the big bucks to do is listen, listen to your
12 arguments.

13 But if that truly is accurate, I will tend, and, and
14 I'm just telling you, I have tended to allow people to do
15 proper discovery before -- I mean it just makes sense.

16 Yes, sir---

17 MR. WOOD: May I, may I respond to that---

18 THE COURT: ---Mr -- yes, sir, Mr. Wood.

19 MR. WOOD: ---Judge Fant?

20 THE COURT: Yes, sir.

21 MR. WOOD: The -- number one, Barbara Seymour, I'll
22 stipulate is an expert in the field. She's great. She's
23 a friend of mine. Desa Ballard's an expert in the field.
24 She's a friend of mine.

25 But the problem is, with Ms. Seymour's opinion, is

1 she relies on her -- on, on Judge Allen's statement that
2 he was not her lawyer that summer and then her brief goes
3 on to talk about stuff that happened long before.

4 well, she does not -- Ms. Seymour does not refer to
5 the, the two pieces of paper I attached and filed with the
6 Court late Friday. We have other evidence too. But those
7 were the blow them away pieces of paper that I had.

8 I, I just can not see how in the world Judge Allen
9 can say, with a straight face, that he was not Ms.
10 Watson's lawyer that summer at the very time.

11 So, then, as to the second point, which is -- and
12 you're right, Your Honor. Usually you do full discovery.
13 Everybody has a full chance to do discovery.

14 The reason why that doesn't play in this case is it's
15 Judge Allen himself who has possession of the facts that
16 show whether or not Ms. Mullis was his clients that
17 summer. He has those facts and he could of put those
18 facts in his affidavit and he didn't do it.

19 He just simply said I was not her lawyer that summer,
20 and I'm exaggerating a little bit, little bit of
21 hyperbole, but he basically says she hired me because I
22 had a calculator and I was not her lawyer that summer.

23 well, my two pieces of paper that I filed Friday show
24 all the kind of stuff you, Your Honor, as a lawyer, would
25 put in your notes talking to your client about positions

1 that you would take for your client as her lawyer in
2 negotiations with your client's adversary. Stuff like do
3 we ask for more child support. Do we do this. Do we do
4 that. He was not simply checking her math at all and
5 that's why I've made the rare -- taken the rare position
6 that somebody has submitted a false affidavit.

7 Now, if, if Judge Allen wants to say Bob, you
8 invented that, you, you, you manufactured that, it's
9 fraud, you know, fine. We can do discovery on that.

10 But if he's not gonna challenge that those are his
11 notes and that they say approximately what I say they say,
12 then we do not have a genuine issue. It is a material
13 fact but it's not a genuine issue of material fact because
14 he was her lawyer that summer.

15 There's no evidence that he said I'm not your lawyer.
16 I'm just your calculator. He refers to her, Ms. Mullis,
17 as his client in his own notes. The -- we don't have this
18 but we've got another piece of paper where the lawyer on
19 the other side says oh, by the way, Judge Allen, if you're
20 not her lawyer, please let me know and I will deal with
21 whoever her new lawyer is or with her.

22 The, the evidence is overwhelming and that's why I
23 did not plead this case as if Ms. Mullis were a -- Ms.
24 Watson were a former client. That's why I didn't plead it
25 that way.

1 The -- anyway, I, I better stop---

2 THE COURT: Okay.

3 MR. WOOD: ---there.

4 THE COURT: Oh, no, no, no.

5 MR. WOOD: This is almost---

6 THE COURT: I mean---

7 MR. WOOD: ---to the issue.

8 THE COURT: And you're already, I guess, getting into

9 the partial summary judgment motion --

10 MR. WOOD: I am. I am.

11 THE COURT: -- which, you know, I -- we're, we're

12 gonna hear that I guess at, at length and that's, that's

13 exactly what we're here to do.

14 I, I guess there is, and, and, again, this gets back

15 to, you know, I, I can read and it's all black and white

16 to me. It is color for y'all because y'all have

17 experienced it. You've lived with this file and certainly

18 the people involved in the litigation, it's, you know --

19 so I, I have done my best to review and prepare as, as

20 well as I can, you know, to, to hear y'all's arguments.

21 It, it did seem, and, and I want to make sure, wasn't

22 the divorce like done in 2017 and those---

23 MR. DAVIS: Yes, Your Honor.

24 THE COURT: ---and plenty---

25 MR. DAVIS: That's correct. 2017.

1 THE COURT: Okay. And what this issue is pertaining
2 to is some kind of reimbursement or reconciliation?

3 MR. WOOD: Yes, he had overpaid some equitable
4 division.

5 THE COURT: The, the, the ex-husband. And so---

6 MR. DAVIS: Right.

7 MR. WOOD: Right.

8 THE COURT: But, but that would be what you would be
9 hanging on as far as he was representing her concerning
10 that reimbursement and, and I mean, if you lose on that,
11 you lose, right?

12 MR. WOOD: Well, no, I wouldn't say I lose. I would
13 then move to what is the law -- what duties does a lawyer
14 owe to his former client.

15 THE COURT: I got you.

16 MR. WOOD: Now, I didn't -- haven't really briefed
17 that. That's not the facts---

18 THE COURT: I got ya.

19 MR. WOOD: ---and there's case law on the duties of
20 confidentiality that a lawyer owes to a former client.
21 This is a---

22 THE COURT: Yes.

23 MR. WOOD: ---current client. We have some things
24 where, in the morning, he talked about the reimbursement,
25 Family Court stuff, and that very night they talked about

1 this land transaction. That's a current client.

2 THE COURT: Okay. Okay.

3 MR. DAVIS: Your Honor, may, may -- let me go back to
4 what your original question to us, which dealt with the --
5 it's -- premature as to the motion for summary judgment.

6 It, it, it is our opinion it is premature. The only
7 thing that's been done, done in this case is the filing of
8 the suit, which was in February of this year. Responsive
9 pleadings to -- came to us in May and June of this summer.

10 I -- that's when we got a, we got a answer and we got
11 an original counterclaim with two counterclaims and then a
12 few weeks or months later we got four counterclaims we had
13 to respond to and then we filed the motion -- 12(b)(6)
14 motion saying these are not causes of action based on the
15 facts in this case.

16 There has been no depositions in these cases taken.
17 There have been discovery. We immediately filed a
18 protective order because they were seeking information on
19 their discovery which dealt primarily with the
20 counterclaims. Their request to produce deals with
21 this -- asking my, my client to produce every case where
22 he has been a PR of somebody's estate, whether he's been
23 the attorney in fact of every person -- any -- anybody,
24 has he handled any estates.

25 It's just the, the discovery was too broad. That's

1 why we filed the 26(c)(1) and (2) motion immediately once
2 we got those pleadings. There has been no response to
3 the -- there's request to produce that have been sent and
4 interrogatories on both sides. There's been no response.

5 I mean this -- I don't have to sit here and tell
6 anybody, you know, the -- no summary judgment should be
7 granted until everybody's had a full chance to have
8 opportunity to make sure they understand all the issues
9 and there are serious -- they are issues here.

10 Our position, based on what my client says and
11 Ms. Seymour, is that there was no existing attorney/client
12 relationship in 2022 with this, with this defendant. She
13 was a former client. A divorce decree was entered in
14 2017. The agreement the client had with her was I'm with
15 you until the Family Court matter is decided and that was
16 done in 2007 -- 2017.

17 He had no other representation to her on any other
18 circumstances although she was -- she asked for him to
19 help her on an employment matter and other -- and, and he
20 said I can't do that and I'm not gon' do that.

21 And so it is a -- there's a material issue here as to
22 whether there was any obligation to him whatsoever even as
23 to, as to having -- being a former client, and as a former
24 client from some representation in 2017, it was simply
25 limited to very limited circumstances which Ms. Seymour

1 makes crystal clear that that is not the issue, issue
2 here. So --

3 THE COURT: Okay.

4 MR. DAVIS: -- our position is we, you know, that
5 needs to be delayed for another day until we have --
6 everybody -- Mr. Wood and I have a chance to sort this
7 thing out on, on those issues.

8 There's, there's other issues on the summary judgment
9 dealing with the consideration here, which is -- will
10 require probably expert testimony.

11 So, that's why I go back to, you know, I think
12 we're -- the issue of the, of the -- having the, the
13 motion heard I think is premature and that's our position.

14 THE COURT: Okay. All right. So what we'll start
15 with is I've got it as number seven. It will be a, a
16 motion -- I guess 12(b)(6) motion and motion to dismiss
17 counterclaims.

18 MR. WOOD: Right.

19 THE COURT: That's my understanding that would be the
20 best one to start with.

21 MR. WOOD: Okay.

22 THE COURT: Is that right?

23 MR. DAVIS: That's, that's what I---

24 THE COURT: All right.

25 MR. DAVIS: ---have.

1 okay. On our 12(b)(6), which was filed on the four
2 counterclaims and the four -- we've got an answer here and
3 you got four counterclaims.

4 The first one did -- deals with breach of loyalty and
5 confidentiality, which I say is, is -- it's, it's on a,
6 a -- that's a separate counterclaim and is, is the first
7 one. The second one deals with -- the first one's based
8 on fiduciary -- a claim in fiduciary duty.

9 The second one is misappropriation of confidential
10 information. The key to this is saying misappropriation
11 of, of confidential information.

12 The third -- well, initially it was the first two
13 counterclaims and then they came back and filed the third
14 and fourth. The third one is professional negligence and
15 the fourth one is unfair trade practice.

16 Our position is, based on what's in our brief, on our
17 brief, every one of these causes of action are tied to
18 what the defendant's claiming that the plaintiff has some
19 obligation to this defendant based on Rule 1.8 is really
20 what -- when you look at it.

21 When I say -- when the, when the Court looks at this,
22 on these counterclaims, I suggest look at Paragraph 39 in
23 their counter -- just going through their counterclaims,
24 Paragraph 39, Paragraph 40, 41, 54, 55, 57, 61, 63, and
25 64, and those run through every one of those counterclaims

1 and they all are tied to attempting to say that the
2 breach, alleged breach of that particular rule of
3 professional responsibility is a basis for a cause of
4 action against Mr. Allen.

