

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
Court of Common Pleas

Patrick C. Fant, III, Circuit Court Judge

Appellate Case No. 2025-000614
Civil Action No. 2024-CP-40-00827

RECEIVED

Jul 17 2026

SC Court of Appeals

Kellum W. Allen,Respondent,

v.

Ann Marie Watson,Appellant

RECORD ON APPEAL

Robert P. Wood (SC Bar No. 6206)
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December 3, 2025

Counsel for Appellant, Ann Marie Waston

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP4000827

Kellum W Allen
PLAINTIFF(S)

Ann Marie Watson
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Please see the attachment on Page 2 below.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

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

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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This Matter came before the Court on December 16, 2024, pursuant to multiple motions filed by both Parties.

Regarding Plaintiff's Motion Pursuant to SCRCP Rule 39(a), Plaintiff's Motion is hereby Denied and this Court will not refer this matter to the Master-in-Equity of Richland County considering the Defendant has asserted compulsory legal counter-claims that go to enforceability of the land sale contract. See Rule 53(b), SCRCP.

Regarding Plaintiff's Motion to Dismiss Counterclaims of Defendant Pursuant to SCRCP Rule 12(b)(6), based on the law of South Carolina, the Court Dismisses Defendant's Second Counterclaim alleging Misappropriation of Confidential Information because the claim does not exist, or is otherwise duplicative of Defendant's First Counterclaim for Breach of Fiduciary Duties of Good Faith, Loyalty, and Confidentiality. The Court has not found any cause of action for Misappropriation of Confidential Information nor were any elements pled by the Defendant. The Court will allow the Defendant to proceed with all other Counterclaims alleged.

Regarding Plaintiff's Motion to Strike Certain Pleadings in the Amended Answer of Defendant Pursuant to SCRCP Rule 12(f), based on the arguments of the attorneys and the relevant law, Plaintiff's Motion is hereby Granted as to Defendant's Second Counterclaim, however, the Motion is Denied as to the rest of Plaintiff's requests.

Regarding Plaintiff's Motion for Protective Order Pursuant to SCRCP Rule 26(c)(1) and (2), the Court Grants this Motion considering that the Court has found it proper to strike and dismiss Defendant's Second Counterclaim as stated above. Plaintiff can appropriately respond now, in light of the Court's ruling in this Order.

Regarding Defendant's Motion for Partial Summary Judgment, based on a review of the file, submissions of the Parties, and oral arguments by the attorneys, the Court believes Summary Judgement should be Denied at this point and not revisited until each Party has had a full and fair opportunity to complete discovery. See Doe ex rel. Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857, (2001), citing, Baughman v. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).



Richland Common Pleas

Case Caption: Kellum W Allen vs Ann Marie Watson

Case Number: 2024CP4000827

Type: Order/Electronic Form 4

So Ordered

Patrick C. Fant, III

Electronically signed on 2025-01-24 11:27:09 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP4000827

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PLAINTIFF(S)

Ann Marie Watson
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This Order supplements the Court's prior Order filed on January 24, 2025. The Court's prior Order is hereby supplemented to reflect that the Court is hereby striking and dismissing Defendant's Fourth Counterclaim that alleges violations of the South Carolina Trade Practices Act. Other than the Dismissal of the Defendant's South Carolina Unfair Trade Practices Act Counterclaim, the prior Order has not been changed. Therefore, the Court's prior Order is hereby supplemented to reflect the following:

This matter came before the Court on December 16, 2024, pursuant to multiple motions filed by both Parties.

Regarding Plaintiff's Motion Pursuant to SCRCP Rule 39(a), Plaintiff's Motion is hereby Denied and this Court will not refer this matter to the Master-in-Equity of Richland County considering the Defendant has asserted compulsory legal counter-claims that go to enforceability of the land sale contract. See Rule 53(b), SCRCP.

Regarding Plaintiff's Motion to Dismiss Counterclaims of Defendant Pursuant to SCRCP Rule 12(b)(6), based on the law of South Carolina, the Court Dismisses Defendant's Second Counterclaim alleging Misappropriation of Confidential Information because the claim does not exist, or is otherwise duplicative of Defendant's First Counterclaim for Breach of Fiduciary Duties of Good Faith, Loyalty, and Confidentiality. The Court has not found any cause of action for Misappropriation of Confidential Information nor were any elements pled by the Defendant. The Court will also Dismiss Defendant's Fourth Counterclaim alleging violations of the South Carolina Unfair Trade Practice's Act based on the fact this case concerns a private transaction that does not affect the public interest. The Defendant may proceed on it's First and Third Counterclaims.

Regarding Plaintiff's Motion to Strike Certain Pleadings in the Amended Answer of Defendant Pursuant to SCRCP Rule 12(f), based on the arguments of the attorneys and the relevant law, Plaintiff's Motion is hereby Granted as to Defendant's Second and Fourth Counterclaims, however, the Motion is Denied as to the rest of Plaintiff's requests.

Regarding Plaintiff's Motion for Protective Order Pursuant to SCRCP Rule 26(c)(1) and (2), the Court Grants this Motion considering that the Court has found it proper to strike and dismiss Defendant's Second and Fourth Counterclaims as stated above. Plaintiff can appropriately respond now, in light of the Court's ruling in this Order.

Regarding Defendant's Motion for Partial Summary Judgment, based on a review of the file, submissions of the Parties, and oral arguments by the attorneys, the Court believes Summary Judgement should be Denied at this point and not revisited until each Party has had a full and fair opportunity to complete discovery. See *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 322, 548 S.E.2d 854, 857, (2001), citing *Baughman v. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).



Richland Common Pleas

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Case Number: 2024CP4000827

Type: Order/Electronic Form 4

So Ordered

Patrick C. Fant, III

Electronically signed on 2025-01-24 16:41:07 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP4000827

Kellum W Allen
PLAINTIFF(S)

Ann Marie Watson
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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This matter is before the Court pursuant to two Motions filed by the Parties requesting this Court to reconsider it's Order filed on January 27, 2025.

Regarding Defendant Ann Marie Watson's Motion to Reconsider the Court's Dismissal of Defendant's Fourth Counterclaim alleging violations of the South Carolina Unfair Trade Practices Act, the Court hereby Denies the Defendant's Motion.

Regarding Plaintiff Kellum Allen's Motion to Reconsider the Court's decision not to dismiss the Defendant's Third Counterclaim alleging Professional Negligence, the Court hereby Denies the Plaintiff's Motion.

It is so ordered.



Richland Common Pleas

Case Caption: Kellum W Allen vs Ann Marie Watson

Case Number: 2024CP4000827

Type: Order/Electronic Form 4

So Ordered

Patrick C. Fant, III

Electronically signed on 2025-03-24 14:24:02 page 3 of 3

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Kellum W. Allen,	)	
	)	
Plaintiff,	)	
	)	
v.	)	SUMMONS
	)	
Ann Marie Watson,	)	(Non-Jury Requested)
	)	
Defendant.	)	
_____	)	

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their office at 140 East Main Street, Lexington, South Carolina, WITHIN THIRTY (30) DAYS after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

DAVIS FRAWLEY, LLC

/s/ James Randall Davis

James Randall Davis, SC Bar No.: 1580
 140 East Main Street, Post Office Box 489
 Lexington, South Carolina 29072
 Phone No.: (803) 359-2512

Lexington, South Carolina
 January 25, 2024

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Kellum W. Allen,	)	
	)	
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	(Non-Jury; Specific Performance)
Ann Marie Watson,	)	
	)	
Defendant.	)	
	)	

Plaintiff, Kellum W. Allen, complaining of the Defendant, alleges as follows:

1. Plaintiff is a citizen and resident of the County of Lexington, State of South Carolina.
2. Defendant is a citizen and resident of the County of Greenville, State of South Carolina.
3. This action is for specific performance of a Land Option entered into by Plaintiff and Defendant on August 15, 2022 involving 17.51 acres, more or less, located in Richland County having TMS#R20700-03-04 (hereinafter referred to as "Subject Property").
4. The jurisdiction of this Court is based on the allegations set forth in paragraphs 1 thru 3 above.
5. The venue of this Court is established by the fact that the above referenced Subject Property is located in the County of Richland, State of South Carolina.
6. Plaintiff alleges that a written Land Option was granted to the Plaintiff to purchase the Subject Property on or before February 15, 2024.
7. Plaintiff alleges the Subject Property, as referenced in the Land Option, is described as follows:

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being near the City of Columbia, in the County of Richland, State of South Carolina, containing 17.51 acres, more or less,

as shown as on a plat prepared by Glenn Associates Surveying, Inc., entitled "CLOSING SURVEY FOR ANN MARIE WATSON," dated April 12, 2010 recorded on May 27, 2010 in Plat Book 1609 at Page 2333 in Richland County, South Carolina. Reference is hereby made to the above mentioned plat for a complete metes and bounds description thereof.

8. Plaintiff alleges that the purchase price was Two Hundred Ten Thousand One Hundred Twenty and no/100 (\$210,120.00) Dollars payable as follows: Five Hundred and no/100 (\$500.00) Dollars at execution of the Land Option and the further payment of Two Hundred Nine Thousand Six Hundred Twenty and no/100 (\$209,620.00) Dollars in cash or by certified or cashier's check at closing.

9. Plaintiff has paid the Five Hundred and no/100 (\$500.00) Dollar payment as referenced in said Land Option.

10. Plaintiff alleges that Defendant was to convey the property to the Plaintiff, his heirs, successors and assigns, in fee simple by proper statutory general warranty deed, free from any and all encumbrances except as herein agreed to and assumed by Purchase.

11. Plaintiff has given written notice to the Defendant of his exercising of the right to purchase said Subject Property and his intention of exercise said purchase of the Subject Property. A letter dated January 3, 2024 was sent to the Defendant, which Defendant has received and acknowledged receipt thereof, and the contents of that letter is hereby incorporated in this Complaint as follows:

Dear Ms. Watson:

This law firm represents Kellum W. Allen. Enclosed is a copy of the Land Option which you executed on August 15, 2022 agreeing to sell to him the 17.51 acres, more or less, parcel of land in Richland County, South Carolina. The purchase price was \$210,120.00. Five Hundred and no/100 (\$500.00) Dollars was paid to you as a down payment in regards to this purchase. Mr. Allen is giving you written notice that he wishes to exercise this Option. Mr. Allen intends to fully comply with the terms of this Option in closing this transaction. Further payment on this Option would be either in cash or by a Cashier's Check as required. This law firm will prepare the closing

documents for the transaction and forward them to you or your attorney, as you so request. The only expense that you would have, per the Option, would be pay for the Deed Stamps on transfer of the property and your proration of real estate taxes for the year of closing.

Please acknowledge receipt of this letter, in writing, and please make contact with this office or have your attorney make contact in regards to setting a closing date. We are suggesting the middle of January of 2024. We would like to hear from you at least by the week of January 8 as to a specific closing in January.

12. Defendant has advised the attorney for the Plaintiff that she will not comply with the terms of the Land Option.

13. Subsequent to the above letter, Plaintiff has sent a letter dated February 5, 2024 to the Defendant confirming that Defendant has advised the attorney for the Plaintiff that she will not comply with the terms of the Land Option.

14. Plaintiff has fully fulfilled all of his present obligations under the written Land Option and will fulfill all future obligations, including paying the agreed upon remaining purchase price upon execution of the deed and the closing on this transaction by the Plaintiff; or, in the alternative, deposit said funds with the Court if necessary.

15. Plaintiff is asking the Court to issue its Order requiring the Defendant to specifically perform under the terms of Land Option and convey the Subject Property to the Plaintiff; or, in the alternative, have the Court vest title in the Subject Property in the Plaintiff pursuant to the South Carolina Rules of Civil Procedure Rule 70.

WHEREFORE, Plaintiff prays:

A. This Court issue its Order to require the Defendant to convey the Subject Property to the Plaintiff per the terms of the Land Option in fee simple by proper statutory general warranty deed, free from any and all encumbrances except as herein agreed to and assumed by Purchaser;

B. For an Order requiring the Defendant to specifically perform under the terms of Land Option and convey the Subject Property to the Plaintiff; or, in the alternative, have the Court vest title in the Subject Property in the Plaintiff pursuant to the South Carolina Rules of Civil Procedure Rule 70; and

C. For such other and further relief as this Court may deem just and proper.

DAVIS FRAWLEY, LLC

/s/ James Randall Davis

James Randall Davis, SC Bar No.: 1580
140 East Main Street, Post Office Box 489
Lexington, South Carolina 29072
Phone No.: (803) 359-2512

Lexington, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kellum W. Allen,

Plaintiff,

v.

Ann Marie Watson,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2024-CP-40-00827

ANSWER AND COUNTERCLAIMS
(Jury Trial Demanded)

TO JAMES RANDALL DAVIS, ESQ. ATTORNEY FOR THE PLAINTIFF:

The Defendant, answering the Complaint and by way of counterclaims, would respectfully show that:

FOR A FIRST DEFENSE
(Qualified General Denial)

1. Each and every allegation of the Complaint not expressly admitted herein is denied.
2. Paragraphs 1 and 2, alleging that the Plaintiff is a citizen and resident of Lexington County and that the Defendant is a citizen and resident of Greenville County, are admitted.
3. Only so much of Paragraph 3 is admitted as can be construed as alleging that the Plaintiff seeks specific performance related to a document dated August 15, 2022 involving 17.51 acres, more or less, in Richland County having TMS# R20700-03-04 (the "Subject Property").
4. Paragraphs 4 and 5, alleging that the jurisdiction of the Court is based on the allegations of Paragraphs 1 through 3 and that venue is proper in Richland County, is admitted.
5. Paragraph 6, alleging that a written land option ("Land Option") was granted to the Plaintiff to purchase the Subject Property on or before February 15, 2024, is denied as alleged because no such document was attached to the Complaint. Furthermore, the document the Defendant believes the Plaintiff is referring to is void and/or voidable for the reasons set forth

below, and the Defendant voided the Land Option by letter dated on or about July 31, 2023, and tendered the return of the Plaintiff's earnest money with a note reading, "Refunded deposit – No Sale." The check was for \$450, which she thought was the full amount of the Plaintiff's deposit. The Plaintiff returned the tendered check on August 23, 2023, without explanation. The Defendant would further show that on March 6, 2024, through counsel, the Defendant tendered the return of the full \$500, which tender the Plaintiff has not accepted.

6. The Defendant admits the legal description of the Subject Property as alleged in ¶
7.

7. Paragraph 8 is denied as alleged, and the Defendant refers the Court to the document itself for its terms.

8. Paragraph 9 is admitted to the extent it can be construed as alleging that the Plaintiff has paid \$500, but the Defendant would show that:

a) implied within the scope of any legal representation agreement, this one included, is the lawyer's promise to advise the client when to obtain independent legal counsel;

b) also implied within the scope of any legal representation agreement, this one included, is the lawyer's promise to treat his client fairly and reasonably and not to use her confidential information for his own benefit;

c) the Plaintiff knew or should have known that inserting into a land option of this sort a refundable down payment in any amount was not customary and was utterly unfair, unreasonable, and unconscionable to his client, the Defendant;

d) the Plaintiff knew or should have known that a down payment of \$500 for a land option of this sort was not customary and was utterly unfair, unreasonable, and unconscionable to his client, the Defendant;

e) the Plaintiff, while serving as the Defendant's divorce lawyer, encouraged her to execute and deliver the Land Option yet never advised her to retain independent counsel to advise her on the fairness and reasonableness of the offer, and the Plaintiff took full advantage of the fact that the Defendant relied on the Plaintiff to know what was customary, fair, and reasonable for such a transaction when, in fact, the Plaintiff was using information the Defendant had entrusted him with in her divorce case to the Plaintiff's personal advantage; and

f) the Plaintiff, while serving as the Defendant's divorce lawyer, encouraged her to execute and deliver the Land Option yet never advised her to retain a real estate broker or appraiser to advise her on the reasonableness of the offer in terms of i) price; ii) the diminution of the per-acre value of the Defendant's adjoining lands; iii) the duration of the Land Option; iv) the difficulties and expense of enforcing the restriction on the disruption of the pet cemetery; v) the Defendant's continued access to the pet cemetery; vi) the advisability of a clause whereby the cost of the Land Option would increase as the exercise of the Land Option were delayed; vii) public interest in the lands in light of public comments made by officials of Richland School District Two regarding the possible construction of a \$140 million high school on lands adjoining those of the Plaintiff and his siblings; viii) the down payment was to be applied to the purchase price; and ix) the advisability of the Land Option being assignable; and the Plaintiff took full advantage of the fact that the Defendant relied on the Plaintiff to know what was customary, fair, and reasonable for such a transaction when, in fact, the Plaintiff was using information the Defendant had entrusted him with in her divorce case to the Plaintiff's personal advantage; and

g) the Plaintiff, while serving as the Defendant's divorce lawyer, encouraged her to execute and deliver a writing that the Plaintiff had drafted yet he knew or should have known was not phrased in terms the Defendant could reasonably understand;

h) the Plaintiff, while serving as the Defendant's divorce lawyer, encouraged her to execute and deliver a writing without stating whether he represented her in that transaction;

i) the Defendant had entrusted the Plaintiff with intimate, personal knowledge about her financial and emotional condition, her assets, her liabilities, her net worth, her liquidity, her debts, her liquidity, her access to liquidity, her negotiating personality and skills, her tolerance for conflict, her level of trust in the Plaintiff, her lack of knowledge of commercial real estate transactions, her access to family support, her children's current needs, the level of support from her family and the reasons for it, and her emotional state over the recent loss of her father; and the Plaintiff used that information to his personal advantage;

j) the Defendant had entrusted the Plaintiff with knowledge of her fractured relationship with her siblings, and the Plaintiff used that information to his personal advantage by proposing to buy land from the Defendant when the Plaintiff knew the siblings, or one or more of them, would be opposed to any such sale; and

k) the Plaintiff had vastly superior knowledge about prospective uses for the Subject Property than did the Defendant, yet he failed to disclose those to her; and

l) the Plaintiff failed to advise the Defendant (his client) that she would not be able to enforce any oral promises he had made to her (such as those about lot density, the pet cemetery, and equestrian amenities) that were not included in the written contract.

9. Paragraph 10 is denied as alleged, and the Defendant refers the Court to the document itself for its terms.

10. Paragraph 11, alleging that the Plaintiff has given written notice to the Defendant of his exercising of a so-called right to purchase the Subject Property and setting out the language of the letter, is admitted, but the Defendant would show that the Plaintiff, as the Defendant's

lawyer, failed to advise her that the Land Option was void or voidable and that the Plaintiff had misappropriated the Defendant's information to his own personal benefit in violation of his duties of good faith, loyalty, and confidentiality.

11. Paragraphs 12 and 13 are admitted to the extent they can be construed as alleging that the Defendant has advised the attorney for the Plaintiff that she will not comply with the Land Option, the reasons being stated above. She would further show that she tendered the return of the down payment.

12. Since the Land Option is void, voidable, and unconscionable, ¶ 14, alleging that the Plaintiff has fulfilled his present obligations and will fulfill all future obligations, is denied; and, further, the Defendant is without information sufficient to form a belief as to the truth or falsity of the allegation that the Plaintiff will fulfill all future obligation or has the ability to do so and therefore denies same.

13. Paragraph 15, asking for an order requiring the Defendant to specifically perform under the terms of the Land Option or have the Court vest title in the Subject Property in the Plaintiff, does not require a response. To the extent a response is required, it is denied, since the Land Option is void or has been voided and is not enforceable.

FOR A SECOND DEFENSE
(Contract Illegal and Therefore Void and Voidable)

14. The preceding paragraphs are incorporated by reference.

15. The Plaintiff was the Defendant's lawyer in a family court matter when he entered into this business transaction with her.

16. The Plaintiff drafted the Land Option.

17. The Plaintiff did not advise Defendant in writing or otherwise of the desirability of seeking advice of independent legal counsel in the transaction and did not give her a reasonable opportunity to seek the advice of independent legal counsel on the transaction.

18. The terms of the Land Option are not fair for the reasons stated above.

19. The Plaintiff did not draft the Land Option in a manner such that the Defendant, the Plaintiff's client, could reasonably understand it.

20. The Plaintiff did not explain to the Defendant that he was not her lawyer with respect to the transaction.

21. The Plaintiff drafted the Land Option in violation of the Plaintiff's common law duties of the utmost good faith, loyalty, and confidentiality and in violation of the South Carolina Rules of Professional Conduct, and the Land Option is therefore illegal and unenforceable.

FOR A THIRD DEFENSE

(Lack of Consideration; and Inadequate Consideration Under the Circumstances)

22. The preceding paragraphs are incorporated by reference.

23. The Land Option was not supported by consideration, since the \$500 was to be held in the Defendant's bank account and was therefore refundable and did not constitute consideration. To the extent the Land Option is deemed to be supported by consideration, the consideration was wholly inadequate under the circumstances, making the Land Option void and unenforceable.

FOR A FOURTH DEFENSE

(Unclean Hands)

24. The preceding paragraphs are incorporated by reference.

25. The Plaintiff has unclean hands with respect to this transaction for the reasons stated above and is not entitled to enforce the Land Option.

BY WAY OF A FIRST COUNTERCLAIM
(Breach of Fiduciary Duties of Good Faith, Loyalty and Confidentiality)

26. All preceding paragraphs are incorporated by reference.

27. The parties are within the jurisdiction of the Court, and venue is proper here in Richland County.

28. In presenting the Land Option to the Defendant, the Plaintiff did not advise the Defendant to seek independent counsel or independent business advice, did not explain that he was not acting as her lawyer in the business transaction, did not present the Land Option to her in a way she could understand, did not share with her that he was intending to combine her property with that of others and offer the combined tracts to a real estate developer for a high density, non-equestrian residential development, did not reveal to her the financial benefit he was obtaining from the transaction, did not explain to her that promises he had made regarding his use for the Subject Property would only be binding on her to the extent they were expressed in the written document, did not explain to her that the \$500 deposit he was leaving her was not remotely adequate or customary for such a land option, did not disclose to her all known information that was significant and material regarding the transaction, did not explain to her how difficult it might be for her to enforce the pet cemetery restriction shown on a plat she had sent him.

29. In so doing, the Plaintiff breached the fiduciary duties he owed to his client, the Defendant, of the utmost good faith, loyalty and confidentiality.

30. The Plaintiff violated his duty not to take advantage of his client, the Defendant, by any misrepresentation or concealment.

31. After the Defendant exercised her lawful right not to honor the illegal contract, the Plaintiff sued the Defendant and recorded a lis pendens against the Subject Property.

32. The Defendant has suffered actual damages as a direct and proximate result of the Plaintiff's breach of fiduciary duties.

33. The Defendant is informed and believes that the Plaintiff willfully engaged in his conduct with callous disregard to the Defendant's rights, and the Defendant is informed and believes she is entitled to a judgment for punitive damages in such an amount as is just and will deter the Plaintiff and other lawyers from entering into business transactions with their clients without first complying with the fiduciary duties they owe to their clients.

BY WAY OF A SECOND COUNTERCLAIM
(Misappropriation of Confidential Information)

34. All preceding paragraphs are incorporated by reference.

35. The Defendant entrusted her personal information to the Plaintiff as described above.

36. The Plaintiff used the Defendant's personal information for his own personal benefit by drafting the Land Option in a way grossly and unfairly favorable to him but knowing the Defendant, who trusted him, would execute it anyway.

37. The Plaintiff presented the ill-gotten Land Option to a third-party real estate developer along with other papers and obtained for himself some unknown benefit, and he remains in wrongful possession of that benefit today.

38. The circumstances under which the Plaintiff acquired a benefit from the real estate developer make it inequitable that the Plaintiff should retain that benefit.

39. The Plaintiff is entitled to an order rescinding the Land Option, imposing a constructive trust upon the benefit the Plaintiff derived from the Land Option, requiring the Plaintiff to account for and to turn over to the Defendant the benefit he has received from the Land

Option, and ordering the Defendant to pay the Defendant such additional sums as are necessary to restore the Defendant to the position she occupied prior to executing the Land Option.

WHEREFORE, having fully answered and asserted her Counterclaims, the Defendant prays:

- A. That this Court deny the Plaintiff any relief whatsoever;
- B. That this Court award the Plaintiff actual damages;
- C. That this Court order that the Land Option be declared rescinded, void and of no force or effect;
- D. That this Court order that the Plaintiff's lis pendens be canceled of record;
- E. That this Court require the Plaintiff to account for and to turn over to the Defendant any benefit he has received from the Land Option and to pay the Defendant the additional sums necessary to restore the Defendant to the position she occupied prior to executing the Land Option;
- F. That this Court award the Defendant punitive damages in such an amount as is just.

Respectfully Submitted,

/s/ Robert P. Wood
Robert P. Wood, SC Bar No. 6206
ROGERS TOWNSEND, LLC
1221 Main Street, Columbia, SC 14th Floor (29201)
Post Office box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@RogersTownsend.com

April 15, 2024.

Attorney for the Defendant

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Kellum W. Allen,)

Civil Action No.: 2024CP4000827

Plaintiff,)

v.)

Ann Marie Watson,)

Defendant.)

**NOTICE OF MOTION AND MOTION
TO STRIKE CERTAIN PLEADINGS
IN THE ANSWER OF DEFENDANT
PURSUANT TO
SCRPC RULE 12(f)**

TO: ROBERT P. WOOD, ESQUIRE, ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE, that the Plaintiff Kellum W. Allen, by and through his undersigned attorneys, will move before the presiding Judge of the Fifth Judicial Circuit, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at the Richland County Judicial Center, 1701 Main Street, Columbia, or at such other place as the Court may designate, for an Order striking certain allegations in the pleadings in the Answer of the Defendant. As to paragraphs 8(a) through 8(l), 10, 15 (which is also denied), 17, 18, 19, 20, and 21 of the Answer, these allegations denote insufficient defense and/or immaterial allegations which are directly related to the first and second Counterclaims of the Defendant which fail to state a proper cause of action. Therefore, pursuant to South Carolina Rules of Civil Procedure Rule 12(f), paragraphs 8(a) through 8(l), 10, 15(which is also denied), 17, 18, 19, 20, and 21 of the Answer, filed against Plaintiff should be stricken.

This Motion is based upon the Pleadings in this matter, statutes, including but not limited to provisions of the South Carolina Rules of Civil Procedure, case law, rules of court, and such other and further authority as the Court may deem appropriate.

DAVIS FRAWLEY, LLC

/s/ James Randall Davis

James Randall Davis, SC Bar No.: 1580
140 East Main Street, Post Office Box 489
Lexington, South Carolina 29072
Phone No.: (803) 359-2512
ATTORNEY FOR THE PLAINTIFF

Lexington, South Carolina
May 14, 2024

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Kellum W. Allen,	)	Civil Action No.: 2024CP4000827
	)	
Plaintiff,	)	
	)	NOTICE OF MOTION AND MOTION
v.	)	TO DISMISS COUNTERCLAIMS
	)	OF DEFENDANT PURSUANT
Ann Marie Watson,	)	TO SCRPC RULE 12(b)(6)
	)	
Defendant.	)	
_____	)	

TO: ROBERT P. WOOD, ESQUIRE, ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE, that the Plaintiff Kellum W. Allen, by and through his undersigned attorneys, will move before the presiding Judge of the Fifth Judicial Circuit, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at the Richland County Judicial Center, 1701 Main Street, Columbia, or at such other place as the Court may designate, for an Order dismissing the Counterclaims of the Defendant. This motion is made on the grounds that Defendant fails to state facts sufficient cause of action against the Plaintiff in her Counterclaims on which relief can be granted in that Defendant is attempting to utilize alleged violations of the South Carolina Professional Conduct act as a basis for civil liability. See Rule 407(7), South Carolina Rules of Professional Conduct. As an additional ground for dismissal of the second Counterclaim, there is no breach of confidence action recognized in South Carolina based on the allegations in said second Counterclaim. Also, any claim for imposing an accounting based on constructive trust, should be dismissed because the accounting is based on a cause of action alleged in the Second Counterclaim which does not exist as a cause of action. Therefore, pursuant to South Carolina Rules of Civil Procedure Rule 12(b)(6), the Counterclaims filed against Plaintiff should be dismissed.

This Motion is based upon the Pleadings in this matter, statutes, including but not limited to provisions of the South Carolina Rules of Civil Procedure, case law, rules of court, and such other and further authority as the Court may deem appropriate.

DAVIS FRAWLEY, LLC

/s/ James Randall Davis

James Randall Davis, SC Bar No.: 1580
140 East Main Street, Post Office Box 489
Lexington, South Carolina 29072
Phone No.: (803) 359-2512
ATTORNEY FOR THE PLAINTIFF

Lexington, South Carolina
May 14, 2024

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kellum W. Allen,

Plaintiff,

v.

Ann Marie Watson,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2024-CP-40-00827

AMENDED ANSWER AND AMENDED
COUNTERCLAIMS
(Jury Trial Demanded)

TO JAMES RANDALL DAVIS, ESQ. ATTORNEY FOR THE PLAINTIFF:

The Defendant, answering the Complaint and by way of Amended Counterclaims, would respectfully show that:

FOR A FIRST DEFENSE
(Qualified General Denial)

1. Each and every allegation of the Complaint not expressly admitted herein is denied.
2. Paragraphs 1 and 2, alleging that the Plaintiff is a citizen and resident of Lexington County and that the Defendant is a citizen and resident of Greenville County, are admitted.
3. Only so much of Paragraph 3 is admitted as can be construed as alleging that the Plaintiff seeks specific performance related to a document dated August 15, 2022 involving 17.51 acres, more or less, in Richland County having TMS# R20700-03-04 (the "Subject Property").
4. Paragraphs 4 and 5, alleging that the jurisdiction of the Court is based on the allegations of Paragraphs 1 through 3 and that venue is proper in Richland County, is admitted.
5. Paragraph 6, alleging that a written land option ("Land Option") was granted to the Plaintiff to purchase the Subject Property on or before February 15, 2024, is denied as alleged because no such document was attached to the Complaint. Furthermore, the document the Defendant believes the Plaintiff is referring to was voidable for the reasons set forth below, and

the Defendant voided the Land Option by letter dated on or about July 31, 2023, and tendered the return of the Plaintiff's deposit with a note reading, "Refunded deposit – No Sale." The Plaintiff returned the tendered check on August 23, 2023, without explanation, and the contract was voided by the Defendant's actions. Defendant would further show that on March 6, 2024, through counsel, the Defendant again tendered the return of the full amount paid for the deposit, \$500, which tender the Plaintiff has not accepted.

6. The Defendant admits the legal description of the Subject Property as alleged in ¶
7.

7. Paragraph 8 is denied as alleged, and the Defendant refers the Court to the document itself for its terms.

8. Paragraph 9 is admitted to the extent it can be construed as alleging that the Plaintiff deposited \$500 with the Defendant, but the Defendant would show that:

a) implied within the scope of any legal representation agreement, this one included, is the lawyer's promise to advise the client when to obtain independent legal counsel and independent business advice;

b) also implied within the scope of any legal representation agreement, this one included, is the lawyer's promise to treat his client fairly and reasonably and not to use her confidential information for his own benefit;

c) the Plaintiff knew or should have known that inserting into a land option of this sort a refundable deposit in any amount was not customary and was utterly unfair, unreasonable, and unconscionable to his client, the Defendant;

d) the Plaintiff knew or should have known that a deposit of \$500 for a land option of this sort was not customary and was utterly unfair, unreasonable, and unconscionable to his client, the Defendant;

e) the Plaintiff, while serving as the Defendant's domestic lawyer, encouraged her to execute and deliver the Land Option yet never advised her to retain independent legal counsel or business advice to advise her on the fairness and reasonableness of the offer, and the Plaintiff took full advantage of the fact that the Defendant relied on the Plaintiff to know what was customary, fair, and reasonable for such a transaction when, in fact, the Plaintiff was using information the Defendant had entrusted him with to the Plaintiff's personal advantage; and

f) the Plaintiff, while serving as the Defendant's domestic lawyer, encouraged her to execute and deliver the Land Option yet never advised her to retain a real estate broker or appraiser or independent counsel to advise her on the reasonableness of the offer in terms of i) price; ii) the diminution of the per-acre value of the Defendant's adjoining lands; iii) the duration of the Land Option; iv) the difficulties and expense of enforcing the restriction on the disruption of the pet cemetery; v) the Defendant's continued access to the pet cemetery; vi) the advisability of a clause whereby the cost of the Land Option would increase as the exercise of the Land Option were delayed; vii) public interest in the lands in light of public comments made by officials of Richland School District Two regarding the possible construction of a \$140 million high school on lands adjoining those of the Plaintiff and his siblings; viii) the down payment was to be applied to the purchase price; and ix) the advisability of the Land Option being assignable. In addition, the Plaintiff took full advantage of the fact that the Defendant relied on the Plaintiff to know what was customary, fair, and reasonable for such a transaction when, in fact, the Plaintiff was using information the Defendant had entrusted him with to the Plaintiff's personal advantage; and

g) the Plaintiff, while serving as the Defendant's domestic lawyer, encouraged her to execute and deliver a writing that the Plaintiff had drafted yet he knew or should have known was not phrased in terms the Defendant could reasonably understand;

h) the Plaintiff, while serving as the Defendant's domestic lawyer, encouraged her to execute and deliver a writing in an unrelated matter without stating whether he represented her in that transaction;

i) the Defendant had entrusted the Plaintiff with intimate, personal knowledge about her financial and emotional condition, her assets, her liabilities, her net worth, her liquidity, her debts, her access to liquidity, her negotiating personality, skills and experience, her tolerance for conflict, her level of trust in the Plaintiff, her lack of knowledge of commercial real estate transactions, her access to family support, her children's current needs, the level of support from her family and the reasons for it, and her emotional state over the recent loss of her father; and the Plaintiff used that information to his personal advantage;

j) the Defendant had entrusted the Plaintiff with knowledge of her fractured relationship with her siblings, and the Plaintiff used that information to his personal advantage by proposing to buy land from the Defendant when the Plaintiff knew the siblings, or one or more of them, would be opposed to any such sale; and

k) the Plaintiff had vastly superior knowledge about prospective uses for the Subject Property than did the Defendant, yet he failed to disclose those to her; and

l) the Plaintiff failed to advise the Defendant (his client) that she would not be able to enforce any oral promises he had made to her (such as those about lot density, the pet cemetery, and equestrian amenities) that were not included in the written contract.

9. Paragraph 10 is denied as alleged, and the Defendant refers the Court to the document itself for its terms.

10. Paragraph 11, alleging that the Plaintiff has given written notice to the Defendant of his exercising of a so-called right to purchase the Subject Property and setting out the language of the letter, is admitted, but the Defendant would show that the Plaintiff, as the Defendant's lawyer, failed to advise her that the Land Option was void or voidable and that the Plaintiff had misappropriated the Defendant's information to his own personal benefit in violation of his duties of good faith, loyalty, and confidentiality.

11. Paragraphs 12 and 13 are admitted to the extent they can be construed as alleging that the Defendant has advised the attorney for the Plaintiff that she will not comply with the Land Option, the reasons being stated above. She would further show that she tendered the return of the \$500 deposit. The Plaintiff further violated his duties to the Defendant by purporting to reject the tender.

12. Since the Land Option is void, voidable, and unconscionable, ¶ 14, alleging that the Plaintiff has fulfilled his present obligations and will fulfill all future obligations, is denied; and, further, the Defendant is without information sufficient to form a belief as to the truth or falsity of the allegation that the Plaintiff will fulfill all future obligations or has the ability to do so and therefore denies same.

13. Paragraph 15, asking for an order requiring the Defendant to specifically perform under the terms of the Land Option or have the Court vest title in the Subject Property in the Plaintiff, does not require a response. To the extent a response is required, it is denied, since the Land Option has been voided and is not enforceable.

FOR A SECOND DEFENSE
(Contract Illegal and Against Public Policy, Therefore Unenforceable)

14. The preceding paragraphs are incorporated by reference.
15. The Plaintiff was the Defendant's lawyer in a family court matter when he initiated discussions regarding and entered into this business transaction with her in a completely unrelated matter.
16. The Plaintiff drafted the Land Option.
17. The Plaintiff did not advise Defendant in writing or otherwise of the desirability of seeking independent legal or business counsel in the transaction and did not give her a reasonable opportunity to seek such independent advice.
18. The terms of the Land Option are not fair for the reasons stated above.
19. The Plaintiff did not draft the Land Option in a manner such that the Defendant, the Plaintiff's client, could reasonably understand it.
20. The Plaintiff did not explain to the Defendant that he was not her lawyer with respect to the transaction.
21. The Plaintiff drafted the Land Option in violation of the Plaintiff's common law duties of the utmost good faith, loyalty, and confidentiality and in violation of the South Carolina Rules of Professional Conduct, and the Land Option is therefore illegal, against the public policy of the State of South Carolina and unenforceable.

FOR A THIRD DEFENSE
(Lack of Consideration; and Inadequate Consideration Under the Circumstances)

22. The preceding paragraphs are incorporated by reference.
23. The Land Option was not supported by consideration, since the \$500 deposit was to be held in the Defendant's bank account and was therefore refundable and did not constitute

consideration. To the extent the Land Option is deemed to be supported by consideration, the consideration was wholly inadequate under the circumstances, making the Land Option voidable and unenforceable, and the Defendant has declared it void and has tendered the return of the \$500 deposit to the Plaintiff.

FOR A FOURTH DEFENSE
(Unclean Hands)

24. The preceding paragraphs are incorporated by reference.

25. The Plaintiff has unclean hands with respect to this transaction for the reasons stated above and is not entitled to enforce the Land Option.

FOR A FIFTH DEFENSE
(Transaction Unfair)

26. The preceding paragraphs are incorporated by reference.

27. The Land Option is not fair, just, or equitable in the ways stated above and for the reasons stated above and was not entered into openly and in an aboveboard manner. Instead, the Land Option was entered into in bad faith through the Plaintiff's concealment, misrepresentation, undue advantage, and oppression and was entered into due to the Defendant's comparative ignorance in business and legal matters and her misplaced trust. Hence, the Plaintiff is not entitled to the remedy of specific performance.

FOR A SIXTH DEFENSE
(Transaction Unconscionable)

28. The preceding paragraphs are incorporated by reference.

29. The Land Option is not fair, as described above.

30. The Plaintiff is a sophisticated attorney and former judge who has drafted or reviewed professionally thousands of contracts and conducted hundreds of negotiations.

31. The Defendant has no formal legal training or experience and has only rarely reviewed a contract or negotiated the terms of one. She knows very little about substantive contract law, the terms normally found in an option contract or contract for the sale of undeveloped real property, or the bargaining process.

32. The Plaintiff's bargaining power is immensely greater than that of the Defendant.

33. The Land Option the Plaintiff presented to the Defendant failed to contain terms the Defendant asked for with respect to the Plaintiff's use of the Subject Property.

34. Because the Land Option was substantively unfair and because the bargaining process was unfair, the Land Option is unconscionable and unenforceable. The Defendant has declared it so, and it is now void.

FOR A SEVENTH DEFENSE
(Estoppel)

35. The preceding paragraphs are incorporated by reference.

36. For the reasons stated above, the Plaintiff should be estopped from asserting any rights he might otherwise have under the Land Option.

BY WAY OF A FIRST COUNTERCLAIM
(Breach of Fiduciary Duties of Good Faith, Loyalty, and Confidentiality)

37. All preceding paragraphs are incorporated by reference.

38. The parties are within the jurisdiction of the Court, and venue is proper here in Richland County.

39. In presenting the Land Option to the Defendant, the Plaintiff did not advise the Defendant to seek independent counsel or independent business advice, did not explain that he was not acting as her lawyer in the business transaction, did not present the Land Option to her in an arm's-length transaction or in a way she could understand, did not share with her that he was

intending to combine her property with that of others and offer the combined tracts to a real estate developer for a high density, non-equestrian residential development, did not reveal to her the financial benefit he was obtaining from the transaction, did not explain to her that promises he had made regarding his use for the Subject Property would only be binding on her to the extent they were expressed in the written document, did not explain to her that the \$500 deposit he was tendering to her was not remotely adequate or customary for such a land option, did not disclose to her all known information that was significant and material regarding the transaction, and did not explain to her how difficult it might be for her to enforce the pet cemetery restriction shown on a plat she had sent him and on which she had conditioned all further transactions regarding the Subject Property.

40. In so doing, the Plaintiff breached the fiduciary duties he owed to his client, the Defendant, of the utmost good faith, loyalty and confidentiality.

41. In presenting the Land Option to the Defendant and accepting her signature on it, the Plaintiff violated his duty not to take advantage of his client, the Defendant, by any misrepresentation or concealment.

42. After the Defendant exercised her lawful right to void the illegal contract, the Plaintiff sued the Defendant and recorded a lis pendens against the Subject Property.

43. The Defendant has suffered actual damages as a direct and proximate result of the Plaintiff's breach of fiduciary duties. Those damages include her loss of profits from her inability to market the Subject Property, loss of profits from her inability to manage the Subject Property for timber and other forest products, loss of profits from her inability to enter into long-term contracts for the use of the Subject Property, loss of profits from her inability to sell the Subject Property for an equestrian-residential development similar to that on Persimmon Fork Road, loss

of tax benefits from placing the Subject Property into a conservation easement, loss of income from her inability to use the Subject Property as collateral for a loan, and otherwise. She also lost the unfettered right to develop or improve the Subject Property as she wished. She also suffered shame, embarrassment, and emotional distress when she realized it was highly likely the Plaintiff had told the real estate developer referred to in ¶ 39 that it was due to the Defendant's actions that the high-density residential development referred to above would be delayed.

