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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

21156

APPEAL FROM HORRY COUNTY
William H. Seals, Jr., Circuit Court Judge

Case No. 2009-CP-26-5743

Hotel and Motel Holdings, LLC, Respondent,

v.

BJC Enterprises, LLC, Wendy J. Bellamy, Americana, Inc.,
a/k/a Americana Motel of Myrtle Beach, Inc., Mozingo &
Wallace Architects, LLC, Kersi S. Shroff, and Shroff Management,
Inc., Defendants,

of whom

BJC Enterprises, LLC, Wendy J. Bellamy, Americana, Inc.,
a/k/a Americana Motel of Myrtle Beach, Inc., Appellants,

v.

First Palmetto Savings Bank, F.S.B., Jack Jones, Donald D. Godwin,
and Bhupendra Patel, Respondents.

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JAN 06 2014

SC Court of Appeals

RECORD ON APPEAL

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1 Q YOU DISCUSSED BUYING THE MORTGAGE ON THE HOTEL
2 OR YOU DISCUSSED BUYING THE HOTEL?

3 A WHEN YOU BUY A MORTGAGE, IT'S A NOTE FROM THE
4 BANK.

5 Q WHO WAS DISCUSSING POTENTIALLY BUYING THE
6 MORTGAGE FROM THE BANK? WHO WERE GOING TO BE
7 THE PURCHASERS?

8 A IT WAS COLLINS AND JACK.

9 Q WHY WERE YOU INVOLVED IN THE DISCUSSIONS?

10 A WELL, I WAS ASKED TO BE A PART OF A MANAGEMENT
11 TEAM THERE.

12 Q DID JOEY AND TERRY AGREE?

13 A YES. THEY AGREE TO THAT.

14 Q WHEN THAT MEETING WAS OVER, WAS THERE AN AMOUNT
15 THEY WERE TRYING TO OFFER THE BANK? TELL ME
16 WHAT YOU RECALL ABOUT THE FIRST THING YOU WERE
17 INVOLVED IN?

18 A IF I REMEMBER RIGHT, EACH PARTY HAS TO COME UP
19 TO \$2 MILLION APIECE.

20 Q JACK HAD TO COME UP WITH \$2 MILLION AND THE
21 COLLINS HAD TO COME UP WITH \$2 MILLION?

22 A YEAH, THAT'S WHAT I REMEMBERED THE DISCUSSION
23 WAS.

24 Q THE DISCUSSION WAS THAT THE BANK HAD ALREADY
25 AGREED TO SOMETHING OR WAS SOMEBODY JUST TRYING

MABRY COURT REPORTING

PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SCRR.COM Exhibit H - Patel Dep.

1 TO PUT A PROPOSAL TOGETHER FOR THE BANK OR DO
2 YOU KNOW?

3 A I DON'T KNOW.

4 Q DO YOU RECALL ... AND DID THE COLLINS AGREE TO
5 PUT IN \$2 MILLION?

6 A THEY HAD TO TAKE SOME ADVICE FROM THEIR
7 FINANCIAL ADVISERS.

8 Q DO YOU KNOW KNOW A LAWYER HERE IN TOWN NAMED
9 TONE TRASK?

10 A I KNOW HIM.

11 Q DID THEY SAY THEY NEEDED TO TALK TO MR. TRASK
12 BEFORE THEY DECIDED WHAT THEY WANTED TO DO?

13 A YES, THAT WAS DISCUSSED AT THE MEETING.

14 Q WAS IT DISCUSSED THAT IF THIS PROPOSAL GOT PUT
15 TOGETHER, WHO WOULD OWN HOW MUCH OF THE DEAL SO
16 TO SPEAK?

17 A THAT PART I DID NOT GET TO KNOW BECAUSE THEY
18 WERE DISCUSSING AMONG THEM SELF.

19 Q DO YOU KNOW WHAT JACK PROPOSED TO THE OWNERSHIP
20 OF THAT DEAL IF HE COULD PUT IT TOGETHER?

21 A NOT REALLY.

22 Q NOT REALLY BUT WHAT DO YOU KNOW ABOUT THAT?

23 A YOU KNOW THERE WAS NO AGREEMENT REACHED BETWEEN
24 THEM.

25 Q AND DO YOU KNOW WHAT THE BREAKDOWN WITH REGARD

MABRY COURT REPORTING

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1 TO THAT ISSUE WAS?

2 A NOT REALLY.

3 Q DO YOU KNOW ANYTHING ABOUT IT?

4 A NO.

5 Q NOW, THE SECOND MEETING AT K&W, WHO WAS PRESENT
6 AT THE MEETING?

7 A ME, WENDY AND THE COLLINS AND JACK. DON'T
8 REMEMBER ACTUALLY HOW MANY WAS THERE.

9 Q SO WENDY, YOU, JACK, TERRY AND JOEY?

10 A UNLESS THERE WERE BOTH OF THEM OR ONE OF THEM I
11 DON'T REMEMBER. I THINK THEY WERE BOTH OF
12 THEM.

13 Q WHAT WAS DISCUSSED AT K&W IF YOU REMEMBER?

14 A IT WAS THE SAME THING THEY WERE DISCUSSING.

15 Q TRYING TO DISCUSS IT FURTHER?

16 A YES.

17 Q AT THE K&W MEETING, DO YOU KNOW IF THE COLLINS
18 HAD ALREADY DISCUSSED THIS MATTER WITH TONE
19 TRASK?

20 A I HAD NO IDEA.

21 Q DID YOU EVER ATTEND A MEETING WHERE JACK AND
22 THE COLLINS AND TONE TRASK WERE PRESENT?

23 A NO.

24 Q DID JACK EVER TELL YOU THE RESULTS OF HIS
25 NEGOTIATIONS WITH THE COLLINS AND WHAT HAPPENED

—MABRY COURT REPORTING—

PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SCRR.COM Exhibit H - Patel Dep.

Exhibit I

Exhibit I – Loan Agreements

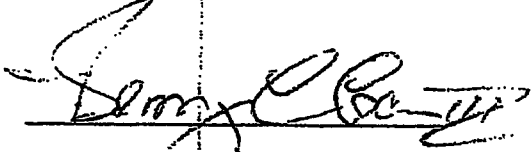
STATE OF SOUTH CAROLINA

COUNTY OF Horry

This is to certify that Wilbur Boyd Jones loaned \$50,000 on or before May 14, 2009 to be repaid out of the proceeds and profits generated by BJC Enterprises, LLC and Americana Corporation, Inc. and is to be repaid in full by July 31, 2009.



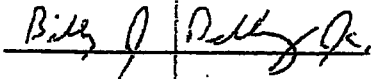
Wendy Jones Bellamy, Member BJC Enterprises, LLC and Americana Corporation, Inc.



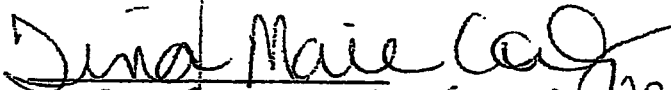
Henry C. Coan, III, Guarantor of the BJC's First Palmetto Mortgage



Wilbur Boyd Jones



Witness #1 Billy Joe Bellamy



my commission expires April 26, 2014

Witness #2 and South Carolina Notary Tina Marie Corley

Exhibit I - Loan Agreements

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

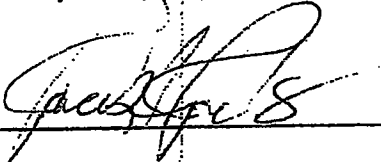
This is to certify that Jack H. Jones loaned \$20,000 on or before May 14, 2009 to be repaid out of the proceeds and profits generated by BJC Enterprises, LLC and Americana Corporation, Inc. and is to be repaid in full by July 31, 2009.



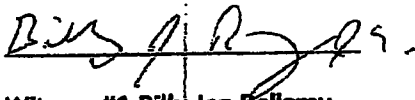
Wendy Jones Bellamy, Member BJC Enterprises, LLC and Americana Corporation, Inc.



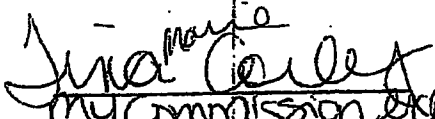
Henry C. Coan, III, Guarantor of the BJC's First Palmetto Mortgage



Jack H. Jones



Witness #1 Billy Joe Bellamy



my Commission expires April 26, 2014

Witness #2 and South Carolina Notary Tina Marie Corley

Exhibit I - Loan Agreements

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

HOTEL & MOTEL HOLDINGS, LLC,)

Plaintiff,)

vs.)

BJC ENTERPRISES, LLC, ET AL.,)

Defendants.)

BJC ENTERPRISES, LLC, ET AL.,)

Third-Party Plaintiffs,)

vs.)

FIRST PALMETTO SAVINGS BANK,)
F.S.B., JACK JONES, DONALD D.)
GODWIN, AND BHUPENDRA PATEL,)

Third-Party Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP-26-05743

**MOTION TO STRIKE REQUEST FOR
JURY TRIAL**

FILED
HORRY COUNTY
2011 JUN -6 PM 12:56
MELANIE HUGGINS-WARD
CLERK OF COURT

TO: DEFENDANTS BJC ENTERPRISES, LLC, AMERICANA, INC. AND WENDY J. BELLAMY AND THEIR ATTORNEY, KATHRYN M. COOK, ESQUIRE

YOU WILL PLEASE TAKE NOTICE that Plaintiff Hotel & Motel Holdings, LLC, by and through its undersigned counsel, hereby moves the Honorable William H. Seals Jr. for an Order striking the requests of Defendant BJC Enterprises, LLC, Americana, Inc. and Wendy J. Bellamy for a jury trial in the above matter. This matter involves the foreclosure of real property mortgages, which is particularly appropriate for a non-jury trial. This Motion is based on the following specific grounds:

- A. In its Amended Complaint, Hotel & Motel Holdings, LLC asserts the following three causes of action: (1) Foreclosure of Real Property Mortgages; (2) Claim and Delivery; and (3) Appointment of Receiver and Assignment of Leases and Rents.
- B. The causes of action for Claim and Delivery and Appointment of Receiver have been previously disposed of or rendered moot by Order of this Court dated April 20, 2010, and filed on the same date. A true and accurate copy of the Order for Appointment of Receiver is attached hereto and incorporated herein by reference as **Exhibit A**.
- C. In the Order, the Honorable Steven H. John appointed Kenan S. Walker of Waccamaw Land & Timber Management Co., LLC as Receiver and ordered that he take immediate possession of the properties which are the subject of this action.
- D. Since his appointment, the Receiver has maintained possession and control of the properties, including the personal property which is the subject of the Claim and Delivery cause of action. The defendants are no longer in possession of the personal property, and therefore, the Claim and Delivery cause of action is moot.
- E. Based on the foregoing, Plaintiff's only remaining claims in this action are for the foreclosure of real property mortgages. Foreclosures are equitable actions, and in equitable actions, there is no right to a jury trial. Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994); Lester v. Dawson, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997).

Based on the foregoing, Plaintiff Hotel & Motel Holdings, LLC respectfully requests an Order striking the requests of Defendants BJC Enterprises, LLC, Americana, Inc. and Wendy J. Bellamy for a jury trial in the above matter and granting Plaintiff a bench trial on its foreclosure claims and the defenses of Defendants.

In accordance with Rule 11(a), SCRPC, Plaintiff's counsel hereby certifies that prior to filing this Motion, counsel has communicated with opposing counsel and has attempted in good faith to resolve the matter contained in the Motion.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By: *Audra M. Byrd*
R. Wayne Byrd (S.C. Bar #1068)
Audra M. Byrd (S.C. Bar #76719)
2411 North Oak Street, Suite 301
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JUNE 3, 2011

ATTORNEYS FOR HOTEL & MOTEL
HOLDINGS, LLC

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS NONJURY
2 COUNTY OF HORRY) (2009-CP-26-05743)
3)

4 Hotel and Motel Holdings,
5 LLC,

Plaintiffs

v.

TRANSCRIPT OF RECORD

6 BJC Enterprises, LLC, Wendy
7 J. Bellamy, Americana Motel
8 of Myrtle Beach, Inc., Mozingo
9 and Wallace Architects, LLC,
10 Kersi S. Shroff, and Shroff
11 Management, Inc.,

September 23, 2010
Conway, S. C.

Defendants

12 BJC Enterprises, LLC, Wendy J.
13 Bellamy, and Americana, Inc.
14 a/k/a Americana Motel of
15 Myrtle Beach, Inc.,

Third-Party Plaintiffs

v.

16 First Palmetto Savings Bank,
17 F.S.B., Jack Jones, Donald D.
18 Godwin, and Bhupendra Patel,

Third-Party Defendants

B E F O R E:

HONORABLE STEVEN H. JOHN, Judge.

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

R. WAYNE BYRD, ESQ.

AUDRA M. BYRD, ESQ.

ATTORNEYS FOR PLAINTIFF and

ATTORNEYS FOR THIRD-PARTY DEFENDANTS: (Godwin and Jones)

COPY

1
2 KATHRYN M. COOK, ESQ.
3 ATTORNEY FOR DEFENDANTS and
4 ATTORNEY FOR THIRD-PARTY PLAINTIFFS: (BJC Enterprises, LLC,
Wendy J. Bellamy, Americana, Inc. d/b/a Americana Motel of
Myrtle Beach, Inc.)

5 SCOTT B. UMSTEAD, ESQ.
6 ATTORNEY FOR DEFENDANT: (Mozingo & Wallace Architects, LLC)

7 SUSAN P. MacDONALD, ESQ.
8 ATTORNEY FOR DEFENDANTS: (Kersi S. Shroff and Shroff
Management, Inc.)

9 WILLIAM H. SHORT, ESQ.
10 ATTORNEY FOR THIRD-PARTY DEFENDANT: (First Palmetto Savings
Bank, F.S.B.)

11 WILLIAM W. DesCHAMPS, Jr., Esq.
12 WILLIAM W. DesCHAMPS, III, Esq.
13 ATTORNEY FOR DEFENDANT: (Bhupendra Patel)

14 DIXIE COX EUBANK
15 CIRCUIT COURT REPORTER
16 FIFTEENTH JUDICIAL CIRCUIT
17
18
19
20
21
22
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24
25

1 Equity, so Ms. Cook, let me hear your arguments about why this
2 Court should reconsider that and not have the matter referred
3 to the Master-in-Equity.

4 MR. BYRD: If Your Honor please ---

5 THE COURT: Yes sir, Mr. Byrd.

6 MR. BYRD: ---This may shorten the matter some.

7 THE COURT: All right.

8 MR. BYRD: ---But it's clear that in the Complaint for
9 foreclosure and the Amended Complaint of foreclosure, that a
10 Claim and Delivery Cause of Action was pled. Our Supreme
11 Court has held that Claim and Delivery is a legal claim ---

12 THE COURT: Right.

13 MR. BYRD: ---Therefore Ms. Cook's client is entitled
14 to a jury trial on that issue, and we really cannot oppose the
15 recision of the Order under 59, Your Honor.

16 THE COURT: All right. And let me -- let me go a
17 little bit further than that. Under North Carolina Federal
18 Savings and Loan versus DAV and it's progenies since the early
19 eighties, has not also the Supreme Court stated that the jury
20 trial has to be held first, before the reference; is that --
21 is that not correct?

22 MR. BYRD: Yes, Your Honor.

23 THE COURT: All right. All right. So, in what other
24 respects, Ms. Cook, would you want the Order reconsidered?

25 MS. COOK: With that concession, Your Honor, the only

1 other respect would be to the effect that the legal
2 Counterclaims that were previously, and even more now,
3 included in the Answer and Counterclaims, are compulsory
4 counterclaims, they are legal counterclaims, and that would be
5 part of the jury trial that would go forward in addition to
6 the claim and a delivery Plaintiff's claim. Those
7 counterclaims being, Your Honor, in the Amended Answer as
8 follows: A counterclaim for breach of contract ---

9 **THE COURT:** Let's be specific. You are talking about
10 where you pled for a Twelfth Defense, First Counterclaim and
11 Third-Party Complaint.

12 **MS. COOK:** Yes sir.

13 **THE COURT:** All right. All right. Starting with
14 paragraph Seventy-Nine?

15 **MS. COOK:** Yes sir.

16 **THE COURT:** All right. Very good. All right.

17 **MS. COOK:** The Thirteenth Defense Counterclaim and
18 Third-Party Complaint is for Fraud.

19 **THE COURT:** All right. Let me get to that. Hold on a
20 second.

21 **MS. COOK:** Yes sir.

22 **THE COURT:** What paragraph does that start with? One
23 Hundred. I'm sorry, One Hundred. Okay. All right, go ahead.

24 **MS. COOK:** The Fourteenth Counterclaim, Third-Party ---

25 **THE COURT:** The Fourteenth Defense and Third-Party?

1 **THE COURT:** All right. So, Mr. DesChamps, you
2 understand which ones that are now against your client?

3 **MR. DesCHAMPS, III:** Yes sir, Your Honor.

4 **THE COURT:** All right. Very good.

5 All right. Ms. Byrd, apparently you have a Motion to
6 Compel; is that correct?

7 **MS. BYRD:** Yes sir, Your Honor.

8 **THE COURT:** All right. And what is that about?

9 **MS. BYRD:** We submitted Interrogatories and Requests
10 for Production to Defendants, Bellamy, BJC and Americana in
11 December the 14th of last year. We have received no response
12 whatsoever.

