

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

On Appeal from Charleston County
Court of Common Pleas

The Honorable J.C. Nicholson, Jr.

Case No. 08-CP-10-7245

Larry S. Bowman.

RESPONDENT,

v.

M. Donald Alexander and Old Dominion, LLC

APPELLANTS.

**RECORD ON APPEAL
Volume 1 (Pages 1-447)**

A. Camden Lewis
Keith M. Babcock
Ariail E. King
LEWIS, BABCOCK, & GRIFFIN, LLP
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

ATTORNEYS FOR APPELLANTS

Michael S. Glenn
GLENN, HAIGLER, McCLAIN &
STATHAKIS, LLP
121 W. Benson Street
Anderson, South Carolina 29624
(864) 226-1885

ATTORNEY FOR RESPONDENT

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Larry S. Bowman,)

Plaintiff,)

vs.)

M. Donald Alexander and Old
Dominion, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case Number: 2008-CP-10-7245

ORDER¹

BY

JULIE J. ARMSTRONG
CLERK OF COURT

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FILED

Plaintiff commenced this action by filing a Summons and Complaint on December 22, 2008. In his Complaint, the Plaintiff (hereafter "Bowman") sought specific performance of a Settlement Agreement, which the parties entered into following mediation on September 10, 2007, prior to either party filing suit.

gen Bowman also sought damages for breach of contract. As his Second Cause of Action, Bowman sought the dissolution of Old Dominion Plantation, LLC, in which he shared ownership with the Defendant M. Donald Alexander (hereafter "Alexander").

In his Answer, Alexander, denied that Bowman was entitled to specific performance of the Settlement Agreement and denied breach of contract.

Alexander contended that the Settlement Agreement could not be enforced, and

alleged it violated the terms and conditions of the Conservation Easement, which applies to the property owned by Old Dominion Plantation, LLC, and which is held by Ducks Unlimited / Wetlands America Trust (hereafter "Ducks Unlimited").

In his Counterclaim, Alexander seeks specific performance of the terms and requirements of the Conservation Easement. He alleges Bowman has violated his obligations under the easement and breached the terms of the Settlement Agreement. Alexander further alleges that he is entitled to damages.

On October 4, 2011, Bowman filed and served a Notice withdrawing his First Cause of Action for specific performance of the Settlement Agreement. At trial, Bowman sought to have the Court appoint a Receiver to dispose of the LLC's assets and liabilities, and to dissolve Old Dominion Plantation, LLC. Alexander opposed the sale of assets and the dissolution of Old Dominion Plantation, LLC, and contended the Court should enforce the Settlement Agreement of September 10, 2007.

ISSUES

1. Whether Bowman is entitled to an Order appointing a Receiver to dispose of the assets, determine and settle the liabilities of Old Dominion Plantation, LLC, and thereafter, to proceed with the dissolution of Old Dominion

Plantation, LLC.

2. Whether Bowman is entitled to an Order requiring an accounting of the assets and liabilities of Old Dominion Plantation, LLC, as well as the obligations of Bowman and Alexander to Old Dominion Plantation, LLC.
3. Whether Alexander is entitled to an Order requiring specific performance of the Conservation Easement, which applies to Old Dominion Plantation, LLC.
4. Whether either party is entitled to damages for breach of the Settlement Agreement of September 10, 2007.
5. The Venue Motion was dealt with verbally prior to trial.

BACKGROUND OF DISPUTE



Bowman and Alexander are both physicians in South Carolina; Bowman is an orthopaedic surgeon in Seneca, and Alexander is a cardiologist in Columbia. Bowman and Alexander have been friends for many years, since their days in medical training.

In 1995, Bowman and Alexander agreed to purchase Old Dominion, a 647-acre plantation on Edisto Island in Charleston County. In 1998, Bowman and Alexander entered into a Conservation Easement with Ducks Unlimited. In 1999, Bowman and Alexander agreed to purchase an additional 78 acres from Nature Conservancy, which included the existing Conservation Easement.

Subsequently, a dispute developed between Bowman and Alexander concerning their use and respective ownership rights in the plantation property owned by Old Dominion Plantation, LLC. The dispute ultimately resulted in mediation, and a signed Settlement Agreement, dated September 10, 2007.

Bowman filed this action on December 22, 2008.

ISSUE 1

Whether Bowman is entitled to an Order appointing a Receiver to dispose of the assets, determine and settle the liabilities of Old Dominion Plantation, LLC, and thereafter, to proceed with the dissolution of Old Dominion Plantation, LLC.

DISCUSSION

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Bowman contends a deadlock has occurred between the owners of Old Dominion Plantation, LLC, and that he is entitled to an Order dissolving the limited liability company. The Uniform Limited Liability Company Act outlines certain procedures for actions brought by members of a limited liability company.

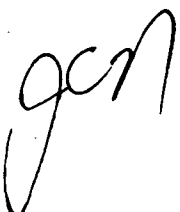
SC Code Ann. §33-44-410(a) enables a member to maintain an action against the limited liability company or another member “for legal or equitable relief, with or without an accounting” to enforce, in pertinent part:

(1) The member’s rights under the Operating

Agreement;

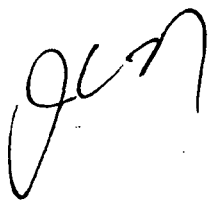
- (2) The member's rights under this Chapter; and**
- (3) The rights that otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company.**

SC Code Ann. §33-44-801 sets out the events requiring the dissolution of a limited liability company, and the winding up of a company's business, including in pertinent part:

- 
- (4) on application by a member or a disassociated member, upon entry of a Judicial Decree that: . .**
 - (c) It is not otherwise reasonably practical to carry on the company's business in conformity with the Articles of Organization and the Operating Agreement; . . .**
 - (e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the Petitioner;**

A member's right to seek dissolution of a Limited Liability Company under S.C. Code Ann. §33-44-801 was recognized in Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 673 S.E.2d 448 (2009). The Supreme Court found, "...the LLC Act grants broad judicial discretion in fashioning remedies in action by a member of an LLC against the LLC and/or other members." Id. at 428, 454.

Alexander contends Section 33-14-300 of the South Carolina Business Corporation Act governs the dissolution of a Limited Liability Company. S.C. Code Ann. §33-14-300 provides a Court may grant judicial dissolution to a shareholder if it is established that:

- 
- (i) **the directors or those in control of the corporation are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of a deadlock. . .**

A member's right to seek dissolution of a limited liability company because of a dispute or deadlock among members has been recognized by other Courts. See

49 A.L.R. 61; Dickson vs. Rehnke, 164 Cal. App. 4th 469, 78 Cal. Rptr.3d 874 (Cal. App. 3 Dist. 2008).

FINDINGS OF FACT

After considering the testimony and exhibits, and observing the demeanor of the parties during testimony, I find, by the greater weight of the evidence, the following facts:

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1. Beginning in the year 2000, the parties began experiencing difficulties in working out the use of their jointly-owned property. Bowman and his family often encountered Alexander and his family, when they visited the plantation. Because of their conflicts in usage, and Bowman's belief that Alexander was dominating the property, the parties agreed to use the property on alternate weeks. Bowman contends that on many occasions, Alexander or members of his family were present on the property during a week designated for Bowman.
 2. When the parties were unable to solve their conflicts concerning the use of the plantation property, they began discussing a possible division of the property. For an extended period of time, Bowman searched for other similar property to purchase so that he could sell his interest in Old Dominion, LLC.

to Alexander. This solution did not materialize.

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3. In addition to the controversy over the use of the plantation property, the parties encountered difficulties concerning management of the property. At an area of the plantation property known as Picnic Point, Alexander performed significant work; road work, eliminated trees, constructed a dock, and had electricity run to the dock, all without the agreement or consent of Bowman. Alexander also constructed an addition to a barn without agreement or consent of Bowman.
 4. The testimony indicates Bowman and Alexander could only agree that they were in conflict, and Old Dominion Plantation, LLC's operating agreement required mediation in such a circumstance.
 5. The parties agreed to hire Thomas J. Wills, IV, Esquire, a Charleston, South Carolina attorney and mediator, to mediate their differences. The parties initially entered into mediation without legal representation. The mediation lasted for several months, and resulted in the mediator recommending a division of the plantation property. The mediator further recommended the parties obtain attorneys to help them work out such a division.
 6. The mediation was held before Mediator Wills in Charleston, South Carolina, on September 10, 2007. Bowman was represented by attorneys

Michael D. Glenn and John W. Fields, and Alexander was represented by attorneys Randolph Murdaugh, III and Leonard Krawcheck. The mediation resulted in a signed Settlement Agreement (Pl's Ex. 3). The Settlement Agreement provides the parties shall attempt to obtain the permission of Ducks Unlimited for a legal division of the plantation property as depicted upon aerial photos attached to the Settlement Agreement.

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7. The testimony reveals that controversy between Bowman and Alexander continued following the execution of the Settlement Agreement. Pursuant to the Settlement Agreement, the parties employed a surveyor to survey the property and produce a plat for the division of the property. Another dispute developed after Alexander instructed the surveyor to draw a crucial line in a way which was different from that shown on the aerial photograph, which was a part of the Settlement Agreement. Alexander also asked the surveyor to include an easement in his favor, which was also contrary to the Settlement Agreement. Ultimately, the surveyor resurveyed the property and produced a new plat in conformity with the aerial photographs and the Settlement Agreement. Thereafter, Alexander stopped payment on his check to the surveyor for his one-half of the cost for the survey.
 8. The Settlement Agreement was submitted to Ducks Unlimited for

consideration. By letter dated March 26, 2008, Ducks Unlimited notified the parties it would not approve a legal division of Old Dominion Plantation but would review the matter on an on-going basis. Ducks Unlimited indicated it was willing to review biological evidence, such as a study from a consulting wildlife biologist or other similar report, presenting a management plan wherein the biological integrity of the property would still be protected in the future, under a division of the property.

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9. Bowman suggested the parties retain Williams Land Management Company to conduct the biological survey. Kenneth Williams, of Williams Land Management Company, conducted the original survey, which resulted in the existing easement. Again the parties disagreed, and were unable to agree upon a consulting wildlife biologist.
 10. On one occasion, Bowman called Alexander to inform him that he was mailing a contract submitted to hire Williams Land Management Company. Bowman then sent the contract to Alexander by certified mail. Alexander refused to accept the certified mail, and pointed out in his Answer to the Complaint that he was not obligated to accept it.
 11. On December 30, 2010, Alexander wrote a letter to Coy Johnston agreeing to proceed with the survey with the assistance of Kenny Williams, of Williams

Land Management Company.

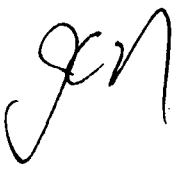
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12. On March 2, 2011, Mr. Johnston wrote a letter to the parties making a recommendation for submission of the management plan to Ducks Unlimited. He recommended both Bowman and Alexander be willing to give up certain rights to high-ground property, which they have under the existing easement. The evidence shows that Bowman immediately agreed to Johnson's recommendations. However, Alexander objected and refused to go forward; he did not want to give up his rights under the existing easement.
 13. That disagreement continued until October 4, 2011, when the attorney for Bowman filed his Notice with the Court withdrawing his request for specific performance of the Settlement Agreement, and indicating he intended to proceed with his request to dissolve Old Dominion Plantation, LLC.
 14. Shortly thereafter, on October 7, 2011, one of the attorneys for Alexander wrote to Ducks Unlimited officials requesting approval of the legal division of the property, and recommended a division which had never been presented to, nor approved by Bowman. Bowman's attorney then wrote Ducks Unlimited officials requesting they not make a decision, pending a decision of the Court in this case.
 15. In addition to the parties' inability to agree upon having an environmental

survey, problems concerning the use of the plantation property continued.

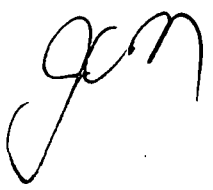
Alexander acknowledged entering a barn, on a portion of the property designated for Bowman, to remove personal property. Alexander also acknowledged cutting a fence and using a dike to move equipment, claiming he was trapped when a public road flooded. Both the fence and the dike were located on property designated for Bowman in the Settlement Agreement. Thereafter, Alexander filed a plat on a portion of the property with the Charleston County RMC's Office, without the agreement or permission of Bowman. Alexander then constructed a building on the property, again without permission or agreement.

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16. Bowman testified the continued conflicts over use of the plantation property, the inability of the parties to agree to accomplish the necessary survey to present to Ducks Unlimited concerning a legal division of the property, and their inability to agree on a procedure for presenting a plan of division to Ducks Unlimited, clearly demonstrates the deadlock between the parties continued to the date of trial. Bowman testified ten (10) years of conflict with Alexander indicates the parties simply cannot cooperate in any way.
 17. Bowman further testified the legal division of the property, as set out in the Settlement Agreement, requires the cooperation of the parties regarding their

continued joint-ownership of the Picnic Point area. The Settlement Agreement also requires the parties employ a third party to maintain the property, with each party contributing \$5,000.00 per year for upkeep, "or such amount both parties agree is necessary". The Settlement Agreement provides disputes regarding maintenance of the pier and/or the roads at Picnic Point will be finally determined by binding Arbitration.

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18. Due to past and present conflicts between the parties, Bowman testified that he believes future conflicts will be a certainty, which will ultimately be inherited by the children of the parties. For that reason, Bowman withdrew his request for specific performance of the Settlement Agreement and now seeks dissolution of Old Dominion Plantation, LLC.
19. In his testimony, Alexander acknowledged many conflicts as described by Bowman prior to the mediated Settlement Agreement. In his Answer, Alexander acknowledged the parties were deadlocked at the time of the mediation. However, Alexander disputes Bowman's view of the difficulties since the mediation.
20. Alexander testified he was always willing to proceed with seeking a legal division of the plantation property, but did not do so because the proposed employment contract by Williams Land Management Company included a

hold harmless clause. However, the allegations of Alexander's Answer and Counterclaim indicate otherwise. His Answer contends the 2007 Settlement Agreement is illegal because it violates the terms of the existing Conservation Easement. Alexander denies Bowman was entitled to specific performance of the Settlement Agreement. In his Counterclaim, Alexander seeks specific performance of the terms and conditions of the Conservation Easement, not the Settlement Agreement, as he contended in his testimony.

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21. The Court finds the long standing disputes between Bowman and Alexander, limited liability company members, amounts to a deadlock in the conduct of the business of the LLC and the use of its property. As a result, Alexander has engaged in conduct related to the company's business that makes it not reasonably practical to carry on the company's business between Bowman and Alexander. I also find that Alexander's conduct in the disputes between the parties has resulted in his acting in a manner that is oppressive or unfairly prejudicial to Bowman under the provisions of S.C. Code Ann. §33-44-801.
22. The Court finds continued efforts seeking approval from Ducks Unlimited regarding a division of the plantation property and a reduction in home sites, will only add to the deadlock in operating Old Dominion Plantation, LLC.
23. The Court finds the only practical and reasonable solution is to sell the

plantation property. As the Conservation Easement presently exists, the Court finds it is virtually impossible to divide the real property without a deadlock. Dissolution is necessary because of the easement in addition to the nature of Old Dominion Plantation, LLC's business.

CONCLUSION

The testimony and evidence before the Court clearly shows the parties have experienced a great deal of conflict concerning their ownership of Old Dominion Plantation, LLC as well as the real property it owns in Charleston County. Since 2001, the parties have been in conflict concerning the use and management of the plantation property and the LLC. Even after reaching an agreement at mediation, it took the parties four (4) years to agree on a method of proceeding with the legal division of their property. Finally, when the parties received a report which could have provided a path for the legal division, they continued to disagree with going forward. The evidence shows that just eighteen (18) days before trial, Alexander agreed to proceed with seeking a legal division, and then submitted a plan without the agreement or consent of Bowman. Therefore, I find a deadlock exists between the members of Old Dominion Plantation, LLC.

The relief sought by Bowman is in accord with the provision of S.C. Code

Ann. §33-44-410. Bowman seeks equitable relief with an accounting as to Old Dominion Plantation, LLC's business to enforce his rights under the Operating Agreement and his rights under the Uniform Limited Liability Company Act. S.C. Code Ann. §33-44-801(4) provides for dissolution and winding up of a company's business on the application by a member or a dissociated member, upon entry of a judicial decree. Therefore, I find the controversy between Bowman and Alexander demonstrates it is not reasonably practical to carry on the Old Dominion Plantation, LLC's business in conformity with the Articles of Organization and the Operating Agreement. See S.C. Code Ann. §33-44-8-1(4)(c). I also find the actions of Alexander are unfairly prejudicial to Bowman, and he is entitled to dissolution. See S.C. Code Ann. §33-44-801(4)(e). The business affairs of Old Dominion Plantation, LLC can no longer be conducted to the advantage of the members because of the deadlock.

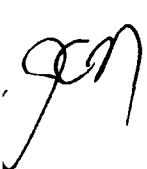
Alexander asserts that S.C. Code Ann. §33-14-300(i) controls Judicial Dissolution. I find that that Section is not applicable here. It applies to business corporations and its shareholders.

I find that Bowman is entitled to an Order requiring the dissolution of Old Dominion Plantation, LLC.

ISSUE 2

Whether Bowman is entitled to an Order requiring an accounting of the assets and liabilities of Old Dominion Plantation, LLC, as well as the obligations of Bowman and Alexander to Old Dominion Plantation, LLC.

DISCUSSION

 In his testimony, Alexander contended that he performed significant work at Picnic Point, and accomplished other construction projects, which benefitted and enhanced the value of the property, prior to signing the Settlement Agreement in 2007. Alexander also testified that since 2007, he has performed construction as well as other maintenance and repair work on the portion of the property designated for him in the Settlement Agreement. Alexander introduced a hand-written list of his alleged expenses since 2007.

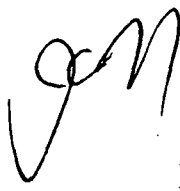
Bowman testified that he too performed construction and maintenance of the property both before and after the signing of the Settlement Agreement in 2007. However, neither party submitted sufficient evidence regarding their contributions. Therefore, the Court was not able to calculate the value of their claims.

CONCLUSION

In a Temporary Order filed on May 7, 2012, I provided a method for the

parties to submit financial information to the Court so the Court could make a determination concerning an accounting of money spent on behalf of Old Dominion Plantation, LLC by its members. The parties submitted affidavits and documentation to the Court and appeared before the Court for argument on November 1, 2012. After reviewing the information submitted by the parties, I find that Bowman is entitled to credit in the amount of \$149,747.58. I also find that Alexander is entitled to credit in the amount of \$475,612.48 when a final accounting is made following the dissolution of Old Dominion Plantation, LLC.

ISSUE 3



Whether Alexander is entitled to an Order requiring specific performance of the Conservation Easement, which applies to Old Dominion Plantation, LLC.

DISCUSSION

In his Counterclaim, Alexander seeks specific performance of the provisions and requirements of the Conservation Easement, which applies to Old Dominion Plantation, LLC. Each party testified that the other had violated the terms of the Conservation Easement. However, both parties failed to point out wherein the easement was violated.

CONCLUSION

Neither party demonstrated a specific violation of the easement. Moreover, the only practical and reasonable solution is to sell the real property as the Conservation Easement, which is held by Ducks Unlimited presently exists, and dissolve Old Dominion Plantation, LLC. Therefore, I find that an Order requiring specific performance of the Conservation Easement, which applies to Old Dominion Plantation, LLC should not be granted.

ISSUE 4

Whether either party is entitled to damages for breach of the Settlement Agreement of September 10, 2007.

DISCUSSION



Bowman contends and, Alexander agreed during testimony, the Settlement Agreement provides for the equal division of jointly-owned personal property with a value of \$18,120.00. However, following the Settlement Agreement, the parties could not agree upon a division of the personal property, and ultimately Alexander took all the property. Bowman contends he is entitled to a payment of \$9,060.00, for half of the personal items.

The Settlement Agreement provides that Bowman will pay Alexander \$250,000.00 over 5 years at 7% interest, with payments to be made annually for

principal and interest. The evidence shows Bowman made the first payment in the amount of \$67,000.00 on September 7, 2008, the first anniversary of the Settlement Agreement. Alexander acknowledged receipt of the payment. Because the parties did not go forward with the terms of the Settlement Agreement, Bowman has made no other payment.

CONCLUSION

The evidence is clear and undisputed; the Settlement Agreement requiring the division of the property will not be accomplished. Therefore, Bowman is entitled to be paid for his one-half interest in the personal items in the amount of \$9,060.00 and the return of his one payment under the Settlement Agreement in the amount of \$67,000.00 for a total of \$76,060.00.



As set out above, I find Bowman is entitled to a credit of \$149,747.58 and Alexander is entitled to a credit of \$475,612.48 for funds spent by each party for repairs and enhancing the value of Old Dominion Plantation, LLC. I find that Alexander is not entitled to any other damages for breach of the Settlement Agreement.

IMPLEMENTATION OF ORDER

The Court determined the long standing disputes between Bowman and Alexander amounts to a deadlock, and dissolution of Old Dominion Plantation,

LLC is the proper remedy. The Court found the only practical and reasonable solution is to sell the plantation property. Moreover, it is in the best financial interest of both parties for the property to be sold.

By Consent Order dated October 1, 2012, the parties agreed upon a method of marketing and disposing of the property owned by Old Dominion Plantation, LLC. In that Consent Order, Alexander continued to dispute Old Dominion Plantation, LLC should be dissolved and the property sold. With that reservation, the parties agreed as follows:

1. The parties will obtain an appraisal through Chris Donato of Atlantic Appraisals.
2. After the appraised value is determined, if either party wants to purchase the property at the appraised value and the other party agrees, sales price would be one-half ($\frac{1}{2}$) of the appraisal amount. If both parties want to purchase the property at the appraised value, each party would submit one sealed bid and the property would be sold to the highest bidder. Each party will submit the sealed bid to his attorney and the attorneys will meet to open the bids.
3. If neither party wants to buy the property, it will be listed with Holcombe, Fair, & Lane for 180 days (unless the parties jointly agree to use another realtor). If either party wants a co-listing, he may obtain one. The property

shall also be advertised in the *New York Times* and *Wall Street Journal*. The minimum sales price will be set by the parties.

4. If either party wishes to do a 1031 exchange upon the sale of the property, the other partner agrees to execute any necessary documents to aid in the completion of such exchange.

In the Consent Order, the parties made it clear that they agreed to proceed with securing an appraisal. However, they continue to disagree as to the timing of any sale. Plaintiff requested that the process outlined in the Consent Order begin immediately or upon entry of this Court's Final Order in this action. Defendants requested that the process not be initiated until an entry of Final Judgment by this Court dissolving Old Dominion Plantation, LLC and Ordering such sale, or in the event of any appeal, after entry of Final Judgment on any such appeal dissolving Old Dominion Plantation, LLC and Ordering such sale, whichever is later.

Since the parties have not agreed, this Court Orders that the process set forth above and set forth in the Consent Order proceed when this Order becomes final. In the event the property is not sold during the 180 days agreed to for the real estate listing. If the property does not sell then either party may file a motion for further relief as to a reasonably commercial means of disposing of the property.

NOW THEREFORE, IT IS ORDERED:

1. Bowman shall have judgment as follows:

A. It is Ordered that Old Dominion Plantation, LLC shall be dissolved.

 The parties shall proceed with the marketing and sale of the property as set forth in this Order. If the property is not sold while it is listed as the parties agreed, either party may apply to this Court for an Order requiring the property to be sold at public auction under terms and conditions set by the Court.

B. Alexander's claim for specific performance of the Conservation Easement is denied.

C. (1) From the proceeds of the sale of the property, the Court finds Bowman is entitled to be paid a credit of \$149,747.58 and Alexander is entitled to be paid a credit of \$475,612.48 as found in the Conclusion to Issue 4.

(2) Bowman and Alexander shall share the remaining net proceeds of the sale equally.

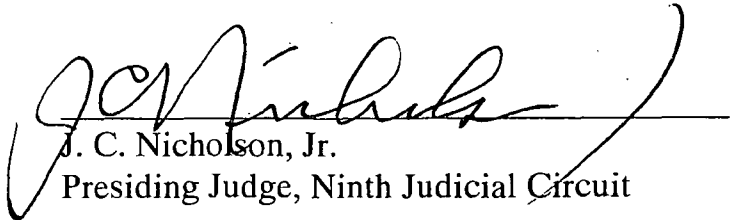
(3) From Alexander's share of the net proceeds, Bowman shall be paid \$76,060.00 as found as damages in the Temporary Order.

(4) After the distribution of the proceeds of the sale of Old

Dominion Plantation, LLC, the attorneys for the parties shall cooperate to secure the dissolution of Old Dominion Plantation, LLC.

2. If the parties cannot agree upon a minimum sales price then either party may file a motion to set the minimum sales price based upon the appraisal as well as any offers received. That order will be sealed to prevent any potential buyers from seeing the minimum sales price.
3. This Court shall retain jurisdiction of this action to continue the monitoring and implementation of this Order and the Consent Order agreed to by the parties.

IT IS SO ORDERED THIS 1 DAY OF March, 2013.


J. C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina

¹After the Court's issuance of its temporary order, Defendants filed a motion for new trial and/or to void judgment and a motion to alter or amend, pursuant to Rule 59(e), SCRPC on May 31, 2012. Because that Order was temporary, the Court indicated that no ruling would be made on the post-trial motions. Defendants have not waived and have expressly preserved all of the grounds in

the motions filed on May 31, 2012, and can reassert such grounds in any post-trial motions filed after the issuance of this Order.

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2008-CP-10-7245

Bowmen
PLAINTIFF(S)

Alexander
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **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: Defendant's Motion for a New Trial is **Denied**.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
Circuit Court Judge

2117
Judge Code

5/15/13
Date

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2008-CP-10-7245

Bowmen
PLAINTIFF(S)

Alexander
DEFENDANT(S)

Submitted by: _____

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **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: Defendant's Motion to Alter or Amend is **Denied**.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

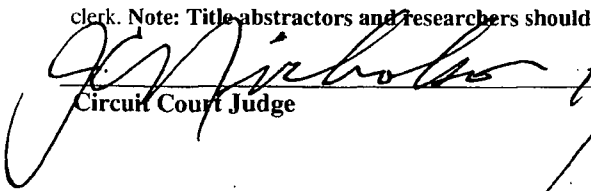
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2117
Judge Code

5/15/13
Date

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Larry S. Bowman,)

Plaintiff,)

vs.)

M. Donald Alexander and Old
Dominion, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case Number: 2008-CP-10-7245

TEMPORARY ORDER

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2012 MAY 11 AM 9:28

FILED

Plaintiff commenced this action by filing a Summons and Complaint on December 22, 2008. In his Complaint, the Plaintiff (hereafter "Bowman") sought specific performance of a Settlement Agreement, which the parties entered into following mediation on September 10, 2007, prior to either party filing suit. Bowman also sought damages for breach of contract. As his Second Cause of Action, Bowman sought the dissolution of Old Dominion Plantation, LLC, in which he shared ownership with the Defendant M. Donald Alexander (hereafter "Alexander").

In his Answer, Alexander denied Bowman was entitled to specific performance of the Settlement Agreement and denied breach of contract. Alexander contended the Settlement Agreement could not be enforced, and alleged it violated the terms and conditions of the Conservation Easement, which applies to the

property owned by Old Dominion Plantation, LLC, and which is held by Ducks Unlimited / Wetlands America Trust (hereafter "Ducks Unlimited").

In his Counterclaim, Alexander seeks specific performance of the terms and requirements of the Conservation Easement, and alleged Bowman violated his obligations under the easement and breached the terms of the Settlement Agreement.

Alexander further alleged that he is entitled to damages.

On October 4, 2011, Bowman filed and served Notice withdrawing his First Cause of Action for specific performance of the Settlement Agreement. At trial, Bowman sought to have the Court appoint a Receiver to dispose of the LLC's assets and liabilities, and to dissolve Old Dominion Plantation, LLC. Alexander opposed the sale of assets and the dissolution of Old Dominion Plantation, LLC, and contended the Court should enforce the Settlement Agreement of September 10, 2007.



ISSUES

1. Whether Bowman is entitled to an Order appointing a Receiver to dispose of the assets, determine and settle the liabilities of Old Dominion Plantation, LLC, and thereafter, to proceed with the dissolution of Old Dominion Plantation, LLC.
2. Whether Bowman is entitled to an Order requiring an accounting of the assets and liabilities of Old Dominion Plantation, LLC, as well as the obligations of Bowman and Alexander to Old Dominion Plantation, LLC.

3. Whether Alexander is entitled to an Order requiring specific performance of the Conservation Easement, which applies to Old Dominion Plantation, LLC.
4. Whether either party is entitled to damages for breach of the Settlement Agreement of September 10, 2007.
5. The Venue Motion was dealt with verbally prior to trial.

BACKGROUND OF DISPUTE

Bowman and Alexander are both physicians in South Carolina; Bowman is an orthopaedic surgeon in Seneca, and Alexander is a cardiologist in Columbia. Bowman and Alexander have been friends for many years, since their days in medical training.

In 1995, Bowman and Alexander agreed to purchase Old Dominion, a 647-acre plantation on Edisto Island in Charleston County. In 1998, Bowman and Alexander agreed to enter into a Conservation Easement with Ducks Unlimited. In 1999, Bowman and Alexander agreed to purchase an additional 78 acres from Nature Conservancy, which included the existing Conservation Easement.

Subsequently, a dispute developed between Bowman and Alexander concerning their use and respective ownership rights in the plantation property owned by Old Dominion Plantation, LLC. The dispute ultimately resulted in mediation, and a signed Settlement Agreement, dated September 10, 2007.

Bowman filed this action on December 22, 2008.

ISSUE 1

Whether Bowman is entitled to an Order appointing a Receiver to dispose of the assets, determine and settle the liabilities of Old Dominion Plantation, LLC, and thereafter, to proceed with the dissolution of Old Dominion Plantation, LLC.

DISCUSSION

Bowman contends a deadlock has occurred between the owners of Old Dominion Plantation, LLC, and that he is entitled to an Order dissolving the limited liability company. The Uniform Limited Liability Company Act outlines certain procedures for actions brought by members of a limited liability company.

S.C. Code Ann. §33-44-410(a) enables a member to maintain an action against the limited liability company or another member “for legal or equitable relief, with or without an accounting” to enforce, in pertinent part:

- 
- (1) The member’s rights under the Operating Agreement;**
 - (2) The member’s rights under this Chapter; and**
 - (3) The rights that otherwise protect the interests of the member, including rights and interests arising independently of the member’s relationship to the company.**

S.C. Code Ann. §33-44-801 sets out the events requiring the dissolution of a limited liability company, and the winding up of a company's business, including in pertinent part:

**(4) on application by a member or a disassociated member,
upon entry of a Judicial Decree that: . . .**

**(c) it is not otherwise reasonably practical to
carry on the company's business in conformity
with the Articles of Organization and the
Operating Agreement; . . .**

**(e) the managers or members in control of the
company have acted, are acting, or will act in a
manner that is unlawful, oppressive, fraudulent,
or unfairly prejudicial to the Petitioner. . .**



A member's right to seek dissolution of a Limited Liability Company under S.C. Code Ann. §33-44-801 was recognized in Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 673 S.E.2d 448 (2009). The Supreme Court found, "... the LLC Act grants broad judicial discretion in fashioning remedies in actions by a member of an LLC against the LLC and/or other members." Id. at 428, 454.

Alexander contends Section 33-14-300 of the South Carolina Business Corporation Act governs the dissolution of a Limited Liability Company. S.C. Code Ann. §33-14-300

provides a Court may grant judicial dissolution to a shareholder if it is established that:

(i) the directors or those in control of the corporation are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of a deadlock. . .

A member's right to seek dissolution of a limited liability company because of a dispute or deadlock among members has been recognized by other Courts. See 49 A.L.R. 61; Dickson vs. Rehnke, 164 Cal. App. 4th 469, 78 Cal. Rptr.3d 874 (Cal.App. 3 Dist. 2008).



FINDINGS OF FACT

After considering the testimony and exhibits, and observing the demeanor of the parties during testimony, I find, by the greater weight of the evidence, the following facts:

1. Beginning in the year 2000, the parties began experiencing difficulties in working out the use of their jointly-owned property. Bowman and his family often encountered Alexander and his family, when they visited the plantation. Because of their conflicts in usage, and Bowman's belief that Alexander was

dominating the property, the parties agreed to use the property on alternate weeks. Bowman contends that on many occasions, Alexander or members of his family were present on the property during a week designated for Bowman.

- 
2. When the parties were unable to solve their conflicts concerning the use of the plantation property, they began discussing a possible division of the property. For an extended period of time, Bowman searched for other similar property to purchase so that he could sell his interest in Old Dominion, LLC to Alexander. This solution did not materialize.
 3. In addition to the controversy over the use of the plantation property, the parties encountered difficulties concerning management of the property. At an area of the plantation property known as Picnic Point, Alexander performed significant work; road work, eliminated trees, constructed a dock and had electricity run to the dock, all without the agreement or consent of Bowman. Alexander also constructed an addition to a barn without agreement or consent of Bowman.
 4. The testimony indicates Bowman and Alexander could only agree that they were in conflict, and Old Dominion Plantation, LLC's operating agreement required mediation in such a circumstance.
 5. The parties agreed to hire Thomas J. Wills, IV, Esquire, a Charleston, South Carolina attorney and mediator, to mediate their differences. The parties

initially entered into mediation without legal representation. The mediation lasted for several months, and resulted in the mediator recommending a division of the plantation property. The mediator further recommended the parties obtain attorneys to help them work out such a division.

6. The mediation was held before Mediator Wills in Charleston, South Carolina, on September 10, 2007. Bowman was represented by attorneys Michael D. Glenn and John W. Fields, and Alexander was represented by attorneys Randolph Murdaugh, III and Leonard Krawcheck. The mediation resulted in a signed Settlement Agreement (Pl's Ex. 3). The Settlement Agreement provides the parties shall attempt to obtain the permission of Ducks Unlimited for a legal division of the plantation property as depicted upon aerial photos attached to the Settlement Agreement.



7. The testimony reveals that controversy between Bowman and Alexander continued following the execution of the Settlement Agreement. Pursuant to the Settlement Agreement, the parties employed a surveyor to survey the property and produce a plat for the division of the property. Another dispute developed after Alexander instructed the surveyor to draw a crucial line in a way which was different from that shown on the aerial photograph, which was a part of the Settlement Agreement. Alexander also asked the surveyor to include an

easement in his favor, which was also contrary to the Settlement Agreement. Ultimately, the surveyor resurveyed the property and produced a new plat in conformity with the aerial photographs and the Settlement Agreement. Thereafter, Alexander stopped payment on his check to the surveyor for his one-half of the cost for the survey.

- 
8. The Settlement Agreement was submitted to Ducks Unlimited for consideration. By letter dated March 26, 2008, Ducks Unlimited notified the parties it would not approve a legal division of Old Dominion Plantation but would review the matter on an on-going basis. Ducks Unlimited indicated it was willing to review biological evidence, such as a study from a consulting wildlife biologist or other similar report, presenting a management plan wherein the biological integrity of the property would still be protected in the future, under a division of the property.
 9. Bowman suggested the parties retain Williams Land Management Company to conduct the biological survey. Kenneth Williams, of Williams Land Management Company, conducted the original survey, which resulted in the existing easement. Again the parties disagreed, and were unable to agree upon a consulting wildlife biologist.
 10. On one occasion, Bowman called Alexander to inform him that he was mailing a

contract submitted to hire Williams Land Management Company. Bowman then sent the contract to Alexander by certified mail. Alexander refused to accept the certified mail, and pointed out in his Answer to the Complaint that he was not obligated to accept it.

11. On December 30, 2010, Alexander wrote a letter to Coy Johnson agreeing to proceed with the survey with the assistance of Kenny Williams, of Williams Land Management Company.

12. On March 2, 2011, Mr. Johnson wrote a letter to the parties making a recommendation for submission of the management plan to Ducks Unlimited. He recommended both Bowman and Alexander be willing to give up certain rights to high-ground property, which they have under the existing easement. The evidence shows that Bowman immediately agreed to Johnson's recommendations. However, Alexander objected and refused to go forward; he did not want to give up his rights under the existing easement.

13. That disagreement continued until October 4, 2011, when the attorney for Bowman filed Notice with the Court withdrawing his request for specific performance of the Settlement Agreement, and indicating he intended to proceed with his request to dissolve Old Dominion Plantation, LLC.

14. Shortly thereafter, on October 7, 2011, one of the attorneys for Alexander wrote

Ducks Unlimited officials requesting approval of the legal division of the property, and recommended a division which had never been presented to, nor approved by Bowman. Bowman's attorney then wrote Ducks Unlimited officials requesting they not make a decision, pending a decision of the Court in this case.

15. In addition to the parties' inability to agree upon an environmental survey, problems concerning the use of the plantation property continued. Alexander acknowledged entering a barn, on a portion of the property designated for Bowman, to remove personal property. Alexander also acknowledged cutting a fence and using a dike to move equipment, claiming he was trapped when a public road flooded. Both the fence and the dike were located on property designated for Bowman in the Settlement Agreement. Thereafter, Alexander filed a plat on a portion of the property with the Charleston County RMC's Office, without the agreement or permission of Bowman. Alexander then constructed a building on the property, again without permission or agreement.

16. Bowman testified the continued conflicts over use of the plantation property, the inability of the parties to agree to accomplish the necessary survey to present to Ducks Unlimited concerning a legal division of the property, and their inability to agree on a procedure for presenting a plan of division to Ducks Unlimited, clearly demonstrates the deadlock between the parties continued to the date of

trial. Bowman testified ten (10) years of conflict with Alexander indicates the parties simply cannot cooperate in any way.

17. Bowman further testified the legal division of the property, as set out in the Settlement Agreement, requires the cooperation of the parties regarding their continued joint-ownership of the Picnic Point area. The Settlement Agreement also requires the parties employ a third party to maintain the property, with each party contributing \$5,000.00 per year for upkeep, "or such amount both parties agree is necessary." The Settlement Agreement provides disputes regarding maintenance of the pier and / or the roads at Picnic Point will be finally determined by binding Arbitration.



18. Due to past and present conflicts between the parties, Bowman testified that he believes future conflicts will be a certainty, which will ultimately be inherited by the children of the parties. For that reason, Bowman withdrew his request for specific performance of the Settlement Agreement and now seeks dissolution of Old Dominion Plantation, LLC.

19. In his testimony, Alexander acknowledged many conflicts as described by Bowman prior to the mediated Settlement Agreement. In his Answer, Alexander acknowledged the parties were deadlocked at the time of the mediation. However, Alexander disputes Bowman's view of the difficulties since the

mediation.

20. Alexander testified he was always willing to proceed with seeking a legal division of the plantation property, but did not do so because the proposed employment contract by Williams Land Management Company included a hold harmless clause. However, the allegations of Alexander's Answer and Counterclaim indicate otherwise. His Answer contends the 2007 Settlement Agreement is illegal because it violates the terms of the existing Conservation Easement. Alexander denies Bowman was entitled to specific performance of the Settlement Agreement. In his Counterclaim, Alexander seeks specific performance of the terms and conditions of the Conservation Easement, not the Settlement Agreement, as he contended in his testimony.

21. The Court finds the long standing disputes between the shareholders amounts to a deadlock, and therefore business can no longer be conducted to the advantage of the shareholders under S.C. Code Ann. § 33-14-300.

22. The Court finds continued efforts seeking approval from Ducks Unlimited regarding a division of the plantation property and a reduction in home sites, will only add to the deadlock in operating Old Dominion Plantation, LLC.

23. The Court finds the only practical and reasonable solution is to sell the plantation property. As the Conservation Easement presently exists, the Court finds it is

virtually impossible to divide the real property without a deadlock. Dissolution is necessary because of the easement in addition to the nature of Old Dominion Plantation, LLC's business.

CONCLUSION

gm The testimony and evidence before the Court clearly shows the parties have experienced a great deal of conflict concerning their ownership of Old Dominion Plantation, LLC as well as the real property it owns in Charleston County. Since 2001, the parties have been in conflict concerning the use and management of the plantation property and the LLC. Even after reaching an agreement at mediation, it took the parties four (4) years to agree on a method of proceeding with the legal division of their property. Finally, when the parties received a report which could have provided a path for the legal division, they continued to disagree with going forward. The evidence shows that just eighteen (18) days before trial, Alexander agreed to proceed with seeking a legal division, and then submitted a plan without the agreement or consent of Bowman. Therefore, I find a deadlock exists between the members of Old Dominion Plantation, LLC.

The relief sought by Bowman is in accord with the provision of S.C. Code Ann. §33-44-410. Bowman seeks equitable relief with an accounting as to Old Dominion Plantation, LLC's business to enforce his rights under the Operating Agreement and his rights under the Uniform Limited Liability Company Act. S.C. Code Ann. §33-44-801(4)

provides for dissolution and winding up of a company's business on application by a member or a dissociated member, upon entry of a judicial decree. Therefore, I find the controversy between Bowman and Alexander demonstrates it is not reasonably practical to carry on the Old Dominion Plantation LLC's business in conformity with the Articles of Organization and the Operating Agreement. See S.C. Code Ann. §33-44-801(4)(c). I also find the actions of Alexander are unfairly prejudicial to Bowman, and he is entitled to dissolution. See S.C. Code Ann. §33-44-801(4)(e).



It is clear that the business affairs of Old Dominion Plantation, LLC can no longer be conducted to advantage of the shareholders generally because of the deadlock. S.C. Code Ann. §33-14-300(i) provides a Court may grant Judicial Dissolution to a shareholder in this situation. Therefore, I find Bowman is entitled to an Order requiring the dissolution of Old Dominion Plantation, LLC.

ISSUE 2

Whether Bowman is entitled to an Order requiring an accounting of the assets and liabilities of Old Dominion Plantation, LLC, as well as the obligations of Bowman and Alexander to Old Dominion Plantation, LLC.

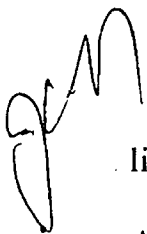
DISCUSSION

In his testimony, Alexander contended that he performed significant work at Picnic Point, and accomplished other construction projects, which benefitted and enhanced the

value of the property, prior to signing the Settlement Agreement in 2007. Alexander also testified that since 2007, he has performed construction as well as other maintenance and repair work on the portion of the property designated for him in the Settlement Agreement. Alexander introduced a hand-written list of his alleged expenses since 2007.

Bowman testified that he too performed construction and maintenance of the property both before and after the signing the Settlement Agreement in 2007. However, neither party submitted sufficient evidence regarding their contributions. Therefore, the Court was not able to calculate the value of their claims.

CONCLUSION



I find that Bowman is entitled to an Order requiring an accounting of the assets and liabilities of Old Dominion Plantation, LLC, as well as the obligations of Bowman and Alexander to Old Dominion Plantation, LLC. Because neither party submitted sufficient evidence regarding their contributions, the Court shall reopen the record and receive financial information and figures as to each party's expenses.

The parties may submit information to the Court by affidavit and / or financial records and if necessary, the Court will allow testimony on the contributions. The expenses previously claimed by Alexander for repairs and enhancing the value of the property, shall be submitted to the Court. Depending on the volume of information submitted by the parties regarding the expenditures, the Court may appoint a third party to

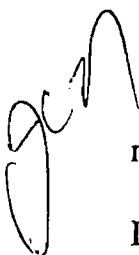
make the accounting and report to the court. If the Court determines the service of a third party is required, the parties shall share equally in the costs.

The parties have 10 days from the receipt of this Temporary Order to notify the Court as to how they wish to proceed in submitting the requested information. If either party wants to offer testimony, the Court shall set a hearing.

ISSUE 3

Whether Alexander is entitled to an Order requiring specific performance of the Conservation Easement, which applies to Old Dominion Plantation, LLC.

DISCUSSION



In his Counterclaim, Alexander seeks specific performance of the provisions and requirements of the Conservation Easement, which applies to Old Dominion Plantation, LLC. Each party testified that the other had violated the terms of the Conservation Easement. However, both parties failed to point out wherein the easement was violated.

CONCLUSION

Neither party demonstrated a specific violation of the easement. Moreover, the only practical and reasonable solution is to sell the real property as the Conservation Easement, which is held by Ducks Unlimited presently exists, and dissolve Old Dominion Plantation, LLC. Therefore, I find that an Order requiring specific performance of the Conservation Easement, which applies to Old Dominion Plantation, LLC should not be granted.

ISSUE 4

Whether either party is entitled to damages for breach of the Settlement Agreement of September 10, 2007.

DISCUSSION

Bowman contends, and Alexander agreed during testimony, the Settlement Agreement provides for the equal division of jointly-owned personal property with a value of \$18,120.00. However, following the Settlement Agreement, the parties could not agree upon a division of the personal property, and ultimately Alexander took all the property. Bowman contends he is entitled to a payment of \$9,060.00, for half of the personal items.



The Settlement Agreement provides that Bowman will pay Alexander \$250,000.00 over 5 years at 7% interest, with payments to be made annually for principal and interest. The evidence shows Bowman made the first payment in the amount of \$67,000.00 on September 7, 2008, the first anniversary of the Settlement Agreement. Alexander acknowledged receipt of the payment. Because the parties did not go forward with the terms of the Settlement Agreement, Bowman has made no other payment.

CONCLUSION

The evidence is clear and undisputed; the Settlement Agreement requiring the division of the property will not be accomplished. Therefore, Bowman is entitled to be paid for his one-half interest in the personal items in the amount of \$9,060.00 and the return

of his one payment under the Settlement Agreement in the amount of \$67,000.00 for a total of \$76,060.00.

As previously indicated, the Court found Alexander's hand-written list of expenses was insufficient. The expenses claimed by Alexander for repairs and enhancing the value of the property, shall be submitted to the Court as a part of the accounting as ordered herein. At that time, the Court shall determine whether Alexander is entitled to damages for breach of the Settlement Agreement.

IMPLEMENTATION OF ORDER



The Court determined the long standing disputes between the Bowman and Alexander amounts to a deadlock, and dissolution of Old Dominion, LLC is the proper remedy. The Court found the only practical and reasonable solution is to sell the plantation property. Moreover, it is in the best financial interest of both parties for the property to be sold. Therefore, the parties have thirty (30) days from receipt of this order to agree upon a method to market and dispose of the plantation property.

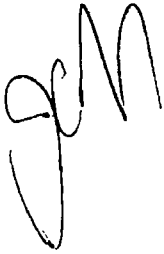
This is a Temporary Order, and a Permanent Order will be issued after an accounting is rendered and a method of disposition has been determined. Depending on the volume of financial information submitted by the parties regarding the expenditures, the Court may appoint a third party to make the accounting and report to the Court. If the Court determines the service of a third party is required, Bowman and Alexander shall share

equally in the costs.

If the parties do not submit proposals within thirty (30) days, or in the alternative, if the Court determines that none of the proposals appropriate, the Court shall issue a Permanent Order disposing of the plantation property by auction.

NOW THEREFORE, IT IS ORDERED:

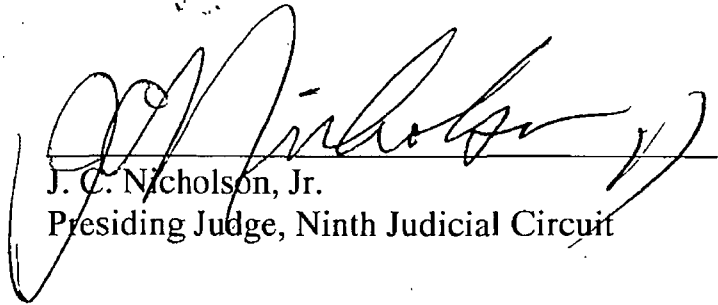
1. Bowman shall have judgment as follows:

- 
- A. It is Ordered that Old Dominion Plantation, LLC shall be dissolved. The parties shall have thirty (30) days from the date of this Order to agree upon a method of marketing and disposing of all assets of the limited liability company. If the parties are unable to agree upon a method to market and sell the assets of Old Dominion Plantation, LLC, the court shall issue an order disposing of the property by auction, and appointing a receiver if necessary.
 - B. The parties shall follow the procedure laid out in the Temporary Order concerning contributions and completing an accounting.
 - C. Alexander's claim for specific performance of the Conservation Easement is denied.
 - D. Any moneys owed to the Plaintiff or the Defendant will be determined by the Court after the completion of the accounting. There will be no

funds transferred until the property is sold and any offset will be made against the proceeds of the sale of the property against the appropriate party.

2. This Court shall retain jurisdiction of this action to supervise and monitor the implementation of the Temporary Order as set forth herein.
3. A final Order on dissolution shall be issued after proper disposition of the assets is determined and an accounting has been completed.

IT IS SO ORDERED THIS 7 **DAY OF** MAY, 2012.


J. C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Larry S. Bowman,)
Plaintiff,)
vs.)
M. Donald Alexander and Old)
Dominion, LLC,)
Defendants.)

IN THE COURT OF COMMON PLEAS

Case Number: 2008-CP-10-7245

SHORT ORDER

FILED
2012 JUN 21 AM 11:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

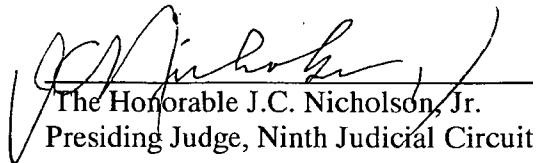
THIS MATTER CAME BEFORE THE COURT on the Defendant's Motion for New Trial and/or to Void Judgment and the Defendant's Motion to Alter or Amend, Pursuant to Rule 59(e), SCRPC. However, the aforementioned motions are premature and not yet ripe.

In the Temporary Order issued by the Honorable J. C. Nicholson, Jr. on May 7, 2012, the Court ordered that it shall reopen the record and receive financial information and figures as to each party's expenses for repairs and enhancing the value of the plantation property owned by Old Dominion Plantation, LLC. The Court further ordered the parties to submit information to the Court by affidavit and / or financial records, and agreed to take testimony regarding the parties' contributions if necessary. Because the Court is awaiting additional financial information and may take additional testimony from the parties, the Court will take the Defendant's Motion for New Trial and / or to Void Judgment and the Defendant's Motion to Alter or Amend under advisement at this time.

THEREFORE, the Court will not issue a decision regarding the Defendant's Motion for New Trial and / or to Void Judgment and the Defendant's Motion to Alter or Amend, until a

Final Order has been issued and oral arguments on the motions have been received.

AND IT IS SO ORDERED.


The Honorable J.C. Nicholson, Jr.
Presiding Judge, Ninth Judicial Circuit

6/21, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE
NINTH JUDICIAL CIRCUIT

Larry S. Bowman,

Plaintiff,

v.

M. Donald Alexander and Old Dominion,
LLC,

Defendants.

CIVIL ACTION NO. 08-CP-10-7245

CONSENT ORDER

FILED
2012 OCT -4 AM 9:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

This matter is before the Court on the issue of the method of sale of the property consisting of an approximately 718-acre plantation on Edisto Island, owned by the Old Dominion Plantation, LLC.. The Temporary Order of this Court, filed May 11, 2012, provides that the parties could reach an agreement on the marketing and disposing of the said property.¹ The parties have now agreed as follows:

1. The parties will obtain an appraisal through Chris Donato of Atlantic Appraisals.
2. After the appraised value is determined, if either party wants to purchase the property at the appraised value and the other party agrees, the sales price would be ½ of the appraisal amount. If both parties want to purchase the property at the appraised value, each party would submit one sealed bid and the property would be sold to the highest bidder. Each party will submit the sealed bid to his attorney

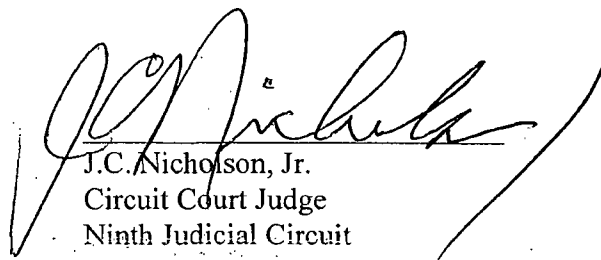
¹Although Defendants dispute that Old Dominion Plantation should be dissolved and the property sold, Defendants have agreed to the method of sale outlined herein in the event such sale is mandated.

and the attorneys will meet to open the bids.

3. If neither party wants to buy the property, it will be listed with Holcombe, Fair & Lane for 180 days (unless the parties jointly agree to use another realtor). If either party wants a co-listing, he may obtain one. The property shall also be advertised in the New York Times and Wall Street Journal. The minimum sales price will be set by the parties.
4. If either party wishes to do a 1031 exchange upon the sale of the property, the other partner agrees to execute any necessary documents to aid in completion of such exchange.

Although the parties disagreed to the timing of the required sale of the property, the parties have jointly agreed to proceed with the obtaining of the appraisal of the property as outlined above.²

And it is so ordered this 1 day of October, 2012.


J.C. Nicholson, Jr.
Circuit Court Judge
Ninth Judicial Circuit

²Plaintiff requested that the process outlined herein to begin immediately or upon the entry of this Court's final order in this action. Defendants requested for the process not to be initiated until an entry of final judgment by this Court dissolving the LLC and ordering such sale, or in the event of any appeal, after entry of final judgment on any such appeal dissolving the LLC and ordering such sale, whichever is later. Since the parties do not agree as to the timing of the initiation of the method of sale outlined herein, the Court will address that issue in its final order. However, while the parties jointly agree to proceed with obtaining an appraisal as set forth in Item One while reserving all other rights. The Court's final order will also address the method of sale in the event a sale of the property is not accomplished after the above process is completed.

WE CONSENT:

Michael D. Glenn 9/13/2012

Michael D. Glenn, Esq.
Glenn, Haigler, McClain & Stathakis, LLP
121 W. Benson Street
Anderson, South Carolina 29624
(864)226-1885
Attorneys for the Plaintiff

Ariaail E. King
A. Camden Lewis
Ariaail E. King
LEWIS, BABCOCK, & GRIFFIN, L.L.P.
1513 Hampton St.
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000
Attorneys for Defendants

A. CAMDEN LEWIS
KEITH M. BABCOCK
JAMES M. GRIFFIN
ARIAIL E. KING
MARGARET N. FOX*

LB&G

LEWIS, BABCOCK & GRIFFIN L.L.P.

EMAIL: AEK@LBGLEGAL.COM

1513 HAMPTON STREET
P.O. BOX 11208 (29211)
COLUMBIA, S.C. 29201
FACSIMILE: 803-733-3534
TELEPHONE: 803-771-8000
WEBSITE: WWW.LBGLEGAL.COM

* ALSO ADMITTED IN N.C.

September 18, 2012

*Received
9/24*

The Honorable J.C. Nicholson, Jr.
100 Broad Street, Suite 106
Charleston, South Carolina 29401

Re: Bowman v. Alexander, Civil Action No. 08-CP-10-7245
Our File 09-103

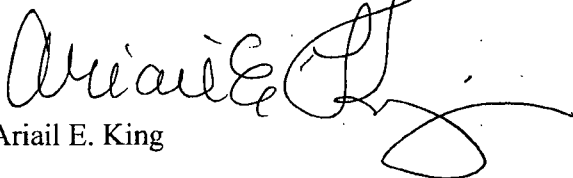
Dear Judge Nicholson:

Enclosed please find a Consent Order which has been consented to by counsel for the parties. If you would sign the Consent Order and return it to me, I will file it with the Court. However, if you would like any changes made to the order, I would be pleased to do so.

With highest regards, I am

Very truly yours,,

LEWIS, BABCOCK & GRIFFIN, L.L.P.


Ariail E. King

AEK:cg
Enclosure
cc: Michael D. Glenn, Esquire

00054

State of South Carolina) In the Court of Common Pleas
County of Charleston) 10th Judicial Circuit

Larry Bowman) Transcript of Record

Plaintiff,) 2008CP1007245

V.)

M. Donald Alexander,)

Defendant.)

October 25, 2011

Charleston, South Carolina

B E F O R E:

The Honorable, J. C. Nicholson, Jr., Judge

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

Michael D. Glenn, Esquire

Attorney for the Plaintiff

A. Cam Lewis, Esquire

Ariail E. King, Esquire

Attorneys for the Defendant

SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

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E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
<u>For the Plaintiff:</u>			
1	- Articles of Incorporation Document		--45
2	- Operating Agreement		--46
3	- Mediation Agreement		--59
4	- Letter dated 3/36/2008		--67
5	- Letter dated 10/6/2008		--69
6	- Copy of FedEx Envelope		--78
7	- Management Plan		--79
8	- Letter dated 3/2/2011		-112
9	- Aerial Photograph		-114
10	- Letter dated 4/24/2004		-191
11	- Letter dated 3/27/2006		-192

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
<u>For the Defendant:</u>			
A	- First Operating Agreement		--33
1	- Photograph of Road		-141
2	- Letter dated 3/6/2008		-164
3	- Letter dated 12/17/2008		-166
4	- Letter dated 9/17/2010		-167
5	- Letter dated 10/12/2010		-167
6	- Letter dated 8/10/2011		-171
7	- Multi Page Document dated 10/7/2011		-172
8	- Letter dated 10/13/2001		-174
9	- Note dated 9/10/2007		-177
10	- Tax Records		-181

1 Tuesday, October 25, 2011

2 THE COURT: All right. Let me see. I've read the
3 defendant's pretrial brief. I guess before we get
4 started, I would appreciate it if the attorneys would
5 just sort of very briefly give me an opening statement
6 giving their respective positions.

7 MR. GLENN: Your Honor, here's a return I filed to
8 their motion they filed yesterday.

9 THE COURT: I haven't seen the motion yet. What's
10 the motion? I hadn't seen the motion. I read the
11 pretrial brief, the settlement agreement, an e-mail where
12 you had sent the excerpts. You sent some excerpts of
13 depositions, I believe. Dr. Alexander sent some excerpts
14 of depositions.

15 MS. KING: Your Honor? This was our motion, Your
16 Honor.

17 THE COURT: Okay. I believe we need to hear the
18 motion before we proceed, if we're going proceed. Be
19 glad to hear you on your 12(b)(6) motion. I believe you
20 got also in that motion a motion to change venue; isn't
21 that correct?

22 MR. LEWIS: Yes, sir.

23 THE COURT: Okay. I'll be glad to hear you.

24 MR. LEWIS: May it please the Court. I'm Cam Lewis
25 and I represent Dr. Alexander. And I apologize for the

1 lateness of those motions but it wasn't until October the
2 4th that we received from the other side -- there are two
3 causes of action in their complaint. One entitled
4 specific performance, slash, contract, breach of
5 contract, and then the other one is dissolution.

6 We didn't receive their letter or their motion or
7 their notice that they were withdrawing their specific
8 performance allegation, which of course withdraws their
9 first cause of action, and once that happened it brought
10 into bear what we now bring before the Court. Prior to
11 that time we did not think these two were applicable but
12 now they are.

13 The first one is change of venue, and you will see
14 we base that on the --

15 THE COURT: Well, why don't you do the 12(b)(6)
16 because if you get the 12(b)(6) there won't be any change
17 of venue. So why don't you address that first.

18 MR. LEWIS: Okay.

19 THE COURT: If you don't mind.

20 MR. LEWIS: Not at all, Your Honor. I'm here to
21 please you.

22 THE COURT: Okay. If we could, let's address the
23 12(b)(6) first.

24 MR. LEWIS: The 12(b)(6) is a dissolutionment cause
25 of action and it is dissolutionment you find under Code

1 Section 33-14-300, and it gives you the requirements of a
2 dissolutionment. And it says in there, The directors or
3 those in control of the corporation are deadlocked in the
4 management of the corporate affairs -- that's first you
5 have to have that, The shareholders are unable to break
6 the deadlock, and irreparable injury to the corporations
7 are threatened or being suffered.

8 The only thing that is alleged in the cause of
9 action, if anything, is that those in control are
10 deadlocked. This is a 50/50 corporation, 50 percent, 50
11 percent. There is no allegation that there is
12 irreparable injury to the corporation is threatened or
13 being suffered. Having said that, they failed to allege
14 the necessary elements under 33-14-300 for
15 dissolutionment; and therefore, they failed to state a
16 cause of action, period.