44. The Defendant is informed and believes that the Plaintiff willfully engaged in his conduct with callous disregard to the Defendant's rights, and the Defendant is informed and believes she is entitled to a judgment for punitive damages in such an amount as is just and will deter the Plaintiff and other lawyers from entering into business transactions with their clients without first complying with the fiduciary duties they owe to their clients.

BY WAY OF A SECOND COUNTERCLAIM
(Misappropriation of Confidential Information)

45. All preceding paragraphs are incorporated by reference.

46. The Defendant entrusted her personal information to the Plaintiff as described above.

47. The Plaintiff used the Defendant's personal information for his own personal benefit by drafting the Land Option in a way grossly and unfairly favorable to him but knowing the Defendant, who trusted him and was not in a position to exercise independent judgment by virtue of her attorney-client relationship with Plaintiff, would execute it anyway.

48. The Plaintiff presented the ill-gotten Land Option to a third-party real estate developer along with other papers and obtained for himself some unknown benefit, and, on information and belief, he remains in wrongful possession of that benefit today.

49. The circumstances under which the Plaintiff acquired a benefit from the real estate developer make it inequitable that the Plaintiff should retain that benefit.

50. The Defendant is entitled to an order declaring that the Land Option is void, imposing a constructive trust upon the benefit the Plaintiff derived from the Land Option, requiring the Plaintiff to account for and to turn over to the Defendant the benefit he has received from the Land Option, and ordering the Plaintiff to pay the Defendant such additional sums as are necessary to restore the Defendant to the position she occupied prior to executing the Land Option.

51. The Defendant also suffered damages in the form of loss of profits from her inability to market the Subject Property, loss of profits from her inability to manage the Subject Property for timber and other forest products, loss of profits from her inability to enter into long-term contracts for the use of the Subject Property, loss of profits from her inability to sell the Subject Property for an equestrian-residential development similar to that on Persimmon Fork Road, loss of tax benefits from placing the Subject Property into a conservation easement, loss of income from her inability to use the Subject Property as collateral for a loan, and otherwise. She also lost the unfettered right to develop or improve the Subject Property as she wished. She also suffered shame, embarrassment, and emotional distress when she realized it was highly likely the Plaintiff had told the real estate developer referred to in ¶ 39 that it was due to Defendant's actions that the high-density residential development referred to above would be delayed.

BY WAY OF A THIRD COUNTERCLAIM
(Professional Negligence)

52. All preceding paragraphs are incorporated by reference.

53. The Plaintiff has at all relevant times been an attorney practicing law in South Carolina.

54. The Defendant retained the Plaintiff to serve as her attorney in a domestic matter. He served as her attorney in that matter from May 1, 2016 through October 2022.

55. By accepting the Defendant as his client, the Plaintiff assumed duties to her to possess and exercise the same degree of skill, care, learning, communication, and disclosure as would be expected of a reasonable, competent, and trustworthy attorney under the same or similar circumstances. Those duties included, among other things, the duty to inform, consult, and communicate with the client as to a need to retain other counsel if he could not represent her yet knew she needed a lawyer.

56. When the Plaintiff offered to enter into a business transaction with the Defendant, he knew she needed separate legal and business counsel, yet he failed to advise her of that.

57. The Plaintiff acted negligently, carelessly, recklessly, and wantonly in the following particulars:

- a) Failing to render legal services in the form of advice to retain separate counsel with respect to the Land Option;
- b) Failing to disclose to the Defendant that he had a conflict of interest and could not enter into the Land Option without her properly informed, written consent;
- c) Failing to disclose to the Defendant that the Plaintiff was prohibited by South Carolina Rules of Professional Conduct from entering into this transaction unless he had obtained her properly informed, written consent;
- d) Failing to comply with the rules, regulations and statutes governing attorneys' conduct in the State of South Carolina; and
- e) Taking advantage of the Defendant.

58. As a direct and proximate result, the Defendant entered into a business transaction with the Plaintiff where the transaction was unfair to her and grossly favorable and profitable to the Plaintiff, and she has suffered actual damages as a result. Those damages include loss of profits from her inability to market the Subject Property, loss of profits from her inability to manage the Subject Property for timber and other forest products, loss of profits from her inability to enter into long-term contracts for the use of the Subject Property, loss of profits from her inability to sell the Subject Property for an equestrian-residential development similar to that on Persimmon Fork Road, loss of tax benefits from placing the Subject Property into a conservation easement, loss of income from her inability to use the Subject Property as collateral for a loan, and otherwise. She also lost the unfettered right to develop or improve the Subject Property as she wished. She also suffered shame, embarrassment, and emotional distress when she realized it was highly likely the Plaintiff had told the real estate developer referred to in ¶ 39 that it was due to the Defendant's actions that the high-density residential development referred to above would be delayed.

BY WAY OF A FOURTH COUNTERCLAIM
(Violation of the South Carolina Unfair Trade Practices Act)

59. All preceding paragraphs are incorporated by reference.

60. The Plaintiff is an attorney who at all relevant times has been engaged in trade or commerce in South Carolina. He has committed, participated in, directed, or authorized the commission of the acts described below, and he is the one who made the decisions to commit those unlawful acts.

61. As described above, the Plaintiff enticed the Defendant to enter into the business transaction with him where he knew that the Defendant was his client, that she looked up to him as her trusted attorney, that she did not have separate counsel for the transaction, and that he had superior knowledge about impact of a new high school being built nearby.

62. The Plaintiff's actions constitute unfair or deceptive acts or practices in the conduct of trade or commerce in South Carolina.

63. The Plaintiff's actions are capable of repetition because he is a practicing attorney who accepts cases from the general public and from family members.

64. The Plaintiff's actions have also actually been repeated. Specifically, on information and belief, the Plaintiff and three of his law partners entered into a business transaction with a client named Dial Rawl and tried to enforce the contract despite the fact that the Plaintiff and his law partners had breached their fiduciary duties to him in entering into that contract without full disclosure and written, informed consent. The Plaintiff dropped his claims against Mr. Rawl shortly after Mr. Rawl filed his lawsuit for violation of the South Carolina Unfair Trade Practices Act. See Lexington County Civil Action No. 2000-CP-32-0248.

65. The Plaintiff's actions are also capable of repetition because he continues to practice law in South Carolina, represents naïve, uninformed, and trusting clients, owns property with other relatives in Richland County, and remains willing to conduct business with those relatives and clients.

66. The Plaintiff's actions affect the public interest in that they have reduced the public's confidence in the South Carolina justice system and the South Carolina Bar.

67. The Plaintiff's actions also affect the public interest in that they are violations of the South Carolina Rules of Professional Conduct and not merely violations of common law fiduciary duties.

68. The Plaintiff's actions have cost the Defendant an ascertainable sum of money in the form of loss of profits from her inability to market the Subject Property, loss of profits from her inability to manage the Subject Property for timber and other forest products, loss of profits

from her inability to enter into long-term contracts for the use of the Subject Property, loss of profits from her inability to sell the Subject Property for an equestrian-residential development similar to that on Persimmon Fork Road, loss of tax benefits from placing the Subject Property into a conservation easement, loss of income from her inability to use the Subject Property as collateral for a loan, and otherwise. She also lost the unfettered right to develop or improve the Subject Property as she wished. She also suffered shame, embarrassment, and emotional distress when she realized it was highly likely the Plaintiff had told the real estate developer referred to in ¶ 39 that it was due to the Defendant's actions that the high-density residential development referred to above would be delayed.

69. The Plaintiff's actions were committed willfully in that the Plaintiff took his actions in knowing violation of the law. He had done this sort of thing before with Mr. Rawl and settled his case with Mr. Rawl. The Plaintiff is also a lawyer and knows the law of unfair trade practices, the law of fiduciary duties, and the restrictions on lawyers transacting business with a client. He also knows the reasons for those rules.

70. The Defendant is informed and believes she is entitled, as a direct and proximate result of Plaintiff's conduct, to judgment against the Plaintiff for actual damages, treble damages and attorney's fees and costs incurred.

WHEREFORE, having fully answered the Complaint and asserted her Amended Counterclaims, the Defendant prays:

A. That this Court deny the Plaintiff any relief whatsoever;

B. That this Court award the Defendant actual damages, punitive damages, treble damages, attorney's fees, and costs;

C. That this Court order that the Land Option be declared rescinded, void and of no force or effect;

D. That this Court order that the Plaintiff's lis pendens be canceled of record; and

E. That this Court require the Plaintiff to account for and to turn over to the Defendant any benefit he has received from the Land Option and to pay the Defendant the additional sums necessary to restore the Defendant to the position she occupied prior to executing the Land Option; and

F. That this Court grant the Defendant such other and further relief as is just and proper.

/s/ Robert P. Wood

Robert P. Wood, SC Bar No. 6206

ROGERS TOWNSEND, LLC

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Columbia, SC 29202

(803) 771-7900

Robert.Wood@RogersTownsend.com

June 12, 2024.

Attorney for the Defendant

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Kellum W. Allen,	)	Civil Action No.: 2024CP4000827
	)	
Plaintiff,	)	
	)	NOTICE OF MOTION AND MOTION
v.	)	TO DISMISS COUNTERCLAIMS
	)	OF DEFENDANT PURSUANT
Ann Marie Watson,	)	TO SCRPC RULE 12(b)(6)
	)	
Defendant.	)	
	)	

TO: ROBERT P. WOOD, ESQUIRE, ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE, that the Plaintiff Kellum W. Allen, by and through his undersigned attorneys, will move before the presiding Judge of the Fifth Judicial Circuit, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at the Richland County Judicial Center, 1701 Main Street, Columbia, or at such other place as the Court may designate, for 1701 Main Street, Columbia, or at such other place as the Court may designate, for an Order dismissing the Counterclaims of the Defendant.

This motion is made on the grounds that Defendant fails to state facts sufficient to state a cause of action against the Plaintiff in her Counterclaims on which relief can be granted in that Defendant is attempting to utilize alleged violations of the South Carolina Professional Conduct act as a basis for civil liability. See Rule 407(7), South Carolina Rules of Professional Conduct. As an additional ground for dismissal of the Second Counterclaim, there is no breach of confidence action recognized in South Carolina based on the allegations in said second Counterclaim. Also, any claim for imposing an accounting based on constructive trust should be dismissed because the accounting is based on a cause of action alleged in the Second Counterclaim which does not exist as a cause of action.

Further, Plaintiff's Third Counterclaim should be dismissed in that she alleges professional negligence of the Plaintiff and pursuant to *SC Code Ann. §15-36-100, et seq.*, when the allegation of professional negligence are alleged, the party that is alleging such negligence is contemporaneously to file an affidavit of an expert specifying negligent act(s) or omission(s) to which the Defendant failed to submit.

In addition, the Defendant's allegations in the Fourth Counterclaim are duplicate to the allegations in the Third Counterclaim and since the Third Counterclaim does not state a cause of action as to the reasons set forth in the Third Counterclaim, there is no cause of action in the Fourth Counterclaim. Also, as to the Fourth Counterclaim, Defendant has failed to properly plead the necessary allegations for the elements of public harm and repetitive action which are mandatory elements of an action for Unfair Trade Practice Act.

Further, the allegations in the Fourth Counterclaim are void of the allegations required by the definition of trade and commerce in *SC Code Ann. §39-5-10(b)*.

For the causes set forth above, all Counterclaims of the Defendant should be dismissed pursuant to South Carolina Rules of Civil Procedure Rule 12(b)(6).

This Motion is based upon the Pleadings in this matter, statutes, including but not limited to provisions of the South Carolina Rules of Civil Procedure, case law, rules of court, and such other and further authority as the Court may deem appropriate.

DAVIS FRAWLEY, LLC

/s/ James Randall Davis

James Randall Davis, SC Bar No.: 1580
140 East Main Street, Post Office Box 489
Lexington, South Carolina 29072
Phone No.: (803) 359-2512
ATTORNEY FOR THE PLAINTIFF

Lexington, South Carolina
June 27, 2024

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kellum W. Allen,

Plaintiff,

v.

Ann Marie Watson,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2024-CP-40-00827

**DEFENDANT'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

TO JAMES RANDALL DAVIS, ESQ., ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that on the tenth day after service hereof or as soon thereafter as counsel can be heard and at such place and time as set by the court, the Defendant will move the court pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for summary judgment as to the Plaintiff's demand for specific performance on the basis that there is no genuine issue of material fact and the Defendant is entitled to judgment as a matter of law.

Specifically, the Land Option was voidable when executed because it was drafted by the Defendant's own lawyer, who violated his fiduciary duties to his client (the Defendant) by failing to inform her of her right to be represented in the transaction by independent counsel and the Defendant thereafter declared the Land Option void and tendered the return of the Plaintiff's earnest money security deposit.

Furthermore, the Plaintiff violated Rule 1.8 of the South Carolina Rules of Professional Conduct by entering into the business transaction with the Defendant, his client, without first (a) advising her in writing of the desirability of seeking the advice of independent legal counsel on the transaction, (b) giving her a reasonable opportunity to seek the advice of independent legal counsel on the transaction, and (c) obtaining the Defendant's informed consent in writing as to the

lawyer's role in the transaction, including whether the lawyer represented the client in the transaction, and any contract a lawyer enters into in violation of the Rules of Professional Conduct is voidable as a matter of law, and the Defendant has voided the Land Option and tendered the return of the Plaintiff's earnest money security deposit.

Furthermore, the Plaintiff has the burden of proving he is entitled to specific performance, and he cannot show the Land Option is fair, just, and equitable since it is not supported by consideration.

Furthermore, even if the Land Option was not voidable for lack of consideration, as a matter of law, a refundable deposit of \$500 for an 18-month land option is not fair, just and equitable under the undisputed facts and circumstances of this case.

This motion is based upon the pleadings, the Affidavit of Desa Ballard, the Affidavit of Ann Marie Watson (and exhibits attached thereto, including the Land Option), the laws of the State of South Carolina, a memorandum of law to be submitted in due course, and upon such other and further matters as may be properly submitted to the court.

/s/ Robert P. Wood
Robert P. Wood, SC Bar No. 6206
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September 6, 2024

Attorney for the Defendant

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kellum W. Allen,

Plaintiff,

v.

Ann Marie Watson,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2024-CP-40-00827

DEFENDANT'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S MOTIONS

- a. To Strike Demand For Jury Trial
- b. To Dismiss Counterclaims
- c. For Protective Order

The Plaintiff has filed numerous motions so far in this case. They should all be denied.

The Defendant's Motion for Partial Summary Judgment is briefed separately.

Background

This is a lawsuit by a lawyer against his former client. In his suit, he asks the court for specific performance – to force his then-current client¹ to honor a Land Option he (the lawyer) drafted and instructed her (the client) to sign, yet never advised his client (in writing or otherwise) to have the proposed Land Option reviewed by an independent lawyer. And it gets worse, as we will see.

The Motion to Refer Should be Denied

Plaintiff filed this suit on February 7, 2024, and Defendant served an Answer and Counterclaims on April 15, demanding a trial by jury on all issues. In response, Plaintiff filed a Motion pursuant to Rule 39(a) to refer the case to the Master-in-Equity. Plaintiff says the basis for his motion is that the “main purpose” of the “matter” is specific performance of the Land Option. What the “main purpose” of Plaintiff's Complaint is, however, is not the test of whether

¹ Plaintiff was representing Defendant in her family court matter, which included equitable distribution of real property that was the subject of the requested Land Option.

Defendant is entitled to a jury trial. The test is whether she has asserted any legal, compulsory counterclaims. And because she has, she is entitled to a jury trial.

Defendant's Return to the Motion pointed out that she had asserted legal compulsory counterclaims (for actual and punitive damages for breach of fiduciary duty and for equitable relief for misappropriation of her confidential information) for which Defendant was constitutionally entitled to a trial by jury.

Before the motion could be heard, Defendant filed an Amended Answer and Amended Counterclaims that included the original counterclaims for breach of fiduciary duty and misappropriation of her confidential information but added counterclaims for damages for Misappropriation of Confidential Information and Professional Negligence and for damages and treble damages for violation of the South Carolina Unfair Trade Practices Act.

Plaintiff did not file a new motion to refer, but he did not withdraw it, either.

The Motion to Refer is Moot

In *Schein v. Lamar*, 284 S.C. 252, 255, 325 S.E.2d 573, 574 (Ct. App. 1985), the South Carolina Court of Appeals held that since Plaintiff's first amended complaint had been superseded by the second amended complaint, it was no longer the operative pleading in the case. "Thus, any [previous] questions as to the sufficiency of the First Amended Complaint are now moot." *Id.* The same would apply to the original counterclaim in this case: It has been superseded by the Amended Answer and Amended Counterclaims, and the motion to refer is moot.

Hence, if Plaintiff desired to keep his motion to refer in place after Defendant filed her Amended Answer and Amended Counterclaims, he should have filed a new motion to refer the case to the Master.

Defendant has a Right to a Jury Trial on Her Compulsory Legal Counterclaims

Assuming the Court decides to treat the motion to refer as not being moot, the case should not be referred anyway.

Plaintiff claims this case should be tried by non-jury by the Master-in-Equity because the “main purpose of this matter is specific performance of the Land Option.” That is simply not the question. The question is whether the Amended Counterclaims are legal and compulsory, and they are.

The South Carolina Supreme Court has held that “both plaintiffs and defendants have a right to a jury trial of issues raised in a compulsory legal counterclaim interposed in an equitable action.” *Johnson v. S.C. Nat’l Bank*, 292 S.C. 51, 54, 354 S.E.2d 895, 896 (1987). Specifically, “If the complaint is equitable and the counterclaim legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaim.” *Id.* at 56, 354 S.E.2d at 897. The Supreme Court laid out the analysis this way:

- (a) The trial judge may, pursuant to Rule 42(b), order separate trials of the legal and equitable claims, or may order the claims tried in a single proceeding.
- (b) If separate trials are ordered, the judge must determine which issues are to be tried first. **If there are factual issues common to both claims, absent the ‘most imperative circumstances,’** *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 79 S. Ct. 948, 3 L. Ed. (2d) 988 (1959), **the ‘at law’ claim must be tried first.** If there are no common factual issues, it is within the trial judge's discretion which claim will be tried first.
- (c) **If the claims are to be tried in a single proceeding and there are factual issues common to both claims, the jury shall first determine the legal issues.** The court may

then determine the equitable claims, but **the jury's determination of common factual issues shall be binding upon the court.**

Id. (emphasis added).

The counterclaims for damages for Breach of Fiduciary Duty, Professional Negligence, and Unfair Trade Practices are no doubt legal counterclaims. (A suit for damages for breach of fiduciary duty is one at law. *Jordan v. Holt*, 362 S.C. 201, 205, 608 S.E.2d 129, 130 (2005)(holding that a cause of action seeking punitive damages for breach of fiduciary duty was at law); *Corley v. Ott*, 326 S.C. 89, 92, 485 S.E.2d 97, 99 n. 1 (1997)(“An action for breach of fiduciary duty is an action at law. . .”) . A suit for damages for misappropriation of confidential information is one at law. *Wilson v. Gandis*, 430 S.C. 282, 844 S.E.2d 631 (2020)(holding that an action for money damages for misappropriation of trade secrets was an action at law.) . A suit for damages and treble damages under the Unfair Trade Practices Act is one at law. *S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 800 S.E.2d 488 (Ct. App. 2017)).

To be “compulsory” counterclaims, they have to have arisen “out of the transaction or occurrence that is the subject matter of the opposing party's claim and [do] not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.” Rule 13(a), SCRCPP; and *Deutsche Bank Nat'l Trust Co. v. Estate of Houck*, 440 S.C. 409, 892 S.E.2d 280 (2023) (rejecting prospectively the “logical relationship” test of *North Carolina Federal Savings & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 517-18, 381 S.E.2d 903, 905 (1989)).

Here, Defendant’s counterclaims did in fact arise out of the same transaction or occurrence as the Land Option. In fact, they are based on the Land Option and the way Plaintiff manipulated Defendant into signing it and how, while negotiating the Land Option, Plaintiff used his own client’s confidential information to his personal advantage. This is laid out in detail in ¶8

of her Amended Answer (which is incorporated into the Amended Counterclaims) and in each of her Amended Counterclaims. It is also covered in Defendant's Affidavit and in the affidavit of her expert witness, Desa Ballard.

In short, the allegations of the Amended Counterclaims, if true, impact the very enforceability of the Land Option and how Defendant was damaged by it, so Defendant is entitled to a jury trial. *See* SC Const. Art. I § 14 and SCRCP 38(b). After the jury returns its verdict, the Court may rule on any equitable claims or defenses.

Motion to Strike Specific Allegations from the Original Answer and Counterclaims

Plaintiff filed a motion to strike paragraphs 8(a) through 8(l), 10, 15, 17, 18, 19, 20, and 21 of her Answer. Plaintiff did not file a similar motion after Defendant filed her Amended Answer and Amended Counterclaims. Because the Amended Answer and Amended Counterclaims are now the operative pleadings, that motion is moot, as discussed at the beginning of this brief.

Motion to Dismiss Counterclaims

After Defendant filed her Amended Answer and Amended Counterclaims, Plaintiff filed a motion to dismiss them.² We will address each basis separately.

1. Applicability of the Rules of Professional Conduct

Plaintiff first claims Defendant is using the Rules of Professional Conduct as a basis for civil liability, citing Rule 407[7]. Rule 407[7] reads in relevant part:

Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation.

² Plaintiff did not withdraw her similar motion addressed to the original Answer and Counterclaims, but it appears this new motion does in fact serve to replace it. If we are wrong, we ask permission to brief the original motion.

The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

Rule 407[7], SC Rules of Professional Conduct.

Plaintiff seems to want the Court to rule that he is immune from civil liability for breach of fiduciary duty, stealing confidential information, professional negligence, and violation of the South Carolina Unfair Trade Practices Act if his breach happens also to be a violation of the Rules of Professional Conduct. He is wrong.

For example, Rule 1.1 requires a lawyer to provide competent representation. If Plaintiff's position were right, no lawyer could be sued for professional negligence. Rule 1.3 requires a lawyer to act with reasonable diligence and promptness, so under Plaintiff's view, a lawyer couldn't be sued for failing to file a timely notice of appeal. Rule 1.4 requires a lawyer to comply with reasonable requests for information. Rule 1.6 prohibits a lawyer from revealing information related to the representation of a client. The list goes on and on.

Defendant has retained South Carolina's premier expert in the subjects of legal ethics, professional responsibility and legal malpractice, Desa Ballard. Her affidavit is on file with the Court. She has focused her practice for more than 35 years on professional responsibility and ethics, representing lawyers, judges, law firms, and persons seeking admission to the Bar and litigation regarding law firm break-ups, associate departure and related matters. Ballard Aff. ¶ 4.

She has opined that the Land Option "is likely void as against public policy as the product of a breach of fiduciary duty and over-reaching by Plaintiff as to his obligations to Ann

Marie.” Ballard Aff. ¶ 33. She has further opined, “At all times, Plaintiff had to know that the land option contract was against public policy, as the product of an unfair business transaction between a client and her lawyer the result of duress, and a violation of his fiduciary duties to Ann Marie.” *Id.* ¶ 42. And she further opined:

51. In my professional opinion to a reasonable degree of certainty, Plaintiff deviated from the standard of care owed by attorneys to their clients when he:

h. Continued to attempt to enforce the land option contract despite knowing that it was against public policy, had been voided, and was the result of a violation of his fiduciary duty to Ann Marie, arising from the confidential relationship of attorney-client that existed between them at the time Plaintiff initiated a discussion about his interest in purchasing the subject property.

53. It is also my opinion that Plaintiff has breached his fiduciary duty to Ann Marie, separately from the duties he owed her as her lawyer. Because Plaintiff and Ann Marie had a familial relationship and Plaintiff undertook her legal representation when she was especially vulnerable, then exploited it for his own purposes separate and apart from the duties he owed to Ann Marie as her counsel, the breach of his fiduciary duties to Ann Marie are extreme in nature.

Attorney Ballard did not stop with breaches of common law fiduciary duty. She has opined that Plaintiff failed to meet an attorney’s standard of care. She wrote:

49. The standard of care for an attorney requires the attorney to act, without exception, in the best interests of the client. Using the existence of the attorney-client relationship to initiate a land sale proposal during the time of the representation requires that the attorney give full disclosure to his client of the possibility or actual conflict between them, and he is required to disclose in writing his advice for the client to seek independent counsel regarding the transaction.

50. Plaintiff did none of that.

And then in Paragraph 51 she provided detail after detail of how Plaintiff further violated the standard of care:

51. In my professional opinion to a reasonable degree of certainty, Plaintiff deviated from the standard of care owed by attorneys to their clients when he:

- a. Initiated discussions with Ann Marie about a business transaction intended to benefit him personally without advising her to seek independent counsel while he was also representing her.
- b. Failing to advise Ann Marie to get independent advice regarding the enforceability of the deed restriction in her deed to the 17.51 acres, the potential tax consequences, the price, burden of future zoning issues, the financial terms of the land option contract, and/or failing to advise her to get independent advice on those and other topics.
- c. Continuing discussions with Ann Marie about a business transaction intended to benefit him personally after Ann Marie shared emotional and heart-wrenching information about her feelings related to the property in the context of the attorney-client relationship between Ann Marie and Plaintiff, which should have alerted Plaintiff to the fact that Ann Marie was under emotional pressure and needed independent advice in order for her to engage in an arms-length transaction regarding the property.
- d. Took advantage of Ann Marie, who was his client and to whom he owed the highest duty of care and loyalty.
- e. Departed from his duty of loyalty, fairness by using Ann Marie, who was his client, to enrich himself and his family to Ann Marie's detriment.
- f. Failing to disclose to Ann Marie the plans Plaintiff had with his family to add Ann Marie's land to larger parcels owned by Plaintiff and his family to make a large and lucrative land deal with Mungo Homes.
- g. Departed from his duty of loyalty, fairness and reason after Ann Marie verbally voided the land option contract upon learning that Plaintiff intended to violate his promises to Ann Marie regarding the use that would be made of the property after Plaintiff resold the property to Mungo Homes.
- h. Continued to attempt to enforce the land option contract despite knowing that it was against public policy, had been voided, and was the result of a violation of his fiduciary duty to Ann Marie, arising from the confidential relationship of attorney-client that existed between them at the time Plaintiff initiated a discussion about his interest in purchasing the subject property.
- i. In failing to fully disclose to Ann Marie his intentions regarding the property prior to preparing a land option contract for her signature.
- j. In failing to properly advise Ann Marie regarding the legal significance of terms used in the land option contract and failing to disclose his own personal

plans to enrich himself and his family by using Ann Marie's property as part of a larger sale to Mungo Homes.

- k. In refusing to accept the return of a deposit of money that was never actually paid to Ann Marie, since the land option contract prohibited her from accepting the \$500.00 payment as her own funds.
- l. In failing to advise Ann Marie to seek real estate professional assistance prior to engaging with Plaintiff in a transaction that affected her ownership of real property, especially since Plaintiff was acting as Ann Marie's legal counsel at the time.
- m. In using his knowledge of Ann Marie's assets, which he learned in the course and scope of his representation of her in the domestic action, to his own advantage and causing harm to Ann Marie.
- n. In preparing a land option contract that gave no consideration to Ann Marie.
- o. In attempting to enforce a void land option contract that he knew or should have known was void, especially after Ann Marie voided it.
- p. Failing to ensure Ann Marie had independent legal advice and professional real estate advice prior to entering into the land option contract.
- q. In depriving Ann Marie of the value of her real estate through wrongful acts;
- r. In taking action to devalue the real property that Ann Marie did not contract to sell;
- s. In using client information to profit for himself individually, which also harmed his client, Ann Marie.

So, no, Defendant is not invoking the Rules of Professional Conduct as procedural weapons. The Common Law of the State of South Carolina is sufficient.

And we ask the Court not to forget the last line of Rule 407[7]:

Since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule **may be evidence of breach of the applicable standard of conduct.**

(emphasis added).

2. Cause of Action for Breach of Confidence

We are, frankly, bewildered by Plaintiff's position that "there is no breach of confidence action recognized in South Carolina based on the allegations in said second Counterclaim."

In South Carolina, where legal advice of any kind is sought from a professional legal adviser in his capacity as such, the communications relating to that purpose made in confidence by the client are at [her] instance permanently protected from disclosure by himself or by the legal adviser, except the protection be waived. *Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 293, 692 S.E.2d 526, 530 (2010).

The information Defendant disclosed to Plaintiff while she was his client belonged to her and not to him.

A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience is bound to act in good faith and with due regard to the interests of the one imposing the confidence. To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant. *See generally Moore v. Moore*, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004) (discussing the elements comprising a breach of fiduciary duty claim). Our courts have long recognized that an attorney-client relationship is, by its very nature, a fiduciary relationship." *Spence v. Wingate*, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011).

RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-336, 732 S.E.2d 166 (2012) (internal citations omitted).

In *Burgess v. American Cancer Society, So. Car. Div., Inc.*, a client provided confidential information to her attorney, and the attorney passed that along to a third party, to the Plaintiff's detriment. Although barred by the statute of limitations, by Court of Appeals viewed the allegation as actionable.

3. Cause of Action for Accounting Allegations as Otherwise Actionable

Plaintiff claims Defendant is not entitled to an accounting of the profits he, her lawyer, made by using her confidential information for his personal gain.

No doubt Defendant has alleged that she and Plaintiff had a confidential relationship.

Defendant alleges in ¶ 8:

i) the Defendant had entrusted the Plaintiff with intimate, personal knowledge about her financial and emotional condition, her assets, her liabilities, her net worth, her liquidity, her debts, her access to liquidity, her negotiating personality, skills and experience, her tolerance for conflict, her level of trust in the Plaintiff, her lack of knowledge of commercial real estate transactions, her access to family support, her children's current needs, the level of support from her family and the reasons for it, and her emotional state over the recent loss of her father; and the Plaintiff used that information to his personal advantage; [and]

j) the Defendant had entrusted the Plaintiff with knowledge of her fractured relationship with her siblings, and the Plaintiff used that information to his personal advantage by proposing to buy land from the Defendant when the Plaintiff knew the siblings, or one or more of them, would be opposed to any such sale.

Defendant alleges in ¶ 50 that as a direct result of Plaintiff's use of that confidential information for his own, personal benefit, the court should impose a constructive trust upon the benefit Plaintiff derived from the Land Option, requiring the Plaintiff to account for and to turn over to Defendant the benefit he has received from the Land Option, and ordering Plaintiff to pay Defendant such additional sums as are necessary to restore Defendant to the position she occupied prior to executing the Land Option. (She also alleges, in ¶ 51, that she suffered damages in numerous respects.)

A confidential or fiduciary relationship exists when one reposes special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence. *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987).

A constructive trust arises whenever a party has obtained money that does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it, as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty. *Wolfe v. Wolfe*, 215 S.C. 530, 56 S.E.2d 343 (1949). A constructive trust arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust. *Whitmire v. Adams*, 273 S.C. 453, 257 S.E.2d 160 (1979).

It is also said that a constructive trust operates against one who by fraud, actual or constructive, by duress or abuse of confidence, by commission of a wrong or by any form of unconscionable conduct, artifice, concealment, or questionable means and against good conscience, either has obtained, or holds the right to property which he ought not in equity and good conscience hold and enjoy. *PCS Nitrogen, Inc. v. Ross Dev. Corp.*, 126 F. Supp. 3d 611 (D.S.C. 2015), dismissed *sub nom. PCS Nitrogen Inc. v. Ross Dev. Corp. Rivers*, No. 16-1540 (L), 2018 WL 2111081 (4th Cir. 2018).

An accounting is a judicial remedy designed to prevent unjust enrichment by disclosing and requiring the relinquishment of profits received as the result of a breach of a confidential or fiduciary duty. *Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 382 S.E.2d 915 (1989).

Yes, certainly Defendant has stated a cause of action for an accounting based on Plaintiff's misappropriation of her confidential information.

4. Affidavit of Expert Supplied, Though not Needed

Plaintiff claims Defendant's counterclaim for professional negligence should be dismissed because she filed it without contemporaneously filing an affidavit of an expert specifying negligent acts or omissions.

We assume Plaintiff is referring to SC Code § 15-36-100. That statute creates duties for Plaintiffs and **not for counterclaiming defendants**. It reads:

(A) In an action for damages alleging professional negligence against [an attorney at law]..., the **plaintiff** must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. (Emphasis added.)

We are not aware of any statute that requires defendants asserting counterclaims to file a contemporaneous affidavit. In fact, such a requirement would be nonsensical and violate due process and equal protection rights. This case presents a good example of that.

Plaintiff was Defendant's lawyer. Plaintiff knew his professional obligations far better than his client did, and he had three years to bring this lawsuit. Defendant had 30 days to serve her Answer and Counterclaim. At least in cases involving professionals who are lawyers, the court should honor the plain terms of the statute (which is in derogation of the common law anyway) and not play like the General Assembly meant something it did not say.

Rules for statutory interpretation are laid out succinctly in *16 Jade Streets, LLC v. R. Design Constr. Co.*, 398 SC 338, 728 S.E.2d 448 (2012):

Where the words in the statute are clear and unambiguous, we cannot give them a different meaning. If the statute is in derogation of a common law right, it must be strictly construed and not extended in application beyond clear legislative intent. Therefore, a statute is not to be construed in derogation of common law rights if another interpretation is reasonable. However, the statute must also be read as a whole and in harmony with its purpose. In that vein, a statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. Similarly, we are to construe a statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous. In the end, however, we will reject any interpretation which would lead to a result so absurd that the General Assembly could not have intended it.

16 Jade St. at 347 (internal citations and quotation marks omitted).

Courts have no more right to change “plaintiff” to “defendant” than they do to change “yes” to “no.” See *Lemmons v. Maced. Water Works, Inc.*, 431 S.C. 186; *Taylor v. Taylor*, 439 S.C. 272; and *Key Corporate Capital, Inc. v. County of Beaufort*, 373 S.C. 55, where it is established that if the language of a statute is plain, unambiguous, and conveys a clear and definite meaning, the court must apply the statute according to its literal meaning without resorting to forced construction to change its scope.

5. The Fourth Counterclaim is not a Duplicate of the Third Counterclaim

Plaintiff claims the Fourth Counterclaim (Unfair Trade Practices Act) is identical to the Third Counterclaim (Professional Negligence) and therefore should be dismissed for the same reasons as the Third.

For starters, the Third Counterclaim states a perfectly good cause of action for Professional Negligence, and we once again invite the Court to take a look at the Affidavit of Desa Ballard.

Secondly, the causes of action are very different.

A claim for professional negligence contains four elements: 1) the existence of an attorney-client relationship; 2) breach of a duty by the attorney; 3) damage to the client; and 4) proximate causation of the client's damages by the breach. *Smith v. Haynsworth*, 322 S.C. 433, 435, 472 S.E.2d 612 (1996).

A claim for violation of the South Carolina Unfair Trade Practices Act contains three elements: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Maybank v.*

BB&T Corp., 416 S.C. 541, 569, 787 S.E.2d 498 (2016).

The causes of action are entirely different.

6. Defendant pled public harm or repetitive action

Plaintiff claims Defendant failed to plead what he calls the “elements of public harm and repetitive action,” which he claims are mandatory elements of an action for violation of the Unfair Trade Practices Act.

Defendant alleged:

60. The Plaintiff is an attorney who at all relevant times has been engaged in trade or commerce in South Carolina. He has committed, participated in, directed, or authorized the commission of the acts described below, and he is the one who made the decisions to commit those unlawful acts.

61. The Plaintiff’s actions constitute unfair or deceptive acts or practices in the conduct of trade or commerce in South Carolina.

63. The Plaintiff’s actions are capable of repetition because he is a practicing attorney who accepts cases from the general public and from family members.

64. The Plaintiff’s actions have also actually been repeated. Specifically, on information and belief, the Plaintiff and three of his law partners entered into a business transaction with a client named Dial Rawl and tried to enforce the contract despite the fact that the Plaintiff and his law partners had breached their fiduciary duties to him in entering into that contract without full disclosure and written, informed consent. The Plaintiff dropped his claims against Mr. Rawl shortly after Mr. Rawl filed his lawsuit for violation of the South Carolina Unfair Trade Practices Act. See Lexington County Civil Action No. 2000-CP-32-0248.

65. The Plaintiff’s actions are also capable of repetition because he continues to practice law in South Carolina, represents naïve, uninformed, and trusting clients, owns property with other relatives in Richland County, and remains willing to conduct business with those relatives and clients.

66. The Plaintiff’s actions affect the public interest in that they have reduced the public’s confidence in the South Carolina justice system and the South Carolina Bar.

"To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or

deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Maybank v. BB&T Corp.*, 416 S.C. 541, 787 S.E.2d 498 (2016).

One way (but not the only way) a plaintiff can prove that an allegedly unfair or deceptive act affected the public interest is by proving that the act had a potential for repetition. A plaintiff can prove "potential for repetition," by any one of three ways:

- (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence (*e.g.*, *Barnes v. Jones Chevrolet Co.*, 292 S.C. 607, 358 S.E.2d 156 (Ct. App. 1987) (where the Court of Appeals ruled that the trial court improperly excluded evidence of padding other customers' bills), or
- (2) by showing the defendant's procedures created a potential for repetition of the unfair and deceptive acts (*e.g.*, *Dowd v. Imperial Chrysler-Plymouth, Inc.*, 298 S.C. 439, 381 S.E. 2d 212 (Ct. App. 1989), where the Defendant dealer's salesmen were trained to tell potential buyers what he told Plaintiff, although what he tells them might not be accurate); or
- (3) some other way.

Daisy Outdoor Advertising Co. v. Abbott, 322 S.C. 489, 473 S.E.2d 47 (1996).³

As to the "some other way," the Supreme Court held in *Daisy*:

Generally, plaintiffs will prove potential for repetition by the two means described above. **We decline to hold, however, that those are the only means for showing potential for repetition/public impact.** Rather, **each case must be evaluated on its own merits.** We expressly reject any rigid, bright line test that delineates in minute detail exactly what a plaintiff must show to satisfy the potential for repetition/public impact prong of the UTPA test.

Daisy Outdoor at 497 (emphasis added)

Here, Defendant has also alleged that Plaintiff is a practicing attorney who accepts cases from the general public and from family members. Defendant also alleged that Plaintiff's actions

³ So the test is not whether the claim contains the "elements of public harm and repetitive action."

are capable of repetition because he represents *naïve, uninformed, and trusting clients*, he owns property with other relatives in Richland County, and he remains willing to conduct business with those relatives and clients.

Defendant also alleged Plaintiff's actions affect the public interest in that they have reduced the public's confidence in the South Carolina justice system and the South Carolina Bar, and Defendant has alleged that Plaintiff's actions affect the public interest in that they are violations of the South Carolina Rules of Professional Conduct and not merely violations of common law fiduciary duties.

And Defendant has alleged that Plaintiff did the same thing to one Dial Rawl over in Lexington County, and she even cited to the civil action Mr. Rawl filed against Plaintiff.

7. Defendant Pled Plaintiff was Engaged in Trade or Commerce

Finally, Plaintiff claims the Fourth Counterclaim should be dismissed because it is "void of allegations required by the definition of 'trade and commerce' in SC Code § 39-5-10(b)."

The South Carolina Unfair Trade Practices Act defines "trade" and "commerce" as including the advertising, offering for sale, *sale* or distribution of any **services** and *any property*, tangible or intangible, *real*, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State. S.C. Code Ann. § 39-5-10(b).

Lawyers are subject to the Unfair Trade Practices Act. *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 732 S.E.2d 166 (2012). And they should remain so. A lawyer such as Plaintiff comes into contact with a cross-section of the public and develops trusting clients, many of whom are naïve and uninformed. Plaintiff owns property with other relatives in Richland County, and he remains willing to conduct business with those relatives and clients.

The last we heard, his deal with Mungo Homes has not been cancelled. We imagine we will find that he has also been providing legal advice to his brother and sister regarding this very Mungo land deal.

Plaintiff's Motion for Protective Order

Defendant served discovery on Plaintiff in the form of standard interrogatories, additional interrogatories, and a request to produce. Plaintiff responded with a motion for protective order, saying he should not be forced to engage in discovery while his motion to dismiss is pending.

Plaintiff initiated the Land Option. Plaintiff sued Defendant. Plaintiff does not cite a single basis for a protective order except that he thinks Defendant's Amended Counterclaims do not state a claim.

Plaintiff's motion for a protective order should be denied.

/s/ Robert P. Wood

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Attorney for the Defendant

September 19, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2024-CP-40-00827
	)	
Kellum W. Allen,	)	
	)	
Plaintiff,	)	PLAINTIFF'S BRIEF IN SUPPORT OF
	)	MOTION TO DISMISS
v.	)	COUNTERCLAIMS PURSUANT TO
	)	RULE 12(b)(6)
Ann Marie Watson,	)	
	)	
Defendant.	)	
_____	)	

Statement of Facts

Plaintiff, Kellum Allen, was defendant's attorney in her divorce. On August 15, 2022, five years after the entry of the final order of divorce, Mr. Allen and defendant entered into a written option contract for the property which is the subject of this lawsuit. The written option agreement granted plaintiff until February 15, 2024 to exercise the option. The total purchase price was Two Hundred Ten Thousand One Hundred Twenty Dollars (\$210,120.00) for seventeen and 51/100 (17.51) acres. Plaintiff tendered a \$500 check on August 7, 2022 in accordance with the terms of the option. Defendant cashed this check.