13 **THE COURT:** All right. Ms. Cook.

14 **MS. COOK:** Your Honor, I concede, and I do apologize to
15 the Court. I am fighting four lawsuits against Womble,
16 Carlisle. I've not taken a new case in four months. I will
17 have her those answers. I'm just inundated, and I will have
18 her those answers and the documents by Thursday.

19 **THE COURT:** All right. Very good. All right, so by
20 the end of the week, Ms. Byrd, you will get your responses to
21 the Motion to Compel.

22 **MS. BYRD:** Yes sir, Your Honor.

23 **THE COURT:** All right. Very good.

24 **MS. COOK:** Yes sir, Your Honor.

25 **THE COURT:** All right. Very good. Okay. Now, there

1 is a Motion to Dismiss, Ms. Byrd, that you have.

2 MS. BYRD: Yes sir, Your Honor.

3 THE COURT: All right. And tell me when you filed that
4 one.

5 MS. BYRD: Our Motion to Dismiss was filed on July the
6 10th.

7 THE COURT: All right. Hold on a second.

8 MS. BYRD: I'm sorry. July the 19th, Your Honor.

9 THE COURT: July 19th. Okay. And this is Notice of
10 Motion and Motion to Strike, and to Dismiss on behalf of
11 Third-Party Defendants, Jack Jones and Donald Godwin; is that
12 correct?

13 MS. BYRD: Yes sir, Your Honor.

14 THE COURT: All right. So -- and it's under Rule -- it
15 would be under Rule 12(B)(6), 12(F) and 14(A), correct?

16 MS. BYRD: Yes sir, Your Honor.

17 THE COURT: Because 12(B)(8), we have disposed of that
18 in the other one, so it can't be a ---

19 MS. BYRD: Yes sir, Your Honor.

20 THE COURT: ---A claim in this motion, so we've got
21 12(B)(6), 12(F), and 14(A); is that right?

22 MS. BYRD: Yes sir, Your Honor.

23 THE COURT: All right. Let me hear your arguments,
24 please.

25 MS. BYRD: Your Honor, the primary basis for this

1 motion is Rule 14(A). This Third-Party Complaint was
2 obviously brought under Rule 14, which allows defendants to
3 bring in third parties, or include third parties that are, or
4 may be liable for all or part of a judgment that they may get
5 against them. A third party complaint must be based on
6 derivative liability so that the outcome of the main claim is
7 determinative of the third-party complaint, and that's not the
8 case here. Our client, Hotel and Motel Holdings has sought to
9 foreclosure on it's note and mortgage. The Third-Party
10 Complaint alleges Conspiracy, Conversion, and it does not
11 depend the outcome of foreclosure matter. The Court may
12 determine that Ms. Bellamy and BJC and Americana are right,
13 and that they are not liable under the note and mortgage
14 because of all the bad acts, and the Court may make that
15 finding that she's not responsible to pay this, and invalidate
16 the note and mortgage, but that does not negate the claims
17 that she has for Breach of Fiduciary Duty, Conversion,
18 Conspiracy. In other words, Your Honor, those claims are
19 independent and separate than the foreclosure matter. The
20 outcome of the foreclosure does not dictate the outcome of the
21 claims that Ms. Bellamy, BJC and Americana have brought, and
22 so therefore they are obviously not based on derivative
23 liability. It's an improper grounds to bring a third-party
24 complaint. And one of the factors the Court is to consider in
25 examining whether this is a proper claim is whether the

1 joinder of those claims would unduly complicate the
2 litigation, and I think Your Honor is clear today that joinder
3 of those claims will obviously complicate the litigation. At
4 it's court this is a foreclosure matter, and there are -- and
5 Ms. Bellamy, BJC, Americana may have claims against these
6 third parties, Jack Jones, Donald Godwin, Bhupendra Patel, and
7 First Palmetto, but it is not a proper Third-Party Complaint
8 for purposes of Rule 14 because it's not based on derivative
9 liability. There is a great case from the District Court,
10 which is Laughlin versus Dell, and I think that Mr. DesChamps
11 talked about that earlier.

12 I have a copy of that case if the Court would like to
13 see it.

14 **THE COURT:** Yes Ma'am. All right.

15 **MS. BYRD:** Your Honor, I think in that case -- analysis
16 of what is and what is not a proper third-party complaint.
17 And if you go to page four it says that, "Only if a third ..."
18 -- in the second column -- "Only if a third person's liability
19 on that claim is, in some way, dependant upon the outcome of
20 the main claim is a Rule 14 complaint proper", and it goes on
21 to say that, in this case the Third-Party Plaintiff's claim
22 that relief was available regardless of the outcome of the
23 claims asserted by the Plaintiff against the Defendant, and
24 that's exactly what is presented here, Your Honor. The claims
25 and the relief that BJC, Americana and Wendy Bellamy seek are

1 available to them without regard to what the Court ultimately
2 determines in the foreclosure matter, and on that basis we
3 believe that this is a improper Third-Party Complaint, it will
4 unduly complicate this litigation, and we ask that the Third-
5 Party Complaint be stricken.

6 **THE COURT:** All right. Thank you.

7 Mr. DesChamps, you have that ---

8 And I'm sorry. Ms. Byrd, you are making that motion on
9 behalf of the Defendants, Jack Jones and Donald Godwin,
10 correct?

11 **MS. BYRD:** Yes sir, Your Honor.

12 **THE COURT:** All right. And Mr. DesChamps, you have
13 that same argument for the Defendant, Bhupendra Patel?

14 **MR. DesCHAMPS, III:** Yes, Your Honor. And I would just
15 like to add that, in that -- the **Laflin** case the Court noted
16 that Rule 14(A) does not allow the defendant to assert a
17 separate and independent claim, even though the claim arises
18 out of the same general set of facts as the main claim between
19 the plaintiff and the defendant, and I think that's pretty
20 much the case, what we have here, and we would like to move to
21 strike the Third-Party Complaint based on those grounds.

22 **THE COURT:** All right. Thank you.

23 All right, Ms. Cook, let me hear you, please Ma'am.

24 **MS. COOK:** Yes sir, Your Honor. I am one hundred and
25 eighty degrees opposite. These third party claims are

1 derivative claims, derivative liability that are dependant on
2 the Plaintiff's action, and my clients' Counterclaims against
3 H & M.

4 Your Honor, Rule 14(A) allows the third-party plaintiff
5 to bring any claims it has against another party who is, or
6 may be liable to him for all or part of the plaintiff's claim
7 against me, and that's exactly what I've done.

8 I want to hand up to Your Honor the case of Burgess
9 versus Sea Pines. It is a Supreme Court 1993 case that talks
10 about Rule 13(A) joinder and liability, and what that case
11 would state -- as well as, I would like to hand up, Your
12 Honor, the Beach case that -- I'm sorry, I believe I handed
13 the wrong case up.

14 THE COURT: I've got Burgess versus Stern.

15 MS. COOK: Yes, Your Honor, if I could hand up -- and
16 I'm going to give these all to counsel.

17 THE COURT: Okay.

18 MS. COOK: I've handed up, Your Honor, a number of
19 cases.

20 THE COURT: Did you want me to have this one too?

21 All right. Thank you.

22 MS. COOK: If we could look at, within that stack that
23 I have handed up -- let me find my stack -- and I may
24 pronounce this wrong, but the Burnsed versus Greene case.
25 That's Court of Appeals 1986. That is, and can be

1 distinguished from this case, and the distinguishing factors
2 are what makes this case deri -- shows, Your Honor, that this
3 case is based on derivative liability. In that case the
4 Plaintiff brought collection actions on promissory notes
5 against two Defendants. It arose out of the three parties,
6 the Plaintiff and the two Defendants, going into a business
7 together, and the two Defendants signing promissory notes to
8 finance the business. The Plaintiff brought collection
9 actions on the promissory note, similar in this case to the
10 foreclosure action brought. And in that case the Defendants
11 pled, and brought -- sought to bring in, pursuant to Rule
12 13(H), and Rule 14(A), a third-party memorial that was the
13 company that was formed by the three gentlemen, and the Court
14 in that case said that 13(H) and 14 allow litigation of all
15 claims and defenses arising from the promotion of that
16 corporation to occur in one case. That's what we've got here,
17 Your Honor. In this case, just as in the **Brunsid** case, the
18 Defendants brought Counterclaims of Fraud and Breach of
19 Fiduciary Duty, and then sought to bring a third-party claim
20 against Memorial Products based on the same facts, Fraud, and
21 what the Court said was that Memorial Products should have
22 been allowed and permitted to come in so that all the matters
23 could be considered by the Court in one case. That's what
24 we've got here. It is derivative liability.

25 Your Honor, further -- and I believe if Your Honor

1 looked -- I think it's at the top of page 912, it says, had
2 the Circuit Court applied the new rules -- this in '86, and
3 the new rules had just come in in '85 -- he would have allowed
4 the pleadings of all these matters, and would have added
5 Memorial Products as a party in accordance with 13(H) that
6 would have permitted the litigation of all claims and defenses
7 arising from the promotion of the corporation in one lawsuit.

8 I'm asking that all claims and defendants -- all claims
9 and defenses be allowed in the transaction dealing with the
10 validity of the assignment to the Plaintiff. If, Your Honor,
11 the only way my clients can prevail in the Third-Party claims
12 is if they prevail on their defenses and Counterclaims against
13 the Plaintiff. If the Plaintiff prevails, and is granted
14 foreclosure because we've breached the contract and not made
15 payment, not the other way around, then I've got no liability
16 on my claims for Conspiracy, Conversion, Breach of Contract,
17 Breach of Contract accompanied by Fraud.

18 And another important distinction in this case that Ms.
19 Byrd has gone to is, will the addition of the third-party
20 claims unduly complicate the main case. Well, they won't,
21 because and every Third-Party claim that I've asserted against
22 a Third-Party Defendant is asserted as a Counterclaim against
23 the Plaintiff, so all of those claims have to be tried before
24 a jury and a judge as counterclaims. So to require us to try
25 all the Counterclaims in one case, and not allow the Third-

1 Party claims that are exactly the same, if Ms. Byrd were
2 correct, is what might allow for inconsistent verdicts. Every
3 factual issue, every legal issue that is involved in the
4 Third-Party claims are asserted as Counterclaims against the
5 Plaintiff and have to be tried.

6 Your Honor, one of the -- one very good case that's
7 analogous to this case is the Beach versus Hudson versus Smith
8 case. That's a 1989 case out of the Court of Appeals. The
9 Plaintiff was the buyer -- it's a real estate deal -- and the
10 Plaintiff, Mr. Beach, sought to buy property from the
11 Defendant, Ms. Hudson. Ms. Hudson had signed an Exclusive
12 Listing Agreement with the Third-Party Defendants, Smith. The
13 buyers brought an action for Breach of Contract and Specific
14 Performance seeking damages and specific performance on the
15 Breach of Contract because Ms. Hudson wouldn't close with
16 them. Ms. Hudson did not allege any counterclaims back
17 against Beach, but did bring a Third-Party claim against the
18 listing agent, and in that Third-Party claim against the
19 listing agent she alleged seven causes of action, a lot of
20 which are alleged here, Fraud, Outrage, Breach of Standard of
21 Care, Negligence, Breach of a Listing Agreement, Unfair Trade
22 Practices. In this case the Court granted the Third-Party
23 Defendant's Motion to Dismiss, saying that those claims were
24 independent, and those claims did not rely on the -- on the
25 outcome of the Beach claim against Ms. Hudson. That's

1 completely different from this case because every counterclaim
2 -- every Third-Party claim we've alleged arising out of the
3 same facts and transaction as the Plaintiff, H & M's claim
4 against my client, and they are all the same claims asserted
5 as Counterclaims.

6 Your Honor, in this case it is derivative liability
7 because if the Plaintiffs prevail, in that they are properly -
8 - they were properly assigned this note, that we breached the
9 note, and that they are entitled to foreclosure, that
10 determines the outcome of my claims against H & M, Donald
11 Godwin, Jack Jones and Mr. Patel. The exact same claims are
12 asserted as defenses and Counterclaims against H & M as are
13 contained in the Third-Party claims. It's just that there are
14 more parties involved in those claims.

15 **THE COURT:** All right, Ms. Byrd, let me hear any reply
16 arguments that you might have.

17 **MS. BYRD:** Yes sir, Your Honor. Thank you.

18 Your Honor, Ms. Cook has represented that if H & M
19 prevails on it's claim then that is determinative of the
20 Third-Party Complaint, and we wish that were accurate, but
21 unfortunately it's not. The claims for Conversion -- that
22 claim is that Donald Godwin, Jack Jones, Bhupendra Patel stole
23 money from BJC, Americana and Ms. Bellamy. That claim itself
24 is not going to be determined in a foreclosure matter. The
25 claim is that they stole the money and prevented her from

1 being able to pay the note and mortgage. Her ability to pay
2 the note and mortgage does not invalidate the note and
3 mortgage. It may give rise to a Third-Party claim against
4 third parties, which it may, but it doesn't go to the validity
5 of the note and mortgage, so there's a very good probability
6 that the mortgage could be upheld, but she would still have
7 these independent claims. I mean, for example, she says that
8 all of the Third-Party claims are also Counterclaims. Well,
9 there's a Breach of Fiduciary Duty claim. That cannot be
10 against H & M, Hotel and Motel. In addition, Hotel and Motel
11 was not formed until June of 2009, so the conspiracy
12 allegations, while we will concede that there are
13 Counterclaims asserted against Hotel and Motel Holdings that
14 are the same as some of the Third-party claims, the viability
15 of those claims is different, and we think that as this case
16 progresses this will be narrowed down. If the Third-Party
17 Complaint were stricken, and it was brought in a separate
18 suit, the foreclosure matter could be paired down, and that's
19 what this is about, I think, that it's complicating the
20 litigation, and that while she may allege as a defense that
21 the assignment was not valid, that's something that Hotel and
22 Motel will have to prove, affirmatively prove to go through
23 with the foreclosure, so our foreclosure matter does not
24 determine any of the issues raised in her Third-Party
25 Complaint. And ---

1 **THE COURT:** So you are talking about every single cause
2 of action that she's brought, not differentiating among any of
3 them?

4 **MS. BYRD:** No sir, Your Honor. None of the Third-Party
5 claims are going to be determined based on the outcome ---

6 **THE COURT:** I'm sorry. Go ahead.

7 **MS. BYRD:** ---I'm sorry, Your Honor -- based on the
8 outcome of the foreclosure matter, because as -- as we have
9 tri -- I think it goes to the argument previously. Those may
10 go to a defense to the foreclosure, but they do not attack the
11 validity which -- I mean, we have been focusing on her
12 Counterclaim, and her Third-Party Complaint, but the focus
13 really should be the initial pleading, which is a foreclosure,
14 and the defense to that would be that the note and mortgage
15 were invalid, so you can affirmatively claim that there was
16 some kind of conspiracy or fraud, or unfair trade practices
17 claim, and that may be a separate lawsuit, but it's not -- it
18 has no place in a foreclosure action.

19 **THE COURT:** All right. Mr. Deschamps.

20 **MR. DesCHAMPS, III:** Yes, Your Honor. I would that --
21 in response to Ms. Cook's arguments distinguishing the
22 Laughlin versus Dell Financial Services case, the **Laflin** case
23 is very similar to our case, more so than the **Burnsed** case and
24 the other authority cited by Ms. Cook, in that in the **Laflin**
25 case the Third-Party Defendant was the Plaintiff's son, who

1 the Defendant alleged gave them a fake -- or gave them the
2 Plaintiff's Social Security number, and that induced them to
3 give credit to the Plaintiff, and thereafter the Plaintiff
4 told the Defendant to stop reporting inaccurate credit reports
5 to the credit agency, but they continued to do it. The
6 Plaintiff brought an action against the Defendant for
7 Defamation, Negligence and Unfair Trade Practices, and the
8 Defendant moved to mend their Answer to add the Plaintiff's
9 son as a Third-Party Defendant for Breach of Contract,
10 Fraudulent Inducement, Fraudulent Misrepresentation and
11 Negligent Misrepresentation. The Court specifically said that
12 the actions of the Third-Party Defendant, or the Plaintiff's
13 son, could -- could be used as a defense to Plaintiff's claim,
14 however, the Defendant's causes of action against that Third-
15 Party Defendant were separate and apart, so essentially the --
16 in that case the Third-Party Defendant's alleged actions could
17 have prevented the Plaintiff from recovering under a
18 negligence theory as an intervening cause, but that could be a
19 defense, not for -- but it wasn't enough to give rise to a
20 Third-Party complainant. They held it was -- that it was
21 still improper, and they also noted, as I stated previously,
22 that even though it comes out of the same set of facts it's a
23 separate and independent claim; it cannot give rise to a
24 third-party action. Moreover, the Third-Party Complaint in
25 our case, it doesn't even allege derivative liability. It

1 doesn't even allege any factual allegations giving rise to
2 that. There's no legal theory alleged in that Complaint. It
3 just states causes of action.