5 It is a duty that he owes them based on that language
6 in the, in the pleadings and the law in this state, in
7 your opinion, is absolutely clear that you -- that the
8 rule of professional responsibility do not give rise to a
9 cause of action and do not give rise to any presumption of
10 a legal duty and, furthermore, the -- and this I'm citing
11 in our brief, *Spence versus Wingate*, on Page 2 of our
12 brief that the duties owed to a former client are not
13 controlled by the rules of professional conduct. And this
14 is not where the def -- the defendant's asking for some
15 interpretation of those ethical rules.

16 Our position is they're trying to claim they are
17 duties and they're -- and they can not be duties and the
18 language in our rules make it absolutely clear that
19 they -- they are what I, what I just say. And it says
20 that the purpose of the rules can be re -- subverted when
21 they're invoked by opposing parties as proceeding with
22 weapons.

23 I'm not sure exactly what all that means but I, but I
24 know this, that, that these, these -- the ethical rules
25 are not a basis for a cause of action in these, in these,

1 in these counterclaims.

2 The -- it also -- even if, even if the -- if you're
3 gonna use some interpretation of the rules of professional
4 responsibility, there has to be an active attorney/client
5 relationship, which we are denying. Based on our
6 affidavits that we're (sic) filed, there was no active
7 attorney/client relationship. That relationship ended in
8 2017 based on case law of this state of *Shannon versus*
9 *Shannon* and based on the actual, actual contract that Mr.
10 Allen had in this case with his client and that contract's
11 compliance with 1.03 of the rules of professional
12 responsibility. They ended his obligation to, to her.

13 Now, on the, on the second cause of action, which is
14 the one dealing with breach of confidentiality --
15 breach -- misappropriation confidential information, our
16 position is there's no such cause of action in South
17 Carolina. The only one exists -- this is where -- this is
18 trying to create a separate tort for breach of
19 confidentiality, breach of confidentiality information.

20 The case we've cited that this Court has only said
21 that applies to a physician/patient situation. It does
22 not apply to a -- it has not been extended to an
23 attorney/client relationship. So, we don't believe that
24 that cause of action exists in South Carolina.

25 Later on they bring the professional negligence.

1 But, again, when you -- that's the third counterclaim.

2 But when you look at it, they've alleged again the
3 same thing in the third cause of action and what it
4 deals -- and what they have alleged is, in Paragraphs,
5 Paragraphs -- that she was -- he was her attorney in
6 Paragraph 54, that he assumed duties to her, and then he
7 said the, the plaintiff -- the defendant says, in 57,
8 plaintiff was negligent, careless, and reckless in
9 Paragraphs 57, A, B, C, and D, which are all tied where
10 they're saying those are the breaches of those duties
11 referred to in Paragraph 55, which are all dealing with
12 rules of professional responsibility which can not be
13 used, in our opinion, the duties.

14 Furthermore, under the third, the professional
15 negligence, no affidavit was submitted by any expert
16 saying anything. There was no certification. That is not
17 a procedural defect. That is a fatal defect that you
18 don't have a cause of action. You got to have -- you got
19 to file that with the pleadings. That did not occur.

20 By not filing that cause of action, you -- by not
21 filing that certification from the expert and it was not
22 filed with these pleadings, were not filed, then that
23 cause of action should be dismissed on that basis alone
24 because that is a mandatory -- in the, in the case law
25 that I cite in here indicates that's a mandatory

1 requirement.

2 As to the fourth cause of action on unfair trade
3 practice, that was brought in -- as a -- on the second
4 trip along with professional negligence. That unfair
5 trade practice, they're trying to say he was my lawyer.
6 He was my lawyer. He was helping me and he was trying to
7 buy a piece of property from me and, and he was, and he
8 was -- and my client was buying -- getting an option of a
9 piece of property from the defendant. He was, he was
10 doing that.

11 But the deal is this. The allegations on the unfair
12 trade practice in Paragraph 61, 63, and 64 are identical.
13 Again, gonna -- goes to the rules on 1.8. They're using
14 those rules for the basis of unfair trade practice.

15 I cite in our brief -- in our brief I cite two cases,
16 bar -- Page 8 of our belief, *Barnes versus Seigler*, and
17 also there is a case in Greenwood and the name of that I
18 cited -- and the name of the case is *Tinsley*.

19 On the *Barnes versus Seigler* case -- in that, there
20 was a claim in Federal Court they failed to file the
21 affidavit on the professional negligence claim. The Court
22 held that, by not filing that affidavit, that also allowed
23 the dismissal on the unfair trade practice claim because
24 they -- because the professional, the professional
25 negligence cause, cause of action where they didn't file

1 the affidavit in *Barnes versus Seigler* is those
2 allegations are the same as what the defendant here's
3 alleging on the unfair trade practice. Same thing.
4 They're not -- she's -- he's, he's my lawyer and, and he,
5 he should of given us separate advice.

6 They -- the Court held that that required the
7 dismissal of the unfair trade practice because of
8 allegations in both the unfair, unfair trade practice and
9 the professional negligence were, were the same. So you
10 have to dismiss the unfair trade practice.

11 On the *Tinsley* case, it holds -- and it can -- comes
12 from Greenwood. It holds for this. That case, that case
13 involved professional negligence, fiduciary duty
14 violation, unfair trade practice, and some, some
15 securities issue. All the allegations were the same.

16 The Court held, if you haven't proven professional
17 negligence, and the allegation's the same in the other
18 causes of action, they're all ended. That's *Tinsley* and
19 that went to the South Carolina Supreme, Supreme.

20 The other thing is, on the unfair trade practice,
21 this was not a public -- this is not a public event. This
22 is where Mr. Allen was getting the option on a specific
23 piece of property that he wanted to get which would help
24 him on other property he had adjoining the piece that he
25 was buying.

1 That's not duplicate. That is, that is not
2 duplicate. That is a specific case, a one time thing, and
3 it's not a matter of any public interest.

4 THE COURT: You talking about repetition --
5 repetition?

6 MR. DAVIS: That's correct.

7 And using *Tinsley* as an example I mentioned before,
8 that involved where the lawyers handled the closing and it
9 involved the purchase of property on Lake Greenwood and
10 they said there was not repetition -- not repetition
11 there. Because this is a specific event, and not
12 something normally -- how, how -- if you get to, if you
13 get -- if you get some -- Ms. Watson's property, then
14 he'd, he'd have what he wants for that piece of property
15 and there's no evidence he has any other property in that
16 area except the property which abuts up to the defendant's
17 property and these people are related and they knew --
18 everybody knew who owned what out there. There's not --
19 this is not a, a public event under the unfair trade
20 practice.

21 I think that's it, Your Honor.

22 THE COURT: Okay. All right.

23 MR. WOOD: Your Honor, I---

24 THE COURT: Mr., Mr. Wood.

25 MR. WOOD: Thank you, Your Honor.

1 I think I covered each one of these points except
2 those cases in the brief that I filed last August I think.

3 First of all, and I say right in front of my brief,
4 I'll be the first to say you can not use the rules of
5 professional conduct themselves to sue somebody over.
6 They're certainly not a sword and they say why the rules
7 are not a sword. But the rules are based on common law
8 rules of fiduciary duty and that's what he broke.

9 When I was in high school, I had an algebra class and
10 we knew -- and I hated algebra. But we knew that you
11 could look at the back of the book and it would tell you
12 the answer to the problem and it was always some nice
13 round number. But the hard part was getting to that
14 number.

15 Well, the rules of professional conduct act like the
16 little answer key in the back of the book that says did
17 you get it right or not. It just makes it simpler to
18 plead, simpler, simpler, simpler, simpler to understand.

19 In this case, everybody on the planet would agree
20 that a lawyer owes fiduciary duties to his client as a
21 matter of common law whether we have rules or not, whether
22 they're crimes about stealing people's private
23 information, whether they're torts for stealing people's
24 private information and using it for your personal
25 benefit.

1 we all have those duties regardless of the rules of
2 professional conduct. It's just easier to plead them that
3 way and I, and I said that in my brief. I'll be the first
4 to admit I can not use them as a, as a sword.

5 Now, there's some states that say you can use them as
6 a shield and I cite -- it's a case from Kentucky I cite
7 but they're other cases too, three or four states, that I
8 found that say you can use the rules of professional
9 conduct as a shield because they state the public policy
10 of South Carolina.

11 Now, the fid -- the common law rules of fiduciary
12 duties are the, the common law of South Carolina and we
13 all know that a lawyer not suppose to steal client -- from
14 his client. I'm not talking money, Your Honor.

15 I'm talking information, how he used his knowledge of
16 his client's personality against her. He never denies
17 that. Judge Allen never denies that in his affidavit. He
18 learned all kind of stuff about her in his relationship
19 with her that, that ended, the first time, when the
20 divorce ended but then continued on till the summer in
21 question that we have here.

22 So, he could of denied that in his affidavit, and if
23 I've overlooked that, fine. That would be a question of
24 fact.

25 But he did use that information, and whether it

1 happens to be a crime or whether it happens to be in the,
2 the, the rules of professional conduct does not matter.

3 what matters is he had a fiduciary relationship with
4 her long ago as a former client and he used that
5 information against her. If -- red flags should go up big
6 time anytime a lawyer does business with a current client
7 or a former client. The -- one of the issues you look at
8 when you might have a -- let's say you want to sue a
9 former client, you look at the issue of oh, but do I have
10 special inside information about that former client that
11 would make it unfair for me to sue him or to represent
12 somebody against him.

13 So, you look for the issue of does he still have
14 information that would be unfair to be used. So, that's
15 what you look at.

16 So certainly he had all these duties of loyalty and
17 confidentiality. He had no right in the world to
18 misappropriate that information. That even includes her
19 negotiation style. I think he does make reference to the
20 fact that she decided not to take his legal advice on some
21 aspect of the divorce.

22 well, he knows when his former client, Ann Marie
23 watson, is willing to fold. He knows how much money she
24 got from the divorce, how hard will she fight sometimes,
25 when does she give up sometimes.

1 So, he has an adverse relationship with her. As long
2 as she keeps him as her, as her lawyer, then that's great.
3 He uses that to everybody's advantage. But when they
4 become adverse such as when they enter or propose to enter
5 into a land transaction, reep, reep, I didn't do well on
6 recording, but he, he, he should not have come close to
7 this and he did come close to this.

8 I don't know if I put it in the pleadings. But we've
9 learned in the last few months that he, he, Judge Allen,
10 might of received a big check from Mungo Homes, the people
11 who are gonna buy this big piece of land when he puts it
12 together to keep their option open.