17 THE COURT: Okay.

18 MR. LEWIS: That's our argument on that.

19 THE COURT: All right. Let me look at their
20 complaint real quick.

21 MR. LEWIS: All right, sir.

22 THE COURT: If you don't mind.

23 MR. LEWIS: No, sir.

24 (PAUSE)

25 THE COURT: Okay. Anything else you want to add?

1 MR. LEWIS: No, sir.

2 THE COURT: Okay. Mr. Glenn?

3 Well, Mr. Lewis, before you -- let me just ask you
4 one question. The last part of 33-14-300, it says or the
5 business and affairs of the corporation can no longer be
6 conducted to the advantage of the shareholders.

7 MR. LEWIS: That isn't alleged either.

8 THE COURT: Pardon?

9 MR. LEWIS: That's not alleged.

10 THE COURT: Well, if you read 1 through 20 in the
11 complaint it pretty well shows that there's a deadlock
12 and the corporation is not functioning. So I'm just
13 asking you that question.

14 MR. LEWIS: It does say, Or, that's correct, but
15 the question is can --

16 THE COURT: In other words, it's not only just the
17 detriment of irreparable harm. It's not only that. It's
18 also when the corporation can't function any longer.

19 MR. LEWIS: Well, all it says in there is they are
20 deadlocked.

21 THE COURT: Okay.

22 MR. LEWIS: It doesn't say that they can't
23 function. They are just deadlocked. The corporation,
24 there's no allegations --

25 THE COURT: Well, when it's 50/50 and it's

1 deadlocked doesn't that insinuate or mean that the
2 corporation can't function? When it's 50/50 there's no
3 way to break the deadlock.

4 MR. LEWIS: Well, if --

5 THE COURT: I'm just asking you that question.

6 MR. LEWIS: I understand. But the point being is
7 if that was right all you'd have to put in this statute
8 is the word deadlocked.

9 THE COURT: Okay. All right. Thank you so very
10 much. I appreciate you answering my question.

11 Mr. Glenn?

12 MR. GLENN: Your Honor, I had prepared a memorandum
13 that includes the authorities that I cited in the return
14 to the motion having to do with deadlock, and the first
15 thing I was going to do is read that alternative language
16 in the statute that the Court just referred to.

17 In his answer to the complaint Dr. Alexander
18 admitted that there was a deadlock. I don't believe that
19 you have to allege every element that caused the deadlock
20 but you allege enough to show that there's a deadlock and
21 that there's a disagreement, and that it cannot be
22 operated to the advantage of the members.

23 In actuality, 33-44-410 that's cited in the motion
24 is the section dealing with corporations, generally,
25 closely held corporations, family corporations, and

1 that's what that refers to.

2 I've cited in our return 33-44 -- I'm sorry. I
3 misquoted that one. The one he cited was 33-14-300.
4 That's the one that deals with closely held corporations
5 and family corporations.

6 33-44-410 deals specifically with LLCs or limited
7 liability companies, and it authorizes a member or
8 manager to maintain an action against a limited liability
9 company or another member or manager for legal or
10 equitable relief, with or without an accounting to the
11 company's business, to enforce: It's the members rights
12 under the operating agreement; the members rights under
13 the statute; or rights that otherwise protect the
14 interest of the member and so forth. And we believe the
15 suit is authorized under that section.

16 The authorities that I hold up -- handed up, and
17 particularly the South Carolina case, deals with a
18 dissolution of an LLC, and I think it's clear that a
19 deadlock applies to an LLC.

20 I think there's no doubt that there's a deadlock.
21 It's been deadlocked. These gentlemen have been in
22 conflict for ten years, and they still are. And we
23 believe that the sections we cited under the limited
24 liability company statute apply rather than the one they
25 cited. But even the one they cited includes the language

1 that if it's not being operated to the benefit of the
2 members it's a deadlock, and the allegations we have in
3 our complaint which shows the disagreement of the
4 parties, and the testimony will show the disagreement of
5 the parties. So we believe the motion to dismiss should
6 be denied and the Court should proceed with the testimony
7 about the deadlock.

8 THE COURT: Okay. Thank you very much.

9 Mr. Lewis, anything very briefly in rebuttal?

10 MR. LEWIS: Yes, sir. First, 33-44-801 --

11 THE COURT: Hold on just a second, please.

12 All right. Thank you. Be glad to hear you. I
13 can't do two things at once.

14 MR. LEWIS: Neither can I.

15 THE COURT: Be glad to hear you.

16 MR. LEWIS: He keeps bringing up the LLC statute
17 and it does not in there ever talk about dissolution.
18 Dissolutionment comes back to the corporation statute
19 which is 33-14-300, and it governs dissolutionment of
20 partnerships, corporations and associations. So that is
21 the controlling statute.

22 Now, the controlling statute does say in there that
23 there has to be a deadlock and it uses deadlock in two
24 different ways. It has to be a deadlock that, The
25 shareholders are able to break the deadlock and

1 irreparable injury to the corporation is threatened or
2 the business and affairs of the corporation can no longer
3 be conducted to the advantage.

4 You have to either allege that irreparable injury
5 to the corporation is threatened or being suffered, or
6 the business and affairs of the corporation can no longer
7 be conducted to the advantage. You can't just say
8 deadlock. All deadlocks do not require a
9 dissolutionment. So he hasn't pled any of that. All he
10 has pled is deadlock, and he's failed to state a cause of
11 action and we ask that it be dismissed.

12 THE COURT: Thank you very much. On the 12(b)
13 motion, based upon reviewing the complaint and the
14 answer, the parties motion is denied.

15 Now, I believe you have a motion for change of
16 venue; is that also correct?

17 MR. LEWIS: Yes, sir.

18 THE COURT: Let me see. That's in the same motion,
19 right?

20 MR. LEWIS: Yes, sir.

21 THE COURT: Not a separate motion?

22 MR. LEWIS: That's correct.

23 THE COURT: 33-14-310, proceeding to dissolve lies
24 in the county where the corporation's principal was last
25 located. Is that --

1 MR. LEWIS: That's correct.

2 THE COURT: I'll be glad to hear you on the venue.

3 MR. LEWIS: Your Honor, for this you have to just
4 look at the front of the operating agreement. We'd make
5 that exhibit A.

6 THE COURT: Which agreement now?

7 MR. LEWIS: For purposes of reviewing venue under
8 33-14-310 you would have to look -- we want to put in as
9 exhibit A, the operating agreement.

10 THE COURT: Okay. Any objection?

11 MR. GLENN: No objection.

12 THE COURT: All right. The operating agreement,
13 Defendant's Exhibit Number 1?

14 MR. LEWIS: A because this is just for this motion.

15 THE COURT: For the motion, okay. We'll mark it as
16 A as to the motion. All right. What do you want me to
17 look at now?

18 MR. LEWIS: I want you to look at the front page.

19 THE COURT: Okay.

20 MR. LEWIS: Number two.

21 THE COURT: Number two.

22 MR. LEWIS: And number three.

23 THE COURT: Okay.

24 MR. LEWIS: When you look at that and you look at
25 the statute for -- and this only became operative when

1 they -- and on the 4th of October when they dropped their
2 cause of action.

3 When you look at that and you look under 33-14-310,
4 The venue for proceeding to dissolve a corporation lies
5 in the county where the corporate's principal office was
6 last located, and if it's not there then it's in the
7 place where its registered agent is, and both of those
8 are in Richland County, according to Exhibit Number A.

9 THE COURT: Okay. Now, I believe -- I'm trying to
10 find it. I read it in his return, basically says that
11 you have waived that, I believe; is that correct,
12 Mr. Glenn?

13 MR. GLENN: Yes, Your Honor.

14 THE COURT: Mr. Lewis, why don't you address that
15 while you're talking, the possibility of a waiver.

16 MR. LEWIS: Well, they just amended their complaint
17 and it's within 20 days of amending their complaint. I
18 don't know how I can waive something when, first of all,
19 it wasn't applicable and now then they -- when they amend
20 their complaint it becomes applicable. I don't know how
21 I waived it. I don't understand --

22 THE COURT: I'll let you listen to his argument
23 then you can address that.

24 MR. LEWIS: I will. I just don't understand that.

25 THE COURT: Be glad to hear you, Mr. Glenn.

1 MR. GLENN: The complaint was filed in December of
2 '08. It asked for -- the second cause of action for
3 disillusionment has been in there the whole time. 12(b)8
4 says you raise that by 12(b) motion or your responsive
5 pleading, and the motion has to be before the pleadings
6 or concurrent with the pleadings. They didn't do that
7 and it's waived.

8 THE COURT: Okay. Be glad hear you.

9 MR. LEWIS: I can't -- first of all, you had
10 jurisdiction until he dropped his cause of action. So I
11 can't move for change of venue when there is a cause of
12 action that is triable in Charleston County. That would
13 be silly.

14 Like when you have a cause of action against a
15 foreign corporation and a South Carolina citizen you
16 can't ask that it be removed to federal court, but if you
17 dismiss the South Carolina citizen then you move to have
18 it removed. Just like that here, when he dismissed his
19 cause of action then the change of venue became an issue
20 and I made the motion within 20 days. I couldn't of -- I
21 can't make a motion on something that isn't ripe.

22 THE COURT: Okay. All right. Mr. Glenn, basically
23 he's saying the change of venue was not relevant until
24 you dropped the first cause of action; therefore, he
25 couldn't do it by 12(b) or by the pleadings, responsive

1 pleadings until that time, which he has done now in his
2 12(b)(6) motion.

3 MR. GLENN: The statute he raised about dissolution
4 being in the county where the registered agent is was
5 there all along and so was the cause of action. He could
6 have raised it on a 12(b)(6) motion before he filed his
7 answer.

8 THE COURT: Well, what was your first cause of
9 action?

10 MR. GLENN: It was for specific performance of an
11 agreement.

12 THE COURT: Which would have been relevant in
13 Charleston County, I assume.

14 MR. GLENN: Or in Richland County.

15 THE COURT: Or in Richland County. Either county.

16 MR. GLENN: If he's entitled to move for
17 dissolution he could move the whole case, in my judgment.
18 So I didn't amend the complaint. I simply sent him a
19 notice of withdraw on the request for specific
20 performance because we no longer want that remedy. We
21 want the remedy of -- that's been asked for since it was
22 filed in '08. And under the rule he has to raise that at
23 the time he files his answer or before or he waives it.

24 THE COURT: Okay. I don't think you have anything
25 to add, do you?

1 MR. LEWIS: No, sir.

2 THE COURT: So you said what you want to say. All
3 right.

4 I apologize for taking so much time. If I would
5 have known about all this maybe 24 hours ago I would have
6 had an opportunity to read it before I got here. So you
7 all just got to bear with me, okay?

8 MR. LEWIS: No. It's our fault, Your Honor.

9 THE COURT: I do want to read everything you all
10 presented to me before I make a decision, Okay?

11 MR. LEWIS: No problem. It's our fault, Your
12 Honor, especially Mr. Glenn's.

13 THE COURT: You say it's Mr. Glenn's fault?

14 MR. LEWIS: Yes, sir.

15 THE COURT: Okay.

16 (PAUSE)

17 THE COURT: All right. Mr. Glenn, let me just ask
18 you a question. I understand that your position is that
19 he should have raised it in his answer or by 12(b) motion
20 earlier before you dropped the first cause of action.
21 However, as you stated, the first cause of action could
22 have been tried in Richland County or Charleston;
23 therefore, I don't think it was probably -- at least the
24 defendant's position was that he didn't think it was
25 appropriate to make the motion until that cause of action

1 which actually gave venue in Charleston County was
2 dismissed, and under the statute there's no question that
3 the venue of the dissolution should be in Richland County
4 based upon the Exhibit Number A. I understand your
5 argument but I just don't know if I agree with your
6 argument.

7 MR. GLENN: I still contend that those sections,
8 33-14-300 and 310, deal with a different type of
9 corporation. There's no similar issue in the --

10 THE COURT: LLC.

11 MR. GLENN: In the LLC provision. There's nothing
12 in there about that, and the authorities I handed up,
13 it's clear that --

14 THE COURT: Well, what do the sections under LLC
15 say as far as venue is concerned?

16 MR. GLENN: I didn't find anything in there about
17 venue.

18 THE COURT: Do any of those sections about the LLC
19 address the venue issue?

20 MR. GLENN: I didn't find any, no, sir.

21 THE COURT: Then why wouldn't by -- if you don't
22 think the other section is applicable but by analogy or
23 by reference to that section why wouldn't the Court look
24 to that section, even if it's not applying to LLC?

25 MR. GLENN: Generally when you are dealing with

1 real estate you bring the case where it's located. In
2 this case it was located here and the LLC was
3 originally --

4 THE COURT: I'm going to address that in just a
5 minute after I listen to make sure I understand your
6 argument, okay?

7 MR. GLENN: Yes, sir. But my main argument is the
8 cause of action to dissolve the corporation was in the
9 complaint all along. If he's entitled to have that tried
10 in Columbia he was entitled to have the whole case tried
11 in Columbia.

12 THE COURT: Well, wouldn't it have been selected on
13 either Richland or Charleston based upon your first cause
14 of action? I agree he could have made the motion and
15 made the argument on separate cause of actions in
16 Richland County; therefore, the first cause of action
17 would be in Richland, too. Basically that's your
18 position, right?

19 MR. GLENN: Right. And if I wanted to keep the
20 first cause of action here I would have to sever it and
21 bring two different lawsuits. But if he's entitled to
22 have this case heard, the dissolution heard in Richland
23 County then the whole case would have been moved there.
24 You wouldn't leave part of it and move the other part up
25 there --

1 THE COURT: I understand.

2 MR. GLENN: -- if he's entitled to have part of it
3 up there. That's the main thrust of my argument.

4 THE COURT: That's the main thrust of your
5 argument. He could have done it irregardless the second
6 cause of action.

7 MR. GLENN: He had an obligation to do it as to the
8 second cause of action, if he wanted to do it, and he had
9 the obligation to do it before the pleadings were filed
10 or at the same time. He could have raised it in his
11 pleadings or 12(b) motion.

12 THE COURT: Well, it really wasn't an issue until
13 you dropped your first cause of action.

14 MR. GLENN: It was always an issue. I also said if
15 the Court doesn't grant specific performance then we want
16 it dissolved. It was always there.

17 THE COURT: I'm talking about the venue issue
18 wasn't there under the statute until you dropped the
19 first cause of action.

20 MR. GLENN: And that's where I'm disagreeing.

21 THE COURT: I see you disagree.

22 MR. GLENN: It's in the pleading to dissolve the
23 corporation, and if there's a statute that says he's
24 entitled to have that tried in Richland County then he
25 has the motion --

1 THE COURT: You think that statute would take
2 precedent over the first cause of action?

3 MR. GLENN: Yes, sir.

4 THE COURT: And the Court would have to follow that
5 statute if he made the motion?

6 MR. GLENN: Yes, sir.

7 THE COURT: All right. Mr. Lewis, anything you
8 want to say? I don't want to cut you short. Anything
9 you want to say in reference to the questions I've asked
10 Mr. Glenn?

11 MR. LEWIS: No, sir. That's a new principle of law
12 that I hadn't heard before.

13 THE COURT: Well, I understand. All right. Well,
14 Mr. Glenn, my inclination is to grant the change of
15 venue; however, since everybody is here I'd be glad to
16 hear you on a motion to keep venue in Charleston for
17 convenience of witnesses.

18 MR. GLENN: I'm sorry. I didn't hear.

19 THE COURT: I said my inclination is to grant his
20 motion; however, I'll be glad to hear a motion from you
21 to keep it in Charleston County on convenience of
22 witnesses, and that's within the discretion of the Court.
23 I'll be glad to hear arguments on that.

24 MR. GLENN: I think my argument on that issue would
25 be obvious, all the witnesses are here that we're going

1 to have. We've gathered here today with our evidence and
2 our witnesses to try the case, and certainly it would be
3 more convenient to go ahead and get it done today. It's
4 not a jury trial so we don't have the issue of the jury.

5 THE COURT: I believe the plaintiff is from Clemson
6 and the defendant is from Columbia?

7 MR. GLENN: That's right.

8 THE COURT: What other witnesses are we talking
9 about? I looked. I remember there was some listed in
10 the defendant's brief, pretrial brief, but I don't know
11 where they are from. There's a Coy Johnston I remember.

12 MR. GLENN: We took Mr. Johnston's deposition. He
13 is in Canada today. We sent a subpoena for him and he's
14 in Canada. He's 82 years old and his partner said he may
15 be on his last hunting trip. So I was planning to offer
16 his deposition. We both designated fair amounts of his
17 deposition.

18 MR. LEWIS: And we have no objection to the
19 deposition of Mr. Johnston.

20 MR. GLENN: Also, the other witness was R. K.
21 Williams, who's had a very short deposition, and I think
22 we stipulated that we'd present that rather than have him
23 live. So my only witness is Dr. Bowman, who is here and
24 ready to proceed.

25 THE COURT: Okay. Mr. Lewis, you want to address

1 anything on the convenience of witnesses?

2 MR. LEWIS: Yes, sir. Convenient of witnesses does
3 not say because we made the motion here and everybody is
4 here that that's convenient. That's just not what
5 convenient of witnesses means, and the convenience of the
6 witnesses, as Dr. Bowman says, he has to go to an
7 operation somewhere.

8 Dr. Alexander is a cardiologist in Columbia. It's
9 obvious that the convenience of the witnesses is either
10 in Clemson or Columbia. That's the best place that this
11 could be heard and we ask that it be sent to Columbia,
12 like you've indicated.

13 But convenience of witnesses, as the Court has
14 brought up, is not something that is to be based upon the
15 fact that we are here. We're always going to be here to
16 argue a motion.

17 THE COURT: Okay. Anything else, Mr. Glenn?

18 MR. GLENN: I'll just say the trial has been set
19 for a good while. We planned to try the case. They
20 didn't file the motion until yesterday. So we were going
21 to be here today even if they didn't file the motion, and
22 certainly it's convenient since we're here.

23 THE COURT: I understand. All right. I'm going to
24 deny the motion for change of venue and move forward with
25 the case.

1 Now, the plaintiff, you're going to present two
2 written depositions; is that correct?

3 MR. GLENN: Yes, Your Honor.

4 THE COURT: Plus Dr. Bowman?

5 MR. GLENN: Yes, sir.

6 THE COURT: I would like to hear arguments -- not
7 arguments but a brief statement as to your position and
8 defendant's position. I read the pretrial brief and I've
9 read your complaint but that's basically all I know about
10 it.

11 MR. GLENN: Your Honor, the background of this
12 is --

13 THE COURT: Could I ask the parties a question. In
14 reading the pretrial brief this land is in land
15 management, right? What -- or conservator. How does
16 that affect ownership and use of the property?

17 MR. GLENN: It restricts what they can do on the
18 property by easement that they gave to Ducks Unlimited or
19 Wetlands, it's a subsidiary of Ducks Unlimited, back in
20 the early ownership of it.

21 THE COURT: Does that include all the acreage or
22 just a portion of the acreage or what?

23 MR. GLENN: It includes the entire thing but they
24 reserve certain rights that are not controlled. The
25 easement allows them to reserve certain rights that they,

1 we say have, and it includes the easement presently on
2 property is ten sites of up to five acres that they would
3 own and be able to sell to other people.

4 And the easement is a right long thing that we'll
5 get to but it restricts what they can do on the property
6 severely and when they do that it protects the ecological
7 integrity of the property so that ducks come in, and
8 wildlife, and game birds, and fish.

9 THE COURT: Does it put certain restrictions on the
10 remaining -- you said ten acres, five, parcels of ten
11 acres? Is that what you said?

12 MR. GLENN: It's ten parcels of five acres.

13 THE COURT: Ten parcels of five acres. So it's 50
14 acres?

15 MR. GLENN: Right.

16 THE COURT: Does the easement put restriction on
17 those parcels?

18 MR. GLENN: It has some restrictions but basically
19 they can build on those, they can sell them to someone
20 else who can own and build on them under the present
21 easement, and the easement is in perpetuity.

22 THE COURT: Okay. I'll be glad to hear you, if you
23 would, very briefly, on your position on the dissolution.

24 MR. GLENN: Your Honor?

25 THE COURT: Well, first, Mr. Lewis, was there a

1 counterclaim? I haven't read the answer. Was there a
2 counterclaim?

3 MR. LEWIS: Yes, sir.

4 THE COURT: What was the counterclaim?

5 MR. LEWIS: Specific performance of the settlement
6 agreement.

7 THE COURT: Okay. Fine. I understand.

8 Go ahead, Mr. Glenn.

9 MR. GLENN: He didn't ask for the same kind of
10 specific performance I asked for. There's a difference
11 in specific performance.

12 MR. LEWIS: Yours is gone.

13 MR. GLENN: I know but you didn't have to divide
14 the property illegally.

15 THE COURT: See all the trouble you've caused by
16 going away with the first cause of action, Mr. Glenn?

17 MR. GLENN: So far nothing has been agreeable in
18 this case since 2000, the year 2000. It's unfortunate
19 that Dr. Bowman and Dr. Alexander's friendship goes way
20 back to after they were in med school and when Dr. Bowman
21 was an intern and Dr. Alexander was a residence, and they
22 were good friends for many years.

23 Their families were friends. They went hunting
24 together, fishing together. They went to ball games
25 together, had parking places beside each other, and I

1 guess looking back on it it's unfortunate that they
2 decided to buy a plantation together, but they did, and
3 that was in 1995. They purchased 647 acres down on
4 Edisto Island, and in '98 is when they made the easement
5 to the Wetlands Division of Ducks Unlimited.

6 In '99 they actually purchased 78 more acres from
7 the nature's conservancy. So it's now -- that's added to
8 the property that they own.

9 THE COURT: How many acres?

10 MR. GLENN: In addition was 78.

11 THE COURT: Seventy-eight. Okay.

12 MR. GLENN: Yes, sir. I won't go into all the
13 details about it now because you're going to hear the
14 testimony, but let's say conflicts developed between them
15 on the use of the property, the sharing and the use of
16 the property, who was going when and who was going to be
17 there, and that sort of thing, and that was a severe
18 problem between the parties, at least in Dr. Bowman's
19 mind.

20 They also had disagreements on the management of
21 the property. Dr. Alexander wanted to do certain things
22 to property and did certain things to the property and
23 didn't get agreement of Dr. Bowman. So they had
24 disagreements on the use of the property and the
25 management of the property.

1 From about 2000 on they discussed various ways of
2 dealing with it, including Dr. Bowman selling out to
3 Dr. Alexander and finding some alternative property that
4 he actually had a contract on or gave a contract on at
5 one time. That didn't work out. They didn't get that
6 done. And so they continued to own it together.

7 The operating agreement says that if they have
8 difficulties and can't get along and have differing views
9 about what to do with the property then they submit it to
10 mediation, and so they decided on their own to do that.
11 And they didn't have lawyers to do it. They contacted
12 Tom Wills and hired him to be the mediator, and this
13 started back in '06. And they shared a lot of
14 information with him. He met with them in dealing with
15 them trying to arrive at some solution to their
16 difficulties with this property.

17 They didn't get it done but they were -- his
18 recommendation was that they divide the property, if they
19 could, but it was a complicated thing to do particularly
20 because of the easement on the property. So each of them
21 got lawyers. I was hired by -- Mr. Fields and I were
22 hired by Dr. Bowman, and Dr. Alexander -- it wasn't
23 Mr. Lewis at that time, but he had a couple of lawyers
24 that represented him. And we met in Charleston on
25 September the 12th of '07, and stayed literally until

1 eight or nine o'clock at night with the mediator and
2 ended up with an agreement. And that's the agreement
3 that suit was brought on, and it will be in evidence.

4 That agreement basically said this: We drew lines
5 on the plat and said we'll divide it legally here and
6 we'll have it surveyed according to this line and we will
7 ask Ducks Unlimited to approve that division, and if they
8 don't approve it then we'll work out by contract joint
9 use of the property so that we still can basically divide
10 it that way without a legal division. So that's what
11 they agreed to do.

12 That didn't work either. They got in a
13 disagreement about -- Ducks Unlimited at first said --
14 well, first they got into a dispute about the survey.
15 They finally got the survey done and then Ducks Unlimited
16 said, Well, we're not going to approve it unless you show
17 that -- at first they said they were not going to do it.
18 Then they said, We will consider a legal division if you
19 can show that environmental integrity of the property
20 will not be damaged because of the division, shown by a
21 certified biologist to make a study of the ecology of the
22 property.

23 Dr. Bowman then suggested they get R. K. Williams
24 who was the man who did the original study for them on
25 how to care for this property, and they never could agree

1 on someone. So we went on and on, and on and couldn't
2 agree on somebody to do the study. So we weren't getting
3 anywhere with the study.

4 So finally in December of '08 is when the suit was
5 filed, and the suit -- the specific performance was to go
6 forward with that agreement or if that agreement -- if we
7 couldn't do the legal division then dissolve the
8 corporation.

9 THE COURT: What's dissolving the corporation going
10 to accomplish as far as the dispute between the parties?

11 MR. GLENN: Well, we asked the Court to first
12 appoint a receiver to sell the assets of the corporation
13 to pay the debts then dissolve the corporation. In other
14 words, we're moving to dissolve the corporation, sell its
15 assets and close it down.

16 THE COURT: Well, the assets, i.e., the land,
17 right?

18 MR. GLENN: Beg your pardon?

19 THE COURT: The land and whatever is on the land?

20 MR. GLENN: That's right.

21 THE COURT: Well, how can you do that without Ducks
22 Unlimited involved in this since they have a perpetual
23 easement to do whatever they need to do?

24 MR. GLENN: Well, Ducks Unlimited indicated that
25 they would do it if they gave up some of those ten sites,

1 and that's all in the testimony of Mr. Williams and
2 Mr. Johnston. That's what their job was, was to deal
3 with Ducks Unlimited and show that it could be done, and
4 they did do that.

5 THE COURT: Okay.

6 MR. GLENN: But then there was a dispute.
7 Dr. Bowman said, Okay, I'll do what they recommend.

8 Dr. Alexander comes in and says, No, I don't want
9 to give up that many sites.

10 So we still -- and when it got to that point is
11 when basically Dr. Bowman threw up hands and he said, We
12 can't cooperate with anything. And that's the reason for
13 the withdraw of the request for specific performance.

14 Even if it's divided legally it requires some
15 cooperation, and the evidence, I believe, will show that
16 they haven't been able to cooperate on anything. They'll
17 have a joint piece of property that they'll have joint
18 use of and management of.

19 THE COURT: I guess my question to you, Mr. Glenn,
20 is this. How can the Court, assuming the Court decides
21 to do what you want done, how can the Court do that
22 without Ducks Unlimited being a party to this lawsuit?

23 MR. GLENN: It can be sold subject to the easement
24 that's there. It would be subject to that easement. The
25 easement is on record and in perpetuity. So you'd sell

1 the property with the easement in place.

2 And one of the gentleman testified even in his
3 rough economic time there's still a market for this kind
4 of land because most of the people who own come from the
5 northeast and have a lot of money. They come down here
6 to hunt. So they don't get affected by the economy like
7 a lot of us do.

8 And so the Court can order that the -- appoint a
9 referee to take care of the sale or say how to take
10 place, and Dr. Bowman is open and has been all along to
11 having a public auction where either party can bid.

12 He would sell his share to Dr. Alexander for the
13 appraisal that was done right at the time of that
14 mediation, for half of that. He just cannot continue to
15 own that property and work with Dr. Alexander because
16 they just cannot cooperate, cannot get along.

17 Now, each of them have their opinions on why that
18 is and what happened, but I think it's clear and it will
19 show, as I said, they admitted in their answer, there was
20 a deadlock back when we did the mediation. Well, it's
21 only gotten worse since then. It hasn't gotten better.

22 So we believe there's clearly a deadlock. It's
23 clear that they could not operate to the advantage of the
24 members, as the statute said, and that it needs to be
25 dissolved and ended. That's what we're asking the Court

1 to do.

2 THE COURT: Anything else?

3 MR. GLENN: That's all.

4 THE COURT: Mr. Lewis, if you could tell me your
5 position, please, sir, I'd appreciate it.

6 MR. LEWIS: Remember what we said in that -- you
7 had to allege that the deadlock kept property from
8 benefitting the shareholders. You've just heard this
9 talk by Mr. Glenn and the deadlock that his client is
10 participating in doesn't help any shareholder and
11 devalues their property.

12 That's an amazing thing that you say on one hand
13 that you are bringing it, a dissolutionment, for --
14 because you can't benefit the shareholders and the
15 dissolutionment is worse than what's happening right now.
16 Now, let me tell you that the property that we're talking
17 about, and it's a pretty important --

18 THE COURT: I just want to get this marked before I
19 forget it, exhibit A on the motion.

20 (WHEREUPON, Defendant's Exhibit A, the Operating
21 Agreement, was marked and admitted into evidence.)

22 THE COURT: All right. Go ahead.

23 MR. LEWIS: That right there is the property, if
24 you look at that map. We're talking about a piece of
25 property you can't very well understand it until you look

1 at it. It's the one that's -- the whole piece is in the
2 yellow.

3 THE COURT: In the yellow?

4 MR. LEWIS: Yes, sir.

5 THE COURT: What rivers are these?

6 MR. LEWIS: This is the South --

7 THE COURT: South Edisto? I assume --

8 MR. LEWIS: Yes, sir, the bigger one.

9 THE COURT: The bigger one which is to the west and
10 what's the one to the north?

11 MR. LEWIS: I think it's a canal.

12 DR. BOWMAN: Intracoastal Waterway.

13 THE COURT: It's the Intracoastal Waterway. That's
14 the canal from the South Edisto to --

15 DR. BOWMAN: To the North Edisto.

16 THE COURT: To the North Edisto. All right.

17 MR. LEWIS: And this is an impoundments. You know,
18 there's dikes and they flood them and they plant them and
19 the ducks come in and as Ducks Unlimited, you shoot them.
20 I've never understood protecting ducks to shoot them.
21 That's an anomaly to me.

22 THE COURT: You feed them and then you shoot them.

23 MR. LEWIS: That's right. I never have understood
24 that but I'm from West Virginia.

25 THE COURT: Do they have any ducks in West

1 Virginia?

2 MR. LEWIS: Not that I've ever seen. We got coons,
3 squirrel and deer.

4 THE COURT: Along that line, a good friend of mine,
5 actually was my roommate in college, he owned a catfish
6 farm where they control the water.

7 MR. LEWIS: Yes, sir.

8 THE COURT: And they weren't making any money in
9 the catfish business so they shut the catfish down and
10 they come to find out that they got a bunch of ducks
11 coming in. So they sold it to a duck -- group of people
12 that used it for duck hunting and finally made some money
13 from the catfish farm.

14 MR. LEWIS: That wasn't in West Virginia?

15 THE COURT: No. That was over in Marion.

16 MR. LEWIS: Well, that's understandable, Marion.

17 But anyway, the yellow is the property that we're
18 talking about. And I want to emphasize that there were
19 some -- the doctors were not agreeing on everything and
20 they had a mediation. And that mediation resulted in a
21 mediation agreement being executed, a mediation agreement
22 being executed.

23 And it's our position that that starts the inquiry,
24 that once you sign that mediation agreement everything
25 merges into that and you go forward from there. You

1 don't go behind it and argue all the points again that
2 brought you to the mediation and were solved by the
3 mediation agreement.

4 So the mediation agreement was dated September 10,
5 2007. And that mediation agreement did several things.
6 It required a plan on how to manage the land so that the
7 ducks could be -- and the wildlife would have the right
8 environment. It divided the property into essentially
9 two tracts but one track had two parts.

10 If you'd look down at the bottom left corner, the
11 southwest corner down there, there's a little triangle
12 area. You see that, with kind of -- cutoff?

13 THE COURT: Exhibit A shows --

14 MR. LEWIS: Yeah, that's it, but I was looking at
15 the bigger map. It's the same thing.

16 THE COURT: Yeah, same thing.

17 MR. LEWIS: All right. That one, plus the top
18 area, that would have been one tract, and the middle area
19 was the other tract. And those were to go to the doctors
20 and be the doctors' control. But there would be an
21 agreement as to how those lands would be managed and to
22 make sure that the ducks were happy.

23 Then what happened was there was an agreement in
24 that settlement agreement that you go to Ducks Unlimited
25 and try to let you divide it in feet so that you would

1 own it in fee simple. You know, your tract in fee simple
2 and the other one would own it in fee simple. And in
3 that agreement if Ducks Unlimited would not allow you to
4 do that then you would operate it as if it was divided in
5 half, the way I just told you.

6 But going back to the easement and the base
7 easement is very important because the base easement,
8 this is approximately 750 acres. In the base easement 50
9 acres was excluded from being duck land. You could sell
10 it, you could build on it, you could do that in five-acre
11 tracts. So there were ten five-acre tracts were excluded
12 from being duck land and you could sell them, and five
13 went to one doctor and five went to the other.

14 Now, that ten tracts is pretty important because
15 the appraisal that they keep talking about was 10 million
16 dollars. So when you divide the 10 building tracts into
17 the 10 million dollars each those sites worth a million
18 dollars because the sites are very much tied, as you
19 asked a minute ago, to the easement.

20 Every site has to agree that they'll abide by the
21 easement, that they'll do whatever is best for the ducks,
22 and Ducks Unlimited has to be notified of who you sell it
23 to and they make sure that they agree under the
24 paragraphs of the agreements that they will be, that is
25 the new owner will be -- he will too abide by all terms

1 and conditions of the easement. So the easement is going
2 to apply to every lot that's sold and there's going to be
3 ten lots under the original easement worth a million
4 dollars a piece, according to the appraisal.

5 When they got their agreement --

6 THE COURT: Is that appraisal before the decrease
7 in the real estate market or before?

8 MR. LEWIS: This is in '07. So it wasn't before
9 the decrease.

10 THE COURT: Okay.

11 MR. LEWIS: If you did it now I shudder to think if
12 my appraisers are any indication of what's happened, but
13 maybe. They tell me duck land always stays high. I
14 don't know.

15 THE COURT: You reckon these ducks would be proud
16 for all the money and effort it's taken to get to shoot
17 them.

18 MR. LEWIS: Yes, sir. I would if I was a duck.

19 Anyway, when they went to see if Ducks Unlimited
20 would agree to a division allowing one person to divide
21 it in half and transfer it in fee they ran into what has
22 to be the Ducks Unlimited giving multiple answers.

23 At first Ducks Unlimited said, We won't let you do
24 it. Second they said, You can do it if you give up two
25 lots each. That's four million dollars. Then they said,

1 Give up three lots. That's six million dollars. Or
2 we'll let you have one lot a piece of ten acres. So now
3 we're giving up nine million dollars.

4 So what's happening is Ducks Unlimited is being
5 very, very elusive, and Dr. Alexander, under the
6 agreement, you can read the agreement, was required to
7 give up at most two lots, but we say one lot. And you
8 can read it. It stops at that. Nobody anticipated you
9 were going to have to give up more.

10 So when all this was happening we were trying to
11 get somebody to send in a letter. We needed a joint
12 letter, Ducks Unlimited said. We couldn't get a joint
13 letter. So we decided we'd take the deposition of Coy
14 Johnston, who was very well respected by Ducks Unlimited,
15 used to be the man that approved these easements, and see
16 what he said Ducks Unlimited would do and see if we
17 couldn't get something from him that we could send to
18 Ducks Unlimited to get their approval to divide the land.

19 Well, we took his deposition after he had been
20 contacted and he had a land management plan by
21 Mr. Williams that he said that Ducks Unlimited would
22 accept, and that the land management plan -- this was
23 very important to us, the first time we'd ever heard
24 this. The land management plan would work whether you
25 did it in fee or you did it together. And the land

1 management plan removed a passthrough in the dike from.
2 one piece of property to the other. And he said you
3 could close that and it would make no difference.

4 Ducks Unlimited in earlier conversations and
5 correspondence had said that that was vital and had to
6 remain operative. So by removing that culvert or dam
7 that meant the properties were physically separate, and
8 being physically separate he said they could be operated
9 separately under the same easement and you wouldn't have
10 to have anything other than they do their -- what this
11 land management plan says, and Dr. Alexander do what his
12 -- the same land management plan said. There would be a
13 land management plan that both of them would do but it
14 would be on their property.

15 We were pretty excited about that and we got Coy
16 Johnston to tell us that he could recommend drawing a
17 line down in the southern part of the property. Do you
18 see the southern part there where there was a little --
19 looks like a black area?

20 THE COURT: Yes, sir.

21 MR. LEWIS: A line across there, and he would allow
22 three approximately five-acre tracts on Dr. Alexander's
23 and three approximately five-acre tracts on Dr. Bowman,
24 and therefore everything above it would be for the ducks.
25 He said he could recommend that.

1 Well, that was better than we'd ever gotten before
2 as to Ducks Unlimited. So we sent a letter to Ducks
3 Unlimited asking them if they would allow this fee with
4 the Williams Management Plan and having the lots on the
5 bottom, the three lots each. As soon as we sent that
6 Mr. Bowman's attorney sent a letter saying, Don't look at
7 it, Ducks Unlimited.

8 So what we're doing is we're having an -- I don't
9 know what it's called. If you've ever done divorce court
10 it's kind of -- it just seems to me if this Court will
11 say, Follow what Mr. Coy Johnston says, or just says,
12 Adopt the Mr. Williams plan and get on about your
13 business, it might work. But the funny thing I don't
14 understand is every lot they give up is approximately a
15 million dollars.

16 Now, they have five right now each. Anything you
17 go to Ducks Unlimited with will cut it down a minimum of
18 two each, a minimum of two million dollars. Now, how
19 does that help the shareholders?

20 THE COURT: Thank you, sir.

21 You want to call your first witness.

22 MR. GLENN: We call Dr. Bowman.

23 DR. LARRY BOWMAN, after having been duly
24 sworn, testified as follows:

25 THE CLERK: Sir, if you would, please state your

1 first and last name, spelling your last for the record.

2 THE WITNESS: Larry Bowman, B-o-w-m-a-n.

3 DIRECT EXAMINATION

4 BY MR. GLENN:

5 Q. Dr. Bowman, where are you from?

6 A. Seneca, South Carolina.

7 Q. How long have you lived there?

8 A. Thirty-four years.

9 Q. What's your business?

10 A. I'm an orthopedic surgeon.

11 Q. And how long have you been an orthopedic surgeon?

12 A. Thirty-one years.

13 Q. Where did you do your medical training?

14 A. I went to the Medical School at the Medical
15 University of South Carolina. I did my internship at
16 William Beaumont Army Medical Center and served as flight
17 surgeon for two years.

18 Q. Where is that medical center?

19 A. It's in El Paso, Texas. Then I did orthopedic
20 surgery training at Penn State Medical School.

21 Q. Do you have a family?

22 A. Yes.

23 Q. Your wife still with you?

24 A. Yes.

25 Q. And do you have children?

1 A. Yes.

2 Q. Who are your children?

3 A. I have one daughter who has two little children,
4 one three-year-old grandson and a nine-week-old
5 granddaughter, and my son, who just recently passed the
6 bar last Friday --

7 MR. GLENN: He's seated over here with us. He
8 passed the bar last week, Judge.

9 BY MR. GLENN:

10 Q. How long have you and Dr. Alexander been friends?

11 A. Since 1975 when I started by internship in El Paso.

12 Q. Tell the Court something about your relationship
13 with Dr. Alexander?

14 A. Well, we were family friends for a long time, went
15 hunting not just in El Paso but also to Wyoming and
16 Montana Alpine. I couldn't continue those hunts because
17 of the teamwork surgeon for Clemson in 1988 and that
18 prevented me from being gone during the hunting season.

19 Q. You're the athletic physician for the Clemson
20 Football Team?

21 A. I'm the team orthopedic surgeon for all athletes.

22 Q. Basketball, too?

23 A. Yes.

24 Q. Okay. And how long have you had that position?

25 A. This is starting my 24th year.

1 Q. And you and Dr. Alexander before that had gone to
2 the ball games together?

3 A. Yes, sir. Our parking spots were next to each
4 other at Clemson Football Games, and we would vacation
5 with our families at Edisto in the early 80's.

6 Q. How did you and Dr. Alexander come upon the idea of
7 buying this plantation together?

8 A. Well, Dr. Alexander called me and said that he had
9 found a neat piece of property and wanted someone to be a
10 partner and purchase it.

11 Q. And when was that, Dr. Bowman?

12 A. That was 1995.

13 Q. Did you agree to do that?

14 A. Yes.

15 Q. Did you think that it was a good thing for you all
16 to do, being the friends that you were?

17 A. Yes.

18 Q. After the purchase did you and Dr. Alexander form a
19 limited liability company?

20 A. Yes.

21 Q. I'll ask you if this is the articles of
22 incorporation of the company.

23 A. Yes, they are.

24 MR. GLENN: We'd ask this be marked, Your Honor.

25 MR. LEWIS: No objection, Your Honor.

1 THE COURT: All right. Plaintiff's Exhibit Number
2 1 admitted without objection.

3 (WHEREUPON, Plaintiff's Exhibit No. 1, Articles of
4 Incorporation, was marked and admitted into evidence.)

5 BY MR. GLENN:

6 Q. In conjunction with that did you also adopt an
7 operating agreement?

8 A. Yes.

9 Q. And I'll ask you if this is the operating
10 agreement.

11 MR. GLENN: This is the same. You had a part of
12 it, Your Honor, the amendment to it, part of the motion.
13 This is the full agreement plus the amendment.

14 A. Yes.

15 MR. GLENN: We'd ask that be marked.

16 THE COURT: Any objection?

17 MR. LEWIS: If it's got the amendments, no, sir.

18 MR. GLENN: This is the whole thing.

19 MR. LEWIS: With amendments?

20 MR. GLENN: Including the amendment.

21 MR. LEWIS: With the amendments?

22 MR. GLENN: Right.

23 THE COURT: Any objection?

24 MR. LEWIS: No, sir.

25 THE COURT: All right. Plaintiff's Number 2

1 admitted without objection.

2 (WHEREUPON, Plaintiff's Exhibit No. 2, Operating
3 Agreement, was marked and admitted into evidence.)

4 BY MR. GLENN:

5 Q. In the opening statements we both referred to a
6 conservation easement. Tell us about that.

7 A. In 1998 we created a wetlands trust easement to --
8 it's part of the Old Dominion. The land in question is
9 in the middle of the ACE Basin, and we created an
10 easement to protect the wildlife. It was also to our tax
11 advantage to decrease the value of the land by creating
12 the easement.

13 Q. What is the ACE Basin?

14 A. The ACE Basin is the largest waterfowl protected
15 area, I believe in the world. Certainly in the United
16 States. And it's composed in the areas between the
17 Ashley River, Cumbee River and the Edisto Rivers.

18 Q. And I think in his deposition Coy Johnston says
19 that he was a part of the beginning of that ACE Basin,
20 did he not?

21 A. Yes, he was.

22 Q. What did you have to do to have the easement placed
23 on your property?

24 A. Well, we had to have an agreement about hunting and
25 fishing and management for wildlife, and we limited the

1 amount of development to 10 five-acre tracts.

2 Q. Did you have to have an assessment made at that
3 time, an environmental assessment?

4 A. Kenny Williams was working for D. U. at that time
5 and we had to have an appraisal of the property at that
6 time.

7 Q. I believe you get some tax advantages by putting
8 property in a conservation easement, do you not?

9 A. Yes.

10 Q. So you have to have it appraised and a plan made,
11 and Mr. Williams was the one who did the plan?

12 A. Yes.

13 Q. And is he the same one who worked later and gave a
14 deposition in this case?

15 A. Yes.

16 Q. Did you purchase more property in 1999?

17 A. Yes. There was 78 acres that was contiguous with
18 our property but separated by a road that we purchased
19 from nature conservancy.

20 Q. All right. And it's still a part -- now is a part
21 of the overall plantation?

22 A. Yes. And we included that into the overall trust,
23 the wetlands trust.

24 Q. And it's all included in that yellow line that --
25 in the plat we had?

1 A. That's correct.

2 Q. When you purchased the property what kind of
3 structures were on it?

4 A. A two-bedroom, one-bath house that had been there
5 for a long time. It was not in very good shape. And a
6 bunkhouse which basically had a cement floor, a place to
7 put bunk beds, a kitchen and bathroom with a small
8 shower.

9 Q. Was there a barn?

10 A. And a barn. Excuse me. A barn.

11 Q. Was there a plantation house, the old style?

12 A. No. That two-bedroom, one-bath was our plantation
13 house.

14 Q. Was it made out of concrete blocks?

15 A. No. The house, the two-bedroom house was made on
16 -- up on some bricks but it was wood construction, and
17 very poor wood construction.

18 Q. Not what we usually think of as a plantation house?

19 A. No.

20 Q. When you first bought the plantation did you go
21 often?

22 A. Well, I didn't get a chance to go often because of
23 my involvement with Clemson University, and during
24 hunting season and I was always tied up with the athletic
25 teams, through most of the year. The only time I got to

1 go very much was in the spring and summer.

2 Q. How did you work out the use of the house and the
3 use of the plantation with Dr. Alexander?

4 A. Well, when we first purchased it since I didn't go
5 very often there weren't any problems, but as my family
6 moved to the Charleston area, my daughter moved to
7 Charleston, my son started College of Charleston, every
8 time that we would try -- our family would try to utilize
9 Old Dominion there would be conflicts with either
10 Dr. Alexander or his family, and so we developed a -- at
11 my recommendation, a calender for use since there
12 appeared to be very unfair, inequitable use, like every
13 other week my week, Don's week, my week. We did
14 calenders until the mediation.

15 MR. LEWIS: Your Honor, we object to anything about
16 problems or usage. The mediation and the settlement
17 agreement should be the starting point, and we object to
18 any of this testimony. It was all merged into the
19 mediation and the settlement agreement. We're rehashing
20 what happened at mediation and I object.

21 MR. GLENN: Our purpose, Your Honor, is to show
22 that nothing changed at the mediation. This has been
23 going on for 10 years now and I think it's important for
24 the Court to see the depth of the difficulties that
25 they've had all along.

- 1 THE COURT: Overruled. Go ahead.
- 2 BY MR. GLENN:
- 3 Q. Did Dr. Alexander agree on the calender system?
- 4 A. Yes.
- 5 Q. And basically it was every other week?
- 6 A. Yes. I had one week, Don had the next week and we
- 7 just went straight down the calender.
- 8 Q. Did that work?
- 9 A. No.
- 10 Q. Why didn't it work?
- 11 A. Many times when either I would be there or my
- 12 family would be there Dr. Alexander or some of his family
- 13 would come even though it was our week.
- 14 Q. Did you object to that and talk to him about that?
- 15 A. Yes.
- 16 Q. Did it solve anything?
- 17 A. No.
- 18 Q. Did it ever get better?
- 19 A. No. It got worse, but it didn't get better.
- 20 Q. It got worst?
- 21 A. Yes.
- 22 Q. Did he ever call you up and say, Why don't we swap
- 23 weeks? Did that ever happen?
- 24 A. His son called and asked to have my week for
- 25 hunting and I would say just give me another week but I

1 never got another week, but I did give up some weeks.
2 And then the precipitating event for knowing that we were
3 not going to be able to continue in the current operating
4 mode was in December 2002, and it was my week when
5 Clemson was at a bowl game, and I got a phone call in the
6 middle of the week and was told that Don had wanted to go
7 down with his family, was planning an oyster roast. And
8 I said, Well, my daughter is planning on being there and
9 it's our week.

10 And he said, Well, my family is really -- you know,
11 I was really planning on this.

12 And I said, Well, let me see what I can do to
13 accommodate. And I called my daughter, made arrangements
14 for her to come early, be there Friday, have their oyster
15 roast with all her friends Friday and be gone by four
16 o'clock Saturday. That would give Don time to get there
17 and do what he wanted to do. And then seven o'clock in
18 the morning Don arrives with his children and dogs, and
19 all my family is there, you know, with their guests.

20 Q. So you even tried to work it out and it didn't
21 work?

22 A. No.

23 Q. Did you have any problems during the next period of
24 time with the operation of the LLC and projects on the
25 property?

1 A. Yes. Well, Don was doing more and more
2 construction and I was telling him that I didn't want to
3 keep having -- putting money into projects, that we had
4 it for hunting and fishing and I didn't want to -- I was
5 going to retire some day and I didn't want to have to
6 keep having an endless money pit to throw things in and
7 that we needed to have a plan, and maybe we could divide
8 the property for usage. And he said, That can't happen.
9 And so at that point I suggested we get the property
10 appraised and he said --

11 Q. Well, let's back up a minute. Let's talk about the
12 projects that were done. What projects were done?

13 A. Well, before the mediation a dock was built and
14 electricity was run out to the dock.

15 Q. Wait a minute. What kind of dock was built?

16 A. A 120-foot walkway, large dock that would
17 accommodate two boat lifts.

18 Q. Did Dr. Alexander ask you about agreeing to this
19 dock?

20 A. He requested that I sign a request for a permit
21 which meant it lasted for five years. I had no idea that
22 construction would be started and I saw no request for
23 approval for initiation of construction or I had no idea
24 it was happening until I arrived out there and it was
25 done.

1 Q. Did he talk to you and get an agreement to hire a
2 contractor to build this dock?

3 A. No.

4 Q. Did he even have your agreement to proceed with a
5 dock?

6 A. No.

7 Q. Did he do any other work around the dock area?

8 A. Well, he ran electricity underground from the very
9 edge of the property near the barn all the way through
10 one of the dikes -- across two of the dikes and out to
11 Picnic Point.

12 Q. Do you know whether or not he had a permit for
13 that?

14 A. No.

15 Q. Did he have your agreement to do it?

16 A. No.

17 Q. Did you know it was being done?

18 A. Actually, my neighbor called me who happened to be
19 down there and said, I think they are running a waterline
20 out to Picnic Point. Do you know anything about it?

21 It happened to be electricity. But, no, I had no
22 idea.

23 Q. Did you discuss this with Dr. Alexander and say, I
24 didn't agree to that?

25 A. Yes.

1 Q. And what was his response?

2 A. Well, he responded and also in writing that any
3 major improvements would be his responsibility.

4 Q. Was there any roadwork or rockwork done down at
5 the -- I believe the name of the area is Picnic Point; is
6 that right?

7 A. Yes. Well, there's constant maintenance and repair
8 required because of the potential for erosion and there
9 was rock put in at Picnic Point for the stabilization.

10 Q. Was that discussed with you?

11 A. No.

12 Q. Did you know who did it?

13 A. No.

14 Q. Did you agree to have it done?

15 A. No.

16 Q. Did Dr. Alexander suggest a contractor to do it?

17 A. No.

18 Q. Who paid for the construction of these things?

19 A. Up until 2003 I think I paid half, and then I said
20 I'm not paying half for any further construction unless
21 we agree.

22 Q. And what happened then?

23 A. Construction continued and I got the letter saying
24 that he was going to be responsible for any construction
25 that improved the long-term value of the plantation.

1 Q. Dr. Alexander said he would be responsible for the
2 construction?

3 A. That's correct.

4 Q. During this period of time did you and
5 Dr. Alexander discuss one of you buying the other out or
6 dividing the property, or any solution?

7 A. Yes.

8 Q. What solutions did you consider?

9 A. Well, I recommended dividing initially. He said
10 you couldn't do that. And in order to try to avoid
11 continued confrontation I suggested we get it appraised
12 and I'll try to find replacement property and buy me out.

13 Q. The idea was you would find replacement property,
14 you get it appraised. He'd buy you out then you'd buy
15 something else somewhere else?

16 A. That's correct.

17 Q. And did you try to do that?

18 MR. LEWIS: Your Honor, I know this is non jury but
19 not only is Mr. Glenn leading him, after he gets the
20 answer to the leading question he then repeats the
21 answer, and I object to that. I've gone as far as I can
22 go.

23 THE COURT: Your objection is leading? Don't lead
24 your witness.

25 MR. GLENN: Okay.

1 THE COURT: I'll sustain the objection.

2 BY MR. GLENN:

3 Q. I'd asked you whether there was any effort to do
4 anything to solve the problem.

5 A. Yes. We went from trying to divide the property,
6 saying it couldn't happen, to me trying to find
7 replacement property, actually going and having a
8 contract on some property. Unfortunately, another
9 contract came in full price, no contingent, close in 30
10 days, and with what was going on I couldn't guarantee I'd
11 have money to pay for that.

12 So I then said, Why can't we divide it. I already
13 had discussions with our attorney that did the LLC, was
14 involved with the easement. He said he had been in
15 contact with Ducks Unlimited, that we could divide it. I
16 had discussions with Ducks Unlimited. He had
17 discussions --

18 MR. LEWIS: Your Honor, I object to the hearsay
19 that's coming out.

20 THE COURT: I'll sustain the objection.

21 BY MR. GLENN:

22 Q. Don't say what Ducks said?

23 A. Okay. I was told that the division could be
24 accomplished --

25 MR. LEWIS: Your Honor, that's the same.

1 MR. GLENN: Don't say --

2 THE COURT: I'll sustain the objection.

3 A. We were trying -- excuse me. We were trying -- I
4 was trying to find a solution to the problem, and when
5 that couldn't occur then I said, I'll divide, you have
6 pick. You divide, I'll pick for a division. If we can
7 agree, put our names in a hat and pick the names out of a
8 hat. At that point I said -- well, and we agreed on
9 mediation, and that's when we got Mr. Wills.

10 Q. Did you ever employ anyone to assist you in trying
11 to do a division?

12 A. Yes. I employed Mr. Bob George, who was an expert
13 in dikes, and permitting, and environmental engineer, and
14 H. Wayne Unger.

15 Q. Did Dr. Alexander agree with that approach?

16 A. No.

17 Q. Were you able to accomplish anything along that
18 line?

19 A. No.

20 Q. I think you had said you suggested mediation?

21 A. Yes.

22 Q. And did you agree on that?

23 A. Yes. Dr. Alexander suggested Tom Wills. I did my
24 due diligence. Everyone said he was a fair and good
25 mediator, and agreed.

1 Q. Did you and Dr. Alexander both meet with him and --

2 A. Well, everything was by correspondence with
3 Mr. Wills until the actual day of mediation and signing
4 of the agreement.

5 Q. But before you had lawyers did you all meet with
6 him?

7 A. We didn't physically meet. We didn't personally.
8 Everything was by telephone, and e-mail, and
9 correspondence.

10 Q. Were you able to arrive at an agreement about
11 mediation before you hired lawyers?

12 A. No.

13 Q. Then did both of you hire lawyers?

14 A. Yes.

15 Q. And I believe you hired Johnny Fields and me?

16 A. Yes.

17 Q. And Dr. Alexander had a couple of other lawyers,
18 right?

19 A. Randy Murdaugh and Lawrence Crawcheck?

20 Q. And did we go to a mediation in September of '07?

21 A. Yes.

22 Q. As a result of that mediation did you sign an
23 agreement?

24 A. Yes.

25 MR. LEWIS: Is this exhibit 3?

1 MR. GLENN: Yeah. I'm getting ready to show it to
2 him.

3 BY MR. GLENN:

4 Q. I'll ask you if this is the agreement.

5 THE COURT: Any objection to Plaintiff's Number 3?

6 A. Yes. This is the mediated agreement.

7 MR. LEWIS: No, sir.

8 THE COURT: No objection?

9 MR. LEWIS: No, sir.

10 THE COURT: All right. Plaintiff's Exhibit Number
11 3 is admitted without objection.

12 (WHEREUPON, Plaintiff's Exhibit No. 3, Mediation
13 Agreement, was marked and admitted into evidence.)

14 BY MR. GLENN:

15 Q. Let me back up just a little bit before the
16 mediation. I had asked you about if any trouble with the
17 operation of the LLC and the construction. Can you tell
18 us all of the construction?

19 A. Well, Don had, besides the electric, besides the
20 walkway and dock he had put an addition onto the barn to
21 put his boat, which I didn't know about and was
22 cad-locked (ph). He also put in a screened porch onto
23 the bunkhouse.

24 Q. Any of these were you consulted with?

25 A. No.

1 Q. When you went to the mediation what was your
2 position and the controversies that you had with
3 Dr. Alexander?

4 A. The problem was unfair and dominant personal use
5 and management and we could not agree on any of the
6 management use, spending of monies, and so the mediation
7 really was to separate the property so we would be able
8 to hopefully enjoy the property without being incumbered
9 and having any conflicts.

10 Q. The settlement agreement at the mediation provided
11 for a couple of solutions. What was the first -- what
12 was the one solution?

13 A. Well, I had -- he requested to purchase my half
14 which I said I'd agree to. And when he said he didn't
15 want to do that I said I would purchase his half, which
16 he didn't agree to. And then through hours and hours, as
17 we said, I said if he can divide I'll pick again. I'd
18 divide, he'd pick. If he shows us the division I'll pick
19 within 15 minutes, and we came up with a -- I came up
20 with a division that I thought was fair with a fair
21 additional price for who ended up and I said, I'll take
22 either one.

23 Q. And is that agreement set out what you agreed to
24 that day?

25 A. Yes.

1 Q. I believe that included in the agreement you would
2 get certain pieces of property and then you were to pay
3 some money; is that right?

4 A. That's correct.

5 Q. How much were you to pay?

6 A. \$250,000.

7 Q. And it tells how you were to do that?

8 A. \$50,000 a year at five years, at seven percent
9 interest.

10 Q. And what was the reason for the money being a part
11 of it?

12 A. It was felt that the portion that Don didn't pick
13 and that I ended up with I felt that that was a fair
14 amount for the --

15 Q. So you all agreed in that amount to go to the one
16 that got the property --

17 A. Correct.

18 Q. -- that he got and then you would pay that to him?

19 A. That's correct.

20 Q. When you left the mediation that day did you feel
21 like you'd accomplished anything?

22 A. I felt, other than my getting married and my kids
23 being born, it was the happiest day of my life.

24 Q. Why was that?

25 A. We had been in constant conflict for seven years

1 and finally I thought we were going to be able to utilize
2 the property. We both loved it. My daughter got married
3 there, his daughter got married there later. I thought
4 finally we have made something that we are going to be
5 able to enjoy and not have controversy.

6 Q. And the conflicts through those years affected your
7 relationship with Dr. Alexander?

8 A. Unfortunately.

9 Q. After you reached a settlement what was the first
10 step you took to try to implement the settlement?

11 A. Well, the settlement called for --

12 THE COURT: Mr. Glenn, can I interrupt you for just
13 a second. Looking at the aerial photo, that hadn't been
14 marked, right, or is it going to be marked?

15 MR. LEWIS: Yes, sir.

16 THE COURT: All right. Looking at the --

17 MR. GLENN: If it's not marked we can mark it.

18 THE COURT: Well, looking at the settlement
19 agreement, which was Exhibit A, there's a tract I guess
20 which was Picnic Point on the south, then there's a tract
21 showing tract one. So the defendant's property is going
22 to be divided; is that correct?

23 DR. BOWMAN: The tract one --

24 THE COURT: No, I'm not asking you, Mr. Bowman.

25 DR. BOWMAN: Oh. I'm sorry.

1 THE COURT: In other words, that says tract one.

2 That says tract one is tract two?

3 MR. GLENN: That's right.

4 THE COURT: So Dr. Bowman's is going to be in the
5 middle?

6 MR. GLENN: In the middle. Right.

7 THE COURT: And he was going to have the north and
8 south side?

9 MR. GLENN: Right.

10 THE COURT: Dr. Alexander?

11 MR. GLENN: Right.

12 THE COURT: I just wanted to make sure I
13 understood. Please proceed.

14 MR. LEWIS: There were two tracts for one doctor.

15 THE COURT: Right, and one tract for Dr. Bowman.

16 MR. LEWIS: That's correct.

17 THE COURT: Okay. All right.

18 BY MR. GLENN:

19 Q. I was asking you about the first thing you tried to
20 do, you proceeded to do to implement the settlement.

21 A. And I had been in contact with Ducks Unlimited and
22 I tried to exercise the agreement and tried to effect
23 what we needed to proceed with to divide the property.

24 Q. So what's the first thing you did?

25 A. I contacted -- I tried to find out who would be the

1 best wildlife biologist to ensure the biological
2 integrity of the property.