In January of 2024, plaintiff attempted to exercise his option to purchase the property. Shortly thereafter, defendant advised Mr. Allen's attorney that she would not comply with the option. This action for specific performance of the contract ensued.

Discussion

I. Defendant's Counterclaims Are Based Upon Alleged Violations Of The Rules Of Professional Conduct Which Do Not Create A Private Cause Of Action.

The South Carolina Rules of Professional Ethics do not create a private cause of action.

The Rules of Professional Ethics state:

[7] *Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached.* In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Scope, RPC, Rule 407, SCACR (2024) (emphasis added)

The South Carolina Rules of Professional Conduct “simply do not provide a private cause of action.” Hutson v. Hood, No.: 2021-CP-40-00946, 2021 S.C. C.P. LEXIS 3707 at *9 (Richland Co. October 4, 2021). See Hizey v. Carpenter, 119 Wn.2d 251, 830 P.2d 646 (Wash. 1992)(The Rules of Ethics “provide only a public, e.g., disciplinary, remedy and not a private remedy.”) (citing 1 R. Mallen & J. Smith, Legal Malpractice § 6.27 (3d ed. 1989), Terry Cove North, Inc. v. Marr & Friedlander, P.C., 521 So. 2d 22 (Ala. 1988), and Merritt-Chapman & Scott Corp. v. Elgin Coal, Inc., 358 F. Supp. 17 (E.D. Tenn. 1972)). Cf. Hambrick v. GMAC Mortg. Corp., 370 S.C. 118, 634 S.E.2d 5 (S.C. Ct. App 2006)(Statutes prohibiting unauthorized practice of law do not create a private cause of action).

While the Rules of Professional Conduct do not create a private cause of action, they can be consulted in interpreting a recognized tort in an **active** attorney client relationship. In Spence v. Wingate, 395 S.C. 148, 716 S.E.2d 920 (S.C. 2011), the Court held:

the Rules of Professional Conduct do not, in themselves, create a cause of action or establish evidence of negligence per se, they are relevant in assessing the legal duty of an attorney in a malpractice action. Smith v. Haynsworth, Marion, McKay & Geurard, 322 S.C. 433, 472 S.E.2d 612 (1996). HN17[] "In order to relate to the standard of care in a particular case, . . . a Bar rule must be intended to protect a person in the plaintiff's position or be addressed to the particular harm." Id. at 437, 472 S.E.2d at 614 (citation omitted). It is the breach of a duty, not the breach of a rule, that is of determinative import. Id. at 436 n.5, 472 S.E.2d at 614 n.5. HN18[] ***Duties owed to a former client are not controlled by the Rules of Professional Conduct.*** A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation. Id. at 161, 716 S.E.2d at 927 (emphasis added).

While in some situations representation may not end until the time for taking an appeal has ended, in South Carolina divorce proceedings representation ends when ***a final decree of divorce is entered.*** See 7 Am Jur 2d *Attorneys at Law* § 170 (2017). "The attorney-client relationship terminates after the judgment of divorce is entered." Shannon v. Shannon, 292 S.C. 112, 117, 355 S.E.2d 4, 6 (S.C. Ct. App. 1987). Compare Floyd v. Kosko, 285 S.C. 390, 393, 329 S.E.2d 459, 460 (S.C. Ct. 1985) ("An attorney who undertakes the representation of a client in a cause impliedly agrees to see the case through to its termination and is not at liberty to abandon it without reasonable cause.")

This Court should find that Mr. Allen's representation of defendant had terminated at the time he sought to create or exercise the option. There is no dispute that a final decree of divorce was entered ***before*** the option was created or exercised under which defendant would be paid over \$210,000 for seventeen and a half acres. As the divorce decree had been entered and his representation of defendant has terminated, the Rules of Professional Conduct do not apply to this matter and cannot create a cause of action.

Defendant's contention that the representation continued because of the later communications with the Defendant is unfounded and illogical. On her logic, a later communication with Defendant, ***ten years later***, by an attorney would suddenly create an

ongoing active representation for the entire ten-year period. This would create uncertainty in representation, a potential malpractice “trap” for the attorney in a divorce action and discourage the attorney most familiar with the history of the case from participating in a later communication with Defendant. This Court should find that Mr. Allen’s representation ended when the final decree was entered and was not vaguely “ongoing.”

Defendant’s causes of action based on Professional Negligence/Malpractice and the South Carolina Unfair Trade Practices Act are based upon alleged violations of the Code of Professional Conduct. Both causes of action allege an ongoing, active attorney-client relationship. Paragraph 54 of the Complaint under the Professional Negligence Cause of Action states “The Defendant retained the Plaintiff to serve as her attorney in a domestic matter. He served as her attorney in that matter from May 1, 2016 through October 2022.” Again, Paragraph 61 of the Complaint under the Unfair Trade Practices Act states: “the Plaintiff enticed the Defendant to enter into the business transaction with him where he knew that the Defendant was his client, that she looked up to him as her trusted attorney.”

Both causes of action mention duties owed under the Rules of Professional Conduct. Paragraph 55 of the cause of action for Professional Negligence/Malpractice states “Those duties included, among other things, the duty to inform, consult, and communicate with the client as to a need to retain other counsel if he could not represent her yet knew she needed a lawyer.” Paragraph 57(c) states Mr. Allen is liable for: “(c) Failing to disclose to the Defendant that the Plaintiff was prohibited by the South Carolina Rules of Professional Conduct from entering into this transaction unless he had obtained her properly informed, written consent.” Paragraph 57(c) states Mr. Allen is liable for: (d) Failing to comply with the rules, regulations and statutes governing attorneys’ conduct in the State of South Carolina.” Paragraph 64 under the Cause of Action for an alleged violation of the Unfair Trade Practices Act, Defendant alleges Mr. Allen

“and three of his law partners entered into a business transaction with a client named Dial Rawl and tried to enforce the contract despite the fact that the Plaintiff and his law partners had breached their fiduciary duties to him in entering into that contract without **full disclosure and written, informed consent.**”

Similarly, Defendant’s cause of action based on alleged breaches of the duty good faith, loyalty, and confidentiality are rooted in the Code of Professional Conduct. Rule 1:6 provides: “(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).” Rule 1:6, RPC, Rule 407, SCACR (2024). Rule 1:8 provides “use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty.” Rule 1:8, RPC, Rule 407, SCACR cmt. 5 (2024). Defendant’s counterclaims are clearly based upon the Rules of Professional Conduct.

Likewise, Defendant’s allegations of misappropriation of confidential information are clearly based upon alleged violations of Rules 1:6 and 1:9. Rule 1:6 deals with confidentiality of information of a present client. Rule 1:9 deals with confidentiality of information with former clients, requiring the old and new **representation** to be *substantially related*. See e.g. Rule 1:9, RPC, Rule 407, SCACR cmt 3 (2024) Defendant contends that she was an ongoing divorce client of Mr. Allen, even though a final entry of divorce had been entered. She certainly cannot contend that Mr. Allen used her confidential information in a subsequent **active representation of a different client.**

All of these actions are rooted, anchored, and inextricably intertwined with alleged violations of the South Carolina Rules of Professional Conduct. **All** must be dismissed because the Rules of Professional Conduct do not create a private cause of action. **All** must be dismissed

because the Rules of Professional Conduct cannot be used to interpret the duties owed between attorneys and former clients.

II. Defendant's Counterclaims Are Barred Because She Failed To File An Affidavit As Required By Section 15-36-100 Of The South Carolina Code.

Section 15-36-100 of the South Carolina Code requires the filing of an affidavit in any action involving professional malpractice. It provides, in part:

(B) Except as provided in Section 15-79-125, in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of South Carolina and listed in subsection (G), the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. S.C. Code Ann. § 15-36-100(B) (2024).

The affidavit requirement of section 15-36-100(B) applies to legal malpractice actions. H & H of Johnston v. Old Republic Nat'l Title Inc. Co., 405 S.C. 469, 473-74, 748 S.E.2d 72 (S.C. Ct. App. 2013). See Pruitt v. Parker, No. 2022-UP-043, 2022 S.C. App. Unpub. LEXIS 55 at *2-3 (S.C. Ct. App. February 9, 2022); Green v. McClain, No.: 6:19-3270-TMC-SVH, 2020 U.S. Dist. LEXIS 247440 at *8-10 (D.S.C. October 1, 2020); Weil v. Killough, No. 2:12-cv-00856-DCN, 2012 U.S. Dist. LEXIS 110812 at *14-15 (D.S.C. August 8, 2012). No case has found that the "common knowledge" exception section 15-36-100(C)(2) applies in the context of an attorney malpractice action.

A plaintiff cannot avoid the affidavit requirement of section 15-36-100(B) by filing a malpractice claim under a different legal theory. In H & H of Johnston, for example, the plaintiff filed a malpractice claim under the theory of breach of contract and therefore no affidavit was required. The Court held: "We find Bufkin was acting as an attorney at the closing.... We find any advice Bufkin gave H & H regarding potential adverse claims constituted the practice of

law.... Accordingly, we affirm the circuit court's grant of Bufkin's summary judgment motion.”
H & H of Johnston, 405 S.C. at 475.

Again, in Green v. McClain the Court dismissed a breach of contract claim for failure to file the affidavit required by section 15-36-100(B). In ruling the Court cited cases where plaintiffs attempted to file legal malpractice claims under different legal theories. The Court held:

Plaintiff's failure to file the necessary expert affidavit warrants dismissal of his legal malpractice claim.... See, e.g., Rotureau v. Chaplin, C/A No. 2:09-1388-DCN, 2009 U.S. Dist. LEXIS 118618, 2009 WL 5195968, at *6 (D.S.C. Dec. 21, 2009) (dismissing malpractice claim without prejudice as a result of plaintiff's failure to comply with § 15-36-100 by filing an expert affidavit and finding that § 15-36-100 is not a mere "procedural" requirement and is applicable in federal court); Eaglin v. Metts, C/A No. 0:08-2547-TLW-PJG, 2010 U.S. Dist. LEXIS 26901, 2010 WL 1051177, at *8 (D.S.C. Feb.16, 2010) (finding that a plaintiff could not proceed with a state law claim of negligence against a professional where he failed to file an expert witness affidavit with his complaint). Green, 2020 U.S. Dist. LEXIS 247440 at *10.

Again, in David v. Savage, No. 2:19-cv-3139-SAL, 2020 U.S. Dist. LEXIS 260344 (D.S.C. July 6, 2020), plaintiff filed claims of professional malpractice, negligence, and breach of fiduciary duty. After noting that “a legal malpractice cause of action is predicated on an injury or damage to a client caused by an alleged breach of duty by the client's attorney, “ the Court found that BOTH the negligence claim and the breach of fiduciary duty claim were duplicative of the professional malpractice claim. The Court held “[c]omparing the allegations in Plaintiff's Complaint against the above standard, the court concludes that the negligence/negligence per se claim must be construed as one seeking recovery for legal malpractice.” Id. at *8. The Court further held

Turning to the breach of fiduciary duty cause of action, this court similarly concludes that it also seeks relief for alleged professional legal malpractice. South Carolina courts "have long recognized that an attorney-client relationship is, by its very nature, a fiduciary relationship." Spence v. Wingate, 395 S.C. 148, 716 S.E.2d 920, 926 (S.C. 2011). "A claim for breach of fiduciary, as a

general matter, is distinguishable from a claim for legal malpractice because it can arise in contexts other than one involving an attorney-client relationship." RFT Mgmt. Co., LLC v. Tinsley & Adams LLP, 399 S.C. 322, 732 S.E.2d 166, 173 (S.C. 2012) (noting "RFT's claim for breach of fiduciary duty arose out of the duty inherent in the attorney-client relationship and it arose out of the same factual allegations"). David, 2020 U.S. Dist. LEXIS 260344 at *8-9.

This Court should dismiss Defendant's counterclaims because the required expert affidavit has not been filed pursuant to section 15-36-100(B) of the South Carolina Code. No court has found the "common knowledge" exception applies in the context of a legal malpractice/negligence claim; the law and the standard of care expected of attorneys is not a matter of common knowledge.

Defendant's counterclaim based on professional negligence must be dismissed for failure to file the required affidavit, as should her claim based on misappropriation of confidential information. Both stem out of Mr. Allen's legal representation; the claims involve the same facts. An affidavit is clearly required for both claims

Likewise, defendant's counterclaim alleging breach of fiduciary duty must be dismissed for failure to file the required expert affidavit. As noted by the Court in David, the attorney-client relationship is at its core a fiduciary relationship; any claims of a breach of fiduciary duty is therefore a professional malpractice claim for which an affidavit is required.

Finally, defendant's counterclaim for alleged violations of Unfair Trade Practices Act must be dismissed as well for failure to file the affidavit required by section 15-36-100(B). See Barnes v. Seigler, No. 5:11-1156-MBS-KDW, 2012 U.S. Dist. LEXIS 10523 at *6-7 (D.S.C. January 30, 2012)(dismissing SCUFTA claim in federal court for failure to file affidavit). As noted above, paragraph 63 asserts that plaintiff's actions are capable of being repeated because he is a practicing attorney; an essential element of her claim is predicated upon alleged "continuing" malpractice. Paragraph 61 alleges that she relied on plaintiff as her "trusted

attorney.” The prerequisite “trade” she alleges plaintiff was engaged in is the practice of law. Defendant’s counterclaim must be dismissed because she failed to file the required affidavit.

III. There Is No Breach of Confidence Action In The Context Of The Attorney Client Relationship And Defendant’s Counterclaim Must Therefore Be Dismissed.

South Carolina has only recognized a cause of action for Breach of Confidentiality only in the context of the physician-patient relationship; it has not recognized a similar cause of action in the context of the attorney-client relationship. The Court of Appeals first recognized an independent tort of breach of confidence in the context of the physician-patient relationship in 1997. McCormick v. England, 328 S.C. 627, 638-640, 494 S.E.2d 431, 436-37 (S.C. Ct. App. 1997). In the over twenty-five years since McCormick, the Court has not extended its holding, which was **explicitly** limited to the physician-patient relationship. Id. at 640, 494 S.E.2d at 437. (“We find the reasoning of the cases from other jurisdictions persuasive on this issue and today we join the majority and hold that an actionable tort lies for a physician's breach of the duty to maintain the confidences of his or her patient in the absence of a compelling public interest or other justification for the disclosure.”).

In Viscuso v. Quicken Loans, Inc., No. 3:21-cv-01924-JMC, 2022 U.S. Dist. LEXIS 50874 (D.S.C. March 22, 2022), the U.S. District Court for the District of South Carolina again refused to extend the holding of McCormick to the attorney-client relationship. The Court held:

Although Plaintiff argues that she can assert a claim for breach of confidentiality against Defendant, a non- physician, this court has never reached this conclusion. See Stephens v. United States, C/A No. 0:16-149-BHH- PJG, 2018 U.S. Dist. LEXIS 32772, 2018 U.S. Dist. LEXIS 32772, 2018 WL 1110853, at *3 (D.S.C. Jan. 30, 2018) (“Because Stephens's Second Amended Complaint continues to allege that the erroneous disclosure of his medical records was not made by a physician, Stephens fails to plausibly allege that the defendant is liable to him for the South Carolina tort of breach of confidentiality.” (citing McCormick, 494 S.E.2d at 437)); Gallipeau v. Correct Care Sols., C/A No. 3:10-2017-JFA-JRM, 2011 U.S. Dist. LEXIS 11208, 2011 WL 4502043, at *3 (D.S.C. Sept. 29, 2011) (“South Carolina courts have recognized a cause of action for breach of

confidentiality, but such actions only lie against a physician where there is a 'absence of a compelling public interest or other justification for the disclosure.' Here, the cause of action asserted is not against a physician." (quoting McCormick, 494 S.E.2d at 431-37)). Moreover, after reviewing relevant case law to include Hotel & Motel Holdings, LLC v. BJC Enters., LLC, the court is also not persuaded that the South Carolina appellate courts have extended breach of confidentiality to actions against non-physicians. Accordingly, the court finds that Defendant is entitled to dismissal of Plaintiff claim for breach of confidentiality. Viscuso, 2022 U.S. Dist. LEXIS 50874 at *11.

See Marcum v. Bowden, 372 S.C. 452, 455 n.2, 643 S.E.2d 85, 86 n.2 (S.C. 2007)(“The only appellate decision which arguably permits the plaintiff the benefit of the newly-recognized, non-foreshadowed tort duty is McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997), but it is unclear whether the Court of Appeals found this new duty in the common law or in legislative enactments. McCormick may represent an aberration: it is certainly not our general rule.”)

Defendant’s counterclaim for breach of a duty of confidentiality should be dismissed by this Court. There is no independent tort for breach of a duty of confidentiality by a client against his/her attorney. Defendant has clearly failed to state a claim.

All of Defendant’s counterclaims, whether they be cast as professional negligence/malpractice, a violation of the South Carolina Unfair Trade Practices Act, misappropriation of confidential information, or an independent tort for breach of confidentiality, are rooted in the same set of facts and predicated upon the same faulty supposition – namely, that there is a private cause of action rooted in a duty of confidentiality. No matter how Defendant tries to “gussy” it up or disguise it, there is no private cause of action based **either** upon a common law duty of confidentiality or the Rules of Professional Conduct.

IV. The South Carolina Unfair Trade Practices Act Does Not Apply Since Defendant Has Admitted That Plaintiff's Actions Are Not Capable Of Repetition.

The South Carolina Unfair Trade Practices Act applies to attorneys. RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 338, 732 S.E.2d 166, 174 (S.C. 2012); Camp v. Spring Mortgage Corp., 307 S.C. 283, 414 S.E.2d 784 (S.C. Ct. App. 1991).

“[Th]e Unfair Trade Practices Act is unavailable to redress private wrongs if the public interest is unaffected.” LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 71, 370 S.E.2d 711, 713 (S.C. 1988). “[A]fter alleging and proving facts demonstrating the potential for repetition of the defendant's actions, the plaintiff has proven an adverse effect on the public interest.” Daisy Outdoor Advertising Co. v. Abbott, 322 S.C. 489, 493, 473 S.E.2d 47, 49 (S.C. 1996). “An impact on the public interest may be shown if the acts or practices have the potential for repetition. The potential for repetition may be shown in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts.” Skywaves I Corp. v. Branch Banking & Trust Co., 423 S.C. 432, 455 814 S.E.2d 643, 655 (S.C. Ct. App. 2018).

In Skywaves, plaintiff alleged that BB&T's institutional procedures made it likely to repeat its allegedly misleading actions against other customers. It also alleged that “BB&T and Edahl treated Skywaves differently than a normal bank customer by giving it advice and asking others to invest in Skywaves, causing BB&T and Edahl to have a fiduciary duty to Skywaves that is not normally owed by a bank to a customer.” Id. at 455, 455 814 S.E.2d at 656. The Court found that Skywaves could not rely on mere conclusory allegations to assert the repetition and thereby an impact on the public interest.

In RFT Management, the lower court held that the UFTA did not apply to attorneys because they were regulated by the Supreme Court. The Supreme Court held that the UFTA did apply to attorneys, but that the dismissal was appropriate on other grounds. The Court held:

Because RFT alleged the same facts for its UTPA claim as in the legal malpractice claim, i.e., the deceptive acts of Law Firm, which the jury has already rejected, RFT has not shown it could have established all of the necessary elements of this claim. Id. at 339, 732 S.E.2d at 179.

This Court should find that Defendant has failed to allege that Plaintiff's actions have impacted the public interest and dismiss its SCUTPA claim. There is no chance that Plaintiff will repurchase the property over and over again. By her own admission, the acts Defendant alleges are not capable of repetition.

Further, as noted above, Defendant cannot maintain an action for professional negligence because it has not contemporaneously filed the expert witness affidavit required by section 15-36-100. Since it cannot prevail on its professional negligence claim, its claim for a violation of the South Carolina Unfair Trade Practices Act must be dismissed under RFT Management. See also Barnes v. Seigler, No. 5:11-1156-MBS-KDW, 2012 U.S. Dist. LEXIS 10523 at *6-7 (D.S.C. January 30, 2012) (dismissing SCUTPA act claim for failure to file expert witness affidavit).

Conclusion

For the reasons stated above, Plaintiff respectfully requests that this Court dismiss all of Defendant's counterclaims.

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December 11, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2024-CP-40-00827
	)	
Kellum W. Allen,	)	
	)	PLAINTIFF'S BRIEF IN OPPOSITION TO
Plaintiff,	)	DEFENDANT'S MOTION FOR
	)	SUMMARY JUDGMENT
v.	)	
	)	
Ann Marie Watson,	)	
	)	
Defendant.	)	
_____	)	

Statement of Facts

Plaintiff, Kellum Allen, was defendant's attorney in her divorce. On August 15, 2022, after the entry of the final order of divorce in 2017, Mr. Allen and defendant entered into a written option contract for the property which is the subject of this lawsuit. The written option agreement granted plaintiff until February 15, 2024 to exercise the option. The total purchase price was Two Hundred Ten Thousand One Hundred Twenty Dollars (\$210,120.00) for seventeen and 51/100 (17.51) acres. Plaintiff tendered a \$500 check on August 7, 2022 in accordance with the terms of the option. The Defendant cashed the check at the time the contract was signed by her.

In January of 2024, plaintiff attempted to exercise his option to purchase the property. Shortly thereafter, defendant advised Mr. Allen's attorney that she would not comply with the option. This action for specific performance of the contract ensued.

Discussion

I. Defendant's Motion for Summary Judgment Cannot Be Granted As Discovery Has Been On Hold Pending These Motions And Factual Issues Are Therefore Still in Dispute.

Rule 56 of the South Carolina Rules of Civil Procedure states, in part:

The judgment sought shall be rendered forthwith if the pleadings, *depositions, answers to interrogatories, and admissions on file*, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. S.C.Civ.P. Rule 56(c)(2024).

“Since it is a drastic remedy, summary judgment ‘should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.’” Baughman v. At&T, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (S.C. 1991) “This means, among other things, that summary judgment must not be granted until the opposing party has had a *full and fair opportunity to complete discovery*.” Id. (citing 10A Wright & Miller, Federal Practice and Procedure § 2741, p. 543 (1983) and 6 Moore's Federal Practice para. 56.02[6], p. 56-39 (2d. ed. 1990)). See Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (S.C. 2003); Gary v. Askew, 423 S.C. 47, 49, 813 S.E.2d 717, 718 (S.C. 2018) “Nonetheless, the nonmoving party must demonstrate the likelihood that *further discovery* will uncover additional relevant evidence and that the party is “not merely engaged in a ‘fishing expedition.’” Dawkins, 354 S.C. at 69, 580 S.E.2d at 439 (emphasis added).

Rule 56 of the South Carolina Rules of Civil Procedure mirrors Rule 56 of the Federal Rules. S.C.Civ.P. Rule 56(c) note (2024). Under the Federal Rules, a motion for summary judgment should “be denied, or the hearing on the motion to be continued, if the nonmoving party has not had an opportunity to make full discovery.” Celotex Corp. v. Catrett, 477 U.S. 317, 326, 106 S. Ct. 2548, 2254, 91 L. Ed. 2D 265, 276 (1986). See Works v. Colvin, 519 Fed. Appx. 176, 181-82 (4th Cir. 2013)(“summary judgment [should] be refused where the nonmoving party has not had the opportunity to discover information that is essential to his opposition.’... Such requests should be denied, however, if the additional evidence sought for discovery would not have by itself created a genuine issue of material fact sufficient to defeat summary judgment.”) Murrell v. Bennett, 615 F.2d 306 (5th Cir. 1980)(“summary judgment normally should not be

granted before discovery is completed.”); Olin Corp. v. Insurance Co. of N. Am., 603 F. Supp. 445, 449 (S.D.N.Y. 1985)(“Summary judgment should not be granted while the parties opposing judgment seek discovery of potentially favorable information.”)

This Court should find that Defendant’s Motion for Summary Judgment is premature. Summary Judgment is inappropriate, under **BOTH** South Carolina Rule 56 and Federal Rule 56, until the opposing party has had a full and fair opportunity to conduct discovery. Discovery has not begun in this case; a motion for Summary Judgment is premature.

In this situation, Plaintiff is under *no obligation* to show that he is not on a fishing expedition and that *further discovery* would produce evidence that will create a genuine issue of fact. At this point there has been essentially no discovery because of the Motions for Protective Orders.

There are many issues in Defendant’s claims that require factual development. At the heart of ALL of Defendant’s allegations are claims that; (1) Mr. Allen was her attorney at the time of the creation of the option, even though a final entry of divorce had been entered in the case 5 years before; and (2) Is the Option Price on the property inadequate and/or inequitable. In South Carolina, the attorney client relationship terminates upon the final entry of divorce. Shannon v. Shannon, 292 S.C. 112, 117, 355 S.E.2d 4, 6 (S.C. Ct. App. 1987).

II. Defendant’s Claim That the Option Lacks Consideration Is Meritless

Option contracts have three characteristics: “(1) they are unilateral contracts where the optionor, for a valuable consideration, grants the optionee a right to make a contract of purchase but does not bind the optionee to do so; (2) they are continuing offers to sell, irrevocable during the option period; and (3) the transition of an option into a contract of purchase and sale can only be effected by an unqualified and unconditional acceptance of the offer in accordance with the terms and within the time specified in the option contract.” Huffines Co., LLC v. Lockhart, 365

S.C. 178, 194, 617 S.E.2d 125, 133 (S.C. Ct. App. 2005) (*quoting Hutto v. Wiggins*, 175 S.C. 202, 205, 178 S.E. 869, 871 (1935)).

"An option is to be distinguished from a sale, or a contract, or agreement or offer to sell. The chief difference between a contract to sell and purchase real property, and an option to purchase said property lies in the fact that, while the former creates a mutual obligation on the part of one party to sell and the other to purchase, the option merely gives the right to purchase, at a fixed price, within a fixed time, without imposing any obligation to do so." *Hutto*, 175 S.C. at 205, 178 S.E. at 871.

"An option contract is a promise which limits the promisor's power to revoke an offer." *Faulkner v. Millar*, 319 S.C. 216, 220, 460 S.E.2d 378, 380 (S.C. 1995) (*citing* Restatement (Second) of Contracts § 25). *See Alexander's Land Co., L.L.C. v. M&M&K Corp.*, 390 S.C. 582, 599, 703 S.E.2d 207, 216 (S.C. 2010). Section 25 of the Restatement (Second) of Contracts, cited in *Faulkner*, provides:

An option contract is a promise which meets the requirements for the formation of a contract and limits the promisor's power to revoke an offer. Restatement (Second) of Contracts § 25 (1981).

Comment d, following section 25, further elaborates on the irrevocability of an option with consideration, providing:

d. Effect of option contract. The principal legal consequence of an option contract is that stated in this Section: it limits the promisor's power to revoke an offer. The termination of the offeree's power of acceptance is subject to the requirements for discharge of a contractual duty. See § 37. ***A revocation by the offeror is not of itself effective, and the offer is properly referred to as an irrevocable offer.*** Restatement (Second) of Contracts § 25 cmt. d (1981).

The consideration that makes the offer under an option irrevocable can be as little as one dollar (\$1). In *Mullins, Inc. v. Benton*, 309 S.C. 85, 419 S.E.2d 838 (S.C. Ct. App. 1992), the Court, citing American Jurisprudence on *Specific Performance*, held:

As to the one dollar stated consideration, the consideration for an option contract which is sought to be specifically enforced is the purchase price agreed upon and not the nominal amount paid for the option. 71 Am. Jur.2d Specific Performance § 143 (1973). ***One dollar may be adequate consideration for an option if the consideration for the purchase of the land is adequate. Id. Therefore, we reject the argument that there was inadequate consideration for the option agreement. Mullins, Inc., 309 S.C. at 89, 419 S.E.2d at 840***

This Court should deny Defendant's Motion for Summary Judgment on the basis of lack of consideration. Mr. Allen tendered \$500 to Defendant as consideration for the option agreement. Defendant accepted and deposited the check. Under Mullins, Inc. one dollar (\$1) is adequate consideration for the option to purchase land. The \$500 payment made Defendant's offer under the option irrevocable for the period provided in the option agreement. Defendant cannot revoke her offer.

To the extent that Defendant is contending the purchase price is not adequate, summary judgment cannot be granted without any discovery.

III. An Alleged Violation of the Rules of Professional Conduct Cannot Be Used Defensively in an Action in Equity.

The South Carolina Rules of Professional Conduct cannot be used to bar an action in equity. The Scope section of the Rules provides, in part:

[7] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. ***In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation.*** The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. ***Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons.*** Scope, RPC, Rule 407, SCACR (2024) (emphasis added)

In M.A. Mills, P.C. v. Kotts, 640 S.W.3d 323 (Tex. Ct. App. 2022), the lawyer entered into a contract with a client to manage one of its businesses. The client alleged the contract was void because the attorney violated Rule 1.08 of the Rules of Ethics. After discussing cases from

other jurisdictions and their wide variety of approaches to whether the violation of an ethical rule renders a contract voidable, the Court noted “that “courts must exercise judicial restraint in deciding whether to hold arm's-length contracts void on public policy grounds.” Id. at 331. The Court also noted the preamble to the Rules of Ethics, which provided:

These rules do not undertake to define standards of civil liability of lawyers for professional conduct. Violation of a rule does not give rise to a private cause of action nor does it create any presumption that a legal duty to a client has been breached. Likewise, these rules are not designed to be standards for procedural decisions. Furthermore, the purpose of these rules can be abused when they are invoked by opposing parties as procedural weapons. Id. at 331

Finally, the Court cited a Texas case for the proposition that “unless the contract is declared by law to be void or unenforceable, a court should not refuse to enforce the contract simply because it is in contravention of a statute.” Id. at 331. The Court held that Rule 1.08 could not be used to bar a contract claim, finding:

we note that there is no statute or disciplinary rule declaring a contract void or unenforceable because the contract fails to adhere to the requirements of Rule 1.08(a). But this does not mean that there is no framework at all for ensuring that Rule 1.08(a) is respected. An attorney's failure to comply with Rule 1.08(a) can result in disciplinary action, including disbarment. See Tex. R. Disciplinary P. 15.04(D) (providing guidelines for sanctioning a lawyer who fails to avoid conflicts of interest), reprinted in Tex. Gov't Code, tit. 2, sub. G, app. B, part XV; e.g., Rosas v. Comm'n for Lawyer Discipline, 335 S.W.3d 311, 315-16 (Tex. App.—San Antonio 2010, no pet.) (an attorney violated Rule 1.08(a), and was ultimately disbarred, when he entered into a written contract with a client without properly admonishing the client, who was unskilled, about their business transaction). Because that consequence is available, public policy does not demand the invalidation of the parties' oral agreement, especially where that agreement has been shown to be fair and reasonable to both sides. Id. at 331-32.

This Court should find that an alleged violation of the South Carolina Rules of Professional Conduct cannot be used as a defense to an otherwise valid contract in a civil action between an attorney and his client, whether a current or former client. Defendant was a former client of Plaintiff; the final decree of divorce in Defendant's divorce case was entered by the

court 5 years before the Plaintiff and Defendant entered into an option contract. Shannon v. Shannon, 292 S.C. 112, 117, 355 S.E.2d 4, 6 (S.C. Ct. App. 1987). Rule 1:8, upon which Defendant is basing its claims, does not apply to Mr. Allen.

Even were this court to find that there was a nebulous “ongoing” attorney client relationship between Mr. Allen and Defendant, this Court should find that Rule 1:8 cannot be used defensively to bar Mr. Allen’s claim for specific performance. The Preamble to the Texas Code of Ethics quoted in M.A. Mills, P.C. and paragraph [7] of the Scope of the South Carolina Rules of Professional Conduct *are virtually identical*. As in M.A. Mills, P.C., there is no statute in South Carolina that declares a contract void for a violation of the Rules of Professional Conduct. This Court should follow the holdings in M.A. Mills, P.C. and In re Estate of Pedrick and find that any alleged failure to follow an ethical rule cannot be used as a defense in an action for specific performance of an option contract.

Conclusion

For the reasons stated above, Plaintiff respectfully requests this Court to deny Defendant’s Motion for Summary Judgment.

DAVIS FRAWLEY, LLC

BY: /s/ James Randall Davis
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 Attorney for the Plaintiff

December 11, 2024

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kellum W. Allen,

Plaintiff,

v.

Ann Marie Watson,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2024-CP-40-00827

**DEFENDANT'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY JUDGMENT**

The only material issue Judge Allen raises in his affidavit is whether he was Ms. Watson's lawyer in the summer of 2022. This averment is demonstrably false, constitutes a sham affidavit under Rule 56(g), and does not create a **genuine** issue of material fact.

We refer the court to ¶¶ 30 and 31 of Judge Allen's affidavit, where he claims, incredibly, that he was not Ms. Watson's lawyer during the summer of 2022 (when he entered into a business transaction with Ms. Watson).

By way of reference, events in this case picked up April 20, 2022, when Ms. Watson sent Judge Allen an email (**Ex. F.** to Watson Affidavit) about her family court matter. Watson Aff. ¶ 21. Judge Allen does not deny Ms. Watson's averment about discussions about her family court matter on June 21, 2022. And most importantly, we have Judge Allen's notes from that discussion. They are attached hereto as **Ex. A.** Those notes, handwritten by Judge Allen himself, say,

6-21-22. Ann Marie.

Client doesn't want to [] (Emphasis added that he was referring to Ms. Watson as his client.)

May 2022 [illegible] Δ didn't make -

How did he make payment? Gift?

Any other [illegible] ? No.

\$41,616.62 vs. \$47,950?

6/28/22

Call D. Wilson Wednesday [Wilson is the ex-husband's attorney]

\$5,000 [illegible]
[illegible]

6/29/22 D Wilson – 10 minutes. He will call back before
AM. 5,000 increments
He will raise [illegible....]

A Marie
Offer \$2500 E w/ [illegible
9/30 [illegible]
Ct. Order –

7/14/22

Did He pay 3.5 interest on balance of Eq. Div.? Apparently yes.

1. Mutual mistake of Fact and [illegible] "net"
2. Net difference on her assets
3. P. 4 waiver of all equitable claims
4. [illegible]
5. [illegible]
6. He took sales commissions [illegible] on his profits

On July 5 the ex-husband's lawyer referred to Judge Allen's "threat of filing an action to increase child support." **Ex. B**, attached.

In response, Judge Allen didn't say, "Don't ask me about this case; she's not my client."

Instead on July 14 he wrote an email to opposing counsel reading:

Ann Marie to reimburse Chuck \$2500 per quarter commencing September 30, 2022 and the last day of each fiscal quarter thereafter until the \$41,616.67 is paid in full. Ends all equitable division claims. No interest. Own fees.

Let me know. Thanks. Kellum

Ex. B, attached.

Those are undeniably actions of a lawyer acting on behalf of his client. For Judge Allen to claim he was not Ms. Watson's lawyer that summer is a sham, and sham claim does not create a **genuine** issue of material fact that would prevent summary judgment from being granted to Ms. Watson. See SCRCP 56(g), which reads:

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Rule 56(g), SCRCP.

The only evidence is that Judge Allen and Ann Marie started discussing a possible land transaction on the evening of June 21 – **the very same day** Judge Allen had talked to her about her ex-husband's return of some family court overpayments. Talks about the family court matter and the land transaction went on that summer almost in lockstep. On August 7, for example, Judge Allen sent the proposed land option to Ann Marie (Watson Aff. ¶ 37 and Ex. O to her affidavit). This was only 21 days after Plaintiff sent the ex-husband's lawyer an email proposal that would end all family court claims, would cover attorney's fees, and would cover equitable division. And this was almost two entire months before Plaintiff ceased giving Ms. Watson legal advice on the family court matter (by reminding his client, Ms. Watson, on September 20, that she needed to make her first quarterly payment to her ex-husband).

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

The court should ignore Judge Allen's claim that he was not Ms. Watson's lawyer when he entered into the land transaction with her.

/s/ Robert P. Wood

Robert P. Wood, SC Bar No. 6206

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December 13, 2024

Attorney for the Defendant, Ann Marie Watson

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Kellum W. Allen,	)	Civil Action No.: 2024CP4000827
	)	
Plaintiff,	)	
	)	NOTICE OF MOTION AND MOTION
v.	)	TO STRIKE CERTAIN PLEADINGS
	)	IN THE AMENDED ANSWER OF
Ann Marie Watson,	)	DEFENDANT PURSUANT TO
	)	SCRCP RULE 12(f)
Defendant.	)	
_____	)	

TO: ROBERT P. WOOD, ESQUIRE, ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE, that the Plaintiff Kellum W. Allen, by and through his undersigned attorneys, will move before the Honorable Patrick C. Fant, III, Judge of the Fifth Judicial Circuit, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at the Richland County Judicial Center, 1701 Main Street, Columbia, or at such other place as the Court may designate, for an Order striking certain allegations in the pleadings in the Amended Answer of the Defendant. As to paragraphs 8(a) through 8(l), 10, 15 (which is also denied), 17, 18, 19, 20, and 21 of the Amended Answer, these allegations denote insufficient defense and/or immaterial allegations which are directly related to the first, second, third and fourth Counterclaims of the Defendant which fail to state a proper cause of action. Therefore, pursuant to South Carolina Rules of Civil Procedure Rule 12(f), paragraphs 8(a) through 8(l), 10, 15(which is also denied), 17, 18, 19, 20, and 21 of the Amended Answer and the first, second, third and fourth Counterclaims, filed against Plaintiff should be stricken.

This Motion is based upon the Pleadings in this matter, statutes, including but not limited to provisions of the South Carolina Rules of Civil Procedure, case law, rules of court, and such other and further authority as the Court may deem appropriate.

DAVIS FRAWLEY, LLC

/s/ James Randall Davis

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Phone No.: (803) 359-2512
ATTORNEY FOR THE PLAINTIFF

Lexington, South Carolina
December 17, 2024

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kellum W. Allen,

Plaintiff,

v.

Ann Marie Watson,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2024-CP-40-00827

DEFENDANT'S RETURN TO
 PLAINTIFF'S MOTION TO STRIKE
 PORTIONS OF AMENDED ANSWER AND
 COMPLAINT

With the Court's permission granted during the hearing held on December 16, 2024, Plaintiff filed a motion to strike allegations from Defendant's Amended Answer and Counterclaim. The court granted Defendant leave to respond.

Defendant has now reviewed the motion and has verified it is substantially the same as the motion to strike allegations of the original answer and counterclaim. Defendant is satisfied that her Memorandum in Opposition to Plaintiff's Motion to Dismiss Counterclaims filed September 19, 2024, adequately covers the points made in the new motion to strike, and she asks the court simply to consider that memorandum as her response to this motion.

/s/ Robert P. Wood

Robert P. Wood, Esquire (SC Bar No. 6206)

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Robert.Wood@RogersTownsend.com

Attorney for Defendant

January 6, 2025

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kellum W. Allen,

Plaintiff,

v.

Ann Marie Watson,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2024-CP-40-00827

MOTION TO RECONSIDER

TO JAMES RANDALL DAVIS, ESQ., ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that Defendant, by and through her undersigned attorney, will move before the Hon. Patrick C. Fant, III on the tenth day after service hereof or as soon thereafter as counsel may be heard, pursuant to 59(e) of the South Carolina Rules of Civil Procedure, to reconsider so much of the Court's supplemental order entered January 24, 2025 as dismissed Defendant's Fourth Counterclaim (violation of the South Carolina Unfair Trade Practices Act). The motion is based on the grounds that Defendant has in fact alleged the elements of such a claim.

The Court dismissed the Fourth Counterclaim on the basis that, "This case concerns a private transaction that does not affect the public interest."

We submit that it **does** affect the public interest when a lawyer has now twice¹ enticed clients into entering into a business transaction with him in violation of the Rules of Professional

¹ Maybe more, as discussed below.

Conduct, in violation of the common-law standard of care for an attorney, and in violation of his fiduciary duties to a current client.

Actual Repetition and Potential for More Repetition

We certainly acknowledge that one bringing a private cause of action under UTPA must allege (and later prove) his opponent's actions adversely affected the public interest. *Daisy Outdoor Advertising Co. v. Abbott*, 322 S.C. 489, 473 S.E.2d 47 (1996). But in *Daisy Outdoor* the Supreme Court made it clear that to meet the public interest element, all a plaintiff has to do is allege the potential for repetition of the defendant's actions. *Daisy Outdoor*, 322 S.C. at 495. According to *Daisy Outdoor*, potential for repetition can be proven a number of ways, including (1) showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence, or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts. 322 S.C. at 496.

Here, we alleged the same kind of actions occurred in the past:

We alleged in ¶ 63 that Plaintiff is a practicing attorney who accepts cases from the general public and from family members.

We alleged in ¶ 64 that he and three of his law partners entered into a business transaction with a client named Dial Rawl and tried to enforce the contract despite the fact that the Plaintiff and his law partners had breached their fiduciary duties to him in entering into that contract without full disclosure and written, informed consent, and we cited the lawsuit where Mr. Rawl made those allegations.

We alleged in ¶ 65 that Plaintiff's actions are also capable of repetition because he continues to practice law in South Carolina, represents naïve, uninformed, and trusting clients, owns property with other relatives in Richland County, and remains willing to conduct business with those relatives and clients.