13 well, I think the only way in the world Mungo Homes
14 would pay them cash money to keep their option open would
15 be if they thought they had a deal going through, and, and
16 it's getting into the weeds a little bit, but for their
17 deal to go through, they've got to have Ms. Watson's
18 property, which means they -- Mungo has to have something
19 that Judge Allen wants really, really badly, really badly.

20 And what the man should of done, Your Honor, as a
21 matter of common law in South Carolina, is say oooh, I
22 want to buy your land. I'm your lawyer. You need to go
23 get another lawyer to represent you in this land
24 transaction.

25 Now, I go on and on in, in my brief and Ms. Watson

1 goes on and on in her affidavit about the kind of things
2 she would of done had she not thought he was her lawyer.
3 On and on. But she didn't.

4 She says she thought he was her lawyer and he would
5 have, therefore, there was no need to go hire a real
6 estate agent to give her an opinion. I think I cover
7 that.

8 what goes into a typical land contract?

9 Is a typical land contract 30 days or 60 days I think
10 or, is it in this case, I think it was like a year and a
11 half?

12 Long time.

13 when you have a long term contract of sale like this,
14 it's really more like an option. She didn't have that
15 explained to her because she trusted her lawyer, Kellum
16 Allen, to do her right and to warn her about things like
17 that because he was her lawyer. And, by golly, he, he
18 took advantage of that. He did take advantage of that so
19 that in the, in the land option, if he -- if Judge Allen
20 wants out of the contract, all he's got to do is write a
21 letter and say oops, I've decided not to buy this land,
22 please give me my money back. Give me my money back.

23 well, who's paid the taxes in the mean time?

24 who has considered other, other offers?

25 what if other offers had come along for this land?

1 All kind of things that a professional could of
2 advised her about.

3 A purchase price, I think Ms. Watson came up with a
4 purchase price. But there -- we lawyers, you know, we
5 don't make our living doing land transactions debating
6 money. We make our living with the -- what I call the
7 fine print, who pays the taxes, what about the zoning
8 issues, a million things that real estate lawyers think
9 about in their fancy papers when they do a land contract.

10 I think even Judge Kellum -- Judge Allen himself
11 didn't have a form land contract in his files. He got it
12 from an expert.

13 Well, he didn't say to Ms. Watson oooh, by the way,
14 you might want to go get your own contract to take a look
15 at. He did nothing to advise her that he was in a
16 position to be her lawyer and act like her lawyer and use
17 her inside confidentiality information. Did not.

18 Instead, he used it to his own personal advantage.
19 And so far all I know is he got, I think, he's gotten some
20 money from Mungo to, to renew his extension or something.
21 There's a lot I don't know.

22 But, on this point, should I be allowed to proceed?

23 Absolutely.

24 And it's not just because I say he breached the rules
25 of professional conduct. It's because he breached his

1 common law duties of loyalty and confidentiality. He was
2 also negligent, cause when a lawyer comes -- when a, when
3 a client comes in to see me, Your Honor, they're a lot of
4 times when I owe a duty to my client to say hey, don't ask
5 me for tax advice. I don't understand it either. Go get
6 your own lawyer for tax advice, advice. There could be
7 other things like that as well.

8 So, yes, there is a duty of, of professional
9 response -- not responsibility, liability, professional
10 negligence that says, when somebody has come to me looking
11 for legal advice, and it's out of my area of expertise, I
12 have to tell them that and I do tell them that. At least
13 try to. I think I do. And that's what good lawyers do.

14 So, when I say that Judge Allen committed malpractice
15 by not sending her to another lawyer, that's exactly what
16 I'm talking about and my list goes on. I, I think I came
17 up with about 10 different things that he should of done
18 if he were to represent her.

19 Now, what he really should of done, that's if he was
20 gonna -- I don't think he should of represented her in the
21 land trans -- transaction. I think he should of said go
22 get your own lawyer. But he should -- if she was gonna
23 continue as his client while they were working out this
24 equitable distribution thing, then he should of -- he
25 should of written her a letter.

1 Here's why that's a bad idea for you not to get your
2 own lawyer. He didn't do any of that. She was trusting
3 him to be her lawyer.

4 So, the 12(b)(6) motion is, is unfounded in terms of
5 confidentiality, loyalty, misrepresentation.

6 Now, professional -- the affidavit. I know all about
7 these affidavits that, that a plaintiff has to have
8 whether you're suing a lawyer or an, an architect, an
9 engineer. Our law firm does medical malpractice defense,
10 Your Honor. I know all about that stuff.

11 I read the statute before I filed the amended --
12 yeah, the amended counterclaim because I was reluctant to
13 bring a malpractice suit. I don't bring them. It's not
14 what I do for a living.

15 But I read the statute and it very clearly says a
16 plaintiff has to get an affidavit and file it with his
17 complaint or, if he doesn't due to some deadline or
18 emergency or something, then he's got to get one in pretty
19 quick or words to -- there's some details about that.
20 That was not the position I was in.

21 The statute---

22 THE COURT: Aren't, aren't you claiming---

23 MR. WOOD: ---says---

24 THE COURT: Aren't you, Mr. Wood, I mean in -- I, I
25 mean your position is essentially as a plaintiff in your

1 counterclaim?

2 MR. WOOD: It is. Right. And, yes, sir, absolutely.
3 But there's a difference and I explained that in my brief.

4 Judge Allen, a lawyer, brings this case. He had
5 three years, I guess, to, to bring the case. Maybe. I
6 don't know. But he had a long time to, to bring this
7 case.

8 A counterclaiming defendant has 30 days to do
9 something like this, you know, and, and high theory, could
10 she have predicted that her own lawyer was gonna sue her
11 to rescind a contract that he knew was not enforceable?

12 No.

13 Well, the law doesn't require her to anticipate that.

14 So, I'll -- I was working on all this stuff and we
15 got Desa Ballard lined up. She filed the thing right
16 after -- I say right after. Within a matter of a few
17 weeks when I did my amended counterclaim.

18 I, I knew I needed it. That's point number one. But
19 the statute does not require it and I about left something
20 out.

21 The statute is in clear derogation of the common law
22 and clear derogation. Back in the old, the old days you
23 didn't have to file these affidavits. So, you have to
24 take the statute the way it's written and it says
25 plaintiff. It doesn't say or counterclaiming defendant

1 and I say why, as I just kind of argued just then, which
2 I -- the timing is different.

3 They're more pressures on a defendant than the --
4 than there are on a plaintiff, and if pressures are on the
5 plaintiff, then there's ways for him to deal with it. So,
6 it's a different situation altogether for counterclaiming
7 defendants.

8 Now, I know, under the rules of civil procedure,
9 they're lots of times when a counterclaiming defendant is
10 treated like a plaintiff. Roman Numeral II on this point,
11 Your Honor, is this.

12 The suit was filed in mid February. We got the
13 pleading -- the pleadings are not even closed yet. I sent
14 regular old standard interrogatories to the plaintiff, a
15 guy who brought the suit, and he wouldn't answer my
16 standard interrogatories. I've never heard of that in my
17 entire career where somebody will not answer standard
18 interrogatories.

19 Well, now he finally comes up with his own expert,
20 who is very good, Barbara Seymour. She's fine and I think
21 she'll give an opinion that ultimately hurts them when she
22 understands the full facts.

23 But the point is, there's no prejudice whatsoever
24 from my filing an affidavit a few weeks after I filed my
25 amended counterclaim. None at all.

1 So, those are my two positions. Number one, the
2 statute does not say a defendant ever has to file one of
3 these things.

4 Number two, if you want to read the statute that way,
5 that is change the word plaintiff to read defendant, and
6 the Legislature could of done that if they wanted to, but
7 they didn't, but if you want to read it that way under
8 this theory that well, I'm a counterclaiming defendant,
9 which equals a plaintiff, then you still have the issue of
10 doing substantial justice, which is has anybody been hurt.

11 And there really has been no discovery done except
12 for the subpoenas that I sent out to two big players in
13 the case, the, the real estate agent for Judge Allen and
14 to the -- to Mungo Homes, the people ultimately that Judge
15 Allen and this family is gonna sell to. And I got a lot
16 of stuff from them. I really did and I -- of course, I
17 sent it over to Mr. Davis.

18 So that's where we are on the affidavit thing.

19 The unfair trade practice act, I know all about it
20 too. I, I had a case long ago where Chief Justice Toal
21 grilled me, that was kind of one of her, one of her pet
22 statutes, I think she helped pass it, and she -- so I know
23 all about -- I think I know all about the unfair trade
24 practices act. I certainly knew about it when I brought
25 the counterclaim.

1 we did some research and found that Judge Allen
2 himself, and other lawyers in his firm, had done this very
3 same thing to a, a farmer over in Lexington County named,
4 Dial, D-I-A-L, Rawl, R-A-W-L.

5 Now, Judge Allen might want to say hey, that wasn't
6 me. It was somebody else in my firm. I -- but I, I just
7 signed the paperwork. I can't tell. Maybe he's got
8 something to say about that. He might not even know
9 Mr. Rawl. They might be best friends. I don't know. But
10 I know he's done this before. That's one.

11 Point number two is we all admit that Judge Allen
12 owns other property up there in Blythewood. Now it is his
13 property that he's trying to sell. I was about to say he
14 might own some other property about a couple of miles
15 away. But I don't think so.

16 But it -- but of this property, he owns it with other
17 relatives, i.e. think -- of Ann Marie Watson, my client,
18 his first cousin, and another relative.

19 Now, these people that he owns the property with are
20 closer to him than a first cousin. It's a brother. It's
21 a sister. I can't remember if I asked him this question.
22 But I do want to know show me where you warned your
23 brother and your sister, seemed like there's a third
24 person, but where you warn your brother and sister that,
25 if they're relying on you to be their lawyer when dealing

1 with Mungo Homes, did you warn them that maybe they need
2 their own lawyer just like they needed their -- just like
3 Ms. Watson needed her own lawyer in the land transaction.

4 So, to say that this has never happened before and it
5 can never happen again, at least based on the Rule 11 kind
6 of evidence that I have in my file right now, that's not
7 true. So, we do have a genuine issue of material fact on
8 the unfair trade practice act claim.