3 Q. Did you do a survey?

4 A. We had Larry Kennerty survey the land according to
5 our agreement.

6 Q. Who was the -- did you and Dr. Alexander agree on
7 him or how was he picked?

8 A. We agreed on him.

9 Q. Okay.

10 A. I didn't know him.

11 Q. And did he do the survey?

12 A. Yes.

13 Q. Did you agree with the survey?

14 A. Well, the survey was not the survey that was in the
15 mediated agreement. The survey -- instead of having a
16 straight line when it go to a point took a curve into
17 what was to be my portion of the property. So I was
18 losing property according to the survey. Also, there had
19 been placed in some additional easements that had been
20 granted in the initial mediated settlement.

21 Q. Did you raise that with the surveyor?

22 A. Yes, I did. There was also a question about how
23 much frontage each piece had on the South Edisto River,
24 and I said, Just do whatever is fair. You know, we can
25 just make it equal.

- 1 Q. Was there any conflict between you and
2 Dr. Alexander about that survey?
- 3 A. Yes.
- 4 Q. Did you discuss it with him?
- 5 A. Yes.
- 6 Q. And what was the discussion?
- 7 A. Well, I explained we didn't -- that our agreement
8 didn't show the other access areas, and the line was not
9 a straight line, that the line that we had drawn, it was
10 -- and his response was, Well, it's 50 yards on either
11 side. That's just the line.
- 12 Well, it's a straight line and let's just do it
13 like we agreed.
- 14 Q. Was the survey redone?
- 15 A. Yes.
- 16 Q. And when it was redone was it according to what was
17 drawn at the settlement?
- 18 A. Yes.
- 19 Q. And you were pleased with it then?
- 20 A. Yes. I believe Dr. Alexander stopped payment on
21 his check to Larry Kennerty because of the unhappiness of
22 having a straight line.
- 23 Q. Dr. Alexander stopped payment of his check?
- 24 A. Of his portion of the surveyor, yes.
- 25 Q. The settlement agreement deals with some personal

1 property that was owned there and the division of that
2 personal property. Did that take place?

3 A. Yes. There was tractors, a bunch of equipment.
4 Don had put the value on it at 18,200 some odd dollars.
5 And after the mediation he said, You tell me what you
6 would like and I'll take the rest.

7 And I said, Okay. I said, Well, I'd like to get
8 this planter.

9 Well, you can't get that unless you get these two
10 other pieces.

11 As soon as all the stipulations, just to avoid
12 controversy, I said, Don, if you want it all you take it
13 and just pay me half the value.

14 Q. Did he take all of the equipment?

15 A. Yes.

16 Q. Did he agree to pay you half of the value?

17 A. Yes.

18 Q. That would be, what, \$9100?

19 A. Yes.

20 Q. Did he pay you?

21 A. No.

22 Q. The settlement also called for a applying to Ducks
23 Unlimited to see if they would approve the legal division
24 or the other division that you all had made, did it not?

25 A. Yes.

1 Q. Did you submit it to Ducks Unlimited?

2 A. Don wouldn't agree on a wildlife biologist.

3 Q. Before you get to the wildlife biologist.

4 A. Sure. We submitted and they said you need to have
5 a -- they denied it saying it needed to have -- they
6 would consider if we had a wildlife -- certified wildlife
7 biologist and a management plan, and they would consider
8 it on an ongoing basis.

9 Q. I'm going to show you a letter dated March 26, 2008
10 and see if you recognize that letter?

11 A. Yes.

12 Q. Was that letter sent to you and Dr. Alexander by
13 Ducks Unlimited?

14 A. Yes.

15 MR. GLENN: We offer this, Your Honor.

16 MR. LEWIS: No problem.

17 THE COURT: All right. We're going to stop and
18 take a break at this time. Just 10 or 15 minutes. This
19 is number 4? Did you give her a copy?

20 MR. GLENN: Yes, sir.

21 (WHEREUPON, Plaintiff's Exhibit No. 4, a Letter,
22 was marked and admitted into evidence.)

23 (WHEREUPON, a brief recess was taken.)

24 BY MR. GLENN:

25 Q. All right. Ready, Doctor?

1 A. Yes.

2 Q. A while ago you told me about the equipment and so
3 forth. Did Dr. Alexander go ahead and get that
4 equipment?

5 A. Yes, but not by the time in the mediation he came.
6 I didn't offer things in the barn until after, long
7 after, three months after.

8 Q. But you had agreed for him to take it?

9 A. Yes.

10 Q. And was there any conflict about that?

11 A. No.

12 Q. I showed you a while ago a letter from Ducks
13 Unlimited concerning the environmental assessment.

14 A. Yes.

15 Q. I'll show you another letter from Ducks Unlimited
16 dated October the 6th and ask you if you received that
17 letter, you and Dr. Alexander?

18 A. Yes.

19 MR. GLENN: Offer this, Your Honor.

20 THE COURT: Any objection?

21 MR. LEWIS: Just a minute, Your Honor, please.

22 THE COURT: What's the date?

23 MR. GLENN: October 6, 2008.

24 MR. LEWIS: No objection, Your Honor.

25 THE COURT: All right. Plaintiff's Number 5

1 admitted without objection.

2 (WHEREUPON, Plaintiff's Exhibit No. 5, a Letter,
3 was marked and admitted into evidence.)

4 BY MR. GLENN:

5 Q. After you got that first letter, the one dated
6 March 26th, '08, did you and Dr. Alexander agree to go
7 forward?

8 A. No.

9 Q. Why not?

10 A. Don still felt that it couldn't be divided and I
11 had attempted --

12 MR. LEWIS: I object to what he thinks
13 Dr. Alexander thought.

14 Q. What did he tell you, if anything?

15 THE COURT: I'll sustain the objection, what he
16 thought.

17 MR. GLENN: I agree.

18 BY MR. GLENN:

19 Q. You can't tell what he thought. Did he say
20 anything?

21 A. He said it couldn't be divided.

22 Q. All right. Did you advocate getting an
23 environmental assessment done?

24 A. Yes.

25 Q. Did he agree with that?

1 A. No.

2 Q. Did you recommend Kenny Williams?

3 A. Yes.

4 Q. That's K. W. Williams?

5 A. Yes.

6 Q. Or R. K.?

7 A. R. K.

8 Q. R. K. Williams, and he's the one that had done the
9 assessment before?

10 A. Yes.

11 Q. Would Dr. Alexander agree with having him do it?

12 A. No. I had actually offered to pay the entire cost
13 of the study and Dr. Alexander wouldn't agree.

14 Q. During this period of time how did things go on the
15 plantation so far as the use of the plantation? Did it
16 get any better?

17 A. No. We were still having problems and the chain
18 that holds the gate on the barn -- or to the barn from
19 the road was cut. So for Dr. Alexander to go -- he cut
20 the chain to go in and retrieve some of the things that
21 were still in the barn.

22 Q. We talking about some of the equipment and so
23 forth?

24 A. Yes, and things started -- well, we had already
25 notified the attorneys that there had been some

1 vandalism, we're changing the locks. So all you had to
2 do was call, and then there was --

3 Q. Did you talk to him about that?

4 A. Yes.

5 Q. Did he ask you permission to go get them?

6 A. No.

7 Q. Was this on the part that was designated for you at
8 the mediation on that mediation map?

9 A. Yes. All I had to do was give him the combination
10 and he could have gotten in.

11 Q. Would you have done that?

12 A. Yes.

13 Q. Did he ask for it?

14 A. No.

15 Q. And he cut it?

16 A. Yes.

17 Q. Did you let him know that you didn't -- what did
18 you tell him about that?

19 A. It was unsecured then. The gate couldn't be
20 secured because the lock was in links that weren't part
21 of the connection to hold the gate and keep people out.
22 It was on the road.

23 Q. Was there anything else that caused a conflict
24 during this time?

25 A. Sometime thereafter the fence on my side was cut

1 and we had -- when we fixed the trunk that was failing at
2 the time of the division, had to do emergency repairs,
3 the fence was cut on my side of the property, and then
4 Dr. Alexander drove -- and mowed the new dike that had
5 just been repaired and drove equipment across it.

6 Q. Did you talk to Dr. Alexander about that?

7 A. Yes.

8 Q. Did he tell you who did it?

9 A. He said he did it.

10 Q. And did you register any disagreement with that?

11 A. Yes.

12 Q. Why did he say he went across the dike?

13 A. He said he was trapped, that the tide -- we have
14 high tides and this is a county road. The road floods.
15 It's flooded since we bought the property but it only
16 floods at the super high tides. And if it's flooded and
17 we take equipment down that same road, if it's flooded
18 then we wait until a low tide and take it down and we get
19 equipment where we want it, and then you can return it
20 back at low tide.

21 Q. The dike that he went across, do you take heavy
22 equipment across that dike?

23 A. No, we had not.

24 Q. Did he do any damage to the dike?

25 A. Well, the vegetation didn't grow back. We had

1 Egyptian Wheats and things that he stated were weeds but
2 it's what were recommended to be planted and there was
3 erosion after.

4 Q. Did you say the fence was cut?

5 A. Yes.

6 Q. You had a fence across there blocking it?

7 A. It's a fence along the road. He just went across
8 the county road, cut my fence and drove down the dike.

9 Q. When you confronted him what did he say?

10 A. He said he was trapped, he had to get his equipment
11 out, in and out.

12 Q. During this period of time was there any
13 construction done on Old Dominion?

14 A. Soon after the settlement Don put a storage area on
15 the north part of the tract one, the north part of his
16 tract. Then he constructed a dock, he constructed a barn
17 with two bedroom, one bath, at least according to the tax
18 maps on the portion that had been designated as his
19 portion.

20 Q. As far as you know were there any deeds passed
21 between the two of you?

22 A. No. After construction was started someone had
23 sent -- an attorney sent a request for me to sign as a
24 consenting partner to have the five acres deeded to Don,
25 and after discussion and advice of counsel said that once

1 it's divided you don't need to have my signature on
2 anything, and another continuation of just doing whatever
3 you want to do.

4 Q. Did you agree for him to go ahead and construct
5 that and tell him you'd give him a deed?

6 A. No.

7 Q. Did he ask you?

8 A. Yes.

9 Q. He asked you about the construction?

10 A. No. He asked me about giving him the deed.

11 Q. Did he ask you about the construction?

12 A. No.

13 Q. When he asked you about the deed did you tell him
14 you'd give him a deed?

15 A. After things were settled I said we'd settle
16 everything at the same time.

17 Q. When you settled everything you would sign whatever
18 was necessary?

19 A. But I wasn't signing anything until we were fine
20 with the agreement.

21 Q. Was there any platting done?

22 A. Yes. There's a plat recorded in Charleston County
23 showing five acres and has Old Dominion LLC, Don
24 Alexander as the representative.

25 Q. Did you agree to record that plat?

1 A. No.

2 Q. Is that the same plat that you didn't sign the deed
3 for?

4 A. Correct.

5 Q. Did you register your objection to Dr. Alexander?

6 A. Yes. Most of these objections at this point are
7 through attorneys because we're not able to directly
8 communicate.

9 Q. Basically, the two of you stopped communicating
10 with each other?

11 A. Yes.

12 Q. Directly.

13 A. (Nodded).

14 Q. Did there come a time when you decided to go ahead
15 and have the environmental assessment done as Ducks
16 Unlimited had said they would need to decide whether you
17 could divide it?

18 A. Finally in late 2010 Don agreed to have the folks
19 that had been recommended, that I had been recommending
20 since 2007, was Kenny Williams and Coy Johnston. The way
21 we came to that is my barn burned and Don was down there
22 and called me and said, Your barn burned. Isn't there
23 something we can do to get this thing done?

24 I said, well, we've had Coy Johnston and Kenny
25 Williams and you won't agree to have anything done.

1 He said, Let's try to get them to do something.

2 Q. So at that point he agreed to cooperate and go
3 forward with it?

4 A. Yes.

5 Q. Before that had you suggested Kenny Williams?

6 A. Yes. And I had actually had a contract from Kenny
7 Williams, called Don and said, I've got a contract for
8 him do it. I'll pay for the entire study, and I'm faxing
9 it to you so you can look it over and sign it. And I
10 FedExed it to him and it was returned unopened with the
11 quotation mark, Don't want.

12 Q. I'll ask you what this document is.

13 A. Yes, this is the FedEx.

14 Q. What does it show?

15 A. It shows it being returned to -- mailed to the
16 Columbia, South Carolina and on it it says, Doesn't want.
17 Refused.

18 Q. That's when he refused it?

19 A. That's when he refused it.

20 MR. GLENN: We'd offer this, Your Honor.

21 THE COURT: Any objection?

22 MR. LEWIS: Yes. We object. He hasn't proved that
23 that's --

24 THE COURT: What's your legal objection?

25 MR. LEWIS: Sir?

1 THE COURT: What's your legal objection?

2 MR. LEWIS: My legal objection is he hasn't proved
3 that Dr. Alexander got that. He hasn't proved that
4 that's Dr. Alexander's handwriting, he hasn't proved it
5 was delivered to Dr. Alexander. All he's got is some
6 piece of paper.

7 THE COURT: I don't know what's on the paper.

8 MR. GLENN: I think if you'll look at the paper --

9 THE COURT: It's hard for me -- is this the paper?
10 It's hard to rule when --

11 MR. GLENN: Your Honor, in his answer he admits
12 that he refused this.

13 THE COURT: I'm sorry, what?

14 MR. GLENN: In his answer that he filed with the
15 complaint he admits that he refused this.

16 THE COURT: He refused it?

17 MR. GLENN: Yes, sir.

18 THE COURT: Okay. He says his answer admits that
19 he refused it.

20 MR. LEWIS: Well, let me look it up, Your Honor,
21 and see. I don't remember that. But if I did, I did.

22 Yes, sir. We'll admit that, Your Honor.

23 THE COURT: Okay. So you don't have any objection
24 to Number 6?

25 MR. LEWIS: No, sir.

1 THE COURT: All right. Number 6 is admitted
2 without objection.

3 (WHEREUPON, Plaintiff's Exhibit No. 6, Copy of
4 FedEx Envelope, was marked and admitted into evidence.)

5 THE COURT: Where is the address on this thing?
6 Who is it addressed to? I see who shipped it but is that
7 what's blacked out at the bottom?

8 MR. GLENN: I think it is, Your Honor. I think
9 that's where the address is. You see it's blacked out
10 over here, Columbia, South Carolina.

11 THE COURT: Oh, okay. All right. So you can't
12 read where it was actually shipped to. All right.

13 MR. LEWIS: We admit it is what it is.

14 THE COURT: All right. Okay.

15 BY MR. GLENN:

16 Q. Did I understand you to say you had called him
17 before you sent this?

18 A. Yes.

19 Q. And you told him you were going to send it?

20 A. Yes.

21 Q. We'll get back now to the point where you said in
22 late, what year, 2010?

23 A. Yes.

24 Q. You finally agreed to go forward?

25 A. Yes.

1 Q. Is that right? And who did you hire?

2 A. Coy Johnston and Kenny Williams.

3 Q. And did they produce a management plan?

4 A. Yes.

5 Q. I'll ask you if this is the plan that they produced
6 for you.

7 A. Yes.

8 MR. GLENN: Your Honor, we offer this management
9 plan into evidence.

10 THE COURT: Plaintiff Number 7. Any objection?

11 MR. LEWIS: I don't know. Can I see it?

12 (PAUSE)

13 THE COURT: That was by Mr. Johnston, or
14 Mr. Williams, or both? The management plan by both of
15 them or just one?

16 MR. GLENN: They both have a part in it.

17 THE COURT: Any objection?

18 MR. LEWIS: No, sir.

19 THE COURT: All right. Plaintiff's Number 7
20 admitted without objection.

21 (WHEREUPON, Plaintiff's Exhibit No. 7, a Management
22 Plan, was marked and admitted into evidence.)

23 BY MR. GLENN:

24 Q. Dr. Bowman, I want to show you the second page in
25 this package, a letter of December 30, 2010. Tell us

1 what that is.

2 A. It's a letter from Dr. Alexander to Coy Johnston
3 asking him -- I can read the entire letter. It's just
4 asking him --

5 Q. Well, you don't need to read the entire thing.
6 Does it basically ask to do the assessment?

7 A. Yes.

8 MR. LEWIS: Who was the letter that asked to do
9 this assessment?

10 MR. GLENN: Dr. Alexander wrote the letter.

11 MR. LEWIS: Okay.

12 BY MR. LEWIS:

13 Q. When you got that report does it include a
14 recommendation on giving up lots to get Ducks Unlimited
15 to approve the division?

16 A. Yes.

17 Q. And what was your understanding of how many lots
18 were recommended there?

19 A. It was my understanding that we would each retain
20 two building sites but it would be in a contiguous area
21 of land. So that would be four total.

22 Q. Did you agree?

23 A. Yes.

24 Q. To do whatever they recommended?

25 A. Yes.

1 Q. Exhibit 4 is a letter from Ducks Unlimited saying
2 you need a study, right?

3 A. Yes.

4 Q. And what is the date of that letter?

5 A. It was 2008, I believe. March 26, 2008.

6 Q. From that time up until near the end of 2010 did
7 you try to get this done?

8 A. Yes.

9 Q. And why wasn't it done before then?

10 A. Dr. Alexander would not allow to have it done, and
11 at one point suggested another biologist who had -- and I
12 checked to try to see if they had any experience with
13 Ducks Unlimited. If you are going to have an easement
14 amended you need to have folks that Ducks Unlimited has
15 experience with and trusts and they consider experts, and
16 Kenny Williams was the expert and had worked for D. U.
17 For 17 and a half years.

18 The person that he had recommended was a forester,
19 and then at some point they suggested a couple other
20 people that really had not had any significant
21 involvement with easements and easement adjustments with
22 Ducks Unlimited Wetlands in Charleston.

23 Q. So for more than two and a half years nothing
24 happened so far as moving on the agreement; is that
25 right?

1 A. That's correct.

2 Q. What did you think about your ability to cooperate
3 and get along at that time?

4 A. Well, it's just a continuation of frustration and
5 inability to coordinate, to cooperate, to manage. And my
6 real concern is we have to, if we have a legal division,
7 maintain joint access, maintain a dock, maintain
8 management for the entire piece of property and that
9 hasn't occurred now for 10 years, and that's my
10 frustration, and we've had a binding document, I thought,
11 for over four years and it hasn't been followed.

12 Q. And when you got the report, Plaintiff's 7, you got
13 that in March of '11?

14 A. Yes.

15 Q. Is that right?

16 A. That's correct.

17 Q. You agreed to do what they recommended?

18 A. Yes.

19 Q. Did Dr. Alexander agree?

20 A. No.

21 Q. When is the first time he ever agreed, so far as
22 you know?

23 A. I believe it was within the last few weeks.

24 Q. Was it --

25 A. After the --

1 Q. -- when his lawyer wrote the letter to Ducks
2 Unlimited?

3 A. Yes.

4 MS. KING: Your Honor.

5 Q. At that time had I already --

6 THE COURT: Hold on. Do you have an objection?

7 MR. LEWIS: Yes, sir. This is just leading and
8 commenting, and I object.

9 THE COURT: Okay. Mr. Glenn, don't lead the
10 witness.

11 MR. GLENN: All right, sir.

12 THE COURT: I understand you can get through it a
13 little quicker that way. Please don't lead. He has
14 objected to it.

15 MR. LEWIS: It's the comments that are just as bad.

16 THE COURT: It's the comments you don't like?

17 MR. LEWIS: Yes, sir.

18 THE COURT: You don't mind the leading?

19 MR. LEWIS: Yes. I mind that, too.

20 MR. GLENN: I can lead but I can't comment?

21 MR. LEWIS: No. I'm sorry. I don't like either
22 one of them.

23 THE COURT: Okay. Don't lead. No comments,
24 please, sir.

25 BY MR. GLENN:

1 Q. When the letter went from Mr. Lewis to Ducks
2 Unlimited making a proposal had you already instructed me
3 and had I already withdrawn the request for specific
4 performance?

5 A. Yes.

6 Q. And why did you want to withdraw that request?

7 A. For four years since the mediated agreement and for
8 the last ten years we haven't been able to agree, and
9 because of dominant use, and personal use and dominant
10 management, and disagreeing Don just sent a cookbook
11 management, this is how we're going to manage it, that
12 came off the internet as a proposal, and this is what we
13 can give to Ducks Unlimited.

14 Ducks Unlimited wants an expert, and we're not
15 experts. I'm not an expert. And if we are not able to
16 agree on the roads and on the dock we're certainly not
17 going to be able to agree on managing this plantation
18 forward.

19 In 2007 I thought we could. I really had -- I
20 mean, that was the happiest day in my life, and since
21 then nothing has occurred. Nothing is different. And
22 there's no way that I think we can continue to have joint
23 access, joint ownership and joint management.

24 Q. From your perspective where does the fault lie in
25 the inability to get along?

1 A. Well, of course, I feel like it's Dr. Alexander's
2 fault. But no matter whose fault it is we can't manage
3 things together. We can't agree on anything. If we were
4 to put a piece of stone on the road we can't agree.

5 Q. If the legal division were mandated now is there
6 any way that you could manage together? Would it require
7 any joint effort?

8 A. It would require --

9 MR. LEWIS: Your Honor, I object to the leading.

10 THE COURT: I'll overrule on that question. Go
11 ahead.

12 BY MR. GLENN:

13 Q. Would it require you to cooperate in any way, and
14 if so how?

15 A. Well, in the agreement and what Coy Johnston and
16 Kenny Williams -- you have to jointly manage the
17 plantation for quality and for burns, and for the
18 management of the wildlife habitat.

19 In addition, we would have to agree and manage the
20 roads, ingress and egress, to Picnic Point and the dock.
21 That is in significant disrepair. And we haven't been
22 able to agree on who's responsible for anything or how to
23 manage anything, and I don't want to be here in court
24 again trying to get someone to follow an agreement.
25 That's not happened and I have this concern it will never

1 happen.

2 Q. What are you asking the Court to do now?

3 A. I just want the Court to sell the assets and
4 distribute according to however the Court appoints it on
5 one to make it fair, and then dissolve the LLC.

6 Q. Would you still be willing to sell your interest to
7 Dr. Alexander if you reached an agreeable price?

8 A. We said that on more than one occasion and also
9 through the attorneys, and also we have offered in the
10 past at mediation to buy his half and he's refused to
11 any.

12 Q. Would you be willing to ask the Court to have it
13 auctioned off?

14 A. Yes.

15 Q. Would you be agreeable to an auction with
16 significant advertising of the auction and so forth to
17 try to get good bidders?

18 MR. LEWIS: Your Honor, I object to leading. He
19 just asked him the question. He didn't get the answer he
20 wanted --

21 THE COURT: I'll sustain the objection.

22 MR. LEWIS: -- now he's giving the answer.

23 BY MR. GLENN:

24 Q. What kind of sale would you recommend?

25 A. Well, I'd be happy to have it listed with a realtor

1 and have --

2 THE COURT: Just ask him does he want a reserve on
3 it or rather it be open.

4 BY MR. GLENN:

5 Q. You want a reserve on an auction?

6 A. No.

7 Q. You willing to be there and bid and for
8 Dr. Alexander to be there and bid?

9 A. And anyone else who wants to be there to bid, yes.

10 Q. You had some financial issues raised in your
11 pleadings?

12 A. Yes.

13 Q. You have already testified about the \$9500 on the
14 equipment?

15 A. Yes.

16 Q. Do you believe you're entitled to that?

17 A. Yes.

18 Q. Did you pay the first payment on that \$250,000?

19 A. Yes. I paid the \$50,000 plus seven percent
20 interest in December 2008 when it was due. September
21 2008. Whenever it was due it was paid.

22 Q. What was the amount of your check?

23 A. \$67,000.

24 Q. You believe you're entitled to return of that?

25 A. Yes.

1 Q. Did you pay any more payments?

2 A. No.

3 Q. Why not?

4 A. On the advice of counsel, and it was obvious that
5 we were not following the mediated agreement. I am not
6 paying for the equipment. We were continuing to cut
7 fences, mow dikes, do whatever, and that if we weren't
8 following the agreement it just was insane for me to keep
9 paying seven percent interest and the money that we
10 agreed upon would happen if he -- pursuant to the
11 agreement.

12 Q. Dr. Alexander's pleading alleges that you owed him
13 some taxes on the LLC. Do you know whether you do or
14 not?

15 A. I probably do. There's some question of whether
16 taxes were paid twice in one year with the accountant,
17 and I voiced those questions. I haven't received
18 anything except one recent bill saying that I needed to
19 pay half the taxes of which I was to pay the half of the
20 remaining 73 acres on the piece that he, quotation marks,
21 done a cutout, then half of the taxes on the other -- the
22 original piece, the 645-acre piece, and I would pay
23 whatever any court appointed person or auditor says --
24 accountant says that is correct.

25 Q. You asking the Court to order an accounting in

1 connection with the dissolution of the corporation?

2 A. Yes.

3 Q. And did you pay your share in 2009 and '10?

4 A. I didn't -- I think that the taxes for 2010, and
5 I'm not sure about 2009. I paid whatever -- whatever I
6 owe I'm happy to pay --

7 Q. If you didn't pay that that should be deducted --

8 A. The taxes should be deducted.

9 Q. Dr. Alexander also seeks reimbursement for a bunch
10 of the construction that we talked about. What is your
11 position on that?

12 A. He has the letter he wrote in 2004 and after
13 discussions with him before and after that he knew that I
14 didn't want any construction to occur, not until we had
15 an agreement about the final disposition and use of Old
16 Dominion, and that I would not be responsible for any
17 improvements. And his response was that he would be
18 responsible for any improvements in the letter dated
19 2004.

20 Q. On the bill that he sent to you, what did he charge
21 for?

22 A. He charged for equipment, he charged for gas for
23 his dump truck, he charged for mileage on his dump truck,
24 he charged for his hours of labor.

25 Q. His personal hours?

1 A. Yes.

2 Q. Did you spend any other money other than what we've
3 talked about on the plantation?

4 A. Soon after the division the house and the bunkhouse
5 were in severe disrepair, so there was approximately
6 \$75,000 worth of repairs and new roof and things to the
7 bunkhouse just so they didn't fall apart. Plus the
8 emergency repairs for the dikes came to over \$110,000.

9 Q. Would you ask that all the parties spent to be
10 submitted for the accounting and the accountant determine
11 how much is owed by each other?

12 A. That would be the only fair way.

13 MR. GLENN: Give me one second, Your Honor.

14 (PAUSE)

15 MR. GLENN: Thank you, Dr. Bowman. Answer any
16 questions Mr. Lewis has for you.

17 THE COURT: Cross-examination.

18 MR. LEWIS: Yes, sir. Your Honor, may I ask
19 permission to sit. I have -- my back is --

20 THE COURT: Yes, sir.

21 MR. LEWIS: I had an operation.

22 THE COURT: You're welcome to sit. You can move
23 the chair up closer.

24 MR. LEWIS: No. I'm fine. It's just been a long
25 time.

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. LEWIS:

4 Q. Dr. Bowman, can you hear me?

5 A. Yes.

6 Q. You've spent \$75,000 on a bunkhouse just to get it
7 brought back up?

8 A. The house and the bunkhouse and the repairs to
9 stabilize around the barn, yes.

10 Q. Fairly nice, sir? Can you live in them?

11 A. It's not -- it's a little better but it's still
12 not --

13 Q. Is it better than it was?

14 A. Much better.

15 Q. And did you get permission to do that?

16 A. No.

17 Q. And a hundred thousand dollars and that bunkhouse
18 and barn was on the parcel that you were to get; is that
19 not true?

20 A. Yes.

21 Q. And the dikes that you repaired, those were the
22 dikes on your part of property; isn't that true?

23 A. Yes.

24 Q. And did you get permission to spend \$110,000 on
25 those?

- 1 A. They were emergency repairs. There was a trunk
2 that was about to go -- we got every permit from the
3 authorities because we were about to -- and Dr. Alexander
4 knew that there was a problem with the trunk at Picnic
5 Point. We were about to breach it.
- 6 Q. Did he sign the applications for the permits?
- 7 A. No.
- 8 Q. You just signed them yourself?
- 9 A. Yes.
- 10 Q. Did he know you signed them?
- 11 A. He knew they had to be repaired so I'm certainly
12 assuming that he'd sign them. They were emergency
13 repairs.
- 14 Q. Did you talk to him about being emergency repairs?
- 15 A. We discussed it before mediation, of the problems
16 with the trunk.
- 17 Q. The trunk. What about the other dikes?
- 18 A. Well, that was all part and parcel of keeping -- so
19 the trunk wouldn't erode.
- 20 Q. And did he agree for you to spend \$110,000 to
21 repair them?
- 22 A. No.
- 23 Q. In the last four years since the settlement
24 agreement there have been burns, both tracts have had
25 burns, haven't they?

1 A. I think we've had one burn that we've been doing a
2 great deal of flooding to control the vegetation, but
3 yes.

4 Q. And you didn't have any trouble with that burn, did
5 you?

6 A. Well, it didn't cross over the line.

7 Q. Okay. Well, it was a good burn then?

8 A. Yes.

9 Q. You've both coordinated and had the timber cut on
10 the land, didn't you?

11 A. Yes.

12 Q. And you both got paid?

13 A. Yes.

14 Q. And Dr. Alexander has used his parcel, right?

15 A. Yes.

16 Q. And you've used yours?

17 A. And also he's used part of mine at times, but yes.

18 Q. Now, as I heard you say, one of the things that
19 caused the delay from the settlement agreement was coming
20 up with a wildlife biologist to do an assessment?

21 A. Yes.

22 Q. Dr. Alexander offered you four and you wouldn't
23 take any of them?

24 A. That's correct. After a very long delay and after
25 consulting with the Ducks Unlimited and the wildlife

1 specialist, who everyone recommended Kenny Williams, then
2 after reviewing, and I actually called and talked they
3 were not -- my concern, and all of our concern, if O. D.
4 would have remained as following that agreement would
5 have been to have someone to present to Ducks Unlimited a
6 plan that they would accept, and to have someone without
7 the expertise and without the relationship they are much
8 less likely to accept it.

9 Q. So as I understand it you checked out these four
10 people with Mr. Williams?

11 A. No, with --

12 Q. So you --

13 A. With people that are both in responsible places
14 with the ACE Basin, with wildlife specialists and not
15 just -- I didn't ask Mr. Williams actually about any of
16 them.

17 Q. So whatever reason you decided, you decided that
18 they didn't have the necessary expertise and you wanted
19 to stay with Mr. Williams?

20 A. Or someone, anyone that Ducks Unlimited had
21 experience with --

22 Q. Did you suggest anyone besides Mr. Williams?

23 A. I'm not sure. I talked to Coy Johnston and
24 suggested Coy Johnston along the way, too. I spoke to
25 someone in Columbia. I spoke with the people with the

1 ACE Basin and Charles Lane, so I certainly tried to do my
2 due diligence to --

3 Q. I'm not saying -- I'm just asking did you check or
4 did you recommend anybody but Mr. Williams to be a
5 wildlife biologist. That's all I asked you.

6 A. And Coy Johnston.

7 Q. Is Coy Johnston a wildlife biologist?

8 A. I'm not sure of his exact title, but he's a
9 wildlife management specialist.

10 Q. Now, you understood when you first recommended
11 Mr. Williams that he wanted an indemnification from you
12 and Dr. Alexander, didn't you?

13 A. Yes.

14 Q. And you know that Dr. Alexander upon somebody's
15 advice said he shouldn't do that; do you remember that?

16 A. I remember the concern by Mr. Williams of if any
17 result came that Dr. Alexander or I didn't like that that
18 would put him in a position to be sued.

19 Q. That isn't what I asked you. I asked you didn't
20 Dr. Alexander have concern with the fact that there was
21 indemnification and wouldn't sign it with an
22 indemnification?

23 A. Well, he didn't receive the contract. He could
24 have struck the indemnification clause off and signed it,
25 but no, he did not sign it.

1 Q. And did you know that one of the problems was the
2 indemnification?

3 A. No, that wasn't -- but anything legal to doctors is
4 a problem.

5 Q. Now, I don't understand. You say Dr. Alexander
6 owes you \$9,000, approximately, right?

7 A. Yes.

8 Q. Well, you owe him for the taxes he's paid, don't
9 you?

10 A. Yes.

11 Q. And you owe him under the agreement for the
12 payments for the \$250,000?

13 A. I don't think I do because he hadn't followed the
14 agreement. That note was contingent on following the
15 agreement.

16 Q. Well, have you followed the agreement?

17 A. Yes.

18 Q. And did you pay the second payment?

19 A. I didn't pay the second payment. I paid the first
20 payment.

21 Q. Did you pay the second one?

22 A. No, because the rules weren't being -- the
23 mediation was not being followed.

24 Q. All right. Let's talk about that. As I understand
25 you said the mediation that isn't being followed is that.

- 1 you say that he cut some fences.
- 2 A. Yes.
- 3 Q. And he cut a fence because he was stranded?
- 4 A. That's not correct.
- 5 Q. Well, how do you know?
- 6 A. You can't be stranded on -- it's a dike that you
- 7 can walk down. You can leave your equipment and walk
- 8 down. It's right at his house. It's not more than a
- 9 hundred yards. So there may have been water between
- 10 where he would have come out of his house and gone to the
- 11 access that he agreed to if it was high tide but he was
- 12 not stranded.
- 13 Q. What did he say to you?
- 14 A. He said I just got to get to where I want to go.
- 15 I'm just trapped.
- 16 Q. Trapped. He said he was trapped?
- 17 A. Yes.
- 18 Q. Well, was he trapped?
- 19 A. No.
- 20 Q. Were you out there?
- 21 A. No.
- 22 Q. Did you see him?
- 23 A. No.
- 24 Q. And this road that floods is -- doesn't flood the
- 25 same way anymore ever since you got the dikes fixed;

1 isn't that true?

2 A. Actually, and through the North America Waterfowl
3 Conservation Act where we got matching funds it was
4 designed to correct the failed dikes but the dike that --
5 I don't think that the flooding has changed at all since
6 we did the dike repairs or hopefully it improved, but
7 that's the whole idea, is to maintain the water within
8 the dikes. That's why we're doing all the repairs.

9 Q. That's right, and this road is a county road?

10 A. Yes.

11 Q. And you don't want county roads being flooded?

12 A. It's always been flooded at high tides.

13 Q. But now maybe it won't be?

14 A. Well, that's what we hope.

15 Q. Do you know?

16 A. I have not been down there. They just finished the
17 grant work a couple months ago.

18 Q. Well, so you don't know whether it fixed it or not?

19 A. No.

20 Q. Okay. But it would be great if it did, won't it?

21 A. For sure it won't be from anything on my side of
22 the property causing the flooding of the road.

23 Q. Now, you went and got this grant, didn't you?

24 A. Yes.

25 Q. Did you ask Dr. Alexander about getting the grant?

1 A. We sent him the application after he had questioned
2 -- I mean, it's for wildlife. It's to maintain the
3 integrity of the property.

4 Q. Did you ask Dr. Alexander if you could apply for a
5 grant or did you tell him you were going to apply for a
6 grant before you did?

7 A. I'm not sure of the exact sequence but he was
8 notified and Ducks Unlimited had been notified that we
9 were applying for a grant for matching funds to do the --
10 enhance the wildlife and repair the dikes.

11 Q. Okay. So we've talked about you had problems with
12 him riding a dike where he says he was trapped and you
13 say he wasn't, even though you weren't there. What else
14 do you say he did that was a problem after the mediation?

15 A. Well, cutting the chain on the lock.

16 Q. Let's stop right there. Did you see him cut the
17 chain?

18 A. No.

19 Q. Did he tell you he cut the chain?

20 A. Yes.

21 Q. And why did he cut the chain?

22 A. To get to some things in the barn.

23 Q. So he had a chain cutter and he cut the chain and
24 he went to the barn?

25 A. Correct.

1 Q. And he told you that?

2 A. After the fact.

3 Q. Now, you just told us a little while ago that you
4 didn't talk to him after the mediation agreement because
5 everybody had lawyers and you didn't talk to him. How
6 did you talk to him then?

7 A. And I'm not sure whether Don told me or whether he
8 told the person that takes care it. I recall -- we don't
9 talk much but we have had minimal discussions, but the
10 chain was cut and --

11 Q. I understand the chain was cut. So you don't know
12 whether he told you or somebody else?

13 A. No. I'm not a hundred percent sure.

14 Q. Okay. All right. And what else did you --
15 problems did you have besides his cutting -- maybe his
16 cutting the fence and going up on your dike to get out of
17 the water?

18 A. Well, we waited to file the action in 2008 until
19 after his daughter was married out at Picnic Point, and
20 the road was significantly -- it was very rainy and the
21 road was significantly damaged on the way up Picnic
22 Point. It's still not a hundred percent repaired. All
23 the repairs have occurred when we got with the person
24 that has the tractor and works on my half.

25 Q. Wait a minute. Are you complaining because he

1 didn't cancel his daughter's wedding because you had a
2 road that was wet? Is that what you are complaining
3 about?

4 A. About the damage. But actually, when my daughter
5 got married it was supposed to be at Picnic Point and it
6 was raining cats and dogs and we moved the wedding closer
7 to the bunkhouse. We moved the wedding to where there
8 was high ground. So I'm just talking. We knew that
9 there would be problems with the roads and the road had
10 significant damage.

11 Q. So what you are complaining about is a planned
12 wedding for Dr. Alexander's daughter at Picnic Point not
13 being cancelled because the road was wet? It wasn't
14 raining. It was a wet road?

15 A. Oh, it was raining, and it was wet but the
16 complaint is the road wasn't repaired afterwards.

17 Q. All right. Anything else that was a use problem?

18 A. I don't -- there's some concern over ingress,
19 egress on the deeded access and use of the property on
20 the sides of it instead of using just for ingress and
21 egress.

22 Q. I don't understand. You had problems with this or
23 is this a concern?

24 A. No. It's problem. I mean, I observed Don's
25 children throwing a cast net by themselves, you know,

1 into a pond in the woods. It's all okay, you know, but
2 if you are deer hunting or there's something going on and
3 you don't think that somebody is going to be on your side
4 of the -- what you think is your controlled side of the
5 property it's a concern.

6 Q. So someone is throwing a cast net in a pond that's
7 on your tract?

8 A. Yes.

9 Q. And you saw that one time?

10 A. Yes, more than once.

11 Q. How many times you see these kids out there having
12 fun?

13 A. A couple, three.

14 Q. Huh?

15 A. At that particular area a couple, three times, and
16 then in the woods at least two times.

17 Q. All right. Anything else?

18 A. Well, the construction and the failure to manage
19 and follow the agreement to maintain the roads and the
20 dock.

21 Q. Has he ever refused to maintain the roads?

22 A. He's never repaired them.

23 Q. Is he supposed to repair them or are you supposed
24 to repair them? What is the deal on repairing the roads?

25 A. That's the problem. We can't manage anything

1 together and just take it upon yourself to do whatever
2 has to be done because the mediated management was never
3 followed.

4 Q. Since the mediation -- oh, the mediated management
5 has not been followed?

6 A. The mediated agreement.

7 Q. Isn't that a third party that's doing that?

8 A. No. We had agreed that we would have -- we would
9 agree on having a third party that we would have to agree
10 on and we put money aside.

11 Q. Well, have you done that?

12 A. No.

13 Q. Have you suggested somebody?

14 A. No.

15 Q. All right. Now, back to that wedding. They had
16 permission to use the point for the wedding, didn't they?
17 They talked about it for a long time.

18 A. Most definitely.

19 Q. Now, is there any other problem, use problems since
20 the mediation other than what you've said now, the cut
21 fence, the dike, the kids throwing the cast nets, the
22 road not being prepared by some third party who hadn't
23 been contacted? Is there anything else?

24 A. Well, the construction of a house, a dock on what's
25 supposed to be his side with the request for me to pay

1 taxes on part of that land.

2 Q. Okay. Let's talk about that. Now, since the
3 mediation agreement both of you have done construction?

4 A. I have done maintenance and repair done. I've done
5 no major construction on that, no additions. Nothing
6 other than maintenance and repair on the property.

7 Q. You've spent \$75,000 on a bunkhouse and a cabin?

8 A. Yes.

9 Q. And it's a lot nicer now than it was?

10 A. Still not very nice.

11 Q. Well, I mean, I don't know what you think is nice
12 but \$75,000 is pretty nice to me.

13 A. Well, when you have to do major -- you have to put
14 a roof on both because the roof is falling apart, because
15 you have to do major repairs to keep the foundation from
16 falling in that's -- there's a lot of costs involved.

17 Q. I understand that.

18 A. We didn't build a Taj Mahal. We just replaced and
19 tried to fix what was there. Put a stove that worked,
20 get rid of the floor that was sinking in.

21 Q. It was on your piece of property?

22 A. Yes.

23 Q. Has Don complained about that?

24 A. No.

25 Q. But on Don's piece of property he built him a place

1 where he could sleep and a barn and you're complaining
2 about that.

3 A. I'm not complaining about that. I'm complaining
4 about the platting himself a piece of property and then
5 constructing things without the agreement.

6 Q. Well, you constructed something without getting an
7 agreement?

8 A. Again, it was emergency repair and maintenance for
9 wildlife habitat approved by Ducks Unlimited.

10 Q. Oh, this cabin was approved by Ducks Unlimited?

11 A. No, but it was permitted by Charleston County so it
12 wouldn't fall into the ground.

13 Q. Now, let me ask you something about the property.
14 The property is in better shape now than it was at the
15 time of the settlement agreement, isn't it?

16 A. I don't know about what condition of the property
17 on Don -- where Don has everything gated with locks, so I
18 haven't been on his --

19 Q. How about your part?

20 A. My piece is in much better shape for the wildlife
21 habitat. It's been repaired. My barn has burned so I
22 don't have a barn but...

23 Q. I mean, all and all it's in better shape than it
24 was before?

25 A. It's been maintained for wildlife habitat. As far

- 1 as better shape, we fixed the dikes but the dikes will
2 fall apart in another five years. So we've done what you
3 have to for maintenance.
- 4 Q. And got a better bunkhouse, you got a better house,
5 you got a better shed, you got a better everything.
- 6 A. I don't have a shed but...
- 7 Q. Okay. It burnt down.
- 8 A. Yes.
- 9 Q. Okay. Now, and Picnic Point is better, isn't it?
- 10 A. No.
- 11 Q. Oh, you didn't want the docks.
- 12 A. Correct.
- 13 Q. Well, are the docks good docks?
- 14 A. It's in poor repair and it's -- I'm concerned about
15 safety and it maintaining its integrity.
- 16 Q. So you want to get rid of the docks?
- 17 A. That would be fine with me, yes.
- 18 Q. You want to repair the docks?
- 19 A. That would be okay, too. Whatever would increase
20 the value or maintain the value of the property.
- 21 Q. All right.
- 22 A. I have not used the dock and don't ever plan on
23 using the dock.
- 24 Q. Okay. Now, running the electricity out there, was
25 that an improvement?

1 A. It's not out there. It's just got the lines that
2 have been dug up. I'm not sure if that's an improvement
3 or not.

4 Q. Okay.

5 A. I don't want any electricity out there, didn't want
6 any electricity. I don't know what the value is.

7 Q. Now, you will agree that it was hard to get a
8 handle on just what Ducks Unlimited would want you all to
9 give up to get the easement changed, won't you?

10 A. No.

11 Q. You don't?

12 A. No.

13 Q. You don't agree at one time they said you could
14 give up two lots?

15 A. Yes. In 2004 and 2005 when we started this they
16 said we probably have -- in 2004 felt like we wouldn't
17 have to give up any. In 2005 we'd probably have to give
18 up one each as we delayed, and regulations and it's
19 becoming increasingly more severe, more difficult to get
20 D. U. to allow -- them to amend the easement.

21 Q. So right now when Coy Johnston sent in his reports
22 he said we'd have to give up -- each of us would have to
23 give up at least three.

24 A. Yes.

25 Q. That's three million dollars.

1 A. Well, I don't think each lot is -- you'd have to
2 get an appraiser to do all that but that's my concern,
3 and that's why I feel like we need to sell the assets.
4 It's worth everything without dividing it. So you're not
5 losing anything unless you amend the easement.

6 Q. And that's what you didn't want to do, amend the
7 easement, because you don't want to loose your value;
8 isn't that right?

9 A. I have been attempting to get this property divided
10 now for 10 years. I've done everything that I can that's
11 humanly possible. I contact -- I paid for attorneys,
12 I've paid for environmental consults and we have not been
13 able to divide the property for use or divide it in fee.

14 Q. Well, you remember the letter you got from Mr. Coy
15 Johnston, don't you?

16 A. Yes.

17 Q. And you remember, I guess it was a report that they
18 gave, do you have a copy of that up there?

19 A. No. I also need my glasses if I'm going to have to
20 read something.

21 MR. LEWIS: What exhibit is that? Plaintiff's 7?

22 MR. GLENN: Here you go. Here are your glasses.

23 A. Thank you. No, this is two.

24 Q. Huh?

25 A. This is two. I need seven. This is an operating

1 agreement.

2 MR. GLENN: Oh, it's the wrong one.

3 THE COURT: What do you want?

4 DR. BOWMAN: Number seven.

5 THE COURT: You want seven?

6 MR. GLENN: Yes, sir.

7 THE COURT: Here you go.

8 BY MR. LEWIS:

9 Q. You see that, Exhibit Number 7?

10 A. Yes.

11 Q. That was the report that came from Coy Johnston,
12 isn't it?

13 A. Yes.

14 Q. And Coy Johnston was contacted and hired by
15 Dr. Alexander, wasn't he?

16 A. He wrote the letter. I had contacted him at least
17 a year or two before that trying to get his help and
18 advice.

19 Q. Well, but when he did it this letter was a result
20 of Dr. Alexander calling him and getting him to do it,
21 isn't it?

22 A. Finally agreeing to have somebody look at it, yes.

23 Q. And when he did he wrote this report and had a
24 management plan that he got Mr. Williams to do, didn't
25 he?

- 1 A. Yes.
- 2 Q. And nobody had to sign an indemnification agreement
3 for this one, did they?
- 4 A. No.
- 5 Q. Now, can you show me in here what he says you'll
6 have to give up according to him?
- 7 A. Well, if you would show me what I'm supposed to
8 look at then I'll read it.
- 9 Q. Well, first of all look at the letter. Do you see
10 that?
- 11 A. Yes.
- 12 Q. Third paragraph he says the settlement agreement
13 violates Section 3.4 of the easements. Do you see that?
- 14 A. Yes.
- 15 Q. Well, that isn't good, is it?
- 16 A. No.
- 17 Q. And he says it will have to be rewritten, the
18 easement, right?
- 19 A. Can you tell me what page you are on? This is
20 about 35 or 40 pages.
- 21 Q. The first page.
- 22 A. This is Don's letter, not a letter from -- the
23 first page I have is from Don Alexander.
- 24 Q. No, I'm talking about page number 675, down in the
25 right-hand corner?

1 A. This starts at page 678.

2 THE COURT: Ma'am, would you come and show him
3 where you're reading from. Look at his document and show
4 him, please.

5 MR. GLENN: I think that document is not in
6 evidence but it was letter --

7 MR. LEWIS: This whole thing isn't in evidence?

8 MR. GLENN: Well, that wasn't part of the report.
9 That was his letter. He said -- you can put it in, of
10 course.

11 MR. LEWIS: I'll be glad to, and the report had a
12 cover sheet, too. Can we do that?

13 MR. GLENN: I got the cover --

14 THE COURT: Come show him what you're referring to
15 so you all can all get on the same page, please.

16 MR. LEWIS: That's right. Would you mind marking
17 that? Do you have any objection?

18 MR. GLENN: No.

19 MR. LEWIS: What exhibit is that then?

20 THE COURT: You want to make it defense or
21 plaintiff's?

22 MR. LEWIS: Plaintiff's will be fine.

23 THE COURT: All right. Plaintiff's will be number
24 8. Plaintiff's Number 8. Now, what is it?

25 MR. LEWIS: It's a letter to Dr. Alexander and

1 Dr. Bowman from Coy Johnston.

2 (WHEREUPON, Plaintiff's Exhibit No. 8, a Letter,
3 was marked and admitted into evidence.)

4 BY MR. LEWIS:

5 Q. Now, do you see that Plaintiff's 8?

6 A. Yes.

7 Q. And you see in there it says on paragraph three,
8 the settlement agreement, it in my opinion violates
9 Section 3.8 -- 3.4 of the easement?

10 A. Yes, but when Ducks Unlimited, when they reviewed
11 it in '08, didn't mention that the settlement violated.

12 Q. But Mr. Coy Johnston says it in this letter,
13 doesn't he?

14 A. Yes. He's not a representative of Ducks Unlimited.
15 He's a retired person, consultant, but yes.

16 Q. And the recommendations in the letter, the last
17 paragraph to Ducks Unlimited asks for each of you to
18 retain two five-acre subdivisions?

19 A. Yes.

20 Q. You see that?

21 A. Yes.

22 Q. And then he goes on to, We think this is your best
23 offer and you should be prepared to give them all up.

24 You see that?

25 A. Yes. Yes.

1 Q. So what he's saying here is -- in this letter --

2 THE COURT: Is that two five-acres each or total?

3 MR. LEWIS: He said that you would retain two
4 five-acre subdivisions.

5 THE COURT: Each?

6 MR. LEWIS: Each of you, yes, sir.

7 THE COURT: Okay. Thank you, sir.

8 BY MR. LEWIS:

9 Q. Then he goes on to say, We think this is your best
10 offer and you should be prepared to give them all up.

11 You see that?

12 A. Yes.

13 Q. So if you're looking at making sure you keep the
14 value of this plantation this is an impact on the value,
15 isn't it?

16 A. Yes.

17 Q. And after what this report came in and after we got
18 it didn't Dr. Alexander schedule the deposition of Coy
19 Johnston?

20 A. Yes.

21 Q. And during that deposition didn't we get
22 Mr. Johnston to give us a plan to go to Ducks Unlimited
23 that was better than his report?

24 A. I'm not familiar with the exact, That you think it
25 was better, but it was a different plan.

1 Q. Wasn't it a plan --

2 Could we mark this into evidence, Your Honor? I
3 don't think it's been marked yet.

4 THE COURT: Yes, sir. You want it Plaintiff's
5 Number 9?

6 MR. LEWIS: Yes, sir.

7 THE COURT: That's the photo, aerial photo?

8 MR. LEWIS: Yes, sir.

9 THE COURT: Any objection?

10 MR. GLENN: No objection. All right. Plaintiff's
11 Number 9 admitted without objection. That's an aerial
12 photo, right?

13 MR. LEWIS: Yes, sir.

14 THE COURT: Okay. Thank you, sir.

15 (WHEREUPON, Plaintiff's Exhibit No. 9, an Aerial
16 Photograph, was marked and admitted into evidence.)

17 BY MR. LEWIS:

18 Q. All right. We're going to look at Exhibit Number
19 9. Do you see that?

20 A. Yes.

21 Q. And are you aware that Coy Johnston in the
22 southwest corner down where Dr. Alexander has his
23 buildings, that he said that he could recommend to Ducks
24 Unlimited three lots for you and three lots for
25 Dr. Alexander of approximately five acres each; do you

1 understand that?

2 A. Yes.

3 Q. And that the remainder all the way north of that,
4 that would be the ducks impoundments and the wildlife
5 area; do you understand that?

6 A. Yes.

7 Q. So by taking the deposition and checking everything
8 out Dr. Alexander got each of you an extra lot, if Ducks
9 Unlimited accepted Mr. Williams' and Mr. Coy Johnston's
10 suggestion; isn't that right?

11 A. We've been approaching Ducks Unlimited for seven
12 years, eight years trying to get something. So again,
13 this is a proposal so hopefully they would accept it but
14 the number of lots has significantly decreased since we
15 started this attempt.

16 Q. I understand that but I don't know of any other
17 suggestion to Ducks Unlimited by Coy Johnston and Kenny
18 Williams other than the one that was sent after the
19 deposition. Do you know of any other?

20 A. No.

21 Q. And then after that was sent in you had a letter
22 written that said, Don't look at it Ducks Unlimited,
23 didn't you?

24 A. Yes.

25 Q. All right. And the reason you had that letter

1 written was because of the use problems you've just told
2 us about, right?

3 A. Use management and need for cooperation, yes.

4 Q. The management. Now, this new report by Kenny
5 Williams set forth exactly what you're supposed to do.
6 It has a title page, and what does the title page say?
7 Do you have it on that?

8 A. No.

9 Q. Management Plan For Tidal Brackish Management with
10 Wetlands Old Dominion Plantation by R. K. Williams. Now,
11 is there any trouble following that plan?

12 A. There's been trouble since 2001 following any plan
13 and cooperating and I see no -- this happened just two
14 weeks before we finally had a court date. This has been
15 going on for four years.

16 Q. Okay. In 2001 you said?

17 A. Yes.

18 Q. And in all those years you've given me all the
19 problems that you've had?

20 A. No. I've just given you examples of problems.

21 Q. Well, I want to know the other ones.

22 A. Okay. When my daughter -- you sure? I mean, you
23 want me to -- I'll go through them.

24 Q. I want to know. I mean, so far you've talked about
25 someone cutting a fence that you didn't see, you've

1 talked about you're mad at Dr. Alexander for going across
2 your dike when he said he was trapped. Those are what
3 you've told us about, some of them, and there's some more
4 of those kind of things?

5 A. Sure. Starting in 2001 with the unfair and non
6 equitable use of the properties. My daughter and
7 son-in-law at the time were down there with some
8 friends --

9 Q. Wait a minute. Were you there?

10 A. No.

11 Q. So you're telling us what your daughter told you?

12 THE COURT: I think he already testified to that
13 earlier, very early on about the conflict of the use of
14 the joint properties. I assume that's what you were
15 talking about.

16 A. Yes. Well, this was where somebody pulled a nine
17 millimeter on my son-in-law that was a friend of one of
18 Don's sons and wanted to know what he was doing there but
19 that's --

20 Q. Were you there?

21 A. No.

22 Q. Thank you. I want to hear about incidences where
23 you were there.

24 A. Other than every time I go down having problems
25 with use and having new things constructed and things

1 being done without my knowledge, having chains put up for
2 dike access, not having a key to access, and concerns
3 really for the safety of either my family or my friends
4 going down there when it's supposed to be my week.

5 Q. All right. You talked about new construction,
6 haven't we?

7 A. Yes.

8 Q. We talked about the fences, haven't we?

9 A. Yes.

10 Q. We talked about the chain, haven't we?

11 A. Yes.

12 Q. And we've talked about the children that were
13 throwing nets that you were worried about?

14 A. Yes.

15 Q. All right. Then you said something about keys, you
16 don't have a key.

17 A. Before the mediation just restricting access to
18 places without me knowing it was going to occur.

19 Q. So you didn't have keys to everything?

20 A. Correct.

21 Q. All right. Anything else?

22 A. On the safety issue and concerns over management
23 Don's eight-year-old son had been deer hunting, was
24 walking down the road just at dusk and luckily we were
25 the only people there and we saw him, but it's just the

1 safety issue is a concern.

2 Q. Safety issue. Okay. Any other ones?

3 A. I unfortunately don't get to go down much because
4 of all the confrontation and my family has quit going
5 down because of that, too.

6 Q. So we can agree that at least your portion of the
7 property is better off since the mediation, and you've
8 told us what you're complaining about, and you want to
9 sell the property. Will you sell your half of the
10 property with only two lots on it?

11 A. I'm not sure I understand the question.

12 Q. Ducks Unlimited, you said you were willing to take
13 -- have it so that you and Dr. Alexander would only have
14 two lots each. Do you remember saying that?

15 A. Yes.

16 Q. Huh?

17 A. Yes.

18 Q. Were you willing to sell your half with only having
19 two lots on it?

20 A. If it's deeded to me I can decide what I'd like to
21 do.

22 Q. Excuse me?

23 A. If it's deeded to me, if I own it in fee then I can
24 decide how I want to proceed with my piece of property.

25 Q. And certainly that's in deed what this settlement

1 agreement contemplates, doesn't it?

2 A. It does except if I can explain the problem of
3 continued joint access, joint use, joint maintenance.
4 This has gone on for ten years. I don't want to have --
5 I had cancer surgery. I don't want my kids to have to
6 deal with the continued confrontation that's been going
7 on for ten years.

8 Q. Well, if you divide it according to what Ducks
9 Unlimited -- he says the two lots, and cut your half down
10 to two lots you can sell it. You don't have to keep it.
11 You can sell it.

12 A. That's correct.

13 Q. Seems to me that takes care of the problem.

14 A. I don't want to sell mine anymore than Don wants to
15 sell his half. I've offered to buy his, I've offered to
16 let him buy my half. I've offered every type of division
17 available for ten years.

18 Q. I understand. I understand you say that but right
19 now you are asking this Court to sell both pieces.

20 A. Because we are at a deadlock and there's no way we
21 can continue to cooperate.

22 Q. If you agree and have Ducks Unlimited separate it
23 into the halves and you only have two lots, which you
24 said you'd agree to, you can sell your half. It's in fee
25 simple.

1 A. We would significantly decrease the value of the
2 property.

3 Q. Yes, sir.

4 A. The answer is yes. No. I mean, you asked would I
5 do it. It would reduce the value of the property. We've
6 known that all along. Yes, I would sell it.

7 Q. And so that, if you would do that that solves the
8 problem.

9 A. I don't want to sell it.

10 Q. But let me ask you this. Have you discussed some
11 having other people buy this property?

12 A. My neighbors voiced an interest in if Don wants to
13 sell his half buy, but no, I haven't had any.

14 Q. Who is your neighbor?

15 A. John Hamrick.

16 Q. Who?

17 A. John Hamrick.

18 Q. And so he wants to buy it, huh, and he's your
19 neighbor?

20 A. He hasn't made an offer. He hasn't bought my half
21 but he's in real estate.

22 Q. Now, under the easement you could sell -- you could
23 keep one parcel and you could sell four others and Don
24 can do the same thing, couldn't he?

25 A. But the problem is joint management and joint

1 cooperation for the remaining 600 some acres.

2 Q. I understand that but in that case you would have
3 ten people having a say so?

4 A. Yes. If two can't do it I hate to think when you
5 get ten.

6 Q. But that's what you agreed to in your easement?

7 A. That's what the easement says.

8 Q. And the easement says everybody will abide by all
9 the laws, all bylaws and all the agreements with
10 reference to the property, too, doesn't it?

11 A. And that hasn't happened, but that's what the
12 agreement says.

13 Q. Well, Don's been asking you to pick your five
14 pieces of property since 19 -- or, excuse me, 2002,
15 hasn't he?

16 A. A long time.

17 Q. And you won't do it.

18 A. Because we would have to maintain continued joint
19 management and use and that has been unfair since -- for
20 over ten years.

21 Q. But you haven't done it.

22 A. Well, if you designate lots then you obviously are
23 going to change the tax code. There's no reason to
24 designate any property until you are thinking about
25 building. It was not purchased as a -- we just put the

1 easement in to maintain the wildlife and so there's no --
2 the easement doesn't say pick a lot in two years or five
3 years. It just says you have the option.

4 Q. Yeah, and there's no time limit.

5 A. Correct.

6 Q. There's no time limit in the settlement agreement
7 either, is there?

8 A. The settlement you would assume you would start
9 immediately when you sign the agreement.

10 Q. Assume it so. Why don't you assume that when you
11 sign that agreement that you're going to get your lots
12 immediately?

13 A. Excuse me?

14 Q. Well, he wants his lot. You know, each of you got
15 five lots under the easement. Why can't he get it
16 immediately? You wouldn't do it.

17 A. Once it's divided he can do anything he wants but
18 he would not divide it, would not cooperate.

19 Q. When you first signed the easement it had ten
20 five-acre lots in it, didn't it?

21 A. Yes.

22 Q. And you had five and he had five; isn't that right?

23 A. Well, the LLC had ten.

24 Q. I know but according to --it's a 50/50. You had
25 five and he had five.

- 1 A. Yes.
- 2 Q. Isn't that right?
- 3 A. Yes.
- 4 Q. And he wanted his designated, didn't he?
- 5 A. Not when we signed the easement.
- 6 Q. Right after that he did.
- 7 A. I'm not aware of anything though until after 2002.
- 8 Q. Okay. Say 2002. Give you 2002. After 2002 he
- 9 wanted it?
- 10 A. Yes.
- 11 Q. And you wouldn't do it.
- 12 A. There was a significant problem with use and
- 13 management that would preclude assigning lots and would
- 14 make a significant problem with continued use.
- 15 Q. He even had one spot he wanted to put his house
- 16 where he could have a bed out there just like you have
- 17 one out there and you still wouldn't give him that lot,
- 18 would you?
- 19 A. I wouldn't call the house a nice place to stay, and
- 20 I probably spent three nights there since 2007, but other
- 21 people do stay there, family. But if you agree, once
- 22 it's filed I would deed anything.
- 23 Q. But you didn't -- you wouldn't deed it to him,
- 24 would you?
- 25 A. Starting back in 2005 is when he requested the dock

1 permit. I put on the dock permit, Don, we need to have
2 the property divided before we worry about stipulating
3 docks and things.