4 I think it's also important to note in the -- the --
5 forgive me if I mispronounce it -- the Burnsed vs. Greene case
6 cited by Ms. Cook. The Third-Party Defendant that they added
7 in that action was the corporation of the Plaintiff -- excuse
8 me -- the Plaintiff was a sole stockholder in the corporation
9 that was added as a Third-Party Defendant. The Court noted
10 that the -- all the claims arose out of the business
11 arrangement which gave rise to the execution of the notes by
12 Defendants. That business arrangement was that the Defendants
13 would get a -- an interest in that Third-Party Defendant
14 company, I believe when they were executing the notes in
15 issue, so I think it's completely different than our case
16 here.

17 And also, I don't see where Intentional Infliction of
18 Emotional Distress or Interference with a Contract that was, I
19 believe claimed against Patel, was that he advised renters not
20 to pay rent and so that he procured a breach of that contract
21 between the renters and the Third-Party Defendants. I don't
22 see where that has anything to do with the note.

23 Part of the conversion action it -- it alleges that
24 Patel converted real estate. Well, you can't do that. I
25 mean, you can't have conversion for real estate.

1 As far as the income-producing assets, we don't
2 specifically know what they are from the pleadings. They
3 are -- what they -- I mean, where they come from, the -- if
4 it's sums of money. The Complaint does not allege that those
5 funds have been -- have not been co-mingled with other funds,
6 and where they are, and who even has possession of them. I
7 believe you might have to allege -- for a conversion of money
8 you might have to allege that, you know, those funds have not
9 been co-mingled with other funds, or they are readily
10 identifiable.

11 As a Civil Conspiracy Cause of Action, I don't think
12 that could be held to void our motion as -- here I'm kind of
13 getting into my 12(B)(6) Motion as a Civil Conspiracy, but I
14 just want to point out that the allegations of the Civil
15 Conspiracy claims against the Third-Party Defendants
16 essentially alleges that the Third-Party Defendants conspired
17 to do the other acts that they are being sued for, and seeks
18 to recover on that, so ---

19 **THE COURT:** Thank you, sir.

20 All right, counsel, if y'all will give me a few moments,
21 let me look at a couple of things and I'll come back and give
22 you a ruling on both these Motion to Dismiss. All right.

23 **MS. BYRD:** Thank you, Your Honor.

24 **MS. COOK:** Thank you, Your Honor.

25 **MR. DesCHAMPS, III:** Thank you, Your Honor.

1 **MS. MacDONALD:** Thank you, Your Honor.

2 **(THE FOLLOWING TAKES PLACE AFTER A BREAK.)**

3 **THE COURT:** All right. In ruling on the Motions to
4 Dismiss under -- as made by the Defendant, Jack Jones and
5 Donald Godwin, and by the Defendant, Bhupendra Patel, I would
6 first state, obviously I used as guidance Rule 14, and then I
7 also used the cases that were supplied by counsel in arriving
8 at the decision. That was the Burnsed versus Greene, the 1986
9 South Carolina Appellate Court Decision, Robbins versus First
10 Federal Savings Bank, 1987 Decision, South Carolina Court of
11 Appeals, Beach versus Hudson, 1989 Court of Appeals Decision,
12 First General Services of Charleston versus Miller, a 1994
13 Decision of the South Carolina Supreme Court, and the --
14 couple of Federal Decisions, Brown versus Shred-Ex, Inc., 69
15 Fed Supp, 764, a 1999 Decision of the District Court, and also
16 Laughlin versus Dell Financial Services found at 465 Fed Supp
17 2d 563, 2006 Decision of the District Court, and also it was -
18 - let's see -- First General Services of Charleston, Inc.
19 versus Service Master, Inc., and others, a 1994 Decision of
20 the South Carolina Supreme Court, found at 445 S.E. 2d 446.

21 Rule 14, I think, sets forth that the third-party
22 Plaintiff must have a substantive claim against the third-
23 party defendant founded upon derivative liability. The
24 outcome of the principal claim must impact the third-party
25 defendant's liability. No right exists to include a third-

1 party defendant who is directly liable to the plaintiff. I
2 don't know that's the -- not an issue here. The third-party
3 statute does not contemplate an institution of a new cause of
4 action against a third-party defendant in which the third-
5 party defendant is liable to the defendant on a cause of
6 action independent of the original cause of action. Rather,
7 the statute intends that the third-party defendant be liable
8 to the defendant for such damages for which the defendant may
9 be liable to the plaintiff.

10 All right. In doing that, and then looking at the
11 pleading -- the Amended Answer, Counterclaims and the Third-
12 Party Complaint of the Defendant, BJC Enterprises, LLC, Wendy
13 J. Bellamy and Americana, Inc., looking at the claims against
14 the Third-Party Defendants, looking at the first one is for a
15 Twelfth Defense, First Counterclaim and Third-Party Complaint,
16 Breach of Contract, I find that the particular Cause of Action
17 is proper under Rule 14.

18 As to the next matter, the Thirteenth Defense, Second
19 Counterclaim and Third-Party Complaint for Fraud, I find that
20 that is not proper under Rule 14.

21 The next one, for Fourteenth Defense, Third Counterclaim
22 and Third-Party Complaint, Breach of Contract Accompanied by
23 Fraud, I find that that is proper under Rule 14.

24 For Fifteenth Defense, Fourth Counterclaim, Third-Party
25 Complaint for Civil Conspiracy, based on the matters set forth

1 in the pleadings at this stage of the proceedings -- there may
2 be some other motions that might be filed, but as to Civil
3 Conspiracy, I find that it is proper under Rule 14.

4 Conversion, that is for Sixteenth Defense, Fifth
5 Counterclaim and Third-Party Complaint for Conversion, that is
6 not proper under Rule 14.

7 For Seventeenth Defense, Sixth Counterclaim and Third-
8 Party Complaint, South Carolina Unfair Trade Practices Act
9 Claim, that is not proper under Rule 14.

10 For an Eighteenth Defense, Seventh Counterclaim and
11 Third-Party Complaint, Interference with a Contractual
12 Relationship, that is not proper under rule 14.

13 For a Nineteenth Defense, Eighth Counterclaim and Third-
14 Party Complaint for Intentional Infliction of Emotional
15 Distress or Outrage, that is not a proper cause of action
16 under Rule 14.

17 And then for the Twentieth Defense, Ninth Counterclaim
18 and Third-Party Complaint, Breach of Fiduciary Duty, that is
19 not a proper claim under Rule 14.

20 All right, Ms. Byrd, Mr. DesChamps, what I'm going to
21 ask that you do on behalf of your respective clients, I'm
22 going to ask that you draw an order to that effect, setting
23 forth the Court's ruling. I know that the Court ruled with
24 you and against you in part of the motion, but I'm asking the
25 two of you, on behalf of your particular clients, to do an

1 order.

2 Obviously if y'all want to communicate about that -- I
3 don't know that there needs to be significant differences in
4 them, but obviously y'all can communicate about that. I would
5 ask, if you can, to forward that proposed order to me within
6 seven days of today's date, and obviously on all the motions,
7 or all the orders that I ask that y'all prepare, you are going
8 to be forward those -- forwarding on those to opposing
9 counsel, all the counsel that are involved in this case, at
10 the time you send it to me, for their review on all sides, so
11 that everybody can look at them and have any comments to the
12 Court if necessary.

13 All right. You've basically been sitting there the
14 whole time. Is there anything you want to say to the Court,
15 Ma'am?

16 **MS. MacDONALD:** No, thank you. I like it when I get to
17 sit here, Your Honor.

18 **THE COURT:** All right. All right.

19 Anything further, Ms. Cook?

20 **MS. COOK:** No sir. Thank you.

21 **THE COURT:** All right. Ms. Byrd?

22 **MS. BYRD:** No sir, Your Honor. Thank you.

23 **THE COURT:** Mr. DesChamps.

24 **MR. DesCHAMPS, III:** One question, Your Honor, if you
25 don't mind.

1 **THE COURT:** Yes sir.

2 **MR. DesCHAMPS, III:** We filed a -- also a Rule 12(B)(6)
3 Motion as to the Civil Conspiracy claim ---

4 **THE COURT:** At this point in time that is denied. As I
5 indicated as to Civil Conspiracy, there may be -- well, I'm
6 not going to address it as a 12(B)(6). Just put it that I
7 have not addressed the 12(B)(6) motion at this point in time,
8 as it is formulated. It might need to be reformulated in some
9 fashion.

10 All right. Thank you.

11 **MR. DesCHAMPS, III:** Thank you, Your Honor.

12 **THE COURT:** And Mr. Short.

13 **MR. SHORT:** Nothing, Your Honor.

14 **THE COURT:** All right. Very good.

15 All right. Thank y'all very much. Oh, as to the
16 appearance on the docket of the case, as you know, the (01550)
17 (s.i.c.) came on the docket this particular week. It seems to
18 me, looking at this, that -- despite how they were filed, that
19 this action, (2009-05743) should be tried and disposed of
20 first, as opposed to (2009-05550), and I'm going to so
21 instruct the Clerk of Court to have (5743) placed on the
22 docket ahead of (05550).

23 Looking at the terms of Court, there is a -- and they
24 are going to start appearing on the terms of Court very
25 shortly, so I will tell you that, if you do not believe those

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) 2009-CP-26-5743

Hotel & Motel Holdings, LLC,)

Plaintiff,)

vs.)

Transcript of Record

Hearing

BJC Enterprises, LLC, Wendy J.)
Bellamy, Americana, Inc.,)
a/k/a American Motel of Myrtle)
Beach, Inc., et al.)

April 11 & 14, 2011

Defendants.

COPY

B E F O R E :

Honorable William H. Seals, Jr.
Horry County Courthouse
Conway, South Carolina

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

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Grace L. Hurley, CVR-CM
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)

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1 THE COURT: That'd be good. All of you can do
2 that if you'd like. Is that okay with you, Mr. DesChamps?

3 MR. DESCHAMPS, JR.: Yes.

4 MR. SHORT: Your Honor, I don't know how it's
5 going to end up being my job to ask you to potentially set
6 this case for a day certain trial for the term of court that
7 is - begins June the 6th. Your Honor is, I think, scheduled to
8 be in General Sessions and Judge Hyman who has been recused
9 from this case indicated that he would take the General
10 Sessions duty if you would be willing to take on this case.

11 THE COURT: Sure. I hate to say that.

12 MS. COOK: Thank you, sir.

13 THE COURT: I feel like I'm in the Marine Corps
14 and you never volunteer for anything, but why not. All right,
15 that sounds good. We'll do it.

16 MS. COOK: Thank you, Judge.

17 MR. SHORT: Thank you very much.

18 MS. BYRD: Thank you, Judge.

19 THE COURT: Thank you.

20 MR. DESCHAMPS: Thank you, Your Honor.

21 MS. COOK: Thank you, Your Honor.

22 OFF THE RECORD

23 (On the record, April 14, 2011.)

24 THE COURT: All right, who wants to go first?

25 MS. BYRD: I'll be glad to, Your Honor.

1 THE COURT: Sure.

2 MS. BYRD: I'm Audra Byrd and I am here on
3 behalf of Hotel & Motel Holdings, LLC, as well as the Third-
4 Party Defendants, Jack Jones and Donald Godwin.

5 Your Honor, just briefly by background, this is a
6 commercial foreclosure matter. It was filed in June, June the
7 11th of 2009 by First Palmetto Savings Bank. Thereafter, the
8 loan documents that make up the suit were purchased by Hotel &
9 Motel Holdings at the end of June and Hotel & Motel Holdings
10 was substituted as the Plaintiff in this matter. The
11 underlying action is based on in 2005 a company called BJC
12 Enterprises, LLC, took a \$5.58 million loan from First
13 Palmetto savings bank. BJC Enterprises is initially made up
14 of three members, Wendy Bellamy, Harvey Jones and Trip Cohen.
15 They formed BJC in order to purchase an oceanfront motel
16 between Fourth and Fifth Avenues down on the Boulevard. Ms.
17 Bellamy and Mr. Jones' family had operated another hotel
18 property called the Rainbow Court, which is directly behind
19 the Emerald Shores or in front of depending on which way
20 you're looking at it. The plan was to purchase the Emerald
21 Shores and to develop all of the property and sell it as high-
22 rise condominiums. Of course, this was in 2005. The real
23 estate market was great. The original note from First
24 Palmetto was for the principal amount of 5.58 million. It was
25 for 24 months, with the interest only, with a balloon payment

1 due in January of 2007. Of course, the real estate market
2 crashed during that time. When the note came due in January
3 of 2007 BJC had not sold or developed the property and the
4 note was renewed for another year. Again, during 2007 the
5 property wasn't sold or developed. The loan was renewed for a
6 second time in January of 2008. The new maturity date was
7 January of 2009. During the calendar year of 2008 BJC got
8 more and more delinquent on its payments to First Palmetto.
9 By the end of the year the payments completely stopped. The
10 bank had a series of meetings with the debtor about a strategy
11 for moving forward to develop the properties or sell the
12 properties. In other words, the bank said, "We can't renew
13 this loan if we don't have some kind of strategy to move
14 forward." In January of 2009 when the balloon payment was to
15 be made it was not made. A foreclosure action was filed in
16 February of 2009. BJC was able to negotiate for some
17 additional time and bought themselves until May the 31st, 2009,
18 by paying a \$95,000 payment and the property taxes that were
19 due. The May 31st deadline passed. The payment wasn't made.
20 The current foreclosure action was filed on June the 11th.
21 Then the purchase of the loan documents was made by Hotel &
22 Motel Holdings and that's the posture that brings us here
23 today. The BJC, Americana and Wendy Bellamy have asserted
24 various third-party claims and counterclaims and the motions
25 that are before Your Honor today are dispositive of those

1 third-party claims and the counterclaims as well as we have
2 discovery motions outstanding.

3 THE COURT: All right.

4 MS. BYRD: And the basis, Your Honor ---

5 MS. COOK: Your Honor, before Ms. Byrd launches
6 into arguing motions I would say for the record, Your Honor,
7 according to my - and I represent BJC Enterprises, Wendy
8 Bellamy, Americana, Inc., also known as Americana Motel of
9 Myrtle Beach, and I'm going to try to refer to them as the
10 Defendant owners ---

11 THE COURT: Right.

12 MS. COOK: --- during this litigation. However,
13 Your Honor, to the extent that Ms. Byrd goes into any matters
14 that are not in the pleadings - I don't know exactly what Ms.
15 Byrd is fixing - which motions Ms. Byrd is fixing to argue at
16 this time, but according to my records the motions that are
17 before Your Honor today that have been filed for more than 10
18 days are, number one, a First Palmetto motion to compel
19 against my clients dated November 15th, 2010, that I think
20 might have been resolved some time ago.

21 MR. SHORT: Your Honor, Bill Short on behalf of
22 First Palmetto. That motion is moot because we subsequently
23 got the documents following the motion to compel.

24 THE COURT: Got it. All right.

25 MS. COOK: Second in time of filing, Your Honor,

1 well, not really in time of filing because we get a little
2 screwy but there is a motion pending by my client Wendy
3 Bellamy for a protective order pursuant to my instructions
4 during her deposition not to answer certain questions asked of
5 her where I instructed her not to answer questions due to
6 attorney-client privilege. I don't know if really anybody ---

7 THE COURT: I haven't even ---

8 MS. COOK: I had to do that to protect her from
9 my instruction not to answer but I don't know that anybody
10 really wants to pursue that, so.

11 THE COURT: I haven't even seen the motion, that
12 one.

13 MS. COOK: It's in the file but ---

14 THE COURT: All right.

15 MS. COOK: --- but I'm not sure anybody really
16 wants to pursue that.

17 THE COURT: I don't need it if it's not an issue.

18 MR. SHORT: Just so you have it, Your Honor.

19 THE COURT: All right, thank you.

20 MR. SHORT: It is, it is ---

21 MS. COOK: It was, it was them that were asking
22 the questions and I wouldn't let her ask - answer them. So,
23 if they don't intend to try to pursue to get answers to what I
24 asserted is attorney-client privilege then I think that's
25 probably moot.

1 THE COURT: All right.

2 MR. SHORT: I think it is, Your Honor, by a prior
3 order entered by the administrative judge discovery in this
4 case was to have concluded on April the 5th. We don't intend
5 to pursue any further discovery; and so, that issue I would
6 say is moot as well.

7 THE COURT: All right.

8 MS. COOK: All right, Your Honor, then next
9 according to my records there are two motions to strike
10 pursuant to Rule 12(B)(6) pending before Your Honor, one
11 having been filed by Mr. DesChamps' client, Mr. Patel, who is
12 seated here, on October 15th, 2010, and one filed by Ms. Byrd
13 on behalf of her two Third-Party Defendants, Mr. Godwin and
14 Mr. Jones seated here, that was filed on July 16th, 2010, but
15 was not heard by Judge John when he heard related motions.
16 Your Honor, so, those two 12(B)(6) motions are the only Third-
17 Party claim that still exists as to those three Third-Party
18 Defendants being Mr. Jack Jones, Mr. Godwin and Mr. Patel.
19 Your Honor, then in terms of timeliness I believe Ms. Byrd
20 has a motion against my client, Harvey Bellamy dealing with
21 income tax returns.