9 The -- seems like there's something else that
10 Mr. Davis talked about. But I think those are my main
11 points. But you better believe a lawyer can engage in an
12 unfair trade practice and, and be liable for it. You
13 don't have a shield that protects you, as a lawyer, from
14 an unfair trade practice act claim just because you have a
15 law license at all no more than there's a rule of
16 professional responsibility that says hey, your, your
17 license can get in trouble if you commit malpractice, if
18 you're not diligent. I cover all those in my brief.

19 But a lot of things, they're still liable for them.
20 The fact that they're in the rules of professional conduct
21 does not make an ounce of difference.

22 So, I think I've covered everything that Mr. Davis
23 said about to support his motion for -- a motion to
24 dismiss my counterclaim. If I left something out, Your
25 Honor, I will take a deep breath and respond to it.

1 Thank you.

2 MR. DAVIS: May I, Your Honor?

3 THE COURT: Mr. Davis, do you want to respond to --?

4 MR. DAVIS: Yes.

5 Your Honor, the -- in the argument by Mr. Wood, I, I,
6 I heard his argument. The issue before this Court is on
7 the pleadings filed -- the pleadings and the counterclaims
8 is the issue before this Court as in whether they've
9 stated a cause of action on those four counterclaims. And
10 we can have arguments for the judge -- the juries all day.

11 But we -- what, what we're -- what the def -- what
12 the plaintiff here's looking at on these counterclaims is
13 what is your basis for suing us, and our position is the
14 Court needs to look on the 12(b)(6) to look at the
15 pleadings before us to see how we're getting sued so it's
16 crystal clear in the beginning what we have to face. And
17 this other stuff, all these factual issues, is a different
18 matter.

19 What I'm interested in is what is the basis for suing
20 me so I can tell my client what, what he's facing as to
21 what's here. And our position is, for the reasons we have
22 stated that they have, they're suing under the ethical
23 rules, which you can not do.

24 Number two, because they did not file that affidavit
25 on the professional negligence, that is defective. The

1 statute uses the word, in 13-36-100, it says in an action
2 for damages, in an action for damages and whether it's
3 plaintiff or defendant, if you're gonna sue a professional
4 in this state, you got to file that affidavit and it has,
5 it has not, it has not, has not been done.

6 But my -- our position is for the -- we're asking the
7 Court, respectfully, to make it clear as to how, how it is
8 we're getting sued, and if, if they're suing us on some
9 basis based on their pleadings, then dismiss these, these
10 matters for the reasons that we've stated in our -- and in
11 everything I've stated is in the briefs -- in the brief I
12 filed on 12 -- 12(b)(6).

13 The -- on the, the actual affidavit filed by Desa
14 Ballard was some two months after the initial
15 counterclaim -- the initial -- the amended counterclaims.

16 The -- in reference sued -- the, the, the deal in
17 regards to the defendant saying that Mr. Allen was the
18 lawyer that the -- the cases on that issue, it's clear
19 that the divorce decree in South Carolina ends the
20 attorney's obligation based on the case of *Shannon versus*
21 *Shannon* and what's -- also is controlled by what's in
22 their retainer agreement.

23 Any action after that or any lawyer -- somebody
24 trying to say that something had finished in 2017, and
25 you, you, you have a -- some continuing obligation from

1 2017 forever in the future where you can have liability
2 for stuff you don't even know what's going on with the
3 client, and, in this case, the client actually negotiated
4 matters after the decree between she and her husband and
5 the -- and Mr. Allen was not involved in it.

6 So, how can, how can you impose some liability for
7 any -- anything after that 2017 when there's been no
8 contact with the client on this particular matter for like
9 five or, five or six years?

10 There was -- that would not, that would not be fair
11 to the client nor would it be fair to the attorney who had
12 helped his, his cousin in 2017.

13 In reference to Mr. Rawl, if you look at about trying
14 to say that's, that's proven repetitiveness, if you look
15 at the pleadings in that case, there's nothing in there
16 that says -- I mean you -- on a 12(b)(6), I think it --
17 when you -- somebody -- when the plaintiff cites a
18 particular case to look at, you can look at the -- maybe
19 it's part of the record, the pleadings in that case, that
20 just says a settlement was entered in that case.

21 THE COURT: Well, y'all -- y'all've, y'all've,
22 y'all've kind of been getting outside the four corners of
23 the pleadings.

24 MR. DAVIS: Right.

25 THE COURT: Both of you.

1 MR. DAVIS: Very good.

2 Let's see.

3 THE COURT: All right. So, anything else---

4 MR. DAVIS: We're fine.

5 THE COURT: Huh?

6 MR. DAVIS: I'm fine. I'm finished.

7 THE COURT: Okay.

8 MR. WOOD: I, I did have one thing, Your Honor, if I
9 could add one thing?

10 I agree with what Mr. Davis had to say about, once
11 the divorce is over, and the fee agreement's been complied
12 with, that's fine. He could -- Judge Allen could have
13 said oooh, Ann Marie, you know, I'm -- I've kind of
14 finished representing you. Please go find somebody else.
15 And I couldn't of made him keep on represent -- nobody
16 could of made him keep on representing Ms. Watson at that
17 point.

18 But he didn't do that. He didn't do that. He took
19 extensive notes like I filed with the Court on Friday and
20 they had a new attorney/client relationship. And while
21 it's smart for lawyers to have a fee agreement where you
22 explain your scope of representation, there very much can
23 still be an attorney/client relationship when there's no
24 fee agreement in place.

25 That's really all I wanted to add to that. He --

1 Judge Allen, in retrospect, really should of said sorry,
2 Ann Marie. I'm, I'm not able to help you anymore. But he
3 didn't do that and she was his client.

4 THE COURT: So---

5 MR. WOOD: That -- that's all I have to say.

6 THE COURT: So, so, Mr. Wood, y'all take the
7 position, and, and -- that it was final. He no longer was
8 representing her effective 2017 and that a new
9 attorney/client privilege was formulated what, some time
10 in -- was it June or whatever of '22?

11 MR. WOOD: Yes, if that's our year and I apologize.
12 I can't remember the year all this happened.

13 THE COURT: But, but, but I just want to make sure
14 I'm understanding you correctly.

15 You're saying that the attorney/client privilege or,
16 I'm sorry, the attorney/client relationship had ended
17 effective on the final decree and therefore---

18 MR. WOOD: Well---

19 THE COURT: ---all that you're dealing with now is a
20 brand new relationship?

21 MR. WOOD: You're almost right, Your Honor.

22 THE COURT: Okay.

23 MR. WOOD: There was something that happened
24 in-between---

25 THE COURT: Well, I, I tell---

1 MR. WOOD: ---and I don't remember what it was.

2 THE COURT: I---

3 MR. WOOD: But, but we're not saying, because of that
4 fee agreement back 2017, that, therefore, he owed her the
5 duty to represent her more recently. We're not saying
6 that.

7 We're saying that because she called him up and said
8 can you help me and he said yes, I'll help you and we have
9 documentary evidence in his own handwriting where he gave
10 her legal advice, where he talked to her about strategy,
11 do we ask for more child support, do we do this, can we
12 pay overtime, do we need to get a consent order, all the
13 kind of stuff that a lawyer does for a client that's the
14 relationship that I'm talking about.

15 Now, some of this former information, it's really not
16 the, the duty of -- well, let me just put it -- yeah,
17 attorney/client privilege.

18 The duty of confidentiality extends really forever.
19 When I learn something about a client and I still think
20 that client has that information or same personality or if
21 I, if I have a list of their secret coin collection, I can
22 not use that 20 years from now unless I know that fact is
23 different.

24 So, once she tells her lawyer, Judge Allen,
25 information, he's got to keep that inviolate. Can not go

1 talk about it at cocktail parties. Can't use it to his
2 own advantage.

3 That is her information that he gave to her and, and
4 that does include stuff like negotiating styles, who are
5 her children, what land does she own, stuff that might be
6 public record but he learned it through the
7 attorney/client relationship. And, and they're exceptions
8 and jagged edges.

9 But, personality, man. As, as long her personality
10 mattered, then he had a duty not to use that for his own
11 personal benefit, and if he needed something from her, and
12 he did, he should of said you got to go get your own
13 lawyer.

14 That's, that's my argument.

15 MR. DAVIS: Just---

16 THE COURT: Okay.

17 MR. DAVIS: Just one, one argument on that last
18 subject by Mr. Wood if I may, Your Honor.

19 The, the, the inform -- the piece of property being
20 purchased by Mr. Allen that was owned by Ms. Watson, under
21 the ethical rules, the, the -- any obligation that a
22 client has to a former client, and that is our position
23 here, that this was a former client, comes under 1.9. And
24 one of them deals with confidence matters.

25 In this case, this property was in the family --

1 these families of the defendant and the plaintiff, they
2 owned property next to the -- each other and it was
3 general knowledge that they owned this property and that
4 is an exception under 1.9 and it's in the -- as to any
5 issue as to confidence.

6 In fact, Mr. Allen's family owned the piece of
7 property at one time and actually sold it to the
8 defendant's family and/or swapped properties so the
9 defendant would have access to a public road.

10 So, this was general knowledge. It's no special
11 any -- anything that Mr. Allen learned from his cousin
12 based on prior represent -- or prior representation which
13 ended in, in 2017.

14 MR. WOOD: I agree with that. That's not a
15 confidential fact that Judge Allen took advantage of. He
16 knew that.

17 But they're about 20 other things that he knew about
18 her that he only knew about her because of the previous
19 attorney/client relationship and the ongoing client --
20 attorney/client relationship that summer.

21 He's negotiating with her and he knows her assets
22 because he did the, the, the divorce settlement with her.
23 That's the kind of information that he only would of
24 learned from her.

25 Now, if he wants to come to court and say oh, no, we

1 discussed that at a family reunion out in front of
2 everybody, you know, that's a different thing. But we
3 believe that it's, it's, it's the confidential stuff that,
4 that he had no business using for his gain and we're not
5 saying that her ownership of that piece of land was a
6 secret. We're not saying that at all.

7 THE COURT: Okay. All right. So, that -- I guess
8 those arguments -- I -- and I, I, I know there's some
9 overlap. But I mean that, that pertained to the motion to
10 dismiss the counterclaims of the defendant pursuant to
11 Rule 12(b)(6).