4 Q. But I'm just asking a question. When he asked you
5 if you'd please let him have his five-acre parcel for his
6 house so he could have a place to stay, just like you,
7 you wouldn't do it, would you?

8 A. Not until it was divided because he would continue
9 to utilize the property exactly as he wanted to as if it
10 was all his.

11 MR. LEWIS: Thank you, Doctor.

12 THE COURT: Any redirect?

13 MR. GLENN: Yes. If I could have one second, Your
14 Honor.

15 REDIRECT EXAMINATION

16 BY MR. GLENN:

17 Q. Dr. Bowman, Plaintiff's Exhibit 8 is the letter
18 from -- to you all from Coy Johnston?

19 A. Yes.

20 Q. What's the date on that letter?

21 A. March 2nd, 2011.

22 Q. And Mr. Lewis said -- took the deposition to find
23 out what's the best they could do. What's the date of
24 the deposition?

25 A. September 21st, 2011.

1 MR. GLENN: Thank you, sir.

2 That's all I have, Your Honor.

3 THE COURT: Any recross on that?

4 MR. LEWIS: No, sir.

5 THE COURT: All right. Dr. Bowman, you may step
6 down. Thank you very much.

7 We'll adjourn until 2:45. See you then.

8 (WHEREUPON, a lunch break was taken.)

9 THE COURT: Call your next witness.

10 MR. GLENN: Your Honor, please. We offer
11 depositions of Coy Johnston, and also, they have the
12 original. We'll pass that up, Coy Johnston and R. K.
13 Williams. Both sides have sent you designated portions
14 of the depositions. It covers most of them. The Coy
15 Johnston deposition is a little longer. They have all
16 the exhibits to the depositions attached.

17 THE COURT: Okay.

18 MR. GLENN: And then R. K. Williams.

19 THE COURT: R. K. Williams, okay.

20 MR. GLENN: I just call the Court's attention to
21 Coy Johnston's deposition and the fact that he gave the
22 opinion that the very best thing economically to do at
23 this point is to sell the plantation just like it is with
24 the easement as it is and not divide it and not do
25 anything with Ducks Unlimited. Now, he said that will be

1 the very best thing these gentlemen could do financially.
2 I'd just call the Court's attention to that.

3 As I said, the designations of both sides have been
4 sent to the Court, but there's a lot of good information
5 in there on the disputes that these gentlemen had. We
6 just ask the Court to give both those depositions a
7 reading. And we believe with that, Your Honor, the
8 plaintiff closes.

9 THE COURT: All right.

10 MR. LEWIS: Your Honor, I'll object.

11 THE COURT: I'm sorry. What?

12 MR. LEWIS: I'm going to object. Mr. Johnston does
13 not say that they should sell the land. All he says is
14 that having five -- ten five-acre tracts makes the land
15 more valuable. That is a fact, but he doesn't give any
16 opinion of what they should do.

17 THE COURT: Okay. I'll read the deposition.
18 Whatever it says, it says.

19 Any motions from either party?

20 MR. LEWIS: I move just like I did in --

21 THE COURT: You're welcome to stay seated, if you
22 want to, if that helps.

23 MR. LEWIS: Age is no fun, Your Honor.

24 I make a motion that he has as his cause of action
25 a dissolutionment. We made the motion earlier. We've

1 heard all the evidence. There is no evidence in here
2 that there is going to be any harm to anybody. As a
3 matter of fact, the evidence is to the opposite. The
4 property has been made better according to Dr. Bowman.

5 The people would be hurt, according to Coy
6 Johnston, if they can't continue to have the five
7 ten-acre tracts. There's nothing in the record that
8 would support a dissolutionment as is defined in the law
9 of South Carolina, that there has to be a negative impact
10 because of any impasse, and the only impasse here is
11 Dr. Bowman failing to do what?

12 The most important thing in this case is there's a
13 settlement agreement after mediation. That settlement
14 agreement lays out the terms of what should be done.
15 They've never been followed. We say it's Dr. Bowman's
16 fault, he says it's our fault. It doesn't matter.

17 What's happened now is finally we've gotten Coy
18 Johnston to give us an opinion as to how Ducks Unlimited
19 might accept a division. We agree with that and will do
20 that, and Dr. Bowman has said on this stand that he'll do
21 that, and then he can sell it or do what he wants to.

22 But there's nothing in this record to support
23 dissolutionment at all.

24 THE COURT: Well, my understanding with -- I'm
25 going to make sure my understanding is correct about the

1 proposal to Ducks Unlimited. Right now there's ten
2 tracts with five acres each, that's a total of 50 acres.

3 MR. LEWIS: That's correct.

4 THE COURT: And I think Mr. Johnston's opinion was
5 to reduce that to two?

6 MR. LEWIS: Three.

7 THE COURT: Three a piece?

8 MR. LEWIS: Yes, sir.

9 THE COURT: So they would lose four, four or
10 five-acre lots?

11 MR. LEWIS: They would lose four five-acre lots and
12 they would put them at the bottom, I call it the south
13 end, down there --

14 THE COURT: On tract one?

15 MR. LEWIS: They would put one on tract one and one
16 on tract two, but they would be at the bottom. I mean,
17 one, three --

18 THE COURT: Let me ask you this. I know you keep
19 referring to irreparable injury and suffered harm but the
20 third portion can no longer be conducted to the advantage
21 of the shareholders. How is losing four lots to the
22 advantage of the shareholders?

23 MR. LEWIS: Well, I don't think it is, but to
24 Dr. Bowman, what he wants to do is -- it's to his
25 advantage, the most important thing to him is to have

1 them separated.

2 THE COURT: Well, I mean, if you're losing four of
3 the five-acre lots that's going to diminish the overall
4 value if you try to sell your portions, or half it, or
5 whatever --

6 MR. LEWIS: I agree with you.

7 THE COURT: -- versus selling the total with ten --
8 excuse me. Yeah, ten tracts with five acres a piece.

9 MR. LEWIS: I don't understand. You want to say
10 the best thing is to sell it as a whole instead of a
11 half?

12 THE COURT: Well, that's what I'm asking you.

13 MR. LEWIS: I don't understand that. Everybody --

14 THE COURT: Well, you're going to lose if you
15 divide it. If Ducks Unlimited accepts Mr. Johnston's
16 recommendation you're going to lose three tracts.

17 MR. LEWIS: Yes, sir.

18 THE COURT: So wouldn't that diminish the value of
19 each half?

20 MR. LEWIS: Yes, sir.

21 THE COURT: Okay. All right.

22 MR. LEWIS: But that's what the agreement -- now,
23 we got to go back to the settlement agreement.

24 THE COURT: Okay.

25 MR. LEWIS: The settlement agreement contemplates

1 losing lots, and they agreed to it. Now, if you are
2 going to make a settlement agreement worth a darn you are
3 going to have to enforce it.

4 Now, the other thing in this settlement agreement,
5 it says, if you can't get them to divide it, if the Court
6 says, Well, you don't have to give up but two lots, and
7 if you try -- first of all, we've never tried and said,
8 Hey, give up two lots. I can't imagine that Ducks
9 Unlimited wouldn't accept the giving up of two lots or
10 one lot, and that was agreed to in the settlement
11 agreement. At least you got to try that because you
12 agreed to it.

13 THE COURT: Okay.

14 MR. LEWIS: And then wait. Then, Your Honor, if
15 that doesn't work you follow R. K. Williams' plan, the
16 exact same plan you have on the -- you only use that
17 portion of the land that is on your tract and you do the
18 exact same thing as if it was divided in fee except it's
19 not in fee in the records of the county.

20 Now, that's what the settlement agreement says, and
21 they haven't done that. Because what happens then, if
22 you get -- if you divide it into the two sections, five
23 one-acre tracts are deeded to Dr. Alexander, five
24 five-acre tracts are deeded to Dr. Bowman, they now have
25 a joint interest in all the land. They now have the

1 right to use a portion of that joint interest, tracts one
2 and two. They now own five lots each and they can sell
3 those five lots each to whoever they want to.

4 Now, that's what the settlement agreement
5 contemplates, and that's what the settlement agreement is
6 designed to do, and that's what we're asking this Court
7 to enforce, the settlement agreement.

8 THE COURT: Okay. Thank you very much.

9 Mr. Glenn, on his motion? We got sidetracked a
10 little bit from his motion. And he was answering my
11 questions, but we got sidetracked on his motion on the
12 dissolution.

13 MR. GLENN: For ten years Dr. Bowman said, Let's
14 divide it, we can't get along. And Dr. Alexander said,
15 No, you can't divide it.

16 And we went on and on, and he hired lawyers to try
17 to get it done, talked to D. U. Dr. Alexander would
18 never consider a division. And he never did until '07
19 when we had the mediation, and for the first time then he
20 agreed to try to get it legally divided.

21 The evidence is clear that there was an impasse at
22 that time or a deadlock, and it's admitted in their
23 answer that there was a deadlock. And their answer not
24 only admits there was a deadlock they say, You cannot
25 enforce that agreement. It's unenforceable. It violates

1 the easement, and it cannot be done.

2 And, no, they fought, following through and going
3 by the settlement agreement, and they fought us since
4 '07. It's now more than four years later and throughout
5 that time they had an answer saying, No, it can't be
6 done. And everything they said was, No, we don't want to
7 legally divide it. And they continued to say that until
8 finally we got -- it took two and a half years to get Dr.
9 Alexander to agree to hire Coy Johnston and Kenny
10 Williams. He finally agreed and hired them. They said
11 it can be done. Their report says that, that came out in
12 March. It says it can be done.

13 Dr. Bowman immediately says, I'm fine with that,
14 whatever they recommend. I just can't live with it
15 unless it's legally divided.

16 And again Dr. Alexander said, No, I will not agree.
17 I don't want to give up that much. I'm not going to do
18 it.

19 Dr. Bowman says, I give up. We can't get along at
20 all. And I think the testimony is replete with
21 disagreements they have had all along about not only the
22 operation of the plantation and the use of the plantation
23 but even after they reached the settlement they couldn't
24 agree, and they fought us all the way until I sent him
25 that -- until Dr. Bowman threw up his hands and said, I

1 can't live with it. I just need to get out. This is a
2 deadlock. I want out.

3 And that's when we withdrew, and that's when for
4 the first time ever that Dr. Alexander said he would even
5 consider a legal division, and now Mr. Lewis is up here
6 like it was their idea. That's why we filed the lawsuit,
7 because they wouldn't go through with it. We were ready
8 to go forward. You heard the testimony. We were ready
9 to go forward immediately after the mediated agreement.

10 And I think that the argument made here today, and
11 looking at the record is absolutely clear that there is
12 an absolute deadlock between these two owners, and I'll
13 ask the Court to -- I've already asked but if you pay
14 attention closely to Mr. Johnston's deposition he says
15 the best thing financially for them to do is just sell it
16 like it is. That's in the deposition.

17 THE COURT: Well, that's because he's assuming they
18 don't want to lose the five-acre lots.

19 MR. GLENN: But we believe at this point after
20 fighting for ten years to try to get it divided and for
21 them to now come into court and say, Oh, we want to
22 legally divide it, follow the agreement. Well, if they
23 wanted to follow the agreement they should have joined in
24 my relief in the complaint. We would have been through a
25 long time ago.

1 THE COURT: All right. Taking notice to the favor
2 of the non moving party the motion for directed verdict
3 is denied.

4 You want to call your first witness?

5 MR. LEWIS: I was going to point out something,
6 Your Honor, and I'd like to -- he keeps saying that we
7 admitted that it was deadlocked. We admitted it and it's
8 in his brief, this very word. We admitted that it was
9 deadlocked at the time of the settlement agreement.
10 That's true. That's why we had a mediation. We've never
11 admitted it was deadlocked after that.

12 THE COURT: Okay. All right.

13 MR. LEWIS: I want to make sure of that. They keep
14 leaving that little part out, that we didn't agree to a
15 deadlock after the settlement agreement.

16 THE COURT: Okay. I understand. Want to call your
17 first witness.

18 MR. LEWIS: You have the depositions, Your Honor,
19 and I didn't know how you wanted to do that. We
20 designated parts of them and you have the whole
21 deposition.

22 THE COURT: I'm just going to accept the whole
23 deposition. I'm going to read all of Williams' and all
24 of Mr. Johnston's. I know you all designated. I'm just
25 going to accept the whole deposition. I'll read the

1 entire deposition of both parties.

2 MR. LEWIS: Then we have portions of Dr. Bowman's
3 deposition that we would offer.

4 THE COURT: Okay.

5 MR. LEWIS: We're not offering his whole deposition
6 because he's a party opponent.

7 THE COURT: Okay. I'll be glad to receive those.
8 Do you have those?

9 MR. LEWIS: Do you want the whole deposition or you
10 just want the little portion?

11 THE COURT: I just want the little portions. I
12 don't want the whole thing.

13 MR. LEWIS: All right. We will mark that and give
14 them to you.

15 THE COURT: Okay. That will be fine. I don't want
16 the whole thing.

17 MR. GLENN: I sent in designations also for
18 Dr. Bowman, after reading his.

19 THE COURT: Well, mark what you want for
20 Dr. Bowman. I don't want the whole deposition.

21 MR. GLEN: Right.

22 MR. LEWIS: He can't put in Dr. Bowman. Now, he
23 can designate for Dr. Alexander but he can't designate
24 for his own witness.

25 THE COURT: Mr. Glenn, I tend to agree with that.

1 MR. GLENN: Well, if he puts in part and doesn't
2 put in the other part I'm entitled to put in what shows
3 that what he put in wasn't the whole story and there were
4 other questions to ask. He'd stop right in the middle of
5 a discussion.

6 MR. LEWIS: I don't mind him doing that. I don't
7 mind him doing that.

8 MR. GLENN: And what mine is is putting --

9 THE COURT: Just replying to what he put in.

10 MR. GLENN: Yes, sir.

11 MR. LEWIS: I don't have any problem with that.

12 THE COURT: To get a full picture.

13 MR. LEWIS: That's fine.

14 THE COURT: All right. I'll allow that. Do you
15 all have those designations already copied or are you all
16 going to have to copy them?

17 MR. GLENN: I have them. I have mine.

18 MS. KING: Your Honor, I have the designations but
19 not all the exhibits. So I'm going to have the actual
20 designations highlighted from the deposition but not the
21 exhibits.

22 MR. LEWIS: The exhibits are attached to the main
23 deposition.

24 THE COURT: Right.

25 MR. LEWIS: But she has the designations for them.

1 THE COURT: Okay. That's fine. You all just hand
2 them up at the appropriate time. Are you going to call
3 any other witnesses other than what you've --

4 MR. LEWIS: Yes. We're going to call
5 Dr. Alexander.

6 THE COURT: Dr. Alexander, if you'd come around and
7 be sworn, please.

8 DR. MILTON DONALD ALEXANDER, after having
9 been duly sworn, testified as follows:

10 THE CLERK: Sir, if you would, please state your
11 first and last name, spelling your last for the record.

12 DR. ALEXANDER: My first name is Milton. Last name
13 is Alexander, A-l-e-x-a-n-d-e-r.

14 DIRECT EXAMINATION

15 BY MR. LEWIS:

16 Q. Dr. Alexander, you are one of the owners of the
17 property or the LLC that's involved here?

18 A. I am.

19 Q. And what is the name of it?

20 A. Old Dominion Plantation LLC.

21 Q. And how long have you been a part of that?

22 A. Since 1995.

23 Q. And who did you own it with since 1995?

24 A. Dr. Larry Bowman.

25 Q. Now, you heard Dr. Bowman talk about the problems

1 he's had since, I guess 1995; do you remember him
2 testifying?

3 A. I do.

4 Q. And he said that he had a problem with a fence
5 cutting.

6 A. Yes.

7 Q. Do you know anything about a fence cutting?

8 A. I do.

9 Q. What do you know about -- and when did this happen?

10 A. I don't know the exact date. Whenever the road
11 flooded several times. Probably -- I'm guessing in fall
12 of 2008.

13 Q. And what happened?

14 A. I was back on the back end of the property, which
15 is my property, my part of the property, and I had my two
16 small children with me. And it was late in the day and
17 we were trying to come out and we came to the road, the
18 public road, which is our access to the middle dike that
19 allows us to access the back end of the property and the
20 road --

21 Q. The back end, that's where you have the barn and
22 the loft?

23 A. No. No. The back end of the property is the north
24 end, the northern end where the ducks are.

25 Q. All right.

1 A. And the road was completely flooded and essentially
2 impassable. So I went across the dike and then brought
3 my children across the dike back to where the barn is
4 now.

5 Q. And?

6 A. So in order to do that the fence, which was
7 consistent of three strands of barbed wire, I removed,
8 and then I put them back up, to get back onto the public
9 road.

10 Q. So you took them down to get off and you put them
11 back up when you were finished?

12 A. I did.

13 Q. I'm going to show you a picture and see if you
14 recognize it. Do you recognize that?

15 A. I do.

16 Q. Is that the road that we've been talking about?

17 A. That is the public road which leads from one part
18 of my property to access the other part, which in this
19 particular picture is flooded similar to the night that I
20 was trying to come out and bring my children out.

21 MR. LEWIS: Do you have any objection?

22 THE COURT: Any objection to the picture?

23 MR. GLENN: Is there a date on that picture? I
24 would object to the picture unless they can show it was
25 that way on the day that he --

1 A. I will testify that is in October of 2008.

2 Q. And that's the same time that the flooding was that
3 you were talking about?

4 A. That is in October of 2008. That's the same time.
5 That's the same tide, that's the same level of tide the
6 next three days, three days later.

7 MR. LEWIS: We offer it, Your Honor.

8 THE COURT: Any objection?

9 MR. GLENN: No.

10 THE COURT: All right. Defendant's Exhibit Number
11 1 admitted without objection.

12 (WHEREUPON, Defendant's Exhibit No 1, a Photograph,
13 was marked and admitted into evidence.)

14 BY MR. LEWIS:

15 Q. Now, did you ever again have to use his dike?

16 A. No.

17 Q. What's happened since then that makes it better?

18 A. Well, two things. Since he raised the issue I've
19 been treading through the water when I did, when I had to
20 go back there, which limits me. And second thing is he
21 fixed two of his dikes. The first dike he thought that
22 he fixed was the one that he thought was the initial
23 problem. It was not. It was not until the second dike
24 was fixed that the problem has been improved, and we have
25 a very high tide this weekend and we'll see if it floods

1 again. But before it was continually flooding on all
2 tides because the dike was leaking?

3 Q. And you only did this one time?

4 A. Only one time on his dike.

5 Q. Now he complains about a lock that was cut. Do you
6 know anything about that?

7 A. I don't recall that for sure but I'm assuming that
8 this was the time that he complained about me not getting
9 the equipment out of the barn, the old equipment that he
10 said he didn't want. And his daughter's wedding was
11 coming up and I knew I had to get the equipment out of
12 the barn and off the property and I'm assuming that I
13 must have gone through the gate.

14 And I didn't have a key. There's no way to get to
15 the gate. There's no way to get the equipment out, and
16 the wedding is coming up. So I felt it important for me
17 to go across, and I guess I might have cut it. But I
18 don't actually remember cutting it.

19 Q. Now, you mentioned a key. He's complaining you
20 don't give him keys. Did he give you keys for that?

21 A. No, sir. He did not give me a key. I'm locked out
22 of his property.

23 Q. Now, did there come a time with this property that
24 you all decided to -- that you decided to put a
25 conservation easement on this property?

1 A. Yes, sir.

2 Q. And a conservation easement does what?

3 A. A conservation easement protects the property from
4 development. The more restrictive the easement the more
5 restrictive the development and use of the property.

6 Q. And who is it that you get the approval of for a
7 conservation easement?

8 A. There's several agencies that are 501-C corporation
9 that can authorize a conservation easement. The one that
10 was suggested to us by Mr. Coy Johnston at that time, who
11 actually approached us before the purchase of the
12 property was actually completed, he was representing
13 Wetlands America, a branch of Ducks Unlimited, and
14 approached us and asked us if we would consider putting a
15 conservation easement on it in line with the overall
16 goals of the ACE Basin Project.

17 Q. And do you remember when that was?

18 A. I think we finally completed the agreement in 1998.
19 What is the date on that, if you have it?

20 Q. Recorded December 17th, 1999?

21 A. '99. Excuse me. I'm a year off.

22 MR. LEWIS: We would offer it into evidence.

23 MR. GLENN: No objection.

24 THE COURT: I think it's already here, isn't it,
25 one of the exhibits?

1 MR. GLENN: I'm not sure if we put the easement in.

2 MR. LEWIS: No, they didn't put the easement in.

3 THE COURT: I think it's attached to that
4 management agreement, in the back. Look and see.

5 MS. KING: It is.

6 MR. GLENN: I think it is. It is attached to that.

7 THE COURT: You can put it in again, if you want
8 to, but it's already there.

9 MR. LEWIS: No, that's fine, as long as you --

10 THE COURT: It's in the management agreement.

11 MR. LEWIS: Okay.

12 BY MR. LEWIS:

13 Q. Now, after you had the conservation easement did
14 you ask about getting your five lots?

15 A. Yes, sir.

16 Q. And explain the five lots to His Honor.

17 A. The five lots. The conservation easement allows,
18 as we've discussed before, that allows ten five-acre
19 lots, and with 50 percent ownership each owner would be
20 eligible to designate five five-acre lots and then have
21 those deeded to him for his individual use. That is one
22 of the reserved covenants of the conservation easements.

23 Q. And those owners of those lots would be bound to
24 the conservation easement just like you were as the
25 original people?

1 A. That's correct.

2 Q. And you'd be able to sell them or do whatever you
3 wanted with them?

4 A. According to the conservation easement, it allows
5 that.

6 Q. Now, did you ask that that be done?

7 A. Yes, sir.

8 Q. What year did you start asking?

9 A. I started asking in 2002, I believe.

10 Q. And what happened to your requests?

11 A. There was an exchange. There was actually a great
12 deal of effort on both of our parts to try to achieve
13 that. The problem we had was figuring out a way to
14 actually divide the property. The property is, as you
15 can see from the map, there's a series of marsh islands
16 that are interconnected by dikes in the middle of
17 impalements, i. e., rice fields, and therefore how do you
18 equally divide the property? So we struggled back and
19 forth with letters and diagrams of how to come up with an
20 equitable division.

21 Q. Let me ask you something. You say division of the
22 property. Did you ask just to designate the lots rather
23 than the division of the property?

24 A. I first asked to try to designate the lots.

25 Q. And what happened to that request just to designate

1 the lots?

2 A. Dr. Bowman apparently did not want to do that. I'm
3 not sure why, but apparently he did not want to designate
4 the five -- his five individual lots.

5 Q. Were you prepared to do that?

6 A. I was.

7 Q. And you never could get that done?

8 A. No, sir. And we went through an effort to try to
9 do that. It was difficult to value the different parts
10 of the property depending on whether it lies on the
11 river, which is a more valuable property, or whether it
12 was an inland tract. So it was a very difficult thing to
13 try to do, is to come up with an equal value for the
14 different segments of the property so that you could make
15 an equitable division.

16 Q. So then you went from there to try to divide the
17 property just in half; is that right?

18 A. That's correct.

19 Q. And when did that start?

20 A. I could go back to my letters but --

21 Q. Just approximately.

22 A. I think 2004, 2005, and we started trying to divide
23 the property, and again we went through different
24 scenarios. Larry would give me a proposal and I would
25 turn and give him a proposal, and neither one of us could

1 arrive at one that was acceptable to both. And at that
2 point we needed some outside help.

3 Q. And what did you do to get outside help?

4 A. And so it was suggested to us that we try to
5 arrange for a mediator, and we obtained the services of
6 Mr. Tom Wills to see if he could come up with a way that
7 we could equitably divide the property.

8 Q. And did you have that mediation?

9 A. We, after meeting with him -- or rather exchange of
10 letters, as Dr. Bowman has said earlier, we couldn't do
11 it ourselves with him so he suggested that we go through
12 a mediation process. At that point he obtained the
13 services of Mr. Glenn and Mr. Fields, and I obtained the
14 services of Mr. Murdaugh and Mr. Lenny Crawcheck to have
15 a mediation process, which we did here in Charleston.

16 Q. And as part of that mediation process it resulted
17 in the settlement agreement; is that correct?

18 A. That's correct.

19 Q. Do you have a copy of the settlement agreement?

20 A. I don't have that with me, no.

21 Q. It's in evidence. Plaintiff's 3. Was there a
22 division of the property as you -- in this settlement
23 agreement?

24 A. Yes, sir.

25 Q. And as I understand it, the division of the

1 property, your five lots would come out of your division
2 and his five lots would come out of his division?

3 A. Well, that would be the option, yes.

4 Q. And so that eliminated the problem of you all
5 agreeing where your five lots would go and where his five
6 lots would go?

7 A. Hopefully, yes.

8 Q. And once you identified the separate tracts did you
9 again ask him to let you sign your deeds for your lots?

10 A. Well, I asked to designate one five-acre lot, and
11 the reason I did that was because I didn't have a house,
12 I didn't have a place to stay, I didn't have a barn, I
13 didn't have a place to keep equipment. So I asked to be
14 able to designate a five-acre parcel so that I could
15 build something that would be of equal -- an equal
16 situation for me as Dr. Bowman has.

17 He fortunately had another house on Edisto Island
18 that was ten minutes away that he could use. I had no
19 house. My closest house was in Columbia.

20 Q. Well, did he then improve his cabin and his
21 buildings on his tract?

22 A. According to his testimony this morning he did.
23 I've never been in his buildings or his --

24 Q. And he said he spent \$75,000 to improve this, what
25 he calls a little bunkhouse.

- 1 A. That's what he said.
- 2 Q. Did you build a barn?
- 3 A. I built a barn.
- 4 Q. And did the barn have a loft?
- 5 A. The barn has a two-bedroom loft.
- 6 Q. And how much did it cost you?
- 7 A. The barn cost me approximately 120 to \$130,000 with
- 8 all the improvements.
- 9 Q. And now you have a place to stay and keep your
- 10 equipment?
- 11 A. Yes, I do.
- 12 Q. Just like him?
- 13 A. Just like him.
- 14 Q. Would he give you the five-acre lot? Would he sign
- 15 the deed for you to have the five-acre lot that was on
- 16 your portion of the property as determined at mediation?
- 17 A. No, sir. He would never relinquish or give me the
- 18 five-acre designation.
- 19 Q. Now, this settlement agreement, it divided the
- 20 property but it had a procedure to what to do with
- 21 reference to the divided property; is that correct?
- 22 A. That's correct.
- 23 Q. And one procedure was to see if Ducks Unlimited
- 24 would amend the conservation easement to allow you to do
- 25 that?

1 A. That's correct.

2 Q. And what does it say in the agreement about the
3 reduction of homesites?

4 A. This agreement, settlement agreement on page one,
5 last sentence I guess is what you are referring to?

6 Q. Yes, sir.

7 A. If Ducks Unlimited requires a reduction in
8 homesites then Bowman will give up the first homesite and
9 Alexander the second homesite.

10 Q. And you were willing to give up one of the
11 homesites?

12 A. Yes, sir.

13 Q. Now, did you ever submit any plan or did Dr. Bowman
14 ever give you any plan that would go to Ducks Unlimited
15 that would reduce it by one homesite?

16 A. He never gave me a plan. My understanding was when
17 we left the mediation was that since Dr. Bowman had
18 wanted the division to begin with when we left the
19 mediation my understanding was that his attorneys were
20 going to draft that proposal and then we were going to
21 Ducks Unlimited with it.

22 Q. Did you ever get that proposal?

23 A. I never got that proposal from him. I later
24 drafted a proposal which I asked him to submit and he
25 wouldn't agree to submitting that.

1 Q. Okay. So now we've left the mediation and we've
2 got a way to divide the property if Ducks Unlimited will
3 allow it?

4 A. Correct.

5 Q. Now, was there a provision of what to do if Ducks
6 Unlimited would not allow you to divide the property by
7 giving up one homesite each?

8 A. Yes. And Mr. Crawcheck, I think, made a very
9 strong point of that in the -- when after we finished the
10 mediation part and were all back in the room and were
11 signing documents he made the point that the conservation
12 easement does not call for a sub division.

13 So I think -- and I wasn't in the room with the
14 attorneys, but I suppose that the second proposal done by
15 the attorneys was the realization that Ducks Unlimited
16 may not grant a division at all and the second provision
17 is that if Ducks Unlimited won't grant that we would then
18 have a workable agreement that he would have -- we would
19 have basically a functional division. He would have
20 total and private use of his part, I would have total and
21 private use of my part.

22 Q. And that is found in paragraph four?

23 A. That is in paragraph four, In the event that Ducks
24 Unlimited does not permit the legal division of the
25 property, attorneys for the parties will draft agreements

1 to accomplish the separate use, control and
2 responsibility of and for the property; it being the
3 intent of the parties that each party will be responsible
4 for costs associated with his property and have exclusive
5 use of such property.

6 Q. Did you ever get any agreements to accomplish the
7 separate use, control and responsibility?

8 A. No, sir. That's what I was referring to. I never
9 did -- well, no, we never did -- no, I never got that.

10 Q. Did you ever ask Dr. Bowman why his attorneys
11 didn't send you one of those?

12 A. Well, no, I did not. But in one of his letters to
13 me he had said that -- when we got letters from Ducks
14 Unlimited initially indicating that they were not very
15 excited about the division he said that we would possibly
16 consider going onto the second phase, which is that we
17 just talked about.

18 Q. All right. And --

19 A. Second part of the settlement agreement.

20 Q. So did Dr. Bowman ever do anything to perpetuate
21 the second part of the agreement, to accomplish it?

22 A. Not to my knowledge.

23 Q. Were you willing to do that?

24 A. Yes, sir.

25 Q. Now --

- 1 A. I want to follow the agreement.
- 2 Q. The settlement agreement?
- 3 A. Yes, sir.
- 4 Q. You want either the first way, if not then go to
- 5 the second?
- 6 A. Yes, sir. That's what we agreed to.
- 7 Q. Now, under this agreement, the settlement
- 8 agreement, is there a way to sell the property, paragraph
- 9 eight particularly?
- 10 A. Yes, paragraph eight.
- 11 Q. What is it? Would you read it for us.
- 12 A. The parties agree that if one party wishes to sell
- 13 any part of his respective tract the selling party will
- 14 first offer the property to the other party at the
- 15 offering price and will not sell the property to a third
- 16 party for less than the offering price.
- 17 Q. So that's a control on if you're selling your lots
- 18 or selling your whole half or whatever?
- 19 A. Correct, sell any part of his respective tract.
- 20 That's what it says.
- 21 Q. Now, Dr. Bowman mentions his neighbor wanting to
- 22 buy this tract. Has he ever followed paragraph eight for
- 23 that?
- 24 A. No. I've never had an offer for his.
- 25 THE COURT: I think Dr. Bowman merely said he

1 expressed some interest, which is a long ways from making
2 an offer. That's the words, Expressed some interest.

3 BY MR. LEWIS:

4 Q. Has Dr. Bowman given you any indication of what
5 this fellow that has an interest will pay?

6 A. No. I don't know what he'll pay or if he will pay.

7 Q. Do you know who he is?

8 A. John Hamrick. I know him very well.

9 Q. What do you know of him? Is he able to buy
10 something like this?

11 A. I think based on his success in his business he's
12 probably able to buy a lot of things.

13 Q. Why do you think -- why did this impasse come about
14 so hard? Do you have a reason you think that has
15 happened?

16 A. It's difficult for me to understand what Dr. Bowman
17 wants. I'm not at all clear, but it appears that since
18 he's not been agreeable to all of the aspects we
19 previously agreed to and proceeded with the plan that we
20 agreed to in the settlement agreement that it appears
21 that he wants to force me to give up my half and maybe
22 even his neighbor buy it. And this is a depressed market
23 now. My half would be a lot less.

24 Your Honor, I've spent a lot of time and effort and
25 work down there, a lot of sweat equity, if you will. I

1 bought an old dump truck and I drove it down from
2 Columbia when I would come down on the weekend, load it
3 with rock and I would dump them out and drive back the
4 next weekend or the next day and come back two weeks
5 later. I'd spread those rocks out, I'd take care of the
6 roads, bush hog the property, keep it clean, keep it
7 appropriate. I did the best I could to maintain it in
8 the ways that the management was called for in the
9 conservation easement.

10 That property is part of me, it's part of my family
11 and we want to have the opportunity -- or I want to have
12 the opportunity to let my children enjoy it. I really
13 don't want it to be taken away from me, and I'm worried
14 and I've been worried through the years that that's what
15 Dr. Bowman wants to do. He wants to take it away from
16 me.

17 Q. Let me ask you something. Now, when you entered
18 this settlement agreement did you have an appraisal at
19 the time?

20 A. Yes, sir.

21 Q. And did they appraise both of the tracts?

22 A. Yes, sir.

23 Q. And what was the appraisal of your tract?

24 A. Actually, Tom Wills recommended that we have an
25 appraisal before the settlement mediation took place.

1 And the appraisal was divided into two different parts,
2 the two different separate parts. And the part that I
3 got was appraised at a certain value, and the part that
4 Dr. Bowman got was appraised at a certain value.

5 Q. Look at this appraisal and see if it refreshes your
6 memory as to the values.

7 A. The appraisal, my part was the -- Your Honor, do
8 you have this? I guess you have this appraisal.

9 Q. No, he only has the map with tract one.

10 A. My part that's appraised is an estimated value of
11 subdivided parcel number one, which is buying, is at
12 4,439,000. His appraisal for his estimated subdivided
13 parcel two is \$6,233,000. So basically it's about a
14 1.8 million dollar difference between his and mine, his
15 being the higher value.

16 Q. All right. So --

17 A. Now, with all due respect, Dr. Bowman gave the
18 option to me of whether I would pick one or the other and
19 I chose the lesser value.

20 THE COURT: How much did you say parcel one was?

21 A. Parcel one is about 1.8 million dollars difference
22 so it's -- now, this was appraised in 2007. I don't
23 think it would appraise for that today, but the estimated
24 appraisal value for parcel one is 4,439,000, and the
25 estimated value for parcel two was 6,233,000.

1 THE COURT: Thank you, sir. I just didn't hear
2 what you said.

3 Q. Now, during the last few years who's paid the taxes
4 on the property?

5 A. For the last -- since 2008, 2009 and 2010 I paid
6 all the taxes.

7 Q. And has Dr. Bowman reimbursed you for that?

8 A. He has not.

9 Q. Have you asked him?

10 A. I have.

11 Q. Now, have you also spent money to improve the
12 property --

13 THE COURT: Do you have a figure on the taxes?

14 Q. What is the figure on the taxes?

15 A. The tax, I think is around \$7,000.

16 THE COURT: Total or for the year?

17 DR. ALEXANDER: Total, I think. I could be wrong
18 on that, Your Honor. I got actual tax receipts. I can
19 give you the exact number.

20 THE COURT: Where?

21 DR. ALEXANDER: Airial, do you have those?

22 THE COURT: If you have those let's get a figure on
23 those.

24 DR. ALEXANDER: I may be high or low.

25 THE COURT: While she's looking go ahead. I just

1 -- so I can know that figure.

2 MR. GLENN: We don't have that figure.

3 THE COURT: I'm going to get it. We'll find the
4 tax receipts.

5 BY MR. LEWIS:

6 Q. Now, you also have spent money for improvements; is
7 that right?

8 A. Yes, sir.

9 Q. And how much does that come to?

10 A. Well, the barn, I mentioned, was approximately
11 120,000, 130,000, and I spent another 30,000 on a dock.

12 Q. And the barn is a joint barn?

13 A. Joint barn?

14 THE COURT: He said he built it, didn't he?

15 A. Joint what?

16 Q. Is it a barn on your property --

17 A. Yes.

18 Q. -- or is it on his?

19 A. No, sir. It's on mine.

20 Q. Well, what is on -- have you spent any money that
21 would benefit both parcels?

22 A. Did I spent any money since the division on both
23 parcels?

24 Q. Or before.

25 A. Before? A lot of money.

1 Q. What was that for?

2 A. That was for the rocks that I would haul down, that
3 was for dock construction that's being commonly used. We
4 had to go through a permitting process. It was
5 interesting because the way that property is you have to
6 have a Kings Grant in order to gain access from the high
7 ground to the mean low watermark. You have to go across
8 state property to get that.

9 In order to get that permit you have to pull -- you
10 have to approve a Kings Grant. Through an exhaustive
11 process, a lot of time legal and engineering, we were
12 able to get the Kings Grant which then allowed us to be
13 able to obtain dock permits, and then after that we built
14 a dock -- I built a dock itself.

15 Also, there was significant amount of erosion on a
16 very pretty part of the property we called Picnic Point,
17 which is enjoyed by both of us, obviously, since my
18 daughter got married out there and his daughter wanted to
19 get married out there. She couldn't because of a
20 rainstorm, but it's a very pretty part of the property.
21 It was eroding on the frontage. We had to obtain permits
22 in order to stabilize that bank, save the great old oak
23 tree, and that was a fairly expensive process, also.

24 Q. Now, how much? Do you have an amount of money that
25 you have spent to do these things that were beneficial to

1 the whole property?

2 A. For the bank stabilization and for the dock itself
3 the cost is around -- I think 53,000. Somewhere in
4 there. I think something like that. Dr. Bowman said I
5 charged him for hours earlier. That amount does not
6 include hours.

7 Q. Doesn't include labor?

8 A. It doesn't include labor, it doesn't include my
9 time spent.

10 Q. That just --

11 A. Material and construction. There was pile driving
12 by a separate company for the dock structure.

13 Q. And when was that done?

14 A. That was done prior to the mediation, so 2006 or 7.
15 Somewhere along there.

16 Q. Now, after the mediation have you done any work on
17 Dr. Bowman's property?

18 A. I try not to.

19 Q. Has he done any work on your property?

20 A. No, sir. I don't think so.

21 Q. Now, he also complained about someone walking down
22 the road at dusk and he was worried about them getting
23 shot because of -- do you know anything about that?

24 A. I think he was talking about my nine-year-old son
25 at this time who was coming back from deer hunting. I

1 was on the way to pick him up and he was coming back from
2 hunting.

3 Q. Well, what property was he on?

4 A. He was coming on the access road.

5 Q. So he would have been hunting for deer on whose
6 property?

7 A. He would be hunting for deer on my property.

8 Q. And then he was just walking down the access road?

9 A. Correct.

10 Q. Did anybody complain to you about your
11 nine-year-old son walking down the access road?

12 A. No, sir.

13 Q. Coming from deer hunting?

14 A. No, sir. Dr. Bowman was with Mr. Hamrick at the
15 time and I was greatly concerned that my child was okay,
16 and he was. Thank goodness.

17 Q. Now, and then there was a mention that someone was
18 throwing a net, a little child or children, a little boy
19 throwing a net in the pond.

20 A. That's also my nine year old who loves to fish and
21 do those type of things. I didn't know he was throwing a
22 net, a cast net on Dr. Bowman's property. Had I known
23 that I would have stopped that immediately and have told
24 him since that time that that's not allowed.

25 Q. Now, during this -- after the settlement agreement

1 did there come a time when you all needed to hire someone
2 to do a management study or a biological study?

3 A. The letters from Ducks Unlimited -- and I guess
4 that's what you are referring to?

5 Q. Yes.

6 A. They first off, of course, they denied the
7 division. The second letter, after I think Dr. Bowman
8 had asked them again, said that they would consider it by
9 an ongoing if we obtained a biological survey, i. e.,
10 wildlife biologist or some other person that would
11 present a plan that would not violate the biological
12 integrity of the property. So Mr. Bowman proposed that
13 we have Mr. Williams.

14 Mr. William is a wildlife biologist. Mr. Williams
15 was our initial wildlife biologist who actually did the
16 initial survey when we bought the property and
17 Mr. Williams had visited the property several times in
18 his later time of employment by Ducks Unlimited at that
19 time who were monitoring the property. I'd asked him
20 multiple times to try to come down and assist and make
21 sure we were doing the right management for the ponds and
22 so forth.

23 I had trouble getting his attendance and maybe he
24 has a perfect reason why for not doing that, but I was a
25 little bit reluctant to consider Mr. Williams at that

1 time. However, the real reason that I didn't want to
2 consider Mr. Williams is because his contract called for
3 me to indemnify him. I was advised by my counsel at that
4 time, Mr. Tom Runge (ph), not to allow that.

5 Q. So you complained about the indemnification and
6 that was why you didn't go -- the main reason you didn't
7 go forward with Mr. Williams?

8 A. That's correct, but since that time we hired
9 Mr. Williams, who has completed the study.

10 Q. Did he ask for an indemnification?

11 A. No, sir. That's why I contacted Coy Johnston. We
12 got him to do the study without asking for
13 indemnification.

14 Q. Now, let's talk about that a minute. Now, was
15 there a period of time through which -- well, let's go
16 through some of these letter. That will be just as easy.
17 Let's look at the letter of March 6, 2008. You talked
18 about Ducks Unlimited not approving the -- you see that?

19 A. Did you need her to mark this? I don't think she's
20 got this one.

21 MR. LEWIS: Yes. We'd like to offer that into
22 evidence.

23 THE COURT: Which one? What number is it?

24 MR. LEWIS: March 6, 2008.

25 MR. GLENN: No objection.

1 THE COURT: Defendant's Exhibit Number 2, a letter
2 from March 6th, admitted without objection.

3 (WHEREUPON, Defendant's Exhibit No. 2, a Letter,
4 was marked and admitted into evidence.

5 BY MR. LEWIS:

6 Q. And you talked a little earlier about a letter from
7 the Ducks Unlimited and that -- where they turned down
8 the request. Is that the letter you're talking about?

9 A. Yes, sir.

10 Q. And what does it say?

11 A. You want me to just read the whole thing?

12 Q. No, just generally say.

13 A. Well, in the second sentence it says, As you are
14 aware from previous conversations with both of you the
15 conservation easement does not allow the division of the
16 property to separate ownership except for creation of
17 certain building sites. So they basically denied.

18 Q. So then at that time did you try to get -- go to
19 step two and get the management agreement?

20 A. Yes, sir. That's what I've been waiting on, I
21 guess. I don't know if I tried to get it other than I
22 was thinking it was going to come.

23 Q. Did that participate [sic] the talk about
24 Mr. Williams?

25 A. Did that precipitate?

1 Q. Yeah.

2 A. Yes, I guess so.

3 Q. And then --

4 A. Well, I don't think this did because this doesn't
5 say anything about the wildlife biologist. It just says
6 that D. U. is unable to grant the request to legally
7 divide the property.

8 Q. Then the next letter did, the March 26th letter?

9 A. The March 26th said that they would consider it on
10 an ongoing basis and would like the input from a wildlife
11 biologist and/or another -- there's another statement
12 there. I don't have that letter either.

13 Q. All right. Now then I'm going to show you a letter
14 of December 17th, 2008 and ask you if you remember.

15 MR. GLENN: No objection to that.

16 A. I do.

17 Q. And what was that letter?

18 A. That was a letter to Dr. Bowman offering him
19 another name for a person who was recommended to me that
20 could complete a study saying that the biological
21 integrity would not be upset or interfered with.

22 Q. Who recommended that -- is it Mr. Folk?

23 A. Yeah, recommended Mr. Folk.

24 Q. Who recommended him?

25 A. He's a pretty prominent conservationist.

1 Q. And what happened to that request that you all hire
2 Mr. Folk?

3 A. I was informed that he was a forester and was not
4 acceptable.

5 Q. All right. Then did you continue to try to find
6 someone that was acceptable that wouldn't require an
7 indemnification agreement?

8 A. I think through your help we submitted at least
9 three or four other names that could perform the study
10 for us.

11 MR. LEWIS: Could we mark that as an exhibit,
12 please.

13 THE COURT: Number 3, any objection?

14 MR. GLENN: No objection.

15 (WHEREUPON, Defendant's Exhibit No. 3, a Letter,
16 was marked and admitted into evidence.)

17 BY MR. LEWIS:

18 Q. Looking at Exhibit 4, what is that?

19 A. This is a letter from Ms. King to Mr. Glenn saying
20 -- listing three people that potentially could prepare
21 the management plan.

22 Q. And did anybody accept any of those three people?

23 A. Not to my knowledge.

24 Q. I'm going to show you another letter and see if you
25 remember that one.

1 MR. GLENN: No objection.

2 THE COURT: Defendant's Exhibit Number 5 admitted
3 without objection.

4 (WHEREUPON, Defendant's Exhibit No. 5, a Letter,
5 was marked and admitted into evidence.)

6 MR. LEWIS: No objection to 4. We'd move that it
7 be admitted.

8 (WHEREUPON, Defendant's Exhibit No. 4, a Letter,
9 was marked and admitted into evidence.)

10 MR. GLENN: No objection.

11 MR. LEWIS: And we'd move 5 be admitted without
12 objection.

13 BY MR. LEWIS:

14 Q. What is that, Number 5?

15 A. Number 5 is another letter from Ms. King to
16 Mr. Glenn. She made sure that -- she was making sure
17 that he'd received the list of names with the previous
18 letter and wanted to know if you or Dr. Bowman had
19 selected one of those.

20 Q. And did you ever get any word that they accepted
21 one of those people?

22 A. Not to my knowledge.

23 Q. And then at that time did Coy Johnston come back
24 into the picture?

25 A. Yes, he did.

1 Q. How did that happen?

2 A. Well, Coy Johnston, of course, as I said, who
3 originally contacted us in 1995, was now in his own
4 private business and since he had an incredible amount of
5 experience with all of this Dr. Bowman and I actually
6 talked and agreed that he would be a very logical person
7 to get to help us meet with Ducks Unlimited, find out
8 what possibilities existed in support of our case with
9 them. So we contacted Coy and asked him if he would do
10 that, and he accepted.

11 Q. And who was going to do the biological plan for
12 Mr. Johnston?

13 A. He recommended Mr. Williams again, which I had no
14 problem with, and he made sure I told Coy the problem I
15 had with Mr. Williams was not Mr. Williams'
16 qualifications but was the fact that he wanted me to
17 indemnify him for which I had legal counsel not to do so,
18 and so he recommended Kenny Williams, who I perfectly
19 agreed with.

20 Q. And what did Mr. Johnston come up with; do you
21 remember?

22 A. Well, I think there was -- I wasn't at the
23 deposition.

24 Q. Before that, the letter; do you remember?

25 A. I don't remember the exact words but I think he

1 said in his first meeting with them that Ducks Unlimited
2 would request us to give up four -- no, six house sites.
3 So we end up with two five-acre lot together in what he
4 called an envelope, a ten-acre envelope on a restricted
5 part of the property.

6 Q. Well, I'd like you to look at Plaintiff's Number 8.
7 Do you remember looking at this report from Mr. Johnston?

8 A. I do.

9 Q. And what did you take away from that report?

10 A. Well, I guess the last paragraph on the first page,
11 In order for D. U. to consider any amendment the easement
12 would have to be further restricted. That's the first
13 thing.

14 Q. And what was his recommendation on lots?

15 A. His recommendation, the easements will be
16 threatened by having ten five-acre parcels shared by two
17 owners. The management plan will show the division will
18 not impair the conservation values of the property, in
19 other words, it meets one of Ducks Unlimited criteria.

20 Q. What are you reading with, what Exhibit Number, 8?

21 A. Yes, sir, on the second page.

22 Q. Second page, and what does it say?

23 A. It says, Easement value will be threatened by
24 having ten five-acre parcels being shared by two owners.

25 Mr. Johnston was of the opinion that the ten

1 five-acre parcels were not good for duck because if you
2 put them out among the duck fields you'll frighten things
3 away, frighten the duck away.

4 Q. So what did he recommend -- if you divided, what
5 did he recommend in the last paragraph?

6 A. In the last paragraph the recommendation in the
7 letter to Ducks Unlimited asks for each of you to retain
8 two five-acre subdivisions. We think this is your best
9 offer and you should be prepared to give them all up.
10 Old Dominion has a lot of possibilities and with your
11 stewardship wildlife will respond.

12 Q. So now he says that he'll recommend two?

13 A. Two.

14 Q. Two. Now I'd like for you to look at another
15 letter of August 10th, 2011 and see if you recognize that
16 letter.

17 A. I do.

18 Q. Now, this is from Coy Johnston and it's the last
19 letter we looked at where he said two lots we now -- that
20 was marked second, Plaintiff's Exhibit 8; do you
21 remember?

22 A. Yes, sir.

23 Q. And now we're looking at a letter of August 10th,
24 2011. It's some months from the prior letter.

25 A. Uh-huh.

1 Q. And now what does Mr. Coy Johnston want you to
2 accept?

3 A. I recommend that each of you have a single building
4 envelope not to exceed ten acres which shall include the
5 present dwellings.

6 Q. So now you're down to one lot each; is that
7 correct?

8 A. One ten-acre lot each, correct.

9 Q. Where the dwellings are?

10 A. Correct.

11 Q. And now were you confused at this time as to what
12 Ducks Unlimited would do?

13 A. Yeah. I am confused about what they will do and
14 not do. I'm also a little bit confused about what
15 Mr. Johnston is saying, also.

16 MR. LEWIS: Yes, we'd like to mark that as an
17 exhibit and move it into evidence.

18 MR. GLENN: No objection.

19 (WHEREUPON, Defendant's Exhibit No. 6, a Letter,
20 was marked and admitted into evidence.)

21 MR. LEWIS: We would, Your Honor, ask you to take
22 judicial notice of the notice of deposition that was done
23 by us for Mr. Coy Johnston and the deposition notice was
24 August 31st, 2011.

25 THE COURT: Okay. That's fine.

1 BY MR. LEWIS:

2 Q. Now, what at this time, Dr. Alexander -- did you
3 understand the deposition was going to be taken to figure
4 out what Mr. Coy Johnston would do?

5 A. Correct, to clarify what he was saying he would do.

6 Q. And the deposition was taken of Mr. Johnston?

7 A. Correct.

8 Q. And as a result of that were you -- did we send a
9 letter to -- did we send a letter to or did you send a
10 letter to Ducks Unlimited and ask that they consider an
11 amendment to the conservation easement based upon what
12 Mr. Coy Johnston and what Mr. Williams said?

13 A. We did.

14 Q. And I'm going to show you a copy and see if you
15 remember that this is that letter.

16 MR. GLENN: No objection.

17 MR. LEWIS: We'd move it into evidence as --

18 A. I do remember.

19 THE COURT: Defendant's Exhibit 7 admitted without
20 objection.

21 (WHEREUPON, Defendant's Exhibit No. 7, a Multi-Page
22 Document, was marked and admitted into evidence.)

23 BY MR. LEWIS:

24 Q. Looking at Plaintiff's Exhibit 7, is this your
25 attempt to live up to your obligations under the

1 settlement agreement plan one?

2 A. Yes, sir.

3 Q. And if plan one is accepted by Ducks Unlimited will
4 you follow it?

5 A. Yes, I will.

6 Q. Now, if it's not accepted by Ducks Unlimited would
7 you follow the plan two?

8 A. Yes, sir.

9 Q. Do you understand that the plan in there by
10 Mr. Williams, he testified in his deposition that it
11 works whether you divide the property in fee or you don't
12 divide property in fee. You still have to follow his
13 plan no matter what.

14 A. Correct.

15 Q. Do you understand that he removes the box that is
16 on the road to, I guess it's Picnic Point?

17 A. Correct.

18 Q. Now, in the past Ducks Unlimited said that that
19 couldn't be moved, that was essential.

20 A. Yeah. That actually is a point of contention that
21 we'd raised before, that there was a circulation box
22 connection between the two properties, the most northern
23 part and the part of Dr. Bowman's, and Ducks Unlimited
24 came and did their annual inspection. Dr. Bowman was
25 preparing his dike on the river and put in a temporary

1 dam there that dammed that controlled structure up.

2 Ducks Unlimited was concerned that that was blocked off

3 and asked us to remove it, which we did.

4 Q. Now, when Mr. Kenny Williams comes in he now says
5 that it's okay to remove it.

6 A. That's what he says.

7 Q. So Ducks Unlimited is going to have to approve that
8 to be able to remove that?

9 A. That's correct.

10 Q. And even if Ducks Unlimited doesn't accept the
11 division of the properties you can operate the two
12 separate properties without that box, according to
13 Mr. Williams?

14 A. According to Mr. Williams we can.

15 Q. And did you send that proposal to Ducks Unlimited?

16 A. We did.

17 Q. And I'm going to show you Exhibit Number 8?

18 MR. GLENN: No objection.

19 (WHEREUPON, Defendant's Exhibit No. 8, a Letter,
20 was marked and admitted into evidence.)

21 BY MR. LEWIS:

22 Q. And then our letter that we sent was October 7th,
23 2011; do you remember that?

24 A. Yes, sir.

25 Q. And then on October 13th do you have a letter that

1 was sent to Ducks Unlimited?

2 A. This is a letter -- yeah, from Mr. Glenn to Ducks
3 Unlimited.

4 Q. And what does it say about your proposal?

5 A. It says that the trial of the case has been
6 scheduled. Dr. Bowman now believes it would be in the
7 best interest of all parties for Ducks Unlimited to
8 withhold the decision on the legal division of Old
9 Dominion.

10 Q. Now, under the settlement agreement the part one is
11 dependant upon a decision by Ducks Unlimited, isn't it?

12 A. Correct.

13 Q. And you read that letter to say we don't want you
14 to make a decision as required under part one of the
15 settlement agreement?

16 A. That's correct. They are asking them not to make a
17 decision.

18 Q. Are you willing to go with what -- if Ducks
19 Unlimited approves that are you willing to accept that?

20 A. If Ducks Unlimited approves?

21 Q. Our submission.

22 A. Yes, I am.

23 Q. Are you willing to divide the property in half in
24 use and control like plan two determines? Is that
25 something you'd do?

1 A. Yes, sir. I call that functional use. Yes.

2 Q. And all of you would be under Mr. Williams' methods
3 of management?

4 A. Sir?

5 Q. You'd be under Mr. Williams' management plan?

6 A. We have been under his management plan since 1995.

7 Q. Now, I hope this isn't a silly question but we got
8 this big plantation out there with all these impalements,
9 how the ducks been doing?

10 A. The ducks last year, one of the better years we've
11 ever had. We had our population up quite dramatically
12 last year, which I'm a duck hunter and I don't know if
13 there's many others in this room but I'm one of those
14 crazy guys that gets up, goes out there in the cold and
15 ice and shoots those ducks. I'm not so good at shooting,
16 but anyway, our duck population was up. I don't have to
17 shoot anymore. I call for my son and I use my dog to
18 retrieve, but I do enjoy it.

19 Q. But the plantation is --

20 A. Doing well for ducks.

21 Q. And its main goal is duck habitat?

22 A. Right. That was the whole reason we went with
23 Ducks Unlimited to begin with because that was the
24 purpose, to try to protect and enhance a property that
25 would provide habitat for ducks.

1 Q. And so it's improved in that regard?

2 A. It's improved. The best year we've ever had last
3 year.

4 Q. Now, you're asking this Court to -- under the
5 settlement agreement to enforce the settlement agreement
6 which as part of it there's a note that's signed; is that
7 right?

8 A. There's a note. That's right, from Dr. Bowman.

9 Q. Would you --

10 MR. GLENN: No objection.

11 THE COURT: Defendant's Exhibit Number 9 admitted
12 without objection.

13 (WHEREUPON, Defendant's Exhibit No. 9, a Note, was
14 marked and admitted into evidence.)

15 THE COURT: We'll take about a 10, 15-minute break.

16 MR. LEWIS: Thank you, Your Honor.

17 (WHEREUPON, a brief recess was taken.)

18 THE COURT: Yes, sir, please proceed.

19 BY MR. LEWIS:

20 Q. We moved into evidence a note. Do you have a copy
21 of that note? You're looking at a note. Is that a note
22 that you got?

23 A. Yes, sir.

24 Q. And it is a note that someone owes you money?

25 A. Yes, sir.

- 1 Q. And who owes you money?
- 2 A. Larry S. Bowman.
- 3 Q. And how much does he owe you?
- 4 A. 250,000.
- 5 Q. Has he paid you any?
- 6 A. He's paid me one payment, yes.
- 7 Q. And when was he supposed to pay you the next
- 8 payment?
- 9 A. 2009.
- 10 Q. Did he pay it?
- 11 A. No, sir.
- 12 Q. When is the next one due?
- 13 A. 2010.
- 14 Q. Did he pay it?
- 15 A. No.
- 16 Q. When is the next one due?
- 17 A. Now.
- 18 Q. And has he paid it?
- 19 A. No, sir.
- 20 Q. Now, all this time have you all been operating this
- 21 property out there as if you were under plan two?
- 22 A. Yes, sir. In other words, we've had a functional
- 23 division and use of the property.
- 24 Q. And the only thing that's lacking is that you have
- 25 been unable to get him to deed you your tracts; is that

1 correct?

2 A. One five-acre tract, yes, or any other tracts.

3 Q. And have you asked for the other tracts to be
4 deeded?

5 A. No, sir.

6 Q. And I guess the reason that he won't give you the
7 five-acre tract --

8 MR. GLENN: I object to leading since he --

9 THE COURT: I'll sustain the objection. He doesn't
10 know why he's doing it.

11 MR. LEWIS: I was asking him why he didn't do it
12 but that's all right, Your Honor.

13 THE COURT: Okay. Why Mr. Bowman didn't do it?

14 MR. LEWIS: No. He doesn't have any idea why
15 Mr. Bowman --

16 THE COURT: I know he doesn't. I thought you were
17 asking why Mr. Bowman hadn't deeded him the property.

18 BY MR. LEWIS:

19 Q. Now, you still want that property, the five tracts
20 deeded to you; is that correct?

21 A. Yes, sir. I'm entitled to it according to the
22 conservation easement.

23 Q. And according to the settlement agreement you're
24 still under the conservation easement; is that correct?

25 A. And the operating agreement. That's correct.

1 Q. And the only difference is that you are not sharing
2 certain portions of the land?

3 A. Correct.

4 Q. And have you lived up to that non sharing?

5 A. I've tried to.

6 Q. Except for your son fishing in the lake?

7 A. Throwing a cast net.

8 MR. LEWIS: Your Honor, we have the tax for '08,
9 '09 and '10.

10 THE COURT: Okay.

11 MR. LEWIS: We'll mark those in, please.

12 THE COURT: Any objection?

13 MR. GLENN: We believe we've paid '08. '09 and '10
14 is owed but we object to '08.

15 THE COURT: Okay. You object to the tax return or
16 you just object to him saying you --

17 MR. GLENN: Saying that we owe it.

18 THE COURT: Huh?

19 MR. GLENN: Dr. Bowman said we did not owe except
20 for '09 and '10.

21 THE COURT: Okay. Well, I'm going to let him mark
22 '08, '09 and '10.

23 MR. GLENN: Okay.

24 THE COURT: Over your objection. Now, you can
25 offer your testimony in reference if you so desire,

1 Mr. Glenn, at the appropriate time. All right. This is
2 Exhibit Number 10.

3 (WHEREUPON, Defendant's Exhibit No. 10, Tax
4 Records, were marked and admitted into evidence.)

5 BY MR. LEWIS:

6 Q. Now, that is the taxes on the agricultural use of
7 some 600 some acres. Do you pay your taxes on your
8 little barn and your loft separately?

9 A. Yes, sir.

10 Q. So that those taxes don't have anything to do with
11 your separate piece of property?

12 A. You mean by taxes for Dr. Bowman to pay? No, he
13 doesn't pay any of that.

14 Q. Okay. Now, did he pay eight, or do you know?

15 A. I'm not sure. I know that I paid it because I've
16 got it marked but I don't know if he's paid me back.

17 Q. Well, did he pay you back for nine?

18 A. I don't think so.

19 Q. Ten?

20 A. I don't think so.

21 Q. Now, during the testimony it came out that some of
22 the bigger projects on your property, like joint burning,
23 did you have joint burning?