22 MR. SHORT: Harvey Jones.

23 MS. BYRD: Jones.

24 MS. COOK: Harvey Jones, what did I say? Harvey
25 Bellamy, and, Your Honor, those are the only motions that are

1 before you having been filed timely as far as I'm concerned.
2 That being said, if Ms. - if Ms. and I'm sorry I jumped up,
3 Audra, but if Ms. Byrd intends to go forward and argue the
4 12(B)(6) motion at this time I want to make sure that the
5 Court knows that I object to anything going outside the
6 pleadings and I believe Ms. Byrd in a letter to you that I saw
7 dealing with a motion for summary judgment that was filed on

8 ---

9 THE COURT: April.

10 MS. COOK: --- April the 8th as to Plaintiff H &
11 M and ---

12 THE COURT: I saw it. So, in other words, we're
13 dealing with a ---

14 MS. COOK: I, I don't believe that ---

15 THE COURT: --- 12(B)(6) from Mr. DesChamps
16 today, as well as a motion to compel from you, Ms. Byrd?

17 MS. BYRD: And a 12(B)(6) on behalf of the
18 third-party.

19 THE COURT: That was my understanding as well.
20 Got you.

21 MS. COOK: Thank you.

22 THE COURT: All right.

23 MS. BYRD: And Your Honor, so, with regard - I
24 guess we'll start with the - I don't - it doesn't make a
25 difference to me but maybe the motion to dismiss and to strike

1 the conspiracy claim.

2 Your Honor, as Ms. Cook indicated, Judge John heard a
3 motion to strike and struck certain third-party claims and has
4 left only the claim of conspiracy, and with regard to my
5 clients that would be Donald Godwin and Jack Jones.

6 THE COURT: Let me ask you, why did he do that?
7 Why didn't he go ahead and deal with all of them?

8 MS. BYRD: Well, the basis for his ruling was
9 Rule 14, Your Honor ---

10 THE COURT: Got you.

11 MS. BYRD: --- and in his opinion those - the
12 other claims were clearly not derivative claims and just were
13 not - they were improper under Rule 14 and I think we took a
14 little bit - a lot of his time and just said, you know ---

15 THE COURT: Okay.

16 MS. BYRD: --- we'll address that at a later
17 time, and frankly, I think it was to allow us a little bit
18 more discovery time.

19 THE COURT: Got you.

20 MS. BYRD: But I think Ms. Cook's right, that
21 this is a 12(B)(6) hearing. So, we'll stick with the
22 pleadings on that and I think that that actually is an easier
23 motion to make.

24 The - our main argument is that the allegations as
25 alleged in the complaint, Your Honor, there's no allegation of

1 separate or independent acts other than those that are alleged
2 in the other claims in this case. There is no special damages
3 alleged and I think that the case law is just, you know, very
4 clear that you have to allege those to give the Defendants an
5 opportunity to defend against, and we have no idea what the
6 special damages are that are being alleged, number one. So, I
7 just think procedurally and substantively the complaint is
8 lacking in that respect and there's no even allegation of an
9 agreement between anyone and what that agreement was, what the
10 damages were, and further, there's no allegation, especially
11 with regard to Donald Godwin. All of the allegations of the
12 complaint, the totality of the allegations of the complaint
13 with regard to Donald Godwin are that he incorporated Hotel
14 and Motel Holdings and that he's the registered agent, and
15 Your Honor, there's no other allegation with regard to Mr.
16 Godwin. So, with respect to him especially I think that as a
17 matter of law the complaint fails and in further substantively
18 there's just no allegation of any acts on behalf of Donald
19 Godwin.

20 THE COURT: All right.

21 MR. DESCHAMPS, III: Your Honor, Trey DesChamps on behalf
22 of Third-Party Defendant, Mr. Patel. We're somewhat in the
23 same position as Ms. Byrd's client. The prior causes of
24 action against Mr. Patel that were dismissed by Judge John
25 were conversion, interference with a contractual relationship

1 and intentional infliction of emotional distress. We have the
2 same position as Ms. Byrd and I would just like to add that
3 essentially that the pleadings as to Mr. Patel they merely
4 allege that Mr. Patel either converted or stole the property
5 belonging to the Third-Party Plaintiffs or he interfered with
6 rental contracts or interfered with renters' obligations to
7 pay the rent which allegedly inhibited the Defendants from
8 meeting their obligations under the loan and also that Mr.
9 Patel interfered with the lending relationship between First
10 Palmetto and the Defendant owners. There's no allegations of
11 any acts on the part of Mr. Patel in the pleadings that are
12 separate or independent from those. It's just merely that Mr.
13 Patel either converted and stole property or interfered with
14 these contractual relationships to prevent the Defendant
15 owners from making payments and it seeks and then it seeks
16 damages, they seek damages by alleging a conspiracy to do
17 those acts, and those allegations were pled simply in support
18 of their conversion causes of action and the interference with
19 a contractual relationship. So, potentially, they just
20 incorporate all their prior allegations into their sole
21 conspiracy and allege that Mr. Patel conspired to do the
22 allegations that support their other causes of action. So, we
23 believe also that support their Third-Party complaint for
24 civil conspiracy fails as a matter of law.

25 THE COURT: All right, thank you very much. Ms.

1 Cook.

2 MS. COOK: Judge Seals, I'm going to go back to
3 one thing that you said when Ms. Byrd, when you questioned Ms.
4 Byrd. If my recollection is correct of the hearing before
5 Judge John when they made their motions to dismiss on 12(B)(6)
6 grounds all of the third-party claims and on Rule 14 claims
7 the reason Judge John, as I recall his decision that day was
8 that he was striking the conversion, breach of fiduciary duty,
9 tortious interference with contract claims because he found
10 that they were not proper third party - those causes of action
11 against these three gentlemen were not proper third-party
12 claims and could stand alone in a separate lawsuit. However,
13 given the pleadings that were before him and the argument we
14 put before him he stated from the bench and while it may not
15 be as clearly iterated in his order as maybe I would now like
16 or Your Honor would now like, if I recall what he said to us
17 all at that hearing was, "I can see that if the facts bear out
18 going to the very validity of these folks defaulting on the
19 loan and why they defaulted on the loan, the conspiracy claim
20 is wrapped up in that and is a proper claim in this suit, not
21 an independent, stand alone derivative claim." So, that's why
22 he left that under Rule 14. Now, he did specifically rule
23 that they could renew or someone could take up again the Rule
24 12(B)(6) motion and that was my recollection of what he ruled.
25 With regard to what the individual Third-Party Defendants

1 claim I think there's some important distinctions that need to
2 be made here. The only claim against these Third-Party
3 Defendants is civil conspiracy in this case. They are -
4 their, their - of the other claims that are left in this case
5 against the bank and against H & M, breach of contract, breach
6 of contract accompanied by fraud, tortuous interference with
7 contract, none of those claims are pending and these are stand
8 alone claims against these three gentlemen alleging and I
9 think I cited in my memorandum to you all of the facts that
10 the Court must take as true for purposes of this hearing
11 before you today that allege what these three gentlemen we
12 allege did individually to constitute part of this conspiracy
13 among the three individual gentlemen, H & M and the bank.
14 Specifically when you look just at the conspiracy you've got
15 to look at all my factual allegations even though they are
16 contained and incorporated by reference in other causes of
17 action, none of those other causes of action go against these
18 three gentlemen. So, it's as if each of these allegations is
19 just in the conspiracy claim as to these three gentlemen, and
20 specifically what I have alleged and I believe I've cited all
21 of those paragraphs comports exactly with the requirements of
22 civil conspiracy as set forth in the Gynecological Clinic v.
23 Cloer, C-L-O-E-R, case and that is found at 514 S.E.2d 592.
24 We have alleged that there is and that there was between these
25 gentlemen and others a combination of two or more people. We

1 have alleged that the purpose of that was for injuring the
2 Plaintiff, well, in my case Defendant Third-Party Plaintiff.
3 We've alleged that this combination of people conspired to
4 have Mr. Patel come in and operate these hotels and be in
5 charge of the income, the coming in and the outflow going out
6 and where it went, specifically having alleged that where it
7 went was to any creditor or Mr. Patel or anyone else other
8 than First Palmetto to whom the mortgage payments were due.
9 We have alleged further that Jack Jones is the one who brought
10 Mr. Patel to the table to carry out this matter. We have
11 alleged, Your Honor, that Jack Jones, Mr. Patel and Mr. Godwin
12 individually, before the formation of H & M, were the driving
13 force along with the bank in getting in and taking over these
14 properties, siphoning off the money, whether for their own use
15 or to pay other creditors, but certainly not to pay the one
16 creditor, First Palmetto, that was going to allow the property
17 to stay in possession of my client for the sole purpose of
18 making the Defendant owners default on the loan, thereby
19 giving First Palmetto the option not to renew the loan, put it
20 in foreclosure, allow H & M to be formed by Mr. Godwin and Mr.
21 Jones, which occurred with Mr. Godwin being the registered
22 agent for the corporation and then taking over the note and
23 mortgage. Now, that's the conspiracy and that's the purpose
24 for which this conspiracy was entered into to injure the
25 Plaintiff. The special damages as to the conversion cause of

1 action had to do with, they're not breach of contract damages
2 because these three gentlemen didn't have a contract with my
3 client. We're only alleging that they convert, that they
4 entered into a conspiracy to harm my clients, that harm being,
5 that damage being forcing them to default so the bank could
6 then institute foreclosure action, a foreclosure action. You
7 must take those facts as pled in this complaint as true, and
8 I'm just limiting it to the complaint. As you might imagine
9 over the course of two years we have a plethora of
10 documentation and evidence that will be before the judge
11 and/or jury in this matter and in your ruling today
12 irrespective of what you may think we may or may not prevail
13 on with regard to this matter, if we pled facts sufficient,
14 which must under Rule 9 be taken broadly at this stage, must
15 also be taken as true for the purposes of this motion, we've
16 clearly alleged the three elements. Now, Ms. Byrd and Mr.
17 DesChamps want to say, "Well, we haven't pled special
18 damages." Well, nowhere - there's a very early case that
19 talks about pleading specific, it doesn't say numbers, but
20 specific special damages but as you get, as you get on into
21 the case law on conspiracy I do concede that the courts have
22 said if you've alleged breach of contract as one cause of
23 action against a party and then you've alleged conspiracy to
24 commit that breach of contract that that can't stand unless
25 you've got some damages different than or over and above just

1 that breach of contract but that's not the posture of this
2 case with regard to these three individuals. There is no
3 other claim against these three individuals other than civil
4 conspiracy. We haven't alleged that these three individuals
5 breached a contract and then also alleged that that breach of
6 contract was as a result of conspiracy. Our only claim
7 against these gentlemen is the conspiracy itself, and further,
8 Your Honor, we have alleged, which the Court must take as
9 true, that these three gentlemen conspired to take over not
10 only the physical hotel properties that are the subject of
11 First Palmetto's mortgage in this case, but there were other
12 properties that were owned by some of my clients, not all of
13 my clients but some of my clients. There was another piece of
14 hotel property that is not covered by these mortgages and they
15 took over the operation of that hotel. They took over the
16 operation of taking in all the money and paying out all the
17 money or wherever that money went to, separate and apart from
18 the pieces of property that are subject to this mortgage. So,
19 to the extent that counsel is kind of trying to lump together
20 that we haven't pled special damages for conspiracy, we, in
21 fact, have. One of the - two of the things that I think the
22 Court needs to take note of is that as to these three Third-
23 Party Defendants civil conspiracy is the only claim against
24 them and the special damages we have pled is the fact that
25 they entered into this combination for the purpose of, Your

1 Honor, causing our clients, my client, the Defendant owners,
2 to default under the mortgage, which then caused this
3 foreclosure action, plus they took over other property and
4 basically converted, but the conversion's out, but basically
5 took that income from other properties that's not even
6 involved in the breach of contract action against the bank and
7 H & M, against the tortuous interference contract that's with
8 them, against the outrage cause of action, against the breach
9 of contract cause of action. So, at this stage, Your Honor, I
10 believe we have more than met the sufficiency of pleadings to
11 sustain the civil conspiracy claim against Mr. Patel, Mr. Jack
12 Jones and Mr. Donald Godwin.

13 THE COURT: All right, would you like to respond?

14 MS. BYRD: Yes, sir, Your Honor. May I
15 approach?

16 THE COURT: Sure.

17 MS. BYRD: I just want to hand up a case. It's
18 Hackworth versus Greywood at Hammett, LLC, and I think this
19 case is just right on point, Your Honor, and a couple of
20 issues. First, I think conspiracy by its very nature it
21 requires special damages, regardless of what we've just heard,
22 the gravamen of that action is that there are special damages
23 caused and every action that is alleged in this complaint is a
24 separate and distinct tort and those can be brought in a
25 separate action and civil conspiracy requires and in Hackworth

1 it says, "Where particular acts charged as a conspiracy are
2 the same as those relied on as the torturous act or actionable
3 wrongs the Plaintiff cannot recover damages for such act or
4 wrong and recover likewise on conspiracy do the same thing."
5 We've dismissed - we've had those claims stricken from this
6 action without prejudice. So, those claims can still be
7 revived and should not be the basis of a conspiracy claim in
8 this case, especially when there has been no allegation of any
9 special damages. The damages if there was a conversion is
10 obviously whatever was converted. If there was a, you know, a
11 breach of contract then there are contractual damages. So,
12 so, I think it's a little disingenuous to say, "Well, I had
13 alleged those facts in my other cause of action, those were
14 dismissed. So, now that I only have this one I think my
15 pleading is sufficient," and also, Your Honor, I think that
16 the rules, procedural rules, Rule 9 requires that you plead
17 these things with specificity and that is special damages must
18 be pled with specificity. The case that I handed up to Your
19 Honor says that these special damages are never implied at the
20 law, that special damages must be specifically alleged in the
21 complaint to avoid surprise to the other party. We have no
22 idea what the special damages are, Your Honor. The damages
23 that have been alleged in the complaint, and if we're sticking
24 with this complaint, Your Honor, the damages that are alleged
25 are the same as those were alleged in the other causes of

1 action. Moreover, Your Honor, and I think this is a critical
2 point, the rules of professional conduct require us to correct
3 any misstatement of material fact in a pleading and the
4 pleading that Your Honor has has numerous misstatements of
5 fact, and I'm not insinuating that there was any intentional
6 misleading of the Court, but it's just discovery has revealed
7 that some of these allegations are just factually inaccurate
8 and there's no dispute on that. So, I think for Your Honor to
9 take as true the allegations of the complaint I think that I'm
10 obligated to tell Your Honor that you - that that is not the
11 case, even in a 12(B)(6) hearing, that the allegations of this
12 complaint cannot be taken as true, when I think that all
13 counsel would stipulate that some of these facts alleged are
14 absolutely not true.

15 MR. DESCHAMPS, III: Your Honor, I would just like to
16 add even if you take all these allegations as true in this
17 third-party complaint I think it needs to be read in a whole
18 and needs to be read in conjunction with the other causes of
19 action against Mr. Patel, and when you do that you find that
20 the - there are no special damages that are pled and that all
21 the, the conversion cause of action, the interference with the
22 contractual relationship and the other allegations supporting
23 the defenses and counterclaims are just incorporated in the
24 conspiracy claim, and also, going back to Judge John's prior
25 order it specifically prohibits the Third-Party Plaintiffs

1 from seeking recovery against Mr. Patel, also Mr. Jones and
2 Mr. Godwin under a theory or a cause of action for conversion
3 and interference with the contractual relationship and
4 intentional infliction of emotional distress. So, evidence
5 supporting a cause of action for a conspiracy to convert or a
6 conspiracy to interfere with these rents or interfere with
7 these revenues going to the bank it's just completely
8 inadmissible and irrelevant in this cause of action and you
9 can't proceed on those causes of action then you can't proceed
10 on the conspiracy to do those same causes of action.

11 THE COURT: All right. One more time.

12 MS. COOK: Your Honor, yes, sir, briefly, let me
13 just say I think perhaps Mr. DesChamps and Ms. Byrd have
14 misapprehended what the conspiracy is. The conspiracy was not
15 conversion. The conspiracy was not tortuous interference with
16 contract. The conspiracy was the combination of these
17 gentlemen for the purpose of causing my client to not be able
18 to perform under its loan with First Palmetto for the purpose
19 of, for the purpose of damaging my clients specially by
20 causing First Palmetto then to have the ability to bring a
21 foreclosure action. I think they've misapprehended what the
22 conversion action standing alone in this case against their
23 client is with regard - clients is with regard to. Secondly,
24 with regard to the Hackworth case, this case, Your Honor, was
25 a situation where - it was a fight over where a road was

1 located, where the - let me see if I can get this straight,
2 the Hackworths had been sued by Greywood and others, and after
3 that suit failed the Hackworths then brought action against
4 Greywood for bringing the previous suit, but even though from
5 a factual standpoint we're nowhere on all fours with this case
6 or anywhere near it. I will state to Your Honor one of the
7 things that this case says when it's talking about special
8 damages is that those are damages that are the natural but not
9 necessarily the usual consequences of the Defendant's conduct.
10 It says, "General damages are inferred but that these will not
11 be inferred," and I have pled that we were occasioned special
12 damages by these three gentlemen causing us not to be able to
13 perform by paying the bank. This case does not say nor does
14 our law require that at the initial pleading stage where it's
15 usually where, is where you see a 12(B)(6) motion anyway, but
16 at a pleading stage you as a Plaintiff don't know all that you
17 may find when you dig into people's files. You don't know
18 what every element of your damage, much less every measure of
19 your damage is going to be. That's why we engage in
20 discovery, Your Honor, and Your Honor, in this case, this case
21 says nothing more than you've got to plead that we've got
22 special damages. Now, when we get to a jury or to Your Honor
23 or we get to summary judgment stage then I've got to be able
24 to back that up. I've got to create a factual issue on that
25 matter, but that's not where we are, Your Honor, and I agree

1 with Mr. DesChamps. Mr. - I mean, Judge John's order says I
2 can't sue for conversion. I can't sue for those other things
3 in this claim, in this action. It doesn't say I can't
4 separately but I can't in this action, but what he did say is
5 from the pleadings if you take what I have pled as true having
6 pled this before any discovery starts and I don't deny, Your
7 Honor, that this pleading is wrong in that it says that the
8 sale took place on June 30th because when I pled this I hadn't
9 seen the closing statement.