12 Okay. So what will be the next one which you wish
13 for me to hear?

14 MR. DAVIS: Your Honor, there is -- there was a
15 motion---

16 THE COURT: Per the order, I'm gonna -- I'm gonna
17 hear them all but --.

18 MR. DAVIS: Let me, let me hunt the -- there, there
19 was a 12(f) motion, 12(f) motion.

20 I wish I could find my -- I had stuff organized here.
21 But I got so many papers here I've got -- I'm looking for
22 that list of -- 12(f). It should be on that list. It's
23 like five or six items.

24 But if, if -- may I speak on that or have you --
25 still looking on the list?

1 MR. WOOD: Randy, what do you call the 12(f) motion?
2 Do you have another name for it?

3 MR. DAVIS: Yeah, this is the one---

4 MR. WOOD: Yeah, I---

5 MR. DAVIS: This is where I move to strike certain
6 pleadings in the answer is what this is.

7 MR. WOOD: Okay.

8 THE COURT: I've got that listed as number eight.

9 MR. DAVIS: Yeah.

10 And, and what this is, Your Honor, is, is this.

11 On 12(f), it was filed May 14th and, and I've cited
12 certain paragraphs in the pleadings in the, in the
13 counterclaims. I'm, I'm sorry. In the answer, in the
14 answer of the answer and counterclaims I've cited certain
15 paragraphs.

16 And this is where, in the answer, under the 12(f),
17 I'm saying this stuff, under, under the rule dealing with
18 striking, that these are not relevant on the basis, again,
19 they are referring to the ethical rules in trying to use
20 the ethical rules as a shield or a bar to voiding a
21 contract, meaning the land option, and our position is --
22 our position is that in -- there -- you can not do that.

23 This is where you're not bringing a cause of action
24 but you're using as a defense. As to why the, the land
25 option is invalid is that these ethical rules can be a

1 shield or bar to the, to the contract.

2 Our position is this. There is no such case in South
3 Carolina that says that period. They're cases from other
4 jurisdictions. The one that we cite in our brief is one
5 from Texas that uses the identical code of professional,
6 code of professional responsibility language in the Texas
7 case that we use, and the Texas case is in 2022 and
8 indicates that you can not use the ethical rules as a bar
9 to a contract. That's number one.

10 Number two, there is no statute in this state that
11 says you can use the ethical rules to bar a, a contract.

12 And number three is we were not her lawyer at the
13 time. So she can't use those ethical, those ethical
14 rules. But that's the basis for that motion to strike.

15 Now -- and I can -- that really is -- simplifies that
16 particular motion.

17 THE COURT: Okay. All right.

18 MR. WOOD: Your Honor, I---

19 THE COURT: Mr. Wood.

20 MR. WOOD: It could be my fault on this, Your Honor.
21 But the, the thing that Mr. Davis filed on May 14, and,
22 and y'all correct me if I'm wrong, that was before I filed
23 my amended answer and counterclaim and, under the case law
24 in South Carolina, he needed to have filed a new motion to
25 strike from the new and -- amended answer and

1 counterclaim.

2 Now, he might have and I don't mind -- if, if I can
3 find it in my notes, I don't mind debating or arguing
4 those points. But I, I guess what I'll do is I'm assuming
5 that that motion was filed anew after my amended answer
6 and I'll address them on the merits.

7 THE COURT: I, I just have that it was---

8 MR. WOOD: There is a case---

9 THE COURT: Yeah, it was filed May 14th and I
10 apologize. I know I'm talking over you, Mr. Wood.

11 MR. WOOD: No, I'm, I'm glad you did and I filed my
12 amended answer and counterclaim on June 12.

13 So -- and, and I'm not the kind of guy -- Mr. Davis
14 and I are personal friends. He's a great guy, a great
15 guy, and, and I think he might have filed -- kind of
16 refiled his May 14 motion at some later date.

17 I'm just not seeing in my notebook and I'll, I'll be
18 glad to respond to those on the merits. But I don't want
19 to waive my position that his motion is addressed to my
20 original answer and counterclaim.

21 So, having said that, I would like to, to address
22 them on the merits, which would mean I need to find my
23 amended answer and find these references.

24 All right. So we got 8A is the main thing he talks
25 about.

1 MR. DAVIS: I---

2 THE COURT: Yeah. And, and, and just for the record,
3 in the roster that I have as far as these motions, the
4 motion to strike that we have is a May 14th, '24 date at
5 least on, on the roster as far as the file date. And then
6 what I was just showing you was what I printed off. Like
7 I said earlier, and I'm tactile, I have to have it in my
8 hands. I can't just do this computer stuff like my law
9 clerk does.

10 But---

11 MR. WOOD: Everybody in the case feels the same way.

12 MR. DAVIS: Yeah, and I'm---

13 THE COURT: And, and I'm sure -- I'm sure Mr. Davis
14 can tell us if there's, if there's been a subsequent one
15 filed.

16 But, for purposes of this, I -- I've got a May 14,
17 '24 filing date.

18 MR. DAVIS: I will verify that for the Court of
19 the -- I made a list somewhere of what -- the filing
20 dates. But I, I don't know the answer for it. I want to
21 be truthful to the Court as to -- but I, I have the May
22 14th. But I'm not sure about any other filing.

23 I'll just let -- leave it that way.

24 THE COURT: And I have---

25 MR. WOOD: No.

1 THE COURT: I have zero concern about either one of
2 you being truthful to the Court.

3 MR. WOOD: Well, what I'll do then, without waiving
4 my position that he did not file a motion to strike 8A
5 from my amended answer and counterclaim, I will argue
6 those.

7 So, I'm looking at 8A now of my amended answer and
8 counterclaim, which I -- and I haven't compared. I assume
9 it's the same thing. I might of improved it but probably
10 the same thing as the original.

11 I allege in 8A, without reference to the rules of
12 professional conduct, I say implied within the scope of
13 any legal representation agreement, this one included, is
14 the lawyer's promise to advise the client when to obtain
15 independent legal counsel and independent legal advice.

16 All right. There's no reference to the rules of
17 professional conduct there.

18 Number two though, I will say, under this Kentucky
19 case and some others I cited in the brief I filed Friday
20 night, that you can use the rules of professional conduct
21 as a shield. But, in this case, I don't cite to the rules
22 of professional conduct.

23 So, if, if, if that's Mr. Davis's position, then I
24 think -- I think he's -- he would have to say well, and,
25 and I don't want to speak for him, but I think he would

1 say well, that must be coming from the rules of
2 professional conduct.

3 My position is the rules of professional conduct sort
4 of kind of codify the common rules. I think we would all
5 agree, maybe I'm wrong, but implied in a -- in any legal
6 representation agreement is your promise to advise a
7 client when they need to get independent legal advice. I
8 think so. May -- maybe there's -- well, I'm sure it is
9 the law.

10 I think Desa Ballard says that in her affidavit. I
11 think Barbara Seymour would concede that.

12 I'm gonna move to B. Also implied within the scope
13 of any legal representation agreement, this one included,
14 is the lawyer's promise to treat his client fairly and
15 reasonably and not to use her confidential information for
16 his own benefit. I can not believe anybody would debate
17 that point.

18 C. I allege that the plaintiff knew -- yeah, the
19 plaintiff, that's Judge Allen, knew or should of known
20 that inserting into a land option of this a refundable
21 posit in any amount was not customary and was utterly
22 unfair, unreasonable, and unconscionable.

23 Now that could be debatable. I, I haven't moved for
24 summary judgment because this land option is unfair. I, I
25 think I'm the only one with any evidence on that. But I'm

1 certainly entitled to try to prove that because, Your
2 Honor, under the laws of rescission, to get rescission of a
3 contract, which we'll get to later, the party trying to,
4 to rescind it -- I'm sorry. No, the party trying to
5 enforce it has to show that it's fair. Under these
6 circumstances, has to show that it's fair. So that's why
7 we have that allegation in Number C.

8 D. I say -- I allege that Judge Allen knew or should
9 of known that a \$500.00 deposit for a land option of this
10 sort was not customary and was utterly unfair,
11 unreasonable, unconscionable. That's not out of the rules
12 of, of professional conduct. That's -- that will be a
13 matter for discussion.

14 THE COURT: That's right.

15 MR. WOOD: I think this contract was like a year and
16 a half long. Might be good for a month long I want to buy
17 your house. But not however long this option contract for
18 was, \$500.00 that's fully refundable.

19 So, it's a position I'm entitled to take as a
20 defense. Yeah, these are defenses.

21 Then E. Now I, I, I can go through each one, Your
22 Honor. I think they're all about the same. There's no
23 reference to the rules of professional conduct.

24 I say that he, as her domestic relations lawyer,
25 encouraged her to execute and deliver the land option. In

1 fact, I, I think we have it. I might of given it to the
2 Court in my filings. He instructs her to sign it and
3 where to sign it and what to do.

4 Now, what I do, and what I think a lot of lawyers do,
5 is I'll say if this looks good to you, sign it, send it
6 back. If you have any questions, call me. But I'll never
7 tell somebody to sign something and, and that's what he
8 did in this case I think. I think. But certainly I'm not
9 using the rules of professional conduct to come up with
10 Paragraph 8E.

11 Now I'm going to F. Well, then I go on to say he
12 never advised her to obtain a real estate broker. That's
13 not in the rules of professional conduct. But he should
14 of done it. I know I would of and I think most lawyers
15 would and that would be what they call the standard of
16 care in the legal industry when it comes to matters like
17 this.

18 But independent real estate broker or appraiser to
19 advise her about the reasonableness or advisability of the
20 offer in terms of, and I list all these fine print things
21 like what -- I won't go into detail, but things other than
22 price that an independent real estate broker would have
23 advised her on, I say, had she hired an independent real
24 estate broker.

25 And, again, there's nothing in the rules of

1 professional conduct about that. But I think I'll be able
2 to prove that a, a good lawyer would of done that, a, a
3 lawyer meeting the minimum standard of care would of
4 advised her to get an independent the -- real estate
5 broker rather than trusting him, relying on him without
6 him fully disclosing that you better not do it.

7 G. I say while serving as the defendant's domestic
8 relations lawyer, he encouraged her to execute and deliver
9 a writing that he had drafted yet he knew or should of
10 known was not phrased in terms that the defendant, Ms.
11 watson, could reasonably understand.

12 Again, when you have a fiduciary relationship, you,
13 you better explain things in terms that, that the person
14 can understand. I bet you all three of the lawyers, four
15 of the lawyers here, I don't know, the judge, Judge Allen,
16 and, and Mr. Davis and me, we've probably all represented
17 people with some level of, of simplicity and not
18 understanding things. And, man, when I come across one of
19 those, I'm super duper careful to make sure that they know
20 what they're doing, and, if they don't, then they go find
21 somebody who can help them out.