We alleged in ¶ 66 that Plaintiff's actions affect the public interest in that they have reduced the public's confidence in the South Carolina justice system and the South Carolina Bar.

We basically alleged that Attorney Allen did unto his client Watson exactly what he had done unto his earlier client Dial Rawl. Because we have alleged that the same kind of action occurred in the past, we have met the public interest requirement.

As the Supreme Court said in *Daisy Outdoor*, “Proof of the potential for repetition of a defendant's actions satisfies the public interest requirement of [the] UTPA.” *Daisy Outdoor*, 322 S.C. at 493, citing *Noack Enters., Inc. v. Country Corner Interiors*, 290 S.C. 475, 351 S.E.2d 347 (Ct. App. 1986) *cert. dismissed*, 294 S.C. 235, 363 S.E.2d 688 (1987). “After alleging and proving facts demonstrating the potential for repetition of the defendant's actions, the plaintiff has proven an adverse effect on the public interest. The plaintiff need not allege or prove anything further in relation to the public interest requirement.” *Id.*

That is really all we need to have alleged to meet the public interest requirement of a UTPA claim.

But there is more.

New Evidence of Potential for Repetition

We have known all along that Plaintiff is involved in a business transaction with his sister, Barbara Coker, that being a purchase agreement that Plaintiff, Ms. Coker, and their brother Hiram entered into with Mungo Homes. A truncated copy of that purchase agreement is attached as **Exhibit A**.

We learned today that Plaintiff is her lawyer with respect to that transaction. See attached Subpoena Response as **Exhibit B**. So Plaintiff is once again doing business with a client.

We do not know what sorts of disclosures Plaintiff made to his siblings before agreeing to serve as their lawyer in their own business transaction, but we certainly have potential for the repetition of Plaintiff's prior unfair business practices.

Other Means of Showing Potential for Repetition/Public Impact

We note that the Supreme Court in *Daisy Outdoor* also expressly said it declined "to hold ... that those are the only means for showing potential for repetition/public impact. Rather, each case must be evaluated on its own merits. We expressly reject any rigid, bright line test that delineates in minute detail exactly what a plaintiff must show to satisfy the potential for repetition/public impact prong of the UTPA test." 322 S.C. at 497.

What else might satisfy that element other than actual repetition or potential for repetition?

a) *A Lawyer's Special Relationship with His Client*

A lawyer is in a unique position to prey upon his clients by using his positions of trust, confidence and professionalism, together with his skills as a negotiator and advocate to lure a client into not looking out for herself.

Here, Plaintiff holds himself out as a mediator, and we don't doubt he's a good one. Good negotiators know the importance of relationships and how to use them. They know about reciprocity, friendship, norms, and trust. They know the importance of seeing the transaction from the viewpoint of the other side in order to understand what they want and how important it is to them. The reason most mediators these days are licensed attorneys is because lawyers have negotiating skills unknown to most laymen.

We suggest the public interest is affected when a lawyer engages in multiple business transactions with clients without their informed consent.

The public policy of the State of South Carolina requires a lawyer to obtain his client's informed consent before engaging in a business transaction with that client. Rule 1.8(a), SCRPC. As we noted in our main brief, the Supreme Court of Kentucky has held that its Rules of Professional Conduct carry equal public policy weight as any public policy set forth in their Constitution or in a statute enacted by their General Assembly. "The principle that the Rules of Professional Conduct do not create a private right of action "d[oes] nothing to overturn the principle that courts will not enforce contracts that violate public policy. Also, it d[oes] nothing to question that the Rules of Professional Conduct may reflect Kentucky's public policy in proper circumstances." *Lawrence v. Bingham Greenebaum Doll, L.L.P.*, 599 S.W.3d 813, 828 (Ky. 2019). As noted on pages 14 and 15 of our brief, the States of Colorado and Washington agree.

Washington's rule creates a presumption that the defendant may try to overcome. *LK Operating, LLC v. Collection Grp., LLC*, 181 Wash. 2d 48, 90, 331 P.3d 1147, 1165 (2014). Ms. Watson cannot enter that debate if her UTPA claim remains dismissed.

We would further point out that the State of South Carolina, through its Supreme Court, regulates lawyers far more than the Department of Labor, Licensing and Regulation regulates plumbers and electricians. A customer might **hope** her electrician is giving her good advice on a repair, but a client can **expect**, can **demand**, that her lawyer fulfill his fiduciary obligations to her.

An example is the fact that an order disqualifying a lawyer from representing a client in a case is immediately appealable. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). This rule is based on the fact that an attorney-client relationship is confidential and trusting and involves a lawyer being a counselor and confidant who will remain loyal.

b) *Unfair Advantage*

As we pointed out in our brief, specific performance and rescission cases here in South Carolina provide guidance with respect to the public policy of South Carolina, the rule being that a court may declare a contract voidable if it was obtained through bad faith, such as concealment, misrepresentations, **undue advantage, oppression on the part of the one who obtains the benefit, or ignorance**, weakness of mind, sickness, old age, incapacity, pecuniary necessities, and the like, on the part of the other,--these circumstances, combined with inadequacy of price, may easily induce a court to grant relief, defensive or affirmative.” *Campbell v. Carr*, 361 S.C. 258, 603 S.E.2d 625 (Ct. App. 2004) (emphasis added).

Repetitive, bad conduct that violates the Rules of Professional Conduct and is voidable to be point of allowing rescission and denial of the remedy of specific performance affects the public interest.

Discovery is Not Complete

Finally, discovery is not complete. In fact, Plaintiff has not answered our discovery despite it having been served on him on May 24, 2024. Richland County land title records have shown us what real property Plaintiff has owned here over the years, who he acquired it from, and who he sold it to. But we don’t know which of those buyers or sellers were his clients. To learn that we asked Plaintiff to identify estates for which he served as executor or personal representative, trusts for which he has served as trustee, people for whom he has served as an attorney-in-fact, and corporations for which he serves as a board member or officer. That information will help us discover other times he has engaged in a business transaction with a client. And from there we can learn if he had that client’s informed consent or if he has continued to lure clients into doing business with him without their informed consent.

Conclusion

For these reasons, we ask the court to reinstate Defendant's Fourth Counterclaim.

I certify under Rule 11 that I notified opposing counsel before filing this motion and asked him to consent but also knew the communication would be futile.

All of which is respectfully submitted.

/s/ Robert P. Wood

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Attorney for Defendant

February 3, 2025

EXHIBIT A

THIS AGREEMENT IS SUBJECT TO ARBITRATION
PURSUANT TO S.C. CODE §§15-48-10 ET. SEQ.

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the “**Agreement**”) is entered into as of the later of the dates this Agreement is signed by the Purchaser or Seller (the “**Effective Date**”), by and between Seller and Purchaser, as hereinafter designated, for the purchase and sale of certain real property.

Seller: Kellum W. Allen, Hiram S. Allen III and Barbara A. Coker

Purchaser: Mungo Homes Properties, LLC, a South Carolina limited liability company, or its assigns

(Purchaser and Seller shall hereinafter collectively be referred to as the “**Parties**”
and individually sometimes referred to as a “**Party**”)

WITNESSETH:

IN CONSIDERATION of the mutual promises and covenants contained herein, the earnest money paid by the Purchaser, and ten dollars (\$10.00) paid by the Purchaser to the Seller, the receipt and sufficiency of which are hereby acknowledged, the Seller and Purchaser, intending to be legally bound, hereby promise, covenant and agree as follows:

1. Property: The Property which is the subject of this Agreement consists of five parcels, which are described hereinbelow, totaling approximately Two Hundred Ninety-One and 12/100 (291.12) acres located off of Grover Wilson Road and Lawhorn Road in Richland County (the “**County**”), South Carolina, as more fully described or depicted on **Exhibit A**, together with all rights, privileges and easements appurtenant there to, if any, including any rights of view, light and air; rights of way; roadways; roadbeds and reversions or other appurtenant used in connection with the beneficial use thereof (the “**Property**”). Upon completion of a survey by Purchaser (“**Survey**”), if applicable, the property description reflected on the Survey shall automatically replace the drawing or tax map attached on the Effective Date as **Exhibit A**.

- | | | |
|-----|---------------------|-------------|
| (a) | TMS # R23500-06-05- | 34.97 acres |
| (b) | TMS # R20700-03-02- | 150 acres |
| (c) | TMS # R20700-03-03- | 17.75 acres |
| (d) | TMS # R20700-03-22- | 20 acres |
| (e) | TMS # R20700-03-24- | 68.4 acres |

2. Purchase and Sale: Purchaser agrees to purchase and the Seller agrees to sell the Property, on the terms and conditions set forth herein.

3. Purchase Price: The “**Purchase Price**” for the Property shall be Four Million Two Hundred Thousand and no/100 Dollars (\$4,200,000.00).

4. Earnest Money: A total deposit of One Hundred Thousand and no/100 Dollars (\$100,000.00), (when deposited the “**Earnest Money**”), shall be delivered by Purchaser to McAngus, Goudelock and Courie, LLC (the “**Escrow Agent**”). The Earnest Money shall be tendered as follows:

(a) Within five (5) business days of the Effective Date of the Agreement, Twenty-Five Thousand Dollars (\$25,000) of the Earnest Money shall be delivered to Escrow Agent.

(b) The remainder of the Earnest Money shall be deposited with Escrow Agent within five (5) business days following the end of the Inspection Period.

(c) The Earnest Money shall be held in trust and credited against the Purchase Price at closing (the “**Closing**”) or distributed as otherwise provided for herein.

Disclosure Regarding Escrow Agent: Seller is aware that Escrow Agent serves as counsel to Purchaser in this and other transactions. Seller agrees that the duties of Escrow Agent hereunder are ministerial in nature and shall not disqualify Escrow Agent from representation of Purchaser in connection with this Agreement or any dispute that may arise hereunder. If any dispute should arise concerning the disbursement of any funds held by Escrow Agent, Escrow Agent may deposit any funds so held with the Office of the Clerk of the Court of Common Pleas for County where the Property is located (or with the Office of the Clerk of any other court where an action is permitted under this Agreement or is then pending) and may continue its representation of **Purchaser** in connection with such action.

5. Access to the Property, Inspection Period and Termination: At any time for Two Hundred and Seventy (270) days from the Effective Date (the “**Inspection Period**”), Purchaser may, subject to giving prior notice to the Seller, at its sole cost and expense, directly or through its agents, representatives or consultants, enter upon the Property for the purpose of inspection, surveying, environmental studies, engineering studies, soil tests, and or other study of the Property to determine the suitability of the Property to the Purchaser’s requirements, provided such inspections, tests and studies, do not interfere with or damage the Property. Notwithstanding any other term contained herein, Purchaser shall have the right to perform minor clearing on the Property, if needed, to perform such inspections, tests and studies. Purchaser agrees to indemnify and hold Seller harmless from all claims, causes of action, liabilities, losses or damages, including attorneys’ fees, arising from the acts, omissions, faults, or neglects of Purchaser and its agents, contractors and consultants with respect to any such investigations, which agreement shall survive termination of this Agreement or Closing. In the event this transaction does not Close, with the exception of the minor clearing rights referenced above and the rights to install a well on the Property referenced below, Purchaser shall restore and repair any damage to the Property caused by Purchaser or Purchaser’s agents, contractors or consultants; provided, notwithstanding the foregoing, Seller expressly agrees that Purchaser shall not be responsible for any liability, defects or marketability issues resulting merely from the fact that Purchaser’s investigations identify environmental matters, structural defects, or other adverse conditions affecting the Property that were not created by Purchaser.

It is anticipated that the Purchaser’s intended development of the Property will likely require an onsite well system to provide water service to the lots to be developed on the Property. Therefore, in addition to Purchaser’s rights as defined herein, Purchaser shall also have the right during the Inspection Period to install up to three test wells on the Property, in a location to be agreed upon by the Parties, for the purpose of determining if a water source is available and sufficient to service the intended development.

IN WITNESS WHEREOF, the parties have affixed their hands and seals as of the last date written below.

SELLER:

Kellum Allen
Kellum W. Allen

Date: 03-31-2023 | 5:31:06 PM EDT, 2023

Hiram Allen
Hiram S. Allen III

Date: 03-31-2023 | 3:10:23 PM EDT, 2023

Barbara A. Coker
Barbara A. Coker

Date: 03-31-2023 | 6:27:36 PM EDT, 2023

PURCHASER:

MUNGO HOMES PROPERTIES, a South Carolina limited liability company

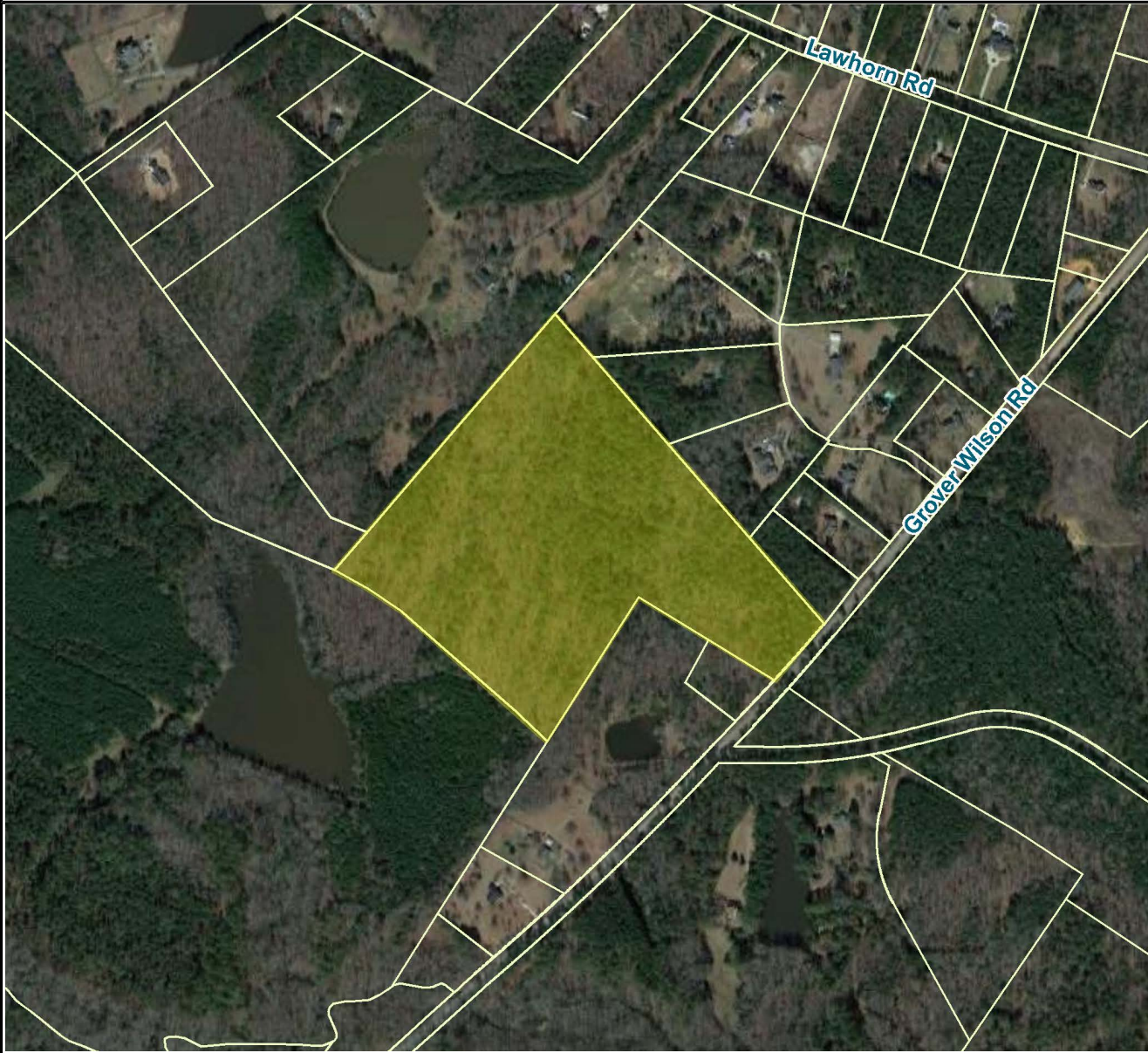
By: Chris Condon
Name: Chris Condon
Title: Regional President

Date: 04-04-2023 | 6:02:02 AM PDT, 2023

By: Maurice Mouzakis
Name: Maurice Mouzakis
Title: Assistant Secretary, VP of Finance

Date: 4/4/2023, 2023

23500-06-05



Copyright 2007
Richland County GIS
2020 Hampton St.
Columbia, SC 29204



DISCLAIMER : This is a product of the Richland County GIS Department. The data depicted here have been developed with extensive cooperation from other county departments, as well as other federal, state and local governments agencies. Richland County expressly disclaims responsibility for damages or liability that may arise from the use of this map.

PROPRIETARY INFORMATION: Any resale of this information is prohibited, except in accordance with a licensing agreement.

Legend

- | | |
|-----------------|-------------------|
| County Boundary | Streets |
| Private Schools | Buildings |
| Public Schools | 2 Ft. Contours |
| Police Stations | Streams |
| Fire Stations | Lakes |
| County Assets | Council Districts |
| Daycares | Zip Codes |

ELECTRONICALLY FILED - 2025 Feb 03 1:40 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4000827

EXHIBIT B

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Kellum W. Allen,	)	Civil Action No.: 2024CP4000827
	)	
Plaintiff,	)	
	)	RESPONSE TO SUBPOENA
v.	)	SENT TO BARBARA COKER
	)	
Ann Marie Watson,	)	
	)	
Defendant.	)	

Below is the response to the subpoena issued to Barbara Coker by Robert P. Wood, Esquire with Rogers Townsend, Attorneys at Law. Said subpoena was issued by the Circuit Court in the County of Lexington since Barbara Coker resides in Lexington County. A copy of said subpoena is attached to this response, including "Exhibit A".

1. Based on the definition of "communications set forth in "Exhibit A"", Barbara Coker has had communications with Kellum Allen as to TMS#R20700-03-02; R20700-03-03; R20700-03-04; R20700-03-22; R20700-03-23; R20700-03-24; R20700-03-29; and R23500-06-05. Ms. Coker objects to revealing those communications with Kellum Allen pursuant to SCRCR Rule 45. Ms. Coker objects to disclosing those communications dating from March 1, 2021 based on attorney/client privilege she had with her brother Kellum Allen involving those parcels. The attorney/client relationship is verbal and no compensation is being paid to him because they are siblings.

2. As to 1(b), Barbara Coker had no separate communications with her brother Hiram Allen, III.

3. As to 1(c) no communications with the persons or entities named except being copied on the emails denoted on the attached Coker01-Coker11 and Coker 60 are emails involving the properties referenced in number 1 above.

4. As to 1(d) and 1(e), there have been no communications with the entities or persons mentioned in paragraphs 1(d) and 1(e).

5. As to 2, Barbara Coker is in possession of two Contracts which are attached hereto as Coker12-Coker59. These Contracts are protected by SCRCF Rule 45(c)(3)(B)(i) and should not be disclosed to persons or entities outside of Defendant and her counsel and any expert witnesses retained by Defendant.

6. As to 3, no payments have been made to Barbara Coker; and therefore, there is no payment documentation.

DAVIS FRAWLEY, LLC
140 East Main Street, P.O. Box 489
Lexington, South Carolina 29071
(803) 359-2512

BY: /s/ James Randall Davis
James Randall Davis

ATTORNEY FOR BARBARA COKER

Lexington, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2024-CP-40-00827
	)	
Kellum W. Allen,	)	
	)	NOTICE OF MOTION AND MOTION
Plaintiff,	)	TO RECONSIDER ORDER FILED
	)	JANUARY 27, 2025 AS TO THE
v.	)	DEFENDANT'S THIRD
	)	COUNTERCLAIM IN HER AMENDED
Ann Marie Watson,	)	ANSWER
	)	
Defendant.	)	
	)	

TO: ROBERT P. WOOD, ESQUIRE, ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE, that the Plaintiff Kellum W. Allen, by and through his undersigned attorneys, will move before the Honorable Patrick C. Fant, III, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at the Richland County Judicial Center, 1701 Main Street, Columbia, or at such other place as the Court may designate, for an Order dismissing the Third Counterclaim of the Defendant.

Defendant filed and served an Amended Answer and four Counterclaims in this matter on June 12, 2024. The Third Counterclaim was an action for professional negligence against the Plaintiff. Plaintiff filed a SCRPC Rule 12(b)(6) Motion contending that the Defendant has failed to file with her Counterclaim an affidavit of expert witness. See *SC Code Ann.* §15-36-100(B). Section 15-36-100 of the South Carolina Code requires the filing of an expert witness affidavit in any action for professional malpractice. The Honorable Patrick C. Fant, III, issued an Order in this matter, on January 27, 2025, indicating his ruling on the Third Counterclaim was "The Defendant may proceed on it's First and Third Counterclaims." Defendant filed an expert witness Affidavit of Desa Ballard on August 27, 2024. No motion to amend the Third Counterclaim has

been filed by the Defendant to include the expert witness affidavit as a certification in said Counterclaim.

LEGAL ARGUMENT

“[A] motion under Rule 59(e) long has been viewed as ‘motion for reconsideration’ despite the absence of those words from the rule.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E. 2d 772, 778 (2004). “The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to ‘reconsider matters properly encompassed in a decision on the merits.’” *Arnold v. State*, 309 S.C. 157, 173-73, 420 S.E.2d 834,842 (1992) (quoting *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 200, 108 S.Ct. 1717, 1720, 100 L.Ed2d 178, 184 (1988)). As a result, “a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” *Elam*, 362 S.C. at 21, 602 S.E.2d at 778-9. Thus, a motion for reconsideration is “one final chance not only to call the court’s attention to a possible misapprehension of an *earlier* argument, but also to revisit a *previously raised* argument.” *Id.* (emphasis added).

This Court should dismiss Defendant’s Third Counterclaim as to professional negligence against Plaintiff because the required expert affidavit has not been filed pursuant to *SC Code Ann.* §15-36-100(B).

(B) Except as provided in Section 15-79-125, in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of South Carolina and listed in subsection (G), the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. S.C. Code Ann. §15-36-100(B) (2024).

The affidavit requirement of section 15-36-100(B) applies to legal malpractice actions. H & H of Johnston v. Old Republic Nat'l Title Inc. Co., 405 S.C. 469, 473-74, 748 S.E.2d 72 (S.C. Ct. App. 2013). See Pruitt v. Parker, No. 2022-UP-043, 2022 S.C. App. Unpub. LEXIS 55 at *2-3 (S.C. Ct. App. February 9, 2022); Green v. McClain, No.: 6:19-3270-TMC-SVH, 2020 U.S. Dist. LEXIS 247440 at *8-10 (D.S.C. October 1, 2020); Weil v. Killough, No. 2:12-cv-00856-DCN, 2012 U.S. Dist. LEXIS 110812 at *14-15 (D.S.C. August 8, 2012).

Again, in Green v. McClain the Court dismissed a breach of contract claim for failure to file the affidavit required by section 15-36-100(B). In ruling the Court cited cases where plaintiffs attempted to file legal malpractice claims under different legal theories. The Court held:

Plaintiff's failure to file the necessary expert affidavit warrants dismissal of his legal malpractice claim.... See, e.g., Rotureau v. Chaplin, C/A No. 2:09-1388-DCN, 2009 U.S. Dist. LEXIS 118618, 2009 WL 5195968, at *6 (D.S.C. Dec. 21, 2009) (dismissing malpractice claim without prejudice as a result of plaintiff's failure to comply with § 15-36-100 by filing an expert affidavit and finding that § 15-36-100 is not a mere "procedural" requirement and is applicable in federal court); Eaglin v. Metts, C/A No. 0:08-2547-TLW-PJG, 2010 U.S. Dist. LEXIS 26901, 2010 WL 1051177, at *8 (D.S.C. Feb.16, 2010) (finding that a plaintiff could not proceed with a state law claim of negligence against a professional where he failed to file an expert witness affidavit with his complaint). Green, 2020 U.S. Dist. LEXIS 247440 at *10.

Based upon the above case law, the failure to file the expert witness affidavit certification to the Defendant's Counterclaim thereby fails to state a cause of action against the Plaintiff. Furthermore, no case has found that the "common knowledge" exception section 15-36-100(C)(2) applies in the context of an attorney malpractice action. Also, as indicated in section 15-36-100(B), the expert witness affidavit has to be filed in an "action" for damages and alleging professional misconduct. This would include a Complaint as well as a Counterclaim.

CONCLUSION

Based on the arguments set out above, the Plaintiff respectfully requests the Court reconsider its decision on the Third Counterclaim as to the professional negligence action against the Plaintiff and rule that because the required expert witness affidavit is not included as a certification in the Defendant's Third Counterclaim, the Counterclaim is dismissed.

Pursuant to SCRCP Rule 11, there is no duty of consultation for Motions to Dismiss and would serve no useful purpose and cannot be timely held.

DAVIS FRAWLEY, LLC

/s/ James Randall Davis

James Randall Davis, SC Bar No.: 1580
140 East Main Street, Post Office Box 489
Lexington, South Carolina 29072
Phone No.: (803) 359-2512
ATTORNEY FOR THE PLAINTIFF

Lexington, South Carolina
February 3, 2025
4916-9586-4854, v. 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2024-CP-40-00827
	)	
Kellum W. Allen,	)	
	)	
Plaintiff,	)	PLAINTIFF'S BRIEF IN RESPONSE
	)	TO DEFENDANT'S MOTION TO
v.	)	RECONSIDER
	)	
Ann Marie Watson,	)	
	)	
Defendant.	)	
	)	

This Brief is being filed in response to Defendant's Motion to Reconsider filed February 3, 2025 asking the Court to reconsider its decision of dismissing the Defendant's Fourth Counterclaim dealing with Unfair Trade Practice allegations.

The Order dismissing the Fourth Counterclaim was based on a Motion Pursuant to Rule 12(b)(6) filed by the Plaintiff claiming the Defendant had not stated a cause of action for Unfair Trade Practice violation. The Court's decision indicated that what was based in the Defendant's Fourth Counterclaim concerned a private transaction which did not affect the public interest.

That decision is supported by the case of *RFT Mgmt. Co., LLC v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 732 S.E.2d 166 (2012) and also is supported by *Noack Enterprises, Inc. v. Country Corner Interiors, Inc.*, 290 S.C. 475, 351 S.E.2d 347, 350, 351 (Ct. App. 19986) as well as *Ardis v. Cocks*, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993). These cases contain facts identical to Defendant's claim against the Plaintiff for Unfair Trade Practice. *Tinsley* involved an attorney closing the real estate transaction and the Court ruled it was not a public interest case. The other cases cited indicate that an unfair or deceptive action to sell a business itself is not readily susceptible to repetition and therefore have no impact on the public interest. Defendant's

specific claims in her Motion that this was a business transaction from Plaintiff to Defendant which the above cases indicated would not indicate public interest.

As to the other arguments presented in the Defendant's Brief, they have either: (1) been presented previously in Plaintiff's or Defendant's Brief on the Motion on Rule 12(b)(6) and would have, therefore, been considered by the Court previously; (2) new arguments that are not set forth in Defendant's Fourth Counterclaim and since this was a Rule 12(b)(6) Motion, those matters should not be considered by the Court because they were not contained in the Defendant's Counterclaim; and (3) even as to the new matters, they were only legal conclusory arguments and were not supported by factual evidence as required by *Daisy Outdoor Advertising Co. v. Abbott*, 322 S.C. 489, 473 S.E.2d 47 (Supp. Ct. 1996). For the reasons stated above, the Plaintiff would ask the Court to reaffirm its decision as to dismissing the Counterclaim for Unfair Trade Practice in that it does not involve public interest but is a private transaction between the Plaintiff and Defendant.

Conclusion

For the reasons stated above, Plaintiff respectfully requests that this Court dismiss Plaintiff's Motion to Reconsider.

DAVIS FRAWLEY, LLC

BY: /s/ James Randall Davis

James Randall Davis, SC Bar #1580
140 East Main Street (29072)
Post Office Box 489
Lexington, South Carolina 29071
(803) 359-2512
Attorney for the Plaintiff

February 13, 2025

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
Court of Common Pleas

The Hon. Patrick C. Fant, III

Civil Action No. 2024-CP-40-00827

Ann Marie Watson.....Appellant

v.

Kellum W. Allen.....Respondent

NOTICE OF APPEAL

Ann Marie Watson hereby appeals the following Orders of the Honorable Patrick C. Fant: (1) an Order dated January 27, 2025, that is attached hereto as Exhibit A; and (2) an Order dated March 25, 2025, that is attached hereto as Exhibit B. Appellant received written notice of the entry of each Order on the date stamped on each respective Order's margin.

Separately, and by U.S. Mail, Appellant has submitted the filing fee to the Clerk of the Court of Appeals.

Respectfully submitted,

/s/ Robert P. Wood

Robert P. Wood, SC Bar No. 6206
ROGERS TOWNSEND, LLC
1221 Main Street, 14th Floor
PO Box 100200 (29202)
Columbia SC 29201
(803) 771-7900 – Telephone
(803) 343-7017 - Fax
robert.wood@rogerstownsend.com
Attorneys for Appellant, Ann Marie Watson

Filed this 31st day of March, 2025.

Other Counsel of Record:

James Randall Davis, Esq. (S.C. Bar No. 1580)
Davis Frawley, LLC
140 East Main Street (29072)
Post Office Box 489
Lexington, South Carolina 29071
(803) 359-2512
Randy@OldCourthouse.com

Attorneys for Respondent, Kellum W. Allen

EXHIBIT A

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP4000827

Kellum W Allen
PLAINTIFF(S)

Ann Marie Watson
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Please see the attachment on Page 2 below.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

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

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

This Order supplements the Court's prior Order filed on January 24, 2025. The Court's prior Order is hereby supplemented to reflect that the Court is hereby striking and dismissing Defendant's Fourth Counterclaim that alleges violations of the South Carolina Trade Practices Act. Other than the Dismissal of the Defendant's South Carolina Unfair Trade Practices Act Counterclaim, the prior Order has not been changed. Therefore, the Court's prior Order is hereby supplemented to reflect the following:

This matter came before the Court on December 16, 2024, pursuant to multiple motions filed by both Parties.

Regarding Plaintiff's Motion Pursuant to SCRCP Rule 39(a), Plaintiff's Motion is hereby Denied and this Court will not refer this matter to the Master-in-Equity of Richland County considering the Defendant has asserted compulsory legal counter-claims that go to enforceability of the land sale contract. See Rule 53(b), SCRCP.

Regarding Plaintiff's Motion to Dismiss Counterclaims of Defendant Pursuant to SCRCP Rule 12(b)(6), based on the law of South Carolina, the Court Dismisses Defendant's Second Counterclaim alleging Misappropriation of Confidential Information because the claim does not exist, or is otherwise duplicative of Defendant's First Counterclaim for Breach of Fiduciary Duties of Good Faith, Loyalty, and Confidentiality. The Court has not found any cause of action for Misappropriation of Confidential Information nor were any elements pled by the Defendant. The Court will also Dismiss Defendant's Fourth Counterclaim alleging violations of the South Carolina Unfair Trade Practice's Act based on the fact this case concerns a private transaction that does not affect the public interest. The Defendant may proceed on it's First and Third Counterclaims.

Regarding Plaintiff's Motion to Strike Certain Pleadings in the Amended Answer of Defendant Pursuant to SCRCP Rule 12(f), based on the arguments of the attorneys and the relevant law, Plaintiff's Motion is hereby Granted as to Defendant's Second and Fourth Counterclaims, however, the Motion is Denied as to the rest of Plaintiff's requests.

Regarding Plaintiff's Motion for Protective Order Pursuant to SCRCP Rule 26(c)(1) and (2), the Court Grants this Motion considering that the Court has found it proper to strike and dismiss Defendant's Second and Fourth Counterclaims as stated above. Plaintiff can appropriately respond now, in light of the Court's ruling in this Order.

Regarding Defendant's Motion for Partial Summary Judgment, based on a review of the file, submissions of the Parties, and oral arguments by the attorneys, the Court believes Summary Judgement should be Denied at this point and not revisited until each Party has had a full and fair opportunity to complete discovery. See *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 322, 548 S.E.2d 854, 857, (2001), citing *Baughman v. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).



Richland Common Pleas

Case Caption: Kellum W Allen vs Ann Marie Watson

Case Number: 2024CP4000827

Type: Order/Electronic Form 4

So Ordered

Patrick C. Fant, III

Electronically signed on 2025-01-24 16:41:07 page 3 of 3

EXHIBIT B

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP4000827

Kellum W Allen
PLAINTIFF(S)

Ann Marie Watson
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Please see the attachment on Page 2 below.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/24/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

This matter is before the Court pursuant to two Motions filed by the Parties requesting this Court to reconsider it's Order filed on January 27, 2025.

Regarding Defendant Ann Marie Watson's Motion to Reconsider the Court's Dismissal of Defendant's Fourth Counterclaim alleging violations of the South Carolina Unfair Trade Practices Act, the Court hereby Denies the Defendant's Motion.

Regarding Plaintiff Kellum Allen's Motion to Reconsider the Court's decision not to dismiss the Defendant's Third Counterclaim alleging Professional Negligence, the Court hereby Denies the Plaintiff's Motion.

It is so ordered.



Richland Common Pleas

Case Caption: Kellum W Allen vs Ann Marie Watson

Case Number: 2024CP4000827

Type: Order/Electronic Form 4

So Ordered

Patrick C. Fant, III

Electronically signed on 2025-03-24 14:24:02 page 3 of 3

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

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

17 JAMES DAVIS
18 ESQ.
19 Attorney for the Plaintiff

20

21 ROBERT P. WOOD
22 ESQ.
23 Attorney for the Defendant

24

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Transcribed by Pamela E. Green, from
webEx

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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* * *
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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

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kellum W. Allen,

Plaintiff,

v.

Ann Marie Watson,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2024-CP-40-00827

AFFIDAVIT OF ANN MARIE WATSON

PERSONALLY APPEARED BEFORE ME ANN MARIE WATSON, who, after being duly sworn, deposes and says that:

1. My name is Ann Marie Watson. I am the person Kellum W. Allen sued in this lawsuit.

2. Kellum Allen was my family court lawyer when he manipulated me into entering into a personal business transaction with him. When I learned he had deceived me, I voided the contract. But he never acknowledged I had voided the contract, and he ultimately brought this lawsuit asking the court to force me to honor the contract he had manipulated me into signing. Here are the details.

3. I was born and raised near Blythewood, South Carolina. Either by deed or by inheritance, my parents gave me four tracts of land near the Allen Family homestead outside of Blythewood.

4. Kellum is a retired family court judge. He was my lawyer regarding a family court matter, he is my first cousin, and over the years he cultivated in the Allen Family an atmosphere such that the family, including me, respected and trusted him.

5. Kellum's father was Hiram Allen, Jr. My mother, Ann Joye Allen Mullis, was Kellum's father's little sister (Kellum's aunt) and my first cousin.

6. Kellum has a brother and a sister. Hiram Allen III is his brother, and Barbara Allen Coker is his sister. Kellum, Hiram, and Barbara own land together near my property.

7. For well over 200 years, the Crankfield family, followed by the Hogan and then the Allen families lived and worked on our family farm near what is now Blythewood. They were farmers and owned hundreds of acres near Twenty-five Mile Creek and what are now Grover Wilson Road, Mullis Road, Lawhorn Road, Rushing Road, and Hiram Allen Road. Many of my ancestors are buried at the Crankfield-Lawhorn Cemetery nearby. The old homestead is still standing, and the family holds reunions there sometimes.

8. I have attached a marked-up tax map that shows the ownership of some tracts of land relevant to this case. It is **Exhibit A**.

9. As the Court can see, I own three tracts of land near the intersection of Lawhorn Road, Mullis Road, and Claude Bundrick Road. Kellum and his brother and sister own a good bit of land to the east and south of my property. Their land is also shown on the marked-up tax map.

10. I married Chuck Watson in 2003. We have three children. Chuck owned a number of Mellow Mushroom franchises and amassed significant assets while I raised the children and worked outside the home in the healthcare field.

11. By the Spring of 2016 Chuck and I had such significant marital issues that we separated. I naturally asked Kellum to represent me. He had been a lawyer for many years by that time and had served as a family court judge for about ten years. He has also served as a professional mediator. He was respected in the Greater Columbia community and in the Allen Family. Kellum agreed to represent me in the family court case at \$350/hour. My legal representation agreement with Kellum is attached as **Exhibit B**. Kellum drafted it, and I signed it the way he drafted it. I didn't even know I could negotiate its terms.

12. During the divorce proceedings, Kellum learned about my assets, my living expenses, my business skills (such as they were), my personality, how my family and I worked out land transactions, how much my children meant to me, and my vulnerabilities. He also learned about clashes I had with my brother and two sisters. He also learned what Chuck wanted by way of the divorce and how I responded to his demands.

13. I know only a little about business transactions and commercial real estate transactions. I also know very little about how to fairly and accurately put a value on real property, how to find and hire a real estate professional, when to hire such a professional, how and when to hire an appropriate tax advisor, and how to negotiate a land transaction.

14. I also know very little about the law. I have never drafted a formal contract, and I have never on my own negotiated a complicated contract.

15. During the course of the divorce proceedings I disclosed my financial situation to Kellum, and Kellum and I reviewed Chuck's financial disclosures. Kellum and I reviewed information about assets and their value, our income, our expenses, and our taxes. Kellum reviewed all of my real estate holdings. One of the deeds he reviewed was for a 17.51-acre tract. The deed contained a restriction for an animal burial site to remain on the property in perpetuity, and Kellum had a copy of that deed in his file on me.

16. We finalized the settlement agreement on June 29, 2017, and the divorce became final the next day. The settlement agreement included provisions for the sale of some of our assets and also included a requirement that Chuck make periodic payments of money to me. The marital settlement agreement as to equitable distribution provided for several transactions to occur in the future, as properties were sold and businesses Chuck owned were subjected to valuation.

17. Chuck and I then attempted to distribute our assets in accordance with the settlement agreement.

18. When the COVID pandemic struck in March 2020, Chuck expressed concern about his finances, and Kellum reviewed the settlement agreement that I had reached with Chuck. As part of that review, Kellum examined each party's obligations and the dollar amounts owed, the dollar amounts paid, and the balance due, down to the penny. And he advised me accordingly. **Exhibit C** is a March 26, 2020, email exchange between Kellum and me where he demonstrates that he understood the status of my real estate and of Chuck's performance under the settlement agreement, including how much more money Chuck owed me.

19. About a year after that, I sold some of my land to my sister. The tract was down the road from the old farmhouse. The tract was one of the assets listed in my divorce paperwork, and Kellum learned the price I set for it when he notarized my affidavit of consideration. The deed and the affidavit of consideration are attached as **Exhibit D**. Looking back on it, I now know from this experience that Kellum knew the per-acre value I would put on land near the family farm.

20. What I also did not know, and what Kellum did not tell me, is that he and his brother and sister had begun discussing putting nearly 300 acres of their nearby land on the market for a residential development. I learned that from an email my new lawyer, Robert P. Wood, subpoenaed from NAI Columbia, a commercial real estate firm in Columbia. That email is attached as **Exhibit E**.

21. In the Spring and Summer of 2022, two very important things happened. First, Chuck contacted me, saying I owed him substantial sums of money from our settlement agreement. I told Chuck to contact Kellum, and I then sent Kellum an email asking him to expect a call from Chuck. My email to Kellum (sent April 20, 2022) is attached as **Exhibit F**. In my email I also

asked Kellum if I could put him or his son (a lawyer in his firm) on retainer for future such events. Kellum would later tell me there was no need, that we were family.

22. On June 15, 2022, Chuck's lawyer wrote a letter to Kellum demanding that I repay Chuck \$42,954.84. The demand letter is attached as **Exhibit G**.

23. Because my new lawyer (Robert Wood) sent subpoenas to Mungo Homes and to Kellum's real estate company, I now know about the second important thing that was happening in the Spring and Summer of 2022. On May 27, 2022, Mungo Homes and Kellum's real estate agent had realized that a Mungo-style high-density residential project required two major access points and that Kellum and his brother and sister had only one major access point to offer to Mungo Homes. The May 27, 2022, email exchange we received pursuant to the subpoenas is attached as **Exhibit H**.

24. My 17.51-acre parcel on Lawhorn Road could provide just the sort of second major access point for a high-density residential development, but I didn't know that Kellum needed it.

25. Not knowing anything about Kellum talking with Mungo Homes about a high-density residential real estate development and the need for a second major access point, I met with Kellum via telephone on the morning of April 21, 2022. During that call we discussed whether I actually owed Chuck the money, how I could afford to repay it, and whether I should ask Chuck for an increase in child support. Kellum turned portions of my family court file over to me after he filed this lawsuit, and his notes from that conference are attached as **Exhibit I**.

26. From April to October, 2022, Kellum acted as my attorney in reaching an agreement with Chuck whereby I would repay the money Chuck had overpaid me.

27. The documents my new lawyer obtained from Mungo Homes and from Kellum's real estate agent show that during the late afternoon of June 21 (just hours after Kellum and I had

spoken on the phone about my payments to Chuck) Kellum's real estate agent told Mungo's representative that Kellum was related to me and that Kellum "will discuss need for secondary access tonight." That email is attached as **Exhibit J**.