10 THE COURT: All right, I think I've figured out
11 your position.

12 MS. COOK: Yes, sir.

13 THE COURT: Anything you need to add to it?

14 MS. BYRD: No, Your Honor.

15 THE COURT: How about Mr. Short?

16 MR. SHORT: No, sir, Your Honor.

17 THE COURT: All right, anything further or is
18 that all we need to deal with?

19 MS. BYRD: No, Your Honor, I just - I just do
20 think it is important that whatever the Court does ---

21 THE COURT: I've read everybody memorandums.
22 I've read the file ---

23 MS. BYRD: --- that, that ---

24 THE COURT: --- and already done a little bit of
25 research on it, so.

1 MS. BYRD: Yes, sir, Your Honor, thank you.

2 THE COURT: I will have you an answer if not
3 today, tomorrow or the first part of next week.

4 MS. BYRD: Thank you, Your Honor.

5 THE COURT: Anything else before?

6 MR. DESCHAMPS, III: Yes, Your Honor, I would just like to
7 add that even if there are special damages that under the
8 Hackworth case you're also required to plead additional acts
9 in furtherance of the conspiracy that are separate and
10 independent from the other causes of action and that wasn't
11 done in this case.

12 THE COURT: I understand.

13 MR. DESCHAMPS, III: Thank you.

14 THE COURT: All right, thank you very much.

15 MS. BYRD: And just, Your Honor, the motion to
16 compel I'm sure we can ---

17 MS. COOK: On that, Your Honor, Audra had asked
18 and I don't deny that she's entitled to Mr. Harvey Jones,
19 that's the nephew of Mr. Jack Jones, and Wendy Bellamy, that's
20 the niece of Jack Jones, their income tax returns. I was able
21 to provide Ms. Bellamy's, the niece's, but I've not been able
22 to provide Mr. Jones' and this is why. Harvey Jones is going
23 through a divorce. Mr. Jones' wife or estranged wife at some
24 point evidently ransacked the home and took papers. He does
25 not have them, Your Honor. We would glad - I mean, I've had

1 STATE OF SOUTH CAROLINA
2 COUNTY OF HORRY

) COURT OF COMMON PLEAS
) No. 2009 CP 26 05743

3 HOTEL & MOTEL HOLDINGS, LLC.
4 Plaintiff
5 versus

6
7 BJC ENTERPRISES, LLC, WENDY
8 BELLAMY, AMERICANA, INC.
9 a/k/a AMERICANA MOTEL OF
10 MYRTLE BEACH, INC., MOZINGO
AND WALLACE ARCHITECTS, LLC,
KERSI S. SHROFF and SHROFF
MANAGEMENT, INC.
11 Defendants

TRANSCRIPT

12 BJC ENTERPRISES, LLO, WENDY
13 BELLAMY, AMERICANA, INC.
14 a/k/a AMERICANA MOTEL OF
MYRTLE BEACH, INC.

OF

RECORD

15 Third Party Plaintiffs
16 versus

17 FIRST PALMETTO SAVINGS BANK,
18 F.S.B., JACK JONES, DONALD
D. GODWIN and BHUPENDRA PATEL

19 Third Party Defendants

GEORGETOWN, SOUTH CAROLINA
May 12, 2011

20
21 B E F O R E :

22 HONORABLE WILLIAM H. SEALS, JR., Judge

23 HARRIET P. BENNETT
24 Reporter, S. C. Court Administration
P. O. Box 86
25 Ladson, S. C. 29456

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

2 For the Plaintiff and
3 Third Party Defendants
4 Jones and Godwin:

AUDRA BYRD, Esq.
Turner, Padget,
Graham & Laney

5 For the Defendants
6 BJC, Bellamy and
7 Americana:

KATHRYN M. COOK, Esq.
Cook & Roy

8 For the Third Party
9 Defendant First Palmetto
10 Savings Bank, F.S.B.:

WILLIAM H. SHORT, JR., Esq.

11

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14

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16

Reporter Present:

LINDA McCALL

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I N D E X

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3 Motions by Ms. Byrd, beginning p. 5

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5 Motions by Mr. Short, beginning p. 54

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7 Motion by Ms. Cook, beginning p. 62

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1 (The within matter came before the Court on May 12,
2 2011, at approximately 2:15 P.M.)

3 THE COURT: Thank you.

4 All right, you may be seated.

5 What motions are we going to hear today?

6 MS. BYRD: Your Honor, on behalf of Hotel and Motel
7 Holdings, we have two Motions for Summary Judgment.

8 One relates to the counterclaims, and one is on the
9 actual claim of Hotel and Motel Holdings.

10 On the Motion for Summary Judgment . .

11 THE COURT: Hold on a second, please.

12 (Brief pause)

13 MS. COOK: Your Honor, on behalf of BJC, Americana
14 and Wendy Bellamy, we have a Motion to reconsider your
15 previous Order striking the conspiracy claim as against
16 Mr. Jones, Mr. Patel and Mr. Godwin.

17 We have our Motion to disqualify Turner Padgett from
18 proceeding as H & M's counsel in this matter, and I be-
19 lieve that is all that we have.

20 I have discussed with Ms. Byrd and Mr. Short that
21 it makes good sense, although it is basically up to Your
22 Honor, for Your Honor to hear the Motions for Summary
23 Judgment first because that would have a lot to do with
24 how we would proceed as to other matters.

25 THE COURT: Well, we will go ahead and do that.

1 Let's do it step by step. You can argue, for example,
2 breach of contract and then they can respond, and then go
3 on to the next one and have response, if that's okay with
4 you all.

5 MS. BYRD: That sounds great, Your Honor.

6 MS. COOK: Yes, sir.

7 THE COURT: All right, I'm ready to hear you.

8 MS. BYRD: Your Honor, I won't waste the Court's
9 time. The basics have been briefed. I will offer to the
10 Court a few facts to begin.

11 BJC Enterprises, LLC. borrowed Five point Five Eight
12 Million Dollars from First Palmetto in 2005, and the money
13 has not been paid back. Those are the facts.

14 We have essentially numerous claims, counterclaims,
15 defenses and third-party claims that are based on those
16 same sort of allegations of conspiracy, that essentially
17 Jack Jones orchestrated a conspiracy to, first of all,
18 steal money from BJC such that it caused the financial
19 collapse of BJC Enterprises whereby BJC could not pay the
20 money to First Palmetto, and, at the same time, conspired
21 with the Bank to convince the Bank not to get paid and to
22 not foreclose, but to allow them to foreclose without
23 being paid.

24 Those are the essential allegations that make up
25 each of the claims, and I guess with regard to the

1 counterclaims, Your Honor, of the Defendants against
2 Hotel and Motel Holdings, the first is, as Your Honor
3 indicated, a breach of contract claim.

4 The Court is aware of the elements required for
5 a breach of contract claim are in contract, unjustified
6 failure to perform or breach of the contract, and dam-
7 ages suffered by the party as a direct and proximate re-
8 sult of the beach.

9 In support of their breach of contract claim, the
10 Defendants essentially allege, Your Honor, a breach of
11 the covenant of good faith and fair dealing.

12 Further in support, they allege that Jack Jones
13 again interfered with BJC's operation such that it could
14 not pay the debt to First Palmetto.

15 That BJC was current on its note in February of
16 2009 when First Palmetto filed its foreclosure action,
17 and the assignment of the loan documents by First Palmetto
18 to Hotel and Motel Holdings was not at arms length and it
19 was for no consideration.

20 Your Honor, finally, they allege that First Palmetto
21 divulged private and confidential information.

22 The problem with the breach of contract claim is
23 the conduct that allegedly makes up the breach of the
24 implied covenant of good faith and fair dealing occurred
25 prior to the formation of Hotel and Motel Holdings.

1 The Defendants attempt to remedy this problem by
2 saying, well, you stand in the place of First Palmetto.
3 If First Palmetto did these things then you are stuck
4 with it.

5 Your Honor, the law is inapposite of that conten-
6 tion. The law says essentially that with regard to an
7 assignee of a contract, the obligator cannot affirma-
8 tively assert a claim that it has against the assignor.

9 It can raise the defenses, and we don't dispute that
10 it can raise the defenses, but it cannot affirmatively
11 claim against Hotel and Motel Holdings.

12 And, Your Honor, if I may, I have a case -- a few
13 cases I would like to present to the Court.

14 May I approach?

15 THE COURT: Yes, you may.

16 (Counsel approaching the bench)

17 MS. BYRD: The first is ~~Roseman~~ versus Campbell, and
18 the second is Dixie Wood versus Kirstein.

19 We also have a -- I'm sorry. We have two copies
20 of that also, one for your Law Clerk.

21 THE COURT: One is fine.

22 MS. BYRD: Okay. Your Honor, the cases essentially
23 say what I have just told the Court, that these claims
24 cannot be made affirmatively against Hotel and Motel
25 Holdings.

1 It is not enough for her or the Defendants to say
2 that First Palmetto breached the implied obligation of
3 good faith and fair dealing, and, therefore, Hotel and
4 Motel is stuck with that breach.

5 There has to be a showing of a breach of contract
6 by Hotel and Motel Holdings, Your Honor, and in this case
7 all the conduct that is complained of in the counter-
8 claims happened prior to Hotel and Motel's formation.

9 THE COURT: Do you wish to respond at this time, Ms.
10 Cook?

11 MS. COOK: Yes, sir, Your Honor.

12 THE COURT: All right.

13 MS. COOK: In this -- this is our position and prob-
14 bably will be or will speak to the issues throughout the
15 matters argued here.

16 Many of these claims that are before Your Honor,
17 excluding the ones that have been struck -- there are
18 certain of the counterclaims and defenses that are as-
19 serted against H and M by virtue of H and M not being a
20 holder in due course when they purchased or allegedly
21 purchased this loan from First Palmetto.

22 I agree with this general principle that Ms. Byrd
23 has spoken to that generally speaking an assignee is
24 not subject to the claims and defenses that my client
25 would have against the Bank.

1 However, as alleged in our Complaint and as has been
2 further fleshed out through the discovery, H and M was
3 formed on June 12th, 2009, and they entered into a loan
4 sales agreement with the Bank on June 24th, 2009; then
5 ultimately closing on that transaction on June 30th of
6 2009.

7 They did not take certain of these actions that are
8 the basis of some of our counterclaims, including the
9 breach of contract claim, except H & M -- what they did
10 do was buy the loan with actual knowledge, and in this
11 case with actual participation in, the activities that
12 constitute breaches of contract by the Bank assignor of
13 the loan, the mortgages and notes, to H and M.

14 So the law is clear, and I believe Ms. Byrd has ac-
15 tually quoted the statutory provisions in her memorandum
16 of the UCC Code that are assigned to a holder in due
17 course and what those obligations or that right would
18 give you and what rights you do not maintain if you are
19 not a holder in due course, and if you are not a holder
20 in due course, as we have alleged in our Complaint, and
21 as further fleshed out.

22 Clearly, at the time we filed this Complaint we did
23 not know all that we have learned during the course of
24 the last twelve months, but just how much of a holder --
25 how much not of a holder in due course -- that's not the

1 proper English. -- but anyway -- the H and M is in this
2 case.

3 If you are not a holder in due course, we have clearly
4 provided a plethora of factual issues to deny the motion
5 for summary judgment.

6 But clearly, Your Honor -- and I don't think they
7 even contest the fact that -- they haven't thus far and
8 I'm sure they will -- but when you are not a holder in
9 due course, having bought the obligation, the loan obli-
10 gation, knowing first of all that it was in foreclosure
11 when you bought it, and that your principal, Jack Jones
12 -- knowing that your principal, Jack Jones at the time,
13 participated in putting his manager in the property and
14 preventing that manager from making the only payment that
15 was then due, a One Hundred Fifty Thousand Dollar payment
16 that was due on March 31st, 2009.

17 In actively participating in this ongoing scheme
18 between the Bank and Jack Jones, the principal in what
19 the second -- in what would be in effect a sham situa-
20 tion for this transaction.

21 And to then try to isolate yourself by forming an
22 LLC two days after foreclosure was formed, and then en-
23 tering into the contract, although at least those are
24 factual issues to be decided by a jury, but this deal had
25 been struck way in advance of the formation of the

1 transaction -- well in advance of the actual formation
2 of H and M, and, in fact, way in advance of the foreclos-
3 ure being filed and way in advance of my client being un-
4 able to tender the Hundred and Fifty Thousand Dollars on
5 May 31st of 2009, which is the only default my client
6 is alleged to have had.

7 It is our position that it is the only default, as
8 the note and the loan documents have been modified by
9 the Bank that my client was under default here.

10 The law provides under the UCC that if you are not
11 a holder in due course -- Title 36 6 803 -- thank you,
12 803 -- that if you are not a holder in due course you are
13 subject to the defenses and the counterclaims that we
14 have asserted in this cause of action.

15 With regard to the position that breaches of con-
16 tract by the Bank cannot constitute breaches of contract
17 by H and M, who now has bought the note and the loan ob-
18 ligations, knowing that and actually participating in
19 the breaches that were accomplished by the Bank, we have
20 a plethora of factual issues that make it ripe for a
21 jury to decide that issue.

22 Let me speak specifically though to the breach of
23 the contract that was pled when we brought our counter-
24 claim way back a year ago, and more breaches we have
25 learned of as we have gotten the evidence and in the

1 depositions in the matter.

2 There was a breach in the good faith and fair deal-
3 ing, given all of the factual testimony and the documents
4 which conflict in many instances with what the Bank and
5 Mr. Jones -- the Bank acting as the lender and Mr. Jones
6 acting as the fiduciary under a Power of Attorney given
7 by my client, Ms. Bellamy, who is seated here, and who
8 at the time -- and is today -- was the owner of one of
9 the pieces of property that was subject to the mortgage
10 -- was a managing member of BJC, the actual borrower,
11 of the Five Million Plus from the Bank; was the major-
12 ity shareholder of Americana, which was the owner of the
13 family-Jones property, Mr. Jones seated here, and Ms.
14 Bellamy and their family, and subject to the mortgage
15 that is at issue here.

16 The other member of BJC is seated here, or was the
17 other member at the beginning of this transaction, and
18 he was the other one-third owner, Mr. ~~Callen~~ Callen, seated here
19 as well.

20 In that light, the breaches of contract, including
21 the breach of good faith and fair dealing, the fact that
22 the Bank breached its duty in permitting by the scheme
23 being carried out by Jack Jones, who had a fiduciary
24 duty to all these folks, and putting in his manager, Mr.
25 Patel, who had sole authority to write checks and to

1 receive income and pay bills, but we now learn from the
2 testimony that is in evidence, and which is to be decided
3 by a jury, actually was very much beholden to Mr. Jones,
4 and, in fact, did not pay the only payment that was then
5 due, the Hundred and Fifty Thousand Dollars on May 31st.

6 There is an issue that the money could have been
7 paid at that time but for the fact that Mr. Jones was
8 directing to whom Mr. Patel would pay bills.

9 From the records, you can see that Mr. Patel does pay
10 a Hundred and Fifty Thousand Dollars as was required un-
11 der the modified loan by the Bank to allow them more time
12 to work out a renewal.

13 What he did do was pay Wilbur Jones Fifty Thousand
14 Dollars, Wilbur Jones being Jack Jones' brother, and
15 pay Jack Jones almost Twenty Thousand Dollars.

16 Those are some of the facts that go to the issues
17 about prevention by the Bank of my clients paying them
18 a Hundred Fifty Thousand Dollars that was due on May the
19 31st.

20 It is kind of counter-intuitive, but when you look
21 further it makes some sense, Your Honor.

22 Why would a Bank -- why would a Bank do something
23 to help a third party to prevent the borrower from pay-
24 ing them back?

25 Well, that is because, again, of the scheme that the

1 Bank and Mr. Jones had on-going to make us be in default,
2 to put the property into foreclosure at that point where
3 Jack Jones or his assigns, in this case H and M, could
4 buy the loan for a reduced price and on terms that they
5 wouldn't offer these borrowers who had the most invested
6 in the property.

7 But in the meantime, Your Honor, from the point of
8 October of 2008 to the point of May 31st, 2009, . .

9 THE COURT: Why don't you go ahead and summarize
10 it a little bit and tighten it up.

11 MS. COOK: Yes, sir.

12 THE COURT: Let's deal with breach of contract and
13 then . .

14 MS. COOK: Right. Yes, sir.

15 So those are factual issues, that go to the breach
16 of contract virtually against the Bank, but by not being
17 the holder in due course H and M is responsible.

18 Additionally, Your Honor, we take the position that
19 H and M is nothing but a sham corporation. It has no on-
20 going business. It has no assets other than the asset as
21 funneled to it through Mr. Godwin and Mr. Jones.