22 That's -- I'm not referring to the rules of
23 professional conduct but I could.

24 H. He never told her by the way, Ms. Watson, I do
25 not represent you in this land transaction. Never told

1 her that.

2 Now, he's gonna say well, you should of known that.

3 Okay. Well, Ms. Watson's gonna say you're my lawyer.
4 You didn't tell me that.

5 So, I -- that's certainly valid and good in pleadings
6 and is why I put that in there. So, I, I think I've --
7 well, I'd go on and on and, again, I haven't compared the
8 amended with the, the original.

9 But I see I've got I where I talk about his -- the
10 fact Ms. Watson had entrusted him with intimate personal
11 knowledge about her financial and emotional condition.
12 Judge Allen talks about her emotional condition in his
13 affidavit.

14 He knew about her assets, liabilities, net worth,
15 liquidity, all kind of stuff that, if you're in a
16 fiduciary relationship with somebody, you darn well better
17 not use that against them and I'm entitled to plead that.

18 J. Ms. Watson entrusted the plaintiff with knowledge
19 of her fractured relationship with her siblings. That's a
20 true fact that judge, I'm so sorry, Judge Allen refers to
21 in his affidavit. They did have a, a fractured
22 relationship. whose fault it is is debate -- debatable
23 but irrelevant. They had one.

24 He -- I'm afraid he might of tried to take advantage
25 of that and then he says, in his affidavit, how well,

1 my -- I'll -- we're into the weeds. But I'm entitled to
2 allege that he knew about her fractured relationship with
3 her siblings.

4 K. He had -- Judge Allen had vastly superior
5 knowledge about prospective uses for the subject property.
6 I think he says in his affidavit that he told her, I know
7 it's not in writing, but he told her it was gonna be a big
8 old development. We say not true.

9 well, fine. But I'm still entitled to allege that
10 and I'm not moving for summary judgment on that particular
11 point. But he had vastly superior knowledge. I think he
12 should of told her. He's gonna say I did tell her. I say
13 I'd love to see that in writing somewhere. But,
14 nonetheless, that's the kind of things that you have
15 lawsuits over.

16 L. I think this is the last one. Judge Allen failed
17 to advise Ms. Watson that she would not be able to enforce
18 any oral promises he had made that were not included in
19 the written contract. We lawyers all know that.

20 where's it in writing that says you can not have,
21 what we call in Columbia, a Mungo style development with
22 300 houses on 200 acres and wall to wall houses?

23 well, that's not in their contract. She didn't know
24 that. She will testify. Judge Allen will disagree.
25 She'll testify that he promised me something like what we

1 call Persimmon Fork, was it -- which is an equestrian area
2 on the other side of -- way on the other side of the
3 interstate from this land, but still in Blythewood, that
4 everybody knows about up there where you got these big old
5 houses on big old tracts of land with horses. Very, very
6 different from a Mungo style thing.

7 If there was no attorney/client relationship, I doubt
8 she could of enforced that because it's not part of the
9 contract. But he didn't advise her oh, by the way, go get
10 your own lawyer. Hint, hint, he might tell you that any
11 promise I made to you is unenforceable unless it's in our
12 land sale contract.

13 So, there's all this stuff that I'm entitled to prove
14 that he violated when he, as her lawyer, talked her into
15 signing this real estate contract.

16 So, that's what I say about A through 8L.

17 THE COURT: I'm sorry.

18 MR. WOOD: A through L. I think it's Mr. Davis's
19 turn.

20 MR. DAVIS: Your Honor, just briefly. Just if I may
21 briefly -- I promise you briefly.

22 In the---

23 THE COURT: No, no. Listen, y'all take as much time
24 as you need. I'm, I'm here to hear your arguments. I'm
25 just -- I've got 8A through 8L, 10, 15, 17, 18, 19, 20,

1 and 21. But these would only per -- or, or pertain to the
2 first and second counterclaims.

3 MR. DAVIS: That's what I was gonna raise.

4 THE COURT: So---

5 MR. DAVIS: The motion.

6 THE COURT: So as far as the third and the fourth,
7 the UTPA and then the third, which, I guess, arguably
8 you -- I mean your position is, is that the third kind of
9 derives itself from whatever's being pled in the second
10 counterclaim I, I believe.

11 MR. DAVIS: Right.

12 THE COURT: So.

13 MR. DAVIS: Yeah, the --.

14 THE COURT: So, I -- I think you would have to file,
15 I guess, a new motion unless you have filed a subsequent
16 motion, and like Mr. Wood said, you know, you, you may
17 have. But as pertains to the third and the fourth. But,
18 but go ahead.

19 I, I guess you want to argue or, or be heard on 8A
20 through 8L?

21 MR. DAVIS: No, really it's on, on the one filed May
22 14th on the motion. I don't -- I was -- I don't see
23 another motion filed but on May 14th on 12(f) that
24 applies, as you said, to the first and second
25 counterclaim.

1 As I say in the motion, the -- I say the date --
2 these should be stricken because those two counterclaims
3 do not state a cause of action.

4 The first one dealing with the breach of
5 confidentiality and loyalty, they're alleging only ethical
6 rules to establish the duty and the obligations which you
7 can not use -- you can not use them to establish the
8 duties and obligations, the ethical rules, and, for that
9 reason, those, those paragraphs should be stricken because
10 they're all, they're all relating to an alleged ethical
11 matters that they claim -- a lawyer should discuss with
12 somebody who was his client if they were.

13 And then the second, the second cause of action --
14 the second could -- cause of action, we have said in that
15 cause of action they -- and it doesn't exist because it's
16 misappropriation of funds.

17 So, we -- the general theory is, on those
18 allegations, they all deal with ethical matters which
19 should not be used as a shield or bar to a contract.

20 That's our position.

21 MR. WOOD: Your Honor, I, I see now -- I did -- I
22 just did eight ad nauseam I think and I didn't cover 15
23 through 21. And I'm looking up the amended complaint as
24 if Mr. Davis's motion included those and I'm, I'm -- I
25 don't want to waive---

1 MR. DAVIS: Ten---

2 MR. WOOD: ---that position but I'm ready to argue
3 them.

4 If you look at my Paragraph 15, it says the
5 plaintiff, Judge Allen, was Ms. Watson's lawyer in a
6 Family Court matter when he initiated discussions
7 regarding and entered into this business transaction with
8 her in a completely unrelated matter.

9 I'll refer to an ethical rule there until you get to
10 the very bottom, which is Paragraph 21, where I say the
11 plaintiff drafted the land option in violation of the
12 plaintiff's common law duties of the utmost good faith,
13 loyalty, and confidentiality and in violation of rules of
14 professional contract (sic).

15 So, I'm going under fiduciary duty and, according to
16 this, I'm going under breaking of rules of professional
17 conduct. But the rules of professional conduct derive
18 from the common law.

19 I don't really want to concede anything, Your Honor.
20 But I, I -- I've said to the Court I'm not suing him
21 because he violated the rules of professional conduct.
22 I'm suing him because he breached this fiduciary duties of
23 the utmost good faith, loyalty, and confidentiality that
24 are kind of crystalized in recipe form. You can find them
25 in the rules of professional conduct.

1 Desa Ballard says in her affidavit all those things,
2 that it violates the standard of care. Certainly lawyers
3 owe these duties. The fact that they're also ethical
4 rules doesn't change the fact that lawyers owe all these
5 fiduciary duties to their clients.

6 So, that's my position on that and, and really the
7 rest of these 17 through 21 kind of deal with what I said
8 before. I know you said take our time and don't go
9 slow -- do go slow. But -- and, and -- I'd be repeating
10 myself.

11 THE COURT: How about Number 10?

12 MR. WOOD: Oh, okay. Thank you, Your Honor.

13 Let me read it.

14 All right. So we admit -- right, right. They did --
15 oh, we admit that he -- that Mr. Davis, on behalf of Judge
16 Allen, wrote a letter exercising the land option.

17 Okay. Well, that came in. We've seen it. We read
18 it. And then they go on to say but the defendant would
19 show that the plaintiff failed to advise her.

20 Now this is my allegation. Judge Allen failed to
21 advise her, as her lawyer, that the land option was void
22 or voidable and that the plaintiff had misappropriated her
23 information to her own personal benefit in violation of
24 duties of good faith, loyalty, and confidentiality, right.

25 Every word is true both factually and legally. She

1 received the letter saying we exercise the option and --
2 but we also say he should of said oh, by the way, this is
3 void from the outset. Certainly voidable at any point.
4 And she darn well did void this thing if it was merely
5 voidable in right colorful fashion. But she let the whole
6 wide world know what she thought about this land option
7 when she realized that it was not gonna be the development
8 she thought.

9 So, I stick with Paragraph 10 big time, Your Honor,
10 factually and legally.

11 THE COURT: Okay. So, as, as pertains to the third
12 and fourth counterclaims, he'll just need to file another
13 motion to strike on those.

14 MR. DAVIS: Yes, Your Honor.

15 THE COURT: Okay. And that way, Mr. Wood, you are
16 protected. We have only heard arguments pertaining to the
17 motion to strike for the first and second counterclaims.

18 MR. DAVIS: That's correct, Your Honor.

19 THE COURT: Okay. So --.

20 MR. WOOD: Is there any way, Your Honor, you can keep
21 jurisdiction so we don't have to train a new judge on this
22 particular motion or you can keep the whole case?

23 THE COURT: Are you, are you training me?

24 MR. WOOD: Well---

25 THE COURT: No, no, I think that would -- I think

1 that would make, make a lot of sense just, just as far as
2 the motion to strike.

3 MR. WOOD: Yes, that -- that's all I'm asking.

4 THE COURT: Okay. Yes.

5 I'm not, I'm not gonna retain jurisdiction on, on the
6 remainder or as this thing goes forward. But, no, that
7 would make a lot of sense. I don't know if that's
8 something which y'all want to, you know, be heard on later
9 on this week. I just think, for judicial economy, but I
10 mean however you wish to do it.

11 MR. DAVIS: Well, you -- you contact -- just make
12 contact with your law clerk about that?

13 THE COURT: That'd be -- that will be fine. That,
14 that will be fine. It's so easy now even though I prefer
15 to be in person. I, I --.