28. Kellum and I did not discuss his "need for secondary access," that night. Instead, at 9:44 that night, Kellum called me and asked if I might be interested in selling him my 17.51-acre tract on Lawhorn Road. He said he wanted it "just to have." He did not say his request was related to his current marketing of the property to anyone, his combining it with his other lands, or any sort of deal already in the works. And he did not say it was for secondary access to a high-density residential development. And he did not advise me to retain a real estate professional or a lawyer. In my mind, I didn't need a lawyer because Kellum already was my lawyer.

29. So, on the night of June 21, 2022, Kellum Allen, my lawyer, knew Chuck was demanding money from me, and Kellum knew the state of my assets, my liquidity, and the financial needs of my children, he knew I had land that he needed, and he deliberately withheld from me information related to what he already intended to do with my land.

30. On Monday, June 27, 2022, Kellum called again. During that call he disclosed to me that he wanted to buy my land to combine it with his family's land and create a residential development. I told him I imagined it being developed into a large-tract equestrian-themed development similar to the Persimmon Fork area on the other side of Blythewood. Kellum did not disclose to me that he was in discussions with Mungo Homes about developing a high-density Mungo-style residential development with no room whatsoever for horses. Nor did he then (or ever) advise me that if I wanted to restrict how the land could be used, I would have to do that as part of my sale of the land to Kellum. But I made the mistake of trusting my own lawyer to treat me fairly and give me solid legal advice.

31. During that call I also told him about a horse cemetery on my tract. It had significant sentimental and emotional value to my brother and his family, and I sent him a plat highlighting the location of the "Old Animal Burial Site." That plat is attached as **Exhibit K**. Kellum already had a copy of my deed to the tract, and it shows the restrictions protecting the pet cemetery. Months later I would discover Kellum's plans for a high-density, Mungo-style development and see that one of Mungo's lots would be placed directly over the pet cemetery. I will discuss the development plan later in this affidavit.

32. After Kellum sued me I learned from my new lawyer that implied within the scope of any legal representation agreement, this one included, is the lawyer's promise to advise the client when to obtain independent legal counsel. Kellum breached that implied promise.

33. I learned from reviewing a copy of Kellum's divorce file on me that he talked to Chuck's lawyer on June 28 and/or June 29, 2022 and that on July 5 (the following week) Chuck's lawyer responded with a letter that was an attempt to settle the matter of Chuck's overpayment to me. Chuck's lawyer's letter to Kellum is attached as **Exhibit L**. I met with Kellum after that over the phone, and on July 14, Kellum responded by email to the lawyer's demand. The email is attached as **Exhibit M**. The letter and the email show that Kellum continued to represent me in my family court matter while at the very same time negotiating to buy land from me.

34. I learned from the documents my new lawyer subpoenaed from NAI Columbia and from Mungo Homes that on July 27, 2022, Ben Kelly of NAI Columbia wrote an email to Bill Dixon of Mungo Homes saying, "Yes, it appears we are making good progress on Watson. Kellum Allen has discussed with [Ann Marie Watson] and should make her an offer to option for 18 months this week. Attached is a preliminary title as to horse graveyard. . ." The email is attached as **Exhibit N**. My lawyer was "making good progress" on me. What kind of a relationship is that?

35. Kellum is an experienced negotiator and in fact often serves as a mediator. I don't have any training at all in the art of negotiation and have never been involved in a formal mediation much less conducted one. I did not know that asking the other side to be the first to put a number on the table is a common negotiation tactic. So, using this tactic, Kellum asked me what I would accept by way of a sales price for my 17.51 acres. So I did some internet research on land values but didn't take into account how each piece I looked at might be different from my 17.51 acres in terms of proximity to paved roads and public utilities or in terms of county lines, school districts, zoning, topography, forestation, soils, nearby developments, traffic counts, nearby population, number of nearby households, or average household income. It also did not occur to me how the land could be more valuable if it were made a part of a larger tract of land. It did not occur to me that any of that mattered, and I recognize today that my research was amateurish compared to what I now know what Kellum's real estate agent did for him. But I reviewed what I considered to be comparables and came up with a price, and Kellum accepted it.

36. I learned from documents my new lawyer subpoenaed from Kellum's real estate agent that Kellum asked his agent at NAI Columbia for a sample of an option contract and that the agent sent him one on August 5. I also learned from those documents that Kellum revised the sample option contract and sent it to his agent at NAI for his professional review. In the cover email Kellum said to his agent, "Please review. If you see a problem, let me know right away." The email, the form land option, and Kellum's version of the land option are attached as **Exhibit O**.

37. Kellum mailed the land option to me on August 7. Although he was my lawyer, he did not advise me to let him know if I saw a problem, much less want to negotiate any terms.

Instead, Kellum (my own lawyer), instructed me in his cover letter to “Read initial and sign” and deposit his \$500 earnest money check. **See Exhibit O.**

38. Kellum never advised me I could negotiate the terms of the land option, hire an independent lawyer, hire my own real estate agent, or hire a tax advisor. He never advised me the land option did not have consideration (since he would be entitled to all of his \$500 earnest money security deposit back if he chose not to exercise the option), and he never advised me that I would be shouldering the entire burden and risk of land ownership while it was off the market. He never told me about the legal issues involved with an attorney entering into a business transaction with his own client.

39. Furthermore, he never disclosed to me that he planned to sell the property to Mungo Homes for a large-scale, high-density housing development that would include my 17.51 acre tract. He never advised me to seek accounting assistance to determine what steps, if any, I could take to best grant an option on the 17.51 acres, *i.e.*, individually or through an LLC.

40. Since Kellum was my lawyer, I felt I could rely on him to treat me (his client) fairly and reasonably. After Kellum sued me, I learned that the Land Option is not fair and reasonable. It’s not even supported by consideration, and it burdens me with the risks and expenses of land ownership while tying up my right to use it. To make matters worse, I have now had a chance to compare the NAI form option to what Kellum mailed to me on August 7, and I see that he (Kellum) removed from the form option the special conditions and any reference to an escrow agent.

41. I always assumed Kellum was under some obligation not to use my confidential information for his own benefit, but I now see that he has done that. Specifically, he used his knowledge of my personal finances to know I was an easy target for his project.

42. Kellum never explained to me legal terms used in the Land Option such as “fee simple” and “general warranty deed,” nor did he explain to me that signing the Land Option as he prepared it was intended to give him unrestricted and irrevocable ownership and control of the land, to do with what he pleased, including commercial development at any density level, and he never explained to me that the Land Option was assignable to people I did not know. He also did not explain to me the difficulties and expense I would run into if the restrictions on the horse cemetery were not honored.

43. On the morning of August 15, 2022, it occurred to me that my father might have retained timber rights in this land when he deeded it to me. So I asked Kellum for advice about that, and he responded. Our email exchange is attached as **Exhibit P**.

44. Later that day (August 15, 2022), believing Kellum was acting in my best interests (since he was still my lawyer), I followed the instructions Kellum had set out in his letter and signed the Land Option and returned it to Kellum via U.S. Mail.

45. I have learned from documents subpoenaed by my new lawyer that Kellum sent the executed Land Option to his real estate agent and the agent responded, “Great work.” The email is attached as **Exhibit Q**.

46. Kellum reminded me on September 20, 2022, that my first payment was due to Chuck by September 30. He ended his legal work for me around October 18, when he sent me paperwork to sign related to the overpayments.

47. In February 2023, I was shocked to hear there was the possibility of a Mungo Homes development going in near my property and that a development plan had been distributed. I asked Kellum for a copy of it, and he delayed. But he finally relented and sent it to me. Our email

exchange (with attached development plan showing 500 homes on 350 acres, including my 17.51 acres) is attached as **Exhibit R**.

48. I was shocked that Kellum had done this to me, and I demanded that he send me a new drawing protecting the horse cemetery, showing equestrian amenities, and showing lot sizes that did not detract from the value of the surrounding properties. I told him, "I will not participate otherwise. Let me know if I need to lawyer up." My email to him is attached as **Exhibit S**.

49. I rescinded the unfair Land Option by writing an email to Kellum saying, "As I have received no response from you regarding me the sale of the property, and as you have had ample time to respond, I must only assume you have no intention of honoring our verbal agreement or meeting any conditions for sale. I will be returning your \$450 earnest money via certified return receipt request letter in the next day or so. The sale is NOT going to happen." See **Exhibit S**.

50. On July 31, 2023, I mailed a check to Kellum reading, "Refunded Deposit – NO SALE." On August 23, Kellum returned the check to me with a short letter. I wrote a message across the bottom of the letter showing my disgust and texted a photo of the check, the letter, and my note to Kellum. The photo I texted him is attached as **Exhibit T**.

51. On January 3, 2024, Kellum, through one of his lawyers, attempted to exercise the Land Option despite the fact that Kellum knew I had voided the Land Option contract (because I did not agree with Kellum's plans to develop the property in direct contradiction to my wishes). Kellum's lawyer suggested a closing in mid-January. I called Kellum's lawyer's office on or about January 5 and communicated my position that there would be no closing.

52. My forester contacted me on January 16 and suggested I cut timber from 9 of the acres on my 17-acre tract (the one involved in the Land Option). He told me that timber prices were up because of the recent wet weather. Because I felt there was a chance Kellum was going to

sue me over the Land Option, I didn't want any activity on that property. So I gave up the opportunity to take advantage of higher timber prices.

53. Kellum filed suit against me on February 7, 2024, and served me with the summons and complaint over the weekend.

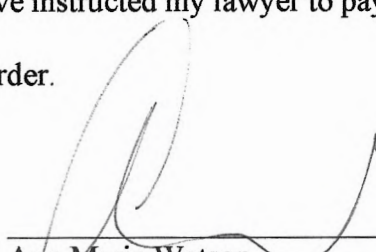
54. I hired Columbia Attorney Robert Wood to represent me, and he sent a letter dated March 6, 2024 expressly voiding the Land Option again and tendering the return of the \$500 earnest money deposit.

55. Kellum never advised me as to the advisability of a clause whereby the cost of the Land Option would increase as the exercise of the Land Option was delayed; and Kellum never advised me that in commercial land transactions the party who desires to buy the property usually has to pay a nonrefundable fee to compensate the seller for keeping the property off the market and for locking himself into a specified purchase price. In fact, Kellum never told me anything about what were customary, fair, or reasonable terms for an 18-month land transaction such as this. And he never advised me to consult with a professional who would know such things.

56. Kellum never told me that oral understandings (such as those about lot density, the pet cemetery, and equestrian amenities) that were not reduced to writing might not be enforceable; Kellum never told me he was not my lawyer with respect to the Land Option; and Kellum never advised me that I should not trust him.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

57. My lawyer is holding \$500 in his trust account for me. I ask the court to declare that the Land Option is not enforceable. I have instructed my lawyer to pay Kellum \$500 from his trust account once the court enters such an order.


Ann Marie Watson

Sworn to before me this 5 day of September, 2024.

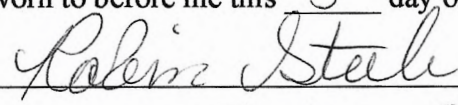

Printed Name: Robin Steele
Notary Public for South Carolina
My Commission Expires: 12/08/2032



EXHIBIT A

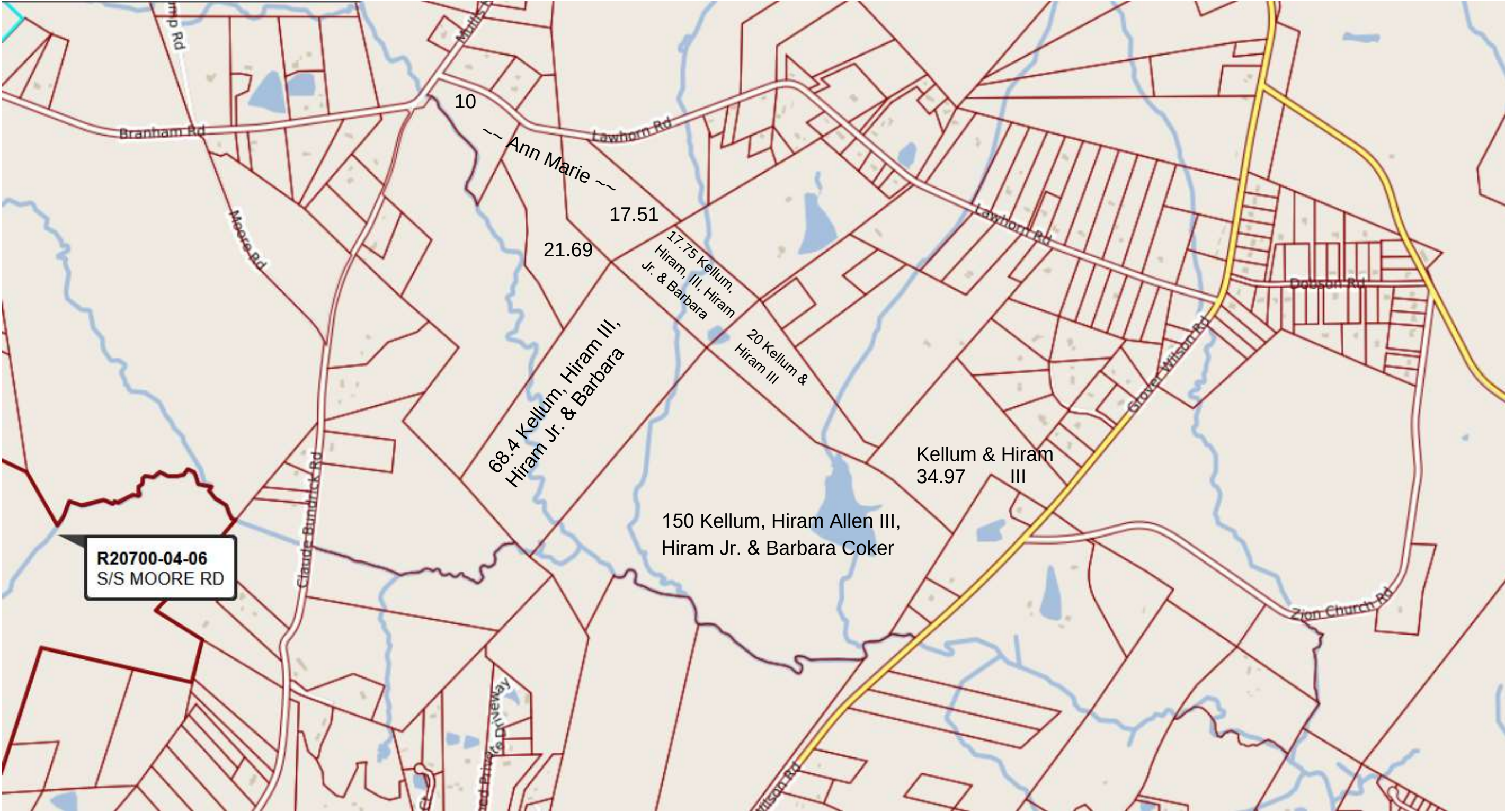


EXHIBIT B

STATE OF SOUTH CAROLINA) AUTHORIZATION AND AGREEMENT
COUNTY OF LEXINGTON) TO HIRE THE ALLEN LAW FIRM, P.A.
)

DOMESTIC

THIS AGREEMENT IS ENTERED into this 1st day of May, 2016 between, Ann Marie Watson (Client) and The Allen Law Firm, P.A., (Attorneys) for representation in a domestic law case wherein Charles Watson is the adverse party.

REPRESENTATION

Client represents that he/she has not retained any other attorney in connection with this matter or, if the Client has done so, such attorney has been discharged. Upon acceptance of this contract, Attorneys agree to utilize their best efforts to obtain favorable results for Client in the Family Court in South Carolina. Attorneys make no representation, guarantee or warranty regarding the outcome of the litigation.

COSTS

Attorneys are authorized to pay or incur liability for all costs and expenses which Attorneys deem necessary in the representation of Client and Client agrees to pay all costs and expenses incurred by Attorneys upon receipt of the bill. Costs will be itemized on the monthly bill. Costs for professional services, such as accounting or appraisal fees, must be paid by Client directly to the provider. The firm will charge a file setup fee of \$100.00.

FEES

Attorneys will bill for preparation of all documents, all communications, (whether written, by telephone, direct contact or electronically) and all work done on the behalf of Client in furtherance of the case. Client may not instruct Attorneys not to contact or work with the opposing attorney or the Guardian *ad Litem*.

Attorneys will bill for the time necessary to travel to and from Court or anywhere else necessary to represent Client's interests.

Telephone calls will be billed at a two-tenths (.2) of an hour minimum charge for all such calls; All correspondence written on behalf of Client shall be billed at hourly rates as outlined here, with a Three-tenths (.3) per hour minimum charge for all such correspondence. Client may be charged for copies and postage.

Missed appointments when Client has failed to contact Attorneys to reschedule will be billed at the hourly rate.

Client will be responsible for payment of all fees regardless of whether the Court orders another party to pay them. Any fees received by way of Court order will be applied to Client's outstanding balance. However, a Court Order does not relieve Client of his/her obligations as outlined herein.

RETAINER FEE AND HOURLY RATE

Client agrees to pay Attorneys at the rate of \$ 350.00 / 250.00 ^{KNA DKAT} per hour for professional Out of Court services, the rate of \$ 350.00 / 250.00 for In Court Services by the Attorney and the rate of \$ 100.00 Dollars per hour for law office personnel assistance.

Client has deposited a retainer of \$ _____. Attorneys will charge against the retainer at the hourly rate listed above and for any costs advanced.

EXHAUSTION OF RETAINER

Client agrees that, once the retainer is exhausted, a new retainer will be paid by Client in the same amount as the original retainer, plus any costs or fees incurred between the exhaustion of one retainer and the payment of the new retainer. Once case has been set for trial, if the balance has not been paid, Attorneys will be relieved of further obligation to represent Client and Client will sign documentation to that effect.

REFUND OF RETAINER

Attorney will refund any unused portion of the retainer when case has been completed.

LIEN ON PROPERTY FOR UNPAID FEES

Attorneys are granted a lien for their unpaid fees, costs and expenses on any property awarded to Client by the Court or received by agreement of the parties., including any monies received by Attorneys on behalf of Client. Attorneys are specifically authorized to file a lien with the appropriate authority to evidence this lien and its encumbering nature, if necessary.

REQUIREMENTS

- a. Client will keep Attorneys informed of any change in his/her address and telephone number(s) as soon as any changes are made;
- b. Client will make all Court appearances as directed;
- c. Client will cooperate with Attorneys in producing any documents required; and
- d. Client will pay his/her bill in full when requested by Attorney.

DISCHARGE OF ATTORNEY

Client may discharge attorney at any time by providing written documentation of that intent and signing an Order to relieve Attorneys as his/her counsel. There will be no charge for the preparation of the Order; however, Client will be charged for the cost of filing the Order with the appropriate office of the Clerk of Court.

DISCHARGE OF CLIENT

Attorneys may be relieved as counsel for Client when they believe withdrawal is appropriate and, more particularly, upon the occurrence of one or more of the following:

- a. Failure to co-operate with Attorney;
- b. Failure to pay his or her bill when requested to do so;
- c. Failure to keep Attorney informed of current address or phone number(s);
- d. Failure to disclose a material fact;
- e. A conflict of interest is present (or develops);
- f. Attorneys believe a withdrawal of representation is required by law or by the rules of professional conduct.

SCOPE OF REPRESENTATION

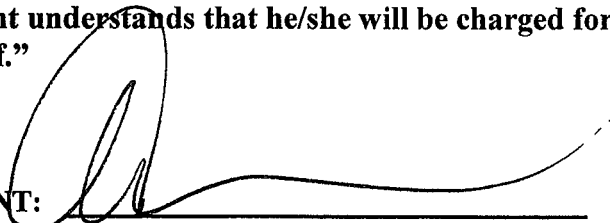
This agreement is for representation of Client through the trial of the case in Family Court. This agreement does not cover post-trial motions or appeals. If same are requested by Client and recommended by Attorneys, a new agreement will be executed and additional funds will be required by Attorneys.

Client indicates by signing below that he/she has read the foregoing retainer agreement and understand the terms as outlined herein. Client certifies that he/she agrees to all of the terms and conditions contained in this contract by affixing his/her signature below.

"Any unused funds remaining may be applied to other matters this law firm is representing the client on as specified and agreed to by the client."

"Client understands that he/she will be charged for any communications made to the firm on the client's behalf."

CLIENT:



Ann Marie Wokan

DATE:

9/15/14

THE ALLEN LAW FIRM, P.A.

By:

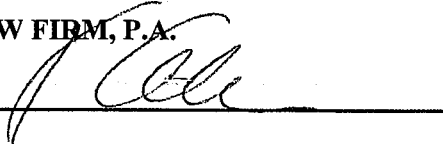


EXHIBIT C

From: Ann Marie watson <a.mwatson@hotmail.com>

Sent: Friday, March 27, 2020 6:55 PM

To: Kellum Allen <kellumallen@gmail.com>

Subject: Re:

#46. Stipulates for cashiers only that wife gets 1/2 difference. It doesn't specify for Poinsett. I assume he sent the total sale price of Poinsett. I'm not sure I knew what actual sale price was.

Ann Marie Watson

On Mar 27, 2020, at 6:19 PM, Kellum Allen <kellumallen@gmail.com> wrote:

Ann Marie

Now that you have shown me all the numbers I agree with your summary, except if you got all the Poinsett excess shouldn't 1/2 the excess have been yours anyhow. If so the amount owed by Chuck would be reduced by \$3,113.99 not \$6,227.97. This is the same logic as applied to your "place marked" Cashiers excess. If I am correct the total still owed would be \$174,030.92. Double-check my math. What do you think?

Kellum

On Mar 27, 2020, at 5:17 PM, Ann Marie watson <a.mwatson@hotmail.com> wrote:

Hi

\$714,430.00 was final value owed me to be adjusted by actual sale values. This already accounted for a placemaker value for poinsett warehouse and 1/2 value of Ledbury Lane (marital home).

Cashiers cabins were on my side of the balance sheet already at placemarked value of \$200,000. They sold for \$304,570.17. An excess of \$104,570.17 divided by half \$52,285.09 was applied toward balance owed me.

Ledbury Lane sold for less than predicted.

Poinsett sold for \$6227.97 over placemarked value. It was applied to what I am owed.

\$714,430 initially owed	
-52,285.09 cashiers excess	
-6,227.97 poinsett excess	
-67,196.72 his 1/2 loss on sale of house (less than placemarked value)	
-367,803.29 his 1/2 of sale of house	

\$220,916.93 remaining owed me	
-\$50,000.00 to date paid in installments	

\$170,916.93 still owed	

Ann Marie Watson

From: Kellum Allen <kellumallen@gmail.com>
Sent: Thursday, March 26, 2020 5:58:15 PM
To: Ann Marie watson <a.mwatson@hotmail.com>
Subject: Re:

Ann Marie

I looked at the Final Decree and attachments.

Chuck owed you \$714,430.00.

Apparently, this was reduced by the \$236,227 from the Poinsett sale. Correct?

Then it was reduced by your getting his half of Ledbury(\$735,606.57 / 2 = \$367,803.69). Correct?

So, that leaves a balance computed as follows: \$714,430 minus \$236,227 minus \$367,803 which equals \$110,400. Double check my math. Correct? You indicated he has made 10 of the \$5000.00 quarterly payments starting November 1, 2017 for a total of \$50,000 against this amount due you.

This is less than the \$200,000 number you mentioned to me. I noticed paragraph 46 has a variable regarding the Cashier's cabin. What has happened on that?

Review for other loose ends besides the interest we discussed and call if you need to talk further.

Kellum

> On Mar 23, 2020, at 10:45 AM, Ann Marie watson <a.mwatson@hotmail.com> wrote:
>
>
> Hi.
> I verified he has NOT been paying interest.
>
> 12/1/2017 I received \$236,227.97
>
> 1/19/2018 I received \$735,606.57
>
> Ann Marie Watson

EXHIBIT D

Book 2635-2707

2021042011 06/29/2021 08:54:58:457

Deed

Fee: \$15.00

County Tax: \$60.50

State Tax: \$143.00



2021042011

John T. Hopkins II

Richland County R.O.D.

Prepared by: Allen, Gantt & Best**Post Office Box 9507****Columbia, SC 29290-0507****803-776-8380****STATE OF SOUTH CAROLINA****COUNTY OF RICHLAND****TITLE TO REAL ESTATE****no title search performed**

KNOW ALL MEN BY THESE PRESENTS, That I, Ann Marie Mullis Watson, the said Grantor, in the State aforesaid, for and in consideration of the sum of Fifty Five Thousand and no/100 (\$55,000.00) Dollars to me paid by, Elizabeth M. Moore, the said Grantee, in the State aforesaid have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

Elizabeth M. Moore, Her Heirs and Assigns:

ALL THAT CERTAIN PIECE, PARCEL, TRACT OR LOT OF LAND, TOGETHER WITH ALL IMPROVEMENTS THEREON, IF ANY, SITUATE, LYING AND BEING IN THE COUNTY OF RICHLAND, STATE OF SOUTH CAROLINA, CONTAINING 11.28 ACRES, MORE OR LESS, THE SAME BEING SHOWN AND DELINEATED AS PARCEL A ON A PLAT PREPARED FOR JOYE A. MULLIS BY SURVEY ONE, LLC, DATED MARCH 29, 2011, REVISED FEBRUARY 24, 2021 TO DIVIDE THE PROPERTY INTO PARCEL A AND PARCEL B. SAID REVISED PLAT BEING RECORDED APRIL 5, 2021 IN THE REGISTER OF DEEDS OFFICE FOR RICHLAND COUNTY IN RECORD BOOK 2605, PAGE 2280. SAID PROPERTY HAVING SUCH SHAPES, COURSES, DISTANCES, METES AND BOUNDS AS SHOWN UPON SAID PLAT, REFERENCE BEING CRAVED THERETO AS OFTEN AS NECESSARY FOR A MORE COMPLETE AND ACCURATE DESCRIPTION; ALL MEASUREMENTS BEING A LITTLE MORE OR LESS.

DERIVATION: BEING THE SAME PROPERTY CONVEYED TO ANN MARIE MULLIS WATSON BY DEED OF DISTRIBUTION FROM THE ESTATE OF ANN JOYE ALLEN MULLIS (RICHLAND COUNTY PROBATE FILE # 2019-ES-40-01704) DATED 04-12-2021, RECORDED 05-10-2021 IN THE OFFICE OF THE REGISTER OF DEEDS FOR RICHLAND COUNTY IN RECORD BOOK 2616, PAGE 1537.

TMS #: PORTION OF 20800-02-07

Mailing Address of Grantee: 2571 Meadowglen Trail, Snellville, GA 30078

Said conveyance subject to all easements, restrictions and covenants of record.

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

Page 1 of 2

\\NAMEC\Jmie\Estate\2019 Estate\19B184, Estate of Ann Mullis\Deed from Ann to Beth.doc

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, her heirs and assigns forever.

And I, the said Grantor, do hereby bind myself and my heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantee, her heirs and assigns, against me and my heirs, and every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS My Hand and Seal this 26 day of June 2021.

Ann Marie Mullis Watson
Ann Marie Mullis Watson, Grantor

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Jane S Allen
(witness)

[Signature]
(Notary Public acting as witness-signs again below)

STATE OF SOUTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF LEXINGTON

On this 26 day of June 2021, before me, the undersigned, a Notary Public in and for the aforementioned state and county, personally appeared the within Grantor, personally known to me, or proven to me on the basis of satisfactory evidence, to be the person who executed the within instrument, and acknowledged to me that she willingly executed the within instrument.

[Signature]
Notary Public for the State of South Carolina

Print: Kellum W. Allen

My Commission Expires:

5/30/24

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located on the South side of Rushing road, near Blythewood, SC 29016 bearing Richland County Tax Map Number: **portion of 20800-02-07**, was transferred by Ann Marie Mullis Watson to Elizabeth M. Moore on June / 26 /2021

- Check one of the following: The Deed is
- ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- ☐ exempt from the deed recording fee because (See Information section of affidavit);

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$55,000.00.
 - ☐ The fee is computed on the Fair market value of the realty which is \$_____.
 - ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$_____.

5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is \$_____.

6. The deed recording fee is computed as follows:
 - a. Place the amount listed in item 4 above here: \$55,000.00
 - b. Place the amount listed in item 5 above here: \$0
(If no amount is listed, place zero here.)
 - c. Subtract line 6(b) from line 6(a) and place result here: \$55,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$203.50.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Ann Marie Mullis Watson
Responsible Person Connected with the Transaction
Print Name: Ann Marie Mullis Watson

SWORN to before me this 26 day of June 2021.

Notary Public for State of South Carolina

Print: Kellum W. Allen

My Commission Expires: 5/30/24

Document

Page 1 of 3

EXHIBIT E

Jack Springs

From: Adam Delk <adelk@NiAmerica.com>
Sent: Tuesday, February 9, 2021 11:35 AM
To: Jack Springs
Cc: Thomas S. Creasman; Ben Kelly; Patrick Chambers; Betsy Hartman
Subject: RE: Sewer | Richland County Parcels | R20700-03-02, R20700-03-24, R20800-02-06, R20700-03-03

Jack, that all depends on the land usage and the flow generated from it. Pump size is dictated by pressure and flow, so the denser the development (more houses) the higher the horsepower and larger wet well that will be needed. Obviously larger pumps and we wells drive the price up. We don't typically install pump stations, ad developers do that as part of their projects, then turn them over to us, so I don't have a real good feel for it. I know that's a non-answer, but there's too many variables for me to give you an off the cuff number.

From: Jack Springs <jsprings@naicolumbia.com>
Sent: Monday, February 8, 2021 4:58 PM
To: Adam Delk <adelk@NiAmerica.com>
Cc: Thomas S. Creasman <tcreasman@NiAmerica.com>; Ben Kelly <bkelly@naicolumbia.com>; Patrick Chambers <pchambers@naicolumbia.com>; Betsy Hartman <bhartman@naicolumbia.com>
Subject: RE: Sewer | Richland County Parcels | R20700-03-02, R20700-03-24, R20800-02-06, R20700-03-03

Adam,
 Thanks for this. How large of a pump would be needed and what would you estimate that cost being?

Jack L. Springs III
 Broker | [Bio](#)

Direct 803.744.9882
 Cell 843.424.8751



Sign-Up to receive our market reports

NAI Columbia

807 Gervais Street, Suite 200 | Columbia, SC 29201

IMPORTANT NOTICE: Never trust wiring instructions sent via email. Always independently confirm wiring instructions in person or via a telephone call to a trusted and verified phone number. Never wire money without verifying that the instructions are correct. NAI Columbia is an affiliate of NAI Global and works in partnership with [NAI Earle Furman](#) in Greenville, SC, and [NAI Piedmont Triad](#) in Greensboro, NC.

From: Adam Delk <adelk@NiAmerica.com>
Sent: Monday, February 8, 2021 2:42 PM
To: Jack Springs <jsprings@naicolumbia.com>
Cc: Thomas S. Creasman <tcreasman@NiAmerica.com>; Ben Kelly <bkelly@naicolumbia.com>; Patrick Chambers <pchambers@naicolumbia.com>; Betsy Hartman <bhartman@naicolumbia.com>
Subject: RE: Sewer | Richland County Parcels | R20700-03-02, R20700-03-24, R20800-02-06, R20700-03-03

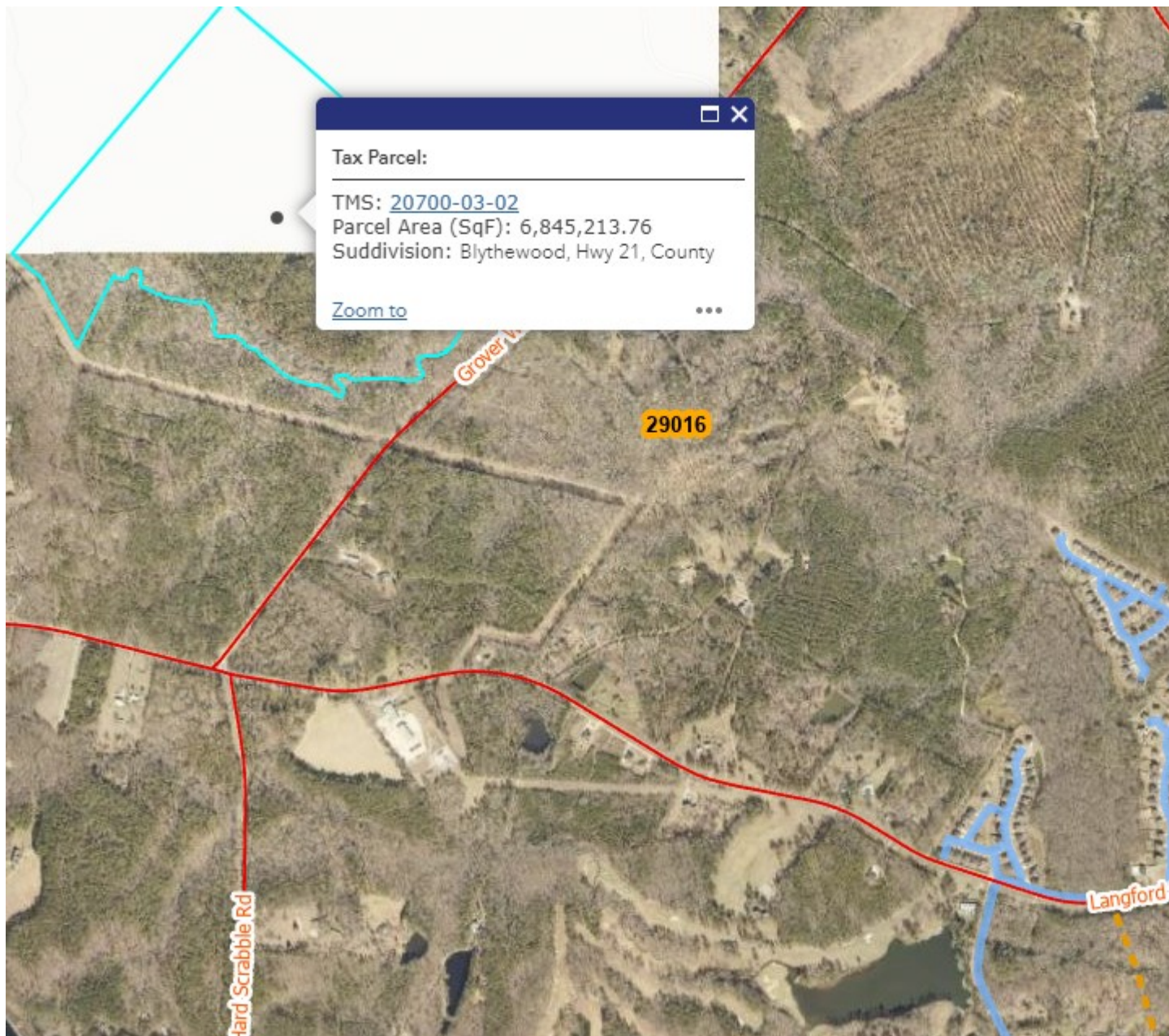
Jack, attached is a map of the properties you referenced, and our closest sewer lines. The closest gravity lines to the southern parcels is in the Hunter's Run subdivision about 5000' downstream. We have a 24" force main about 3200' away, but would require a pump station to connect that way.

Jack Springs

From: Williams, Christopher M <Christopher.Williams@columbiasc.gov>
Sent: Thursday, March 18, 2021 5:09 PM
To: Jack Springs
Subject: Blythewood water screenshot

Good afternoon,

In reference to our brief conversation, I've attached screenshots (below).





Christopher M. Williams
Special Services Manager

Columbia Water
Engineering Department
Engineering Administration Division
Special Services

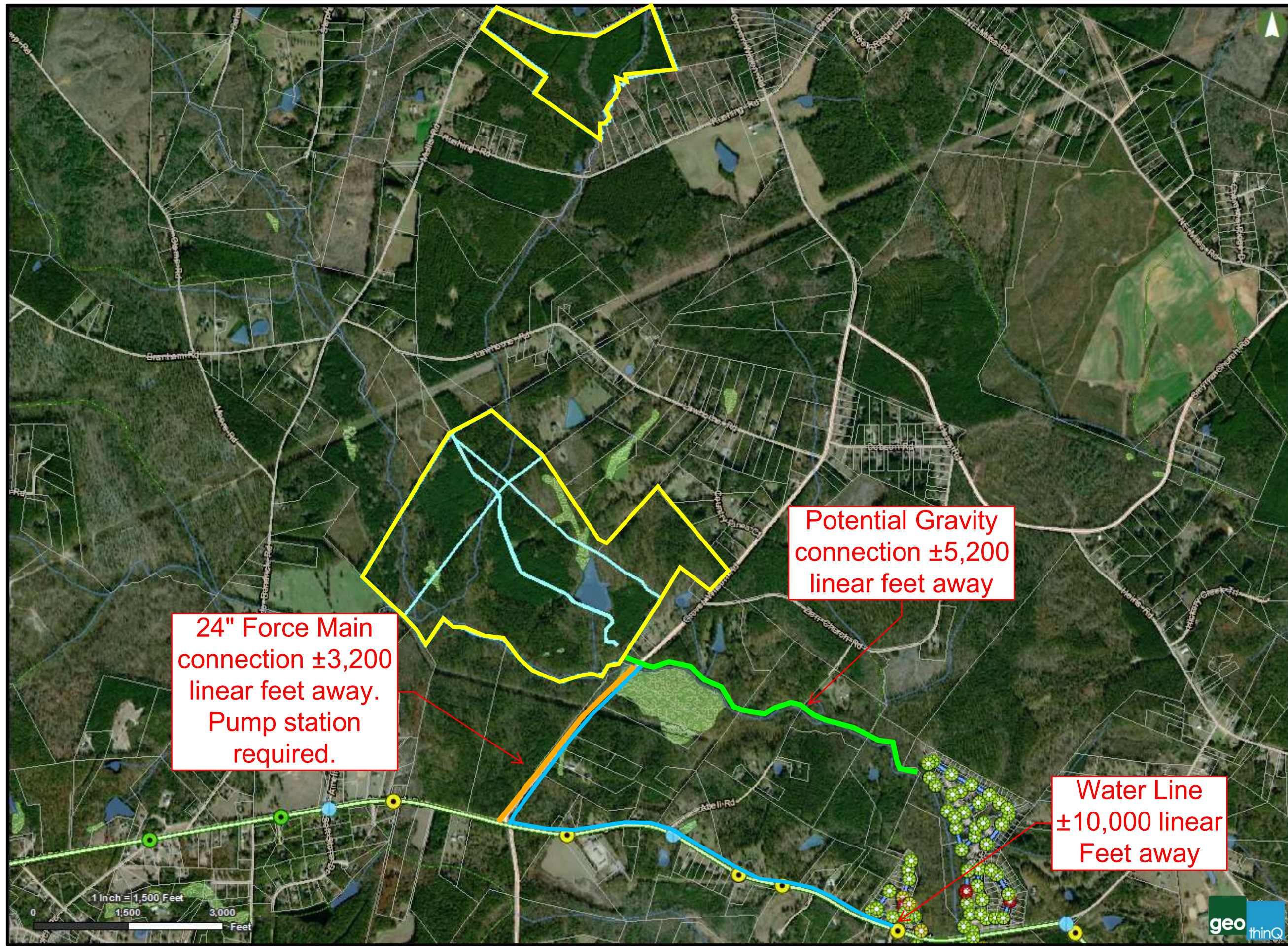
PO Box 147 | Columbia, SC 29217



sewer availability

THEME
02/08/2021

- Excellent
- Fair
- Poor
- Unknown
- Gravity Main
- Satellite
- Pressurized Main
- Wet Well
- Grinder
- Submersible
- Other
- Unknown
- Air Release
- Air Release with Filter
- Ball
- Butterfly
- Gate
- Other



This map was created using geothinq | www.geothinq.com | Mapping Smart Land Decisions

EXHIBIT F

From: Ann Marie watson <a.mwatson@hotmail.com>
Sent: Wednesday, April 20, 2022 2:59 PM
To: Kellum Allen <kellumallen@gmail.com>
Subject: Touching base

Hi. Hope you guys had a happy Easter! It was beautiful here.

Chuck contacted me via email. He says I owe him money. I had asked him previously not to contact me because it just makes me mad. I'm a much more peaceful person if I don't have to deal with him. Knowing he even thinks about me just triggers me. At any rate I told him to that if he thought I owed him money, he could assume it was not I was trying to hide it because I don't operate that way. I Assured him that if I owed it to him that I would most certainly pay it. But I would not discuss it with him and he could contact you.

I apologize I didn't talk with you first or before I extended that invitation. It sorta rolled of the tongue, so to speak.

But this brings me to something else that had been on my mind. Many times I feel like I would like to have an attorney on retainer, as a security net, for things just like this. I didn't want to be presumptuous and assume I can turn to you just because you handled my divorce and we are family. I don't want to take advantage of that, however I feel like I just did.

Would you or David be interested in being on retainer for me for this and future issues? Very few would be criminal, I would imagine 😊

I appreciate you.

As I'm typing this I just remembered news you may not know. Claudia Moreland, our cousin mother was talking with about genealogy has been in contact with me.

George III gave 250 acres to James Wilson who marries Mary Perry. They have 2 sons, John and Jacob. John(and Lucy Crankfield) receive the land ?wedding, inheritance?

It is given to a (?Lewis) Crankfield, possible brother to Lucy. He marries Amelia Randolph.