22 It is a sham corporation, and I'm not going to go
23 into this, but that is one of the reasons we believe,
24 Your Honor, that the Court should reconsider its letting
25 out Mr. Jones and Mr. Godwin individually, having to

1 do with the conspiracy claim.

2 THE COURT: Thank you. Do you have anything before
3 we go on to the next one? Go ahead and move on to your
4 next one, unless you would like to respond, and you can
5 briefly respond.

6 MS. BYRD: Yes, Your Honor.

7 THE COURT: Go ahead.

8 MS. BYRD: If I could respond very briefly, Your
9 Honor.

10 THE COURT: All right.

11 MS. BYRD: In the case that I handed up, Roseman
12 versus Campbell, I think there is a very significant
13 distinction to be made.

14 In that case on page six at the bottom of the page
15 in paragraphs three and four, it says that as an -- as
16 against an assignee, the obligator can only assert a
17 claim defensively when the assignee seeks to avoid the
18 obligation.

19 He has no common law right to sue the assignee af-
20 firmatively on a claim.

21 So there is a distinction to be made between an
22 affirmative counterclaim, which is what we are talking
23 about here, and a defense.

24 And what we are asking for summary judgment on the
25 counterclaim for breach of contract.

1 The law is very clear -- it is very clear that as
2 against an assignee, the obligator cannot make an af-
3 firmative claim. She can assert that as a defense,
4 but not as an affirmative claim.

5 Second of all, we heard a lot of argument of coun-
6 sel that it is important to examine the evidence and the
7 facts, and while the argument of counsel was very inter-
8 esting and entertaining it is important that we require
9 some evidence and some facts to be presented to estab-
10 lish the elements.

11 Finally, Your Honor, with regard to whether or not
12 Hotel and Motel Holdings is a sham corporation, there
13 is no allegation to pierce the veil in the counter-
14 claim.

15 Thank you.

16 THE COURT: Would you like to briefly respond to
17 that?

18 MS. COOK: Your Honor, yes.

19 THE COURT: All right.

20 MS. COOK: I'm not going to go into -- I think we
21 have thirty exhibits, and we have referred to deposition
22 testimony.

23 In fact, Your Honor, we have brought in the depo-
24 sitions that we have referred to in totality. We would
25 like to enter those in the record to the extent it is

1 necessary.

2 We have them all here and we would like to enter
3 them in totality.

4 We have discussed this with Mr. Godwin, with Ms.
5 Bellamy, Mr. Jones -- Mr. Harvey Jones, Jack Jones -- and
6 that was two depositions taken -- into evidence -- and
7 Mr. Patel's deposition in totality.

8 And I'm not going to rehash all of that. That is
9 in here.

10 Importantly also, Your Honor, we would allege that
11 a part of the breach of contract claim -- and I would
12 acknowledge that we have pled breach of contract both as
13 a defense and as a counterclaim. We have alleged it in
14 both ways.

15 I do not agree with Ms. Byrd's analysis that we can-
16 not have an affirmative counterclaim against H and M based
17 on the fact of them not being a holder in due course.

18 But, Your Honor, we would like to make clear to the
19 Court that we have alleged breach of contract by the Bank
20 and H and M as not being a holder in due course as a de-
21 fense in this matter.

22 Further, as part of that, we would offer up, Your
23 Honor, a further breach of contract by the Bank and thus
24 by H and M not being a holder in due course, that there
25 were four modifications of mortgage, one being -- which

1 I do have these to refer to and which constitute causes
2 of action, which was assigned and a further basis of the
3 foreclosure action and the conduct we are talking about.

4 One mortgage modification is dated January 17, 2008,
5 between First Palmetto and Americana.

6 One is at the same time in 2008 between BJC and the
7 Bank.

8 One is the same time period, January of '08, between
9 Ms. Bellamy the Bank.

10 Then we have the preceding mortgage modification (bal-
11 ance of sentence inaudible on tape)

12 These were not attached to the memorandum of BJC and
13 Bank when they renewed in '07, and, Your Honor, that would
14 be the first renewal. If you would look at those mort-
15 gage modifications, they were executed by the Bank, they
16 were executed by my client, but what they are not a part
17 of is an authorized legal transaction by an attorney as
18 a part of this loan modification and/or loan renewal as
19 required.

20 They were documents drafted by the Bank and consti-
21 tute the unauthorized practice of law. That is also a
22 breach of contract issue for a judgment confirmatory, Your
23 Honor.

24 MR. SHORT: Your Honor, I hate to interrupt, but we
25 have wandered back and forth across the line of what is

1 applicable to H and M on their motion, and several issues
2 with regard to my client, the Bank, on its motion, Your
3 Honor.

4 THE COURT: I believe we've come near the end of
5 that.

6 MR. SHORT: I would like to make a few comments here
7 about what is being discussed by previous counsel as to
8 matters concerning the Bank, and in this notebook that ar-
9 rived last night.

10 Your Honor, there has been -- in response to a re-
11 quest by Ms. Cook to deal with the facts and evidence,
12 there is no indication that there is facts in evidence
13 in this.

14 She has introduced a loan modification agreement,
15 and then she got to unauthorized practice of law.

16 Well, Your Honor, there is no pleading that makes
17 reference to that. It is a complete red herring, and
18 that can't be a basis for a breach of contract action be-
19 cause there has never been an allegation as to that.

20 There has never been a motion to amend, or any at-
21 tempt to bring a new claim based on that.

22 That is the problem we have, and I think if we stick
23 with the two H and M motions and our motion that things
24 would be much simpler and much easier for Your Honor to
25 understand.

1 I think there is a lot of chat and not a lot of evi-
2 dence that we're talking about.

3 THE COURT: All right. Would you like to continue?

4 MS. BYRD: Yes, sir. Thank you, Your Honor.

5 As Your Honor is well aware, there are nine elements
6 of fraud. There is a misrepresentation, the falsity of
7 misrepresentation, the materiality, the seeker's know-
8 ledge of the falsity, the seeker's intent that it be
9 relied upon, and the hearer's ignorance, the hearer's
10 reliance on the lie and the proximate injury.

11 In this case, in the Defendant's Answer and Counter-
12 claim the fraud that is alleged is that in January of
13 2008 the First Palmetto Savings Bank required Wendy
14 Bellamy to sign a personal guarantee when they had not
15 required her to do so before.

16 They are not putting at risk other properties that
17 were not already encumbered.

18 That is the allegation of fraud. The evidence in
19 the case has been clear, that both in 2005 and in 2007
20 that Ms. Bellamy was required to sign a personal guaran-
21 tee.

22 It was not new in 2008, so there was not a misrepre-
23 sentation by the Bank.

24 Your Honor, aside from that, that fraud, if that's
25 going to be the basis of a fraud claim, it certainly

1 does not apply to Hotel and Motel Holdings which was not
2 even formed in January of 2008.

3 Your Honor, that is the only allegation of fraud as
4 contained in the Counterclaim.

5 THE COURT: Do you wish to respond?

6 MS. COOK: Yes, sir. I would agree that in the ac-
7 tual Counterclaim for fraud it is not addressed, but we
8 did not know about everything we were going to find out
9 later through discovery.

10 Your Honor, we will concede the factual issues with
11 regard to Ms. Bellamy's signature on a guarantee is a
12 -- that in and of itself does not constitute fraud, inas-
13 much as she was required to sign a guarantee in '05 when
14 the transaction began.

15 However, with all due respect to Mr. Short, and I am
16 trying to keep to this cause of action, but the facts of
17 this matter cross over among all of the causes of action.

18 But with regards to the fraud, and again with all
19 due respect to Mr. Short, while we have not pled the un-
20 authorized practice of law because we didn't know that,
21 first of all, but what we have pled, Your Honor, is the
22 unclean hands.

23 We would say that part of the facts that we have now
24 learned in this case are that the Bank undertook in 2007
25 when the loan became due, and the Bank agreed to renew

1 the loan or refinance the deal.

2 At that point when they did that -- and all the tes-
3 timony in this case has shown that there were lawyers for
4 all parties involved in the 2005 closing of the original
5 Five Million Five Hundred Thousand Dollar loan transac-
6 tion.

7 But from that point forward when the loan was re-
8 newed or refinancing took place that did not occur which
9 was absolutely vital because there was a new loan number
10 assigned, and there was a modification of the mortgage
11 signed each time.

12 That happened, Your Honor, in 2007 and it happened
13 again in 2008.

14 It is part of the fraud that we now complain about,
15 Your Honor, and that we have now learned about. Every-
16 body now knows it, while it is not specifically pled,
17 Your Honor. This is a part of what we found out in dis-
18 covery.

19 Your Honor, we found out that they undertook two
20 different refinancings of this transaction and without
21 any notice the Bank prepared all the documents.

22 That, Your Honor, we believe is unlawful and is a
23 part of the facts of the fraud that took place in this
24 whole scheme. That is part of what we've found out.

25 We are convinced these events really take place

1 between November of 2008 and May 31st of 2009, and the
2 fraud that H and M and the Bank participated in at that
3 time -- we know that the Bank made an offer to renew the
4 loan in November of 2008, November 24th, with an interest
5 payment at a reduced interest rate for one year, as op-
6 posed to what was required, a payment at the much higher
7 interest rate.

8 They sent that out, knowing my clients never re-
9 ceived that offer . . .

10 MS. BYRD: Your Honor, I really hate to do this, but,
11 again, this is a continuous pattern. If just one time
12 there could be a citation to the record.

13 If that is in the deposition at some place, point
14 to it. Show us where that is because, Your Honor, we
15 can't find it. I mean, we would like to know.

16 If these things are supported by the record, then
17 show us.

18 I mean, this is . . .

19 THE COURT: I would ask you to do that, please.

20 MS. COOK: Yes, sir, Your Honor.

21 There is evidence in the record and it is included
22 in our brief, our memorandum of law, of the fraud which
23 shows almost two hundred telephone conversations that
24 took place -- and all those records are here in Court,
25 Your Honor -- almost two hundred telephone conversations

1 that took place with Mr. Smalls, Senior, the CEO of the
2 Bank, between January 22nd of 2009 and May 31st -- excuse
3 me, June 30, 2009, when there was a decision for H and
4 M to buy this.

5 That is in the record, Your Honor. We have the --
6 we have the log of Mr. Short to show exactly when the
7 Bank decided to hire lawyers to paper the deal that they
8 had already struck -- we take the position it can be shown
9 the deal already had been struck between Mr. Jones and
10 Mr. Smalls when they hired a law firm to paper the deal
11 in April of 2009, that being more than thirty days before
12 my client had defaulted under the loan, Your Honor.

13 Based on that, Your Honor, I believe we have pro-
14 duced more than sufficient evidence of fraud in this case.

15 THE COURT: Do you wish to respond at this time?

16 MS. BYRD: Yes, Your Honor. Thank you.

17 In an action for breach of contract accompanied by
18 fraud, there is the same problem with the elements of the
19 case -- of that cause of action which all breach of con-
20 tract actions must establish to show any breach on the
21 part of Hotel and Motel Holdings.

22 Again, there is no evidence of any fraudulent intent
23 or subsequent act accompanying the breach.

24 Your Honor, there's been no breach established, no
25 evidence of a breach on the part of Hotel and Motel

1 Holdings, LLC.

2 Hotel and Motel Holdings, LLC, was not established
3 or formed in 2008. The Answer and Counterclaim for fraud-
4 ulent act was involving the 2008 personal guarantee of
5 Ms. Bellamy which it has now been conceded was not a
6 fraudulent act.

7 So with that distinction, Your Honor, I think it is
8 clear, even more clear, that the breach of contract ac-
9 companied by fraud -- there is no evidence to support the
10 claim, Your Honor.

11 MS. COOK: Your Honor, before we move on to the next
12 one, Your Honor, we take the position that there was a
13 breach of contract accompanied by fraud occasioned by
14 the Bank.

15 Also, H and M was not a holder in due course when
16 they bought this on April 24th.

17 With regard to my concession that the mere execution
18 of the guarantee in 2008 is not the basis of the fraud
19 action as we have now learned.

20 We also would say with regard to summary judgment,
21 you are not bound just to the pleadings because the
22 pleadings were the documents that began the case early on
23 before any discovery.

24 We have put forth all the actions of the Bank and
25 have reiterated those here. They are in the memorandum

1 and the documents. The testimony and evidence is clear,
2 Your Honor.

3 THE COURT: Do you wish to go to the next matter?

4 MS. BYRD: Yes, sir, Your Honor.

5 The next is a civil conspiracy, a combination of
6 two or more persons joining for the purpose of injuring a
7 plaintiff, causing special damage to a plaintiff.

8 In this case, there are no additional -- the con-
9 spiracy claims essentially -- the entire lawsuit counter-
10 claims is that there was a conspiracy to steal the money
11 so BJC could not make the payments to the Bank and have
12 it foreclose; to have the Bank not paid any payments and
13 to allow Jack Jones to hold on to the property.

14 That's the conspiracy, Your Honor, and there has
15 been no act alleged as to Hotel and Motel Holdings, LLC,
16 in furtherance of the conspiracy.

17 It wasn't formed -- in all the acts we have talked
18 about here they are alleged and not established by any
19 evidence, and all of those as alleged happened prior to
20 Hotel and Motel Holdings being formed.

21 In addition, there is no pleading of special damage,
22 and the damages that are complained of in the civil con-
23 spiracy are the exact same damages that are complained
24 of in every other cause of action, Your Honor.

25 THE COURT: Anything further on that?

1 MS. COOK: Your Honor, if merely by engaging in a
2 conspiracy and then to carry out the ultimate part to
3 finalize the conspiracy and getting to the fruits of the
4 conspiracy all you had to do was form a corporation af-
5 ter the fact to accept the fruits of that conspiracy, then
6 you could never have a conspiracy claim, Your Honor.

7 So the fact that H and M was a newly-formed corpora-
8 tion during the period of the alleged conspiracy does not
9 mean in this case that they did not operate H and M dur-
10 ing this period as a separate entity. It is little more
11 than a shell to protect Mr. Godwin and Mr. Jones personally
12 from their acts of conspiracy and receive the fruits of the
13 conspiracy.

14 Now, Your Honor, the actual conspiracy as set out and
15 claimed -- the acts of conspiracy that have been claimed
16 are all the facts that we have alleged against the Bank,
17 Mr. Jones, Mr. Godwin and Mr. Patel, who participated in
18 a scheme to lead the owners to believe, on the one hand,
19 that the Bank was renewing and ultimately modifying their
20 loan for the Bank to pay Seventy-six Thousand Dollars --
21 excuse me -- I believe it was Eighty-six Thousand Dollars
22 in November of 2008, as part of this renewal scheme.

23 Let me also point out that Mr. Jones, as the fidu-
24 ciary for the Defendants in this case, did not divulge
25 the information.

1 That as the fiduciary for my clients, Mr. Jones got
2 the offer and then did not divulge the information to
3 them, but, instead, he continued . .

4 MS. BYRD: Your Honor, again, there is absolutely
5 no -- just take that last sentence, that Mr. Jones got
6 the offer and did not divulge the information about the
7 renewal of the loan.

8 She needs to prove that with evidence, that Jack
9 Jones got the letter and that he did not convey that.
10 This is the problem.

11 There is again no evidence, and, Your Honor, of any
12 scheme . .

13 MS. COOK: Yes, Your Honor. There is evidence in
14 the record in the depositions . .

15 MS. BYRD: Your Honor, to continue to allow argument
16 without evidence defeats the purpose of our being here
17 today.

18 MS. COOK: It was testified to by Mr. Jones himself
19 that he was at the property daily. The property is where
20 the notice was sent.

21 My client testified in her depositions that are be-
22 fore Your Honor that at the time the notice or the offer
23 of November 24 was made, which evidence is in the record,
24 Your Honor, my client had attempted suicide, was hospit-
25 alized, and upon her release she did not go back to the

1 property inasmuch as she had given her Power of Attorney
2 to Mr. Jones.

3 That was her testimony in the depositions, testimony
4 by my client, Your Honor, and, in addition, Mr. Harvey
5 will testify that the hotel was closed at that point in
6 time; that neither he nor my client received an offer or
7 any notice of that offer being made.

8 Additionally, in the documents that are before Your
9 Honor and the deposition transcripts there is reference to
10 the fact that my client thereafter as part of the evidence
11 according to Mr. Smalls, Senior, allowed my client as a
12 part of the (inaudible portion) on the loan to bring in
13 some Ninety-five Thousand Dollars, which is the only tes-
14 timony in the record that my clients were told by their
15 Uncle Jack that if they would pay Ninety-five Thousand
16 Dollars to the Bank, which they did on February first and
17 the checks are there-- the thank you notes from my client
18 are in there -- that they would renew the loan and con-
19 tinue to work with my clients in renewing or modifying
20 the loan.

21 In addition, they would go and pay the taxes on the
22 very same day, and there is evidence in the record that
23 they did, and that is before you.

24 If they would do this and pay the sum of money that
25 the Bank would work with them and extend the loan.

1 My clients did all that, and when you look at the
2 records of the law firm hired by the Bank on April 24th,
3 I believe, Your Honor, of 2009, to paper the deal, that
4 includes the telephone records before you, Your Honor,
5 that emanated from Mr. Smalls' telephone, not the only
6 calls but that's just from his cel phone records -- of
7 calls just between January 22nd of 2009 to June 30th of
8 2009 when the deal was closed on, when H and M first en-
9 tered the agreement to close the transaction.