16 MR. DAVIS: Okay.

17 THE COURT: But, but we can do it virtually at some
18 point. I don't know when I'm gonna be having --.

19 MR. DAVIS: Okay.

20 THE COURT: But we don't have to have a court
21 reporter. So I can just hop on. I'm gonna be really---

22 MR. DAVIS: Very good.

23 THE COURT: I'm gon' be really busy in, in January
24 though. I've got like a, a, a three week murder trial
25 starting the second week. So, just understand it could be

1 after that.

2 All right?

3 MR. DAVIS: Thank you.

4 THE COURT: Okay. All right. So let's see. That
5 would of been Number 8. So we would of dealt with Number,
6 Number 7 and Number 8.

7 where -- what would be the next motion?

8 MR. DAVIS: I think we've --.

9 THE COURT: Some of this is overlapped I know. But
10 --.

11 MR. DAVIS: The, the mo -- Number 4 and Number 6,
12 I've -- you know, I, I think we've, we've already
13 discussed that. That was we filed a motion for protective
14 order to not respond to the discovery request to produce
15 and interrogatories until the, until the 12(b)(6) were
16 heard.

17 Our position was that -- it's two things. One,
18 the -- when you look at the request to produce and also
19 the interrogatories, most of it, if not all of it, except
20 some of the interrogatories, were related to the
21 counterclaims, and since we don't know whether -- we got
22 to get the Court's decision as to whether they are
23 counterclaims, it'd be premature to respond to that.

24 But, you know, depending on what the Court rules, if
25 we -- if it's unfavorable, and we'll -- you know, and we,

1 and we gon' -- we will respond promptly at that time. If
2 they're dismissed, then that would end our obligation to
3 respond to that discovery.

4 There is, in the interrogatories, there's about four
5 or five, four or five request on interrogatories that deal
6 with -- Paragraphs 9 -- this is on interrogatories by the
7 defendant.

8 Paragraphs 9, 13, 14, 15, 16, and 17 of -- let me say
9 that again.

10 Nine, 13, 14, 15, 16, which I think what you -- I, I
11 believe are too broad and the Court should, should narrow
12 any response on those particular requests. For example,
13 having my client identify every mediation he's conducted
14 in his mediation practice, which would be a very large
15 number of cases just as an example.

16 But the same issue on 13, 14, 15, 16, too broad.

17 Thank you, Your Honor.

18 MR. WOOD: Well, let me get those out. I --.

19 MR. DAVIS: That was one -- what I said was on -- I
20 believe, on the interrogatories and request to produce, I
21 say my review is that they're, they're tied to the
22 counterclaims. Until the Court makes a decision on those
23 counterclaims, then we will know how to respond and will
24 respond promptly.

25 But on Paragraphs 9, 13, 14, 15, 16---

1 MR. WOOD: Okay.

2 MR. DAVIS: ---on the interrogatories about telling
3 every mediation case he's had, any probate file he's
4 handled, whether he served as PR from -- there's no time
5 period on it. Beneficiary or trustees or some attorney in
6 fact, that's -- there should be at least a limitation time
7 wise as to those matters. Not forever.

8 MR. WOOD: My position on those, Your Honor, it does
9 sound overly broad. But it's not and the reason is this
10 and, and this is a little bit of new news.

11 Judge Allen, in his affidavit, sort of kind of makes
12 it looks like Ms. Watson knew how to negotiate for
13 herself. Now, he doesn't make a very convincing case of
14 that. But what I want to do is say well, compare the one
15 or two or three land deals she did as a regular old
16 person, compare it with the what, 500 or 200 mediations
17 and -- that, that Judge Allen has done, maybe more than
18 that. We know he's still doing them. He's an expert I
19 guarantee.

20 I don't know if we been -- went to the class to
21 become a certified mediator. I bet he did. But he's done
22 enough where anybody would say he's an expert mediator and
23 nobody would say Ms. Watson is an expert negotiator.

24 So that's what I'm going to and then the second half
25 is, if he has represented a bunch of estates, then he

1 would of had a fiduciary relationship with the people in
2 those estates, and if he took advantage of any of those
3 people, he was involved in either as they were his clients
4 or if they were participating in mediations, then you got
5 this big public out there, Your Honor, that would be
6 subject to him doing unto them the same thing as what he
7 did unto Mr. Rawl, or his law firm did.

8 Number two, the same thing he did unto Ann Marie
9 Watson, and, number three, the same thing that his other
10 relatives up there in Blythewood are vulnerable to right
11 now.

12 So, on the one hand, Mr. Davis is saying that well,
13 we only cite one evidence and that's Mr. Rawl. Well,
14 okay, I don't know about any others. I really don't. I
15 don't. But I betcha they're more.

16 The only reason I know about Mr. Rawl is Mr. Rawl
17 sued him or sued his law firm and then they settled it
18 real quick and I don't know how. Maybe Mr. Rawl went
19 away. Maybe Mr. Rawl got eight billion dollars. I don't
20 know. But I know that it happened before.

21 And then I do know that he's got other relatives in
22 Blythewood. He's got other land in Blythewood. He can do
23 it again and I want to prove that -- well, I want -- let
24 me put it this way.

25 I want to see who else is vulnerable to this

1 continued unfair trade practice that he has done before at
2 least twice, once with Mr. Rawl, once with Ms. Watson and
3 that's why I want this, and that's why I'm not limiting it
4 in time cause he's -- he'd been a lawyer longer than I've
5 been and I learned from -- I read an old brief I wrote my
6 second year as a lawyer. It's good.

7 well, he did some good stuff before, before I got
8 sworn in and he's learned from it and he's experienced and
9 that's why I want to know this stuff. I don't mind some
10 confidentiality rule where I don't find out who his
11 clients are. I certainly don't need to know the terms of
12 the settlements. There's a lot of stuff I don't need to
13 know.

14 what I'm trying to prove is you've done it before.
15 He could still be doing it now and he's gonna do it again
16 and that's why I want to know this. That's the purpose of
17 discovery.

18 MR. DAVIS: Your Honor, two brief -- from two brief
19 things.

20 Number one, in reference to Ms. Watson being not
21 experienced as Mr. Allen on property matters, his area of
22 practice was in the domestic law. But the, the divorce --
23 the divorce decree in the, in the matter finished in 2017
24 involved million -- a million dollars of property that
25 were resolved between Ms. Watson and her, and her

1 ex-husband. That's number one.

2 Number two, Mr. Rawl, since Mr. Wood has asked the
3 question, then when you look at the record, it says the
4 case was settled. The facts will show when -- if, if
5 there's discovery on this, and Mr. Rawl actually paid
6 \$10,000 to the law firm in that case where \$2,000 was paid
7 to five partners. But we'll deal with that when discovery
8 comes up.

9 MR. WOOD: I didn't know that.

10 MR. DAVIS: Well---

11 MR. WOOD: But I'm entitled to know that kind of
12 thing.

13 MR. DAVIS: Yeah.

14 MR. WOOD: And, Your Honor, it could be that Mr. Rawl
15 was supposed to pay them, I don't know, a million dollars
16 but all they had to do was pay him 10. I don't know. But
17 I do know that Mr. Rawl felt strongly enough about it to
18 bring a lawsuit that is very similar to this lawsuit here.

19 MR. DAVIS: On an unverified complaint.

20 MR. WOOD: Sure. I, I -- all I know is what I could
21 find in the public record and, and that's why we do
22 discovery and maybe it's---

23 MR. DAVIS: Public---

24 MR. WOOD: ---it's a dry hole.

25 THE COURT: It seems---

1 MR. DAVIS: Public record says---

2 THE COURT: It, it seems like -- and I mean I know
3 that y'all need me to rule on the counterclaim first.

4 But it, it does seem like this is something y'all
5 could work out it -- cause it does seem, I don't know,
6 just -- it seems, on its face, overly broad but I'm not
7 ruling on it right now.

8 But I also understand, Mr. Wood, what you're getting
9 at as far as what you're trying to, to get. It just seems
10 like the parties could discuss that and, and reach some
11 kind of resolution on that. At least I---

12 MR. DAVIS: Thank you, Your Honor.

13 THE COURT: At least I would encourage the parties to
14 discuss that.

15 MR. WOOD: We are so encouraged, aren't we,
16 Mr. Davis?

17 MR. DAVIS: Yes, Your Honor, and, yes, Mr. Wood.

18 THE COURT: Okay. So, that brings us I, I believe to
19 the motion and it -- it's a motion for partial summary
20 judgment.

21 Is that correct?

22 MR. WOOD: Yes, Your Honor.

23 THE COURT: Are, are we ready to, to go there,
24 Mr. Davis?

25 MR. DAVIS: This is his motion and not -- so, you

1 know, I think we've covered, covered the base on---

2 THE COURT: From stem to stern.

3 MR. DAVIS: Yes, sir.

4 THE COURT: All right.

5 MR. DAVIS: Okay. We can, we can -- if -- in
6 reference to it's -- on his motion, if, if I need to
7 respond to his motion, I will do so at -- besides what
8 we've said, I'll do so right now and that, that deal --
9 yeah.

10 If you give us just a brief more time, Your Honor, on
11 that, on that?

12 THE COURT: On, on which thing, the, the summary---

13 MR. DAVIS: Motion for---

14 THE COURT: ---judgment.

15 MR. DAVIS: ---summary judgment.

16 THE COURT: Well, I mean do y'all want to just hear
17 that when you -- when we hear the, the other argument on
18 the additional motions to strike?

19 MR. DAVIS: Yes, that'd be okay. That'd be okay.

20 THE COURT: What about that, Mr. Wood?

21 But I mean look, we're, we're set on your motion for
22 partial summary judgment. So, I mean if you, if you wish
23 to proceed on that today, that's fine. I mean I --.

24 MR. WOOD: I, I would love to, Your Honor.

25 THE COURT: Okay.

1 MR. WOOD: We filed this on September 19. It's been
2 pending forever and one of the reasons that they've asked
3 that we not do discovery is because of the sort of issues
4 that we're talking about here. That's number one.

5 Number two is, if Judge Allen was the current lawyer
6 for the current client known as Ann Marie Watson, then
7 it's a matter of law for the Court to decide whether or
8 not this land sale contract is enforceable. So, I think
9 we are ready to go and ready to argue it.

10 Have -- if you -- and, and I, I get Mr. Davis. I --
11 they had some issues on their side. Might have some
12 issues today. I'm not one to take advantage of personal
13 issues.