Littleton Crankfields mother, Amelia/Millie Randolph was a widowed by a Crankfield. Through 1st husband Crankfield, she became owner of 250 acres. Her second husband was Lewis Perry. This is Mary Perry's brother from above). She gave property to Littleton on his 21st birthday as inheritance from his father. However, at that time women did not hold property. She gave up doceer rights to Lewis (the stepfather) so that in 1797 he could deed the 250 acres to Littleton.

The end point is that we are considered first family South Carolina although Claudia says S.C. quit adding to that registry. Most importantly, the women can proudly claim they are DAR, as Littleton and John Wilson are well documented revolutionists.

And on an aside to all this:

I worked in Camden with a nurse who was from Kershaw. She's black. Her last name is Wilson. She mentioned to me that her grandfather was "light-skinned." The Wilsons and Crankfields were around the Kershaw Fairfield County area so I decided to see if maybe she and I were related. I did find her family on [Ancestry.com](https://www.ancestry.com) and was able to go back to slave times and then I hit a dead end in the recordkeeping. But interestingly enough, I did find a record of a black man in her family tree in the early 1800s named Littleton Wilson.

EXHIBIT G

David A. Wilson
Eric K. Englehardt

dwilson@GreenvilleSClaw.com
eric@GreenvilleSClaw.com

June 15, 2022

Kellum W. Allen
Post Office Box 3241
West Columbia, SC 29171

RE: Ann Marie Watson vs. Charles L. Watson, Jr.
Case No. 2016-DR-23-3744

Dear Kellum:

I hope you are doing well. As you may recall, I represented Charles L. Watson, Jr. in connection with his divorce from Ann Marie Watson back in 2017. For your convenience, I am enclosing a copy of the Final Decree of Divorce filed June 30, 2017 as **Exhibit A**.

Pursuant to Paragraph 47 of the Marital Settlement Agreement which was approved by the Court, my client was ordered to pay your client \$714,430 to effectuate the equitable apportionment of the marital estate ("Equitable Distribution Payment"). As set forth in the Marital Settlement Agreement, my client satisfied \$236,227.97 of this obligation by allowing your client to receive all of the proceeds from the sale of the former Marital Home. He also received credit in the amount of \$236,227.97 representing the proceeds from the sale of the property on Cleveland Street.

As required by the Marital Settlement Agreement, my client paid your client \$5,000 per quarter every quarter from November, 2017 through February, 2022.

As you may recall, there was some dispute as to the value of the cabins in Cashiers. We included a value of \$200,000.00 on the Asset Allocation as a placeholder. Pursuant to Paragraph 46 of the Marital Settlement Agreement, if the Cashiers cabins sold for more than \$200,000.00, the value allocated to the wife would be increased by one-half the difference between the sales price and \$200,000.00. Based upon the Settlement Statement attached as **Exhibit B**, your client sold the cabins for \$327,000.00. Accordingly, my client is entitled to credit toward the Equitable Distribution Payment in the amount of \$63,500 (one-half the difference between \$327,000.00 and \$200,000.00).

As shown by **Exhibit C**, the net result of all the above is that my client has overpaid your client to the tune of \$42,954.84, which includes interest at 3.5%.

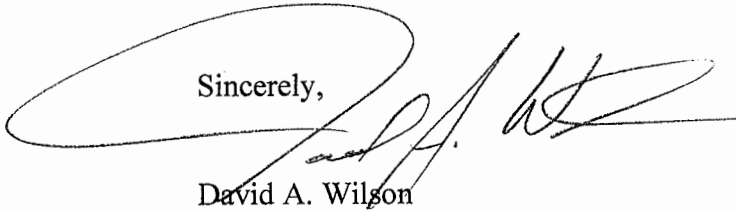
On April 20, 2022, my client sent your client a very matter-of-fact request for reimbursement of the overpayment which resulted in your client sending numerous emails filled with profanity and threats.

Please contact your client and let me know when my client can expect to receive reimbursement for the overpayment of the Equitable Distribution Payment.

If you no longer represent Ann Marie Watson, please let me know that as well so I can send a letter directly to her.

I look forward to hearing from you.

Sincerely,


David A. Wilson

DAW/scn

Cc: Charles L. Watson, Jr.

NY-2

EXHIBIT H

Archived: Friday, June 14, 2024 7:36:03 AM
From: [Ben Kelly](#)
Sent: Fri, 27 May 2022 14:15:25
To: [Bill Dixon](#)
Cc: [Patrick Chambers](#)
Subject: Re: [External] Allen
Sensitivity: Normal

I agree. We need to investigate dirt rd also. I will send info shortly. Thank you, Ben.

Sent from my iPhone

On May 27, 2022, at 9:40 AM, Bill Dixon <bdixon@mungo.com> wrote:

\u-257 ?
Ben,

Looking closer at this I mistakenly thought they also owned a parcel that fronted on Lawhorn Road.

I think it will be necessary to buy one or both parcels owned by Ann Marie Watson. A project this size will need 2 major access points.

I am also concerned with the limited frontage on Grover Wilson.

Thanks,

Bill Dixon
VP Land Development
Mungo Homes
441 Western Lane
Irmo, SC 29063
803-227-8423 Direct
bdixon@mungo.com
www.mungo.com



EXHIBIT I

6-21-22 → 8:30 → 9:15 t/c 20 min
Ann Marie

~ 9/5 incense (C) Client doesn't want to

Oed 2017 ✓

Why mother of lawyer (C) Don't know -

MAY 2022 page (C) D didn't make -

- Bread by kids present (C)

- How did he make (C) gift (C)

- Any other issues unresolved (C) - No -

4/6/22 1:5 07,951?

6/28/22

call D. Wilson Wednesday -

- 5,000⁰⁰ - incense

How to be raised

6/29/22 D Wilson - 10 min. He will call Beth before

A: 5,000 incense

He will raise hands

1. will be raised
 call will be raised

M-3

(A. Marie)Watson v Watson

> offer 2500 £ w no stl

9/30 + end of end of the pl
until 4/... pl - 10

> Ct. order -

7/14/22

Did ~~he~~ pay 3.5 interest on Balance of E.C. Div.

Apparently, yes

(Argument)

① Mutual mistake of fact on Cohier: "net"

② Not different ~~in~~ ^{on} his assets

③ P. 4 waiver of all equitable claims

④ For 4, her early age is 15 & mal = 180 yrs. ? Further
or
proof

⑤ per 58 continuing jurisdiction

⑥ He took sole continuous responsibility on his obligations

EXHIBIT J

Archived: Friday, June 14, 2024 12:20:00 PM

From: [Ben Kelly](#)

Sent: ue, 21 Jun 2022 21:30:25

To: [Bill Dixon](#)

Cc: [Patrick Chambers](#)

Subject: [External] ro er ilson second access

Sensitivity: Normal

Attachments:

atson ites d 

ellum is related to Ms. Watson and will discuss need for secondary access tonight.

Ben Kelly, CCIM

Principal | Executive Committee Member

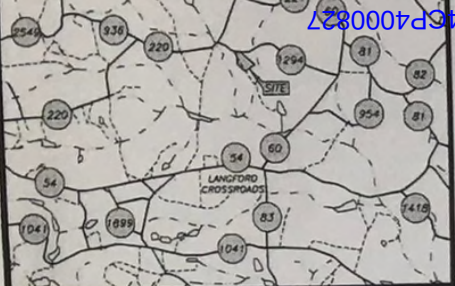
NAI Columbia

Direct 803.744.9830

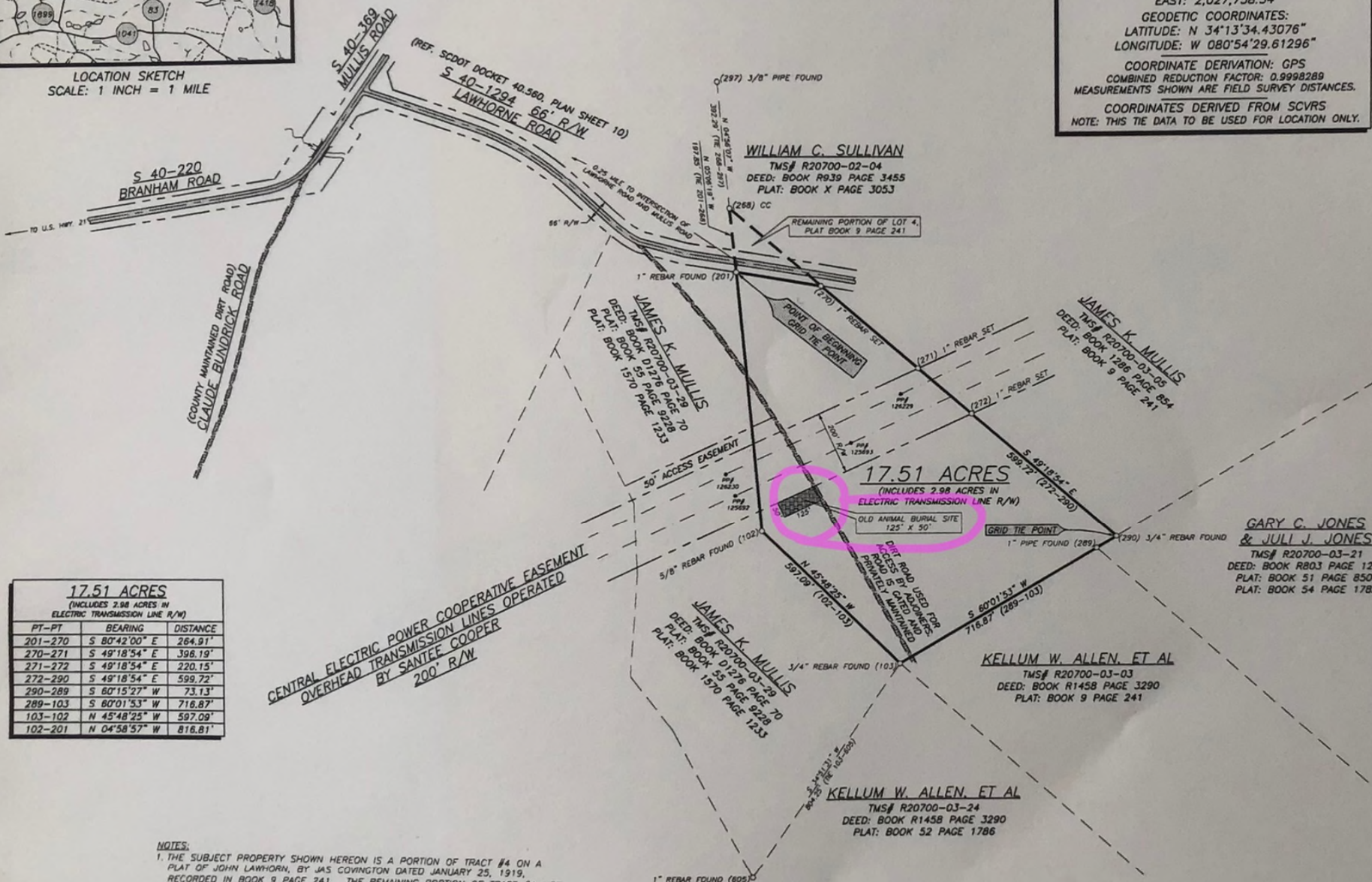
Cell 803.530.7900

bkelly@naicolumbia.com

EXHIBIT K



LOCATION SKETCH
SCALE: 1 INCH = 1 MILE



17.51 ACRES

(INCLUDES 2.98 ACRES IN
ELECTRIC TRANSMISSION LINE R/W)

PT-PT	BEARING	DISTANCE
201-270	S 80°42'00" E	264.91'
270-271	S 49°18'54" E	398.19'
271-272	S 49°18'54" E	220.15'
272-290	S 49°18'54" E	599.72'
290-289	S 80°15'27" W	73.13'
289-103	S 80°01'53" W	716.87'
103-102	N 45°48'25" W	597.09'
102-201	N 04°58'57" W	816.81'

CENTRAL ELECTRIC POWER COOPERATIVE EASEMENT
OVERHEAD TRANSMISSION LINES OPERATED
BY SANTEE COOPER
200' R/W

NOTES:

1. THE SUBJECT PROPERTY SHOWN HEREON IS A PORTION OF TRACT #4 ON A
PLAT OF JOHN LAWHORNE, BY JAS COVINGTON DATED JANUARY 25, 1919,
RECORDED IN BOOK 9 PAGE 241. THE REMAINING PORTION OF TRACT #4 LIES
WITHIN OR ON THE NORTHERN SIDE OF LAWHORNE ROAD AS SHOWN HEREON.

2. I HEREBY CERTIFY THAT I HAVE CONSULTED THE FEMA FLOOD INSURANCE RATE
MAP AND TO THE BEST OF MY KNOWLEDGE, BELIEF, AND INFORMATION, THE
SUBJECT PROPERTY IS NO LOCATED IN A SPECIAL FLOOD HAZARD ZONE.

COMMUNITY PANEL NUMBER: 45079C0075 G
COMMUNITY PANEL DATE: JANUARY 19, 1994

3. NO PRINT OR ELECTRONIC COPY OF THIS PLAT IS CERTIFIED BY GLENN
ASSOCIATES SURVEYING, INC. UNLESS IT BEARS THE ORIGINAL SIGNATURE AND
IMPRESSION SEAL OF THE RESPONSIBLE SURVEYOR SHOWN HEREON.



DRAWING BY JOE E. FRICK JR.

SUBJECT PROPERTY REFERENCES

TMS# R20700-03-04
DEED: BOOK D1286 PAGE 850
PLAT: BOOK 8 PAGE 241

VERTICAL DATUM: NAVD 88

POINT NUMBER: 201
SC GRID COORDINATES
NORTH: 871,468.23
EAST: 2,026,554.97
GEODETIC COORDINATES:
LATITUDE: N 34°13'42.70622"
LONGITUDE: W 080°54'43.69943"

POINT NUMBER: 290
SC GRID COORDINATES
NORTH: 870,632.81
EAST: 2,027,738.34
GEODETIC COORDINATES:
LATITUDE: N 34°13'34.43076"
LONGITUDE: W 080°54'29.61296"

COORDINATE DERIVATION: GPS
COMBINED REDUCTION FACTOR: 0.9998289
MEASUREMENTS SHOWN ARE FIELD SURVEY DISTANCES.
COORDINATES DERIVED FROM SCVRS
NOTE: THIS TIE DATA TO BE USED FOR LOCATION ONLY.

CLOSING SURVEY FOR
ANN MARIE WATSON

LOCATED APPROXIMATELY 3.5 MILES EAST OF BLYTHEWOOD
RICHLAND COUNTY, SOUTH CAROLINA
APRIL 12, 2010

SCALE: 1 INCH = 200 FEET

0 200' 400' 600' 800' 1,000' 1,200'

EXHIBIT L

On Jul 5, 2022, at 11:39 AM, David A. Wilson <dwilson@greenvillesclaw.com> wrote:

Kellum, by way of follow up on our conversation last week, my client is agreeable to your client paying the property division overpayment over time. This can be accomplished either by your client making reasonable monthly payments or by my client reducing child support payments. If we can reach an understanding, then my client will waive interest.

As to your client's threat of filing an action to increase child support, my client is not worried. His income is substantially less now than it was

when the order was signed. He closed two of the Mellow Mushroom locations in the last two years and two of the remaining four locations are losing money. Depending on your client's current financial situation, it appears likely that my client would actually be entitled to a *reduction* in his child support obligation. He will not pursue that reduction right now if we can satisfactorily resolve the issue of the overpayment of the property division.

Please let me know your client's position by no later than July 15.

David A. Wilson

<image001.jpg>
Carolina@Whitsett
200 Whitsett Street, Suite 100-B
Greenville, SC 29601
(864) 232-2329

CONFIDENTIALITY NOTICE: *This message is intended solely for the individual or entity to which it is addressed and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone [\(864.232.2329\)](tel:864.232.2329) or reply to this e-mail and delete all copies of this message. Thank you.*

EXHIBIT M

From: Kellum Allen <kellumallen@gmail.com>
Sent: Thursday, July 14, 2022 3:27 PM
To: David A. Wilson <dwilson@greenvillesclaw.com>
Subject: Re: Watson

David

Ann Marie to reimburse Chuck \$2500 per quarter commencing September 30, 2022 and the last day of each fiscal quarter thereafter until the \$41,616.67 is paid in full. Ends all equitable division claims. No interest. Own fees.

Let me know. Thanks.

Kellum

EXHIBIT N

Archived: Friday, June 14, 2024 7:3 :43 AM

From: [Ben Kelly](#)

Sent: ed, 27 Jul 2022 17:5 :53

To: [Bill Dixon](#)

Cc: [Patrick Chambers](#)

Subject: [External]RE: Allen Pro erty

Sensitivity: Normal

Att chments:

2022072111111517 d  022072111116574 d  02207211112750 d  0220721111134 07 d 

es it appears we are making good progress on Watson. ellum Allen has discussed with her and should make her an offer to option for 18 months this week. Attached is preliminary title as to horse graveyard and timber rights. ames Mullis is 93 and ellum believes timber has been cut. Worst case we purchase present value of future cut. I will send surveys.

Ben Kelly, CCIM

Principal | Executive Committee Member

NAI Columbia

Direct 803.744.9830

Cell 803.530.7900

bkelly@naicolumbia.com

ELECTRONICALLY FILED - 2024 Sep 06 9:51 AM - RICHLAND - COMMON PLEAS - CASE#2024CP4000827

EXHIBIT O

Archived: Tuesday, September 3, 2024 1:05:52 PM
From: [Ben Kelly](#)
Sent: Fri, 5 Aug 2022 1:30:57 -0000 Authentication
To: [Kellum Allen](#)
Subject: F : tion
Sensitivity: Normal
Attachments:
[and](#) [tion doc](#) 

F

Ben Kelly, CCIM

Principal | Executive Committee Member

NAI Columbia

Direct 803.744.9830

Cell 803.530.7900

bkelly@naicolumbia.com

From: Betsy Hartman bhartman@naicolumbia.com
Sent: Friday, August 5, 2022 2:07 PM
To: Ben Kelly bkelly@naicolumbia.com
Subject: tion

s this the form you need

Betsy Hartman

ale ea in A mini tractor

NAI Columbia

Direct 803.744.98



807 Gervais Street, Suite 200
Columbia, SC 29201
+1 803 254 0100
www.naicolumbia.com

Land Option

Both Seller and Purchaser acknowledge receiving, reading, and understanding the South Carolina Real Estate Commission's Agency Disclosure Form.

The [] Purchaser [] Seller is Licensed under the laws of South Carolina as a Real Estate Licensee.

KNOW ALL MEN BY THESE PRESENT, That this _____ day of _____, _____ that, _____ (Seller) in consideration of the sum of _____ (\$ _____) Dollars, to be held in a non-interest bearing trust account by **NAI Avant, LLC** does hereby grant, bargain and sell unto _____ (Purchaser), the right and option of purchasing at any time on or before the _____ day of _____, _____, the following described property:

at and for the total purchase price of _____ (\$ _____) Dollars, payable as follows: \$ _____, above acknowledged and the further payment of (\$ _____) Dollars, in cash or by certified or cashier's check at closing, and

And the said Seller does hereby represent that Seller is the owner in fee simple of the said premises, and has a full and perfect right to grant and sell this option, and Seller covenants and agrees that upon compliance by the said Purchaser or Purchaser's heirs, successors and assigns, with the terms of this option, Seller will convey the subject property at closing to Purchaser, _____ heirs, successors and assigns, in fee simple by a proper statutory general warranty deed, free from any and all encumbrances except as herein agreed to be assumed by Purchaser.

Upon written notice being given by the Purchaser during the period of this option of the intention of Purchaser to take said property in compliance herewith, then this option shall be extended beyond the period of its expiration as aforesaid a further reasonable time, not exceeding _____ (_____) days, to allow time for examination of title, and

S _____ P _____

preparation of closing documents.

The above described property shall be conveyed subject to applicable zoning ordinances and valid recorded easements, restrictions and covenants provided the foregoing do not make the title unmarketable or prohibit Purchaser from using the property for such purposes, if any, which may be specified under Special Conditions herein below.

All real property taxes, assessments, and rents (as and when collected) are to be prorated to date of completion of sale.

Seller shall pay for deed stamps, transfer tax, or other similar taxes or fees for recording based in whole or in part upon the consideration for or value of the Property.

It is agreed by both parties hereto that all money paid under the Land Option shall pass through the hands of **NAI Avant, LLC** as a disbursing agent for both parties hereto. **NAI Avant, LLC** does not guarantee payment of check or checks accepted as option money. Seller agrees to pay all real estate fees or commissions.

This agreement constitutes the entire agreement between the parties and can only be changed by written agreement signed by the parties hereto.

Special Conditions (the following conditions shall control if in conflict with the printed provisions of this Land Option):

WITNESS the execution hereof by Seller and Purchaser the day, month and year above written. Signed, Sealed and Delivered in the Presence of:

Witness:

Seller:

By: (Seal)

By: (Seal)

Witness:

Purchaser:

By: (Seal)

By: (Seal)

S _____ P _____

SOUTH CAROLINA DISCLOSURE OF REAL ESTATE BROKERAGE RELATIONSHIPS



South Carolina Real Estate Commission
PO BOX 11847, Columbia, S.C. 29211-1847
Telephone: (803) 896-4400 Fax: (803) 896-4427
<http://llr.sc.gov/POL/REC/>

Pursuant to South Carolina Real Estate License Law in S.C. Code of Laws Section 40-57-370, a real estate licensee is required to provide you a meaningful explanation of agency relationships offered by the licensee's brokerage firm. This must be done at the first practical opportunity when you and the licensee have substantive contact.

Before you begin to work with a real estate licensee, it is important for you to know the difference between a broker-in-charge and associated licensees. The broker-in-charge is the person in charge of a real estate brokerage firm. Associated licensees may work only through a broker-in-charge. **In other words, when you choose to work with any real estate licensee, your business relationship is legally with the brokerage firm and not with the associated licensee.**

A real estate brokerage firm and its associated licensees can provide buyers and sellers valuable real estate services, whether in the form of basic **customer** services, or through **client**-level agency representation. The services you can expect will depend upon the legal relationship you establish with the brokerage firm. It is important for you to discuss the following information with the real estate licensee and agree on whether in your business relationship you will be a **customer** or a **client**.

You Are a Customer of the Brokerage Firm

South Carolina license law defines customers as buyers or sellers who choose **NOT** to establish an agency relationship. The law requires real estate licensees to perform the following **basic duties** when dealing with **any** real estate buyer or seller as customers: ***present all offers in a timely manner, account for money or other property received on your behalf, provide an explanation of the scope of services to be provided, be fair and honest and provide accurate information, provide limited confidentiality, and disclose "material adverse facts" about the property or the transaction which are within the licensee's knowledge.***

Unless or until you enter into a written agreement with the brokerage firm for agency representation, you are considered a "customer" of the brokerage firm, and the brokerage firm will not act as your agent. As a customer, you should not expect the brokerage firm or its licensees to promote your best interest.

Customer service does not require a written agreement; therefore, you are not committed to the brokerage firm in any way unless a transaction broker agreement or compensation agreement obligates you otherwise.

Transaction Brokerage

A real estate brokerage firm may offer transaction brokerage in accordance with S.C. Code of Laws Section 40-57-350. Transaction broker means a real estate brokerage firm that provides customer service to a buyer, a seller, or both in a real estate transaction. A transaction broker may be a single agent of a party in a transaction giving the other party customer service. A transaction broker also may facilitate a transaction without representing either party. The duties of a brokerage firm offering transaction brokerage relationship to a customer can be found in S.C. Code of Laws Section 40-57-350(L)(2).

You Can Become a Client of the Brokerage Firm

Clients receive more services than customers. If client status is offered by the real estate brokerage firm, you can become a client by entering into a written agency agreement requiring the brokerage firm and its associated licensees to act as an agent on your behalf and promote your best interests. If you choose to become a client, you will be asked to confirm in your written representation agreement that you received this agency relationships disclosure document in a timely manner.

A seller becomes a client of a real estate brokerage firm by signing a formal listing agreement with the brokerage firm. For a seller to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the seller and the brokerage firm which becomes the agent for the seller.

A buyer becomes a client of a real estate brokerage firm by signing a formal buyer agency agreement with the brokerage firm. For a buyer to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the buyer and the brokerage firm which becomes the agent for the buyer.

(Rev 1/17) Page 1 of 2

S _____ P _____

SOUTH CAROLINA DISCLOSURE OF REAL ESTATE BROKERAGE RELATIONSHIPS



South Carolina Real Estate Commission
 PO BOX 11847, Columbia, S.C. 29211-1847
 Telephone: (803) 896-4400 Fax: (803) 896-4427
<http://llr.sc.gov/POL/REC/>

If you enter into a written agency agreement, as a client, the real estate brokerage has the following **client-level duties: obedience, loyalty, disclosure, confidentiality, accounting, and reasonable skill and care**. Client-level services also include advice, counsel and assistance in negotiations.

Single Agency

When the brokerage firm represents only one client in the same transaction (the seller or the buyer), it is called single agency.

Dual Agency

Dual agency exists when the real estate brokerage firm has two clients in one transaction – a seller client and a buyer client. At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the brokerage firm to represent both you and the other client in a disclosed dual agency relationship.

Disclosed Dual Agency

In a disclosed dual agency, the brokerage firm's representation duties are limited because the buyer and seller have recognized conflicts of interest. Both clients' interests are represented by the brokerage firm. As a disclosed dual agent, the brokerage firm and its associated licensees cannot advocate on behalf of one client over the other, and cannot disclose confidential client information concerning the price negotiations, terms, or factors motivating the buyer/client to buy or the seller/client to sell. Each Dual Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

Designated Agency

In designated agency, a broker-in-charge may designate individual associated licensees to act solely on behalf of each client. Designated agents are not limited by the brokerage firm's agency relationship with the other client, but instead have a duty to promote the best interest of their clients, including negotiating a price. The broker-in-charge remains a disclosed dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients. At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the brokerage firm to designate a representative for you and one for the other client in a designated agency. Each Designated Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

It's Your Choice

As a real estate consumer in South Carolina, it is your choice as to the type and nature of services you receive.

- You can choose to remain a customer and represent yourself, with or without a transaction broker agreement.
- You can choose to hire the brokerage firm for representation through a written agency agreement.
- If represented by the brokerage firm, you can decide whether to go forward under the shared services of dual agency or designated agency or to remain in single agency.

If you plan to become a client of a brokerage firm, the licensee will explain the agreement to you fully and answer questions you may have about the agreement. Remember, however that until you enter into a representation agreement with the brokerage firm, you are considered a customer and the brokerage firm cannot be your advocate, cannot advise you on price or terms, and only provides limited confidentiality unless a transaction broker agreement obligates the brokerage firm otherwise.

The choice of services belongs to you – the South Carolina real estate consumer.

Acknowledgement of Receipt by Consumer:

Signature _____ Date _____

Signature _____ Date _____

THIS DOCUMENT IS NOT A CONTRACT.
 This brochure has been approved by South Carolina Real Estate Commission for use in explaining representation issues in real estate transactions and consumer rights as a buyer or seller. Reprinting without permission is permitted provided no changes or modifications are made.

(Rev 1/17) Page 2 of 2

S _____ P _____

August 7, 2022

Ms. Ann Marie Watson
8400 N. Tigerville Road
Traveler's Rest, SC 29690

re: Land Option Contract for 17.51 acres in Blythewood

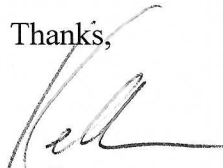
Dear Ann Marie:

Enclosed are the documents for the above 18-month option on the 17.51 acres at \$12,000 per acre, as agreed. I have signed same in the presence of a witness.

Please do the following:

- 1) Read the document, initial page 1 and page 2, and sign page 2.
- 2) Please have an adult witness sign where indicated, witnessing your name on page 2.
- 3) Please fill in the date on page 1 with the date you sign.
- 4) Deposit my \$500 earnest money check, enclosed herein to your individual bank account.
- 5) Please make and retain a copy of the document for yourself.
- 6) Please return the document as signed by you in the self-addressed, stamped envelope provided for your convenience.

Thanks,



Kellum

Land Option

KNOW ALL MEN BY THESE PRESENT, That this ____ day of August, 2022 that, Ann Marie Watson (Seller) in consideration of the sum of Five Hundred (\$500.00) Dollars, to be held in her individual checking account does hereby grant, bargain and sell unto Kellum W. Allen (Purchaser), the right and option of purchasing at any time on or before the 15th day of February, 2024, the following described property:

ALL that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being near the City of Columbia, in the County of Richland, State of South Carolina, containing 17.51 acres, more or less, as shown as plat prepared by Glenn Associates Surveying, Inc., entitled "CLOSING SURVEY FOR ANN MARIE WATSON," dated April 12, 2010 recorded on May 27, 2010 in Plat Book 1609 at Page 2333 in Richland County, South Carolina. Reference is hereby made to the above mentioned plat for a complete metes and bounds description thereof.

T.M.S.# R20700-03-04

at and for the total purchase price of two hundred ten thousand one hundred twenty (\$210,120.00) Dollars, payable as follows: \$500.00, above acknowledged and the further payment of (\$209,620.00) Dollars, in cash or by certified or cashier's check at closing.

And the said Seller does hereby represent that Seller is the owner in fee simple of the said premises, and has a full and perfect right to grant and sell this option, and Seller covenants and agrees that upon compliance by the said Purchaser or Purchaser's heirs, successors or assigns, with the terms of this option, Seller will convey the subject property at closing to Purchaser, Kellum W. Allen or his heirs, successors or assigns, in fee simple by a proper statutory general warranty deed, free from any and all encumbrances except as herein agreed to be assumed by Purchaser.

Upon written notice being given by the Purchaser during the period of this option of the intention of Purchaser to take said property in compliance herewith, then this option shall be extended beyond the period of its expiration as aforesaid a further reasonable time, not exceeding sixty (60) days, to allow time for examination of title, and preparation of closing documents.



Kellum W. Allen (initials)

Ann Marie Watson (initials)

NAI 000790

The above described property shall be conveyed subject to applicable zoning ordinances and valid recorded easements, restrictions and covenants provided the foregoing do not make the title unmarketable or prohibit Purchaser from using the property for commercial and/or residential development.

All real property taxes, assessments, and rents (as and when collected) are to be prorated to date of completion of sale.

Seller shall pay for deed stamps, transfer tax, or other similar taxes or fees for recording based in whole or in part upon the consideration for or value of the Property.

This agreement constitutes the entire agreement between the parties and can only be changed by written agreement signed by the parties hereto.

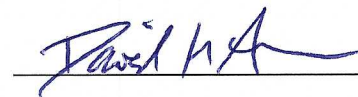
WITNESS the execution hereof by Seller and Purchaser the day, month and year above written.
Signed, Sealed and Delivered in the Presence of:

Witness:

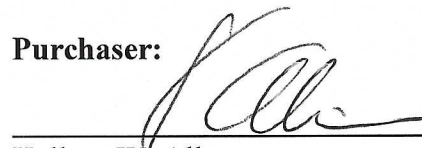
Seller:

Ann Marie Watson

Witness:



Purchaser:



Kellum W. Allen



Kellum W. Allen (initials)

Ann Marie Watson (initials)

NAI 000791

EXHIBIT P

From: Ann Marie watson <a.mwatson@hotmail.com>
Sent: Monday, August 15, 2022 11:30 AM
To: Kellum Allen <kellumallen@gmail.com>
Subject: Re: Re:

Will be today on the way to school pick up. 1st day back to school. Go team!

From: Kellum Allen <kellumallen@gmail.com>
Sent: Monday, August 15, 2022 11:13 AM
To: Ann Marie watson <a.mwatson@hotmail.com>
Subject: Re:

Hey

It's okay. The Courthouse records indicate Jim relinquished timber rights some years later.

So, we're still good.

Let me know when you mail the paperwork.

Thanks.

Kellum

On Aug 15, 2022, at 10:34 AM, Ann Marie watson <a.mwatson@hotmail.com> wrote:

You are just going to have to overlook my stupidity. Thank you in advance. I forgot I had copy of the deed in my safe. I have not mailed your offer yet.

Look over this and make sure it doesn't change anything, specifically the timber rights. I see they ARE assigned to daddy until his death. Did you want to include a sentence about that in your offer?

Thanks,

Ann Marie Mullis Watson

<IMG_7534.jpg>

EXHIBIT Q

Archived: Tuesday, August 6, 2024 12:03:16 PM
From:
To:
Subject: RE: Portia Road tract
Sensitivity: Normal

reat ork Can you please send me an executed copy Thank you Ben

Ben Kelly, CCIM

Principal | Executive Committee Member

NAI Columbia

Direct 803.744.9830

Cell 803.530.7900

bkelly@naicolumbia.com

From: Kellum Allen kellumallen@mail.com
Sent: Thursday, August 1, 2022 10:11 AM
To: Ben Kelly bkelly@naicolumbia.com
Subject: Re: Portia Road tract

Ben received Ann Marie's signed option contract yesterday Thanks Kellum

sent from my iPhone

EXHIBIT R



Kellum Allen



Cancel



All

Mail

People

Files

1

Filter

Has Attachments

wondering where we go to...

AM

Ann Marie watson 2/10/23

Re: layout

3

Sent

You know what else? I just noticed it's Mungo home...

AM

Ann Marie watson 2/10/23

(no subject)

Sent

Doesn't have to be a hard copy. You can take a pic a...

AM

Ann Marie watson 2/9/23

Re: Blythewood

2

Sent

Morning! Jeff and everyone else have seen...

AM

Ann Marie watson 12/7/22

(no subject)

Sent

Hi. Our contract is up now isn't it? Thanks, Ann Mari...

AM

Ann Marie wats... 11/19/22

AM

You

To Kellum Allen

Feb 9, 2023

...

Morning!

Jeff and everyone else have seen them markers surveys etc. to the property being sold. He mentioned to me in passing that you had showed him a plan for development of the property. I asked him to share it with me. He's emailed you checking with you to make sure that's OK with you.

I would like to see that plan please.

Thanks,

Ann Marie Mullis Watson

...



Reply to All



Mail



Calendar



Channels



Apps



All Mail People F

1 Filter Has Attachments

AM Ann Marie wa... 7/29/23
(no subject) Sent
As I have received no
response from you reg...

AM Ann Marie wa... 2/15/23
(no subject) Sent
No, I'm not bluffing. I will
not do it. Thanks, Ann...

AM Ann Marie wa... 2/15/23
(no subject) Sent
Hello. You may be
wondering where we g...

AM Ann Marie wa... 2/10/23
Re: layout 3 Sent
You know what else? I
just noticed it's Mungo...

AM Ann Marie wa... 2/10/23
(no subject) Sent
Doesn't have to be a
hard copy. You can tak...

AM Ann Marie wat... 2/9/23
Re: Blythewood 2 Sent
Morning! Jeff and
everyone else have se...

AM Ann Marie wa... 12/7/22
(no subject) Sent

Ann Marie

Here you go.

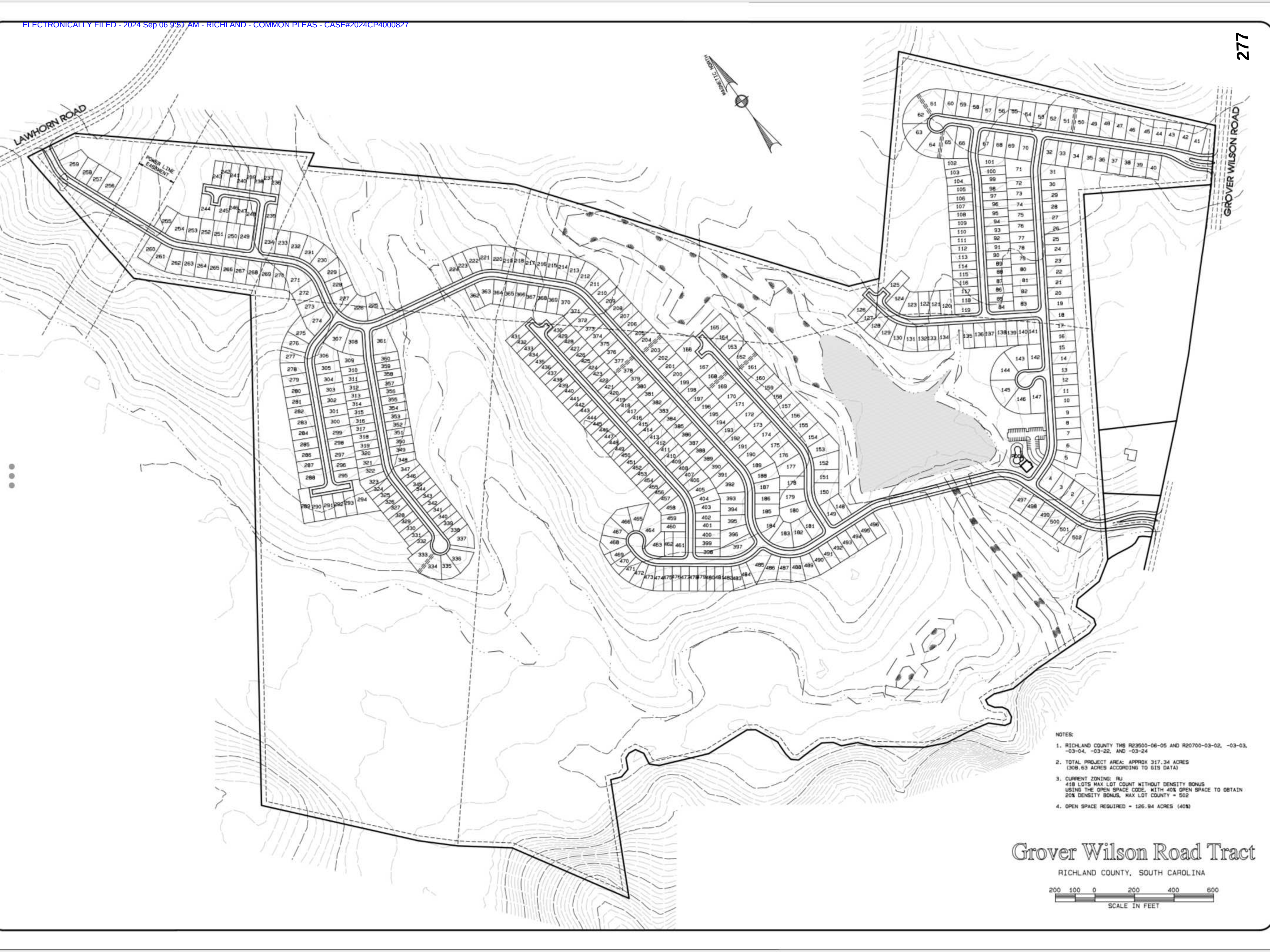
Thanks.

Kellum

Begin forwarded message:

...

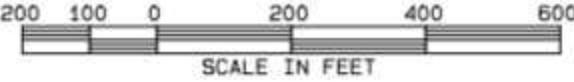
ELECTRONICALLY FILED - 2024 Sep 06 9:51 AM - RICHLAND - COMMON PLEAS - CASE#2024CP4000827



- NOTES:
1. RICHLAND COUNTY TMS R23500-06-05 AND R20700-03-02, -03-03, -03-04, -03-22, AND -03-24
 2. TOTAL PROJECT AREA: APPROX 317.34 ACRES
(308.63 ACRES ACCORDING TO GIS DATA)
 3. CURRENT ZONING: RU
418 LOTS MAX LOT COUNT WITHOUT DENSITY BONUS
USING THE OPEN SPACE CODE, WITH 40% OPEN SPACE TO OBTAIN
20% DENSITY BONUS, MAX LOT COUNT = 502
 4. OPEN SPACE REQUIRED = 126.94 ACRES (40%)

Grover Wilson Road Tract

RICHLAND COUNTY, SOUTH CAROLINA



Kellum Alle Cancel



All

Mail

People

F

1 Filter

Has Attachments

AM

Ann Marie wa... 7/29/23
(no subject) Sent

As I have received no response from you reg...

AM

Ann Marie wa... 2/15/23
(no subject) Sent

No, I'm not bluffing. I will not do it. Thanks, Ann...

AM

Ann Marie wa... 2/15/23
(no subject) Sent

Hello. You may be wondering where we g...

AM

Ann Marie wa... 2/10/23
Re: layout 3 Sent

You know what else? I just noticed it's Mungo...

AM

Ann Marie wa... 2/10/23
(no subject) Sent

Doesn't have to be a hard copy. You can tak...

AM

Ann Marie wat... 2/9/23
Re: Blythewood 2 Sent

Morning! Jeff and everyone else have se...



Ann Marie wa... 12/7/22
(no subject) Sent

AM

You
To Kellum Allen

Feb 10, 2023

...

Thats an ass load of houses Kellum. Can't you jam in some more somewhere? Maybe make some townhomes? Turn them in to tiny homes! Hell, you can put a trailer lot in the middle, then folks can have the relatives come and live there too on wheels..come and go like snowbirds. it's also good that they're crammed up right on each other's boundary lines. You wouldn't want anyone to have a sense of privacy would you? Did you draw that plan or did the developer that you're trying to find draw that plan?

I am not seeing room for equestrian supported activities. I am not seeing any notice of a cemetery



Reply to All

278



Mail



Calendar



Channels



Apps

All Mail People F

1 Filter Has Attachments

AM Ann Marie wa... 7/29/23
(no subject) Sent

As I have received no response from you reg...