24 A. Well, we burned. I think his manager burned and I
25 burned, yes.

1 Q. And did you all have any problem with that? And
2 what is burning?

3 A. It's recommended by Mr. Williams in the management
4 plan. There's two ways to try to reduce emerging
5 vegetation into the ponds, which you want open water to
6 attract ducks. So there's two ways to control the
7 vegetation growing in and getting rid of the open water.
8 One is by burning and one is by flooding, and so
9 Mr. Williams recommends some of both.

10 Q. And burning just means what it is, you go in there
11 and you light a fire on the vegetation?

12 A. You set the fields on fire.

13 Q. And you all did that?

14 A. We did that.

15 Q. And was there any problems in that --

16 A. No, sir.

17 Q. -- joint --

18 A. We've been doing it on and off since 1995.

19 Q. And without problem?

20 A. Without problem. And since the mediation there
21 hadn't been any problems with him burning on his and me
22 burning on mine.

23 Q. All right. What else do you do on your property
24 that you try to coordinate?

25 A. Well, you know, obviously you would like to try to

1 maintain the same amount of protection for the game and
2 try to keep it quite.

3 Q. Has that been working?

4 A. Well, try. Yes, I think it has. Dr. Bowman has
5 been successful killing deer, I've been successful -- or
6 my sons have been successful killing deer. I don't deer
7 hunt.

8 Q. And of course you said this is the best year of
9 ducks you've had?

10 A. Right.

11 Q. What else do you do out there besides deer and
12 duck?

13 A. You can crab, and you can fish, and you can observe
14 wildlife.

15 Q. Do you do turkeys?

16 A. We have some turkeys but the turkey population is
17 so small that it would be best not to hunt them right
18 now.

19 Q. All right. So and then I believe you said that you
20 had a timber cutting; is that right?

21 A. Correct.

22 Q. Was the timber cutting just on your land?

23 A. No, it was on both of us.

24 Q. Did you have any problem with that?

25 A. No, sir, not that I know of.

1 Q. Now, he has his fixed-up little cabin and you have
2 your loft above the barn.

3 A. Correct.

4 Q. And you go out there and you sleep and do whatever
5 you want to and I suppose he goes to his and does
6 whatever he wants to. Have you all had any problem with
7 you being in your barn and him being in his cabin?

8 A. Not that I know of.

9 Q. Have you had any problem with you being out there
10 when he's out there since the --

11 A. Not for me.

12 Q. Since the settlement agreement?

13 A. Not for me.

14 Q. Have you had any complaints from him since the
15 settlement agreement?

16 A. Complaints from -- yes. I've had some complaints
17 from his attorney.

18 Q. And what did he complain about?

19 A. He complained that I went on his dike one time that
20 we discussed.

21 Q. All right. And anything other than that?

22 A. He complained about vandalism.

23 Q. What vandalism?

24 A. I don't know. He said there was vandalism, and I
25 had vandalism, too. I had someone who tried to shoot my

1 lock off and did.

2 Q. Did they insinuate that you were the vandal?

3 A. I don't think so but...

4 Q. Good.

5 A. He just mentioned the problem.

6 Q. Anything else other than you being on the dike and
7 that both of you all had vandalism?

8 A. He complained that I didn't pay for his equipment.

9 Q. And what is your answer to that?

10 A. My answer to that is that he owes me, I owe him.
11 The way I thought it was going to work with the equipment
12 -- the equipment is old. Some of it doesn't even run.
13 So I was hoping that he would take part of this old
14 equipment and I would take part of the old equipment and,
15 you know, there wouldn't have to be an exchange of money.
16 So that -- I got kind of stuck with all of it. So some
17 of it still doesn't work.

18 And, you know, he still owes me, I felt, for things
19 that -- for taxes and so forth that I've done, and I've
20 actually -- my legal representative before had written
21 him several years back to take the taxes that he owed me
22 and offset the amount that I owed him. So, you know, and
23 he still owes me a lot on the promissory note.

24 Q. So it's just a matter of balancing the owes and the
25 debts and then you'd be happy?

1 A. I'd be very happy.

2 Q. All right. Anything else he complained about?

3 A. I don't think so, that I can recall. I'm sure I'll
4 find out about it.

5 Q. How long have you all owned this piece of property
6 together?

7 A. Since 1995.

8 Q. That's 16 years. And in 16 years we've heard about
9 your son being in the wrong place, a fence being knocked
10 down --

11 MR. GLENN: I object to the testimony by the
12 lawyer, Your Honor.

13 THE COURT: I'm sorry. What was your objection?

14 MR. GLENN: He was just testifying.

15 THE COURT: Okay. Don't lead the witness.

16 BY MR. LEWIS:

17 Q. Is there anything -- I mean, do you feel there's
18 been any problems out there other than the normal
19 problems of people that have owned something 16 years
20 together?

21 A. I don't think so. I don't think there's any major
22 problems that can't be overcome, if there's any problems
23 there. I mean, we've agreed to a functional separation
24 and/or a division. The property is a very large piece of
25 property and I don't -- you know, I mean, I just don't

1 understand.

2 Q. And you've been operating under this functional
3 division since the settlement agreement that we've talked
4 about dated September 10, 2007?

5 A. That's correct.

6 Q. So that's four years.

7 MR. LEWIS: Nothing further. I said nothing
8 further. I'm sorry. You didn't hear?

9 MR. GLENN: I didn't hear you. I'm getting old,
10 too.

11 THE COURT: How long you think your cross will be?

12 MR. GLENN: Twenty minutes, 30 minutes.

13 THE COURT: Okay. I mean, I'm not trying to cut
14 you short. I'm just trying to -- you think we can finish
15 this today or have to come back tomorrow?

16 MR. GLENN: I'm very hopeful we can finish it in a
17 few minutes.

18 THE COURT: Okay. Thank you.

19 CROSS-EXAMINATION

20 BY MR. GLENN:

21 Q. Dr. Alexander, you and Dr. Bowman were once close
22 friends, were you not?

23 A. Yes, sir.

24 Q. Families were friends?

25 A. Yes, sir.

1 Q. Has your ownership of Old Dominion together
2 affected the friendship?

3 A. Has it affected it?

4 Q. Has it affected it.

5 A. Sure it has.

6 Q. There's been a lot of problems through the years,
7 have there not?

8 A. Well, obviously so. I don't think we would be here
9 today if there wasn't.

10 Q. Right. And it got to the point that you felt like
11 you were at a deadlock and asked for the mediation, did
12 you not?

13 A. You keep using the word deadlock. I don't know
14 what deadlock means. Deadlock means that we tried to
15 work out something between us and we never could reach an
16 agreement. We needed some assistance and so we asked for
17 a mediator to assist us in resolving the issues. It's
18 not a deadlock. That's two willing parties trying to
19 work together.

20 Q. You acknowledge in your answer that you were
21 deadlocked at the time of your mediation, did you not?

22 A. I don't remember that.

23 Q. Well --

24 A. You said that but I don't remember that.

25 THE COURT: Wait a minute. Hold on now. Doctor,

1 listen to his question and answer it. Don't interrupt
2 him.

3 DR. ALEXANDER: I'm sorry.

4 THE COURT: He'll ask the question, you answer the
5 question. She can't take both of you down at once and I
6 can't listen to both of you at the same time, okay.

7 You may proceed.

8 MR. LEWIS: And that goes for Mr. Glenn, too. He's
9 not supposes to interrupt.

10 THE COURT: I understand. He understands that.

11 Go ahead, Mr. Glenn.

12 BY MR. GLENN:

13 Q. You had a lot of trouble leading up to the
14 mediation, did you not? You could not solve your own
15 problems.

16 A. We had a difference of opinions, yes.

17 Q. Dr. Bowman complained often about what he called
18 your dominating use of the property, did he not?

19 A. He has.

20 Q. And he complained often that you would show up when
21 it was his week or your family would show up when they
22 shouldn't have been there; isn't that right?

23 A. That's what he claims.

24 Q. Well, it was true, wasn't it?

25 A. That's what he claims.

1 Q. Well, was it true?

2 A. Not always, no.

3 Q. A lot of times was it true?

4 A. Well, there was some times that maybe I shouldn't
5 have been there and, you know, I apologized to him in the
6 past for that.

7 Q. He complained about some of the construction that
8 you had done without talking to him about it, did he not?

9 A. Yes, he did.

10 Q. And you did that, didn't you?

11 A. I did, all of which he's used.

12 Q. Beg your pardon?

13 A. All of which he's used. He's used the screen
14 porch, he's used the addition to the bunkhouse.

15 Q. You did do construction work and improvements out
16 there without consulting him, did you not?

17 A. Improvements, that's correct.

18 Q. Let me show you this letter from you to Dr. Bowman
19 April 22, 2004.

20 MR. LEWIS: Your Honor, we object to this. This
21 would be prior to the mediation and everything merged
22 into the mediation. There's no question that there was
23 disagreements prior to the mediation but a settlement
24 agreement was reached and that would be the start of this
25 case today.

1 THE COURT: I think I've already overruled that one
2 time. I'll overrule it this time.

3 MR. GLENN: We'd offer this letter into evidence,
4 Your Honor.

5 THE COURT: What's the letter? Have you shown it
6 to counsel?

7 MR. GLENN: Yes, Your Honor.

8 THE COURT: It's to Mr. Bowman --

9 MR. GLENN: Dr. Alexander wrote the letter to
10 Dr. Bowman.

11 THE COURT: Any objection to the letter, other than
12 what you already made?

13 MR. LEWIS: No, sir. That's the only objection I
14 have to all this information, and I'm sorry I have to
15 make it but if I don't make it I can't preserve it.

16 THE COURT: I understand. You can make any
17 objections you want to make. I'll be happy to hear you,
18 okay, any time.

19 The letter is admitted with objection.

20 (WHEREUPON, Plaintiff's Exhibit No. 10, a Letter,
21 was marked and admitted into evidence.)

22 BY MR. GLENN:

23 Q. Doctor, I'd ask you to read the second paragraph on
24 the second page of that letter, please.

25 A. As you now, Lisa and I plan -- Lisa is my wife.

1 She's -- boss is Bris Marchant (ph). She lives here in
2 Charleston. Lisa and I plan to build a house, build on
3 Picnic Point. I've invested time, money in upgrading the
4 roads, proceeding the stabilization of the bank around
5 Picnic Point. I want to make sure you know that I am
6 paying for all those costs.

7 MR. GLENN: Your Honor, if I could have just a
8 second. I thought I had copies of this next letter.

9 (PAUSE)

10 MR. GLENN: Sorry. I misplaced my copies. I'll
11 show it to Mr. Lewis.

12 MR. LEWIS: Okay.

13 BY MR. GLENN:

14 Q. Doctor, I ask you to look at the letter dated March
15 27, '06. Did you send that to Dr. Bowman?

16 A. I did.

17 MR. GLENN: I'll offer this in evidence, Your
18 Honor.

19 THE COURT: Any objection?

20 MR. LEWIS: No, sir.

21 THE COURT: Plaintiff's Number 11 admitted without
22 objection.

23 (WHEREUPON, Plaintiff's Exhibit No. 11, a Letter,
24 was marked and admitted into evidence.)

25 BY MR. GLENN:

1 Q. I'll ask you to start reading on the second
2 paragraph on the second page, and read down several
3 paragraphs there.

4 A. Second paragraph?

5 Q. Yes, sir.

6 A. Once we obtained these permits I thought -- this
7 was talking about the dock, exhaustive process to go
8 through the dock permitting process. I thought it would
9 be prudent to proceed with dock construction immediately,
10 and since you signed the designation for the permits I
11 thought I had your permission to -- your permission and
12 knowledge to proceed. I apologize if I did not.

13 I am also quite confident if the dock permits had
14 not been pursued and construction started then our
15 ability to obtain permits in the future will be greatly
16 diminished. For several years Lisa and I, again my wife,
17 and I have been wanting to build at Old Dominion, and I
18 had asked and I thought I had received your permission to
19 proceed at Picnic Point.

20 Over the past few years I put in many, many hours
21 of personal work, effort and funds in upgrading and
22 protecting the shoreline and land at Picnic Point. I
23 have also spent an incredible amount of time in road
24 construction throughout the property, improving the
25 aesthetics, farming and general maintenance. All of

1 these efforts have improved the property and increased
2 the value. I thought that I not only had your permission
3 but also, parenthesis, since your time is more limited
4 had your encouragement.

5 At Picnic Point for both protection at the dock a
6 boat lift is needed, also running water is needed there
7 and therefore a well is required. Both of these require
8 electricity as well as construction. I thought I had
9 your permission to run the preferred underground
10 electrical cable preferred as to above ground.

11 If I have made false presumptions about all of the
12 above I apologize. If this has caused some or all of the
13 present conflict please let me know. Despite the fact
14 that Picnic Point is most scenic area to build Lisa and I
15 will be willing not to build there and preserve it for
16 recreational joint use.

17 Larry, I'd like to resolve all these issues as soon
18 as possible. I am willing to meet with you and with your
19 representatives, and if necessary a mediator to work all
20 this out. Obviously, the present proposals that we have
21 presented to each other are not acceptable.

22 If none of the above is an option for you I stand
23 ready to purchase your half with a fair market value as
24 described in our agreements. This letter is also very
25 difficult for me to write. Please let us try to resolve

1 these issues as soon as possible. Don.

2 Q. Dr. Alexander, you were not able to resolve any of
3 those issues between the two of you, were you?

4 A. It wasn't for lack of effort, Mr. Glenn.

5 Q. Right, but you weren't able to do it. Whether it's
6 your fault or his fault you weren't able to resolve them?

7 A. That's why we went to a mediator.

8 Q. Right. When did Dr. Bowman first start talking to
9 you about the possibility of a legal division of Old
10 Dominion?

11 A. I don't remember. What was the date of that last
12 letter?

13 Q. Beg your pardon?

14 THE COURT: March, 27th '06.

15 A. It was sometime after that. Obviously, it was
16 between March of that time and the mediation in 2007.

17 Q. Didn't he actually start suggesting that to you and
18 talking to you back in '02 and '03?

19 A. Ask the question again. Let me make sure I
20 understand.

21 Q. Did he start suggesting to you that it appeared the
22 only way to work it out is to do a division or for you to
23 buy him out?

24 A. I don't recall that. I thought we were going to --
25 from my perspective, again, I was hoping that we would

1 designate our five areas and have our individual use.

2 Q. The conservation easement is in the name of the
3 limited liability company, is it not?

4 A. It is.

5 Q. And it does not require the deeding off any
6 property, does it?

7 A. Does not require the -- I don't know what that
8 means.

9 Q. The conservation easements reserves ten five-acre
10 tracts for the owner of the property, the LLC, does it
11 not?

12 A. Again, I'm not sure.

13 Q. There's nothing in the conservation easement that
14 says Dr. Bowman gets five and Dr. Alexander gets five, is
15 there?

16 A. No, but I think in -- well, I don't know. In the
17 operating agreement I think it's a 50/50 unit, and it
18 says ten units and, you know, each get five.

19 Q. There's nothing that requires the two of you to
20 agree that the LLC can deed those lots, is there?

21 A. I don't know that.

22 Q. You haven't been able to agree. He hasn't agreed
23 to convey any lot to you; is that right?

24 A. That's correct.

25 Q. And if you all can't agree then you are in a

1 deadlock, are you not?

2 A. No.

3 Q. No?

4 A. We try to go to mediation.

5 Q. Well, you went to mediation?

6 A. We did, and came up with an agreement, and we have
7 an agreement before us.

8 Q. Dr. Alexander, you have resisted the legal division
9 of that property from the start, have you not?

10 A. No, sir. I have always said there's a problem with
11 the division because of the nature of the land itself.
12 It's a very difficult property to divide. That's been
13 the problem, and that's been the problem we've had, we've
14 struggled to arrive at. We went through a mediation as a
15 compromise. I'm agreeing with the mediation. I'm
16 agreeing to divide it. I'm agreeing to stick with the
17 mediation agreement.

18 Q. You came to that about three weeks ago, did you
19 not?

20 A. No, sir. I signed it, didn't I, on September of
21 2007? I've agreed with it from day one. I wouldn't have
22 signed it if I didn't agree with it.

23 Q. And this lawsuit was brought to enforce that
24 agreement and you resisted it in your answer, did you
25 not?

1 A. I resisted it in my answer?

2 Q. Yes. You said it cannot be divided legally as the
3 settlement agreement says, did you not?

4 A. I don't think I said that. The question is would
5 Ducks Unlimited allow it to be divided, Mr. Glenn.

6 Q. Right, and that was the question and you refused to
7 cooperate in getting that opinion, did you not?

8 A. No, sir. We want to go to Ducks Unlimited, get
9 their answer.

10 Q. Well, you went and got an answer, then what did
11 they say --

12 A. We haven't gotten an answer. You wouldn't let us.

13 Q. You got an answer that said you can't do it, right?

14 A. Got an answer from Ducks Unlimited initially, yes,
15 but they --

16 Q. You --

17 THE COURT: Hold on. Both of you calm down.

18 DR. ALEXANDER: Okay. Sorry.

19 THE COURT: Take a drink of water. Just cool it a
20 little bit. Listen to his question and answer them,
21 okay?

22 DR. ALEXANDER: Okay.

23 THE COURT: Just calm down, both of you.

24 BY MR. GLENN:

25 Q. After you got the one that said you can't do it you

1 got another one that said we'll consider it if you get an
2 environmental assessment by a biologist, did you not?

3 A. Uh-huh.

4 Q. Sir?

5 A. Yes, sir.

6 Q. Right. And Dr. Bowman immediately started trying
7 to get a biologist that you would agree with.

8 A. No. He didn't immediately decide to do that.

9 Q. Very short time, was it not?

10 A. Not at short time. It was a while.

11 Q. Okay. Let me show you this letter of January 28th,
12 '08 that Mr. Fields wrote to Mr. Crawcheck. He was your
13 attorney, was he not?

14 A. He was during the mediation.

15 Q. Right, and he wrote that letter to him suggesting
16 problems with implementing the agreement, did he not?

17 A. He did.

18 Q. And you saw that letter?

19 A. I did.

20 MR. GLENN: Your Honor, I'd offer this into
21 evidence.

22 THE COURT: Any objections?

23 MR. LEWIS: We object, being this is a settlement
24 letter.

25 MR. GLENN: I don't see it as that, Your Honor.

1 THE COURT: I don't know unless I see it. It's
2 hard to tell without looking at it.

3 MR. LEWIS: It said, we would very much like to
4 avoid further controversy in litigation, so I'm writing
5 with the hopes that we can settle the matter with your
6 intervention with Dr. Alexander. So this is what he's
7 asking for settlement.

8 MR. GLENN: It's something that's already been
9 done. He's suggesting that the settlement is not being
10 fulfilled and --

11 THE COURT: Was this after the mediation?

12 MR. LEWIS: Yes, sir.

13 MR. GLENN: Yes, sir.

14 THE COURT: I'll agree. I'm going to sustain the
15 objection on this letter. I think it's a letter confined
16 to settlement. I'm not going to allow it in.

17 BY MR. GLENN:

18 Q. You didn't agree with hiring Kenny Williams to do
19 the assessment; is that right?

20 A. Yes, sir.

21 Q. It is right?

22 A. Not initially, only because he asked me to
23 indemnify him, only because of that. I didn't have any
24 problem with Kenny Williams, other than what I mentioned
25 to you earlier.

1 Q. Dr. Alexander, I show you Defendant's Exhibit
2 Number 4. This is a letter where your attorney wrote to
3 me suggesting several names.

4 A. Yes, sir.

5 Q. For possible assessments.

6 A. Yes, sir.

7 Q. What's the date on that letter?

8 A. Dated September 17, 2010.

9 Q. And that was about exactly three years after the
10 mediation and settlement; is that right?

11 A. That's about correct.

12 Q. And that's the first time that you even mentioned a
13 name?

14 A. No, sir. We sent you another name before that.

15 Q. About a week before that, right?

16 A. I don't remember, but before that.

17 Q. You didn't do anything for almost three years to
18 get somebody to go assess the property, did you?

19 A. When did I get a request from Dr. Bowman to use
20 Mr. Williams?

21 THE COURT: You don't ask questions. Just answer
22 them, please, sir.

23 DR. ALEXANDER: I'm sorry?

24 THE COURT: Just answer the questions. You're not
25 allowed to ask questions. That's one of the

1 disadvantages of having to testify.

2 DR. ALEXANDER: I'm sorry, sir. I didn't mean to
3 do that.

4 BY MR. GLENN:

5 Q. '08, is that when it was?

6 A. I don't know. What does it say? Is that what it
7 says, 08?

8 MR. LEWIS: Boy, that's a hidden thing, isn't it?

9 THE COURT: Yes, sir.

10 MR. LEWIS: Oh, here it is. Ship date, 28,
11 November '08. I see it right by the word FedEx.

12 BY MR. GLENN:

13 Q. So at that time he was sending you the contract for
14 Kenny Williams; isn't that right?

15 A. Correct.

16 Q. And he had already talked to you about Kenny
17 Williams?

18 A. No, sir.

19 Q. No?

20 A. He did not talk to me about Kenny William.

21 Q. Ever?

22 A. No, sir.

23 Q. You didn't agree with Kenny Williams?

24 A. No, sir. I agreed with Kenny Williams. I didn't
25 agree with indemnifying him upon legal advice.

1 Q. When the lawsuit was filed by Dr. Bowman you
2 understood he was filing to enforce the settlement
3 agreement?

4 A. That's what he said.

5 Q. Right. And wasn't that a good time if you wanted
6 to enforce that agreement for you to join in that and
7 say, Let's find a way to do it?

8 A. I was ready to do it.

9 Q. You were ready to do it?

10 A. Yes, sir.

11 Q. Your answer doesn't say it's impossible to divide
12 it legally?

13 A. My answer said that?

14 Q. Yes, sir.

15 A. When?

16 Q. I'm asking you.

17 A. No, sir. I never said it was impossible to divide
18 it legally. If you divide it we don't know what Ducks
19 Unlimited is going to require.

20 Q. Did things get to the point where you and
21 Dr. Bowman just don't communicate anymore?

22 A. Well, at times we have communicated and times we
23 haven't.

24 Q. About the only time you communicated is when you
25 called him when his barn burned, right?

1 A. No, sir. We've talked multiple times between
2 before then and afterwards.

3 Q. When you called him about the barn burning that's
4 when you all finally decided to go forward with the
5 assessment and hire Coy Johnston; is that right, shortly
6 after that?

7 A. I don't know. I don't remember that. There was a
8 whole series -- I mean, it wasn't like anything wasn't
9 going on. It was a whole series of things that kept
10 occurring and I think there's paper trails that document
11 that from both you and Mr. Lewis throughout this time.

12 Q. What happened to get the settlement done between
13 '07, the day of the settlement, and when you all hired
14 Coy Johnston in the spring of -- what was it, this year?

15 A. I don't know what happened.

16 Q. Well, nothing happened --

17 A. The first thing that was supposed to happen was we
18 were supposed to file a management plan -- or rather a --
19 whatever the Ducks Unlimited required, a plan for
20 management, and it never was done.

21 Q. Well, because you wouldn't agree to someone to do
22 that.

23 A. No, sir. That didn't have anything to -- I
24 developed a management plan, presented it to you and you
25 rejected it, and it's the same management plan, if you'll

1 read it, that Mr. Williams developed because it came from
2 Mr. Williams' booklet, which I have.

3 Q. What did Ducks Unlimited tell you they needed to
4 see in order to consider the legal division?

5 A. Can I use that letter, please, from March 28th or
6 whatever it is, 26th?

7 Q. What did it tell you --

8 MR. GLENN: What exhibit is that? I'm sorry.

9 THE COURT: Plaintiff's 4.

10 Q. Plaintiff's 4. That's the letter from Ducks
11 Unlimited?

12 A. Correct.

13 Q. And what does it say that they need in order to
14 determine --

15 A. It says we are willing to review -- this is the
16 second sentence, We are willing to review biological
17 evidence such as a study from a consulting wildlife
18 biologist or another similar report, and that's not a
19 wildlife biologist, that presents a management plan where
20 the biological integrity of the property will still be
21 protected in the future under the division of the
22 property.

23 It doesn't say you have to have a wildlife
24 biologist. It says you have a similar report. I
25 submitted a report. That wasn't acceptable. Then we had

- 1 to get a biological report.
- 2 Q. You thought Ducks Unlimited would accept the report
- 3 that you copied off the internet?
- 4 A. Well, it would be a lot less expensive.
- 5 Q. You thought that --
- 6 A. Excuse me. It wasn't from the internet, sir. It
- 7 was from a booklet written by Mr. Williams and
- 8 incorporated Mr. Williams' initial management plan as
- 9 well as his plan of recommendations for the same tidal
- 10 percentage we have on Old Dominion. It's exactly word
- 11 for word in his current management plan.
- 12 Q. Did you think that you had a better chance of
- 13 getting it divided by doing that rather than hiring an
- 14 expert?
- 15 A. I thought it was worth a try.
- 16 Q. Beg your pardon?
- 17 A. I thought it was worth a try.
- 18 Q. Worth a try?
- 19 A. Yeah, it's \$35,000.
- 20 Q. If you legally divided the property now what would
- 21 happen with Picnic Point?
- 22 A. If you legally divided the property now? Picnic
- 23 Point would be divided as it is on the survey.
- 24 Q. Isn't there some requirement for cooperation
- 25 between you and Dr. Bowman?

- 1 A. Yes, sir.
- 2 Q. Right? You would own that jointly, would you not?
- 3 A. That's correct.
- 4 Q. And it would require upkeep and so forth?
- 5 A. That's correct.
- 6 Q. And you think you can agree on that?
- 7 A. Absolutely.
- 8 Q. What makes you think that?
- 9 A. Why wouldn't it?
- 10 Q. Have you agreed on anything?
- 11 A. Absolutely.
- 12 Q. What?
- 13 A. We have agreed to a settlement agreement, okay, and
- 14 we've stuck by the settlement agreement for the last four
- 15 years. He's maintained his part of the property, I've
- 16 maintained mine. We've done the usual management that's
- 17 required of the two properties, we've not interfered with
- 18 each other. It works.
- 19 Q. The interference that he testified to and the
- 20 disagreement he testified to you disagree with?
- 21 A. We've addressed all of those issues that he's
- 22 brought up.
- 23 Q. You addressed all of them?
- 24 A. Every one. Every issue that he brought up that he
- 25 disagreed with we've gone over.

1 Q. And you think delaying submitting a plan to Ducks
2 Unlimited for four years is cooperating?

3 A. There wasn't any intentional delay of submitting a
4 plan to Ducks Unlimited. There's been a continual paper
5 trail throughout all of this in trying to reach a
6 document that we can present to them.

7 Q. And most of them were my letters saying, Why don't
8 we agree to go forward with Kenny Williams?

9 A. I told you the reason I initially objected to Kenny
10 Williams was because he asked me to indemnify him. My
11 attorney said not to do that, so therefore when Coy
12 Johnston said he wasn't going to have Kenny Williams do
13 that I was perfectly happy to accept Kenny Williams.

14 Q. So you and Dr. Bowman couldn't even agree on how to
15 go forward with the settlement?

16 A. How to what?

17 Q. How to go forward and try to implement the
18 settlement? Do you disagree with that?

19 A. I think we have.

20 Q. You think you have, four years later?

21 A. We're ready to present it.

22 Q. You've sent that letter saying that you would like
23 for them to consider a legal division after we withdrew
24 the request for specific performance and said Dr. Bowman
25 has had enough, he wants to sell the property. That's

1 when you sent that, don't you?

2 A. I don't know that.

3 Q. You don't know that?

4 A. You'd have to ask my attorney that, okay. I'm
5 following my attorney's advice.

6 Q. You didn't see when I went through the requests for
7 specific performance? Your attorney didn't tell you
8 that?

9 A. I'm sure he probably did.

10 Q. Right. And it was long before you sent that -- you
11 had him send that letter saying we want a legal division.

12 A. I don't know that.

13 Q. You don't know that?

14 A. Sir, I'm not an expert in the legal aspects.

15 Q. I'm talking about the dates.

16 MR. LEWIS: Objection. He's arguing with the
17 witness, Your Honor.

18 THE COURT: Well, the witness is not being very
19 responsive to the questions either.

20 MR. LEWIS: He said he didn't know, Your Honor.

21 THE COURT: He said it was a legal question. Don't
22 interrupt, sir. Okay? I've asked you several times not
23 interrupt, okay? You understand?

24 DR. ALEXANDER: Yes, sir.

25 THE COURT: Please don't do that, okay?

1 All right. Ask the question again.

2 BY MR. GLENN:

3 Q. I'm not talking about a legal question. I'm just
4 talking about you already knew that Dr. Bowman said, I've
5 had enough. I want to sell the property. I don't want
6 to perform. And you knew that well before you asked your
7 lawyer to send that letter to Ducks Unlimited.

8 A. I was following the advice of my attorney.

9 Q. Did you know it before, Dr. Alexander?

10 A. I was following the advice of my attorney.

11 Q. Do you not understand that question?

12 A. I don't understand the question.

13 Q. What is it you don't understand about it?

14 A. I don't know what withdrawing your complaint means.
15 I'm not sure what that means.

16 Q. It said if he wants to sell the property. You read
17 that, didn't you?

18 A. No, sir. I didn't read it.

19 Q. Your lawyer didn't send you that?

20 A. No, sir.

21 Q. And you had no knowledge that that had been filed?

22 A. That's correct.

23 MR. GLENN: Thank you, Dr. Alexander.

24 That's all we have, Your Honor.

25 THE COURT: Any redirect?

1 MR. LEWIS: We'd like to bring to the Court's
2 attention through judicial notice that the notice of
3 deposition of Coy Johnston was dated August 31st, 2011,
4 and after a delay the deposition was taken on September
5 21st, 2011, moved from 9-14-11. The Glenn letter to the
6 Court withdrawing specific performance cause of action
7 was dated October 4, 2011. The letter to Ducks Unlimited
8 incorporating the Coy Johnston recommendation was dated
9 October 7th, 2011.

10 THE COURT: I'm sorry. What was dated October?

11 MR. LEWIS: Sir?

12 THE COURT: What was dated October the 7th, the
13 last thing?

14 MR. LEWIS: That was the date that our letter went
15 to Ducks Unlimited to approve Coy Johnston's
16 recommendations.

17 THE COURT: I'm not going to take judicial notice
18 of it. I'll take arguments. I don't see any need to
19 take the judicial notice as to when the deposition was
20 taken. That's when the letter was written but I don't
21 see any reason to take judicial notice of it.

22 MR. LEWIS: No, sir. It's in evidence.

23 THE COURT: I'll accept it as evidence.

24 MR. LEWIS: It is in evidence and has a date on it.
25 I should have told you that. I'm sorry. I should have

1 just said it's in evidence and the date of the deposition
2 is September 21.

3 THE COURT: I see the date of the deposition. I'll
4 accept that as evidence.

5 MR. LEWIS: Okay. I'm sorry, Your Honor.

6 THE COURT: Do you have any questions you want to
7 ask Dr. Alexander?

8 MR. LEWIS: I have a question.

9 REDIRECT EXAMINATION

10 BY MR. LEWIS:

11 Q. I have a question looking at Plaintiff's Exhibit
12 11 --

13 MR. LEWIS: Do you have that one?

14 THE COURT: You'll have to come find it. You'll
15 have to find 11. They are scattered all over right now.

16 MR. LEWIS: I know. I'm sorry. It was just put
17 in.

18 BY MR. LEWIS:

19 Q. Looking at Plaintiff's Exhibit 11, you were asked
20 to read on the second page all of this, about six
21 paragraphs. Do you see that?

22 A. Yes, sir.

23 Q. Do you see the paragraph about third from the
24 bottom that starts with, I thought?

25 A. On the second page?

- 1 Q. Yes.
- 2 A. Yes, sir.
- 3 Q. And you see the sentence that starts with the word
- 4 if?
- 5 A. Second sentence?
- 6 Q. The third sentence. I'm sorry. If this has caused
- 7 some?
- 8 A. If this has caused some or all of the present
- 9 conflict, please let me know.
- 10 Q. Now, did you ever hear from Dr. Bowman about this
- 11 letter where you were asking him to please let you know
- 12 if what you said caused any problems or what you'd done?
- 13 Did you ever hear from him?
- 14 A. No, sir.
- 15 Q. Excuse me?
- 16 A. No, sir.
- 17 MR. LEWIS: Thank you. Nothing further.
- 18 THE COURT: What's the date of that letter?
- 19 MR. LEWIS: March 27th, 2006.
- 20 THE COURT: Okay. All right. Do you have any
- 21 other witnesses?
- 22 MR. LEWIS: No, sir.
- 23 THE COURT: Do you have any reply testimony?
- 24 MR. GLENN: No reply.
- 25 THE COURT: Do you need a few minutes to talk about

1 reply or do you have any?

2 MR. GLENN: We have nothing.

3 THE COURT: No reply?

4 MR. GLENN: No, sir.

5 THE COURT: Thank you all very much. Anything else
6 that we need to consider?

7 MR. LEWIS: Yes, sir. I would like to make a
8 suggestion.

9 THE COURT: Yes, sir.

10 MR. LEWIS: That we give you whatever you'd like in
11 the way of posttrial memorandum or posttrial order and we
12 exchange them, and then within ten days the other side
13 complains about whatever they want to, and you get the
14 complaints as to the submissions and then you would have
15 the case to make a decision.

16 THE COURT: I don't really care about a posttrial
17 memorandum. I don't mind both of you presenting a
18 proposed order.

19 MR. LEWIS: All right, sir.

20 THE COURT: I don't mind you doing that on your
21 respective side and your respective side.

22 MR. LEWIS: And then would we have time upon
23 submission to then comment on each other's order?

24 THE COURT: I'll give you plenty of time after I
25 e-mail someone and give you my decision and ask you how I

1 want your respective proposed orders amended. Then once
2 that's done I'll give you time to respond.

3 MR. LEWIS: That will be fine. How long do we have
4 to do the proposed order?

5 THE COURT: You tell me. You all are working for a
6 living. You all got other schedules other than this
7 case, okay. I've got a lot of reading to do. I'm not
8 going to say when I'm going to get it done. So you tell
9 me.

10 MR. LEWIS: Well, thank you for that. That's very
11 refreshing.

12 You want to tell me?

13 MR. GLENN: Thirty days. Is that a reasonable
14 time?

15 MR. LEWIS: Well, to me I'd rather have a little
16 more time but...

17 THE COURT: Thirty days adequate? I'm not going to
18 press the issue. You tell me. I'm trying to satisfy
19 you.

20 MR. LEWIS: How about 45 days, Your Honor?

21 THE COURT: All right. Forty-five days from either
22 party. Now, you all are not going to swap that. I just
23 want to receive it. Once I make a decision and I ask for
24 a proposed order and then once I get it I'll give you all
25 time to reply.

1 MR. LEWIS: Yes, sir.

2 MR. GLENN: Just send ours to you?

3 THE COURT: Right. Proposed orders, send it to me,
4 okay?

5 MR. LEWIS: Yes, sir.

6 THE COURT: And this will sort of act as a
7 memorandum for you, in essence, to be truthful about it.

8 MR. LEWIS: It's just a -- to inform you, yes, sir.

9 THE COURT: Right. But I don't need a memorandum
10 and order. I'm assuming you all will do the order in
11 detail laying out your respective positions and finding
12 of fact, if you think appropriate.

13 Yes, ma'am? You were going to ask a question.

14 MS. KING: Judge, did you want them exchanged
15 between counsel? I know you don't want us to respond,
16 but did you want them exchanged or not exchanged?

17 THE COURT: Not this first order. Just please give
18 me the case laying out your findings of fact and the law
19 to support your case. Send that directly to me. Once I
20 make a decision then I'll ask one of you to send a
21 proposed order. Then I'll let you swap and you all can
22 make comments.

23 MR. LEWIS: That will be fine, Your Honor.

24 THE COURT: Okay.

25 MR. LEWIS: Yes, sir.

1 THE COURT: Is that clear?

2 MR. GLENN: Yes, sir. I understand.

3 THE COURT: Okay. Thank you all very much.

4 MR. GLENN: Thank you, Judge.

5 MR. LEWIS: Thank you, Your Honor.

6 MR. FIELDS: Thank you for giving us all day.

7 THE COURT: No problem.

8 (WHEREUPON, the hearing was concluded.)

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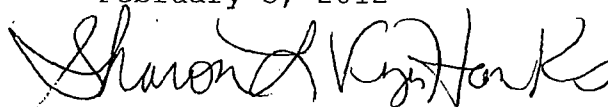
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C E R T I F I C A T E

I, Sharon L. Vizer-Hanks, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 25th day of October 2011.

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

February 3, 2012



SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

LARRY S. BOWMAN

Plaintiff

vs.

M. DONALD ALEXANDER and OLD
DOMINION, LLC

Defendants

THE COURT OF COMMON PLEAS

DOCKET NO. 2008-CP-10-7245

TRANSCRIPT OF RECORD

September 7, 2012
Charleston, South Carolina

B E F O R E:

THE HONORABLE J. C. NICHOLSON, JUDGE

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

MICHAEL GLENN, ESQ.
Attorney for the Plaintiff

A. CAMDEN LEWIS, ESQ.
ARIAIL E. KING, ESQ.
Attorney for the Defendant

LISA ALEXANDER, ESQ.

SUSAN M. PERRON, CVR-CM-M
Circuit Court Reporter

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No exhibits were introduced

PROCEEDINGS

THE COURT: I understand the parties have reached a settlement -- I should say a settlement as to hopefully a disposition of the property is that correct?

MR. GLENN: I think we have agreed on the issues that were before the court today.

THE COURT: Okay.

MR. GLENN: The first issue raised in our motion was about the sale of the property.

THE COURT: Right.

MR. GLENN: And the court had issued an order about that that included a provision that allowed the parties to devise their own way of trying to sell the property more advantageously than at a public auction or something. And so we had worked on that but we hadn't agreed. I think we have now reached an agreement and I'll ask Ms. King to ---

THE COURT: --- Ms. King if you could put the agreement on the record ---

MR. GLENN: --- we want to put that agreement on the record then we'll do a consent order for that.

THE COURT: Okay.

MR. GLENN: First we have agreed that Chris Donato of American Appraisers we would ask him to appraise the property. And if either party wants an additional

1 appraisal they can -- free to do that but at their own
2 expense and it won't have any impact on his appraisal.
3 His appraisal will be the appraisal used as we go
4 forward. If either -- after receiving that appraisal if
5 either party desires to purchase the property at 50
6 percent of the appraised value Donato then -- if only one
7 wants it they can have it at 50 percent.

8 If both parties wish to purchase the property each
9 will submit to their attorney's sealed bids for what they
10 would give for their -- for the other half. The
11 attorneys will then meet and open those bids and whoever
12 has the highest bid would get the property. If neither
13 party wishes to submit a bid, if neither party wants to
14 buy then the parties would agree on a listing price that
15 will either be the appraised value or if they agree on a
16 different price they will do so.

17 They will list the property with the Holcombe, Fair,
18 Lane, which is a local appraiser that both sides are -- I
19 mean a realtor that both sides are familiar with. They
20 will list it with that person. If either party wants a
21 co-listing then they are free to do that. We'll fix it
22 so that it would be a co-listing if we had more than one.
23 We will provide that the property be advertised in a
24 national publication similar to the New York Times or the
25 Wall Street Journal or both. And we'll advertise it for

1 sale for a period of 180 days. At the end of that 180
2 days if the property has not been sold then we would
3 proceed under the court's final order to sell it in the
4 method that the court provides in that final order. We
5 also agree, Your Honor, that if they sell the property
6 and either party wants to do a 1031 exchange that the
7 other party will cooperate by signing any necessary
8 documents to accomplish that.

9 THE COURT: Ms. King, is that your understanding of
10 the agreement?

11 MR. LEWIS: No, sir.

12 [Whereupon, Mr. Glenn confers with Ms. King and Mr.
13 Lewis]

14 MR. GLENN: We also would put in this order -- the
15 court provided for a hearing later on -- or each side
16 submit financial information for what they claim that
17 they did to enhance the value of the property.

18 THE COURT: Okay. Now I'm talking about only
19 since they started operating half and half, not prior to
20 that time, but I don't remember that date ---

21 MR. GLENN: --- since the mediation date I guess is
22 what I mean.

23 THE COURT: Right.

24 MR. GLENN: But we have agreed I think the court
25 could schedule or tentatively schedule -- was it October

1 17th, Wednesday? I think it seems to me ---

2 THE COURT: --- Caroline, what date was that?

3 CLERK OF COURT: Wednesday, the 17th.

4 THE COURT: Wednesday, the 17th.

5 MR. GLENN: Wednesday, the 17th. And we have
6 agreed that we will exchange affidavit material between
7 the parties by October 1st that puts the other party on
8 notice of what it is we will be claiming at that hearing.
9 We'll also file that with the court. Did I leave out
10 anything?

11 MR. LEWIS: No, I don't think so except I want to
12 make sure that the record is clear that he said that
13 there would be a hearing and the court would order what
14 would happen to the property if all this other stuff
15 doesn't work out. And I agree that the court can issue
16 whatever order it wants to but I don't concede to the
17 order as something that I agreed to.

18 THE COURT: Oh, I understand that. And you filed
19 some motions and the court -- for a new trial and some
20 other motions, and I issued a very short order saying I
21 thought they were premature because it was a temporary
22 order ---

23 MR. LEWIS: --- that's right ---

24 THE COURT: --- and if you want to hear those
25 motions at an appropriate time I will be glad to hear

1 them and I'm not going to require you to refile them.

2 MR. LEWIS: Thank you, Your Honor. And also we'll
3 draft an order and send it to Mr. ---

4 MR. GLENN: --- we'll look at this order ---

5 MR. LEWIS: --- we'll draft it and send it to Mr.
6 Glenn and then he will send it on to you.

7 THE COURT: Okay. That would be fine.

8 MR. GLENN: Hopefully we'll get it to you early
9 next week.

10 THE COURT: Just send it to the law clerk.

11 MR. GLENN: Okay.

12 THE COURT: Email it. Don't send me a hard copy;
13 just email it to me if you would please.

14 MR. GLENN: Okay.

15 MR. LEWIS: All right.

16 MR. GLENN: Thank you, Your Honor.

17 THE COURT: Anything else? Doctor Bowman, is that
18 your understanding of the agreement?

19 DOCTOR BOWMAN: Yes.

20 THE COURT: Doctor Alexander, is that your
21 understanding?

22 DOCTOR ALEXANDER: I think I understand it, yes.

23 THE COURT: Do you understand it?

24 DOCTOR ALEXANDER: I think I do.

25 THE COURT: Do you need to talk to your attorney

1 more so you do understand it?

2 DOCTOR ALEXANDER: Yes, sir.

3 THE COURT: Well talk to them and let me know if
4 you understand it or not.

5 MS. ALEXANDER: Your Honor, may I speak for a
6 moment?

7 THE COURT: Yes, ma'am.

8 MS. ALEXANDER: I'm Lisa Alexander. I think he was
9 saying yes he understood and I was speaking at the same
10 time he did so I apologize for that. I just wanted one
11 clarification, Your Honor. You said on the expenses if
12 after the time of the settlement agreement even though
13 we're not forcing the settlement agreement because some
14 of the expenses in the complaint were right before that
15 time. But you don't want those at the financial hearing
16 ---

17 THE COURT: --- let me -- I'll leave that up to the
18 lawyers. If the lawyers think there is a valid
19 expenditure occurred prior to that time they can present
20 it and make the arguments at the hearing okay. I'm not
21 going to foreclose that issue.

22 MS. ALEXANDER: Okay, that's ---

23 THE COURT: --- but my thoughts when I issued a
24 temporary order were that neither party fully developed
25 the issue of expenses on their half versus the other

1 half. And I don't have any idea who spent the most
2 money, who didn't spend the most money. And one of the
3 parties may be entitled to an offset on the purchase
4 price. And that's the reason I did it temporarily so I
5 could resolve that issue.

6 MS. ALEXANDER: Thank you. Yes, Your Honor.

7 THE COURT: Now my thoughts were prior to that time
8 it was supposed to be a 50/50 deal. But after the
9 mediation and one took half and the other took half then
10 I think at that time one party may have been spending
11 more money for improvements than the other and they would
12 be entitled, in my opinion, to an offset on the purchase
13 price.

14 MS. ALEXANDER: Yes sir, Your Honor.

15 MR. LEWIS: Your Honor, I might say back in
16 chambers you said from the operating agreement and now
17 we've moved to the...

18 THE COURT: Well, I don't remember the date as to
19 when they theoretically split the property in half and
20 started running on their own. I don't remember that
21 date; whatever date that is. If you want to go past that
22 date fine, present it and I'll listen to arguments at the
23 hearing. I'm not precluding you.

24 MS. ALEXANDER: Thank you, Your Honor, that's the
25 reason ---

1 THE COURT: --- I'm not precluding anything you
2 want to present at the hearing present, just swap it by
3 October 1st I believe?

4 MR. GLENN: Yes, sir.

5 THE COURT: That's all.

6 MS. ALEXANDER: Thank you, Your Honor. That's what
7 our only misunderstanding ---

8 THE COURT: --- and I'll listen to your testimony
9 and your arguments on what I should consider and what I
10 shouldn't consider, okay. I'm not precluding whatever
11 you want to present at that hearing.

12 MS. ALEXANDER: Thank you.

13 THE COURT: Does that answer the question?

14 MR. LEWIS: Yes, sir.

15 THE COURT: Okay. Anything else? With that
16 having said Doctor Alexander do you understand the
17 agreement as far as the sale of the property?

18 DOCTOR ALEXANDER: I understand.

19 THE COURT: Okay, because all we're dealing with on
20 the agreement is the actual sale of the property. Okay.
21 Anything else?

22 MR. GLENN: Nothing from us.

23 THE COURT: Thank y'all so very much for being here
24 and thank you so very much for working it out.

25 MR. LEWIS: Thank you, Your Honor.

1 THE COURT: If everybody would state their names
2 for the record please for the court reporter.

3 MR. GLENN: I'm Michael Glenn. I'm the attorney
4 for the plaintiff and John W. Fields also attorney for
5 the plaintiff.

6 THE COURT: Can y'all state your name for the
7 record for the court ---

8 MS. KING: --- Ariail King.

9 MR. LEWIS: Cam Lewis.

10 THE COURT: Representing the defendant Alexander.
11 Thank y'all very much.

12 MR. LEWIS: Thank you, Your Honor.

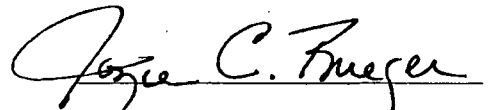
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
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, reported by Susan
Perron, transcribed by Joyce Rueger relative to appeal,
in the Court of Common Pleas for Charleston County, South
Carolina on the 7th day of September, 2012.

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

November 30, 2013



Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA
9TH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON
COURT OF COMMON PLEAS
CASE NO. 2008-CP-10-07245

LARRY S. BOWMAN

PLAINTIFF

VERSUS

NOVEMBER 1, 2012

TRANSCRIPT OF HEARING

CHARLESTON, SOUTH CAROLINA

M. DONALD ALEXANDER, ET AL

DEFENDANTS

B E F O R E:

HON. J.C. NICHOLSON, JUDGE.

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

ON BEHALF OF PLAINTIFF:

HON. MICHAEL D. GLENN
HON. JOHN FIELDS
MR. LARRY S. BOWMAN WAS PRESENT

ON BEHALF OF DEFENDANT
DONALD ALEXANDER:

HON. A. CAMDEN LEWIS
HON. ARIAIL KING

ORIGINAL

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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1 BEGINNING 10:50 A.M.

2 BY THE COURT:

3 THE COURT: Please be seated. Have you all resolved
4 your issues?

5 MR. GLENN: They're still working on the overall
6 case, your Honor.

7 THE COURT: Well, do you all need some more time?

8 MR. GLENN: I don't know.

9 MR. LEWIS: No, I don't know so, Judge.

10 THE COURT: I mean, I've got all day. I don't know
11 if you have or not, but I'll be glad to give you more
12 time if you all think, since you're here, you all might
13 be able to work it out. I'll be glad to give you some
14 more time.

15 MR. FIELDS: We're going to see if they're going to
16 stay after this. They've got some stipulations they're
17 going to do.

18 MR. LEWIS: We've greatly shortened this hearing.

19 THE COURT: Oh, okay.

20 MR. LEWIS: And we have made some progress on that.

21 THE COURT: Okay.

22 MR. LEWIS: And that should really take a lot of the
23 time consuming testimony. And your Honor, I'm still
24 having trouble -- can I remain seated?

25 THE COURT: You may sit. You may sit.

1 MR. LEWIS: And so, I'll just tell you what we've
2 decided, and then we'll go forward. We've decided that
3 Mr. Glenn's affidavit, with his supporting documentation,
4 we agree that Dr. Bowman spent what he said he spent on
5 what he said he spent it on. That was hard for me to get
6 out.

7 THE COURT: Okay.

8 MR. LEWIS: And they agree that we spent what we
9 said we spent on what we said we spent it on.

10 THE COURT: Okay.

11 MR. LEWIS: And we will put that in just as
12 exhibits. We each have pictures to put in. And that
13 would be what we think -- what we think would be in
14 keeping with your order of re-opening the case.

15 THE COURT: Okay.

16 MR. LEWIS: And with that, if Mr. Glenn disagrees,
17 he can tell you now.

18 MR. GLENN: I agree with what Mr. Lewis said, with
19 the exception of I have arguments I want to make about
20 some of the items that the defense says they spent and
21 whether it's --

22 THE COURT: So, you don't agree that he should get
23 credit or some type of offset for certain items.

24 MR. GLENN: Correct. That's correct.

25 THE COURT: The way he spent it, but you don't think

1 it was appropriate expenditures.

2 MR. GLENN: I want to talk about what they should
3 get credit for.

4 THE COURT: Okay. All right. Do you have, Mr.
5 Lewis, do you have any objections to what they spent, or
6 are you going to question whether it's legitimate
7 expenditures on their behalf?

8 MR. LEWIS: The expenditures that they expended.

9 THE COURT: You agree with.

10 MR. LEWIS: I agree that they've expended them.

11 THE COURT: All right.

12 MR. LEWIS: Now, I've got arguments as to whether or
13 not they enhanced the property. I want to point
14 something out.

15 THE COURT: Well, let me do this, so I'll have it in
16 front of me. Can you all go ahead and mark what you've
17 agreed to as Court's Exhibits 1 and 2?

18 MR. LEWIS: Yeah. Yeah.

19 THE COURT: Then I'll have something in front of me
20 while I'm listening to you.

21 MR. LEWIS: That would be fine. I just wanted to
22 point out, your order in this case is -- I haven't
23 understood it for the following reasons. You say, in
24 your order on Page 16, --

25 THE COURT: Which order are we talking about? The

1 first order or the second order?

2 MR. LEWIS: The order that says -- the first order.
3 It's called the temporary order.

4 THE COURT: Temporary. Okay.

5 MR. LEWIS: You say on Page 16:

6 *Because neither party submitted sufficient*
7 *evidence regarding their contributions, the*
8 *Court shall re-open the record and receive*
9 *financial information and figures as to each*
10 *party's expenses.*

11 THE COURT: Right.

12 MR. LEWIS: We're doing that.

13 THE COURT: Okay.

14 MR. LEWIS: And that's what I think I've done.
15 That's what I'm agreeing to for Mr. Glenn.

16 Then, you go on to say you can put it in by
17 affidavit or financial record. We're putting it in by
18 stipulation.

19 THE COURT: Okay.

20 MR. LEWIS: And then, you say -- this is the one I
21 don't understand:

22 *The expenses previously claimed by*
23 *Alexander for repairs and enhancing the*
24 *value of the property shall be submitted*
25 *to the Court.*

1 I have no idea what expenses previously claimed
2 means. I don't know what it's previous to. I have no
3 idea. And it's only as to Alexander. So, as I read your
4 order, I don't have a right to do any -- the things that
5 Mr. Glenn are putting in, are expenses and financial
6 information that you'll take under consideration.

7 But then you say:

8 *The expenses previously claimed by*
9 *Dr. Alexander for repairs and enhancing*
10 *the value of the property shall be submitted*
11 *to the Court. That enhancing only goes to*
12 *Alexander's previously paid expenses.*

13 And I don't understand that. I'm just sorry. I
14 just don't understand it.

15 THE COURT: Well, I understand why you don't
16 understand it. Basically, what I was trying to say,
17 both parties can submit expenses. And then, if the
18 property -- if the legitimate expenses concerning the
19 property, the enhancement of property or whatever their
20 expenses were, it possibly may be an offset. I'm trying
21 to determine which parties did what; whether it was a
22 balance or an imbalance; and then make an adjustment.
23 That's what I was trying to do. Apparently, it was
24 worded very poorly, and I apologize for that.

25 MR. LEWIS: I have no problem with that.

1 THE COURT: Okay.

2 MR. LEWIS: Then all we need to do is give you the
3 expenses.

4 THE COURT: Right.

5 MR. LEWIS: And that's what I'll be glad to do.

6 THE COURT: Right.

7 MR. LEWIS: All right.

8 THE COURT: Now, if you all object to some of those
9 expenses, I need to know that.

10 MR. LEWIS: You object to them as -- as --

11 THE COURT: As to whether they should be an offset
12 or not an offset, or applied towards a possible offset.
13 I have no earthly idea what Alexander spent. I have no
14 earthly idea what Bowman spent.

15 MR. LEWIS: That's true, but it --

16 THE COURT: All I remember is Alexander spent some
17 money on a dock on one section of the property, and Mr.
18 Bowman spent -- Dr. Bowman spent some money on an old
19 house that was there. That's all I remember as far as
20 expenses.

21 MR. LEWIS: I agree. But the question I have and
22 the question Mr. Glenn brings up is, are we going to sit
23 here and argue whether a shed enhanced the value of the
24 property? You can't do that. Nobody -- a property is a
25 piece of property as a whole. And so, whatever Dr.

1 Bowman spent, it was on the property as a whole.

2 Whatever we spent was on the property as a whole.

3 Now, if they say we didn't spend it, that's one
4 thing. But if they say we spent it, what is the other
5 consideration? That's what I don't understand.

6 THE COURT: Well, my thoughts, and I agree, the
7 order's not worded very well. Okay. My thoughts are to
8 look at what was spent and see if there's a great
9 variance, and then make some adjustments. Did it enhance
10 the property or didn't it enhance the property.

11 MR. LEWIS: You're going to make a decision on
12 whether a shed enhanced the property or not?

13 THE COURT: No, I'm not -- I don't think I'm going
14 to get into the enhancement. I just want to see what
15 Alexander's total expenditures were versus Bowman's total
16 expenditures, and see if there should be some offset.

17 MR. LEWIS: We agree with that a hundred percent.

18 THE COURT: And that's what my intention was.

19 MR. LEWIS: We agree a hundred percent.

20 THE COURT: And I'll agree that the wording was very
21 unclear.

22 MR. LEWIS: I don't mean to do that. I'll just tell
23 you that I was confused.

24 THE COURT: I understand.

25 MR. LEWIS: But now you say what you've just said,

1 I'm happy with that, that is what's happened. And we'll
2 put in the --

3 THE COURT: Let me qualify by saying, long as it was
4 legitimately spent toward the property.

5 MR. LEWIS: And nobody -- I don't agree. I don't
6 take issue that any of his expenses weren't a legitimate
7 expense toward the property.

8 THE COURT: I mean, that was my only concern. I
9 wasn't going to start doing some evaluation on whether it
10 increased the value or decreased the value.

11 MR. LEWIS: I agree with that.

12 THE COURT: Mr. Glenn, you want to comment?

13 MR. GLENN: The only comment I have, we do not
14 disagree that they spent what they've got in their
15 affidavit.

16 THE COURT: Right.

17 MR. GLENN: And that it went for the property. I
18 thought that we were going to talk about whether it
19 enhanced the value of the property, and I thought we were
20 going to talk about when the expenditures were made.

21 THE COURT: Well, I can see, after you read the
22 order, how you arrived at that conclusion, and that was
23 not my intent.

24 MR. GLENN: Okay.

25 THE COURT: And it was very poorly written. I

1 probably need to amend it. Or maybe this oral comment
2 will amend it.

3 MR. GLENN: Well, I just have some comments, then,
4 on one or two of the items that they have on theirs that
5 I'd like to point out to the Court, but outside of that.

6 THE COURT: I mean, my concern was, if I'm going to
7 order the property to be sold, which I did, and you all
8 came up with another settlement, which I agree with, and
9 I issued the second order on that settlement. But my
10 concern was, it wasn't fair if Dr. Alexander has spent,
11 say, a half a million dollars, and Dr. Bowman has spent a
12 hundred thousand.

13 MR. GLENN: Correct.

14 THE COURT: A hundred thousand, there should be some
15 offset. And that was my concern, not whether or not it
16 increased the value or didn't increase the value of the
17 property.

18 MR. GLENN: Okay.

19 THE COURT: Because, unfortunately, the property has
20 probably decreased beyond their control because of the
21 real estate market.

22 MR. GLENN: My comments, then, on the expenditures,
23 will be very brief. I have a couple that I want to talk
24 about.

25 THE COURT: Now, if you all want me to submit a

1 supplement order, I will do that, clarifying that point.

2 MR. LEWIS: No, you've clarified it to my
3 satisfaction.

4 MR. GLENN: I'm fine with what you say.

5 THE COURT: And I'm sorry for the confusion. I wish
6 you'd emailed me a long time ago and said, hey, this is
7 my confusion. We would have straightened that out a long
8 time ago. And I apologize. That's my error.

9 MR. LEWIS: All litigants, your Honor, hope that
10 they never have to bring up some -- that their order is
11 confusing, so you do that the last minute. So, you just
12 keep hoping that something good's going to happen.

13 MR. FIELDS: And it is, Judge. We're trying.

14 MR. LEWIS: I want to make sure, Judge, just for the
15 record, this is all just so -- I get petrified. I don't
16 want to waive anything. We have filed a motion.

17 THE COURT: You didn't waive anything last time you
18 were here.

19 MR. LEWIS: We made a motion for as to the venue,
20 because when we made the motion to change venue, the
21 Court said Mr. --

22 THE COURT: I don't think you waived any motions you
23 made at trial. I don't think you waived any motions by
24 agreeing to this, Mr. Lewis. I understand that. I think
25 we brought that up last time when you all agreed to how

1 the property should be sold.

2 MR. LEWIS: I agree, but the Supreme Court looks for
3 a reason not to hear anything. And we have the Rule 59
4 motion that we don't want to waive.

5 THE COURT: Right.

6 MR. LEWIS: So, there's two motions, the one on --

7 THE COURT: And I don't think we've ever heard that.
8 I said I'll be happy to hear that, once I issue a final
9 order, I will be happy to hear those motions.

10 MR. LEWIS: I agree, but I just don't want to waive
11 them.

12 THE COURT: I understand.

13 MR. GLENN: I agree that he hasn't waived anything.

14 THE COURT: I do, too.

15 MR. LEWIS: All right. Then, your Honor, then we
16 would go into -- we have Dr. Alexander's affidavit. We
17 would offer that as Exhibit Number 1.

18 DOCUMENT REFERRED TO AS AFFIDAVIT
19 OF DR. ALEXANDER MARKED DEFENDANTS'
20 EXHIBIT NUMBER 1, ADMITTED AS
21 EVIDENCE.

22 MR. GLENN: Is this the new one you did?

23 MS. KING: No, that's the old one that we had.

24 MR. GLENN: You going to put the new one in, too.

25 MS. KING: It was going to be an affidavit, so,

1 yeah.

2 MR. GLENN: That's the one you emailed me.

3 MS. KING: Right.

4 MR. GLENN: Yeah. Okay.

5 MR. LEWIS: Do you want a copy, your Honor, of
6 everything? It's going to be a big stack of stuff.

7 THE COURT: If you don't mind, I sure would. That
8 way, I don't have to sign it out from the clerk's office.

9 MR. GLENN: I think this affidavit was filed with
10 the court. I don't have a copy, but it's the same one
11 that's filed with -- and I've sent the first one to you
12 before we filed it.