14 I would like to just -- if we don't hear it and go
15 forward, I, I would love the Court to at least let us do
16 basic discovery. The case has been on hold ever since --
17 almost ever since it got filed and all I've been able to
18 do is subpoenas.

19 So, I think it's clear -- I, I -- and if, if
20 Mr. Davis needs more time now that he knows his client's
21 position, which is I was not her lawyer during that
22 summer, but I think he does know that argument. I'm,
23 I'm -- it just shocked me when I read his affidavit last
24 Wednesday night that says I was not her lawyer that
25 summer.

1 And so I went scurrying about and found a good bit of
2 evidence, the two rifle shot pieces, that prove that he
3 was her lawyer that summer. Proved. And you'll -- no, I
4 don't think you'll ever see me, Bob Wood, take a position
5 that an affidavit is a sham and not true because I do know
6 that if it's, if it's a bona fide affidavit, if it goes to
7 a, a, a material issue of fact, an issue that matters, and
8 that does seem to matter, then that would ruin my motion.

9 But I think these two pieces of evidence, plus more I
10 have, but two pieces of evidence says they had an
11 existing, ongoing relationship. He does have an affidavit
12 of Barbara Seymour, who everybody knows is an expert too,
13 but she says, if you believe what Judge Allen said on his
14 affidavit is true, then we look at law related to former
15 client.

16 She doesn't say, I don't think time -- she had time
17 to say, she doesn't say I read those two pieces of paper
18 that Bob found in his file Thursday, filed with the Court
19 Friday, where it shows he refers to Ann Marie as his
20 client and he talks about strategy and facts and all kind
21 of stuff that a lawyer would talk to his client about and
22 they develop strategy.

23 And, again, Your Honor, if, if what I produced Friday
24 night is shown to be altered or fake, then Judge Allen
25 would know that right now and he could tell us all I take

1 the position they're fake. If he says I'm not gonna take
2 that position, those are my notes, I produced those notes
3 to Mr. Wood or Ms. Watson this past summer or whenever it
4 was, then I think, as a matter of law, all these rules
5 kick into play and we have a contract that is
6 unenforceable.

7 Hence I'm moving for partial summary judgment only as
8 to the main part of the case, which is that land sale
9 contract is not enforceable, again, on that basis that
10 they were -- that Ms. Watson was a current client of Judge
11 Allen when they entered into this land contract and that's
12 my position on that argument. And, again, I know it's
13 early.

14 But I also know that Judge Allen knows if there are
15 real issues as to whether, real factual issues, as to
16 whether he really was her lawyer that summer and I just
17 can not believe he can say with a straight face he was
18 not.

19 So, that's my argument on that and we don't need
20 discovery to find out if he was her lawyer that summer
21 because I've produced these two things that prove that she
22 was.

23 Again, they beat me if they can say the paper's a
24 lie, it's altered, it's counterfeit, or that client
25 doesn't mean client, you know, whatever. But --.

1 MR. DAVIS: Your Honor, may -- Bob, were you---

2 MR. WOOD: That's my argument.

3 MR. DAVIS: ---finished?

4 MR. WOOD: That's my argument.

5 MR. DAVIS: Okay. Yeah, we've, we've discussed this
6 to a certain extent on our position is it's premature.

7 There's been no -- you -- we have these experts and,
8 and Ms. Seymour is qualified I'm sure -- is qualified to
9 give her opinion. She's given an eight page affidavit and
10 she's indicated that this defendant was the -- my client's
11 former client at the time they had any discussions in 2022
12 and was not a regular client. It makes all the difference
13 in the world.

14 Any -- the limited obligation that the lawyer has
15 under 1.9, the federal -- of the rules of professional
16 responsibility are, are very limited to where you can't
17 take action in -- you can't take an action against the
18 client in the, in the matter you helped her with, which
19 was divorce, and you can't deal with certain confidential
20 matters.

21 But it's very limited and the -- and there's a
22 material issue of fact where there's been no discovery
23 through the -- through requests to produce or
24 interrogatories or we don't even know what -- that, that
25 we have counterclaims in this case and when -- motion for

1 summary judgment would not be proper at this time.

2 It would be against the, the basic rules dealing with
3 this subject. Everybody has the opportunity for a fair
4 hearing and should not be -- should not be finalized until
5 it -- the admissions and interrogatories and production
6 has been produced, especially in this case involving a
7 very serious question as to whether somebody is a client
8 when your representation ended in 2017, five years after
9 2022.

10 So, our position is it's premature. I will also say
11 this and I haven't, I haven't said it until right now
12 cause I wanted to finish, finish this today, in, in
13 reference to -- this thing -- the, the -- this case was
14 filed in February and, and makes -- and pleadings were
15 filed by the defendant in May or June of the year and then
16 the moment -- and then the counterclaims came and these --
17 and so it's, it's carried to this point as to discovery.

18 And we have -- and, and my position is, again,
19 without repeating myself is it's premature and it should
20 not be granted at this time.

21 But yours truly here, on October 12th, I'm, I'm
22 not -- I'm just telling you what my -- where I've been the
23 last two months. I got pneumonia and I was in the
24 hospital from October 12th through the 24th and rehab
25 for another two weeks and then homebound and was not

1 released by a doctor off oxygen until one week ago.

2 So, I was -- I haven't done any -- I've been very
3 limited as to anything and I'm not saying that's an excuse
4 as to something not being done. I'm just telling you what
5 my personal situation is in, in the last six months.

6 But I -- but we're -- this is not prepared yet for a
7 summary judgment grant in the case. This -- things need
8 to be done before, before, before that is done one way or
9 the other because I think there's material issues of fact
10 in this case.

11 The -- I think that's where I am on this -- on the
12 motion for summary judgment. We have no -- if the Court
13 wants to hold off until you -- the additional motion on
14 12(f), that's fine with us. But I'm just telling you
15 where, where, where we stand on this matter.

16 MR. WOOD: I will never in a million years push
17 somebody based on health issues. I will not do that and
18 I'm not doing that.

19 I do think, having said that, that Judge Allen can
20 see the papers that I filed with the Court Friday where he
21 refers to Ms. Watson as his client and where they talk
22 about the merits and the substance of her issue with this
23 family court matter.

24 And, and if -- if he's willing to say yeah, those are
25 my notes and we were doing all that stuff, then it does

1 not matter what Barbara Seymour characterizes that where
2 she bases her opinion on Judge Allen's affidavit that,
3 that merely says I was not her lawyer and now I found this
4 piece of paper. I've had it all along that says---

5 THE COURT: It sounds, it sounds to me like something
6 that needs to be covered in discovery---

7 MR. WOOD: Have the answer---

8 THE COURT: ---in a deposition.

9 MR. WOOD: I -- my point is he would have to take his
10 own deposition. He doesn't need -- I don't have to take
11 his deposition to prove this document.

12 Anyway, I, I think you're ruling, Your Honor, and I'm
13 gonna -- I'll back off. But it's, it's a whole lot of
14 money in attorney's fees that these folks are gonna have
15 to pay when I think there's not a genuine issue on this
16 piece of paper or two pieces of paper. But I'll be quiet,
17 Your Honor.

18 THE COURT: Listen, I -- you, you can speak for as
19 long as you, you need to.

20 Do y'all feel like you have been adequately heard on
21 this motion for partial summary judgment or is there
22 anything else you need to, need to let me hear?

23 MR. WOOD: I would ask the Court don't forget my
24 brief. For, for the record, I filed---

25 THE COURT: I, I---

1 MR. WOOD: ---a brief on this.

2 THE COURT: Yeah, and, like I said, I, I looked at
3 this stuff. But, again, you know, I mean I get -- I, I
4 think I've got 21 on my schedule today. So, it's not like
5 I get to focus on, you know, y'all's and reread it and
6 read it and -- before I hear your arguments.

7 So, I, I, I assure you that I'm gonna spend time on
8 this. I'm certainly gonna take this stuff under
9 advisement and, and I will look at it.

10 MR. DAVIS: Thank you, Your Honor.

11 THE COURT: But, but, again, and I mean this will be
12 the third time I've said it and y'all, y'all will get
13 this, but, you know, I can read it. It's black and white.
14 You know these briefs and stuff. But I mean y'all've
15 lived with it day in day out.

16 So, it's like, you know, I mean you can discuss it
17 for, for days. I, I just -- I just need to have
18 additional time to, to dive into it and I, I appreciate
19 it.

20 Okay. So is there anything else that I need to hear
21 from y'all?

22 MR. DAVIS: No, Your Honor. Not me.

23 THE COURT: Okay.

24 MR. DAVIS: Not from the plaintiff.

25 THE COURT: Okay.

1 MR. WOOD: I think we've covered it. My paralegal's
2 not here. So, I could be wrong but I, I think we've
3 covered everything that I wanted to say this morning.

4 THE COURT: Okay. Well -- and if y'all will reach
5 out to my law clerk concerning the additional motion --
6 motions to strike I guess pertaining to the third and
7 fourth counterclaims?

8 MR. DAVIS: Yes, Your Honor.

9 THE COURT: Okay. And I'm glad that you're doing
10 better, Mr. Davis.

11 MR. DAVIS: Yep, I feel better.

12 THE COURT: Well, I don't think anybody wants to go
13 through that.

14 MR. DAVIS: First thing I did was to get a pneumonia
15 vaccination.

16 THE COURT: Boy you're smart.

17 MR. DAVIS: Yeah, it took me two months to figure
18 that one out but I decided.

19 But anyway, okay.

20 THE COURT: Okay. Well, I, I hope that y'all have a,
21 a wonderful rest of your Monday and just reach out to my
22 law clerk and we'll try to---

23 MR. DAVIS: Yes, Your Honor.

24 THE COURT: ---get you in here.

25 Thank you.

1 MR. WOOD: Thank you.
2 Randy, I'm gonna give you a call if that's okay?
3 I know you need to talk to your client but do you
4 mind if I call you right after this?
5 MR. DAVIS: You can.
6 MR. WOOD: Okay. Thank you.
7 Thank you, everybody.
8 MR. DAVIS: See you.
9 THE COURT: Okay. Thank you. Y'all take care.
10 MR. DAVIS: Thank you.
11
12 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Richland County, South Carolina, on the 16th day of December, 2024.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 20th, 2025



PAMELA E. GREEN, Court Reporter