10 We believe that is sufficient or more than a suffi-
11 cient scintilla of facts.

12 THE COURT: Ms. Byrd, are you ready to move on to
13 the conversion?

14 MS. BYRD: In conversion, Your Honor, the three
15 elements are interest by the Defendants in property, a
16 conversion, in this case by Hotel and Motel Holdings,
17 and that the use was without permission.

18 Your Honor, again, Hotel and Motel Holdings was not
19 formed until 2009 and they could not have acted prior to
20 June of 2009, prior to being formed.

21 So any conversion that Hotel and Motel Holdings --
22 anything they converted would have to be after that time
23 or after that point because they could not have acted un-
24 til formed.

25 From June of 2009, during that season, Hotel and

1 Motel Holdings -- they are seasonal, and Hotel and Motel
2 Holdings was not operating the hotel.

3 Ms. Bellamy and Mr. Patel were operating the prop-
4 erty at that time.

5 When the next season came around, it was March and
6 then into April a Receiver was appointed by the Court.

7 So they have alleged that we have stolen not only
8 money -- that's one thing, and the other one appears to
9 be a conversion of real property which, of course, is
10 not a cause of action in conversion. Conversion does not
11 go to real property.

12 In this case, there has been no money being identi-
13 fied. There is simply no evidence that anyone took any-
14 thing from these people.

15 During the depositions of Ms. Bellamy, she was spe-
16 cifically asked what money did they take, and she didn't
17 know, Your Honor. She couldn't identify it.

18 There is no evidence whatsoever that anybody has con-
19 verted anything in this case.

20 MS. COOK: Your Honor, with regards to the convers-
21 ion claim, these pictures have already been introduced at
22 prior hearings.

23 Those photographs show that at the time of the sale,
24 April 21st, 2010, that's the second season after H and M
25 became the owner of these loan documents.

1 When H and M was supposed to be nothing more than a
2 mere mortgagor, that shows H and M through its representa-
3 tives, Mr. Godwin and Mr. Jones, being continually on the
4 property while the Receiver was in charge of the property,
5 Your Honor.

6 Part of this property, Your Honor, is the regular
7 hotel property where you go to check in, but a part of
8 the property is, Your Honor, mainly for students or peo-
9 ple who come into our area to work for the summer season.

10 The photograph you see here is of people lined up,
11 and that is when they pay every Monday for their rent for
12 staying on the property.

13 Your Honor, those photographs were taken by my client
14 and you will see on the back a note as to the date, and
15 that shows that on Monday the students and others were
16 paying their rent to a Receiver, but we don't see the
17 Receiver there, and they were paying in cash.

18 Now, at a previous hearing it was shown that who
19 was there was Mr. Godwin and Mr. Jones.

20 Your Honor, again, their presence on the property
21 when a Receiver has been appointed by the Court, is com-
22 pelling evidence.

23 MS. BYRD: Again, your Honor, there is no evidence of
24 conversion whatsoever. This shows pictures of persons
25 or members of Hotel and Motel Holdings being on the

1 property with the Receiver's permission.

2 It in no way shows the conversion of any assets what-
3 soever.

4 THE COURT: Move on then to Unfair Trade Practices.

5 MS. BYRD: In Unfair Trade Practices, Your Honor,
6 the elements are a violation of this act, an unfair trade
7 practice that impacts the public interest which is shown
8 by the possibility of repetition.

9 Also, a showing that the acts have occurred in the
10 past or accompanying policies and procedures that have a
11 potential for repetition, as well as proximate cause of
12 injury.

13 Your Honor, the allegation is that Hotel and Motel
14 Holdings is in the business of lending money to the pub-
15 lic, and based on all the conspiracy and conversion alle-
16 gations those would be unfair and deceptive acts.

17 Under the unfair trade practices, Your Honor, Hotel
18 and Motel Holdings, according to deposition testimony,
19 has only engaged in one transaction. There is absolutely
20 no evidence that they were in the business of lending
21 money to the public or in any way interacting with the
22 public.

23 Your Honor, in addition, this was a single transac-
24 tion between two commercial prop -- people. I mean, it
25 was the first interchange with Hotel and Motel Holdings.

1 There is no impact on the public whatsoever. It was
2 a transaction between the two parties with no evidence of
3 any violation of the Act by the Bank or Motel and Hotel
4 Holdings.

5 THE COURT: Briefly.

6 MS. COOK: Your Honor, with regard to the unfair
7 trade practices, the claim against H and M was as a direct
8 result of not being a holder in due course.

9 For the purpose of the transaction, the Bank is in
10 the business and trade of making loans, both residential
11 and commercial, and that is replete in the testimony by
12 way of deposition.

13 As to H and M, according to the deposition of Mr.
14 Samuels' deposition, they engaged in this kind of business
15 practice with the public.

16 THE COURT: Move on to the next one.

17 MS. BYRD: Yes, Your Honor. Interference with con-
18 tractual relationship.

19 The elements of interference with contractual rela-
20 tionship are a contract, an offer with knowledge of the
21 contract, the potential for procurement of its breach,
22 without justification, and damage resulting therefrom.

23 The allegations are of two contracts. One is a con-
24 tract with renters for the property, and the second is a
25 contract between BJC and First Palmetto.

1 Your Honor, with regard to First Palmetto, that is
2 easy. There has been no breach of that contract. It
3 was assigned. There was an assignment of the contract,
4 and there's no breach there.

5 With regard to the renters, there has been no evi-
6 dence to establish that there was any contract -- there
7 has not been any evidence presented about any contract
8 there or any breach of contract, Your Honor.

9 THE COURT: Thank you. Response?

10 MS. COOK: Your Honor, with regard to interference
11 with contract, it is our position that H and M and its
12 principal, Mr. Jack Jones, is alleged to have interfered
13 with the relationship between the First Palmetto and my
14 client, BJC.

15 At the time, I concede that H and M was not formed,
16 but if H and M was nothing but a shell corporation and
17 this is the only transaction it ever entered into is this
18 transaction, then by forming this LLC, which had no funds
19 and no assets, as testified to by Mr. Jones in his depositions.
20 tion.

21 It was his testimony that the only asset they had at
22 the time of purchase of the transaction was Two Hundred
23 and Fifty Thousand Dollars he lent H and M to buy these
24 loan papers.

25 The Four Million Seven Hundred and Fifty Thousand

1 Dollars from the loan proceeds that the Bank lent him or
2 lent H and M to buy this transaction -- that admittedly
3 is the only assets the LLC had.

4 He further testified in his deposition that other
5 than that Two Hundred Fifty Thousand Dollars and the Four
6 Million Seven Hundred Fifty Thousand Dollar loan proceeds
7 from the Bank that he and Mr. Godwin had put down another
8 Five Thousand Dollars each or Ten Thousand Dollars each
9 since the formation of the company.

10 That testimony is here before Your Honor, if you
11 would look at those records for that loan that was set
12 up by Mr. Godwin and Mr. Jones for this shell corporation.
13 There was also a contribution that went to County Council,
14 and with regard to interference with the contract, they
15 interfered with the loan relationship.

16 From the evidence in this case, a jury could draw a
17 conclusion that but for the interference of Jack Jones
18 in forming H and M -- but for his interference in ~~form-~~
19 ing H and M to try to protect himself individually, no one
20 would have come up with this scheme, but the Bank would
21 have lived up to its offer to extend the loan.

22 As a result of interference of Jack Jones, the scheme
23 was formed, and that was the interference that caused the
24 result we have seen here.

25 THE COURT: All right. Ms. Byrd?

1 MS. BYRD: I'll move on to the next one, the inten-
2 tional infliction of emotional distress.

3 The elements of intentional infliction of emotional
4 distress are conduct which is so egregious that it exceeds
5 all possible bounds of decency and actually caused the
6 Plaintiff emotional distress, so severe that no reasonable
7 man could be expected to endure it.

8 Here the emotional distress that was alleged by Ms.
9 Bellamy was her attempt to take her own life in November
10 of 2008, Your Honor, a year prior to Hotel and Motel being
11 formed.

12 That was her own deposition testimony, Your Honor,
13 and it was related to her obligations which she undertook
14 and knew were due to the Bank.

15 Your Honor, there is no conduct on the part of H and
16 M that caused Ms. Bellamy emotional distress or such that
17 caused her to attempt to take her own life.

18 THE COURT: Ms. Cook.

19 MS. COOK: Your Honor, I would agree with Ms. Byrd
20 that the acts of H and M nor Mr. Jones caused Ms. Bellamy
21 to attempt to try to take her own life, but it has been
22 -- the evidence has clearly shown, as Mr. Harvey Jones
23 has testified, that as a result of acts of H and M, Mr.
24 Jones and the Bank and their scheme that he has contin-
25 ued to suffer; that he has had a heart attack and has

1 continued health problems. He testified concerning that
2 in his deposition.

3 Ms. Bellamy also testified in her deposition, Your
4 Honor, that when she gave him that Power of Attorney, she
5 believed in her heart of hearts, knowing as he testified
6 in his deposition that's before Your Honor, that she tried
7 to kill herself over this very thing, the prospect of
8 losing her family property, that he would take care of
9 her as she was assured and then he conspired with others
10 to steal her property from her.

11 That that caused her distress, Your Honor, and I be-
12 lieve if you look Matrix case itself, Matrix Financial
13 versus Frazier, one of the things the Court talked about
14 in that case was unclean hands and that outrageous con-
15 duct can cause emotional distress.

16 THE COURT: All right. Is there anything
17 further with regard to the Counterclaims or is that all
18 of it?

19 MS. BYRD: I think that is all of it, Your Honor.

20 THE COURT: All right. Do you want to move on now
21 to the Summary Judgment Motions on behalf of the Plaintiff?

22 MS. BYRD: Yes, sir, Your Honor.

23 Our Motion for Summary Judgment is that essentially
24 in the context of a foreclosure action the Plaintiff has
25 the burden of establishing that there is a debt, that it

1 owns the debt, and there was a default on the debt.

2 Your Honor, in this case there is no dispute that
3 there is a debt. Everyone in this case essentially has
4 testified that the loan was made, that BJC got the loan,
5 and it hasn't been paid back.

6 So the debt has been established. The amount of the
7 debt has yet to be determined as charges continue to
8 amount, but, Your Honor, that can be established in summary
9 hearing.

10 Then it must be established that there was a default.
11 Your Honor, in this case it is clear that there was a de-
12 fault, and it does not seem there is any genuine issue of
13 material fact.

14 Even by counsel's own admission to the Court, they
15 failed to make payment that was due on May 31st.

16 Now, they contend that was Hundred and Fifty Thous-
17 and Dollars, but regardless of what was due on May 31st
18 that amount wasn't paid.

19 So there is no genuine issue of material fact as to
20 the existence of the debt, that there has been a default
21 on the debt, and the debt has not been paid. No one dis-
22 putes that.

23 The ownership of the debt has likewise been estab-
24 lished by the public record, and there is no contention
25 that Hotel and Motel Holdings does not own the mortgage.

1 It is a matter of public record that the mortgages,
2 the three mortgages that are the subject of this foreclos-
3 ure, have been assigned to Hotel and Motel Holdings, Your
4 Honor.

5 So once those elements have been established, the
6 burden shifts to the Defendants to establish a viable de-
7 fense, which in this case, Your Honor, has not -- they
8 have not done. They have not met their burden.

9 I don't know if -- would you like me to go through
10 the defenses as to . .

11 THE COURT: It might not be a bad idea to go through
12 that.

13 MS. BYRD: Thank you, Your Honor.

14 As to the defense of H and M not being a holder in
15 due course, that is not really a defense. It is our bur-
16 den and we have established the ownership of the debt.

17 It is our position there has not been a viable de-
18 fense raised and the holder in due course issue has not
19 even come up.

20 THE COURT: Ms. Cook.

21 MS. COOK: Your Honor, with regard to the fact that
22 there is a debt, we do not dispute that.

23 The fact that there is a default, we do dispute that,
24 Your Honor.

25 We a c knowledge the fact of the payment that was

1 due on May 31, 2009, of a Hundred and Fifty Thousand Dol-
2 lars was not paid, but as a part of our defenses we say
3 that it was not paid because we were prevented by the bad
4 faith and unclean hands of the Bank in its dealings as
5 far as the contract.

6 We also say that there is an issue of fact in the
7 case as to what was due. Our position is that the pay-
8 ment of a Hundred and Fifty Thousand Dollars was due on
9 May 31st.

10 The testimony of Mr. Jones in his deposition was that
11 he knew that a Hundred Fifty Thousand Dollars was due
12 also -- Mr. Jack Jones, I apologize.

13 Mr. Jack Jones' testimony in deposition was that he
14 was advised that if the Hundred and Fifty Thousand Dol-
15 lars was paid by May 31st the Bank would continue to work
16 with them.

17 The Bank didn't put anything in writing as to what
18 they would or wouldn't do, and there is further testi-
19 mony in this record that Five Million Five Hundred Thous-
20 and Dollars or Five Million and change was due on May the
21 31st.

22 So obviously they weren't even talking about the
23 fact that a Hundred Fifty Thousand was due, Your Honor,
24 but the most important defense in this case, Your Honor,
25 is breach of duty of good faith and fair dealing, and

1 also unclean hands.

2 We have clearly established facts with regard to both
3 defenses, but we agree upon that while being a holder in
4 due course is not actually a defense, it can be raised once
5 we have established it and once we have gotten rid of the
6 other defenses first, Your Honor.

7 In this case, we believe that H and M has not proven
8 that they are holders in due course in this case, and if
9 they are not holders in due course there is a factual is-
10 sue that must be determined by a jury as to whether H and
11 M is a holder in due course because of the actual know-
12 ledge of its principal of this conspiracy by which they
13 obtained possession and ownership of the loan documents.

14 THE COURT: Let's move on to the next one.

15 MS. BYRD: Yes, sir, Your Honor. The next defense
16 is a lack of consideration.

17 In their Answer they said generally that the loan
18 assignment from First Palmetto to Hotel and Motel Hold-
19 ings was not at arms length and was in and of itself not
20 a consideration.

21 Again, it is clearly established by the evidence
22 based on the loan sale agreement and testimony of all of
23 the witnesses that the price for this loan was Five Mil-
24 lion Dollars.

25 The loan in this case was discounted by Twenty-nine

1 Thousand Dollars. That is how much the discount on the
2 loan was for Hotel and Motel Holdings.

3 In their memorandum in opposition to our motion, the
4 Defendants have indicated that the only money paid to the
5 Bank was Two Hundred Fifty Thousand Dollars, which at
6 the closing is accurate.

7 Two Hundred and Fifty Thousand Dollars was paid at
8 closing. However, at the closing there were two control
9 agreements also executed whereby First Palmetto was given
10 the right to take control of Certificates of Deposit that
11 amounted to One point Seven Five Million Dollars, and the
12 reason why they were not liquidated and given at closing
13 was because of the fees that would have been incurred
14 prior to maturity of those CDs.

15 So the Bank said, instead of incurring those penal-
16 ties, we will have you sign a control agreement.

17 If you look at it, counsel would concede that act-
18 ually Two Million Dollars in cash has been paid to the
19 Bank.

20 One Million went to reduce the principal owed, which
21 is now Four Million Dollars that Hotel and Motel Holdings
22 owes.

23 The other Million Dollars was placed in an irrevoc-
24 able certificate of deposit with an interest period served
25 of five years. So that each month that Certificate of

1 deposit is deducted from the monthly interest payment
2 being made monthly in an account which the Bank exclu-
3 sively has control over.

4 So, Your Honor, the contention that there is no con-
5 sideration is totally not correct.

6 In addition to the Two Million Dollars and the Four
7 Million Dollar note that is still owing, the Bank also
8 got an assignment of the collateral so that the Bank has
9 in essence Two Million Dollars in cash, the Four Million
10 Dollar note from Hotel and Motel Holdings, and Hotel and
11 Motel Holdings assigned ^{its right to} back/the collateral.

12 It is also secured by Trip Cullen's personal guaran-
13 tee, Ms. Bellamy's guarantee and Mr. Jones' guarantee.
14 So this transaction, Your Honor, we supported by consider-
15 ation as well as the property.

16 Even if we assume there was no consideration, that
17 is not a defense for the Defendants to assert to attack
18 the validity of the contract that was between
19 Hotel and Motel Holdings and First Palmetto.

20 THE COURT: Briefly.

21 MS. COOK: Your Honor, some of what Ms. Byrd just
22 said we do concede.

23 We do concede that Two Hundred Fifty Thousand Dol-
24 lars was paid on June 30th, but another Seven Hundred and
25 Fifty Thousand Dollars was paid in mid-October. That was

1 a part of the CD Ms. Byrd talked about.

2 At closing, all that was paid was Two Hundred and
3 Fifty Thousand Dollars. The Bank chose to give Jack
4 Jones, who did not fill out a loan application -- neither
5 did H and M fill out a loan application . .

6 MS. BYRD: Your Honor, again, the loan application
7 is a part of the record. It is called an installment ap-
8 plication.

9 MS. COOK: Your Honor, in the record it shows that
10 -- and Mr. Jones in his deposition testimony has already
11 said -- there is a loan application.