13 THE COURT: Okay.

14 MR. LEWIS: Is that Dr. Bowman's affidavit?

15 MR. GLENN: Yes, this is his affidavit.

16 MR. LEWIS: Okay. So, that's your Exhibit Number 1?

17 MR. GLENN: Right.

18 DOCUMENT REFERRED TO AS AFFIDAVIT

19 OF DR. BOWMAN MARKED PLAINTIFF'S

20 EXHIBIT NUMBER 1, ADMITTED AS EVIDENCE.

21 MR. LEWIS: All right. Exhibit Number 2, your
22 Honor, for Alexander would be the --

23 MS. KING: The summary and the backup of the
24 expenditures.

25 MR. LEWIS: -- the summary of the expenditures, and

1 then, the backup for each of the expenditures showing
2 that he spent the money for what he said he spent it for.

3 THE COURT: Well, if you all agree to it, I don't
4 really need backup.

5 MR. LEWIS: No, you don't.

6 THE COURT: If you all agree to it.

7 MR. LEWIS: You would want --

8 THE COURT: All I need is the summary.

9 MR. LEWIS: All right. Then, we'll take the summary
10 and make it Number 2. And then, the backup, Number 3.

11 THE COURT: The backup, I don't really need the
12 backup.

13 MR. LEWIS: You don't want us to even put it into
14 evidence?

15 THE COURT: If you want to.

16 MR. LEWIS: I do want to just put it into evidence.

17 THE COURT: I'd be happy for you to put it into
18 evidence. The Supreme Court may want to look at it.

19 MR. LEWIS: Is that his? Is that the summary?

20 COURT REPORTER: Number 1 is called what?

21 MR. LEWIS: Affidavit of Dr. Alexander.

22 COURT REPORTER: And 2 is what?

23 MS. KING: Summary.

24 MR. LEWIS: 2 is the summary.

25 COURT REPORTER: Summary. All right.

1 MR. LEWIS: Number 3 is the backup.
2 DOCUMENT REFERRED TO AS SUMMARY
3 MARKED DEFENDANTS' EXHIBIT
4 NUMBER 2, ADMITTED AS EVIDENCE.
5 DOCUMENT REFERRED TO AS BACKUP
6 MARKED DEFENDANTS' EXHIBIT
7 NUMBER 3, ADMITTED AS EVIDENCE.
8 MR. LEWIS: The next one, your Honor, would be the
9 appraisal of the first appraisal back in 2007.
10 THE COURT: I think that's already part of the court
11 record. That was admitted at the trial.
12 MR. LEWIS: We couldn't find it in evidence.
13 MR. GLENN: Well, I don't care if they want to put
14 it in.
15 THE COURT: I mean, that's fine if you want to put
16 it in. That's fine.
17 MR. LEWIS: Okay. We thought it was in evidence,
18 too.
19 MR. GLENN: I think it was.
20 THE COURT: I thought it was, too.
21 MR. LEWIS: I hope you're right, because we couldn't
22 find it.
23 THE COURT: Okay.
24 MR. LEWIS: But it's in now, either once or twice.
25 THE COURT: All right. So, that will be Number 3.

1 MR. LEWIS: Yes, sir.

2 THE COURT: The appraisal?

3 MR. LEWIS: No, that would be Number 4.

4 THE COURT: Number 4. Okay.

5 MR. LEWIS: Right, Madam?

6 COURT REPORTER: Correct.

7 DOCUMENT REFERRED TO AS FIRST

8 APPRAISAL 2007 MARKED DEFENDANTS'

9 EXHIBIT NUMBER 4, ADMITTED AS

10 EVIDENCE.

11 MR. LEWIS: Then we have a group of exhibits. This

12 is a picture. The first one is Exhibit Number 5. It's a

13 picture of Trophy -- not Trophy Point, but that's --

14 Trophy Point's at West Point where I went to school.

15 This is Picnic Point.

16 THE COURT: Picnic Point. Okay. That's where the

17 dock is, right?

18 MR. LEWIS: Yes, and you'll see a picture of the

19 dock.

20 MR. GLENN: What number is that?

21 THE COURT: Number 5.

22 COURT REPORTER: 6.

23 THE COURT: 6 is -- Number 6. I mean, it's just the

24 same picture. One shows the old dock, the other one

25 shows part of it, right?

1 MR. LEWIS: And it shows the riffraff. We have
2 another of the riffraff, unless your Honor can see the
3 riffraff.

4 THE COURT: I can see it.

5 ITEM REFERRED TO AS PHOTOGRAPH

6 MARKED DEFENDANTS' EXHIBIT

7 NUMBER 5, ADMITTED AS EVIDENCE.

8 ITEM REFERRED TO AS PHOTOGRAPH

9 MARKED DEFENDANTS' EXHIBIT

10 NUMBER 6, ADMITTED AS EVIDENCE.

11 MR. LEWIS: The next exhibit, your Honor, would be
12 Exhibit Number 7, which is the second dock.

13 THE COURT: Is that at Picnic Point, also?

14 MR. LEWIS: No, it's way down from Picnic Point.
15 It's on another dock on the -- the second dock that
16 you'll see was built.

17 THE COURT: Okay.

18 ITEM REFERRED TO AS PHOTOGRAPH

19 OF SECOND DOCK MARKED DEFENDANTS'

20 EXHIBIT NUMBER 7, ADMITTED AS EVIDENCE.

21 MR. LEWIS: And then, then, your Honor, we have
22 Exhibit Number -- what exhibit?

23 COURT REPORTER: 8.

24 MR. LEWIS: 8, which is the barn with the living
25 thing above it.

1 THE COURT: Is that at Picnic Point or at the other
2 location?

3 MR. LEWIS: It's not at either one. It's where Dr.
4 Alexander built a barn on the 70 acres down at the bottom
5 of the tract.

6 THE COURT: Okay.

7 ITEM REFERRED TO AS PHOTOGRAPH
8 OF BARN WITH LIVING THING ABOVE
9 IT ON 70 ACRES AT BOTTOM OF TRACT
10 MARKED DEFENDANTS' EXHIBIT
11 NUMBER 8, ADMITTED AS EVIDENCE.

12 MR. LEWIS: We're sorry. We only have one copy of
13 that.

14 All right, your Honor, I think that is the -- one
15 more.

16 THE COURT: Have you all handed up 8 yet?

17 MS. KING: Yes.

18 MR. LEWIS: What number? 8?

19 COURT REPORTER: This will be Number 9.

20 MR. LEWIS: Number 9 is a picture of Dock Number 2,
21 out in the water.

22 ITEM REFERRED TO AS PHOTOGRAPH
23 OF DOCK NUMBER 2 OUT IN WATER
24 MARKED DEFENDANTS' EXHIBIT
25 NUMBER 9, ADMITTED AS EVIDENCE.

1 MR. GLENN: Okay. You're going to send us copies of
2 those? You don't have copies of those?

3 MS. KING: Yes.

4 THE COURT: How about Number 8? Have you handed
5 that up?

6 MS. KING: Yes, your Honor.

7 MR. LEWIS: That's the barn.

8 MS. KING: 7, 8, and 9 did not have additional
9 copies, but I'll make sure we get you a copy.

10 THE COURT: I'll just look at them. The court
11 reporter can hand them to me. I'll look at them.

12 MS. KING: Exhibit 7 was the second dock, Exhibit 8
13 was the barn, and Exhibit 9 was the second dock.

14 THE COURT: Right.

15 COURT REPORTER: Do you want to see them now? I
16 don't have them marked yet.

17 THE COURT: Go ahead and mark them and I'll look at
18 them.

19 MR. LEWIS: That's our submission, your Honor.

20 THE COURT: That's fine.

21 COURT REPORTER: I'll mark them better in just a
22 minute, when I get a chance.

23 THE COURT: Those two are Defendants'. We'll just
24 put in these three.

25 COURT REPORTER: And you should have 6 -- you should

1 have 6 on down.

2 THE COURT: I've got 6. Which is 6 and which is 5?
3 One shows the gazebo and one doesn't.

4 COURT REPORTER: Just a second.

5 THE COURT: That should be 2, 3, and 4.

6 COURT REPORTER: Okay. That's 6.

7 THE COURT: This is 6?

8 COURT REPORTER: That's 6. And the other is 5.

9 THE COURT: Okay.

10 COURT REPORTER: And that should be all the photos.

11 THE COURT: All right. For the plaintiff, you've
12 got one. Is it the Bowman affidavit? What else do you
13 have?

14 MR. GLENN: We have Numbers 2 through 6, which are
15 photos of the work that Dr. Bowman had done on the dock
16 repair that he got the grant for. He paid some money,
17 and then got a grant.

18 THE COURT: Okay.

19 MR. GLENN: It's in our affidavit, so, 2 through 6
20 would be those photos.

21 THE COURT: Pictures of the docks.

22 MR. GLENN: It's the work that was paid for with his
23 money that he said.

24 THE COURT: Right.

25 MR. GLENN: And the grant he got as a result of

1 spending it.

2 MR. LEWIS: I only saw three.

3 MR. GLENN: Do you want to see it?

4 MR. LEWIS: Well, I don't know what the other ones
5 are.

6 MR. GLENN: It's the same thing.

7 MR. LEWIS: I don't mind. I don't mind, but I just
8 didn't see --

9 MR. GLENN: It just shows the work he had done.

10 MR. LEWIS: Okay. I didn't see those.

11 ITEM REFERRED TO AS PHOTOGRAPH
12 OF WORK DR. BOWMAN DID ON DOCK
13 REPAIR MARKED PLAINTIFF'S EXHIBIT
14 NUMBER 2, ADMITTED AS EVIDENCE.

15 ITEM REFERRED TO AS PHOTOGRAPH
16 OF WORK DR. BOWMAN DID ON DOCK
17 REPAIR MARKED PLAINTIFF'S EXHIBIT
18 NUMBER 3, ADMITTED AS EVIDENCE.

19 ITEM REFERRED TO AS PHOTOGRAPH
20 OF WORK DR. BOWMAN DID ON DOCK
21 REPAIR MARKED PLAINTIFFS' EXHIBIT
22 NUMBER 4, ADMITTED AS EVIDENCE.

23 ITEM REFERRED TO AS PHOTOGRAPH
24 OF WORK DR. BOWMAN DID ON DOCK
25 REPAIR MARKED PLAINTIFFS' EXHIBIT

1 NUMBER 5, ADMITTED AS EVIDENCE.

2 ITEM REFERRED TO AS PHOTOGRAPH
3 OF WORK DR. BOWMAN DID ON DOCK
4 REPAIR MARKED PLAINTIFF'S EXHIBIT

5 NUMBER 6, ADMITTED AS EVIDENCE.

6 THE COURT: All right. So I make sure I understand
7 -- I'm sorry. Go ahead, you all. Finish talking.

8 MR. GLENN: Well, I was going to put in some more
9 pictures.

10 THE COURT: Okay. Go ahead. I'm sorry.

11 MR. GLENN: All right. These are pictures. More
12 dock pictures.

13 MR. LEWIS: When?

14 MR. FIELDS: Last week. What it looks like now.

15 MR. GLENN: Your Honor, these next photos are three
16 photos that show the present condition of part of the
17 dock at Picnic Point.

18 MR. LEWIS: We object to the characterization of one
19 board shows the present condition of anything.

20 MR. GLENN: It shows the condition of there's no
21 board there.

22 THE COURT: All right. Go ahead and mark them.

23 COURT REPORTER: Okay, these are going to be 7, 8,
24 and 9.

25 MR. GLENN: Okay. Those are pictures of the dock.

1 THE COURT: Of which dock, now?

2 MR. GLENN: The dock at Picnic Point last week.

3 THE COURT: Okay. Dock at Picnic Point. Okay. And

4 what else? And what else? Well, let her get those

5 marked. You got those marked?

6 COURT REPORTER: Yes, we're getting --

7 THE COURT: Do you have 7, 8, and 9 marked?

8 COURT REPORTER: No, I've got 2, 3, and 4. Just a

9 minute.

10 THE COURT: Go ahead and mark them all.

11 ITEM REFERRED TO AS PHOTOGRAPH

12 OF PICNIC POINT SHOWING PRESENT

13 CONDITION MARKED PLAINTIFF'S

14 EXHIBIT NUMBER 7, ADMITTED AS EVIDENCE.

15 ITEM REFERRED TO AS PHOTOGRAPH

16 OF PICNIC POINT SHOWING PRESENT

17 CONDITION MARKED PLAINTIFF'S

18 EXHIBIT NUMBER 8, ADMITTED AS EVIDENCE.

19 ITEM REFERRED TO AS PHOTOGRAPH

20 OF PICNIC POINT SHOWING PRESENT

21 CONDITION MARKED PLAINTIFF'S

22 EXHIBIT NUMBER 9, ADMITTED AS EVIDENCE.

23 MR. GLENN: I think this one's 10. It's a photo of

24 pilings out near the Picnic Point dock.

25 THE COURT: Pilings?

1 MR. GLENN: Pilings.

2 ITEM REFERRED TO AS PHOTOGRAPH
3 OF PILINGS NEAR PICNIC POINT DOCK
4 MARKED PLAINTIFF'S EXHIBIT NUMBER 10,
5 ADMITTED AS EVIDENCE.

6 MR. GLENN: The last two are a shed and a storage
7 shed that's on Dr. Alexander's list.

8 THE COURT: Where are these in relation to the dock?
9 Or is it part of the dock?

10 MR. GLENN: It's near the dock at Picnic Point. It
11 was to be a lift, as I understand it.

12 THE COURT: Oh, okay.

13 ITEM REFERRED TO AS PHOTOGRAPH
14 OF SHED AND STORAGE SHED ON DR.
15 ALEXANDER'S LIST MARKED PLAINTIFF'S
16 EXHIBIT NUMBER 11, ADMITTED AS
17 EVIDENCE.

18 ITEM REFERRED TO AS PHOTOGRAPH
19 OF SHED AND STORAGE SHED ON DR.
20 ALEXANDER'S LIST MARKED PLAINTIFF'S
21 EXHIBIT NUMBER 12, ADMITTED AS
22 EVIDENCE..

23 MR. LEWIS: Your Honor, we have one more picture now
24 that they've put their pictures in. Okay?

25 THE COURT: Okay. Be my guest.

1 COURT REPORTER: That would be Defendants' 10.
2 ITEM REFERRED TO AS PHOTOGRAPH
3 MARKED DEFENDANTS' EXHIBIT
4 NUMBER 10, ADMITTED AS EVIDENCE.
5 MS. KING: May I say something, your Honor.
6 THE COURT: I'm sorry?
7 MS. KING: May I say something, your Honor.
8 THE COURT: Yes, ma'am. Well, hang on just a second
9 if you want it on the record, after she gets these
10 marked, and I'll be happy to hear you.
11 COURT REPORTER: I'm sorry, this will be --
12 THE COURT: Defendants'.
13 COURT REPORTER: Defendants'. Yes, Defendants'.
14 THE COURT: Number 10, I believe it was.
15 Defendants' Number 10.
16 MR. LEWIS: That last picture, your Honor, shows the
17 pilings that they took pictures of, over to the left, as
18 you look at the dock.
19 THE COURT: If you hand me the rest, I've got to
20 look at 10 on Plaintiff's. What else do you have? If
21 you could hand those up, I'd like those.
22 COURT REPORTER: Okay. Just one second. 11 and 12.
23 ITEM REFERRED TO AS PHOTOGRAPH
24 MARKED DEFENDANTS' EXHIBIT NUMBER
25 11, ADMITTED AS EVIDENCE.

1 ITEM REFERRED TO AS PHOTOGRAPH
2 MARKED DEFENDANTS' EXHIBIT NUMBER
3 12, ADMITTED AS EVIDENCE.

4 THE COURT: You all don't have any pictures of any
5 ducks? Maybe not pictures.

6 MR. LEWIS: It's not time yet.

7 THE COURT: Oh, okay.

8 MR. GLENN: Ducks Unlimited.

9 THE COURT: Duck's Unlimited.

10 THE COURT: No decoys?

11 MR. LEWIS: No, we do have those, now.

12 THE COURT: You got those? Okay.

13 Can I look at Defendants' 10. And Plaintiff's is 1
14 through 12, right? 1 through 12?

15 COURT REPORTER: It is. Plaintiff's is 1 through
16 12.

17 THE COURT: All right. Any other pictures or
18 anything else the parties would like to mark?

19 MR. LEWIS: No, sir.

20 MR. GLENN: Not for exhibits.

21 THE COURT: All right. Let me ask, first of all,
22 Mr. Lewis, what -- I'm sorry. You wanted to say
23 something and I cut you off.

24 MS. KING: No, your Honor. I'm fine.

25 THE COURT: Please feel free to say whatever you

1 wanted to say.

2 MS. KING: No, your Honor. It's fine. Thank you.

3 THE COURT: You sure?

4 MS. KING: Yes, sir. Thank you.

5 THE COURT: I mean, I'll be happy to hear you.

6 MS. KING: Mr. Lewis has said it. Thank you.

7 THE COURT: Pardon?

8 MR. LEWIS: I said it.

9 MS. KING: Mr. Lewis has said it, your Honor. Thank
10 you.

11 THE COURT: What I'm going to ask you on, I guess
12 it's Defendants' Exhibit Number 2 on the front cover
13 sheet, is summary of Alexander expenditures. And it says
14 499,632.19. On that same exhibit, on the last page, on
15 Page 3, it has total expenditures 496,832.15. Which is
16 it, without having me doing a lot of math?

17 MR. LEWIS: It's the first one, your Honor.

18 THE COURT: The first one.

19 MR. LEWIS: (Nodded head.)

20 THE COURT: So, the second one, the one on Page 3 is
21 an error.

22 MR. LEWIS: Yes.

23 THE COURT: Okay. So, it should be the same as the
24 first.

25 MR. LEWIS: Yes.

1 THE COURT: 499.

2 MR. LEWIS: Yes, sir.

3 THE COURT: Okay. 632.19. Now, did Dr. Bowman

4 submit a summary? Is there a summary in here of his?

5 MR. GLENN: It's just a three-page affidavit, your

6 Honor. It's got the total amounts. The total amount

7 is --

8 THE COURT: The total amount is 155,188.

9 MR. GLENN: Yes, sir.

10 THE COURT: Is that correct?

11 MR. GLENN: Yes, sir.

12 THE COURT: All right. Now, if I remember

13 correctly, and correct me if I'm wrong, it's been a

14 while, there was also a \$75,000.00 payment from Dr.

15 Bowman to Dr. Alexander pursuant to the agreement that

16 Dr. Alexander wanted to enforce on the division of the

17 property and the value. Is that correct or incorrect?

18 MR. GLENN: I think the figure was like 67

19 something.

20 MR. LEWIS: Yes.

21 MR. GLENN: When you added the --

22 THE COURT: Is that included in your affidavit?

23 MR. GLENN: No, sir. It's already in the court

24 order.

25 THE COURT: I know. It's in the court order. 67

1 what?

2 MR. LEWIS: \$67,000.00 even.

3 THE COURT: Even. Okay. All right.

4 MR. GLENN: Then, there was also a 9,000 something

5 that was part of the personal property that he was

6 entitled to.

7 THE COURT: All right. So, that was a total of

8 looks like, 76,000. Is that correct?

9 MR. GLENN: Yes, sir.

10 THE COURT: Okay.

11 MR. LEWIS: That's in your order.

12 THE COURT: Well, I missed it by a thousand. I

13 thought it was 75 or 77.

14 MR. LEWIS: That was your order, your Honor.

15 THE COURT: I understand.

16 MR. LEWIS: We're not agreeing to it. We're just

17 saying that's what was in your order.

18 THE COURT: I understand. I haven't looked at that

19 order in a few months.

20 All right, now, how do you all desire to proceed?

21 MR. LEWIS: I'm finished, your Honor. That's what

22 you asked for; you've got it.

23 THE COURT: Okay.

24 MR. GLENN: I have a few things I want to point out

25 to the Court.

1 THE COURT: Okay.

2 MR. GLENN: That \$76,000.00 that the Court just
3 mentioned has been in Dr. Alexander's possession since
4 '08. So that, he's had the use of that money, and we
5 believe some interest should be added to that.

6 If the Court looks at the summary of Dr. Alexander's
7 affidavit, more than 90,000 of that money was before the
8 mediated settlement. The Picnic Point dock was a big
9 part of it, the riffraff and other things, too, preparing
10 the dam and so forth, was real early. Those were some of
11 the expenditures that created the dissension between the
12 parties and got us here. So, we just wanted to point out
13 that, of his affidavit, 90 some -- like 91,000 was before
14 the 2007 settlement.

15 THE COURT: You're talking about on Dock 2 on Page 3
16 of this summary sheet?

17 MR. GLENN: Yeah, I think it's Dock 2. Dock 1.
18 Picnic Point dock. It's the lesser one. The new dock
19 costs more, I think.

20 MR. LEWIS: It's the one with the red roof.

21 THE COURT: I was just looking on the summary sheet
22 to see which one you're talking about. Look at his
23 summary sheet and tell me which one you're talking about.

24 MR. LEWIS: Dock 1.

25 THE COURT: You've got the riffraff rocks and the

1 sand shell for 37,107.30. Is that what you're talking
2 about?

3 MR. GLENN: There's a --

4 THE COURT: And there's also one on two docks.
5 Dock 1, 42,635. Is that what you're talking about?

6 MR. GLENN: Yes, sir. Yes, sir. That's the Picnic
7 Point dock.

8 THE COURT: Okay. So, those two together were what,
9 now? That was expenditures before what?

10 MR. LEWIS: Before the mediation agreement.

11 MR. GLENN: Before the mediation agreement, earlier
12 -- in their summary, they have the years that they spent
13 the money.

14 THE COURT: Okay.

15 MR. GLENN: And I just went through and picked up
16 the ones that were earlier that we think created a lot of
17 the difficulty between these gentlemen. Another --

18 THE COURT: Well, I mean, what are you asking me?
19 Why are you telling me this?

20 MR. GLENN: The Court, at one time, said you wanted
21 to hear what have you spent since the settlement.

22 THE COURT: Right.

23 MR. GLENN: And --

24 THE COURT: Well, tell me if I'm wrong. My thoughts
25 on this particular -- what I'm trying to do now,

1 irrespective of when it was done, theoretically, it
2 increased the value of the property. So, when the
3 property sold, you should get some of that back. Now, I
4 understand with the real estate market crunch, it's sort
5 of a different situation now. I don't know what it's
6 worth. You all haven't gone forward with that appraisal
7 yet; have you?

8 MR. GLENN: We have employed the appraiser and
9 he's --

10 THE COURT: You don't know the results yet?

11 MR. GLENN: No, sir.

12 MR. LEWIS: No, sir.

13 MR. GLENN: We're just what, two weeks ago or ten
14 days ago that we told him to go forward.

15 THE COURT: Well, my thoughts are, if he's put a
16 dock in there, that should increase the value of the
17 property. So, I don't know why I should consider whether
18 it's important for me to enter it after mediation, is my
19 question. Why should I?

20 MR. GLENN: It's up to the Court. All I did --

21 THE COURT: I understand. I want to understand what
22 you're trying to tell me. Why do you think I should
23 consider those expenditures and an offset for Dr.
24 Alexander.

25 MR. GLENN: The expenditures that I'm talking about

1 were never agreed to by Dr. Bowman, and it caused a
2 conflict that started this.

3 THE COURT: I understand.

4 MR. GLENN: But certainly, the Court has a right to
5 consider all expenditures. I don't have any argument
6 with that.

7 THE COURT: Okay. I just want to make sure I
8 understood what you were trying to tell me.

9 MR. GLENN: The one thing I do want to point out to
10 the Court, it was in the testimony during the case in
11 chief, that Dr. Alexander filed a plat of five acres
12 where he built the barn, he calls it, in his apartment
13 over there. He's asking for reimbursement for all the
14 taxes paid since 2008. And if the Court looks at those,
15 you'll see --

16 THE COURT: Well, show me what you're talking about.
17 The property taxes 2003, '8, '9, '10, '11? It's on Page
18 3. Look on the summary sheet at Page 3.

19 MR. GLENN: I think that was some other tax. That
20 wasn't a property tax.

21 THE COURT: Well, it says the property taxes on Page
22 3 of his summary sheet.

23 MR. GLENN: It's just \$289.00, so I'm not going
24 to --

25 THE COURT: Two hundred and what?

1 MR. GLENN: \$289.73.

2 THE COURT: Where is it on the sheet is what I'm

3 trying to determine? Or is it on the sheet?

4 MR. GLENN: It's on that Page 3.

5 THE COURT: Okay. The back taxes, 289.73.

6 MR. GLENN: Yes, sir.

7 THE COURT: Okay. All right. What do you want to

8 tell me about that?

9 MR. GLENN: What I want to tell you is, about the

10 taxes coming forward, after he filed that plat, --

11 THE COURT: Okay.

12 MR. GLENN: -- that five acres was no longer

13 assessed the same way it used to be. And the taxes went

14 way up on it, because it's a residential assessment. And

15 so, he got the benefit. If the Court looks at the list

16 of the taxes, the ones labeled 003 are all for the five

17 acres that he had re-done without agreement, and on which

18 he built.

19 THE COURT: So, you're saying 2008, 2009, '10, and

20 '11 was re-appraised as residential on the five acres.

21 MR. GLENN: Yes, and in '9, '10, '11, and '8, it was

22 not that way.

23 THE COURT: Okay.

24 MR. GLENN: And I just wanted to point that out,

25 because we do not believe -- certainly, Dr. Bowman didn't

1 benefit for having that plat filed, and objected to the
2 plat being filed.

3 THE COURT: Okay.

4 MR. GLENN: On the plat that was filed, there's a
5 notation that there's a permanent easement to that
6 property, and I would like to hand this plat in as one
7 more exhibit.

8 THE COURT: That'll be Plaintiff's Number 13.

9 MR. LEWIS: I don't know what it is. Let me look at
10 it. That's a permanent easement for the five acres?

11 MR. GLENN: Yes. Or to the five acres.

12 MR. LEWIS: To the five acres.

13 DOCUMENT REFERRED TO AS PERMANENT

14 EASEMENT MARKED PLAINTIFF'S EXHIBIT

15 NUMBER 13, AND ENTERED AS EVIDENCE.

16 MR. GLENN: I guess the last point I want to make,
17 your Honor, both sides put in --

18 THE COURT: Have you handed up the plat?

19 MR. GLENN: Yes, sir. She has it.

20 THE COURT: Let me look at it real quick to see if I
21 had any questions about it.

22 Okay. All right. Go ahead. Go ahead, Mr. Glenn.

23 MR. GLENN: Your Honor, we don't question any of the
24 expenditures that they claim Dr. Alexander made. What we
25 do question, obviously, there were disagreement about it,

1 and I understand the position of the Court, and I just
2 wanted to make that known to the Court.

3 THE COURT: Okay. All right. Thank you so very
4 much. Mr. Lewis, anything you would like to say
5 concerning --

6 MR. LEWIS: Yes, sir.

7 THE COURT: -- the expenditures by both parties?

8 MR. LEWIS: Yes, First, the Picnic Point, he put on
9 one board. Out of all of that docking, he puts in one
10 board, and he wants you to think that, from that one
11 board, all this docking is no good. That docking is very
12 good. It has one board that needed replaced. And you
13 have to remember, this case has been in litigation and
14 it's very -- they have said that we don't own it; we're
15 not part of it; and so, they want to sell it. So, that's
16 kind of a damper on going out and doing total maintenance
17 on something.

18 The second thing is, they show you those pilings out
19 there. If you'll remember the prior hearing, those
20 pilings were put in to put a lift in, and Dr. Bowman
21 refused to let electricity to go out there. So, it's
22 hard to use them to have a lift without electricity. And
23 who would have thought someone would have complained
24 about a lift being put in by Dr. Alexander.

25 They talk about the interest and say they need

1 interest back to 2008. Well, Dr. Alexander has spent all
2 this money and a big difference, and he has interest. If
3 interest is due Dr. Bowman, there's interest due Dr.
4 Alexander. They've each had use of monies that the other
5 one has spent. Dr. Alexander had the use of what Dr.
6 Bowman spent, and Dr. Bowman had the use of what Dr.
7 Alexander has spent, so. And the difference would be,
8 we'll be glad to take interest on our part.

9 They went in here and they kept saying that the
10 90,000 was before the mediation settlement. Well, that's
11 what they do. They run with the mediation settlement,
12 and then they run away from the mediation settlement.
13 They take the mediation settlement when it's good for
14 them, and they say it's not in effect when it's bad for
15 them. You can't have it both ways.

16 Now, the barn down there, they say the plat. Well,
17 they want to -- the barn is something that was necessary,
18 and enhances the property. You couldn't have built the
19 barn without putting a plat. The taxes are because the
20 barn is there. The property gets the value of the barn,
21 and therefore, it helps whoever owns all of the property.
22 Again, here they go. They try to separate out the barn
23 from the rest of the property, but the barn is with the
24 property, according to the Court's order.

25 And so, what you have here is, in this case, in this

1 hearing, in this where we are here, we have so much money
2 by Dr. Bowman; so much money by Dr. Alexander; and the
3 difference would go to Mr. Alexander, Dr. Alexander's
4 column. That's all and simple as it is. And we like
5 what your Honor said at the first of the hearing, if
6 that's what he was doing. Mr. Glenn wants to pick and
7 choose some good, some bad, some worth while.

8 THE COURT: I think a lot of that's because of my
9 error in how I worded the order and his interpretation.
10 And I think that's where he's coming from. I haven't
11 changed my intention of what I stated at the very
12 beginning. Okay?

13 MR. LEWIS: All right, then, I don't have any --

14 THE COURT: It's simple math.

15 MR. LEWIS: I agree with you and I --

16 THE COURT: Subtract what he paid from what he paid,
17 and he's going to get credit.

18 MR. LEWIS: I have nothing further to say.

19 MR. GLENN: All I want to say is I disagree with all
20 his testimony, and the Court knows I disagree with it,
21 and we've already fought about it.

22 THE COURT: You want me to swear both of you?

23 MR. GLENN: We've already fought about it already.

24 THE COURT: Why don't we just swear both of you and
25 let you cross-examination each other.

1 MR. GLENN: No. I'm finished.

2 THE COURT: Okay. All right. Thank you all so very
3 much.

4 MR. LEWIS: Thank you, your Honor.

5 MR. GLENN: Thank you, Judge.

END PROCEEDING 11:22 P.M.

CERTIFICATE OF REPORTER

NOVEMBER 1, 2012 TRANSCRIPT OF HEARING

STATE OF SOUTH CAROLINA

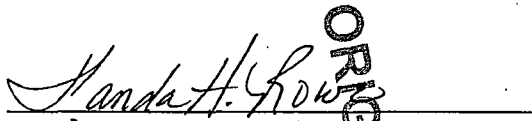
COUNTY OF CHARLESTON

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing November 1, 2012 Transcript of Hearing is a true, accurate, and complete record of the proceedings had on said date and evidence admitted in the case of Larry S. Bowman versus M. Donald Alexander, et al, Charleston County, Court of Common Pleas, Case Number 2008-CP-10-07245.

I further certify that I am of neither kin, counsel, or interest to any party hereto.

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature August 28, 2013.


Wanda H. Rowe, CVR-M
Official Court Reporter

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35:22 38:15 40:20 SELL- 41:15 SENT- 18:11 SEPARATE- 42:22 SETTLEMENT- 15:8,9 35:8,14 36:21 42:10,11,12,13 SHALL- 10:8,24 11:10 SHED- 4:16,17,23,24 12:23 13:12 29:6,7,14,19 SHEET- 32:13 35:16,21,23 38:18,22 39:2,3 SHELL- 36:1 SHORTENED- 7:18 SHOW- 27:16 38:16 41:18 SHOWING- 3:25,32 4:4 19:1 28:12,16,20 SHOWS- 21:24,25 22:1 25:3 26:9 27:19,20 30:16 SIDES- 40:17 SIGN- 18:8 SIGNATURE- 45:20,21 SIMPLE- 43:4,14 SIT- 7:25 12:22 SITUATION- 37:5 SOLD- 15:7 17:1 37:3 SOUTH- 1:1,19 45:4,8 SPEND- 13:3 SPENDING- 26:1 SPENT- 8:4,5,8,9,20,25 9:5 12:13,14,16,18 13:1,2,4,8 14:4,14 15:10,11 19:2 36:12,21 42:1,5,6,7 STACK- 18:6 STAMP- 45:20 START- 14:9 STARTED- 38:2 STATE- 1:1 45:4,8 STAY- 7:16 STIPULATION- 10:18	STIPULATIONS- 7:16 STORAGE- 4:17,24 29:6,14,19 STRAIGHTENED- 16:7 SUBMISSION- 24:19 SUBMITTED- 10:6,24 11:10 SUBTRACT- 43:16 SUFFICIENT- 10:6 SUMMARY- 5:3 19:8,9,19,23,24,2 5 18:23,25 20:2 32:13 33:4 35:6,16,21,23 36:12 38:18,22 SUPPLEMENT- 16:1 SUPPORTING- 8:3 SUPREME- 17:2 19:18 SWEAR- 43:22,24 T TAX- 38:19,20 TAXES- 38:14,17,21 39:5,10,13,16 42:19 TELLING- 36:19 TEMPORARY- 10:3,4 TEN- 37:13 TESTIMONY- 7:23 38:10 43:20 THAT'LL- 40:8 THAT'S- 8:24 10:14,15 11:23 12:5,15,19 13:3,5,18 16:8 17:23 18:2,11,16 20:10,15,16 21:13,16 24:7,19,20 25:6,8 29:7 34:11,17,21 36:6 40:10 41:15 42:10 43:4,6,8,10 THEIRS- 15:4 THEORETICALLY- 37:1 THERE'S- 13:8 17:6 27:20 36:3,4 40:4,5 42:3 THEREFORE- 42:21 THESE- 24:24 27:11,15,23 29:8	30:9 36:17 THEY'RE- 7:5,15,16 THEY'VE- 7:16 9:10 14:14 29:24 42:4 THOUSAND- 15:12,14 34:12 THREE- 24:24 26:2 27:15 THREEPAGE- 33:5 TIME- 7:7,12,14,23 16:6,8,17,25 31:6 36:20 TOOK- 30:17 TOTAL- 13:15 32:15 33:6,8 34:7 41:16 TOWARD- 14:4,7 TOWARDS- 12:12 TRACT- 5:36 23:5,9 TRANSCRIPT- 1:17 45:2,9,17 TRIAL- 16:23 20:11 TROPHY- 21:13,14 TROUBLE- 7:24 TWICE- 20:24 TWO- 15:4 17:6 24:23 29:6 36:4,8 37:13 38:25 U UNCLEAR- 13:21 UNDERSTOOD- 9:23 38:8 UNFORTUNATELY- 15:19 UNLESS- 22:2 UNLIMITED- 31:8,9 USED- 39:13 V VALUE- 10:24 11:10 12:23 14:10,19 15:16 33:17 37:2,16 42:20 VARIANCE- 13:9 VENUE- 16:19,20 VERSUS- 1:13 13:15 45:12	W WANDA- 1:46 45:7,24 WANTS- 41:10 43:6 WASN'T- 14:9 15:10 38:20 WATER- 6:4 23:21,23 WAYS- 42:15 WE'LL- 8:2 14:1 19:9 24:23 42:8 WE'RE- 7:15 10:12,17 16:13 23:12 28:6 34:16 37:13 41:14 WE'VE- 7:18 8:1,2 17:7 43:21,23 WEEK- 27:14 28:2 WEEKS- 37:13 WEREN'T- 14:6 WEST- 21:14 WHAT'S- 14:1 WHOLE- 12:25 13:1,2 WILL- 8:11 15:2,23 16:1 17:9 20:25 23:19 30:11 WISH- 16:5 WITNESS- 45:21 WORDED- 11:24 13:7 43:9 WORDING- 13:20 WORK- 2:34,41 3:3,10,17 7:13 25:15,22 26:9,12,16,20,24 27:3 WORKING- 7:5 WORTH- 37:6 43:7 WRITTEN- 14:25 Y YEARS- 36:12 YOU'D- 16:6 YOU'LL- 11:6 21:18 22:16 38:15 41:19 YOU'RE- 7:12 13:11 20:21 24:1 35:15,22,23 36:1,5 37:22 38:16 39:19

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Larry S. Bowman,)

Plaintiff,)

vs.)

M. Donald Alexander and Old
Dominion, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case Number: 2008-CP-10-7245

SUMMONS

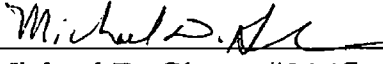
2008 DEC 22 PM 11:00
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO: DEFENDANTS AND THEIR ATTORNEYS:

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 subscriber at his office at GLENN, HAIGLER, MCCLAIN & STATHAKIS, LLP, 121 West Benson Street, Anderson, South Carolina 29624 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, the Plaintiff in this action will apply to the Court for the said relief demanded in the Complaint.

GLENN, HAIGLER, MCCLAIN
& STATHAKIS, LLP


Michael D. Glenn, #2147
Attorney for Plaintiff
121 West Benson Street
Anderson, South Carolina 29624
(864) 226-1885
(864) 226-0561, fax

December 17, 2008

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Case Number: 2008-CP-10-7245

Larry S. Bowman,)
)
Plaintiff,)

vs.)

COMPLAINT

M. Donald Alexander and Old)
Dominion, LLC,)
)
Defendants.)

2008 DEC 22 AM 11:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

Plaintiff alleges:

1. Plaintiff and Defendant M. Donald Alexander (hereafter Alexander) are citizens and residents of the State of South Carolina.
2. Defendant Old Dominion, LLC is a limited liability company organized and existing pursuant to the laws of the State of South Carolina and doing business in Charleston County, South Carolina.
3. Plaintiff and Defendant Alexander are the sole members and owners of Defendant Old Dominion, LLC. Plaintiff and Defendant Alexander each owned a 50% interest in Old Dominion, LLC.
4. Old Dominion, LLC is the owner of a plantation known as Old Dominion Plantation which is situated in Charleston County, South Carolina. The property was conveyed to Old Dominion Plantation, LLC by deed of Old

Dominion, a general partnership, dated March 15, 1995 and recorded March 21, 1995 in Book P-253 at Page 107, and by deed of The Nature Conservancy, recorded December 17, 1999 in Book M-339 at Page 420, Office of the Register of Deeds for Charleston County, South Carolina. TMS number 010-00-00-001(PT).

5. Over a period of several years, a dispute developed between Plaintiff and Defendant concerning their joint use of Old Dominion Plantation. In 2007 Plaintiff and Defendant contracted the services of Thomas J. Wills, Esquire to mediate the dispute between the parties.
6. Prior to September 10, 2007, a deadlock existed between Plaintiff and Defendant Alexander concerning the operation and governance of Old Dominion, LLC.
7. On September 10, 2007, a mediation was held at the office of the mediator in Charleston, South Carolina. At the mediation, Plaintiff was represented by attorneys John W. Fields and Michael D. Glenn. The Defendant Alexander was represented at the mediation by attorneys Randolph Murdaugh, IV and Leonard Krawcheck.
8. As a result of the mediation, Plaintiff and Defendant Alexander entered into a Settlement Agreement which is attached hereto as **Exhibit A**.
9. The Settlement Agreement requires that Plaintiff and Defendant Alexander

divide Old Dominion Plantation as set out in the Agreement.

10. The Settlement Agreement also requires Plaintiff and Defendant Alexander to consult with Ducks Unlimited to determine whether the contemplated division can be legally made. (Ducks Unlimited holds a conservancy easement on a portion of the property).
11. Subsequent to the mediation, Plaintiff and Defendant Alexander employed a surveyor to prepare a plat of the property and provide for the division of the property as contemplated by the Settlement Agreement. (The plat is attached as **Exhibit B**).
12. After the survey of the property, Plaintiff and Defendant Alexander consulted with Ducks Unlimited to determine whether the property can be legally divided.
13. On March 26, 2008, Plaintiff and Defendant Alexander were notified by Ducks Unlimited that the proposed division of the Plantation was denied. Ducks Unlimited indicated, however, that it is willing to review "... biological evidence such as a study from a consulting wildlife biologist, or other similar report, that presents a management plan wherein the biological integrity of the property will still be protected in the future under a division of the property." (The March 26, 2008 Ducks Unlimited letter is attached as **Exhibit C**).

14. After receipt of the notice from Ducks Unlimited, Plaintiff contacted a certified wildlife biologist and land management consultant, Williams Land Management and its principal, R.K. (Kenney) Williams. Williams Land Management agreed to provide to Old Dominion, LLC a wet-lands management plan for the entire Old Dominion property. Williams Land Management proposed to enter into a contract with Plaintiff and Defendant to provide such a plan. The proposed contract provides, "The plan shall show that division of the property, pursuant to the provided division survey, with any impact to the biological integrity to the property and recommendations to protect the biological integrity of the property now and in the future, so as to satisfy all requirements of Ducks Unlimited and the existing conservation easement".
15. Plaintiff is informed, believes and alleges that the plan proposed by Williams Land Management will be approved by Ducks Unlimited which will allow for the division of Old Dominion Plantation pursuant to the Agreement of Plaintiff and Defendant Alexander.
16. Plaintiff informed Defendant Alexander of the proposed contract with Williams Land Management and of Plaintiff's willingness to personally pay for the work of Williams Land Management.
17. On October 6, 2008, Plaintiff and Defendant Alexander were again notified

by Ducks Unlimited that it is willing to review the management and possible division of the property as previously indicated on March 28, 2008 (October 6, 2008 Ducks Unlimited letter is attached as **Exhibit D**).

18. By letter of November 24, 2008, Plaintiff notified Defendant Alexander of the proposed contract with Williams Land Management and furnished copies of the contract for Defendant Alexander's signature. The contract had previously been signed by Plaintiff. Williams Land Management is willing to sign the contract once it has been signed by Defendant Alexander. (letter and proposed contract attached as **Exhibit E**).
19. Upon mailing the letter and contract to Defendant Alexander, Plaintiff notified Defendant Alexander by phone that he had sent the documents by Federal Express. Defendant Alexander refused to accept the documents (refusal attached as **Exhibit F**).
20. Since the parties reached their Settlement Agreement on September 10, 2007, Plaintiff has performed the contract in every way including making payment to the Defendant Alexander as required by Paragraph Two (2) of the Settlement Agreement (payment check is attached as **Exhibit G**).

FOR A FIRST CAUSE OF ACTION

Breach of Contract / Specific Performance

21. Defendant Alexander has breached the Settlement Agreement of the parties

by failing and refusing, after repeated requests, to pursue the approval of the division of the property of Old Dominion Plantation by Ducks Unlimited as required by the Settlement Agreement signed on September 10, 2007.

22. Defendant Alexander has also breached the Settlement Agreement of the parties by failing and refusing to pay for the personal property obtained by Defendant Alexander pursuant to the Settlement Agreement of September 10, 2007. Defendant Alexander took all of the personal property listed in the Agreement and paid nothing.
23. Plaintiff is entitled to an Order of this Court requiring Defendant Alexander to specifically perform the Settlement Agreement contract and requiring Defendant Alexander to sign the proposed contract with Williams Land Management as set forth herein and requiring Defendant Alexander to cooperate in completing a division of Old Dominion Plantation as required by the Settlement Agreement or, in the alternative, if the legal division is not allowed, to proceed with the Settlement Agreement as required in Paragraphs Four (4) through Eight (8) of the Settlement Agreement.
24. The Plaintiff is entitled to an Order requiring Defendant Alexander to pay for the personal property he took under the terms of the Settlement Agreement of September 10, 2007.

FOR A SECOND CAUSE OF ACTION

25. Plaintiff realleges all allegations set forth herein and incorporates the same herein.
26. In the event the Court does not grant Plaintiff's prayer for specific performance of the contract between Plaintiff and Defendant Alexander, requiring division of Old Dominion Plantation as agreed by the parties, Plaintiff alleges that a deadlock exists between the shareholders and owners of Old Dominion, LLC.
27. Because of the deadlock between Plaintiff and Defendant Alexander in the operation and governance of Old Dominion, LLC, Plaintiff alleges that the Court should appoint a Receiver to take control of and liquidate the assets and debts of Old Dominion, LLC including Old Dominion Plantation and that said liquidation be made pursuant to a plan approved by the Court.

WHEREFORE, Plaintiff prays:

1. That Defendant Alexander be required to specifically perform his contract of September 10, 2007 as set forth herein.
2. That Defendant Alexander be required to pay to Plaintiff the value of the personal property he took under the terms of the Settlement Agreement of September 10, 2007.
3. In the alternative, in the event the Court does not grant specific performance, that the Court issue it's Order appointing a Receiver for

Old Dominion, LLC and require the Receiver to liquidate the assets
and liabilities of Old Dominion, LLC, including Old Dominion
Plantation, under a plan of liquidation approved by the Court.

John W. Fields, #2007
10 Commons Boulevard
Seneca, South Carolina 29678
(864) 882-1812
(864) 882-1899, fax
and
Michael D. Glenn, #2147
GLENN, HAIGLER, MCCLAIN &
STATHAKIS, LLP
121 West Benson Street
Anderson, South Carolina 29624
(864) 226-1885
(864) 226-0561, fax

By: Michael D. Glenn
Michael D. Glenn
Attorneys for Plaintiff

December 17, 2008

A

SETTLEMENT AGREEMENT

In Re: Old Dominion

With respect to disagreements with regard to the use and ownership of the property known as Old Dominion (the Property), the sole members of the LLC, Don Alexander, M.D. and Larry S. Bowman, M.D. (parties) agree as follows:

1. The Property will be divided as depicted in Exhibit A.
2. Tract I will be held and controlled by Alexander. Bowman will pay to Alexander \$250,000.00, to be paid over five (5) years at 7% interest, payments to be made annually for principal and interest. Obligation evidenced and secured by unsecured promissory note.
3. Tract II will be held and controlled by Bowman.
4. The parties will consult Ducks Unlimited to determine if the Property can be legally divided as depicted in Exhibit A. If so, the division will be made and each party will be conveyed his respective tract. In the event Ducks Unlimited does not permit the legal separation of the Property, attorneys for the parties will draft agreements to accomplish the separate use, control, and responsibility of and for the Property, it being the intent of the parties that each party be responsible for costs associated with his Property, and have exclusive use of such Property. In the event the legal subdivision is accomplished, Bowman will grant a non-exclusive permanent transmissible access easement to Alexander over the dikes and roads leading to Picnic Point. If Ducks Unlimited requires a reduction of home sites, then Bowman will give up the first home site and Alexander the second home site.

EXHIBIT A

5. The parties will retain the services of a surveyor to survey the agreed-upon division. This survey will specifically equally divide Picnic Point. The parties will share the cost of such survey.

6. The joint pier at Picnic Point and the joint roads (as shown on Exhibit B) will be maintained by a third party who will be paid by the LLC or the parties. The parties will contribute \$5,000.00 apiece (or such amount both parties agree is necessary) annually toward the maintenance.

7. Disputes regarding maintenance of the pier at Picnic Point and/or the roads will be finally determined by binding arbitration.

8. The parties agree that if one party wishes to sell any part of his respective tract, the selling party will first offer the Property to the other party at an offering price, and will not sell the Property to a third party for less than the offering price.

9. With respect to existing equipment (see Exhibit C), such equipment will be divided by permitting each party to purchase such equipment as they select at the price listed on Exhibit C. Such selection shall be concluded on or before January 13, 2008. If both parties desire the same piece of equipment, the parties will draw straws to determine which party will purchase the equipment. Alexander will remove his divided equipment from the Bowman tract on or before January 13, 2008.

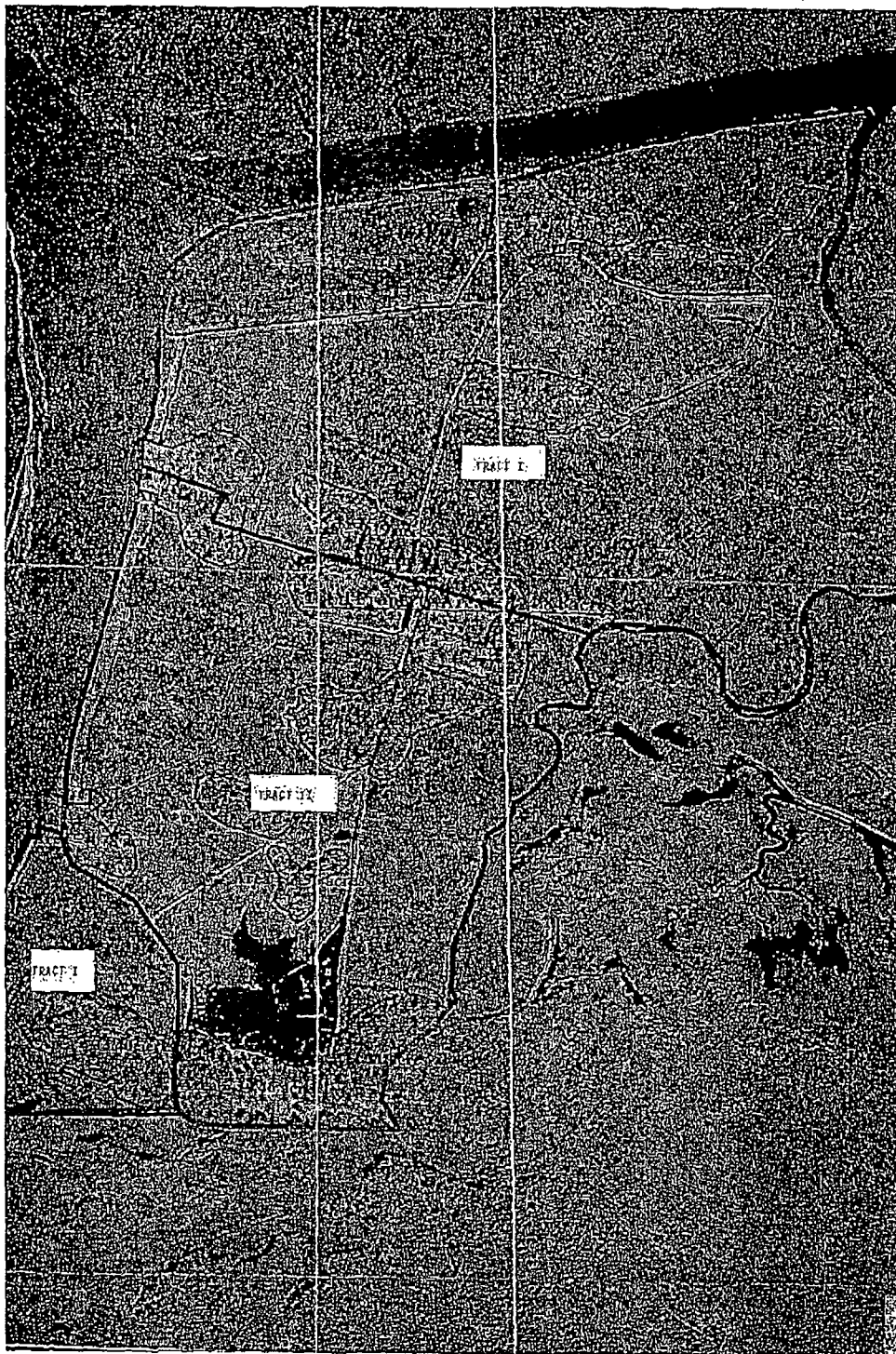
10. The parties agree that Bowman will have exclusive use of the Property (Tract I and Tract II) from Monday, January 14, 2008 through Monday, January 21, 2008, for the wedding of his daughter.

11. This agreement is binding on the parties and their respective heirs and assigns.

James M. ...
...

MD Council 9/10/07
L. S. S. 9/10/07

EX A



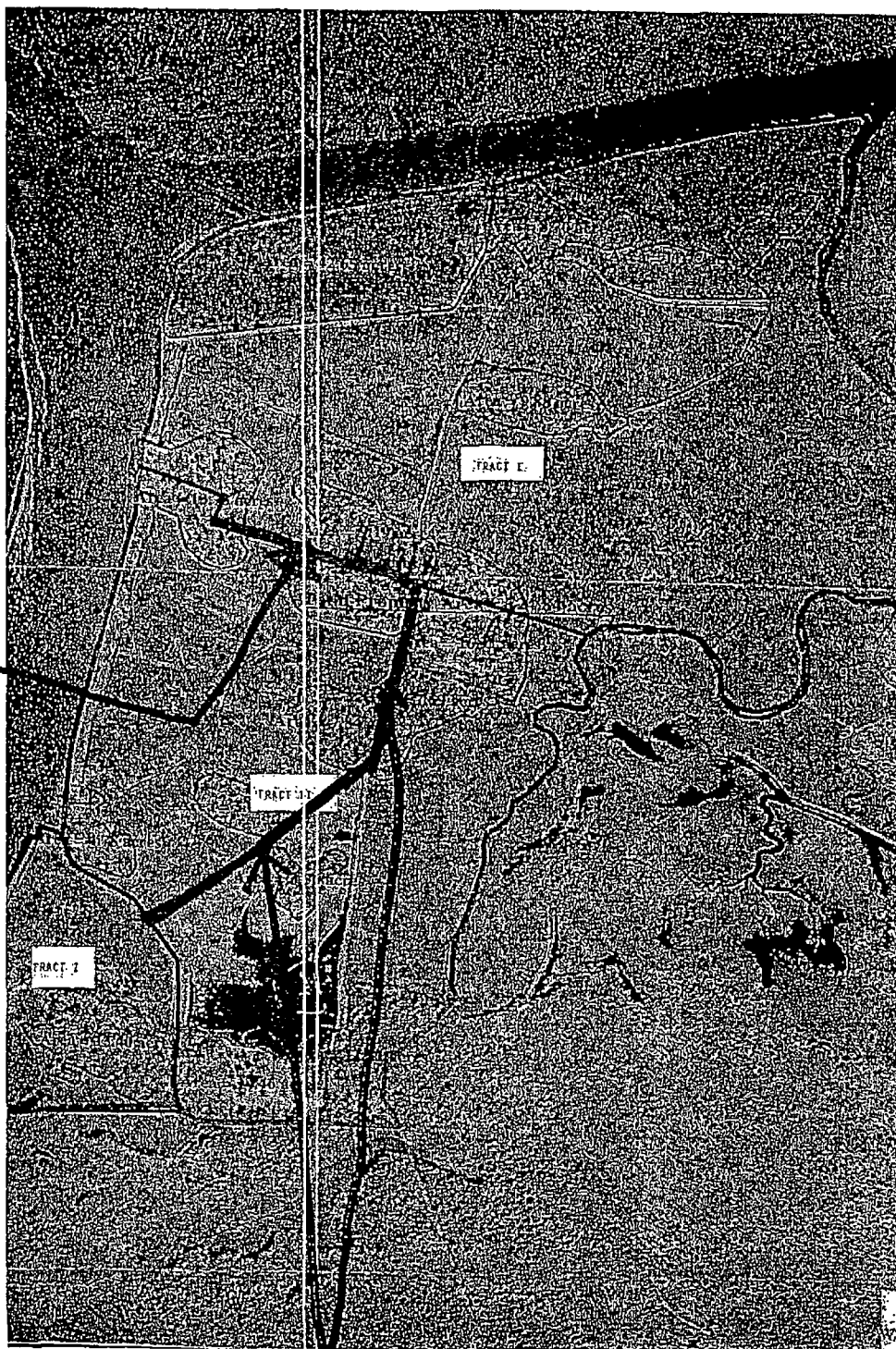
P. O. Box 834
Mt. Pleasant, SC 29465
Tel. # 843-379-6220 x 111
Fax. # 843-379-6222

atlanticappraisals.com
cdonato@atlanticappraisals.com

25B-2 Market Street
Beaufort, SC 29901
Tel. # 843-379-6220 x 111
Fax. # 843-379-6222

Ex B

Road Access



Road Access

P. 0836834
Mt. Pleasant, SC 29465
Tel. # 843-379-6220 x 111
Fax # 843-379-6222

atlanticappraisals.com
cdonato@atlanticappraisals.com

25B-2 Market Street
Beaufort, SC 29901
Tel. # 843-379-6220 x 111
Fax # 843-379-6222

Equipment Owned Jointly

CL

Estimated (?) Depreciated Value

Diesel Pump	\$ 1000.00
John Deere Tractor	7000.00
4 Row Planter	1000.00
Bush Hog	100.00
Back Hoe	8000.00
Snorkel Boat	800.00
Sprayer	20.00
Plow	200.00

Total

18,120.00

B

The following are listed as
 lacking or returned: 1-11-11
 Creation Care Planning Committee
 7/14/32 OCT 4, 2008
 App # _____ Date _____

[illegible][illegible]

1. A further extension of the term of the existing contract of the National Security Agency with the Central Intelligence Agency for the purpose of continuing the present contract for the purpose of continuing the present contract.
2. A further extension of the term of the existing contract of the National Security Agency with the Central Intelligence Agency for the purpose of continuing the present contract for the purpose of continuing the present contract.
3. A further extension of the term of the existing contract of the National Security Agency with the Central Intelligence Agency for the purpose of continuing the present contract for the purpose of continuing the present contract.
4. A further extension of the term of the existing contract of the National Security Agency with the Central Intelligence Agency for the purpose of continuing the present contract for the purpose of continuing the present contract.
5. A further extension of the term of the existing contract of the National Security Agency with the Central Intelligence Agency for the purpose of continuing the present contract for the purpose of continuing the present contract.

DECLARATION OF STATEMENT

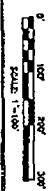
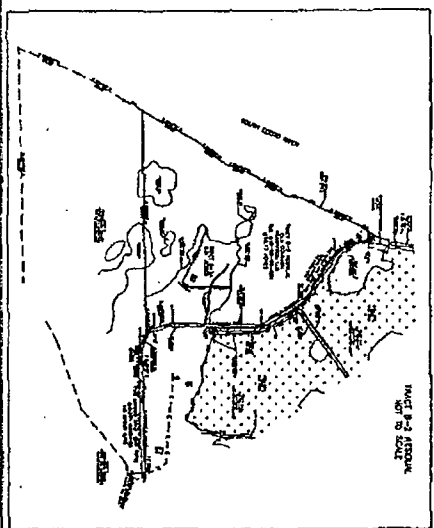
I, James Earl Ray, do hereby declare that the foregoing is a true and correct statement of the facts and circumstances of the case, and that I am not making any statement which is false or misleading, and that I am not making any statement which is intended to defame or injure the reputation of any person.

James Earl Ray

19-9-68

DECLARED & SIGNED: James Earl Ray

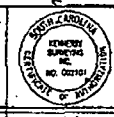
WITNESSES: James Earl Ray and James Earl Ray



can provide more robust minimum requirements of AS DIRECT Regulation and applicable standards for installation of new energy technologies. One target and proposed system to ensure a 3 bed room single family residence, plus globally Permit # 2009060407

[illegible]

PLAT SHOWING A SUBDIVISION SURVEY OF
A PORTION OF OLD DOMINION PLANTATION
CREATING TRACT B-2A & TRACT B-2 RESIDUAL
TMS 010-00-00-001
LOCATED ON EDISTO RIVER,
CHARLESTON COUNTY, SOUTH CAROLINA
PROPERTY OWNED BY: OLD DOMINION PLANTATION LLC
SURVEY REQUESTED BY: DON ALEXANDER



KENNERTY SURVEYING INC.
5355 SAVANNAH HIGHWAY
RAVENEL, S.C. 29470
843-889-3600
EMAIL: kennerty@comcast.net

EXHIBIT.

00353

C



NATIONAL HEADQUARTERS

One Waterfowl Way
Memphis, TN 38120-2351
(901) 758-3825 fax (901) 758-3850
www.ducks.org

March 26, 2008

M. Donald Alexander, MD
8 Richland Medical Park Drive, Suite 300
Columbia, SC 29203

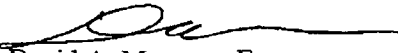
Larry S. Bowman, MD
10630 Clemson Blvd., Suite 100
Seneca, SC 29678

Re: Conservation Easement on Old Dominion Plantation

Dear Doctors,

We've received responses from you regarding the decision by DU to deny the division of the Plantation at this time. DU is willing to review this matter in an ongoing basis. We are willing to review biological evidence such as a study from a consulting wildlife biologist, or other similar report, that presents a management plan wherein the biological integrity of the property will still be protected in the future under a division of the property. Until such time DU requests you follow the terms of your Settlement Agreement, and complete a use and maintenance agreement for the property. Please consult with the Lowcountry Field Office before the final agreement is executed to ensure the future management conforms to the protection of the conservation values in the easement.