AM Ann Marie wa... 2/15/23
(no subject) Sent

No, I'm not bluffing. I will not do it. Thanks, Ann...

AM Ann Marie wa... 2/15/23
(no subject) Sent

Hello. You may be wondering where we g...

AM Ann Marie wa... 2/10/23
Re: layout 3 Sent

You know what else? I just noticed it's Mungo...

AM Ann Marie wa... 2/10/23
(no subject) Sent

Doesn't have to be a hard copy. You can tak...

AM Ann Marie wat... 2/9/23
Re: Blythewood 2 Sent

Morning! Jeff and everyone else have se...

AM Ann Marie wa... 12/7/22
(no subject) Sent



I am not seeing room for equestrian supported activities. I am not seeing any notice of a cemetery that needs to be protected. I am thinking respectfully that you're trying to bullshit me, sir. If you don't have any pearls to clutch, I'll mail you some... Amazon can get them to you in two days if you use prime delivery options. I don't know Jane's wardrobe, but she certainly seems like the kind of girl that would have pearls on hand.

Maybe you could use hers:

Now this is the third time I've observed you in a little misrepresentation of the truth to me. (I do pay attention.) I don't like it. I don't like it at all. Please make note to yourself that I don't like it. I'm not my mother. I am not going to quietly sit by while you do what the heck you want to, (legally of course).

If you would like me to sign off on the sale of that property, then you would be behooved to create the things that you told me you were going to create.

Let's remember who is the gate keeper here. Without my property, you have nothing to develop. I know that and you know that. Please act like it.

Warmest wishes!

Thanks,

Reply to All

EXHIBIT S



Kellum Allen



Cancel



All

Mail

People

Files

1

Filter

Has Attachments

AM

Ann Marie watson 7/29/23

(no subject)

Sent

As I have received no response from you regard...

AM

Ann Marie watson 2/15/23

(no subject)

Sent

No, I'm not bluffing. I will not do it. Thanks, Ann Ma...

AM

Ann Marie watson 2/15/23

(no subject)

Sent

Hello. You may be wondering where we go f...

AM

Ann Marie watson 2/10/23

Re: layout

3

Sent

You know what else? I just noticed it's Mungo home...

AM

Ann Marie watson 2/10/23

(no subject)

Sent



You

To Kellum Allen

Feb 15

...

Hello.

You may be wondering where we go from here. I'm waiting on a new drawing from you indicating a protected cemetery and lot sizes that do not detract from the value of the surrounding properties and some sort of equestrian amenities. I will not participate otherwise.

I completely understand that I signed and accepted your money. If you are going to hold me to the letter of the law, please know that you will have to sue me if you don't rectify this. I will not participate in this level of rape of our ANCESTORS LEGACY. It's kind of like burying hazardous waste and screwing up the land values and health of the people remaining living in the area. You see the analogy don't you? Y'all are something else.

Let me know if I need to lawyer up.

Ann Marie Mullis Watson



Reply to All

281

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Mail



Calendar



Channels



Apps

EXHIBIT T

JPG - 3.4 MB

How old are you?

Good LORD!

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kellum W. Allen,

Plaintiff,

v.

Ann Marie Watson,

Plaintiff.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action no. 2024-CP-40-00827

AFFIDAVIT OF DESA BALLARD

Personally, appeared before me, Desa Ballard, who being duly sworn, deposes and says that:

1. I am over the age of eighteen (18) years, of sound mind and am competent to state the matters set forth herein.
2. I am a member of the South Carolina Bar, having been admitted in 1983, S.C. Bar No. 498. I am also member in good standing of United States District Court for the District of South Carolina (1984), the Fourth Circuit Court of Appeals (1984) and the United States Supreme Court (1987) and numerous other jurisdictions as listed on my CV, attached as **Exhibit A**.
3. My practice focuses on defending lawyers in disciplinary and legal malpractice matters. I also teach students and lawyer groups frequently on issues related to legal ethics in South Carolina. I have been recognized as an expert by Courts in South Carolina on subjects including legal ethics, professional responsibility and legal malpractice.
4. My interest in professional responsibility and ethics arose while I was clerking for the late Chief Justice Ness at the South Carolina Supreme Court from 1985-1987. In South Carolina, licensure and discipline of attorneys is a function of the Supreme Court, not the state Bar or another agency. My clerkship with the Chief Justice included dealing with a

large number of attorney disciplinary matters which generated my interest and led me to focus on professionalism and obligations as an area of professional interest. As soon as I left the employment of the Chief Justice in 1987, I sought out and became involved in national organizations which focus on professional responsibility and ethics to better educate myself on this specialty area. I elected to focus my practice in that area and have done so for more than thirty-five (35) years, representing lawyers, judges, law firms, and persons seeking admission to the Bar and litigation regarding law firm break-ups, associate departure and related matters.

5. I have testified as an expert witness at trial on issues related to legal ethics and professional responsibility in approximately twenty (20) cases, and have independently consulted with hundreds of lawyers regarding potential cases they are reviewing including affidavits in support of lawsuits as required by S. C. Code §15-.
6. I was retained by Robert Wood to review materials relevant to this dispute and to offer my expert opinion as to the conduct of Plaintiff Kellum Allen with respect to transactions between him and Defendant Ann Marie Watson. I have reviewed a significant number of materials, but am receiving more as they become available. I hope to continue to receive more as litigation proceeds. I reserve the right to amend the opinions set forth herein as more information becomes available.
7. The duty of an attorney to a client is relatively sacred. The attorney must always place the client's interests above his own. That is not attenuated when the attorney and the client have a familial connection; in fact, it likely increases the duty owed to the client, because the two have some personal connection that predates the representation.



8. Once an attorney begins representing a client, the attorney becomes subject to the highest duty of loyalty to the client, notwithstanding any prior relationship of any kind, familial or otherwise, that may have existed between them. From my review of the documents¹ in this matter, including the amended answer with counterclaims filed on June 12, 2024, it appears that Kellum Allen began representing Anne Marie Watson in connection with a domestic matter in the Spring of 2016, when he began to advise her on matters related to her separation from her now-former husband.²
9. From my review of the documents and information received from Mr. Wood, I assume the following to be true.
10. Plaintiff represented Ann Marie in a domestic matter, including a divorce from her now ex-husband, with representation lasting approximately one year. The initial representation continuing uninterrupted from June 2016 when the parties to the domestic action finalized a marital settlement agreement dated June 29, 2017 which finally settled all property distribution issues between the parties. The divorce decree is dated June 30, 2017.
11. Plaintiff became intimately familiar with Ann Marie's real estate in Richland County, in the Blythewood area, during his representation in the domestic matter. Copies of the deeds, including the deed to Ann Marie of the 17.51 acres which contains a deed restriction

¹ Among the documents I have reviewed are deeds, materials that are identified as the domestic file maintained by Kellum Allen, a copy of the family court file from Greenville Family Court and other documents provided by Mr. Wood's office that I am informed and believe have been obtained by subpoena.

² The fee agreement is dated May 15, 2016, although Ann Marie's signature is dated September 1, 2016. The scope of the representation was "domestic action" as it related to Ann Marie's separation and divorce from Charles Watson. While the last billing entry in the file is in 2017, there is clear evidence in the form of text messages that Plaintiff was still representing Ann Marie in the domestic matter in 2021 as to an equitable distribution adjustment when Plaintiff brought up the possibility of Ann Marie entering into a land option contract with him for the 17.51 acres in Blythewood.



for an animal burial site to remain on the property in perpetuity, are in Plaintiff's domestic file for Ann Marie.

12. The marital settlement agreement as to equitable distribution provided for several transactions to occur in the future, as properties were sold and businesses owned by the husband were subjected to valuation.³ I am informed and believe that Ann Marie and her ex-husband attempted to distribute the assets in accordance with the settlement agreement.
13. Plaintiff reviewed the status of the parties' performance of their obligations under the family court settlement agreement in March 2020, shortly after COVID was expected to affect the ex-husband's finances. An email from Plaintiff to Ann Marie dated March 26, 2020, demonstrates Plaintiff's knowledge of that.
14. Documents produced from NAI and Mungo Homes reflect that Plaintiff and his family began marketing their real property in the Blythewood area, adjacent to Ann Marie's property, in early 2021.
15. By deed dated June 26, 2021, Ann Marie sold a piece of her Blythewood property to her sister, and Plaintiff and his wife were witnesses on the deed. The deeds state the location of the property, the acreage, and the sale price.
16. In April 2022, Ann Marie's ex-husband notified Ann Marie that he believed Ann Marie had been overpaid for her share of the equitable distribution. Plaintiff resumed representation of Ann Marie for purposes of verifying whether the ex-husband's claim was valid and then working out an agreement for repayment to her ex-husband. Plaintiff

³ Ann Marie's inherited property in Blythewood including the 17.51 acres which Plaintiff later attempted to option, was treated as marital property subject to equitable distribution and was listed among the assets that were used to allocate marital assets. Plaintiff's file from Ann Marie's domestic action does not reflect that any appraisals were done of Ann Marie's Blythewood property, and it was valued at \$295,000.00 by agreement of the parties. No consideration seems to have been made of the possibility that this property was separately owned property, inherited by Ann Marie and not subject to equitable distribution nor does there appear to be any analysis of whether the property was transmuted into marital property.



continued to represent Ann Marie as counsel worked out a methodology for Ann Marie to pay back the overage to her ex-husband.

17. On April 20, 2022, Ann Marie asked Plaintiff if she could keep him on retainer for miscellaneous legal issues that arose from time to time, including the claim by her ex-husband that the equitable distribution from their divorce needed to be adjusted because Ann Marie had been overpaid. On information and belief, Plaintiff responded that a permanent retainer was unnecessary because they were family and he would always provide legal services to Ann Marie when necessary.
18. From April 2022 through September 20, 2022, Plaintiff acted as Ann Marie's attorney in reaching an agreement with Ann Marie's ex-husband and the ex-husband's attorney to adjust the equitable distribution payments from the original divorce.
19. During the renewed representation in the domestic matter, and before the renewed representation concluded, in June 2022, Plaintiff asked Ann Marie if she would consider allowing him to take an option on real property that Ann Marie owned in Richland County. Over the course of several conversations, while the attorney-client relationship was still in existence, Plaintiff prepared a land option contract agreement which purportedly gave him an option to purchase a 17.51-acre tract of real estate in Richland County owned by Ann Marie that was part of her historic family farm.
20. Ann Marie had taken title to the 17.51 acres in Richland County by deed from James K. Mullis in 2010. The transfer of the property occurred by deed recorded in Richland County Book 1656 at page 1320. The deed contains the following deed restriction: "Grantee agrees that the old animal burial site. . . is to be protected forever. The old animal



burial site is never to be divided and no structure is ever to be built upon it.” This deed is in Plaintiff’s file for Ann Marie’s domestic action.

21. Documents reflect there were discussions between Plaintiff and Ann Marie regarding the 17.51 acres prior to July 2022.
22. Plaintiff and Ann Marie spoke by telephone the evening of June 15, 2022 and Plaintiff expressly told Ann Marie he wanted the option so he could purchase her 17.51 acres for himself personally. On information and belief, he intentionally withheld information related to his current marketing of the property and the proposed deal with Mungo Homes that would include Ann Marie’s 17.51 acres. Plaintiff also knew that Ann Marie’s ex-husband was demanding money from Ann Marie based upon the allegation he had overpaid his equitable distribution to Ann Marie.
23. By email on June 27, 2022, Ann Marie sent to Plaintiff a “platt” that shows the location of the “animal burial site.” On the plat, Ann Marie used a highlighter to show Plaintiff where the animal burial site existed. This is evidence that Ann Marie expressly told Plaintiff that the property had a deed restriction that required the animal burial site to be protected in perpetuity. Plaintiff of course was aware of that because a copy of the deed with deed restriction was in his possession from the domestic representation.
24. Based upon a chain of emails among Plaintiff and Ben Kelly from NAI Columbia and an agent of Mungo Homes on July 27, 2022, all were aware of the deed restriction regarding the animal burial site before Plaintiff sent a proposed land option agreement to Ann Marie and both possessed copies of the deeds with the animal burial site and timber rights. Plaintiff did not disclose to Ann Marie that he had pending plans to sell her 17.51 acres to Mungo Homes as part of a larger land deal for a high-density residential development he



had worked out for himself and his siblings for sale to Mungo Homes. On July 27, 2022, Ben Kelly of NAI Columbia advised Bill Dixon of Mungo Homes that “Kellum . . . has discussed with her and should make her an offer to option for 18 months this week. Attached is a preliminary title as to horse graveyard. . .”

25. Plaintiff asked Ann Marie what she would accept by way of sales price for the 17.51 acres and she estimated a sales price. There is no evidence Ann Marie’s Blythewood property was valued during the domestic action (the value on the financial declarations was by agreement), and Plaintiff was aware of the amount that Ann Marie had agreed to accept for the sale of her 11.28 tract to her sister in 2021, since Plaintiff and his wife were witnesses on the deed. Plaintiff also notarized the affidavit of consideration on the deed. Before responding to Plaintiff’s request for her asking price, Ann Marie looked at some other property as “comparables,” but she had no knowledge or expertise in that area, and Plaintiff knew she was not a real estate professional. She also did not know about Plaintiff’s plan to resell the property for a high-density residential development.
26. On August 5, 2022, Plaintiff asked his agent Ben Kelly at NAI Columbia for a sample of an option contract, and it was provided to Plaintiff the same day. The option contract that Plaintiff prepared for the option on Ann Marie’s 17.51 acres was far less sophisticated than the sample option Plaintiff obtained from NAI Columbia.
27. It should have been apparent to Plaintiff that Ann Marie was emotionally attached to the real estate and not capable of objectively negotiating an arm’s length transaction regarding the tract, especially when Plaintiff was continuing to represent Ann Marie regarding equitable division of assets from her divorce action and not disclosing to her his ultimate plans to enrich himself and his family through the Mungo Homes transaction.



28. At no time did Plaintiff advise Ann Marie to seek independent advice regarding the value of her land, the legal issues involved with her attorney entering into a business transaction with his own client, the fairness to Ann Marie of the option contract or what effect sale of the 17.51 acres would have on the remaining real property that Ann Marie owned in the area. He also did not disclose his plans of a sale of property to Mungo Homes for a high-density residential development, which would include her 17.51-acre tract. He did not advise Ann Marie to seek accounting assistance to determine what steps, if any, she could take to best grant an option on the 17.51 acres, *i.e.*, individually or through an LLC. It is undisputed, however, that Ann Marie informed him of the protected nature of the animal burial site on the 17.51 acres and that Plaintiff disclosed that to his real estate broker and to Mungo Homes. It is also undisputed that Ann Marie intended that any sale of the 17.51 acres that might occur in the future must contain the deed restriction regarding the animal burial site.
29. Ann Marie expressly told Plaintiff that, if he exercised the Land Option contract, Ann Marie planned to use the proceeds of the sale to preserve the nearby Crankfield cemetery.⁴
30. Ann Marie received the land option contract from Plaintiff via United States mail on or about August 11, 2022. Believing Plaintiff was acting in her best interests as he was still her lawyer, Ann Marie followed the instructions Plaintiff set out in his letter, and she signed the Land Option contract and returned it to Plaintiff via U.S. Mail on August 15, 2022.

⁴ Crankfield Cemetery was established in the 1800s and is located near the property which is the subject of this action. The cemetery was originally in Fairfield County, but lines were redrawn in 1913 and the land was identified as being located in Richland County.



31. Plaintiff did not explain relevant legal terms to Ann Marie in connection with the Land Option contract, including “fee simple” and “general warranty deed,” nor did he explain to her that signing the Land Option contract as he prepared it was intended to give him unrestricted and irrevocable ownership and control of the subject property, to do with what he pleased including commercial development, and that Ann Marie had no recourse or ability to prevent him from taking action that was in direct contravention of the restrictions placed upon the transaction or the deed restriction in the deed to Ann Marie in 2010 regarding the animal burial site. Plaintiff also did not disclose to Ann Marie that the land option was assignable.
32. Without disclosing material information to her or advising Ann Marie to consult with independent counsel, Plaintiff prepared a proposed written land option which gave him the contractual right to purchase from Ann Marie the 17.51-acre tract no later than February 15, 2024. Ann Marie was paid \$500.00 as the price for the option, but Plaintiff asked Ann Marie to retain the money and isolate it from Ann Marie’s funds so that it could be refunded should Plaintiff decide not to exercise the option. Plaintiff failed to make any provision for preservation of the animal burial site. Plaintiff did not advise Ann Marie to get any independent consultation regarding the transaction, and omitted any provision which required him or his assignee to pay property taxes on the property during the term of the option. The land option contract left all the burden of ownership on Ann Marie.
33. The handling of the option price as dictated by Plaintiff to Ann Marie means there was no consideration of any kind paid to Ann Marie for the August 2022 land option agreement prepared by Plaintiff because Ann Marie did not receive the \$500.00 in an unrestricted fashion. She was not allowed to exercise dominion over the money, and therefore it was



of no value to her. In my professional opinion, the land option contract is void as against public policy as the product of a breach of fiduciary duty and over-reaching by Plaintiff as to his obligations to Ann Marie.

34. Plaintiff notified NAI Columbia via email on August 18, 2022 that he had received Ann Marie's signed option contract "yesterday." At 1:36 pm, Ben Kelly at NAI Columbia responded, "Great work" and he requested a copy of the option contract.
35. Ann Marie owns other real property in the vicinity of the 17.51 acres that is the subject of the Land Option contract, and Plaintiff failed to advise Ann Marie to get independent real estate consultation and advice regarding the effect of a transfer of the 17.51 acres with unrestricted development on the remaining real estate owned by Ann Marie in the area.
36. Ann Marie did not seek independent counsel to protect her interests in connection with the land option contract, because she believed Plaintiff was representing her and acting in her best interests in connection with the transaction.⁵ Instead, Plaintiff was withholding critical information regarding his plans for the property in order to take advantage of his client Ann Marie.
37. I am advised that Plaintiff agreed with Ann Marie to ensure that the animal burial site would be preserved in the event the property was developed in the future but took no action in connection with land option contract, or otherwise, to include the restriction to which he had promised to Ann Marie he would honor.

⁵ Since Plaintiff did not disclose his plans with NAI and Mungo Homes, Plaintiff prevented Ann Marie from being able to independently seek advice on her own regarding the effect of selling her 17.51 acres or the value of her land.



38. Ann Marie asked Plaintiff for legal advice regarding her father's timber rights on the property prior to executing the land option contract, and Plaintiff provided her with legal advice regarding her father's entitlement to timber on the property after sale.
39. The preservation of the animal burial site was a material term of Ann Marie's agreement to enter into the land option contract. However, Plaintiff did not include any reference to this restriction in the land option contract that he prepared and did not advise Ann Marie that failure to expressly address the issue in the land contract made the deed restriction likely unenforceable as to him or any other assignee. The email chain among Plaintiff, his real estate agent and Mungo Homes reflect that Mungo Homes took some steps to inquire into the enforceability of the deed restriction regarding the animal burial site.
40. Documents reflect Plaintiff and two of his family members entered into a series of transactions for Plaintiff to obtain the option on Ann Marie's land and, in conjunction with sale of real property Plaintiff and his family owned personally, resell the land for residential development to Mungo Homes for a housing development, which would result in a substantial profit to Plaintiff and members of his immediate family. It actually appears Plaintiff proposed including Ann Marie's 17.51 acres in his proposed deal with Mungo Homes before he ever brought up the subject of taking an option on Ann Marie's property.
41. In February 2023, Ann Marie learned there was the possibility of a Mungo Homes development going in near her property in Blythewood. She contacted Plaintiff, who delayed but finally divulged the development of 500 home on 350 acres and his pending deal with Mungo Homes, which included Ann Marie's 17.51 acres.
42. In 2023 Plaintiff continued his efforts with others, including members of his family to attempt to enforce the illegal land option contract and retained counsel to represent him.



At all times, Plaintiff had to know that the land option contract was against public policy, as the product of an unfair business transaction between a client and her lawyer the result of duress, and a violation of his fiduciary duties to Ann Marie.

43. Ann Marie immediately revoked any legal effect of the land option, and on April 5, 2023, Plaintiff advised Mungo Homes that Ann Marie would no longer cooperate with the sale of her 17.51-acre tract in Blythewood. Plaintiff refused to respond to Ann Marie for several months other than by text, but the text messages made clear her position that the land option contract was revoked. In July 2023, Ann Marie sent a check to Plaintiff in the amount of \$450.00,⁶ which he returned without comment.
44. By letter dated January 3, 2024, Plaintiff attempted to exercise the land option contract, by way of a letter from his attorney, with full knowledge that Ann Marie had voided the land option contract, and she did not agree to Plaintiff's plans to develop the property in direct contravention with her wishes. Plaintiff's attempt to enforce the land option contract knowing Ann Marie had voided it made his attempt to enforce the land option contract a violation of his duties as Ann Marie's former attorney.
45. Plaintiff's counsel stated in the January 3, 2024 letter that it would "prepare the closing documents for the transaction" and suggested a closing of the sale in the middle of January, 2024.
46. Plaintiff filed suit against Ann Marie on February 7, 2024, seeking specific performance of the land option contract. Filing suit against Ann Marie in an attempt to enforce a void land option contract was an additional abuse of the prior relationship between Plaintiff and Ann Marie. Plaintiff had more than enough information in his possession by that time to

⁶ I am informed and believe that Ann Marie did not recall, when she sent the check, the exact amount Plaintiff had paid her for the land option.

know that the land option contract had been revoked (if it ever was valid), that his relationship with Ann Marie had polluted the independence of the land option contract, and the land option contract was likely not enforceable.

47. Ann Marie hired counsel to represent her, and upon doing so, her counsel sent a letter dated March 6, 2024 expressly voiding the land option contract again and tendering the return of the \$500 earnest money deposit.
48. Nonetheless, Plaintiff continued to insist the land option was valid, and he also disclosed to his counsel an easement that crossed Ann Marie's property that tied part of his family's land to a road that could be used for ingress and egress for a housing development. With full knowledge of his misconduct, Plaintiff moved forward with his plans to force Ann Marie to comply with the land option.
49. The standard of care for an attorney requires the attorney to act, without exception, in the best interests of the client. Using the existence of the attorney-client relationship to initiate a land sale proposal during the time of the representation requires that the attorney give full disclosure to his client of the possibility or actual conflict between them, and he is required to disclose in writing his advice for the client to seek independent counsel regarding the transaction.
50. Plaintiff did none of that.
51. In my professional opinion to a reasonable degree of certainty, Plaintiff deviated from the standard of care owed by attorneys to their clients when he:
 - a. Initiated discussions with Ann Marie about a business transaction intended to benefit him personally without advising her to seek independent counsel while he was also representing her.



- b. Failing to advise Ann Marie to get independent advice regarding the enforceability of the deed restriction in her deed to the 17.51 acres, the potential tax consequences, the price, burden of future zoning issues, the financial terms of the land option contract, and/or failing to advise her to get independent advice on those and other topics.
- c. Continuing discussions with Ann Marie about a business transaction intended to benefit him personally after Ann Marie shared emotional and heart-wrenching information about her feelings related to the property in the context of the attorney-client relationship between Ann Marie and Plaintiff, which should have alerted Plaintiff to the fact that Ann Marie was under emotional pressure and needed independent advice in order for her to engage in an arms-length transaction regarding the property.
- d. Took advantage of Ann Marie, who was his client and to whom he owed the highest duty of care and loyalty.
- e. Departed from his duty of loyalty, fairness by using Ann Marie, who was his client, to enrich himself and his family to Ann Marie's detriment.
- f. Failing to disclose to Ann Marie the plans Plaintiff had with his family to add Ann Marie's land to larger parcels owned by Plaintiff and his family to make a large and lucrative land deal with Mungo Homes.
- g. Departed from his duty of loyalty, fairness and reason after Ann Marie verbally voided the land option contract upon learning that Plaintiff intended to violate his promises to Ann Marie regarding the use that would be made of the property after Plaintiff resold the property to Mungo Homes.



- h. Continued to attempt to enforce the land option contract despite knowing that it was against public policy, had been voided, and was the result of a violation of his fiduciary duty to Ann Marie, arising from the confidential relationship of attorney-client that existed between them at the time Plaintiff initiated a discussion about his interest in purchasing the subject property.
- i. In failing to fully disclose to Ann Marie his intentions regarding the property prior to preparing a land option contract for her signature.
- j. In failing to properly advise Ann Marie regarding the legal significance of terms used in the land option contract and failing to disclose his own personal plans to enrich himself and his family by using Ann Marie's property as part of a larger sale to Mungo Homes.
- k. In refusing to accept the return of a deposit of money that was never actually paid to Ann Marie, since the land option contract prohibited her from accepting the \$500.00 payment as her own funds.
- l. In failing to advise Ann Marie to seek real estate professional assistance prior to engaging with Plaintiff in a transaction that affected her ownership of real property, especially since Plaintiff was acting as Ann Marie's legal counsel at the time.
- m. In using his knowledge of Ann Marie's assets, which he learned in the course and scope of his representation of her in the domestic action, to his own advantage and causing harm to Ann Marie.
- n. In preparing a land option contract that gave no consideration to Ann Marie.



- o. In attempting to enforce a void land option contract that he knew or should have known was void, especially after Ann Marie voided it.
 - p. Failing to ensure Ann Marie had independent legal advice and professional real estate advice prior to entering into the land option contract.
 - q. In depriving Ann Marie of the value of her real estate through wrongful acts;
 - r. In taking action to devalue the real property that Ann Marie did not contract to sell;
 - s. In using client information to profit for himself individually, which also harmed his client, Ann Marie.
 - t. There are so many deviations from the standard of care that the undersigned reserves the right to supplement this affidavit.
52. As a direct and proximate result of the multiple deviations from the standard of care that Plaintiff owed to Ann Marie, she has been and will continue to be damaged.
53. It is also my opinion that Plaintiff has breached his fiduciary duty to Ann Marie, separately from the duties he owed her as her lawyer. Because Plaintiff and Ann Marie had a familial relationship and Plaintiff undertook her legal representation when she was especially vulnerable, then exploited it for his own purposes separate and apart from the duties he owed to Ann Marie as her counsel, the breach of his fiduciary duties to Ann Marie are extreme in nature.
54. This affidavit is necessarily limited by the information available to me at this time and I Reserve the right to amend, edit or withdraw this affidavit should I determine the facts to be other than I have stated them to be.



Desa Ballard
Desa Ballard

Sworn and Subscribed before me this
26th day of August, 2024

W C Allen Jr
William C. Allen, Jr.
Notary Public for Georgia
My commission expires: 11/9/2024



Exhibit A

Curriculum Vitae
DESA BALLARD, ESQUIRE

CONTACT INFORMATION

Ballard & Watson, Attorneys at Law
 226 State Street
 West Columbia, South Carolina 29169
 Telephone 803.796.9299
 Facsimile 803.796.1066
 desab@desaballard.com
 www.desaballard.com

EDUCATION:

Juris Doctor - 1983
 University of South Carolina School of Law

Bachelor of Arts (Journalism) - 1980
 University of South Carolina
Magna cum Laude, Phi Beta Kappa

**PROFESSIONAL
 EXPERIENCE:**

Ballard & Watson, Attorneys at Law
 West Columbia, South Carolina - 1997 - present.

Adjunct Professor, University of South Carolina School of Law
 Columbia, South Carolina - Advanced Legal Profession. 2003 -2015.

Barnes, Alford, Stork & Johnson, L.L.P. (Of Counsel)
 Columbia, South Carolina - 2000 - 2003.

Ness, Motley, Loadholt, Richardson & Poole -
 Charleston, South Carolina - Partner. 1987 - 1997.

Chief Justice J. B. Ness, South Carolina Supreme Court - Law Clerk to Chief Justice. 1985 - 1987.

South Carolina Supreme Court - Staff Attorney. 1984 – 1985.

Honorable Ralph King Anderson, Jr., Florence, South Carolina. Circuit Court Law Clerk. 1983 - 1984.

**BAR
 MEMBERSHIPS:**

South Carolina Supreme Court
 District of Columbia Bar
 United States District Court, District of South Carolina
 Third, Fourth, Fifth, Eighth, Tenth Circuit Court of Appeals
 United States Supreme Court

PROFESSIONAL ACTIVITIES:

South Carolina Trial Lawyers Association

Chairman, Ethics & Professionalism Committee, 1996 - 2007
 Co-Editor, The Bulletin Magazine - 1993 - 1996
 Member, Technology Committee, 1994 - 1996
 Vice Chairman Amicus Committee, 1989 - 2000
 Board of Governors, 1990 - 1993
 Chairman CLE Committee, 1989 - 1992
 Vice Chairman Publications Committee, 1989 - 1990
 Vice Chairman CLE Committee, 1988 - 1989

South Carolina Bar

Member - Professional Responsibility Committee, 1994 – 2011;
 Chairman 1997-98.
 Member, Lawyers Helping Lawyers 1995 – present.
 Editorial Board, South Carolina Lawyer Magazine,
 1993 - 1994.
 Member - Ethics Advisory Committee, 1991 - 1999.
 Member - Continuing Legal Education Committee,
 1991 - 1992.
 Member – Unauthorized Practice of Law Committee
 2011- 2019.

South Carolina Administrative Law Judges Advisory Rules Committee 1994 - present.

South Carolina Criminal Practice Rules Committee 1987 - 1992.

South Carolina Judicial Council, Family Court Rules Subcommittee - 1986 - 1988.

Editorial Board - A Guide to South Carolina Legal Research South Carolina Bar CLE Division (1991).

Other Memberships:

Center for Professional Responsibility
 Association of Professional Responsibility Lawyers
 South Carolina Association of Ethics Counsel
 (Founding Member and Chairman)

PUBLICATIONS:

*A Force To Be Reckoned With - The South Carolina Delegates to the
 Constitutional Convention* Co-Author with J. B. Ness - published by the
 National Conference of Chief Justices, 1993.

Tearing Down the Spider's Web - The Deceptive Practice of Lawyer Bashing Co-author with J. B. Ness - South Carolina Trial Lawyer's Bulletin, Spring 1990.

South Carolina Jurisprudence - South Carolina Bar Encyclopedia. Contributing author on the topic of appellate practice, 1990.

Do The Write Thing - Quarterly column on legal writing in the South Carolina YLD Bar Tab, 1991 - 1993.

Punitive Damages Today - South Carolina Lawyer, January- February 1992.

Punitive Damages Today Part II - They're Back - South Carolina Lawyer, January - February 1994.

Brother, Can You Spare a Dime? - South Carolina Trial Lawyers Bulletin, Spring 1995.

Dicta from Desa - South Carolina Lawyers Weekly, 2009-2011.

TEACHING:

South Carolina Bar - CLE Division

Approx. 3 - 4 seminars per year 1986-2019, various topics

Legal Ethics and Practice Program (LEAPP) – Ethics of Trust accounting 3 seminars per year 2009-2012.

South Carolina Trial Lawyers Association

Chair, moderate and speak at annual convention seminar on Ethics and Professionalism, 1996 - 2007.

Other various educational presentations,

Including Mecklenburg County Bar Association, Administrative Law Judge Association, numerous Title Insurance Company seminars, Paralegal Associations, Technical College classes, York County Bar Association, Richland County Bar Association, Anderson County Bar Association, Hilton Head Island Bar Association; Probate Bench and Bar; SC Public Service Commission, SCAEC annual ethics seminar.

University of South Carolina School of Law: 2-week annual seminar on the S.C. disciplinary process in Advanced Professional Responsibility, 1993 – 2003.

CIVIC ACTIVITIES:

Mental Health Association of South Carolina

Board Member - 1997 to 1999.

AWARDS:

South Carolina Lawyers Weekly
Hall of Fame (2018)
Leadership in Law (2017)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2024-CP-40-00827
	)	
Kellum W. Allen,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF PLAINTIFF
	)	KELLUM W. ALLEN
v.	)	
	)	
Ann Marie Watson,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE ME KELLUM W. ALLEN, who, after being duly sworn, deposes and says that:

1. This Affidavit is offered in opposition to Defendant's Motion for Partial Summary Judgment. I am the Plaintiff in this action seeking specific performance of a land option contract (attached as Exhibit A) I entered into with Defendant for sale of a property owned by Defendant.

I. MY PERSONAL BACKGROUND

2. I was admitted to the South Carolina Bar in 1976. I served as an assistant, then deputy public defender from 1976 – 1978 in Greenville County. Since that time, I have been in private practice and then served as a Family Court Judge for the Eleventh Judicial Circuit for sixteen (16) years. I now consider myself semi-retired with my practice limited to mediation.

II. PERTINENT FACTUAL BACKGROUND OF THIS CASE

3. The property in question is part of the Allen Family Original Properties located near Blythewood, SC. The Original Properties consisted of numerous tracts accumulated by Hiram S. Allen and Annie Lou Allen during the 1900's. They were the grandparents of both me and the Defendant. The Allen family Original Property consisted of two (2) distinct locations. One (1) was the original "Home Place" near where my parents and the Defendant's parents had their homes. The second location is what the family has always called the "Creek Place/Big Pond." It consists entirely of undeveloped timberland. The "Home Place" and the "Creek Place/Big Pond" are two (2) separate locations approximately two (2) miles apart.

4. Following the death of our grandfather in 1960 and our grandmother in 1984, their two (2) children and heirs, H.S. Allen, Jr. (my father) and Ann Joye Allen Mullis (the Defendant's mother) decided to consolidate each's property by transferring tracts from joint ownership to sole ownership to simplify the overall ownership into Allen property and Mullis property. This was done in 1988.

5. Included in these transfers was the 17.51-acre tract, which is the subject of this case and has road frontage. In 1988, that tract was owned by my father, and the Mullis family owned a similar sized tract (without road frontage) which was exchanged for the Allen family 17.51-acre tract.

6. Simultaneously, in order to compensate for the loss of road frontage, an express easement was executed by all parties that gave the Allen Family an absolute right to develop the easement "to Richland County standards" so that the road access to Lawhorne Road would be preserved for any future development plans by the Allen family. (See Easement as Exhibit B)

7. My brother and I bought two (2) additional tracts that were adjoining the Allen property which provided a second road access should the property be sold. The net effect was to give the Allen family two (2) road access points for the purpose of satisfying potential development needs in the future. One access (1) on Grover Wilson Road and one (1) access on Lawhorne Road.

8. Thirty-three (33) years later as the owners of the Allen Family property involved in this case, my brother, Hiram S. Allen, III; my sister, Barbara Allen Coker; and I decided to sell our properties contained in the Allen tracts and hired Ben Kelly to broker the marketing and sale. We signed a listing contract with him on July 27, 2021.

9. Sometime in 2022, Ben Kelly advised me potential buyers/developers he was talking to preferred to have, if possible, a closer access to Lawhorne Road than our property afforded. Ben felt this could enhance the marketability of our property and asked me if I knew Ann Marie Watson. I told him she was my cousin and one (1) of Ann Joye's four (4) children. He asked if I thought she would consider selling the property. I replied that I did not know but would ask. The tract now in dispute, which was part of the Mullis property from 1988, was gifted to the Defendant in 2010 by her father following her parents' divorce.

10. I subsequently talked with the Defendant, told her our plan was to consolidate and sell our property through a commercial broker, and asked if she would consider selling. At no time was there any suggestion that I wanted the property for personal use. The Defendant said she would think about it and let me know.

11. Several months went by and Ben asked me if the Defendant had made a decision. I said I had not heard any response from her and I would follow up. I called her and she said she would let me know her decision.

12. On August 3, 2022, she responded with an email stating "Hi. \$12,000/acre is my asking price. Ann Marie." The next day she sent a second email laced with ugly, hateful language directed towards numerous people, which she followed up minutes later with a third email stating that I charged her mother too much for her divorce. (See her 4 emails with my reply as **Exhibit C with emphasis added**). The part that appalled me most was her allegation "out of the blue" that I had charged her mother, my Aunt, too much money in her divorce case from her father in the mid 1990's. The facts were that I had referred Ann Joye to attorney Tom McCutchen for divorce representation. Mr. McCutchen was perhaps the most highly regarded member of the Richland County Bar.

13. Because Ann Joye could not afford to hire a private investigator upon Mr. McCutchen's recommendation to prove her husband's adultery and needed funds for his retainer fees, I gave her the needed funds and moreover helped her with the necessary discovery and paperwork to minimize her lawyer's needed time and expenses. I stated these facts to Defendant in no uncertain terms.

14. Frankly, at that point, the Defendant's attitude and conduct had reached its limit with me. In her email, she chose to continue with our land option contract, which we did, but I knew then why her siblings had warned me about dealing with her; warned me how she "turns on a dime," and how she is "a piece of work."

15. The land option contract was signed a few days later; it set forth \$500 in consideration to her, and was a straightforward document, which was provided me by Ben Kelly. The Defendant sent me a copy of the deed on the property that mentioned an animal burial ground. I forwarded that along to the

broker for his and any buyer's information. There was no discussion about its legal effect, and I certainly made no representations to her or my broker about its preservation. That would be an issue for any subsequent buyer who would be assigned the contract purchase rights from me. At no time did the Defendant express any desire to preserve the cemetery, but rather was telling me about it so that I could tell any potential buyer. I had no personal knowledge of the cemetery, whose it was, or anything about it. In fact, it is now clear to me that she viewed the cemetery as important to her brother, his family, and her other siblings from whom she is estranged, and she decided to go forward with the contract with me, rather than insisting on some preservation of the cemetery. Subsequently, the Defendant has attempted to flip the cemetery issue as emotionally important to her, which instead was seized upon by her as an opportunity to antagonize her family. See Exhibit C where Defendant says, "But you've asked me to roll over on our family, something I never thought I would do. I'm going do it (*sic*). I gave you a price."

16. All the basic elements of a contract are met in this simple transaction. The undisputed facts are that I expressed an interest in an option on the property. The Defendant made me an offer and named her asking price. Her offer was accepted by me without any negotiation or discussion whatsoever. This is a simple contract. Because there was no attorney-client relationship existing at the time of this contract, there would be no fiduciary relationship in existence. Moreover, my role in that simple negotiation of an offer to buy the tract; a sales price named by the Defendant; and an acceptance by me demonstrates no complications that would suggest a breach of fiduciary duty even if it had existed.

17. Subsequently, our family entered a contract to sell our property to the Mungo company, who had previously been purchased by Berkshire-Hathaway. The contract was completed on April 4, 2023 and included purchaser's right to our option contract with the Defendant until its expiration on February 15, 2024.

18. In February 2023, the Defendant again "turned on a dime" and started demanding to terminate the contract and sent repeated profane and vulgar emails to me together with her social media campaign against me and my family. On February 10, 2023, she included my wife in one of her nasty

emails. I resolved at that moment to have absolutely no further direct contact with her. And I have not, even though she continued her nasty, profane emails to me.

19. I hired Randy Davis to be my attorney to pursue the option on my behalf in early 2024. The Defendant refused to sell per the contract and instead, called Mr. Davis several times with her usual hate-filled language. Mr. Davis filed suit on my behalf to enforce the contract. The Defendant has hired an attorney and brought counterclaims against me which allege that she has been manipulated and deceived and that she should be allowed out of the contract. Her email to me of April 20, 2022 expresses satisfaction with my representation to the extent that she inquired about being on a retainer with me and my son at the law firm. I told her then that is not an arrangement that we would be interested in and, in fact, had never done for any client. I told her that if she had legal issues that would be in an area of our practice, we would consider it, but that anything that would require travel to Greenville would be out for me and perhaps for my son. An example of her inquiring about representation was on February 9, 2019 when she called me and stated she had been fired as a nurse anesthetist at her hospital and was adamant about taking legal action against her former employer. Our office has never handled an employment type claim, and I did not like the sound of the details, so I referred her to a labor law firm whom she could contact if she so chose.

20. It is not pleasant to deal with anyone on this level, however I have been left with no alternative but to defend myself. So, I ask for the Court's patience to allow me to respond to all of the Defendant's attacks.

III. DEFENDANT'S CLAIMS OF BREACH OF FIDUCIARY DUTY AND VIOLATION OF RULE 1.8 OF THE SCRPC

21. While it is difficult to discern exactly what legal arguments Defendant is advancing in her Motion for Partial Summary Judgment and supporting Affidavit, it seems that some of Defendant's claims rely on an assertion that I was Defendant's lawyer at the time Defendant and I entered into our land option contract.

22. When the Defendant initially contacted me about representation in 2016, I recommended she contact Tom Traxler of the Greenville Bar or Ben Stevens of the Spartanburg Bar. Although the

Defendant is my cousin, we are 18 years apart in age and interacted on a seldom basis at the occasional family reunion. I am 73 and she is 55.

23. She called back and said that they did not take her case and asked me again if I would. I agreed at that time. She sued her husband for divorce on adultery and he counterclaimed against her for a divorce on habitual intoxication and adultery. It quickly became clear this was going to be a bitter divorce case with custody of the children as a major issue and a substantial and complex marital estate with multiple businesses to untangle. I had to also constantly tamp down the drama which the Defendant regularly inflamed with her social media postings. I had no details about her conduct from her family and after representing her on the divorce, it became apparent to me in bits and pieces of the estrangement between the Defendant and numerous members of her family, but I deliberately did not seek details from them and attempted to remain in a civil relationship with the Defendant as the years went by.