Very Truly Yours,


David A. Marrone, Esq
Director of Land Protection
dmarrone@duck.org
901-758-3726

CC: Craig LeShack, Jimmy Emfinger, Curtis Hopkins

EXHIBIT

President

W. Bruce Lewis
Natchez, Mississippi

Chairman of the Board

James E. Hulbert
Longview, Washington

Executive Vice President

D. A. (Don) Young
Memphis, Tennessee

First Vice President

John R. Pope
Jacksonville, Florida

Treasurer

John W. Newman
New Orleans, Louisiana

Secretary

Stephen C. Reynolds
Memphis, Tennessee

President,

Netherlands America Trust, Inc.
James C. Kennedy
Atlanta, Georgia

Senior Vice Presidents

Sandra L. (Sandi) Beitzel
Menasha, Wisconsin

Jared Brown
Clearwater, Florida

Doug Burch
Neosho, Missouri

Steve Dey
Waterville, Ohio

George Dunklin, Jr.
DeWitt, Arkansas

Ken Durdahl
Howard Lake, Minnesota

Carla Hopp
Newberg, Oregon

Rogers Hoyt, Jr.
Uvalde, Texas

Tom Jones
Salem, Oregon

Lon Knoedler
Kenosha, Wisconsin

Luke Laborde
Cary, North Carolina

A. Kel Long, III
Atlanta, Georgia

Steve Marasovich, Jr.
Fabens, Texas

Jack Moss
Raymond, Mississippi

Mike Panos
Maywood, New Jersey

Paul Ralstin
Boise, Idaho

Doug Schoenrock
Fayetteville, Tennessee

Corporate Executive Secretary

James West
Memphis, Tennessee

D



Chris Vaughn
Land Protection Coordinator
South Atlantic Field Office
3294 Ashley Phosphate Road, Suite I-F
North Charleston, SC 29418
(843) 745-9110 Fax (843) 745-9112
cvaughn@ducks.org

October 6, 2008

M. Donald Alexander, MD
8 Richland Medical Park Drive, Suite 300
Columbia, SC 29203

Larry S. Bowman, MD
10630 Clemson Blvd., Suite 100
Seneca, SC 29678

Re: Conservation Easement Old Dominion Plantation

Dear Doctors,

Per my conversation with Dr. Bowman on 10/3/08 and Dr. Alexander on 10/06/08, I wish to reiterate and summarize those discussions by saying that DU is still willing to review the management and possible division of the property on an ongoing basis per the specific conditions stated in a memo to you both from Dave Marrone, Director of Land Protection, dated March 26, 2008 (enclosed). While our recent conversations were personally beneficial to my understanding, it doesn't appear that the overall situation has changed since March 26, 2008, and more importantly, DU's position in this matter remains unchanged. Please carefully reference this memo from Dave as you both move forward in your discussions.

It was certainly a pleasure speaking with you both and having the opportunity to see the property. I do look forward to working with each of you in the future.

Sincerely,

Chris Vaughn
Land Protection Coordinator
cvaughn@ducks.org
m843-209-2290

CC: Craig LeShack, Dave Marrone

Enclosure (1)

EXHIBIT D

LEADERS IN WETLANDS CONSERVATION

00357

E



Blue Ridge Orthopaedics

SPECIALIZING IN SPORTS MEDICINE, GENERAL ORTHOPAEDICS, TRAUMA, FOOT & HAND SURGERY AND TOTAL JOINT REPLACEMENT

Seneca Office
10630 Clemson Blvd.
Suite 100
Seneca, SC 29678
864-482-6000
864-482-7000 fax
www.broa.com

November 24, 2008

Anderson Office
100 Healthy Way
Suite 1200
Anderson, SC 29621
864-260-9910
864-328-1451 fax

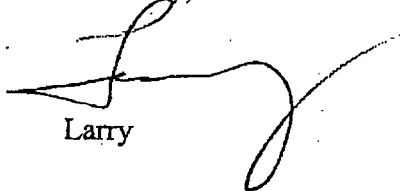
Dear Don,

Enclosed are two copies of the contract for Williams Land Management to provide a management plan for Old Dominion. Please keep one copy and sign and overnight the second copy back to me per the enclosed mailer. I will then overnight the signed contract to Kenny Williams to allow the work to begin.

It is my understanding from the Ducks Unlimited Low Country Land Office and the Director of Land Management, that they will allow the division once this plan is approved and satisfies their requirements. We will have to relinquish building sites, probably 2, to ensure the property value is not increased by the division.

If you do not wish to pay for half the consulting fee then I will fund all of Kenny Williams' charges. After great time and effort it appears we will be able to complete our agreement of September 10, 2007. Please sign and return the contract as soon as possible. I have attempted to reach you by phone (office, home, and cell). Hopefully we will have talked prior to you receiving this, but if not, please call me.

Sincerely,



Larry

Seneca Office
Sports Medicine &
Orthopaedic Surgery
Larry S. Bowman, MD
James C. McGeorge, MD
Steven L. Martin, MD
P. Sean McCallum, MD
Brian J. Redmond, MD
W. Scott Brown, MD
Musculoskeletal &
Sports Medicine
Douglas A. Reeves, MD

Anderson Office
Sports Medicine &
Orthopaedic Surgery
John H. Murray, MD
W. Bruce Richmond, MD
J. Kirk Hensarling, MD
Todd C. Swathwood, MD
James C. Mills III, MD
Mark A. Pierce, MD
Musculoskeletal &
Sports Medicine
Christopher B. Clemow, MD

Physician Assistants
C. Stephen Jackson, PA-C
Wallace S. Liggett, PA-C
G. Emmitt Carter, PA-C
Frank M. Mlinar, PA-C
Blythe J. Watson, PA-C
Kristen L. Myers, PA-C
Anthony L. Alexander, PA-C

EXHIBIT E

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

CONTRACT

This Agreement entered into this _____ day of November, 2008 by and between Old Dominion, LLC, M. Donald Alexander, MD and Larry S. Bowman, MD, individually, and as sole members of Old Dominion, LLC, and Williams Land Management and its Principle R.K. (Kenny) Williams, Certified Wildlife Biologist and Land Management Consultant.

Old Dominion, LLC agrees to pay to Williams Land Management for the here and after described Wetlands Management Plan the fee as submitted by Williams Land Management prior to the deliver of the plan.

Williams Land Management shall provide to Old Dominion, LLC a Wetlands Mariagement Plan for the entire Old Dominion property. The plan shall show that division of the property, pursuant to the provided division survey, with any impact to the biological integrity of the property and recommendations to protect the biological integrity of the property, now and in the future, so as to satisfy all requirements of Ducks Unlimited and the existing Conversation Easement.

Old Dominion, LLC, M. Donald Alexander, MD and Larry S. Bowman, MD do hereby indemnify and hold harmless R. K. (Kenny) Williams from any disputes, disagreements, suits or claims in the preparation of or related in any way to the proposed plan or any division or disposition of ownership rights to the property.

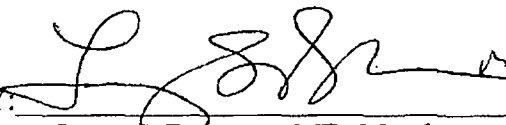
EXHIBIT

E

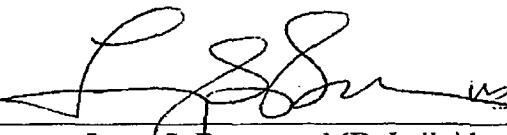
Agreement entered into the day and date first above written

Old Dominion, LLC

BY: _____ (SEAL)
M. Donald Alexander, MD, Member

BY:  _____ (SEAL)
Larry S. Bowman, MD, Member

M. Donald Alexander, MD, Individually

 _____ (SEAL)
Larry S. Bowman, MD, Individually

Williams Land Management

BY: _____ (SEAL)
R.K. Williams, Owner, Authorized Officer

F

From: Origin ID: USCA (800) 463-3339
FEDEX RETURNS
FEDEX
150 QUEEN PARKWAY

WEST COLUMBIA, SC 29169



JCL511128/29/23

SHIP TO: (864) 482-1111 BILL RECIPIENT
SHIPPING
BLUE RIDGE ORTHOPEDIC
10630 CLEMSON BLVD STE 100

SENECA, SC 29678

Ship Date: 28NOV08
ActWgt: 1.0 LB
CAD: 7777244/INET8091
Account#: S *****

Delivery Address Bar Code



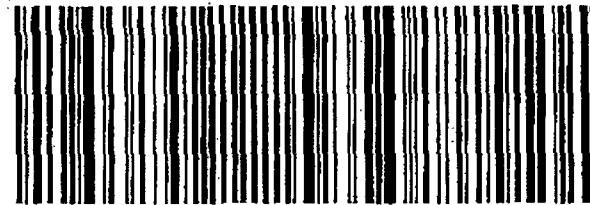
Ref # RTS#861083718630
Invoice #
PO #
Dept #

TRK# 7961 4762 0737
0201

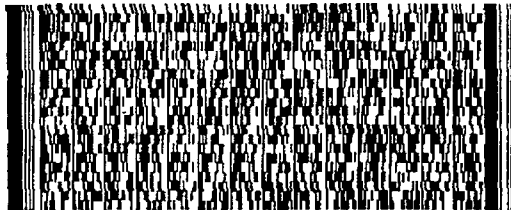
WED-03DEC A5
EXPRESS SAVER

29678
SC-US
GSP

SJ ANDA



EXHIBIT



Company

Recipient's Address
We cannot call

Address

To request a package be held at a specific FedEx location, print FedEx address here.

City

Columbia SC ZIP 292

03533



8610-8371-8630

source la zona de direccion indicada.

El eficiente SOBRE DE TARIFA ÚNICA. No tiene uso.

UPDATE DEL POD

- without a signature
- ☐ 1st Attempt ☐ 2nd Attempt ☐ 3rd Attempt
- ☒ Signature required, please contact shipper for disposition
- ☐ Holiday - Closed
- ☐ Package not attempted (reason)
- ☒ Refused (reason) *doesn't want*
- ☐ Future delivery. Reattempt on (date)
- ☐ Recipient requested hold for pickup
- ☐ Collection/Delivery. Payment not available. Reattempt to be made on (date)
- ☐ Bill recipient shipment. Payment not available. Reattempt to

DELIVERY

Shipping is the property of the U.S. Postal Service and is provided solely for use in sending Priority Mail. Use may be a violation of federal law.

This pouch is resealable. This pouch is the property of the U.S. Postal Service and is provided solely for use in sending Priority Mail. Use may be a violation of federal law. Embalaje es propiedad del Servicio Postal de los Estados Unidos y es proporcionado solo para el envío de correo prioritario. El uso indebido puede ser una violación de la ley penal federal.

00363

G

LARRY S. OR MARY M. BOWMAN
10630 CLEMSON BLVD SUITE 100
SENECA, SC 29678

3230

67-213/32

9/23/08 Date

Pay to the
Order of

M. D. Alexander Jr. M.D.

\$ 67,000.00

Sixty seven thousand / 00/100

Dollars



Security
Features
Detailed on
back.

COMMUNITY FIRST
BANK

Walhalla, S.C. 29691

MEDALLION CHECKING

For

Monthly rate 1/5 of 250,000 + infinite 1%
for old Dominion Division

[Signature]

MP

⑆053202130⑆ 100266980⑆ 3230

EXHIBIT 6

00365

GLENN, HAIGLER, MCCLAIN & STATHAKIS, LLP

ATTORNEYS AT LAW

121 WEST BENSON STREET
ANDERSON, SOUTH CAROLINA 29624

MICHAEL D. GLENN
STEPHEN K. HAIGLER
J. FRANKLIN MCCLAIN
JOHN J. STATHAKIS

Writer's e-mail: mglenn@ghmslaw.com

FAX (864) 226-0561
(864) 226-1885
(864) 224-9677

December 17, 2008

Ms. Julie J. Armstrong
Clerk of Court
100 Broad Street, #106
Charleston, South Carolina 29401

RE: Larry S. Bowman vs. M. Donald Alexander and Old Dominion, LLC

Dear Ms. Armstrong:

I enclose herewith the original and two (2) copies of a Summons and Complaint for filing in your office along with my check in the amount of \$150.00.

I also enclose a self-addressed, stamped envelope for your convenience in returning the certified copies to me.

Thank you for your attention to this matter.

Yours very truly,

GLENN, HAIGLER, MCCLAIN & STATHAKIS, LLP



Michael D. Glenn

MDG/sbl
Enc.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE
NINTH JUDICIAL CIRCUIT

Larry S. Bowman,

Plaintiffs,

v.

M. Donald Alexander and Old Dominion,
LLC,

Defendants.

CIVIL ACTION NO. 08-CP-10-7245

**ANSWER AND
COUNTERCLAIMS**

FILED
7:03 MAR -2 PM 2:09
JULIE J. ARMSTRONG
CLERK OF COURT

Defendants M. Donald Alexander and Old Dominion Plantation, LLC (wrongly identified as Old Dominion, LLC in the Complaint) hereby answer and respond to the Complaint of Plaintiff Larry S. Bowman as follows.

Defendants generally and specifically deny each and every allegation, statement, matter and/or thing set forth and alleged in the Complaint unless specifically admitted, qualified, or explained.

FOR A FIRST DEFENSE
(Failure to Join Necessary Party)

1. The Complaint should be dismissed because Wetlands America Trust, Inc.. ("Wetlands America") holds a Deed of Conservation Easement (hereinafter, "Conservation Easement") on the property which prohibits division of the property. Thus, Ducks Unlimited is a necessary party to any proposed division or partition of the property.
2. Plaintiff's failure to join all necessary parties is grounds for dismissal under Rule 12(b)(7), SCRPC.

3. Defendants have filed, simultaneously with this Answer, a motion pursuant to Rule 12(b)(7).

This Answer shall not be construed to waive any motion under Rule 12(b), SCRCP.

FOR A SECOND DEFENSE

(Insufficient Service of Process)

4. The Complaint lacks a civil action number and/or stamp from the clerk of court.
5. The Complaint should thereby be dismissed under Rule 12(b)(5) for insufficient service of process.

FOR A THIRD DEFENSE

6. Each and every allegation in the Complaint not specifically admitted, qualified, or explained is denied and strict proof is demanded thereof.
7. As to Paragraph 1, Defendants admit the allegations.
8. As to Paragraph 2, Defendants deny the allegations and assert that the name of the limited liability company is Old Dominion Plantation, LLC.
9. As to Paragraph 3, Defendants admit the allegations.
10. As to Paragraph 4, Defendants admit the allegations, and further assert that Wetlands America holds a Conservation Easement on the property and is a necessary party to any division of the property.
11. As to Paragraph 5, Defendants admit the allegations.
12. As to Paragraph 6 Defendants admit the allegations.
13. As to Paragraph 7, Defendants admit the allegations.
14. As to Paragraph 8, Defendants admit the allegations.

15. As to Paragraph 9, Defendants admit the allegations and further assert that division of the property is prohibited under the Conservation Easement. Furthermore, Defendants assert that if such division is even possible, Wetlands America must be a party to any agreement to divide the property.
16. As to Paragraph 10, Defendants admit the allegations and further assert that Wetlands America must be a party to any agreement to divide the property if such division is even possible under the law, given the ecological changes by Plaintiff Bowman.
17. As to Paragraph 11, Defendants admit the allegations and further assert and that any agreement dividing the property must include Wetlands America. Defendants also assert that any agreement dividing the property must provide that each party will have the separate use, control and responsibility for that party's portion of the property but also have rights to ensure the other party meets his responsibilities, so that the property remains in its present state, with the exception of the parties' rights under the Conservation Easement to subdivide the property into 10 lots. Defendants further assert the Settlement Agreement is incomplete in that it fails to provide Defendant Alexander with an alternate transmissible easement to the backside of the property because the county road is subject to flooding by high tides. The county road is the only way for Defendant Alexander to access certain portions of this property. The Settlement Agreement also fails to provide Defendant Alexander with a utility easement allowing him to utilize the existing utility line.
18. As to Paragraph 12, Defendants admit the allegations.
19. As to Paragraph 13, Defendants admit so much of the paragraph as alleges that Wetlands America issued a letter on March 26, 2008, and craves reference to that document. Any

other allegations are denied. Defendants further assert that a management plan as contemplated by Plaintiff Bowman will never be sufficient to protect the biological integrity of the property .

20. As to Paragraph 14, Defendants admit so much of the paragraph as alleges that Williams Land Management issued a proposed contract and craves reference to that document for the contents therein. Defendants lack sufficient information and belief as to admit or deny the remaining allegations. Defendants further assert that the biological integrity of the property cannot be maintained by a land management plan as contemplated by Plaintiff Bowman, given his destruction of a central trunk line.
21. As to Paragraph 15, Defendants have never received a copy of any management plan and therefore deny the allegations.
22. As to Paragraph 16, Defendants admit the allegations but assert that the contract proposed by Williams Land Management is not appropriate because, *inter alia*, it requires Defendant Alexander to indemnify and hold harmless the owner of Williams Land Management.
23. As to Paragraph 17, Defendants admit so much of the paragraph as alleges that Wetlands America issued a letter dated October 6, 2008 and craves reference to that document for the contents therein. Any other allegations are denied.
24. As to Paragraph 18, Defendants admit so much of the paragraph as alleges that Plaintiff notified Defendant Alexander of a proposed contract with Williams Land Management, and craves reference to that documents for the contents therein. Defendants lack sufficient knowledge to form a belief as to the remaining allegations.

25. As to Paragraph 19, Defendants admit the paragraph but assert that Defendants were under no duty to accept the documents.
26. As to Paragraph 20, Defendants deny the allegations and further assert that the Plaintiff's action, Complaint, and the terms of the Settlement Agreement violate the terms of the Conservation Easement.
27. As to Paragraph 21, Defendants deny the allegations.
28. As to Paragraph 22, Defendants admit so much of the paragraph as alleges he is in possession of the personal property, but deny the remaining allegations. Defendants further assert that any amount owed for the personal property is offset by the amount Plaintiff owes Defendant Alexander for costs and expenses regarding improvements to the property and Defendant Alexander's payment for operating expenses. Specifically, Plaintiff owes \$50,233.00 as shown on the hand-written accounting attached hereto as Exhibit A. Additionally, Defendant Alexander has advanced funds to Old Dominion, LLC for property taxes in the amount of \$7,328.22. See Exhibit B.
29. As to Paragraph 23, Defendants deny the allegations.
30. As to Paragraph 24, Defendants deny the allegations. In the alternative, Defendants assert that they are entitled to set off.
31. Paragraph 25 does not require a response. To the extent that it does, Defendants deny the allegations.
32. As to Paragraph 26, Defendants deny the allegations.
33. As to Paragraph 27, Defendants deny the allegations.

FOR A FOURTH DEFENSE AND FIRST COUNTERCLAIM
(Specific Performance)

34. Defendants repeat and reallege each and every previous paragraph of the Answer and Counterclaims as though fully set forth here at length .
35. Plaintiff has an obligation to keep the property in its original condition as contemplated by the Conservation Easement, such that the biological integrity of the property is preserved but also allowing each party to keep all of the home sites to which each is entitled under the Conservation Easement.
36. The settlement agreement would be satisfied, *inter alia*, by dividing the property with Plaintiff and Defendant Alexander each receiving a tract in fee simple but requiring Plaintiff to give up one home site. A cooperative agreement with Wetlands America, as indicated by Exhibits C and D to the Complaint, would also suffice if the property is not divided in fee simple and home sites deeded. If required, Plaintiff agreed to give up one home site to satisfy Wetlands America.
37. The Conservation Easement requires that the property be maintained in its original condition to the extent possible to ensure continual maintenance and use of impoundments, to include all trunk lines.
38. Any destruction of the trunk lines is disallowed and must be repaired.
39. The Conservation Easement also obligates the parties to maintain the natural water courses on the property and refrain from changing, diverting, or disturbing any water course.

40. Upon information and belief, Plaintiff has violated the Conservation Easement by illegally filling in the trunk line at or near Picnic Point, which has altered the biological integrity of the property.
41. Defendants are entitled to an Order requiring Plaintiff to specifically perform and honor its obligations under the Conservation Easement.

FOR A FIFTH DEFENSE AND SECOND COUNTERCLAIM
(Setoff)

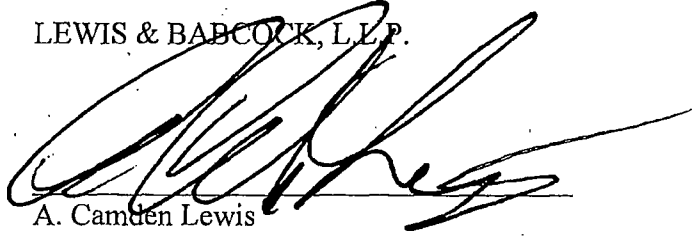
42. Defendants repeat and reallege each and every previous paragraph of the Answer and Counterclaims as though fully set forth here at length.
43. Defendant Alexander incurred substantial costs in constructing improvements to the property, including the home site and the pier at Picnic Point. Defendant Alexander has also paid for various operating expenses.
44. Specifically, Plaintiff owes \$50,233.00 as shown on the hand-written accounting attached hereto as Exhibit A. Additionally, Defendant Alexander has advanced funds to Old Dominion, LLC for property taxes in the amount of \$7,328.22. See Exhibit B.
45. Defendant Alexander is entitled to set off of any amounts owed to Plaintiff in the amount of \$57,561.22.

WHEREFORE, Defendants pray for judgment as follows:

1. Plaintiff takes nothing by virtue of the Complaint on file herein or any cause of action contained therein;
2. The Complaint be Dismissed with Prejudice;
3. That this Court find for the Defendants on the Counterclaims;

4. For attorneys fees and costs if permitted by law;
5. For such other and further relief as the court may deem just and proper.

LEWIS & BABCOCK, L.L.P.

A large, stylized handwritten signature in black ink, appearing to read 'A. Camden Lewis', is written over a horizontal line.

A. Camden Lewis
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

Attorneys for the Defendants

Columbia, South Carolina
February 27, 2009

01/07/2009 14:16 FAX 8037444735

J

0002/0007

Dock Construction

Permit 1750.00
 Kings Grant 5000.00
 Engineer 500.00
 Legal 1200.00
 Insult 500.00
 Piling 34,000.00
 Materials 11,957.00
 Labor 32,500.00

87,407

Roads

Shell Sand 1500 ✓
 Rocks 1680 ✓
 Below 1750 1000 ✓
 Labor 502.00

~~502.00~~
 10130

Construction

Bank House

2400
 4800.00

Barn

5200.00

7600 7600

Pieric Pt

Stone 11,000 ✓
 Delivery 13,750 10,000
 Back Hoe 6500
 Truck Hoe 7500
 Dozer 6800

Shell Sand 5280 ✓
 & Rock

Trucks 1500 ✓

Rental 2000

Labor 2500

56830.00

Electrical & Phone

Delivery 110.00
 Materials 1044.55
 Rental 700.00
 Labor 5280.00

8 12445.00

Not Include! 7134.50

SC Box

Cable

Boxes

Labor

Total

177,982

11/17
 Redwood request
 13712.32

Ditches

Concrete Pipes Foot
 Delivery 600
 Labor 1500
 Flap Gate 300

3200

EXHIBIT

A

01/07/2008 11:20 FAX 8037444735

J

00007/0007

Old Dominion Plantation
Year Ending 12/31/07

Expenses Owed By Dr. Bowman

Property Taxes	2787.09	This was half of the tot
Accounting	1100	This was half of the tot
Tank Rental	44.85	10
Gas & Electricity	~~448.15~~ 424.07	
Total	~~4780.15~~ 4366.11	

*I forgot to half the
electric bill -
Lenny -
fil*

Dr. Bowman:

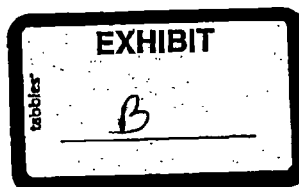
This was half of the owed property taxes. The tank rental was for you Dr. Alexander said. The accounting bill was your half for 2007. The gas & electricity were the total for the year 2007 and they were paid out of the check book that I have for Old Dominion. I think the tank rental was for the fuel. I only had a bill for the tank rental. I hope this is sufficient for you.

I am so glad for our New Clemson Coach. I hoped from the beginning that he would be the one.

2008 Property taxes : \$5,924.22

1/2 prop taxes \$ 2962.11

\$ 7,320.22 to OLD Dominion



000376

00004/0007

THIS TAX BILL DOES NOT REFLECT ANY TAXES YOU MIGHT OWE FOR PREVIOUS YEARS
 COMBINED TAXES FOR: CHARLESTON COUNTY-WIDE ENTITIES AND EDISTO ISLAND DISTRICT B-1
 REAL PROPERTY TAXES FOR PERIOD COMMENCING: 01-01-2008

TAX BILL DATE: 09-30-2008

DIST	TYPE	BLDGs	ACRES	MORTGAGE CODE/ID
81	00		78.26	

RECEIPT#: 2008-112071 PARCEL ID: 010-00-00-001

8925 PINE LANDING RD
 OLD DOMINION PLANT
 TRACT B-2 TRACT A

19122 1 AB 0.951 ***ALTO**SCH 3-DIGIT 290

109

186802

R

OLD DOMINION PLANTATION LLC

1049 THILLIE LN

CHAPIN SC 29036-8984

ASSESSMENT	APPROVAL	ASSESSMENT	MILLAGE	TOTAL
016-044	303,000.00	18,120	218	5,248.00

COUNTY SALES TAX CREDIT

PAY THIS AMOUNT ON OR BEFORE 07-15-2009
 PRIOR YEAR TAX AMOUNT

YOU CAN PAY YOUR TAXES ONLINE AT www.charlestoncounty.org

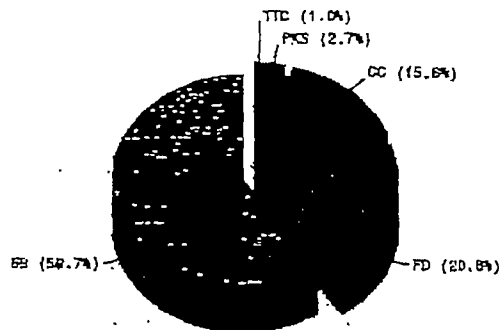
IMPORTANT INFORMATION ON BACK OF THIS BILL

Paid 12/30/08

Check # 3907

ENTITY	AMOUNT	PERCENT

98.7	1,788.44	SCHOOL BOARD OPERATING	SB	59.7%
23.9	433.07	SCHOOL BOARD BONDS (566-1829)		
42.7	773.72	ST PAULS FIRE DISTRICT (889-8450)	FD	20.8%
40.2	457.84	COUNTY GOVERNMENT OPERATING		
6.8	119.59	COUNTY GOVERNMENT BONDS (858-4641)	CC	15.8%
3.8	65.23	PARK AND RECREATION OPERATING		
2.0	38.24	PARK AND RECREATION BONDS (762-2172)	PKS	2.7%
2.0	38.24	TRIDENT TECHNICAL COLLEGE (574-6111)	TTC	1.0%



\$ 3,720.37 PAY THIS AMOUNT

01/07/2009 14:17 FAX 8037444735

JHI-08-2108 THU 11:53 AM

THU 11:53 AM

F 00

00377

THIS TAX BILL DOES NOT REFLECT ANY TAXES YOU MIGHT OWE FOR PREVIOUS YEARS
 COMBINED TAXES FOR: CHARLESTON COUNTY-WIDE ENTITIES AND EDISTO ISLAND DISTRICT 8-1
 REAL PROPERTY TAXES FOR PERIOD COMMENCING: 01-01-2008

TAX BILL DATE: 09-30-2008

PROPERTY DESCRIPTION					ASSESSMENT	APPRAISAL	ASSESSMENT	MILLAGE	TOTAL
DIST	TYPE	BLDGS	ACRES	MORTGAGE CODE/ID	DTG	DAZ	194,030	10.346	219.7
81	00	4	647.76						
RECEIPT#: 2008-112072 PARCEL ID: 010-00-00-002					COUNTY SALES TAX CREDIT				
					SOLID WASTE USER FEE				
					PAY THIS AMOUNT ON OR BEFORE 11-15-08				
					PRIOR YEAR TAX AMOUNT				

8894 PINE LANDING RD
 OLD DOMINION PLANT
 TRACT A HIGH AND MARSH

OLD DOMINION PLANTATION LLC
 1049 THRILLIE LN
 CHAPIN SC 29036-8984

R

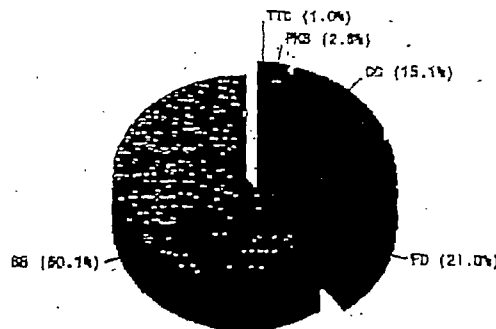
YOU CAN PAY YOUR TAXES ONLINE AT www.charlestoncounty.org

IMPORTANT INFORMATION ON BACK OF THIS BILL

Handwritten: Paid 11/30/08
 Check # 8907

GOVERNMENT AGENCIES RESPONSIBLE FOR MILLAGE RATES				
AGENCY	CODE	AMOUNT	PERCENT	TOTAL

98.7	1,020.56	SCHOOL BOARD OPERATING		
23.9	247.13	SCHOOL BOARD BONDS (566-1829)	SB	50.1%
42.7	441.52	ST PAULS FIRE DISTRICT (888-6450)	FD	21.0%
40.2	248.83	COUNTY GOVERNMENT OPERATING		
6.8	68.24	COUNTY GOVERNMENT BONDS (958-4541)	CC	15.1%
3.6	37.22	PARK AND RECREATION OPERATING		
2.0	20.68	PARK AND RECREATION BONDS (752-2172)	PKS	2.8%
2.0	20.68	TRIDENT TECHNICAL COLLEGE (574-8111)	TTC	1.0%



99.00 SOLID WASTE USER FEE (202-6080)
\$ 2,203.88 PAY THIS AMOUNT

TEAR AT PERFORATION AND RETURN BOTTOM PORTION WITH PAYMENT

00003/0007

01/07/2009 14:18 FAX 8037444735

JAN-08-2009 THU 11:55 AM

FAX ID.

P. 01

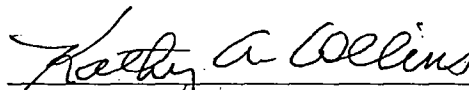
00378

CERTIFICATE OF SERVICE

I, Kathy A. Collins, an employee with the law firm of Lewis & Babcock, L.L.P., do hereby certify that I have this 27th day of February, 2009, served the foregoing Answer and Counterclaims upon the Plaintiff in the foregoing action by placing a copy of same in the United States Mail, postage prepaid and return address clearly indicated to counsel of record for Plaintiff, addressed as follows:

Michael D. Glenn, Esq.
Glenn, Haigler, McClain & Stathakis, LLP
121 W. Benson Street
Anderson, South Carolina 29624

FILED
2009 MAR -2 PM 2:09
JUDGE J. ARMSTRONG
CLERK OF COURT


Kathy A. Collins

Columbia, South Carolina

February 27, 2009.

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Larry S. Bowman,)

Plaintiff,)

vs.)

M. Donald Alexander and Old
Dominion, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case Number: 2008-CP-10-7245

NOTICE OF WITHDRAWAL
OF REQUEST FOR
SPECIFIC PERFORMANCE

TO: Defendant M. Donald Alexander and Counsel for said Defendant:

PLEASE TAKE NOTICE that Plaintiff withdraws his request for specific performance of the Agreement of the parties dated September 10, 2007.

Plaintiff will proceed on his Complaint for Breach of Contract and Dissolution of Old Dominion Plantation, LLC as requested in his Complaint filed on December 22, 2008.

GLENN, HAIGLER & STATHAKIS, LLP



Michael D. Glenn, #

Attorney for Plaintiff
121 West Benson Street
Anderson, South Carolina 29624
(864) 226-1885
(864) 226-0561, fax

October 4, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE
NINTH JUDICIAL CIRCUIT

Larry S. Bowman,

Plaintiffs,

v.

M. Donald Alexander and Old Dominion,
LLC,

Defendants.

CIVIL ACTION NO. 08-CP-10-7245

DEFENDANTS' MOTION
TO DISMISS, PURSUANT TO
RULE 12(b)(6), SCRPC

FILED
2011 OCT 24 PM 3:12
JULIE J. ARMSTRONG
CLERK OF COURT

TO: MICHAEL GLENN, ESQUIRE ATTORNEY FOR PLAINTIFF:

Defendants hereby move to dismiss Plaintiff's Complaint under Rule 12(b)(6), SCRPC. The grounds for this motion include, but may not be limited to the following:

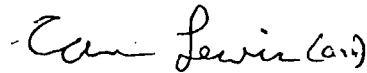
1. Plaintiff's initial Complaint contained claims for specific performance and judicial dissolution. On October 5, 2011, Plaintiff withdrew his claim for specific performance, seeking to proceed only on judicial dissolution.
2. Plaintiff asserts he is entitled to dissolution because "a deadlock exists between the shareholders and owners of Old Dominion, LLC." Cmpt. ¶26. Plaintiff requests that this Court liquidate the assets of the company.
3. Title 33 governs dissolution of partnerships, corporations and associations. Under S.C. Code 33-14-300, a court may only grant judicial dissolution to a shareholder if it is established that:

(i) the directors or those in control of the corporation are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage

of the shareholders generally, because of the deadlock. (emphasis added).

4. Plaintiff has not asserted that irreparable injury to Old Dominion is threatened or suffered.
5. Plaintiff's complaint is not factually or legally sufficient and should be dismissed pursuant to Rule 12(b)(6).
6. Furthermore, under S.C. Code § 33-14-310, venue for a proceeding to dissolve a corporation lies in the county where the corporation's principal office was last located. The principle office of Old Dominion is located at One Richland Medical Park, Suite 420, Columbia, South Carolina. Therefore, Plaintiff's cause of action should be dismissed.

LEWIS, BABCOCK, & GRIFFIN, L.L.P.



A. Camden Lewis
Ariail E. King
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

Attorneys for the Defendants

Columbia, South Carolina

October 24, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE
NINTH JUDICIAL CIRCUIT

Larry S. Bowman,

Plaintiffs,

v.

M. Donald Alexander and Old Dominion,
LLC,

Defendants.

CIVIL ACTION NO. 08-CP-10-7245

DEFENDANT'S MOTION TO ALTER
OR AMEND, PURSUANT TO RULE
59(e), SCRCP

BY

JULIE L. ARMSTRONG
CLERK OF COURT

2012 MAY 31 PM 2:33

FILED

Defendants hereby move to alter or amend this Court's Temporary Order, dated May 7, 2012, filed May 11, 2012. Defendants received notice of the entry of the order on May 18, 2012. The grounds for this Motion are as follows:

1. The Court did not follow the procedure designated for proposed orders.

This Court did not follow its own procedure as set forth at trial, in which the Court asked for proposed orders from each side and stated:

Now, you all are not going to swap that. I just want to receive it. Once I make a decision and I ask for a proposed order and then once I get it I'll give you all time to reply.

Tr. of Trial, p. 215, ll. 21-25. When asked by counsel to clarify whether the proposed orders were to be exchanged, this Court stated:

Not this first order. Just please give me the case laying out your findings of fact and the law to support your case. Send that directly to me. Once I make a decision then I'll ask one of you to send a proposed order. Then I'll let you swap and you all can make comments.

Tr. of Trial, p. 216:17-22.

The parties submitted proposed orders to the Judge as requested. However, the procedure outlined above was not followed as there was never any communication by the Court as to how it intended to rule, no proposed orders provided to Defendants, and no opportunity to comment on the proposed order.

In addition, the Order is factually wrong and relies on the wrong statute in concluding dissolution is proper, as well as being internally inconsistent, in that it enforces certain provisions of the Settlement Agreement dated September 10, 2007, but not all of the provisions.

2. The Order misconstrues the testimony and facts, relies, in part, on the incorrect statute, and wrongly concludes that dissolution is warranted.

The court's order states that Alexander refused to follow Coy Johnston's March 2, 2011 proposal and implies that Alexander's submission of Johnston's later proposal (which would allow give Bowman and Alexander each an additional lot than his previous proposals) to Ducks Unlimited. Order, p. 10-11. The Court also finds that the disputes between the shareholders results in the business no longer being conducted to the advantage of the shareholders under S.C. Code 33-14-300. Order, p. 13. The Court states that continued efforts to seek approval from Ducks Unlimited for division of the property would only "add to the deadlock." Id. The Order then concludes that it "is not reasonably practical to carry on the business of Old Dominion" and that Alexander's actions were "unfairly prejudicial" to Plaintiff under S.C. Code § 33-44-801(c). Id. p 14-15. The Order fails to state the full story and relies in part on the incorrect statute.

Coy Johnston was retained to give an opinion as the how many homesites Ducks Unlimited would require to be forfeited. Mr. Johnston changed his opinion as to the number of home sites to be forfeited several times, with the amount varying between 3 and 4 home sites for each party. Pl.

Ex 8; Def. Ex. 6. In an effort to clarify Mr. Johnston's opinion, Defendant noticed Dr. Johnston's deposition.¹ In his deposition, Mr. Johnston agreed that the property should be able to be divided in fee simple, with each party being able retain three approximately 5-acre tracts located in the most southern part of the property, with no adverse affect on the wildlife. Johnston Dep p. 46:24-48:13; 68:2-25. Mr. Johnston had obtained a wildlife management plan from R.K. Williams which indicated that whether the property was owned together or separately, as long as the parties followed his management plan,² the biological integrity of the property would be maintained. Pl. Ex. 7. The solution proposed by Mr. Johnston and Mr. Williams³ (hereinafter the "Johnston/Williams proposal") solution is one that both parties, at different times, agreed could be submitted to Ducks Unlimited. After receiving this opinion from Mr. Johnston, Defendants wrote to Ducks Unlimited to determine if they would approve the division as proposed Mr. Johnston and Mr. Williams. Def. Ex. 7. The Court implies that Defendants' action were somehow improper. However, in order to determine the feasibility of Johnston's proposal, Ducks Unlimited had to be provided with the proposal itself. Even though the proposal allowed additional lots to the parties, Plaintiff sent a letter to Ducks Unlimited directing that Ducks Unlimited not even consider the proposal. The testimony and evidence indicates that Defendant is ready and willing to divide under the Johnston/Williams proposal (retaining 3 lots), should Ducks Unlimited approve such subdivision. Defendant also

¹This court took judicial notice of this fact.

²Under Mr. Williams' plan, the parties could remove a spillway box and each manage the impoundments on their own tracts, without any participation by the other. Williams Dep. p. 12:21-14:4. In other words, there was a way for the parties to each keep all of their homesites, have separate use of their tracts, and enter into a management agreement as required by the Settlement Agreement.

³Williams was the management specialist preferred by Bowman.

testified that he would abide by Alternative Two in the Settlement Agreement.⁴ Alternative Two of the Settlement Agreement requires the parties to enter into agreements for the separate use, control and responsibility of the property. Alternative Two was designed to ensure that the 2007 mediation could be implemented; it resolved the deadlock, and provided equally viable alternatives.⁵

According to Plaintiff's testimony, even though he previously agreed to the Johnston/Williams proposal, he now does not want to follow the Settlement Agreement. He does not want to submit the Johnston/Williams proposal to Ducks Unlimited or adopt agreements for "the separate use, control and responsibility of the property." Thus, contrary to the Court's finding, the records shows that it is Plaintiff's actions that are unfairly prejudicial⁶ to Defendants and the sale of the property will cause irreparable injury to the company, rendering dissolution improper.

The Court's application of S.C. Code Section 33-44-801 to this case is improper. Section 33-44-801 states that a limited liability company is dissolved, and its business must be wound up,

⁴This Court's Order wrongly states that Defendant denied Plaintiff's right to specific performance of the Settlement Agreement. However, Defendant only denied the right to divide the property because, at the time Plaintiff filed, Ducks Unlimited had denied the request to divide. Accordingly, it would have been illegal at that point to divide the property. Defendant never denied that Alternative Two was an option. The Order ignores that Defendant was willing to enter into the necessary agreements under Alternative Two, and that it was Plaintiff who refused to follow the Settlement Agreement after division was denied.

⁵This Court ignored the fact that the mediation and Settlement Agreement resolved the deadlock, and simply started its own determination based on the wrong facts. Even if the Settlement Agreement could not be followed, Plaintiff would have to follow the provisions of the Operating Agreement in selling his share or withdrawing from the company.

⁶Furthermore, "unfairly prejudicial" is not the standard as Plaintiff's Complaint only alleged that there was a deadlock, not any unfair prejudice. Defendants had no notice that "unfair prejudice" would be an issue at trial. Had Defendants had notice, they could have introduced evidence of the time, effort and costs Alexander put in to the maintenance and improvement of the property, including, bank stabilization, road repair and maintenance, ground maintenance, plowing, and bush hogging, as well as obtaining the dock permits, all of which improved the value of the property.

upon the occurrence of certain events. The Court here relies on two provisions of that section in finding that dissolution is appropriate because:

(c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement,

(e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner[.]

S.C. Code § 33-44-801.

In his Complaint, Plaintiff only asserted deadlock as grounds for dissolution. The language concerning deadlock is found in S.C. Code § 33-14-300 which states that a court may dissolve a corporation if:

the directors or those in control of the corporation are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock.

Therefore, the governing statute is § 33-14-300 and the only issue is whether there was a deadlock, so the Court should not have applied Section 33-44-801 or considered whether there was "unfair prejudice" to Plaintiff.⁷

Under S.C. Code § 33-14-300, a court may only grant judicial dissolution to a shareholder

⁷Even if Section 33-44-801 applied, the record does not support dissolution under S.C. Code § 33-44-801. Section 801(4)(e) only allows for dissolution where "the managers or members **in control of the company** have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner." (emphasis added). Here, Plaintiff and Defendant are equal members and thus, Alexander is not a member "in control of the company." In addition, for reasons set forth herein above, the record shows that the company's assets -- i.e., the property-- has been improved and has more wildlife than any time previously, and the parties have worked together to conduct timber removal and burns. Thus, there is no evidence that it is not reasonably practicable to carry on the company's business and Section 801(4)(c) also does not apply.

if it is established that:

(i) the directors or those in control of the corporation are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock. (emphasis added).

In order to dissolve a corporation under allegations of deadlock, as Plaintiff alleged under S.C. Code 33-14-300, the court must consider the actual benefit and injury to all shareholders resulting from the dissolution. 19 Am.Jur.2d Corporations § 2385, 2387. The record does not support a finding that there was an irreparable injury to the corporation⁸ or that the business can no longer be conducted to the advantage of the corporation. Both Alexander and Bowman testified that the value of the property had been improved. Bowman made improvements, including \$75,000 spent on improvements to a bunkhouse and tens of thousands of dollars for improvements to the dike.⁹ Tr. p. 104. Bowman also said his "piece of the property was in better shape for the wildlife habitat." Tr. p. 105. Clearly, the business of the corporation is being conducted to its advantage-- the property is better condition than it ever has been.

Furthermore, the business and affairs of Old Dominion as set forth in its operating agreement are "to engage in the business of buying, owning, reforesting and cultivating real property and to

⁸In fact, a sale of the property will cause irreparable injury would occur. The parties testified that the appraisal value of Old Dominion exceeded \$10,000,000 in 2007. Testimony acknowledged the recent decline in value of real estate, including Old Dominion, due to market conditions. Therefore, a forced liquidation of the assets of the corporation at this time in the economy would result in a devastating decrease in the valuation of Old Dominion, in addition to the hours of manual labor and costs involved in improving the property.

⁹Bowman did not seek Defendant's permission for these improvements or grant he applied for to make repairs. The Order is completely silent as to this fact.

carry on such other legally permissible business and activities as the Company, in accordance with the LLCA and [the Operating Agreement], shall determine from time to time. . . . " See Operating Agreement of Old Dominion, LLC, p. 4. There was absolutely no evidence introduced that any of the business and affairs of Old Dominion cannot be conducted to the advantage of the shareholders and certainly not because of any deadlock. For example, the testimony at trial indicated that the parties had worked together in having timber cut and harvested. The testimony also indicated that the parties had cooperated in completing necessary "burns."¹⁰ Plaintiff admitted in his testimony that the structures on the property have been improved and are of more value than when the property was acquired.¹¹ Defendant's uncontradicted testimony indicated that the deer and duck population had increased.

This Court's order ignores the testimony that parties had worked together on the business of the Company, and instead erroneously based its decision on personal disputes between the parties. *Woodward v. Anderson*, 627 N.W.2D (Neb. 2001) (shareholder's dislike of another shareholder does not create corporate deadlock to warrant dissolution).¹² The Court's order misconstrues the

¹⁰Burning of certain areas of the property is apparently desirable to enhance regrowth of certain vegetation.

¹¹The parties testified that over \$300,000 had been expended for enhancements to the property since the Settlement Agreement.

¹²Furthermore, judicial dissolution is not meant to serve as a substitute for exit provisions of a company's operating agreement. *Churchman v. Kehr*, 836 S.W.2d 473 (Mo. App. 1992. (dissolution denied even though two dentists/shareholders exhibited considerable animosity and dissension because shares of either shareholder could be sold to another dentist without disturbing corporate form). Here, there are specific provisions governing dissolution in the Operating Agreement as well as a provision for one member to buy out another member. Plaintiff did not abide by either of these provisions. The Court's Order did not address Plaintiff's failure to follow the Operating Agreement.

testimony in finding that Plaintiff could prevail under S.C. Code 33-14-300.

In addition, the Court's Order ignores the fact that the Settlement Agreement provides a method of resolving disputes or deadlocks between the parties. The Settlement Agreement provided an explicit method by which the parties could either seek subdivision of the property or enter agreements for separate use and control of the property:

The parties will consult Ducks Unlimited to determine if the Property can be legally divided as depicted in Exhibit A. If so, the division will be made and each party will be conveyed his respective tract. In the event that Ducks Unlimited does not permit legal separation of the Property, attorneys for the parties will draft agreements to accomplish the separate use, control and responsibility of and for the Property, it being the intent of the parties that each party be responsible for the costs associated with is Property and have the exclusive use of such Property....If Ducks Unlimited requires a reduction of homesites, then Bowman will give up the first home site and Alexander the second home site.

Pl. Ex. 2, Para. 4. The Settlement Agreement also provides a method on how the parties can resolve any dispute regarding maintenance of Picnic Point and other areas, by submitting any dispute to binding arbitration. In other words, the Settlement Agreement itself provides a resolution for any deadlock. The Order ignores this fact in refusing to enforce the Settlement Agreement.

3. The Order is internally inconsistent.

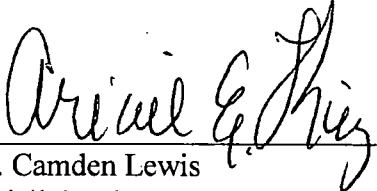
As a valid contract between the parties, the Settlement Agreement is subject to the rules of contract construction. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009), cert. denied (June 9, 2009) (settlement agreements are viewed as contracts); *Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n*, 343 S.C. 335, 540 S.E.2d 843 (2001)(holding the enforcement of the terms of a settlement agreement is a contract action). In determining whether to order specific performance, the Court cannot "make a new contract for the parties, or supply any material stipulation of the contract, but **must enforce the contract according**

to its terms or not at all.” 71 Am.Jur.2d Specific Performance § 35 (emphasis added). Beasley v. Swinton, 46 S.C. 426, 24 S.E. 313, 323 (1896)(A court cannot ignore certain provisions of a contract; it’s duty is “ first to decide what the contract, as made by the parties thereto, is, and then to enforce it.”).

Here, the Court found that the Settlement Agreement would not be enforced as to the division of the real property or the adoption of agreements for the “separate use, control and responsibility of and for the Property.” However, the court then tried to enforce the provision regarding the division of equipment and ordered Alexander to pay Bowman \$9,060.00, but refused to require Bowman to pay Alexander any of the monies due under the promissory note.¹³ The Settlement Agreement cannot be selectively enforced. Either the entire Settlement Agreement is enforced, allowing the parties to draft agreements to accomplish the “separate use, control and responsibility of and for the Property” as well as follow the financial obligations set forth therein, or none of the Settlement Agreement should be enforced.

CONCLUSION

For the reasons set forth herein, Defendants move that this Court alter or amend the Order dated May 7, 2012 and find that: 1) judicial dissolution is not proper; 2) that the parties should abide by the Settlement Agreement by entering into agreements for the separate use, control and responsibility of the property.


A. Camden Lewis
Ariail E. King

¹³Furthermore, just prior to trial, Plaintiff withdrew his cause of action for specific performance/breach of contract. The Court also awarded Bowman an additional \$67,000 under this cause of action, which had been withdrawn. There is no basis for the Court to award damages.

LEWIS, BABCOCK, & GRIFFIN, L.L.P.
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

Attorneys for Defendants

May 21, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE

08-CP-10-7245

I, Connie W. Grugan, employee of the law firm of Lewis, Babcock & Griffin, L.L.P., do hereby certify that I have this served the foregoing Defendants' Motion to Alter or Amend, Pursuant to Rule 59(3), SCRCP, upon opposing counsel in the foregoing action by mailing a copy of same, first-class postage prepaid and return address clearly indicated, to said opposing counsel addressed as follows:

Michael D. Glenn, Esq.
Glenn, Haigler, McClain & Stathakis, LLP
121 W. Benson Street
Anderson, South Carolina 29624

BY Connie W. Grugan
Connie W. Grugan

2012 MAY 31 PM 2:51
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

This 29th day of May, 2012.

A. CAMDEN LEWIS
KEITH M. BABCOCK
MARY G. LEWIS
JAMES M. GRIFFIN
ARIAIL E. KING
MARGARET N. FOX*

LB&G

LEWIS, BABCOCK & GRIFFIN L.L.P.

EMAIL: AEK@LBGLEGAL.COM

1513 HAMPTON STREET
P.O. BOX 11208 (29211)
COLUMBIA, S.C. 29201
FACSIMILE: 803-733-3534
TELEPHONE: 803-771-8000
WEBSITE: WWW.LBGLEGAL.COM

* ALSO ADMITTED IN N.C.

May 29, 2012

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401

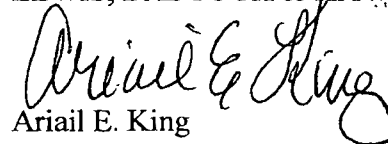
Re: Bowman vs. Alexander, et al.
C/A 08-CP-10-7245, Our File No. 09-103

Dear Ms. Armstrong:

Enclosed please find Defendant's Motion to Alter or Amend, Pursuant to Rule 59(e), SCRCPP and Defendants' Motion for New Trial and/or to Void Judgment in regard to the above-referenced matter for filing with your office. I have also enclosed motion forms and a \$25.00 filing fee for each of the motions. Please return a clocked copy in the envelope provided.

Sincerely,

LEWIS, BABCOCK & HAWKINS, L.L.P.


Ariail E. King

AEK:cg
Enclosure
cc: Michael D. Glenn, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE
NINTH JUDICIAL CIRCUIT

Larry S. Bowman,

Plaintiffs,

v.

M. Donald Alexander and Old Dominion,
LLC,

Defendants.

CIVIL ACTION NO. 08-CP-10-7245

DEFENDANTS' MOTION FOR NEW
TRIAL AND/OR TO VOID JUDGMENT

FILED
13 MAR 18 PM 1:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Defendants hereby move for a new trial on the grounds that venue was not proper in Charleston County and therefore the Temporary Order of the Honorable J.C. Nicholson is void.

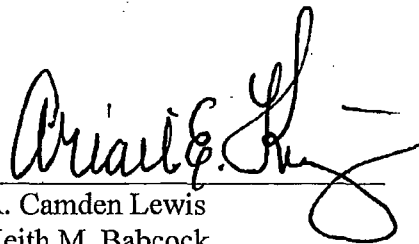
Prior to the trial, Defendants moved to change venue¹ on the grounds that the only remaining cause of action was to dissolve the corporation and under S.C. Code §33-14-310, “[v]enue for a proceeding to dissolve a corporation lies in the county where a corporation's principal office (or, if none in this State, its registered office) is or was last located.” It is undisputed that in this case, Old Dominion’s principal office is in Richland County. [See, Ex. A to the Motion; Trial Tr. p. 14:3-8], After hearing the motion to change venue to the proper county of Richland, the Court stated:

Well, Mr. Glenn, my inclination is to grant the change of venue; however, since everybody is here I'd be glad to hear you on a motion to keep venue in Charleston for convenience of the witnesses.

¹On October 7, 2011, Plaintiff withdrew his first cause of action. Defendants filed a motion for change of venue on October 24, 2011. The bench trial was held on October 25, 2011.

314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994)(A court sitting where venue is improper may only render judgment "provided the party who possesses the venue right consents, either expressly or impliedly."). A judgment rendered in an improper venue is void. *See, Woodside v. Rizzo*, 772 S.W.2d 20, 21 (Mo. Ct. App. 1989) (failure to file in the proper venue leaves the trial court's judgment void); *Comm'n on Ethics v. Lancaster*, 421 So. 2d 711, 712 (Fla. Dist. Ct. App. 1982)(When the trial court improperly denies a motion for change of venue, all subsequent proceedings are void); *Musolino v. Checker Taxi Co.*, 110 Ill. App. 2d 42, 46-47, 249 N.E.2d 150, 152 (Ill. App. Ct. 1969)(if the court erroneously denies the petition for a change of venue and judgment is entered against the party seeking the change of venue, the court, upon motion made by the party, must set the judgment aside and will hold it void).

As set forth above, venue was required to be in Richland County under S.C. Code Section 33-14-310 and Plaintiffs failed to meet the standard to change venue for the convenience of the witnesses. Therefore, Defendants request that this Court void the judgment in its entirety and order that a new trial be conducted.



A. Camden Lewis
Keith M. Babcock
Ariail E. King
LEWIS, BABCOCK, & GRIFFIN, L.L.P.
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

Attorneys for Defendants

March 14, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Connie W. Grugan, employee of the law firm of Lewis, Babcock & Griffin, L.L.P., do hereby certify that I have this served Defendants' Motion for New Trial and/or to Void Judgment upon opposing counsel by mailing a copy of same, postage prepaid and return address clearly indicated, to said opposing counsel addressed as follows:

Michael D. Glenn, Esq.
Glenn, Haigler, McClain & Stathakis, LLP
121 W. Benson Street
Anderson, South Carolina 29624

FILED
2013 MAR 18 PM 1:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

1:46
LONG
RT
Connie W. Grugan

This 15th day of March, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Larry S. Bowman,

Plaintiffs,

v.

M. Donald Alexander and Old Dominion,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 08-CP-10-7245

DEFENDANT'S MOTION TO ALTER
OR AMEND, PURSUANT TO RULE
59(e), SCRCF

FILED
2013 MAR 18 PM 1:46
JUDICIAL CIRCUIT
ARISTEONG

Defendants hereby move to alter or amend this Court's Order, dated and filed March 1, 2013. Notice of entry of the order was mailed to Defendants on March 4, 2013 and received by Defendants on March 8, 2013. The grounds for this Motion are set forth herein.

Plaintiff and Defendant Alexander (hereinafter "Defendant") had been family friends for years prior to forming Old Dominion Plantation, LLC ("Old Dominion" or "the LLC"). See Trial Transcript, p. 43:10-16. The LLC was formed for ownership and use of property in Charleston County and for conservation purposes. This suit concerns that property and LLC.

1. **Plaintiff had a valid legal claim that he voluntarily withdrew only days before trial and thus, the Court should not have ruled on Plaintiff's equitable claim for dissolution.**

An action for corporate dissolution is an action in equity. Mazloom v. Mazloöm, 382 S.C. 307, 316, 675 S.E.2d 746, 751 (S.C.Ct.App. 2009); Kiriakides v. Atlas Food Systems & Service, Inc., 338 S.C. 580-581, 527 S.E.2d 371, 375-379 (S.C.Ct.App. 2000). However, equity is "only available when a party is *without* an adequate remedy at law." EllisDon Construction, Inc. v.

Clemson University, 391 S.C. 552, 555, 707 S.E.2d 399, 401 (S.C. 2011)[emphasis added](citing Key Corp. Capital, Inc. v. County of Beaufort, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (S.C. 2007)). In this case, Plaintiff had a legal remedy under the Settlement Agreement (which Plaintiff actually pursued until the eve of trial). See Complaint, pp. 5-6; See Trial Transcript, p. 13:24- p. 14:2; p. 15:1-13; p. 15:22 - p. 16:2-17; p. 20: 7-19; p. 26:15-16. A settlement agreement is a contract between the parties. Harris-Jenkins and Jenkins v. Nissan Car Mart, Inc., 577 S.E.2d 708, 711 (S.C. 2001)(citing Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 339, 540 S.E.2d 843 (2001)[holding the enforcement of the terms of a settlement agreement is a contract and is viewed as an action at law]). “A party failing to fulfill the requirements of its legal remedy cannot later come to the courts complaining of hardship, seeking an equitable remedy.” EllisDon Construction, Inc., 391 S.C. at 555, 707 S.E.2d at 401. Here, Plaintiff actively pursued legal action to enforce the Settlement Agreement for almost three years until the eve of trial. Plaintiff cannot just voluntarily drop his legal remedy and obligations in order to attempt to obtain a remedy in equity.¹

2. The Order misconstrues the testimony and facts, relies, in part, on the incorrect statute, and wrongly concludes that dissolution is warranted.

The Settlement Agreement contained two Alternatives. Alternative Two of the Settlement Agreement requires the parties to enter into agreements for the separate use, control and responsibility of the property. Alternative Two was designed to ensure that the 2007 mediation

¹Even more disturbing is that after Plaintiff dropped his pursuit of his legal remedies, he apparently submitted a proposed *ex parte* order including new equitable grounds for dissolution which were not plead and of which Defendants had no notice. See Trial Transcript, pp. 214:16-215:2; pp. 215:22-216:3, p. 216:14-22; Defendants’ Motion to Alter or Amend, Pursuant to Rule 59(e), SCRCF, filed on May 31, 2012, pp. 1-2; see also discussion, *infra* [regarding other grounds for dissolution not plead].

could be implemented; it resolved the deadlock and provided equally viable alternatives.² See Trial Transcript, p. 151:8-21.

The court's order states that Defendant refused to follow Coy Johnston's March 2, 2011³ proposal and implies that Defendant's submission of Johnston's later proposal (which would give Plaintiff and Defendant each an additional lot than his previous proposals) to Ducks Unlimited was improper. Order, p. 10-11. The Court also finds that the disputes between the shareholders result in the business no longer being conducted to the advantage of the shareholders under S.C. Code 33-14-300. Order, p. 14. The Court states that continued efforts to seek approval from Ducks Unlimited for division of the property would only "add to the deadlock." Id. The Order then concludes that it "is not reasonably practical to carry on the business of Old Dominion" and that Defendant's actions were "unfairly prejudicial" to Plaintiff under S.C. Code § 33-44-801(c). Id. p. 14-15. The Order fails to state the full story and relies in part on the incorrect statute.⁴

Coy Johnston was retained to give an opinion as to the how many homesites Ducks

²This Court ignored the fact that the mediation and Settlement Agreement resolved the deadlock, and simply made its own determination based on the wrong facts. Even if the Settlement Agreement could not be followed, Plaintiff would have to follow the provisions of the Operating Agreement in selling his share or withdrawing from the company.

³This proposal (as did all earlier proposals) required Defendant to give up more home sites than the Settlement Agreement required.