24. My representation of Defendant ended June 30, 2017 when her Divorce Decree was filed with the Clerk of Court in Greenville County. My retainer agreement with Defendant for her divorce case (which is attached in full in Defendant's Exhibit B to her Affidavit) states in pertinent part:

"SCOPE OF REPRESENTATION

This agreement is for representation of Client through the trial of the case in Family Court. This agreement does not cover post-trial motions or appeals. If same are requested by Client and recommended by Attorneys, a new agreement will be executed and additional funds will be required by Attorneys."

25. In this present matter, she has accused me of greed. Please note I unilaterally reduced her total bill by one-third (\$14,962.21).

26. Five years later, on April 20, 2022, Defendant emailed me to describe an issue that had arisen between Defendant and her ex-Husband, Chuck Watson. Chuck was alleging to Defendant that he had inadvertently overpaid her per certain terms of their Decree.

27. This email is attached hereto in pertinent part as **Exhibit D (emphasis added)**, and this is apparently the point at which Defendant claims she and I resumed an attorney-client relationship.

28. I responded to Defendant's email by calling her, and the conclusion was there was nothing to be done.

29. The matter was dormant for several months. Then on June 23, 2022, Chuck's divorce counsel reached out to me about it. At that point, Defendant and I spoke again.

30. The Defendant's initial email (Exhibit C) to me stated, "I assured him [Chuck] that if I owed it to him that I would most certainly pay it." The Defendant simply asked me to check the accuracy of the math contained in the Divorce Decree, which she and her ex-husband negotiated without lawyers' input, and because she did not want to speak with Chuck, she wanted me to convey her answer. After confirming with Defendant, I informed Chuck's divorce counsel in an email of July 14, 2022 (Exhibit E) that Defendant advised me she would reimburse Chuck as requested. As far as I was concerned, this ended the matter. In her Affidavit in Support of Summary Judgment, Defendant conveniently leaves out that she concluded to accept her ex-husband's proposal for reimbursement.

31. These additional communications did not constitute a new attorney-client relationship. No new retainer agreement was discussed nor signed (see scope of representation in Defendant's Exhibit B, page 2, which required same before an attorney-client relationship could be created). No fee was charged nor paid. Whatever my role in calculating this overpayment matter, it ended July 14, 2022.

32. I have no knowledge as to whether or not Defendant is making these payments to Chuck, but I assume she is doing so.

33. Sometime between July 31, 2022 and August 3, 2022, I followed up with Defendant at the request of Ben Kelly about her openness to sell the Blythewood tract in question pursuant to a land option contract. It was a brief conversation. She said she would let me know her decision and stated she considered herself "in the driver's seat" regarding this matter and had fully discussed it with her father, who was quite knowledgeable about Blythewood land values; hardly the mindset of someone at a negotiating disadvantage.

34. Defendant responded with an "asking price of \$12,000 per acre" on August 3, 2022. (See Exhibit C) As stated in paragraph 16 above, her offer was accepted by me without any negotiation or discussion whatsoever. The contract was signed by both parties and the \$500 was paid on or before August

15, 2022. This was almost exactly one month *after* my role ended in communicating Defendant's response to Chuck's inadvertent overpayment.

35. Between the middle of September and the middle of October, the Defendant's ex-Husband's attorney inquired about the status of the Defendant's payment, and in talking to the Defendant, she assured me the payment had been made per the email of July 14, 2022. I communicated that to the Defendant's ex-Husband's attorney, and he reconfirmed the case had been settled per my prior email and asked for a Consent Order. I told attorney Wilson I did not believe the Family Court Judge would entertain such an Order in a case that was never filed. I was proved correct on that and the request for a Consent Order was abandoned.

36. Defendant claims in her Affidavit that I delayed providing her the developer's sketch plan upon her request. This is not true. I provided that to her after I got permission from the broker and the buyer to send the sketch plan. It was sent on February 10, 2023, which is one day after she first emailed me asking for it on February 9, 2023.

IV. DEFENDANT'S CLAIMS OF INSUFFICIENT AND/OR LACK OF CONSIDERATION

37. Defendant's only other argument for her request for partial Summary Judgment is based on an alleged lack of consideration. In addition to the legal grounds contained in Plaintiff's Brief supporting my position that Defendant had *ample* consideration, as shown in Exhibit C where you can see Defendant was the party who set the sales price of the property, I accepted her offer with no negotiation whatsoever. \$210,120 was (and is) a fair price. As the Court can see from attached Exhibit F, this 17.51 acres is encumbered with a massive powerline easement which would indisputably and substantially reduce the value of the tract. It was agreed between Defendant and me that I would draft the necessary contract documentation, which was nothing more than a two-page option contract in straightforward language.

38. Defendant's claim in her Affidavit that she "refunded" the \$500 I gave her in consideration of the purchase option is baffling since I could not request the \$500 be returned any more than she could

deny that I had such an option to purchase.¹ In fact, Defendant acknowledged in an email to me on February 15, 2023, “I completely understand that I signed and accepted your money. If you are going to hold me to the letter of the law, please know that you will have to sue me if you don’t rectify this.” (see this email as **Exhibit G with emphasis added**).

39. It is also worth noting that Defendant, herself, and Chuck negotiated the terms of their final divorce settlement in 2017 against my advice in certain particulars. Specifically, I had counseled her that the Blythewood properties were pre-marital regarding 1 tract and gifted to her on the other 2 tracts. In my opinion, neither had been transmuted into marital property and should have been excluded from the marital estate, but she determined she wanted them included in her negotiations with her ex-husband. Her negotiations with her ex-husband included a determination that the Blythewood property, which is the subject of this present litigation, had a per acre value of \$7,500.

40. Furthermore, the Defendant sold an 11.28-acre tract in June 2021 to her sister, Beth, at a per acre price of \$4,877. This tract is located within sight of the Allen “Home Place,” whereas the subject of this land option contract is approximately 2 miles from the “Home Place” near the “Big Pond” or “Creek Place” location. Like her divorce settlement, the Defendant negotiated this transaction on her own, once again demonstrating her knowledge and confidence in dealing with her Blythewood properties.

41. Just like she did after entering into the land option contract with me, Defendant emailed profane and vulgar personal attacks to her sister after that deal. (See **Exhibit H with emphasis added**). It reached the point that this sister filed a police report with the Greenville County Sheriff’s Department.

42. I submit the above paragraphs demonstrate Defendant’s pattern of erratic behavior in entering into a contract with someone and then attacking them without provocation and in a very personal manner. I believe these paragraphs also speak quite directly toward refuting Defendant’s claim of insufficient consideration given that our land option contract will pay the Defendant \$12,000 per acre –

¹ For reasons that are unapparent to me, Defendant mailed me a check for \$450. Said check was not accepted by me, and in fact was returned to her by me.

considerably more than the per acre price she established in both of her two (2) previous Blythewood property land transactions.

43. In addition to the inaccuracies outlined hereinabove by Defendant, I have now reviewed the affidavit Defendant's expert Desa Ballard which contains numerous additional inaccuracies that I would need the benefit of a deposition or other discovery to effectively demonstrate to the Court. Discovery, however, has been on hold due to the pending motions by both parties.

V. CONCLUSION

44. In Defendant's tirade of follow up emails following both the present transaction and the transaction with her sister, Defendant makes it clear she is a "creative writer" who will "control the legacy" of her target. See Ann Marie's January 15, 2024 text to me as **Exhibit I (emphasis added)**. The Defendant's conduct toward me and her sister represents a pattern of the personal issues she alludes to in paragraph 12 of her Affidavit, where Defendant raises subjects dealing with her own personality and her clashes with her brothers and sisters. The Defendant has posted on Facebook since our contract was signed that her mother (my Aunt) "told" her not to sell the tract in question in this suit. (See **Exhibit J with emphasis added**) This is not possible because her mother has been deceased since September 5, 2019, more than four (4) years earlier.

45. Defendant does not contest that there was an offer and acceptance. In fact, I asked the Defendant if she wanted to sell the property and she said yes and named her price. It was accepted by me without negotiation of any kind. It was a more than fair price to her.

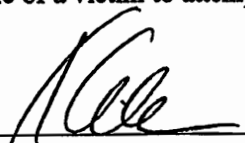
46. Whether this is a case of simply changing her mind and looking for someone to blame; hiring an attorney and now seeing a business opportunity; or simply enjoying the drama of it all, I do not know.

47. Defendant's initial Answer and Counterclaim arguing against performing her end of this contract claimed I had violated some ethical duty, which I believe is improper pursuant to Rule 407 – Scope [7] of the South Carolina Appellate Court Rules.. She has since altered her defense and/or counterclaims by claiming some professional negligence and "unfair trade practices" were committed by me, and that this

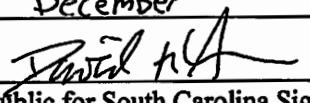
alleged negligence should somehow allow her to avoid her contractual obligations. I submit this an example of her aforementioned "creative writing," which is really just her effort to deny the truth.

48. Defendant is a highly trained and highly paid Nurse Anesthetist who has negotiated other property deals on her own, as recently as June 2021. In her affidavit, she claims that she was vulnerable in financial matters, but the Court should be aware that she walked away with half of a marital estate which was in excess of \$4.6 million.

49. I am disappointed to be in litigation with a member of my own family. Particularly with a family member that seems determined to cause harm to my reputation and standing with the Bar to the point she will fabricate events that did not take place and feign the role of a victim to attempt to gain the upper hand.


Kellum W. Allen

SWORN to before me this 8th day
of December, 2024


Notary Public for South Carolina Signature

David K. Allen
Notary Printed Name
My commission expires: 6/5/25

EXHIBIT A

ml

EXHIBIT A

Land Option

KNOW ALL MEN BY THESE PRESENT, That this 15 day of August, 2022 that, Ann Marie Watson (Seller) in consideration of the sum of Five Hundred (\$500.00) Dollars, to be held in her individual checking account does hereby grant, bargain and sell unto Kellum W. Allen (Purchaser), the right and option of purchasing at any time on or before the 15th day of February, 2024, the following described property:

ALL that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being near the City of Columbia, in the County of Richland, State of South Carolina, containing 17.51 acres, more or less, as shown as plat prepared by Glenn Associates Surveying, Inc., entitled "CLOSING SURVEY FOR ANN MARIE WATSON," dated April 12, 2010 recorded on May 27, 2010 in Plat Book 1609 at Page 2333 in Richland County, South Carolina. Reference is hereby made to the above mentioned plat for a complete metes and bounds description thereof.

T.M.S.# R20700-03-04

at and for the total purchase price of two hundred ten thousand one hundred twenty (\$210,120.00) Dollars, payable as follows: \$500.00, above acknowledged and the further payment of (\$209,620.00) Dollars, in cash or by certified or cashier's check at closing.

And the said Seller does hereby represent that Seller is the owner in fee simple of the said premises, and has a full and perfect right to grant and sell this option, and Seller covenants and agrees that upon compliance by the said Purchaser or Purchaser's heirs, successors or assigns, with the terms of this option, Seller will convey the subject property at closing to Purchaser, Kellum W. Allen or his heirs, successors or assigns, in fee simple by a proper statutory general warranty deed, free from any and all encumbrances except as herein agreed to be assumed by Purchaser.

Upon written notice being given by the Purchaser during the period of this option of the intention of Purchaser to take said property in compliance herewith, then this option shall be extended beyond the period of its expiration as aforesaid a further reasonable time, not exceeding sixty (60) days, to allow time for examination of title, and preparation of closing documents.


Kellum W. Allen (initials)


Ann Marie Watson (initials)

P. 1 of 2

100

The above described property shall be conveyed subject to applicable zoning ordinances and valid recorded easements, restrictions and covenants provided the foregoing do not make the title unmarketable or prohibit Purchaser from using the property for commercial and/or residential development.

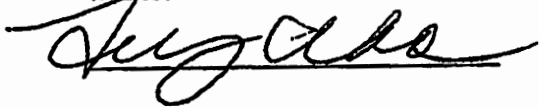
All real property taxes, assessments, and rents (as and when collected) are to be prorated to date of completion of sale.

Seller shall pay for deed stamps, transfer tax, or other similar taxes or fees for recording based in whole or in part upon the consideration for or value of the Property.

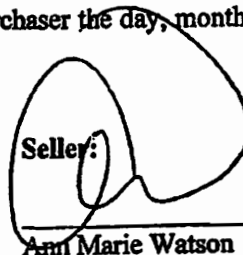
This agreement constitutes the entire agreement between the parties and can only be changed by written agreement signed by the parties hereto.

WITNESS the execution hereof by Seller and Purchaser the day, month and year above written.
Signed, Sealed and Delivered in the Presence of:

Witness:

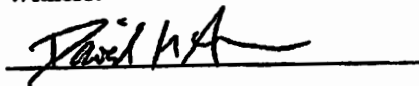


Seller:



Ann Marie Watson

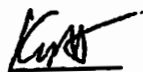
Witness:



Purchaser:



Kellum W. Allen



Kellum W. Allen (initials)

Ann Marie Watson (initials)

B2-12

km

EXHIBIT B

1/24

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)



EASEMENT

D0905 PAGE 007

REGISTERED
 1988 SEP 20 PM 4:51

THIS AGREEMENT made on the 1st day of September, 1988, by and between JAMES K. MULLIS and ANN JOYE MULLIS, party of the first part, and H. S. ALLEN, Jr., HIRAM S. ALLEN, III, KELLUM W. ALLEN and BARBARA LOUISE ALLEN, party of the second part.

WITNESSETH, that the party of the first part, for themselves, their heirs and assigns, in consideration of Five (\$5.00) Dollars, hereby grants and conveys to the party of the second part, their heirs and assigns, an easement in, to, upon and over the following:

An existing pasture dirt road accessing off Lawhorne Road in a southeasterly direction as shown on Richland County Tax Map #20700, on real property more fully described in deeds recorded in Deed Book 904, at page 993, for a 17.75 acre tract and Deed Book 904, at page 993, for a 116.6 acres tract, leading to tracts of 17.75 acres and 218.4 acres of party of second part.

Said easement is given for the purposes of ingress and egress and it is agreed and understood that it is not to be construed as an easement given to the exclusion of the party of the first part, their heirs and assigns, or to others later granted a similar right.

The party of the second part, their heirs and assigns, covenants with the party of the first part, their heirs and assigns, the right to maintain, make necessary repairs, and improve (up to, and including, the road standards of Richland County), at their own expense.

To have and to hold the said right of way easement unto the party of the second part for perpetuity.

D0905 PAGE 007

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IN WITNESS WHEREOF, the parties hereto have duly executed this agreement.

WITNESSES

Patricia A. Carlini
William L. Wilson

PARTY OF THE FIRST PART

James K. Mullis
 James K. Mullis
Ann Joye Mullis
 Ann Joye Mullis

PARTY OF THE SECOND PART

Patricia A. Carlini
William L. Wilson

H. S. Allen, Jr.
 H. S. Allen, Jr.
Hiram S. Allen, III
 Hiram S. Allen, III
Kellum W. Allen
 Kellum W. Allen
Barbara L. Allen
 Barbara L. Allen

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

PROBATE

PERSONALLY appeared before me the undersigned witness, and made oath that (s)he saw the within named Party of the First Part and Party of the Second Part, sign and deliver the within Easement; and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this
 1st day of September, 1988.

William L. Wilson
 Notary Public for South Carolina
 My commission expires: 12/16/92

Patricia A. Carlini

EXHIBIT C

164

From: Ann Marie watson a.mwatson@hotmail.com
Subject: Re: Asking price
Date: August 4, 2022 at 12:29 PM
To: Kellum Allen kellumallen@gmail.com



That's actually lower than what I was going to ask. I thought about including the cost of my mother's emotional suffering.

You know she suffered panic attacks. Panic attacks stem from not speaking your mind. They come from sucking everything inside and not sharing your emotions and not standing up for yourself and letting people run over you. For instance, my father ran over her.

Do you know the elephants in the room I talked about before? Let me openly introduce a biggie to you....

Your brother fucked my mother over. He buried hazardous waste on family property within very uncomfortable distance from my mother's home. My home.

I rode my horse over there around the chemical plant smelling all those fumes, it never occurred to me that those could be hazardous. I was too stupid and naïve.

I bet I'm the first person from my family to even bring this up openly....It's time.

Hiram would come by once a week usually on a Wednesday for an obligatory visit. she would make him a hamburger every week. They visit. They had a nice time. You know she loved him as a child and always did. She could not bring herself to tell him what a piece of shit she thought he was for knowingly burying hazardous wastes near her home. She couldn't do it. I'm doing it for her.

Please understand I don't consider myself any better than anyone else. My poop stinks just as bad. But you've asked me to roll over on our family, something I never thought I would do. I'm going to do it. I gave you a price.

I wanted to justify why I'm asking what I'm asking, you should know it's for Ann Joye. And then I will take that money and try to preserve the Crankfield cemetery. In my opinion, you should make Hiram pay a larger portion.

Maybe you've snapped your head back reading this, wondering where the hell this came from. It came from my need to address reality. I watched my mother suffer and suck up all this stuff. She loved that farm. She loved what her father had made of that farm.

Hiram gives me the creeps. He always has.

Thanks,

Ann Marie Mullis Watson

From: Ann Marie watson
Sent: Wednesday, August 3, 2022 8:47:48 PM
To: Kellum Allen <kellumallen@gmail.com>
Subject: Asking price

HL
 \$12,000/acre is my asking price.

Ann Marie

KAY

lul

From: Ann Marie watson a.mwatson@hotmail.com
Subject: Re: Re:
Date: August 4, 2022 at 1:15 PM
To: Kellum Allen kellumallen@gmail.com



No worries. I'm sure It's a lot to pack in:)

From: Kellum Allen <kellumallen@gmail.com>
Sent: Thursday, August 4, 2022 1:11 PM
To: Ann Marie watson <a.mwatson@hotmail.com>
Subject: Re:

I have just seen your emails. I am holding a mediation today. I will call you when done probably late this afternoon.

Sent from my iPhone

On Aug 4, 2022, at 12:38 PM, Ann Marie watson <a.mwatson@hotmail.com> wrote:

She also thought you charged her too much for her divorce 🤔🤔🤔🤔

lcn

lcn

EXHIBIT D

721

From: Ann Marie watson a.m.watson@hotmail.com
Subject: Touching base
Date: April 20, 2022 at 2:59 PM
To: Kellum Allen kellumallen@gmail.com



Hi. Hope you guys had a happy Easter! It was beautiful here.

Chuck contacted me via email. He says I owe him money. I had asked him previously not to contact me because it just makes me mad. I'm a much more peaceful person if I don't have to deal with him. Knowing he even thinks about me just triggers me. At any rate I told him to that if he thought I owed him money, he could assume it was not I was trying to hide it because I don't operate that way. I Assured him that if I owed it to him that I would most certainly pay it. But I would not discuss it with him and he could contact you.

I apologize I didn't talk with you first or before I extended that invitation. It sorta rolled off the tongue, so to speak.

But this brings me to something else that had been on my mind. Many times I feel like I would like to have an attorney on retainer, as a security net, for things just like this. I didn't want to be presumptuous and assume I can turn to you just because you handled my divorce and we are family. I don't want to take advantage of that, however I feel like I just did.

Would you or David be interested in being on retainer for me for this and future issues? Very few would be criminal, I would imagine.

I appreciate you.

1/14

EXHIBIT E

704

From: Kellum Allen <kellumallen@gmail.com>
Sent: Thursday, July 14, 2022 3:27 PM
To: David A. Wilson <dwilson@greenvillesclaw.com>
Subject: Re: Watson

David

Ann Marie to reimburse Chuck \$2500 per quarter commencing September 30, 2022 and the last day of each fiscal quarter thereafter until the \$41,616.67 is paid in full. Ends all equitable division claims. No interest. Own fees.

Let me know. Thanks.

Kellum

Chuck

2/28

EXHIBIT F

11/

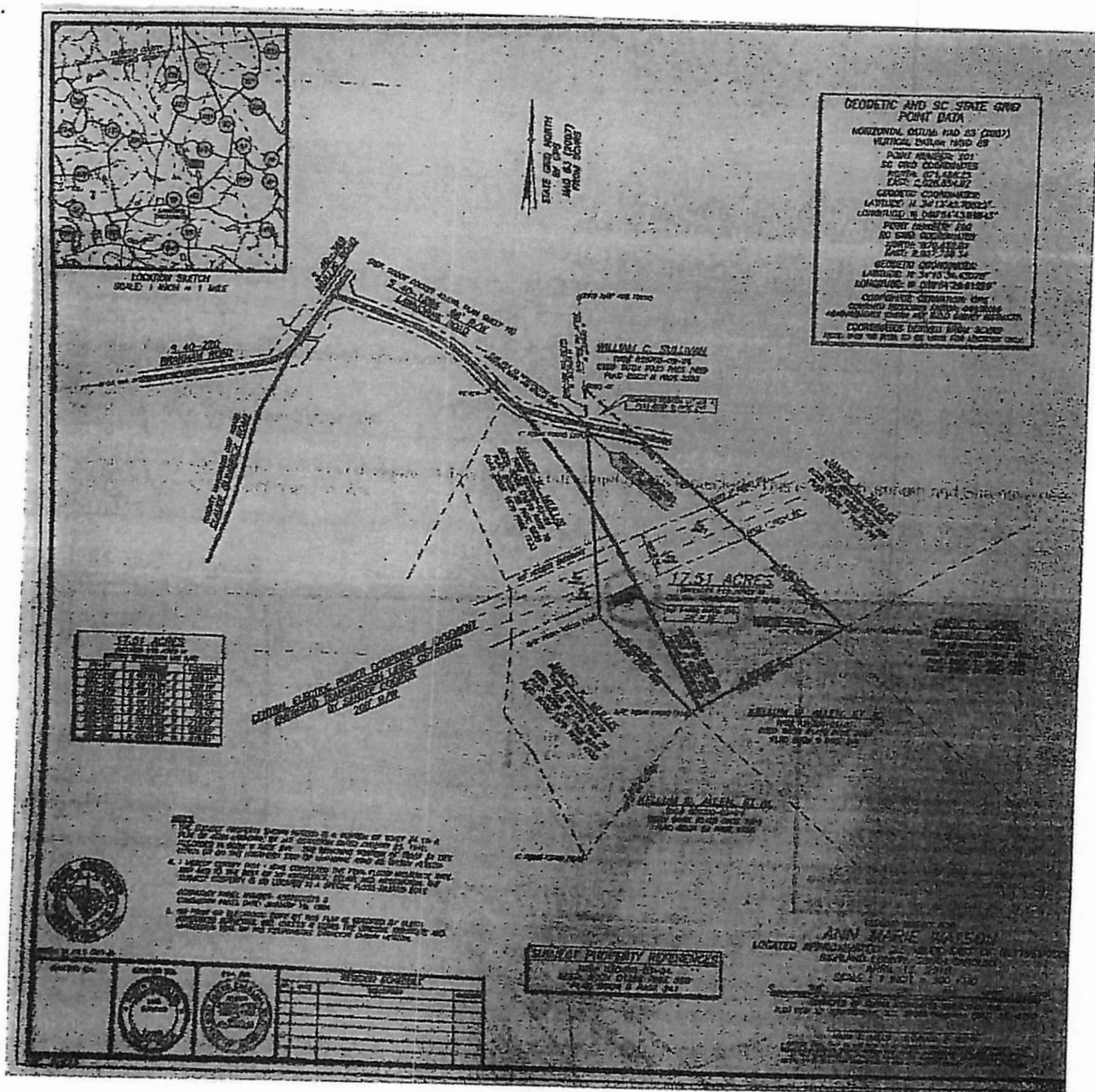


EXHIBIT G

164

From: Ann Marie watson <a.mwatson@hotmail.com>
Date: February 15, 2023 at 3:39:23 PM EST
To: Kellum Allen <kellumallen@gmail.com>

Hello.

You may be wondering where we go from here. I'm waiting on a new drawing from you indicating a protected cemetery and lot sizes that do not detract from the value of the surrounding properties and some sort of equestrian amenities. I will not participate otherwise.

I completely understand that I signed and accepted your money. If you are going to hold me to the letter of the law, please know that you will have to sue me if you don't rectify this. I will not participate in this level of rape of our ANCESTORS LEGACY. It's kind of like burying hazardous waste and screwing up the land values and health of the people remaining living in the area. You see the analogy don't you? Y'all are something else.

Let me know if I need to lawyer up.

Ann Marie Mullis Watson

Kell

EXHIBIT H

161

From: Ann Marie watson
Sent: Friday, December 2, 2022 8:39:47 AM
To: beth moore <beth@mooreorless.net>
Subject:

Good morning sunshine!

Do you ever think about your childhood? Do you ever think about my childhood? Do you ever think about daddy? Do you ever think about daddy's childhood?

I'm told he contacted you sometime before he died and it did not go well, because apparently you refuse to give him any sort of forgiveness. The man came to you searching for forgiveness and peace, and you refuse to give it to him because you have a tiny little shit heart.

I don't know when your time is coming. I won't be there. But if you have any thoughts running through your head, I want you to think about what a piece of shit you are, and how you went out of your way to hurt people because of your spite and I want that to weigh on you so much that you can't breathe. I want you to be filled up with a nasty bitch you are. I want you to think about your resentment for me. I want you to think about how the fact that you hold all those resentment, and how they radiate from you like a cloud of fetid dust.

And then I want you to rest, assured that the situation that I just described to you Will be your legacy. I'm a creative writer And a painter in my free time. I'm very creative. I know how to utilize social media. Maybe I'll wait for your obituary and amend it for you. Oh, you'll love it.

If you and I ever come face-to-face again, you better Find you somebody to stand behind real quick

Take care have fun!

heavy
Thanks,

Ann Marie Mullis Watson

AMW
/lw

EXHIBIT I

1661

Thanks

Dec 7, 2022, 1:03 PM

Hey please give me a call. Thanks. Kellum

I will. Will
Be later this afternoon



Feb 10, 2023, 4:05 PM

Can you give me a call

Delivered

Mon, Jan 15, 10:31 AM

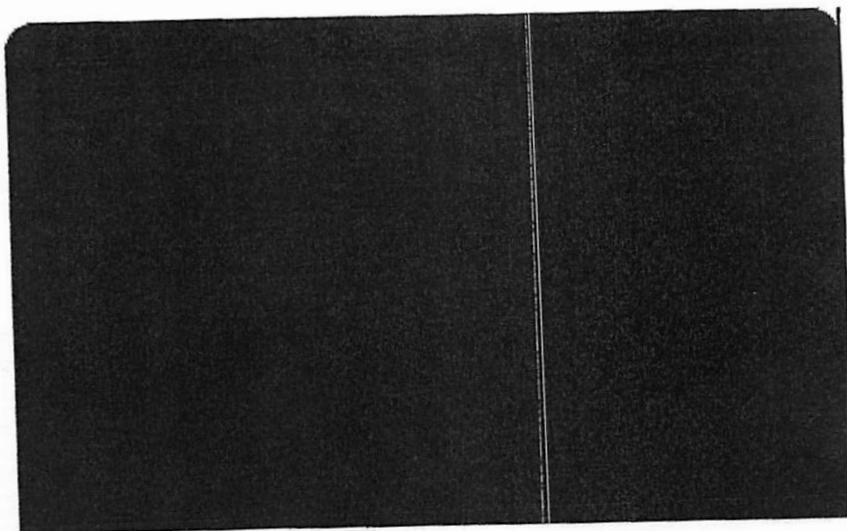
It's hard choosing between greed and integrity, isn't it?

You aren't the first to struggle with it.

Let's see how you deal with it. What is your legacy gonna look like?

Do you want me controlling the narrative of your legacy?

Sun, Feb 11, 3:33 PM



10/11

10/11

EXHIBIT J

lw



Ann Marie Mullis Watson

I'd like everyone to know that Kellum Allen and Hiram Allen and Barbara Allen are suing me (Ann Joye Allen's daughter) to sell them land so they can build a subdivision on our ancestral property. They need access to the road so fire trucks and ambulances can get in and out. Mama advised me to tell everyone. She kept everything bottled up when she was alive but now that she's passed away, she has the benefit of hindsight. Now she knows how to call out a snake now, even though they are family. She told me to do it for her because she spent so much of her life Being run over by them. Ask Hiram how the toxic waste levels are. 😊

Just now Like Reply

1w

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	Civil Action No.: 2024-CP-40-0827
Kellum W. Allen,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF BARBARA M. SEYMOUR
	)	
vs.	)	
	)	
Ann Marie Watson,	)	
	)	
Defendant.	)	

The Affiant, Barbara M. Seymour, an attorney licensed and in good standing in South Carolina and Georgia, states as follows:

1. I make this affidavit in reliance on the documents provided to me regarding certain facts at issue in this case based on my understanding of the legal and ethical principles stated herein. I am making this affidavit and the opinions herein based on my experience as an attorney.
2. I have the requisite qualifications to give this affidavit. Those qualifications include:
 - a. I earned a Juris Doctor degree from the University of Georgia School of Law in 1993. I am an attorney licensed to practice law in South Carolina and Georgia and have been in good standing in those jurisdictions since 1993.
 - b. From 1993 to 2000, I worked as a trial lawyer in a plaintiff's practice that handled personal injury, products liability, and workers' compensation matters.
 - c. From 2000 to 2017, I worked as an investigating and prosecuting attorney for the Office of Disciplinary Counsel to the Supreme Court of South Carolina, including service as the Deputy Disciplinary Counsel from 2007 until 2017. The matters I handled for the Office of Disciplinary Counsel involved the capacity and professional conduct of lawyers and judges and the unauthorized practice of law.
 - d. Since 2017, I have been in private practice, focusing exclusively on matters involving legal malpractice, ethical compliance, lawyer and judicial discipline and incapacity, discovery disputes, Bar admissions and reinstatement, government

ethics, and the unauthorized practice of law. My practice includes providing expert witness opinions and testimony on issues involving the standard of care for lawyers and ethical compliance, including conflicts of interest, discovery abuse, and litigation misconduct.

- e. I have extensively read and studied articles, treatises, and other publications on legal ethics, professional misconduct, and the standard of care in legal matters. I have written articles, manuals, and other publications on a variety of topics related to the duties and practices of judges, lawyers, and paralegals. I have presented more than 350 continuing legal education programs and guest lectures at local, state, and national meetings and conferences on a variety of ethics-related topics.
 - f. As lead counsel, I have had approximately 130 opinions published by the Supreme Court of South Carolina. All of those cases involved the professional conduct and capacity of lawyers or judges.
3. In connection with the preparation of this affidavit, I have reviewed the following documents.
- Complaint, filed 02/07/2024
 - Answer and Counterclaims, filed 04/15/2024
 - Motion to Dismiss Counterclaims, filed 05/14/2024
 - Motion to Strike Certain Pleadings in the Answer, filed 05/14/2024
 - Amended Answer and Amended Counterclaims, filed 06/05/2024
 - Defendant's Memorandum in Opposition to Plaintiff's Motions, filed 09/19/2024
 - Motion to Dismiss Amended Counterclaims, filed 06/27/2024
 - Affidavit of Desa Ballard, filed 08/27/2024
 - Defendant's Motion for Partial Summary Judgment, filed 09/06/2024
 - Affidavit of Ann Marie Watson and exhibits, filed 09/06/2024
 - Memorandum in Support of Defendant's Motion for Partial Summary Judgment, filed 09/19/2024
 - Affidavit of Kellum W. Allen, dated 12/08/2024 and exhibits
4. For purposes of this affidavit and for the formulation of my opinions, I am assuming the facts set out in the Complaint and Affidavit of Kellum W. Allen.

5. It is my opinion to a reasonable degree of professional certainty based on my education, experience, and knowledge, that there was no active attorney-client relationship between Mr. Allen and Ms. Watson after July 2017 and, therefore, Rule 1.8(a), RPC, Rule 407, SCACR, did not apply to the land option contract between the parties.
- a. Mr. Allen's ethical and legal duties to Ms. Watson were limited after the representation in the divorce matter was concluded.

Contrary to the assertions in support of Ms. Watson's Motion for Partial Summary Judgment, the standard of care for a lawyer does not "require the lawyer to act, without exception, in the best interests of the client." There are a multitude of exceptions to the lawyer's obligation to act in the client's best interests.¹ Further, the lawyer's duty to act in the client's best interest is even more limited after the representation has ended. Rule 1.9, RPC, clearly defines the duties owed to former clients, which are limited to (1) avoiding representation adverse to the former client in related matters absent consent and (2) preserving client confidentiality. A lawyer's ethical and legal obligations under the Rules of Professional Conduct and other law are not absolute or perpetual. This includes the requirements of Rule 1.8(a), RPC, which do not extend beyond the period at which the lawyer is no longer representing the client.

A former client is not owed a general and unlimited ethical or fiduciary duty. The duties a lawyer owes a former client are limited in scope and duration. The South Carolina Rules of Professional Conduct related to duties lawyers owe to former clients set out the limitations on such duties. Specifically, lawyers are not generally

¹ For example, the client's interests are subsumed by the prohibition on assisting a client in criminal or fraudulent conduct in Rule 1.2(d), RPC; the ability of the lawyer to disclose confidential information to prevent certain consequences to third parties in Rule 1.6(b), RPC; the requirement to prevent or rectify submission of false testimony in Rule 3.3, RPC; and, the mandate that a lawyer withdraw from representation if the client persists in a course of action that would violate the Rules of Professional Conduct or other law in Rule 1.16(a)(1), RPC.

prohibited by law or ethical standards from acting against the interests of former clients. Although lawyers owe certain continuing and perpetual duties to former clients with respect to confidentiality and certain conflicts of interest, a lawyer may act contrary to other interests of a former client. As she was his former client, Mr. Allen did not owe Ms. Watson a perpetual duty to comply with Rule 1.8(a), RPC, in connection with the land option contract. Further, he did not owe her a general duty of loyalty once his representation of her ended.

- b. Mr. Allen's representation of Ms. Watson ended in July 2017 when the legal matter for which he was retained ended.

When a client hires a lawyer, the scope of the representation is determined by mutual understanding. The client and lawyer might agree that the representation will end at a given time or on the happening of a stated event (such as completion of a legal matter) or they might establish a continuing relationship where the lawyer will handle the client's legal matters as they arise. Restatement Third, The Law Governing Lawyers §31 cmt. *h.* (citing Restatement Second, Agency §§ 105 & 107) The agreement between the client and the lawyer defines the scope the representation. Pursuant to Rule 1.3, Cmt [4], RPC, Rule 407, SCACR, "[i]f a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved." Absent an early termination of the representation by the client or the lawyer, when a lawyer is retained to bring a specific legal matter to its conclusion, the lawyer-client relationship ends when that legal matter is concluded. Where the scope of legal services is expressly limited by a written agreement between the client and the lawyer, the lawyer-client relationship ends when the lawyer has completed the contractually-contemplated services or when the representation ends as provided for in the agreement.

Neither the Rules of Professional Conduct nor the law of legal malpractice and fiduciary duty create a lawyer-client relationship in perpetuity. This is particularly the case when the representation is expressly limited in scope, the objectives stated in the representation agreement have been met, and there has been no

mutual assent to extension of services.

Whether a lawyer-client relationship has ended is a question of fact. In this case, the contract specifically identified not only the scope of the representation, but also the circumstance that would trigger an end to the lawyer-client relationship: “through the trial of the case in Family Court.” Here both Mr. Allen and Ms. Watson clearly understood that the representation would end with the conclusion of the divorce action in the Family Court. That matter was concluded in June 2017, when the agreement of the parties was accepted by the court and the divorce decree was issued.

A claim for legal malpractice does not arise from conduct that occurs after the lawyer-client relationship ends. A legal malpractice action requires evidence of a duty, which does not exist once the lawyer-client relationship ends. It follows that the lawyer’s conduct after the termination of representation does not establish a breach of any negligence duty. A determination that there was no lawyer-client relationship at the time of the conduct in question ends the possibility of liability for negligence based on such a relationship.

The same can be said for fiduciary duties that arise from the lawyer-client relationship. Absent an agreement with the client or a specific obligation established by law,² the lawyer’s fiduciary duty to the client ends when the representation ends.

- c. Mr. Allen’s follow-up assistance to Ms. Watson subsequent to July 2017 did not reestablish an active attorney-client relationship.

Once the lawyer’s representation of the client ends, the lawyer does not have an ongoing responsibility to assist the client in issues related to the prior

² For example, Rule 1.16 of the Rules of Professional Conduct obliges a lawyer to refund unearned fees and deliver legal documents to a former client. See also, Rule 1.9, RPC, setting out the limited scope of the lawyer’s ongoing but limited duties of loyalty and confidentiality owed to former clients.

representation. However, lawyers routinely answer questions and provide documents to former clients or contact third parties on behalf of former clients in relation to concluded legal matters as a courtesy. Such follow-up activities related to completed matters do not necessarily extend or resume the lawyer-client relationship, even if those activities are at the request of or inure to the benefit of the former client. Follow-up activities do not automatically extend the lawyer-client relationship unless they are part of a current or ongoing relationship. Further, the lawyer's willingness to respond to such requests from a client does not create a perpetual lawyer-client relationship that would be subject to the obligations and restrictions of the Rules of Professional Conduct. The question turns on whether the follow-up activity is performed pursuant to a current, as opposed to a former, lawyer-client relationship. Where the lawyer's follow-up activities are provided as a courtesy, incidental to the prior engagement, the client is a former client.

Ms. Watson's legal matter was finite, ending with the issuance of the divorce decree as expressly contemplated by the fee contract with Mr. Allen. Mr. Allen was not Ms. Watson's attorney for general purposes. He did not represent her in any other legal matters. When she had a question about the calculation of the parties' financial obligations three years after the representation ended, Mr. Allen answered her question. When an issue arose about a possible overpayment five years after the representation ended, Mr. Allen briefly interceded at Ms. Watson's request and the issue was resolved. When Ms. Watson's ex-husband claimed she missed a payment, Mr. Allen clarified the situation.

Mr. Allen engaged in these follow-up activities without charge, as a courtesy to Ms. Watson. Neither party legitimately contemplated the representation would extend beyond issuance of the divorce decree, certainly not indefinitely. It would be untenable to perpetually extend legal, ethical, and fiduciary duties beyond the limited obligations set forth in Rule 1.9.³ Certainly if incidental post-representation

³ That is not to say that such follow-up activities do not have to be undertaken with competence and diligence; however, the claims of Ms. Watson do not allege errors or

assistance was determined to extend or re-establish the lawyer-client relationship, lawyers would refuse to provide former clients with such assistance without a new representation agreement and renumeration, all to the detriment of former clients.

- d. Mr. Allen did not represent Ms. Watson in the land option contract transaction in August 2022.

In support of her counterclaims and Motion for Partial Summary Judgment, Ms. Watson suggests that she relied on the advice of Mr. Allen in entering into the land option contract because he was her lawyer. In fact, Mr. Allen did not undertake to represent Ms. Watson in the transaction in question and he provided her with no legal services in that regard. For a lawyer-client relationship to exist, both parties must intend for the lawyer to provide, and for the client to receive, legal advice or assistance. Without such mutual intention there is no lawyer-client relationship. 1 S.C. Juris. Attorney and Client §18.

Two things have to happen for an attorney-client relationship to form. First, the purported client must manifest to the lawyer her intent that the lawyer provide her with legal advice or services. A person becomes a client when she seeks legal services or advice by communicating in confidence with a lawyer for the purpose of obtaining such services or advice. Second, the lawyer must reciprocate the intent to provide such services or advice. A lawyer-client relationship is created when the lawyer undertakes to perform a particular legal service for the client.

In this case, Ms. Watson would have had to take some action that demonstrated that she communicated with Mr. Allen for the purpose of providing her with legal advice in connection with the land option contract and that she intended to employ him for that purpose. In addition, Mr. Allen would have had to reciprocate that intent. Neither of those things happened in this case. A lawyer-client relationship is not assumed, it is created only by the mutual consent of the parties.

malpractice in the performance of the incidental assistance Mr. Allen provided to her many years after her divorce was final.

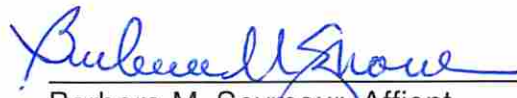
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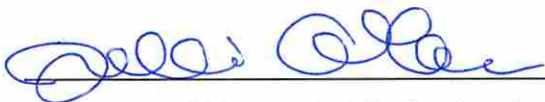
There is no evidence that Ms. Watson sought Mr. Allen's legal advice regarding the land option contract or that she was relying on his services as a lawyer in that transaction. He asked if she was interested in selling the property. She said she would think about it. He contacted her a second time asking if she would sell and explaining that he and his siblings intended to have the land developed. She replied with a sales price. He accepted her price and sent her a contract to sign. There were no negotiations between them. She did not ask any legal questions and he did not provide her with any legal advice. She was aware that she could hire an attorney to represent her, obviously, because she had sold real property with the assistance of attorneys in the past. Ms. Watson gave no indication that she was relying on Mr. Allen's advice or services as an attorney in the transaction.

Again, a legal malpractice action must be based on legal representation. Without a lawyer-client relationship, there can be no legal malpractice. Further, general fiduciary duties that arise from a lawyer-client relationship end when the relationship ends.

6. My expert opinions are based on the information provided to me at this time. The opinions in this affidavit are subject to supplementation, clarification, and modification if and when further evidence or issues are presented to me.


Barbara M. Seymour, Affiant

SWORN TO AND SIGNED in my presence
on December 10, 2024.



Signature of Notary Public for the State of South Carolina

Julie Coleman

Printed Name

My commission expires: 4/10/2029