⁴In Court's Temporary Order, which was initially drafted by Plaintiff's counsel (but not served on Defendants), language was apparently inserted to attempt to provide for dissolution under a statute, S.C. Code Ann. § 33-44-801(4)(b) and (e), which was never pled by Plaintiff. Plaintiff dropped his first cause of action and his second cause of action was solely based on deadlock, under S.C. Code § 33-44- 300. South Carolina law does not allow for trial by ambush in order to help parties correct deficiencies in their pleadings. Had Defendants had notice by way of an amended pleading, they could have conducted discovery and introduced evidence as to Plaintiff's unfairly prejudicial conduct.

Unlimited would require to be forfeited. Mr. Johnston changed his opinion as to the number of home sites to be forfeited several times, with the amount varying between 3 and 4 home sites for each party. Pl. Ex 8; Def. Ex. 6. In an effort to clarify Mr. Johnston's opinion, Defendant noticed Mr. Johnston's deposition.⁵ In his deposition, Mr. Johnston agreed that the property should be able to be divided in fee simple, with each party being able retain three approximately 5-acre tracts located in the most southern part of the property, with no adverse affect on the wildlife. Johnston Dep p. 46:24-48:13; 68:2-25. Mr. Johnston had obtained a wildlife management plan from R.K. Williams which indicated that whether the property was owned together or separately, as long as the parties followed his management plan,⁶ the biological integrity of the property would be maintained. Pl. Ex. 7. The solution proposed by Mr. Johnston and Mr. Williams⁷ (hereinafter the "Johnston/Williams proposal") is one that both parties, at different times, agreed could be submitted to Ducks Unlimited.

After receiving this opinion from Mr. Johnston, Defendants wrote to Ducks Unlimited to determine if they would approve the division as proposed by Mr. Johnston and Mr. Williams. Def. Ex. 7. The Court implies that Defendants' action were somehow improper. However, in order to determine the feasibility of Johnston's proposal, Ducks Unlimited had to be provided with the proposal itself. Even though the proposal allowed additional lots to the parties, Plaintiff sent a letter

⁵This court took judicial notice of this fact.

⁶Under Mr. Williams' plan, the parties could remove a spillway box and each manage the impoundments on their own tracts, without any participation by the other. Williams Dep. p. 12:21-14:4. In other words, there was a way for the parties to each keep all of their homesites, have separate use of their tracts, and enter into a management agreement as required by the Settlement Agreement.

⁷Williams was the management specialist preferred by Plaintiff.

to Ducks Unlimited directing that Ducks Unlimited not even consider the proposal. The testimony and evidence indicates that Defendant is ready and willing to divide under the Johnston/Williams proposal (retaining 3 lots), should Ducks Unlimited approve such subdivision. Defendant also testified that he would abide by Alternative Two in the Settlement Agreement.⁸ Alternative Two of the Settlement Agreement requires the parties to enter into agreements for the separate use, control and responsibility of the property. Alternative Two was designed to ensure that the 2007 mediation could be implemented; it resolved the deadlock, and it provided equally viable alternatives.

According to Plaintiff's testimony, even though he previously agreed to the Johnston/Williams proposal, he now does not want to follow the Settlement Agreement. He does not want to submit the Johnston/Williams proposal to Ducks Unlimited or adopt agreements for "the separate use, control and responsibility of the property." Thus, contrary to the Court's finding, the records shows that it is *Plaintiff's* actions that are unfairly prejudicial to Defendants and the sale of the property will cause irreparable injury to the company, rendering dissolution improper.

Moreover, the standards in S.C. Code Section 33-44-801 that were applied by the Court are not controlling in this case. The court relies on two subsections, S.C. Code § 33-44-801(4)(c) and (e) that state dissolution is appropriate when:

(c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement,

⁸This Court's Order wrongly states that Defendant denied Plaintiff's right to specific performance of the Settlement Agreement. However, Defendant only denied the right to divide the property because, at the time Plaintiff filed, Ducks Unlimited had denied the request to divide. Accordingly, it would have been illegal at that point to divide the property. Defendant never denied that Alternative Two was an option. The Order ignores that Defendant was willing to enter into the necessary agreements under Alternative Two, and that it was Plaintiff who refused to follow the Settlement Agreement after division was denied.

(e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner[.]

S.C. Code § 33-44-801. However, in his Complaint, Plaintiff only asserted deadlock as grounds for dissolution, and did not allege that it was not practicable to carry on this business or that he had been unfairly prejudiced.

The language concerning deadlock is found in S.C. Code § 33-14-300 which states that a court may dissolve a corporation if:

the directors or those in control of the corporation are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock.

Therefore, the governing statute is § 33-14-300 and the only issue is whether there was a deadlock, so the Court should not have applied Section 33-44-801 or considered whether there was "unfair prejudice" to Plaintiff.⁹

Under S.C. Code § 33-14-300, a court may only grant judicial dissolution to a shareholder if it is established that:

(i) the directors or those in control of the corporation are deadlocked

⁹Even if Section 33-44-801 applied, the record does not support dissolution under S.C. Code § 33-44-801. Section 801(4)(e) only allows for dissolution where "the managers or members **in control of the company** have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner." (emphasis added). Here, Plaintiff and Defendant are equal members and thus, Defendant is not a member "in control of the company." In addition, for reasons set forth herein, the record shows that the company's assets -- i.e., the property -- has been improved and has more wildlife than any time previously, and the parties have worked together to conduct timber removal and burns. Thus, there is no evidence that it is not reasonably practicable to carry on the company's business and Section 801(4)(c) also does not apply.

in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock. (emphasis added).

In order to dissolve a corporation under allegations of deadlock, as Plaintiff alleged under S.C. Code § 33-14-300, the court must consider the actual benefit and injury to all shareholders resulting from the dissolution. 19 *Am. Jur. 2d Corporations* § 2385, 2387. Here, dissolution and a sale of the property will cause irreparable injury. The parties testified that the appraisal value of Old Dominion exceeded \$10,000,000 in 2007. Since the real estate market has declined, a forced liquidation of the assets of the corporation in the current economy would result in a devastating decrease in the valuation of Old Dominion, in addition to losses related to the Defendant's hours of manual labor and costs involved in improving the property.

The record does not support a finding that there was an irreparable injury to the corporation or that the business can no longer be conducted to the advantage of the corporation. In fact, the parties have already effectively divided the Property for their respective use as set forth in Alternative Two and have done so for the last 5 ½ years since the Settlement Agreement was entered on September 10, 2007. See Trial Transcript, p. 90:2-8; p. 91:6 - p. 93:15, p. 104:2-22; p. 181: 6 - p. 183:25. Both parties have made significant investments exceeding a half million dollars total on their respective tracts since the entry of the Settlement Agreement.¹⁰ See Trial

¹⁰ Although Plaintiff tries to argue that Defendant somehow acted improperly by improving his portion of the Property without Plaintiff's permission, this is an ironic argument by the Plaintiff. Plaintiff had to admit at trial that he had also made improvements to his Property and performed dike work costing over \$100,000. See Trial Transcript, p. 90:2-12; p. 91- p. 93:15; Plaintiff's Affidavit filed on October 26, 2012. Plaintiff tries in vain to explain his

Transcript, p. 90:48; p. 91:6 -p. 93:8, p. 98:2 - p. 99:3, p. 104:2-22; see also Financial Documentation submitted by parties. The parties have participated in joint timber cuts and both burned timber on their respective tracts. See Trial Transcript, pp. 92:22-25 - p. 93:1-13; p. 181:21-25 - p. 183:25. The wildlife management plan from Mr. Williams indicated that it was valid whether the Property was owned together or separately, as long as the parties followed his management plan. Johnston also testified that Plaintiff would not be dependent on Defendant and vice versa, and that Ducks Unlimited's permission would not be required. See Johnston Deposition, p. 28:14-15, 16-22. Plaintiff has offered speculation and conjecture as to why he thinks problems *could* develop over Alternative Two.¹¹ However, since conjecture does not invalidate the clause, there is no deadlock because Alternative Two is available. In addition, the Settlement Agreement also provides an exit provision for either party if they wish to sell their portion of the Property. See Plaintiff's Trial Exhibit 3 (Settlement Agreement), ¶ 8. While they cannot sell their portion of the Property for less than what they offer to sell it for to the remaining

expenditures in different terms to belatedly show why he didn't get Defendant's approval. These attempts on their face demonstrate a lack of credibility. See Trial Transcript, p. 105:8-12; 92:1-22; 98:23-24. In reality, he didn't seek Defendant's permission for the same reason that Defendant made improvements on his tract. They both were proceeding and continue to do so as if the tracts were separated for their usage as proposed under Alternative Two in the Settlement Agreement.

¹¹Since this law suit was filed in December 2008, Plaintiff has not offered a single incident where Defendant has been on his portion of the Property. In fact, Plaintiff only offered two specific incidents where he alleges that Defendant was on his portion of the Property shortly after the entry of the Settlement Agreement. See Trial Transcript, pp. 97:13:17; p. 99:21-22; p. 140:1-142:4. These two isolated incidents prior to this law suit are the only incidents in the evidence where Defendant was even on the portion designated for Plaintiff's use. Plaintiff has offered not a single incident in the past over four and half years where Defendant has been on his portion of the Property or interfered in any manner with Plaintiff's use of his portion of the Property.

partner, they are otherwise free to sell it to anyone at any price they desire. *Id.* Therefore, the Settlement Agreement clearly provides that there is no deadlock which would create the necessity of the drastic remedy of dissolution of the LLC.¹² See In Re Greenwood Supply Co., 295 B.R. 787, 796 (D.S.C. 2002).

Even if the § 33-44-801(4)(e) has been adequately pled, it states that:

A limited liability company is dissolved, and its businesses must be wound up, upon the occurrence of . . . (e) the manager or members *in control* of the company have acted, are acting, or will act in a manner that is . . . oppressive . . . or unfairly prejudicial to the petitioner . . .

[emphasis added]. Here, neither Plaintiff nor Defendant are “in control” of the LLC and therefore, this statute, by its own language, does not apply. As is clear from the evidence, Plaintiff and Defendant are equal members and owners of Old Dominion, LLC. See Plaintiff’s Trial Exhibit 2 (Operating Agreement), Article V, Section 5.1 Membership Units (a)(i)[“Each membership Unit: (I) has equal governance rights with every other Membership Unit . . .”]; Article VIII, Section 8.1 (Management by Members)[“The Company will be managed by its Members.”]; Exhibit B [Reflecting Plaintiff has 75 units and Defendant has 75 units].

Therefore, there is no manager or member in control of Old Dominion Plantation, LLC to activate the provisions of § 33-44-801(4)(e) even if Plaintiff had attempted to timely plead such a claim for dissolution. The South Carolina Supreme Court clearly held that a substantially similar provision in S.C. Code § 33-14-300(2)(ii)[which permits dissolution if it is established by a shareholder that “the directors or those in control of a corporation have acted, are acting, or will

¹²Even if the Settlement Agreement could not be followed, Plaintiff would have to follow the provisions of the Operating Agreement in selling his shares or withdrawing from the company which would also prevent a dead lock.

act in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial either to the corporation or to any shareholder”] was based on a “trend toward protecting minority shareholders from abuses by those in the majority.” See Kiriakides, 343 S.C. at 593, 541 S.E.2d at 263. Plaintiff is an equal partner, not a minority shareholder.

Finally, Plaintiff cannot create an expectation not set forth in the Operating Agreement and then declare that Defendant acted unfairly or oppressively by not meeting that expectation. In order to avoid any expectations not set forth in the Operating Agreement, Plaintiff and Defendant specifically contracted for and declared that any expectation not included in their Operating Agreement could not be used to “gain advantage through litigation”. See Plaintiff’s Trial Exhibit 2 (Operating Agreement), Section 3.8.¹³ The Operating Agreement specifically prevents Plaintiff from attempting to unilaterally create such expectations and seek legal relief on that basis. See Clary & Tug Properties, LLC, 727 S.E.2d at 778 [“Generally, operating agreements are superior to statutory authority where they are in place and address a matter inasmuch as it is only when an operating agreement is silent as to some matter that statutory law will apply.”]; also Park Regency, LLC, v. R&D Development of the Carolinas, LLC, ___ S.E.2d ___, 2012 WL 5936692 at * 5 (S.C.Ct.App. Nov. 28, 2012)[Same].¹⁴

¹³It is “unreasonable to have or rely on an expectation that is not reflected in this Agreement the failure of a Member who has or develops an expectation contrary to or in addition to the contents of this Agreement as provided in Section 3.8(b)(ii) **is evidence that the expectation was not reasonable and estops** that Member from asserting that expectation as a basis for any claim against the Company or any other Member.” (emphasis added).

¹⁴Even assuming arguendo that any reasonable expectations existed, the South Carolina Supreme Court has held that “we do not believe the Legislature intended a court to judicially order a corporate dissolution **solely** upon the basis that a party’s ‘reasonable expectations’ have been frustrated by majority shareholders.” See Kiriakides, 343 S.C. at 593, 541 S.E.2d at 261.

Furthermore, the record does not support findings of unfair and oppressive conduct by Defendant or that he engaged in conduct relating to the company's business that makes it not reasonably practical to carry on the company's business with him. Rather, Plaintiff merely continuously asks the Court to apply different rules for him to be judged by than he does for Defendant. For example, Defendant should be penalized for his willingness to agree to go beyond the requirements of the Operating Agreement and Settlement Agreement to allow Plaintiff certain periods of time for exclusive use of the property¹⁵ and for his willingness to give up additional home sites in order to accomplish the division of the Property under Alternative One, because of the alleged timing of the agreement. However, as noted previously, the timing of Defendant's last proposal was tied to Coy Johnston's opinion at his deposition as to the number of homesites that would have to be forfeited and was beyond the requirements of the Settlement Agreement. Plaintiff also attempted to cast Defendant's actions of making improvements on and maintaining the Property in a negative light. However, Plaintiff did not ask for Defendant's permission for his own improvements and expenditures.¹⁶ In other words, it was not reasonably impractical to

¹⁵At trial, the Court allowed, over Defendants' strenuous objections, testimony regarding Plaintiff's complaints about shared usage of the Property prior to the entry of the Settlement Agreement. See generally Trial Transcript, p. 35:23- p. 36:3; p. 49:15-20; p. 50:1-2; p. 190:20-25 - p. 191:2. These stale allegations (some even dating 10 years earlier), which were no part of the allegations in the Complaint before the Court, do not deal with any reasonable expectations of the parties under the Operating Agreement. Rather, Plaintiff tries to create some type of argument that Old Dominion Plantation containing over 700 acres with wildlife and hunting attributes was a type of time share with him having a right to separate, exclusive use of the massive tract at certain times. Despite that there was no obligation for Defendant to do so, he attempted to work with Plaintiff because of their friendship in order to give Plaintiff certain times with exclusive use of the Property.

¹⁶Although Plaintiff complains about Defendant building a barn so he would have a place for his equipment and to stay on the Property, Plaintiff proceeded without asking Defendant to get a permit from Charleston County and make \$75,000 of improvements to his own house on

carry on the company's business, the parties were and are carrying on the LLC's business of owning and enjoying property, each on their own tracts.

Plaintiff testified at trial as to the necessity of constant maintenance and repair required because of the potential for erosion and that there was rock put in at Pic Nic Point for the stabilization. See Trial Transcript, p. 54:7-9. Defendant testified that he has consistently performed hard manual labor on the Property for the last seventeen years including personally upgrading and protecting the shoreline at Pic Nic Point by hauling and placing rocks, performing road construction and maintenance, and obtaining dock permits. See Defendant Affidavit, ¶ 3, filed on September 7, 2012;¹⁷ see also Trial Transcript, p. 193:20 - p. 194:4; 54:7-9; p. 155:1-9; p. 159:2-14; p. 159:2-14; Pl. Trial Exhibit 11. In addition, Defendant pays the property taxes and allows Plaintiff to repay him at a later date.¹⁸ Defendant's activities reflect his willingness to improve and maintain the Property, not to prejudice or oppress Plaintiff.¹⁹

Furthermore, as already noted, § 33-44-801(4)(b) and (e) were not raised in the pleadings,

the Property in order to have an even nicer place to stay. Trial Transcript, p. 148:10-16, 17-20 ; p. 149:1. Obviously, Plaintiff believes that a different standard should apply to him.

¹⁷Pursuant to the Court's "short Order" filed on June 21, 2012, the record was reopened and the Court agreed to accept affidavits regarding matters including the parties' repairs and enhancing of the Property's value.

¹⁸At the time of trial, Plaintiff had not yet paid his share of the property taxes for recent years. See Trial Transcript, p. 88:12-15; p. 157:3-17.

¹⁹The Defendants also respectfully ask the Court to remove the language in its Order stating that Defendant eliminated trees on PicNic Point without Plaintiff's permission. In Plaintiff's counsel's letter to the Court dated February 25, 2013, he stated that he had no memory concerning the elimination of the trees from Picnic Point except at the Damages Hearing. Since there was no testimony introduced at the Damages Hearing, there could not have been any testimony presented on that issue during that hearing. This statement is simply not accurate and there is no testimony in the record about this matter.

and thus, Defendant was not able to obtain discovery, introduce evidence on those issues, and pled other appropriate defenses. The unreasonableness of Plaintiff's actions is further highlighted by his requests for the Court to ignore the Operating Agreement and its provisions along with the Settlement Agreement and its provisions.

3. The Court's holding that the property can be sold at public auction has no basis.

The Court's Order provides if a sale of the Property is not accomplished within the short time period set forth in the court's Order filed on October 1, 2012, either party can apply to the Court for an Order requiring the Property to be sold at a public auction. There is absolutely no evidence of any type of imminent harm to the Property which would necessitate a quick sale of the Property. Rather, the evidence at trial was the Property is in good shape and the wildlife population continues to improve. See Trial Transcript, p. 105:20-21; p. 176:10-25; p. 177:1-3; see also Trial Transcript, p. 90:48; p. 91:6 -p. 93:8, p. 98:2 - p. 99:3, 104:2-22; see also Financial Documentation submitted by parties. Defendant and Plaintiff both testified as to participating in joint timber cuts and burns, and to the good condition of the Property. See Trial Transcript, pp. 92:22-25 - p. 93:1-13; p. 181:21-25 - p. 183:25. If the Property is ordered to be sold and a sale is not accomplished within the 180 day time period referenced in the Court's Order filed on October 1, 2012, the Operating Agreement of Old Dominion controls and dictates the terms and structure of the sale. See Clary & Tug Properties, LLC, 727 S.E.2d at 778 ["The operating agreement of a limited liability company is a binding contract that governs relations among the members, managers, and the company."]; see also Park Regency, LLC, __ S.E.2d __, 2012 WL 5936692 at * 5 ["Generally, operating agreements are superior to statutory authority where they are in place and address a matter, inasmuch as it is only when an operating agreement is silent as

to some matter that statutory law will apply.”]

Specifically, the Operating Agreement provides in Section 14.2 (Winding Up of the Company) as follows:

(a) Sale of business by liquidator - During the winding up process, the liquidator shall be required to offer the business of the Company for sale as a whole, as a going business. The offer for sale of the business as a going concern shall be conducted in a manner **customary for the sale of the business of the type engaged in by the Company**, on such terms and conditions as the liquidator deems appropriate in order to **maximize the proceeds of such sale**. Any member may bid and purchase the business, provided that the liquidator and purchasing member (or former member) must be able to demonstrate that the purchase price and terms so offered or paid are equal or superior to, the terms if the business had been sold to an independent third party. In evaluating such sale price, it shall be assumed that all remaining members will continue on with the business in their former capacities and that any leases or other contractual relationships between a member(s) and the Company, beneficial to the Company, shall remain in full force and effect. The written appraisal of a qualified appraiser shall be evidence of the equality of the terms of a member offer or purchase, but there shall be o[sic] obligation to obtain such an appraisal. [Emphasis Added].

Accordingly, the Operating Agreement ensures that a fair price will be received for the Property. The parties’ intent that a fair, market value price would be received for the Property is made even clearer by their inclusion in the Operating Agreement for provisions that even in the event that a member is wrongfully dissociated under Sections 13.5 and 13.10, the wrongfully dissociated member would receive value for his portion of the property determined by “one or more appraisals satisfactory to the Members . . .” See Plaintiff’s Trial Exhibit 2 (Operating Agreement), Section 13.5. A dissolution due to deadlock should not punish a member by allowing for a substantially lower price than a wrongfully dissociated member would receive.

Even if the dissolution due to deadlock is upheld, Section 14.2 of the Operating Agreement controls the method of sale. Section 4.1 of the Operating Agreement sets forth the relationship between the Operating Agreement and the LLC Act as follows:

Section 4.1 Relationship of This Agreement to the Default Rules Provided by the LLC Act. Regardless of whether this agreement specifically refers to particular default rules:

- (a) if any provision of this Agreement conflicts with a default rule, the provision of this Agreement controls and the default rule is modified or negated accordingly; and
- (b) if it is necessary to construe a default rule as modified or negated in order to effectuate any provision in this Agreement, the default rule is modified or negated accordingly.

Thus, the Operating Agreement trumps the statutory provisions on judicial sale and the Court's order should reflect that.

Defendant and Plaintiff contracted in the Operating Agreement to maximize the proceeds of a sale in the event of a dissolution. Defendant invested significant sums of money and time in the Old Dominion Plantation, LLC, and abandoned other real estate opportunities relying on the provisions contracted for and the protections guaranteed in the Operating Agreement. See Defendant Affidavit, ¶ 2, filed on September 7, 2012. Under South Carolina law, those contractual rights cannot be ignored. See Clay & Tug Properties, LLC, 727 S.E.2d at 778; also Park Regency, LLC, ___ S.E.2d ___, 2012 WL 5936692 at * 5. At trial, testimony referred to the most recent appraisal of the Property reflecting a value of \$10,672,000. See Appraisal, p. 1.²⁰ A

²⁰ Defendant recognizes that the appraisal was dated the year prior to this lawsuit, and realize the value of the property has changed, but the appraisal still indicates the significance of the asset involved in this potential sale.

sale of the Property at a courthouse auction would create the potential for irreparable harm to the LLC and its members. Such a sale could allow one of the members or anyone else to purchase the Property for any amount, regardless of the Property's value, if they can outbid the other member. For example, one member could bid one dollar if the other member did not have the means to make a bid and walk away with the Property.²¹ This creates a scenario in which one of the members may accomplish that which was not contracted for and provided for in the Operating Agreement, ie a forced buyout of the equal member and owner, who does not have the means to purchase the Property regardless of the unreasonableness of the highest bid.²² See generally Operating Agreement. Plaintiff's willingness to proceed with such a sale indicates that he strongly believes that he or he and a partner²³ (or partners) can bid up to an amount until he is satisfied and willing to have the Property sold to another bidder at a higher price. However, his financial means and willingness to do so does not prevent the irreparable damage to the LLC and Defendant, and the law does not allow him to have the Court to ignore Defendant's contractual rights.

The method of sale on the Property that Plaintiff seeks in this case contravenes South Carolina Limited Liability Corporation law. In this case, Plaintiff and Defendant, well-educated

²¹Plaintiff testified at the trial that he does not want a reserve on the Property. See Trial Transcript, p. 87:5-6.

²²This scenario also provides the potential for a third party to purchase the Property at an unreasonable bid.

²³Plaintiff testified at trial that his neighbor, John Hamrick, has voiced an interest in buying Defendant's half of Old Dominion Plantation. See Trial Transcript, p. 121:12-17. Defendant is familiar with Hamrick and testified that Hamrick has the financial wherewithal to make a significant purchase. See Trial Transcript, p. 154:8-12. Defendant testified at trial of his concern that Plaintiff was attempting to have a forced sale in this depressed real estate market in order to provide an opportunity possibly for his neighbor to buy it. See Trial Transcript, p. 154:8-23.

parties, represented by counsel entered the Operating Agreement to control their rights in the LLC.

Section 3.7 of the Operating Agreement provides in the relevant section,

Intent of this Agreement.

(a) The parties to this Agreement have reached an understanding concerning various aspects of (i) their business relationship with each other and (ii) the organization and operation of the Company and its business. They wish to use rights created by statute to record and bind themselves to that understanding.

(b) The parties intend this Agreement to control, to the extent stated or fairly implied, the business and affairs of the Company, including the Company's governance structure and the Company's *dissolution*, winding up, and termination as well as the relations among the Company's Members and persons who have signed Contribution Agreements and Contribution Allowance Agreements. [Emphasis Added].

As the records shows, Defendant has invested thousands of manual labor hours in the Property and spent over a million dollars on the property and improvements. See Defendant Affidavit, ¶ 2, filed on September 7, 2012; Defendant Affidavit, ¶¶ 2-13, filed on October 11, 2012; Trial Transcript, p. 154:20 - p. 154:16; p. 193:20 - p. 194:4; see also Evidence submitted at Financial Hearing on November 1, 2012. Defendant has also foregone and lost other real estate and business opportunities because of his significant investment in Old Dominion Plantation, LLC.²⁴ Id. Despite Defendant's reliance on the Operating Agreement and its protections for his investment, he could lose everything at a courthouse auction of the Property. Defendant asks the Court to follow South Carolina law and if the Court orders a sale of Old Dominion, for it to be the on terms set forth in the LLC's controlling Operating Agreement or subject to the agreed upon method by the parties. Pursuant to the Operating Agreement, Section 3.8(b)(ii), any alleged expectation that Plaintiff may have to a *quick* sale of the Property is not reasonable and Plaintiff

²⁴Defendant testified at trial as to his affection for this Property and its meaning to him, a loss that cannot be measured in dollars. See Trial Transcript, p. 155: 10-16.

is estopped from asserting that expectation as a basis for any claim to a courthouse sale of the Property. See Plaintiff's Trial Exhibit 2 (Operating Agreement), Section 3.8 (b)(iii).

Furthermore, the inclusion in the Court's Order for a public auction of the Property completely defeats the ability of the parties to solicit the highest price for the Property during the initial agreed upon sales period in the Consent Order. If buyers can wait and purchase the Property at a public auction, the entire marketing of the Property pursuant to the Consent Order is at risk. This procedure again would directly conflict with the provisions of the Operating Agreement.

4. The Order is internally inconsistent and awards damages on a withdrawn cause of action.

As a valid contract between the parties, the Settlement Agreement is subject to the rules of contract construction. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009), cert. denied (June 9, 2009) (settlement agreements are viewed as contracts); Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 540 S.E.2d 843 (2001) (holding the enforcement of the terms of a settlement agreement is a contract action). In determining whether to order specific performance, the Court cannot "make a new contract for the parties, or supply any material stipulation of the contract, but **must enforce the contract according to its terms or not at all.**" 71 Am.Jur.2d Specific Performance § 35 (emphasis added). Beasley v. Swinton, 46 S.C. 426, 24 S.E. 313, 323 (1896) (A court cannot ignore certain provisions of a contract; it's duty is "first to decide what the contract, as made by the parties thereto, is, and then to enforce it.").

Here, the Settlement Agreement provided for either the division of the property or "separate

use, control and responsibility of and for the Property.” The Settlement Agreement required Plaintiff to make payments to Defendant under a Promissory Note and for Defendant to pay Plaintiff \$9,060.00 for equipment. This Court found that the Settlement Agreement would not be enforced as to the division of the real property or the adoption of agreements for the “separate use, control and responsibility of and for the Property.” However, the court then tried to enforce the provision regarding the division of equipment and ordered Defendant to pay Plaintiff \$9,060.00, but refused to require Plaintiff to pay Defendant any of the monies due under the promissory note.²⁵ The Settlement Agreement cannot be selectively enforced. Either the entire Settlement Agreement is enforced, allowing the parties to draft agreements to accomplish the “separate use, control and responsibility of and for the Property” as well as follow the financial obligations set forth therein, or none of the Settlement Agreement should be enforced.

5. The Court failed to correct the amount of reimbursement to which Defendant is entitled.

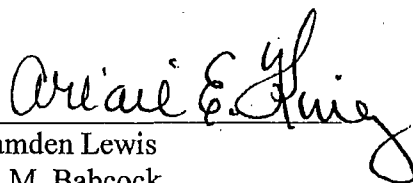
In the Court’s Temporary Order filed on May 11, 2012, the Court ordered the parties to submit information to the Court by affidavit and/or financial records, and agreed to take testimony regarding the parties’ contributions if necessary. The Court also stated in that Temporary Order that if either party wanted to offer testimony, then the Court will set a hearing. Defendants requested a hearing on the matter. The Order filed on May 4, 2013, states that Defendant is entitled

²⁵Furthermore, just prior to trial, Plaintiff withdrew his cause of action for specific performance/breach of contract. The Court also awarded Plaintiff an additional \$67,000 under this cause of action, which had been withdrawn. There is no basis for the Court to award damages. If the Plaintiff had pursued his first cause of action including a claim for damages to recover \$67,000, Defendant could have shown that Plaintiff has received use of Tract Two, a parcel worth \$1,800,000 more than Defendant’s. See Trial Transcript, p. 61, ll. 5-19; p. 156, ll. 10-16; Appraisal, pp.1, 64, 74, 78-79. Therefore, Plaintiff gets a windfall by having exclusive use of a more valuable tract for over five and half years.

to \$475,612.48 (which matches the total of expenditures submitted in Defendant's Affidavit filed on October 11, 2012). In that same affidavit, Defendant attested that "due to the passage of time and flooding in Defendant's basement, some receipts and checks may have been lost or destroyed. Affiant will continue to search for additional documentation for submission at the hearing on the matter." At the subsequent hearing for the financial accounting on November 1, 2012, Defendant presented expenditures and supporting documentation for a total of \$499,632.19. Plaintiff did not contest that Defendant had made those expenditures. In Plaintiff's counsel's letter to the Court dated February 25, 2013, he states that "[a] review of Plaintiff's trial notes and Damages Hearing notes indicate that Mrs. King [Defendants' counsel] is correct on this issue and the amount submitted by Defendant was \$499,632.19." Defendants respectfully request that the Court adjust Defendant's entitlement to a credit to \$499,632.19 to reflect the expenditures presented on November 1, 2012.

Conclusion

For the reasons set forth above, Defendants request that this Court alter or amend its order as follows to hold as follows: 1) that Plaintiff is not entitled to equitable relief because he has a valid legal remedy (that he withdrew); 2) that dissolution is not warranted under the facts and the applicable statute, S.C. Code §33-14-300; 3) that the method of sale is controlled by the Operating Agreement and the property should not be sold at a judicial auction; 4) that no damages can be awarded to Plaintiff as he withdrew his breach of contract action; and 5) that Defendant is entitled to reimbursement of to \$499,632.19, as reflected by the expenditures presented on November 1, 2012, not \$475,612.48.



A. Camden Lewis
Keith M. Babcock
Ariail E. King
LEWIS, BABCOCK, & GRIFFIN, L.L.P.
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

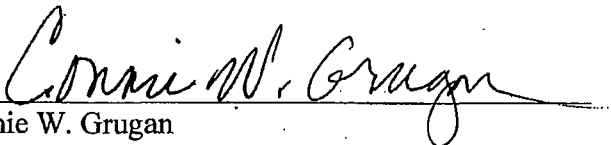
Columbia, SC
March 15, 2013

Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Connie W. Grugan, employee of the law firm of Lewis, Babcock & Griffin, L.L.P., do hereby certify that I have this served Defendants' Motion to Alter or Amend, Pursuant to Rule 59(e), SCRPC upon opposing counsel by mailing a copy of same, postage prepaid and return address clearly indicated, to said opposing counsel addressed as follows:

Michael D. Glenn, Esq.
Glenn, Haigler, McClain & Stathakis, LLP
121 W. Benson Street
Anderson, South Carolina 29624



Connie W. Grugan

This 15th day of March, 2013.

FILED
2013 MAR 18 PM 1:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Larry S. Bowman,)

Plaintiff,)

vs.)

Donald Alexander and Old
Dominion, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case Number: 2008-CP-10-7245

PLAINTIFF'S MEMORANDUM
IN OPPOSITION TO DEFENDANTS'
MOTION TO ALTER OR AMEND,
PURSUANT TO RULE 59(e), SCRPC

BY

JULIE J. ARMSTRONG
CLERK OF COURT

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FILED

Plaintiff contends that Defendants' Motion should be denied in its entirety.

In support of that position, Plaintiff submits the following responses to each of Defendants' positions:

1. **Plaintiff had a valid legal claim that he voluntarily withdrew only days before trial and thus, the Court should not have ruled on Plaintiff's equitable claim for dissolution.**

This position has no merit. Initially it should be noted that Plaintiff did not, at any time, withdraw all of his legal claim which was alleged in the Complaint.

The First Cause of Action in Plaintiff's Complaint is for Breach of Contract / Specific Performance. The Second Cause of Action seeks dissolution of Old Dominion LLC, a Limited Liability Company. Defendants now contend that

Plaintiff withdrew his “valid legal claim” and that, absent a legal claim, the Court should not have ruled upon Plaintiff’s equitable claim for dissolution.

A review of the pleadings and transcript will show that Plaintiff did not withdraw his legal claim for Breach of Contract. His Notice concerning the withdrawal only withdrew his request for Specific Performance and had no bearing on his cause of action for Breach of Contract and damages. In fact, the Court’s Order finds that Defendant did in fact, breach the contract and awards damages to Plaintiff. Defendants’ position that Plaintiff’s legal cause of action was withdrawn is simply not true.

Defendants contend that Plaintiff had an adequate remedy at law which was withdrawn and therefore was not entitled to specific performance. While the proposition advanced by Defendants is often true, it has no applicability here. In this case the relief as sought by Plaintiff and granted by the Court is statutory relief. South Carolina Code §43-44-801 sets out the statutory requirements for dissolution of a Limited Liability Company when the members of the company are dead locked. In this case, the Court found that the evidence supported Plaintiff’s position and that the proper remedy was dissolution of the Limited Liability Company.

2. **The Order misconstrues the testimony and facts, relies, in part, on the incorrect statute, and wrongly concludes that dissolution is warranted.**

Defendants' contentions serve to reiterate and restate the testimony of Defendant Alexander and arguments of his attorneys at the trial. It was clear at trial and is clear now that Defendant Alexander and Plaintiff Bowman have sharply different views of their use, operation, and management of Old Dominion Plantation, LLC and the plantation property it owns.

The testimony clearly shows marked differences between Bowman and Alexander in their use and management of their company and its property since the year 2000. The evidence shows that the parties attempted to solve their differences between themselves but were unsuccessful. The testimony clearly shows, and the Court found, that Bowman and Alexander could only agree that they were in conflict. As a result they tried mediation as required by their Operating Agreement.

The evidence shows that the conflict between the parties was settled at Mediation on September 10, 2007 which resulted in a written Settlement Agreement. The Court found and, the testimony shows, that immediately following the mediated settlement, the parties were in controversy concerning implementation of the Settlement Agreement. The parties literally disagreed on

every item in the Settlement Agreement including a survey and the payment for the survey. The testimony shows that the parties could not even agree upon a party to conduct a biological survey in an effort to implement the Settlement Agreement.

Finally on December 22, 2008, this action was filed by Plaintiff for Breach of the Settlement Agreement, Specific Performance of the Settlement Agreement, Damages, and, as a Second Cause of Action, Dissolution of Old Dominion Plantation, LLC. In his answer to the Complaint, Defendant Alexander admitted that a deadlock existed between the parties at the time of the mediation in 2007.

Positions taken by Defendant Alexander in his Motion and, his testimony at trial, indicate that throughout the controversy with Bowman concerning Old Dominion Plantation, LLC and the property it owned, he always favored and supported the idea of going forward with the Settlement Agreement. He stated that he favored division of the property as contemplated by the 2007 Settlement Agreement.

To the contrary, the testimony shows, and the Court found, that Alexander's position is simply untrue and contrary to his position in the litigation. Alexander's Answer and Counterclaim alleged that the 2007 Settlement Agreement is illegal because it violates the terms of the conservation easement applicable to the plantation property. Alexander denied that Bowman was entitled to specific

performance of the Settlement Agreement. In his Counterclaim, Alexander sought specific performance of the terms and conditions of the conservation easement, not specific performance of the Settlement Agreement as he contended in his testimony.

The testimony and evidence clearly show that Defendant Alexander did everything within his power to prevent the implementation of the Settlement Agreement and, in doing so, extended the deadlock which existed prior to the mediated settlement in 2007.

In his motion, Defendant Alexander repeatedly points to disputes concerning efforts to implement the Settlement Agreement, and in particular, disputes concerning the work of Coy Johnston and R.K. Williams which was aimed toward a possible division of the property. It should be pointed out that for several years following the Settlement Agreement in 2007, Defendant Alexander refused to have any contact with Mr. Johnston or Mr. Williams and refused to participate in their efforts to make an environmental assessment of the possible division. As pointed out in the motion and, supported by the evidence at trial, Defendant Alexander even wrote to Ducks Unlimited seeking the approval of a plan submitted by Mr. Johnston, without any consultation with Plaintiff. This action was taken by Alexander shortly before trial and after he had resisted the

division of the property for approximately 4 years.

Defendants now contend that the Court's Order relies upon an incorrect statute. Plaintiff disagrees. Throughout the trial of the case, Plaintiff contended the statutory law relating to Limited Liability Corporations is applicable to Old Dominion Plantation, LLC. Plaintiff contended that SC Code Ann. 33-44-410 provides for actions by members of an LLC against other members or the Limited Liability Company for legal or equitable relief. Plaintiff also contended at trial that SC Ann. 33-44-801(4) provides for the dissolution and winding up of a company's business on the application of a member under certain circumstances. The Court's Order finds that Plaintiff was correct and was entitled to bring the suit under §33-44-410. The Court also found that dissolution was appropriate under §33-44-801(4)(c) upon a finding that "it is not otherwise reasonably practical to carry on the company's business in conformity with the articles of organization and the Operating Agreement;" and (e) "the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the Petitioner".

Defendant Alexander now complains about the Court finding under that section alleging that he was not "in control" of the Limited Liability Company.

The evidence shows that there was no manager named for Old Dominion,

LLC and that the members, Bowman and Alexander, were equally in control.

Plaintiff contends that the evidence clearly shows that Defendant Alexander acted and will continue to act in a manner which was oppressive or unfairly prejudicial to Plaintiff. In addition, the evidence clearly shows that the controversy and impasse between the members of the LLC show that it is not reasonably practical to carry on the company's business in conformity with the Articles of Organization and the Operating Agreement. The Court was correct in this finding.

The evidence shows that, from the year 2000 until the trial of this case, Plaintiff and Defendant Alexander stayed in conflict concerning the operation of Old Dominion Plantation, LLC and the use of the assets it owned. They never agreed, and do not now agree, on the cause of the conflicts which made their relationship in the Limited Liability Company impossible. The difficulties were obviously clear to the Court and resulted in an Order of Dissolution.

Defendant Alexander now contends that the Court should have applied South Carolina statutory law dealing with the Judicial Dissolution of Corporations, SC Code Ann. §33-14-300 et seq. The statutory law cited by Alexander was also his basis of defense at the trial of this case. It is Plaintiff's position that the corporate statutory law applies to corporations and has no applicability to Old Dominion Plantation, LLC. Old Dominion Plantation, LLC is

a Limited Liability Company and is controlled by the statutory law referred to herein by Plaintiff and the law on which Plaintiff tried his case.

The Court tried the case under the correct statutory law, heard all of the testimony, and made a decision based upon the Court's Findings of Fact in the case. There is no ground for altering or amending the finding of the Court under Rule 59(e), SCRCP.

3. **The Court's holding that the property can be sold at public auction has no basis.**

Defendant Alexander contends that the Court was in error in providing for the sale of the plantation property owned by the Limited Liability Company, if not sold under a procedure agreed to by the parties in 180 days, either party may apply to the Court for an Order requiring the property to be sold a public auction under terms and conditions set by the Court. Alexander contends that if the property is not sold in a method agreed to by the parties, the Court should not make further Order but require the sale of the property pursuant to the terms of the Operating Agreement of Old Dominion Plantation, LLC.

It is clear that the parties agreed on a method of listing the property and providing for its sale during the first 180 days of the listing. The dispute raised by Defendant Alexander is whether, after the 180-day listing, the Court has the

authority to Order the property sold in some other fashion such as public auction or whether the Court is required to proceed under the Operating Agreement of Old Dominion Plantation, LLC.

Plaintiff contends that the method of selling the property is within the discretion of the Court. In Historic Charleston Holdings, LLC v Mallon, 381SC 417, 673 SE2d 448 (2009), the South Carolina Supreme Court stated, “....the LLC Act grants broad judicial discretion is fashioning remedies in actions by members of an LLC against the LLC and/or other members”. Plaintiff contends that the method of sale provided by the Court in this case is within its discretion in dealing with the dissolution of Old Dominion Plantation, LLC.

4. The Order is internally inconsistent and awards damages on a withdrawn Cause of Action.

There was never any doubt in this case that the Complaint was brought for the purpose of enforcing a Settlement Agreement entered into by the parties. There is also no doubt that the Settlement Agreement was a contract entered into by the parties. The First Cause of Action in Plaintiff's Complaint seeks damages for Breach of Contract and Specific Performance of a portion of the contract. On October 4, 2011, Plaintiff filed a Notice withdrawing his request for Specific Performance of the Settlement Agreement and stated that he would proceed

seeking dissolution of the Limited Liability Company. The wording of the Notice withdrawing the Specific Performance request is as follows:

NOTICE OF WITHDRAWAL FOR REQUEST OF SPECIFIC PERFORMANCE

TO: Defendant M. Donald Alexander and Counsel for Defendant:

“Please take notice that Plaintiff withdraws his request for specific performance of the Agreement of the parties dated September 10, 2007.

Plaintiff will proceed on his Complaint for Breach of Contract and Dissolution of Old Dominion Plantation, LLC as requested in his Complaint filed on December 22, 2008.”

There is no question that Plaintiff tried his case on Breach of the Contract between the parties. The Court found that the Contract was breached and awarded damages for the breach, all of which is abundantly supported by the evidence in the case.

5. The Court failed to correct the amount of reimbursement to which Defendant is entitled.

In this section of his Motion, Plaintiff points out that the Court failed to award him the correct amount to reimburse him for expenditures which he submitted to the Court by Affidavit.

Defendant agrees with this point and acknowledges that Defendant Alexander's Affidavit shows documentation for a total amount of \$499,632.19.

CONCLUSION

For the reasons set forth above, Plaintiff requests that the Court uphold the Court Order in its entirety with the exception of the amount of reimbursement to the Defendant as set forth herein.

Plaintiff requests that the Court deny all other requests to alter or amend pursuant to Rule 59(e), SCRPC.

Respectfully submitted,

GLENN, HAIGLER & STATHAKIS, LLP



Michael D. Glenn, #2147
Attorney for Plaintiff
121 West Benson Street
Anderson, South Carolina 29624
(864) 226-1885
(864) 226-0561, fax

March 29, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Larry S. Bowman,)

Plaintiff,)

vs.)

M. Donald Alexander and Old
Dominion, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case Number: 2008-CP-10-7245

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTION FOR A
NEW TRIAL AND/OR TO AVOID
JUDGMENT**

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JULIE J. ARMSTRONG
CLERK OF COURT
BY 

FILED

Plaintiff opposes Defendants' Motion for a New Trial and/or to Avoid Judgment.

Defendant relies on SC Code §33-14-310 which concerns venue in a proceeding to dissolve a corporation. That code section deals with the dissolution of a corporation and has no applicability to this case.

The code section cited by Defendant has nothing to do with Limited Liability Companies. Limited Liabilities Companies are governed by SC Code §33-44-101, et seq. Section 33-44-101(9) defines a Limited Liability Company. That section states, "Limited Liability Company means a Limited Liability Company organized under this Chapter". The chapter which deals with Limited

Liability Companies has no venue requirements for actions which seek the dissolution of a Limited Liability Company.

Plaintiff contends that if Defendant had a venue issue, it was waived. The venue issue is required to be raised in a Rule 12(b)(6) Motion or in a Responsive Pleading. In this case, the venue issue was not raised until the afternoon prior to a scheduled trial in the Charleston Court of Common Pleas.

Defendants argued at trial and in its Motion to Dismiss that Defendants' reason for failing to raise the venue issue in a 12(b)(6) Motion or in Responsive Pleadings was because Plaintiff's First Cause of Action was for specific performance of a Settlement Agreement. This position is without merit. Plaintiff filed and served the Summons and Complaint in this action on December 22, 2008. The First Cause of Action was for Breach of Contract / Specific Performance and the Second Cause of Action was for Dissolution of the Limited Liability Company. In their argument of the Motion at trial, Defendants argued that they could not have filed their Motion to Change Venue earlier since Plaintiff's withdrawal of the First Cause of Action was not received until October 4, 2011 even though the Cause of Action for Dissolution of the Limited Liability Company had been a part of the pleading since December of 2008. No Motion was filed until less than one day before the scheduled trial. The trial of the case had

been scheduled for several weeks and Defendants and their attorneys knew for more than 2 ½ years that the question of the dissolution of the Limited Liability Company was a part of the pleadings in the case.

To summarize the situation, at the time Defendant's Motion to Change Venue was argued, there was no venue statute applicable to the dissolution of a Limited Liability Company and the Cause of Action for Breach of Contract had not been withdrawn. In that circumstance, Defendant had no viable motion available for change of venue. In spite of that fact, Defendant moved to change venue literally hours before the scheduled trial citing a statute which has no applicability to the case. It is Plaintiff's position that Defendant had no grounds for a Motion to Change Venue and, if Defendant had such grounds, had waived the right to file the motion by failing to properly raise it in initial pleadings.

In his argument of the Venue Motion, Defendant contended that the Court should have denied the Motion to Change Venue for the convenience of witnesses. That issue was first raised by the Court during the argument of the Motion. Plaintiff then pointed out that the case had been scheduled for a period of time and was not a jury trial. The record reflects that the Plaintiff is from Oconee County and Defendant Alexander is from Richland County. Neither party scheduled any other witness to testify at the trial of the case but agreed for the use of two (2)

depositions which had already been presented to the Court. Defendants now argue that even if the convenience of witnesses was obvious to the Court, that Plaintiff is required to show that the change of venue also supports the ends of justice and failed to do so in this instance.

It is Plaintiff's position that the Court which scheduled a trial in Charleston County involving litigants from Oconee County and Richland County was within its authority and discretion to determine that the ends of justice would be promoted by going forward with the trial rather than changing venue. Neither party presented any evidence or argument that either Charleston County or Richland County would be more or less convenient for witnesses.

It was obvious to the Court at that time that all parties who would testify were present and prepared to testify. It was also obvious that all attorneys were present and prepared for trial and that the Court and Court Reporter were in place ready to go forward. Certainly under those circumstances, a court has the discretion to determine that the convenience of witnesses and the promotion of justice will be served by going forward with the trial as scheduled rather than grant a Motion to Change Venue made less than one (1) day prior to the trial.

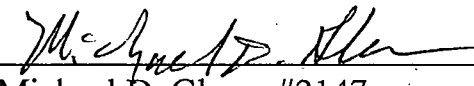
CONCLUSION

There is no requirement in a case to dissolve a Limited Liability Company

that venue be in any particular county. Defendant had no grounds to seek a change of venue and simply cited a statute which had no applicability. If Defendant had grounds for a Motion to Change Venue, he waived that right. If the Change of Venue was necessary, it was within the discretionary power of the Court to deny the motion to provide for the convenience of the witnesses.

Respectfully submitted,

GLENN, HAIGLER & STATHAKIS, LLP



Michael D. Glenn, #2147
Attorney for Plaintiff
121 West Benson Street
Anderson, South Carolina 29624
(864) 226-1885
(864) 226-0561, fax

March 29, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Larry S. Bowman,	)	
	)	CIVIL ACTION NO. 08-CP-10-7245
Plaintiffs,	)	
	)	
v.	)	
	)	
M. Donald Alexander and Old Dominion,	)	DEFENDANTS' REPLY
LLC,	)	MEMORANDUM
	)	
Defendants.	)	
	)	
	)	

Defendants file this memorandum in Reply to Plaintiff's Response to the Motion for New Trial and/or to Void Judgment and Plaintiff's Response to the Motion to Alter or Amend Judgment. Defendants reassert and incorporate the arguments previously made in their Motions. However, Defendants are further compelled to address and correct Plaintiff's misstatements of the record concerning whether Plaintiff withdrew his first cause of action. Since those misstatements are relevant to both motions, Defendants file this same brief in support of both motions.

In his recent filing, Plaintiff has made belated attempts to revive a part of his first cause of action. The trial court record makes clear that Plaintiff was not pursuing any part of his first cause of action. The record is replete with references from both counsel and the Court to the first cause of action no longer being pursued. See Trial Transcript, pp. 13:24-14:2; p. 15:1-13; p. 15:22 - p. 16:2-17; p. 20:7-19; p. 26:15-16. At the hearing on the motion, Defendants argued that the venue issue only became ripe when Plaintiff dropped his first cause of action. Plaintiff did not claim that he had not dropped part of his first cause of action. Rather, he responded to the Court and Defense counsel's arguments by only stating that "the second cause of action for [dissolution] has been in

there the whole time.” See Trial Transcript, p. 15:1-13.¹ Even if Plaintiff wants to belatedly argue that he did not drop the entire first cause of action *prior* to trial, he certainly dropped it *at* the trial. His representations to the Court and Defendants support that he waived any right to pursue any part of his first cause of action and that he is estopped from doing so now. When the Court repeatedly stated throughout the proceedings that Plaintiff had dropped his first cause of action, he sat in silence and never asserted his intent to pursue a part of that first cause of action.

One selected colloquy is as follows:

The Court: All right. Mr. Glenn, basically, he’s saying the change of venue was not relevant until you dropped the first cause of action; therefore, he couldn’t do it by 12(b) or by the pleadings, responsive pleadings until that time, which he has done now in his 12(b)(6) motion.

Mr. Glenn: The statute he raised about dissolution being in the county where the registered agent is was there all along and so was the cause of action. He could have raised it on a 12(b)(6) motion before he filed his answer.

The Court: Well, what was your first cause of action?

Mr. Glenn: It was for specific performance of an agreement.

See Trial Transcript, pp. 15:22-16:11.

Plaintiff’s counsel never informs the Court that the first cause of action includes a breach of contract claim which he is allegedly still pursuing. Even when the Court again addressed Plaintiff’s counsel concerning the issue, he never informed that Court that a part of his first cause of action was being pursued.

¹While the cause of action for dissolution was present, Plaintiff changed the grounds on which he was requesting it from deadlock (under S.C. Code § 33-44- 300) to various grounds under S.C. Code Ann. § 33-44-801(4)(b) and (e).

The Court: All right. Mr. Glenn, let me just ask you a question. I understand your position is that he should have raised it in his answer or by 12(b) motion earlier before you dropped the first cause of action. However, you stated your first cause of action could have been tried in Richland County or Charleston County; therefore, I don't think it was probably – at least the defendant's position was that he didn't think it was appropriate to make the motion until that cause of action which actually gave venue in Charleston County was dismissed

See Trial Transcript, pp. 17:17-18:2.

If Plaintiff still intended to pursue a breach of contract claim, he should have informed the Court and could have argued that the contract was formed in Charleston County, which would have addressed the Court's questions and concerns regarding venue. Instead, in his written response to the motion and his oral argument in Court, Plaintiff's counsel only referred to and made arguments concerning his second cause of action as the basis of the law suit. The Court raised the issue yet again with Plaintiff's counsel as follows:

The Court: That's the main thrust of your argument. He could have done it irregardless [sic] second cause of action.

Mr. Glenn: He had an obligation to do it as to the second cause of action, if he wanted to do it, and he had the obligation to do it before the pleadings were filed or at the same time. He could have raised it in his pleadings or 12(b) motion.

The Court: Well, it really wasn't an issue until you **dropped your first cause of action**. [Emphasis Added].

Mr. Glenn: It was always an issue. I also said if the Court doesn't grant specific performance then we want it dissolved. It was always there.

The Court: I'm talking about the venue issue wasn't there under the statute until you dropped the first cause of action.

Mr. Glenn: And that's where I'm disagreeing.

The Court: I see you disagree.

See Trial Transcript, p. 20:4-21.

Mr. Glenn never informed the Court or Defendants that he was continuing to pursue any claim under his first cause of action. If he was attempting to secretly pursue such a claim, he waived it by not informing the Court and opposing counsel of his intent to do so. Even though a breach of contract claim on a contract formed in Charleston County may have kept the venue in Charleston County, Plaintiff did not make that argument in his response to the motion to change venue or in Court. Plaintiff simply asserted that he was pursuing his claim for dissolution, until after the trial was over, whereupon he has tried to revive a part of the first cause of action.

The issue continued to be discussed during the trial. See Trial Transcript, p. 26:15-16 [“See all the trouble you’ve caused by doing away with the first cause of action, Mr. Glenn?”]. Even in counsel’s opening argument, he referred only to this second cause of action stating “that it needs to be dissolved and ended. That’s what we’re asking the Court to do.”

The Court: Anything else?

Mr. Glenn: That’s all.

See Trial Transcript, pp. 32:24-33:2.

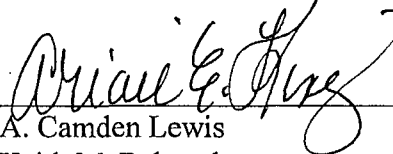
The trial record clearly reflects that Plaintiff only intended to pursue the second cause of action. Thus, the motion for change in venue on dissolution should have been transferred to the Richland County -- the location of the principal place of business--under S.C. Code § 33-14-310.²

²Defendants have numerous viable defenses to any breach of contract claim. However, because a breach of contract claim was not properly before the Court, the Defendants did not have an opportunity to present evidence or defenses as to that cause of action. Therefore, Defendants request to preserve their rights to do so if this matter is going to be belatedly inserted to this case.

In addition, the Plaintiff should not have been awarded damages on breach of contract action that was clearly withdrawn.

With regard to the remaining issues, Defendants refer the Court to their memorandum in support of their motions.

LEWIS, BABCOCK & GRIFFIN, L.L.P.



A. Camden Lewis

Keith M. Babcock

Ariail E. King

1513 Hampton Street

Post Office Box 11208

Columbia, SC 29211

Telephone: 803-771-8000

Facsimile: 803-733-3541

ATTORNEY FOR PLAINTIFFS

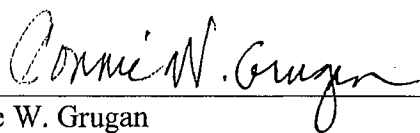
Columbia, South Carolina

4/8, 2013

CERTIFICATE OF SERVICE

I, Connie W. Grugan, employee of the law firm of Lewis, Babcock & Griffin, L.L.P., do hereby certify that I have this served Defendants' Reply Memorandum upon opposing counsel by mailing a copy of same, postage prepaid and return address clearly indicated, to said opposing counsel addressed as follows:

Michael D. Glenn, Esq.
Glenn, Haigler, McClain & Stathakis, LLP
121 W. Benson Street
Anderson, South Carolina 29624



Connie W. Grugan

This 8th day of April, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Larry S. Bowman,)

Plaintiff,)

vs.)

Donald Alexander and Old)

Dominion, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case Number: 2008-CP-10-7245

COPY

PLAINTIFF'S RESPONSE TO
DEFENDANTS' REPLY
MEMORANDUM

This is a response to Defendants' Reply Memorandum filed on April

8, 2013 concerning Defendants' Motion to Alter or Amend Judgment.

In his Reply Memorandum, Defendant Alexander continues to contend that Plaintiff dropped or abandoned his cause of action for Breach of Contract.

Attached as **Exhibit A** to this Response is the NOTICE OF WITHDRAWAL OF REQUEST FOR SPECIFIC PERFORMANCE which was filed by Plaintiff on October 7, 2011. The Notice specifically states that "Plaintiff withdraws his Request for Specific Performance of the Agreement of the parties dated September 10, 2007. Plaintiff will proceed on his Complaint for Breach of Contract and Dissolution of Old Dominion Plantation, LLC as requested in his

Complaint filed on December 22, 2008.”

At the trial of the case, the Court first heard Defendants’ Motions, including the Motion to Change Venue to Richland County. It is true that during the argument, both the Court and Counsel occasionally referred to the Withdrawal of the First Cause of Action of the Complaint. It is clear, however, that the parties were discussing the withdrawal of the Specific Performance Request relative to the First Cause of Action and not the entire Cause of Action for Breach of Contract. During the argument, the Attorney for Plaintiff stated:

“If he’s entitled to move for Dissolution, he could move the whole case, in my judgment. So I didn’t amend the Complaint. I simply sent him a Notice of Withdrawal on the Request for Specific Performance because we no longer want that remedy. We want the remedy of. . . that’s been asked for since it was filed in 2008. And under the Rule, he has to raise that at the time he files his Answer or before, or he waives it.”
(Trial Transcript, p. 16:16-23)

It is important to note that the trial of the case included extensive testimony on the issue of the Breach of the Settlement Agreement Contract. The actual Agreement was received in evidence as Exhibit 3 (Trial Transcript, p. 58:22). After the admission of the Agreement, Plaintiff presented evidence of its Breach. The breach concerning the requirement for a survey is discussed at Trial Transcript p. 65:7-24. The testimony concerning breach of a clause requiring the

division of personal property was presented at Trial Transcript, pp. 65:25-66:21.

Testimony concerning breach of the requirement of an environmental assessment is found at Trial Transcript pp. 69:5-70:13. And finally, evidence of breach concerning the requirement for payment of money was presented at Trial Transcript p. 87:18-25.

A review of all testimony by Dr. Bowman concerning the Breach of the Settlement Agreement went into evidence without any objection on the part of Defendants. There is no question that Counsel for Defendants would have objected to testimony concerning Breach of Contract and Damages had the issue of Breach of Contract been withdrawn by Plaintiff. The fact is the Breach of Contract Cause of Action was not withdrawn and no objection was made to testimony or evidence concerning Breach of Contract.

Finally the Court's Order finds that the Contract was breached and awards damages pursuant to the evidence presented at trial. The Court's Order, pages 19-20 clearly finds that Plaintiff established that the Settlement Agreement was breached by Defendant and that Plaintiff was entitled to damages resulting from the breach.

CONCLUSION

Plaintiff's original suit was for Breach of Contract in which he sought

Damages and Specific Performance. His Second Cause of Action was for Dissolution of the Limited Liability Company. At trial, Plaintiff presented evidence of the Contract, its breach, and damages sustained by the Plaintiff resulting from the breach. The Court found that there was a contract that was breached and that Plaintiff was entitled to damages resulting from that breach.

Defendants' Motion to Alter or Amend the Judgment should be denied.

Respectfully submitted,

GLENN, HAIGLER & STATHAKIS, LLP



Michael D. Glenn, #2147

Attorney for Plaintiff

121 West Benson Street

Anderson, South Carolina 29624

(864) 226-1885

(864) 226-0561, fax

April 22, 2013

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Larry S. Bowman,)

Plaintiff,)

vs.)

M. Donald Alexander and Old
Dominion, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case Number: 2008-CP-10-7245

NOTICE OF WITHDRAWAL
OF REQUEST FOR
SPECIFIC PERFORMANCE

TO: Defendant M. Donald Alexander and Counsel for said Defendant:

PLEASE TAKE NOTICE that Plaintiff withdraws his request for specific performance of the Agreement of the parties dated September 10, 2007.

Plaintiff will proceed on his Complaint for Breach of Contract and Dissolution of Old Dominion Plantation, LLC as requested in his Complaint filed on December 22, 2008.

GLENN, HAIGLER & STATHAKIS, LLP

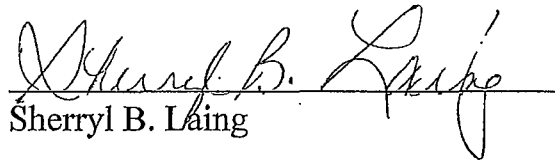

Michael D. Glenn, #
Attorney for Plaintiff
121 West Benson Street
Anderson, South Carolina 29624
(864) 226-1885
(864) 226-0561, fax

October 4, 2011

CERTIFICATE OF SERVICE

I, Sherryl B. Laing, an employee of Michael D. Glenn, do hereby certify that I have this 22nd Day of April, 2013, served the foregoing **Plaintiff's Response to Defendants' Reply Memorandum** upon the Defendants in the foregoing action by placing a copy of same in the United States Mail, postage prepaid and return address clearly indicated to counsel of record for Defendants, addressed as follows:

Ms. Ariail E. King
Attorney at Law
P.O. Box 11208
Columbia, South Carolina 29211


Sherryl B. Laing

Anderson, South Carolina