12 It has nothing filled out but the amount and the date
13 it was signed.

14 He testified in his deposition, as did Mr. Smalls,
15 Mr. Sammy Smalls, that they did make him provide a finan-
16 cial statement for both H and M and himself but they did
17 not pull credit reports. They didn't do anything other
18 than -- they didn't do any due diligence other than to
19 accept payment of Two Hundred Fifty Thousand Dollars on
20 June 30th and accept the CDs.

21 I would concede that in mid-October another Seven
22 Hundred and Fifty Thousand Dollars was paid, Your Honor,
23 but they didn't make us that offer. They didn't give us
24 an offer to pay interest on the money for five years.

25 In addition, there is evidence in the record before

1 you that when this foreclosure was filed on June the 11th,
2 that was the day before H and M was formed. When the
3 foreclosure was filed by First Palmetto, Sammy Smalls,
4 Junior, the COO of the Bank, signed an affidavit saying
5 that (balance of sentence inaudible on tape)

6 I can look up the exact amount, Your Honor, if you
7 could give me a minute.

8 (Brief pause in proceeding)

9 As of June 11th, Your Honor, Five Million Four Hun-
10 dred Forty-three Thousand Two Hundred and Eighty-eight
11 Dollars and Twenty-eight Cents was owed.

12 At the time, the Bank was advised they had gotten
13 an appraisal of Six Million Seven Hundred Fifty-five Thous-
14 and Dollars.

15 So to sell the loan to a newly formed corporation
16 who had no track record and had no income other than loans
17 from its principal, has no other business, had not en-
18 gaged in any other business, and at payments of interest
19 only at five percent without requiring any personal guar-
20 antee or requiring tax returns or anything from the new
21 corporation, Your Honor, that clearly shows there was a
22 lack of consideration.

23 THE COURT: Would you like to respond to that, Ms.
24 Byrd?

25 MS. BYRD: Yes, Your Honor.

1 THE COURT: All right. Briefly.

2 MS. BYRD: I would only say, Your Honor, that we
3 were not buying the property. We were buying the loan, and
4 and that is a critical distinction. The property was
5 still subject to a mortgage so the Bank was well secured
6 in this loan, Your Honor.

7 THE COURT: Move on to the next one, please.

8 MS. BYRD: Okay. The next one is lack of notice,
9 Your Honor. The evidence in this case clearly demon-
10 states that the owners were well aware of the default.

11 Beginning in October of 2008, the Bank had meetings
12 with these folks and told them they were in default.
13 Two letters -- two letters were sent by a law firm for
14 the Bank informing them of their default.

15 Kersi Shroff, a member of BJC, testified that he
16 received multiple notices of the default.

17 In addition to that, the foreclosure action was ac-
18 tually filed and served in February of 2009, wherein it
19 outlined the series of the default.

20 The Bank is not required to continue to provide no-
21 tice of default. Even if they were, after the May 31st
22 -- the argument is that there was no notification of de-
23 fault based on May 31st.

24 Well, Your Honor, the evidence again is to the con-
25 trary.

1 According to Ms. Bellamy's testimony, Mr. Smalls,
2 Senior, the CEO of the Bank, came down and personally
3 told them on June 5th, and she recalled that date -- on
4 June 5th of the default and that personal guarantee ac-
5 tions had been filed.

6 It wasn't until June 11th that the foreclosure ac-
7 tion was filed, the present action.

8 So there was ample notice given to the owners of
9 their default.

10 THE COURT: All right. Ms. Cook, briefly.

11 MS. COOK: Your Honor, there is a factual dispute with
12 regard to that, and what was said about the law firm and
13 the notice sent by them. I only remember one that was
14 June 9th, and I would put that in the record.

15 But that is really neither here nor there. There was
16 a default in 2008 which was cured by the payment of Eighty-
17 six Thousand and some change.

18 The Bank then on January 22nd, 2009, had an in-person
19 meeting with some of the principals involved here and with
20 Jack Jones when they at that point in time took part of
21 the collateral that they had secured the loan transaction
22 with and a CD. At that meeting, Your Honor, the Bank in
23 -- the Bank then in February of 2009 modified the loan
24 and their agreement with BJC which modification was relied
25 on for BJC to pay -- the undisputed evidence is for BJC

1 paid Ninety-five Thousand Dollars to the Bank on June
2 third, pay Ninety-one Thousand and change, pay the little
3 bit of taxes owed on the property, which they paid on the
4 same day.

5 At that point in time, the agreement with the Bank
6 was modified and we were current, and we remained current
7 until May 31st when the Hundred Fifty Thousand Dollar pay-
8 ment was not made.

9 We put the documents in our brief which talks about
10 what notice is required. While I agree that Ms. Bellamy
11 said that Mr. Smalls, Senior, came down to the property
12 on June 3rd and said he was going to foreclose, it is
13 clear from the evidence that they were not given any no-
14 tice in writing and were not given any opportunity to
15 cure the default after the May 31st non-payment on the
16 loan, which we maintain was as a result of the bad acts
17 of Mr. Jones.

18 THE COURT: Move on to the next one, please.

19 MS. BYRD: The next defense, Your Honor, is failure
20 (balance of sentence not audible)

21 It is a bare assertion of a defense, and we
22 don't have any -- there are no conditions precedent that
23 we are aware of which have not been met.

24 MS. COOK: Your Honor, it is our position that we
25 were offered no opportunity to cure and, of course, the

1 foreclosure was begun.

2 Additionally, Your Honor, there is certainly a re-
3 quirement on the assignment of the note and mortgages to
4 H and M under the loan agreement provision which said
5 that H and M had to give certified notice of the assign-
6 ment from the Bank to H and M to my clients within five
7 days of the transaction, the transfer of the transaction.

8 That did not take place, Your Honor.

9 THE COURT: Yes, maam.

10 MS. BYRD: Your Honor, just with regards to the last
11 thing, that notification was accomplished and it was done
12 through counsel, the substitution of the parties.

13 THE COURT: Move on to the next one.

14 MS. BYRD: The next defense is lack of damages.

15 Your Honor, I am not sure what the basis of that one
16 is because we clearly have been damaged.

17 We have been damaged in having to pay the loan as it
18 was due and matured, which we have done, as well as the
19 accrued interest.

20 Clearly we have suffered damages, though we are not
21 clear what the Bank would say.

22 THE COURT: Ms. Cook.

23 MS. COOK: Your Honor, if the breach of contract
24 caused those damages then we do not owe them anything
25 or any damages, and they cannot pursue damages against

1 my clients or put their damages at the feet of my clients,
2 Your Honor.

3 THE COURT: All right.

4 MS. BYRD: They have asserted that but for interfer-
5 ence by Hotel and Motel Holdings they were prevented from
6 making the loan payments.

7 Again, Your Honor, the breach was done prior to the
8 formation of Hotel and Motel Holdings.

9 In addition to that, Your Honor, factually that al-
10 legation is unfounded. Through the testimony of Ms.
11 Bellamy herself, the hotel would never, ever have been
12 able to make these loan payments.

13 Nothing that anybody did changed the financial con-
14 dition, and Ms. Bellamy said they were never able to make
15 the payments.

16 Nothing that anyone did interfered with their abil-
17 ity to pay. It was impossible from the beginning, Your
18 Honor.

19 THE COURT: All right.

20 MS. COOK: Well, Your Honor, that is quite a shock,
21 in that, first of all, when you look at the deposition in
22 its totality, she testified in the beginning about the
23 fact that they made every payment.

24 They would have had to make the payments, Your Honor,
25 from the operation of the motel or some other means after

1 it closed down.

2 The Bank had gone from January 14, 2005, to two
3 years of non-payment. Twenty-four months of non-payment,
4 and then they renewed the loan for another year for in-
5 terest only.

6 Those payments were made for a whole year, and then
7 they renewed it for another year, Your Honor. They paid
8 interest and principal, and that would have been the year
9 -- the calendar year 2007 to 2008, Your Honor.

10 Then they did get behind but they made all those
11 payments up, Your Honor. They paid Eighty-six Thousand
12 Dollars in early November.

13 Your Honor, we've got the payment history showing
14 all those payments.

15 The next payment that was required was Ninety-five
16 Thousand Dollars on January first, and we made that pay-
17 ment, Your Honor, as well as the next payment which was
18 for the taxes. We made every payment that was required
19 of us until H and M interfered in this case and Mr. Jones.

20 THE COURT: All right.

21 MS. COOK: Mr. Jack Jones and H and M.

22 THE COURT: All right.

23 MS. BYRD: I will deal with the last thing in one
24 fell swoop. It is waiver of estoppel and unclean hands,
25 and it is just a general allegation that we have waived

1 our rights, that they're estopped to foreclose, and we
2 have unclean hands, Your Honor.

3 There is no evidence of waiver. They have not pled
4 the estoppel elements, and the same with unclean hands.

5 THE COURT: All right. Let's go on to the motion
6 to disqualify.

7 MR. SHORT: Your Honor, would you want to take up
8 now the Bank's motion for summary judgment?

9 THE COURT: Whichever one you all want to do first
10 is fine. You are standing, so go ahead.

11 MR. SHORT: Thank you, Your Honor.

12 I'll try to take them in summary fashion and Ms.
13 Cook can then respond. Then we would move to the plead-
14 ings that arrived last night and some additional things
15 she has alleged.

16 The first allegation is that First Palmetto Savings
17 Bank breached the contract which is untrue, and that cites
18 to the deposition page and line.

19 The loan was in foreclosure because it was not cur-
20 rent. She said the loan was current but that is not true.
21 The loan matured in January of 2009, and that is undis-
22 puted.

23 The debt all came due. It was not accelerated by
24 the Bank but the loan matured.

25 There was no breach of any implied covenant of good

1 faith and fair dealing because the loan was in default.
2 We didn't owe them any duty, and I just want to be real
3 clear on that.

4 Your Honor, as to the consideration paid by H and
5 M, I believe Ms. Byrd addressed that. They paid us Five
6 Million Dollars for a loan on which we were owed Four
7 Million Dollars. We had a Million Dollar payout and we
8 are holding a Million Dollars in interest carrying, Your
9 Honor.

10 The Bank did not interfere with the operation of the
11 motel by BJC. There is no proof of that. There is no
12 evidence of that.

13 MS. COOK: Your Honor, we have alleged that as to
14 H and M, not against the Bank.

15 MR. SHORT: Your Honor, it was my belief she con-
16 tended that allegation against us.

17 She alleged that the Bank disclosed confidential
18 information. Your Honor, number one, it is not true,
19 and, number two, the loan was in default.

20 They had no expectation of any rights when the loan
21 went into default. The Bank did foreclose it in February
22 of 2009. That ends the issue.

23 It became a public record event because of the fore-
24 closure, not because we said anything. That was no breach of
25 implied covenant of good faith and fair dealing. I think

1 we both argued that, and I don't know that we need to go
2 into that, Your Honor.

3 Your Honor, the second assertion against us, that
4 we breached the contract accompanied by fraud, there is
5 no evidence of any breach of contract.

6 The loan went into default. It was matured and not
7 paid. Your Honor, if there is no breach of contract,
8 there can't be a breach of contract accompanied by fraud.

9 I would say, number one, the pleadings fail in terms
10 of the allegations of fraud, and, more importantly, there
11 is no proof of any actual fraud at the time the debt was
12 in default.

13 Your Honor, as to conspiracy and special damages, it
14 has not been proven, and, number two, and this is very
15 significant, there is no party with which we could have
16 conspired. H and M didn't exist until June.

17 Regardless of the plethora of Ms. Cook has alleged,
18 the entity that is the Plaintiff in the action did not
19 legally exist. There is no one we could have conspired
20 with.

21 Your Honor, I will respond to Ms. Cook's arguments
22 and then I'll go through the brief that we got from her
23 last night.

24 THE COURT: All right.

25 MS. COOK: Your Honor, I'm going to try not to --

1 a lot of my argument against the Bank has already been
2 made, that H and M is not a holder in due course, and
3 I will just stand on that.

4 But I want to address first what Mr. Short has just
5 said about there is no one with whom the bank could have
6 conspired, no person with whom they could have conspired.

7 Just because what the pleadings say at this point
8 and because of actions and claims that have been struck
9 from this action, which the Court has previously told me
10 I could bring in a separate action, the conversion, con-
11 spiracy, claims against individuals, does not mean that
12 the Bank did not conspire with Mr. Jones and others to
13 carry out this scheme and make it impossible for my cli-
14 ents to comply with the most modified terms of the trans-
15 action with us.

16 Putting the property in foreclosure in a deal they
17 had struck as early as at least prior to hiring the law
18 firm to paper the deal in April of 2009, Your Honor.

19 The fact that H and M was not formed and the fact
20 that in the pleadings as they stand now I have not sued
21 Jack Jones for conspiracy does not mean that there was
22 not an actionable conspiracy between the Bank and Mr.
23 Jones even if Mr. Jones was not sued.

24 They would be jointly and severally liable, and I
25 can sue only one co-conspiracy. I don't have to sue all

1 co-conspirators.

2 So the fact that Mr. Short has stated there was no
3 one with whom the Bank could conspire, there were persons
4 with whom it could conspire.

5 In fact, there is case law even out of Horry County
6 itself that says that an entity can conspire with members
7 of the entity if they are moving outside of their obliga-
8 tion.

9 In Horry County -- I'm trying to recite the case law
10 but it was where Ms. Gillam in her individual capacity
11 and in her capacity of Chairman of Horry County Council
12 was sued for conspiracy herself and with the County Coun-
13 cil.

14 So the members of the Bank themselves could have
15 conspired with each other, Your Honor. A conspiracy is
16 between a main party in this case and a third party.

17 I also would say that as to the divulging of private
18 information, the divulging of private information was --
19 the facts in the case support from which a jury could
20 find that the members of the Bank -- this is a small
21 County and we all know how bankers talk. In fact, before
22 the February -- before the filing of the February 2nd
23 foreclosure action which was dismissed when we paid the
24 money to the Bank and the Bank modified the terms of the
25 loan terms with us -- before that was filed, the testimony

1 of my client that is in the record was that they were run-
2 ning their mouths about the situation. The family is a
3 prominent, upstanding family in our area, and they were
4 getting calls from people.

5 That is why you see in the record before you two
6 pieces of paper. One is a letter from Ms. Bellamy after
7 she had gone to the Bank and handed them the Ninety-five
8 Thousand Dollar check.

9 She was told at that time by her testimony that we
10 will handle this and there will be no more talk, and
11 what do you see? What is see is a female the very next
12 day, a loan officer or supervisor, Ms. Hutto -- they were
13 saying no more talk -- it speaks for itself. No more
14 talk about this loan on the street.

15 That was before -- that occurred before the litiga-
16 tion was filed, yes, sir, and there was -- the fact that
17 Mr. Short wants to say that the loan had matured and was
18 in default, Your Honor, it had matured by the terms of
19 the written agreement, but that written agreement had
20 been modified by the Bank in their oral and written con-
21 versations thereafter the January 22nd meeting by allow-
22 ing and testifying that if you do this, we'll work with
23 you; if you do this, we'll work with you.

24 There has been no acceleration of the debt, Your
25 Honor, and there was no acceleration of the debt until

1 after the May 31, 2009, payment was missed, caused by and
2 concealed by others in this action.

3 Let's see, Your Honor. Your Honor, I think I prob-
4 ably covered all the other defenses in my argument with
5 regard to H and M.

6 THE COURT: Do you have any response to her argument
7 at this point?

8 MR. SHORT: I have no response to this argument at
9 this point.

10 We take exception to having gotten this last night
11 at five thirty. There is a lot of material that is cited
12 as evidence, deposition transcripts that are not related
13 to the issues.

14 Your Honor, one issue in particular that we take ex-
15 ception to is introduction into evidence of -- a lot of
16 what is claimed to be evidence is Ms. Bellamy testified
17 she spoke to the bank, as Ms. Cook just said -- that is
18 hearsay, Your Honor.

19 It is objectionable and it doesn't get to the jury.
20 That is what is in the deposition transcripts. Why she
21 wants to give it to you in whole is because there is stuff
22 in there that doesn't get to a jury.

23 It is not authenticated, not identified, and it is
24 hearsay. It is excluded and that is the information in
25 this brief. That is why we take exception to it.

1 I would ask Your Honor to take all of that into con-
2 sideration as you make your deliberation on this.

3 I think Ms. Byrd and I -- we have tried to make a very
4 focused argument, Your Honor.

5 You know, it was Ms. Cook's argument that these pic-
6 tures are in evidence. Well, they are not.

7 There was a motion hearing, a motion to compel a
8 receiver. She presented these, and they are unidentified
9 and unauthenticated. If they are in the record, it was
10 because they remain there, not because they were admitted
11 into evidence.

12 There are a lot of matters Ms. Cook has discussed as
13 evidence that is really not evidence, Your Honor.

14 THE COURT: All right.

15 MS. COOK: Your Honor, two points there. We are
16 here on a summary judgment motion, and it is my understand-
17 ing that at this juncture it doesn't have to be admissable
18 evidence. I may have mis-spoke and I did not mean to
19 mislead the Court.

20 I wanted to show the Court that there are inferences
21 to be drawn from the facts that might present material
22 issues that must go to the jury. I am not saying every-
23 thing in this argument or everything in these depositions
24 is going to get to a jury.

25 THE COURT: Go to the motion to disqualify.

1 TRANSCRIBER NOTE:

2 Linda McCall included a note with this record as
3 follows:

4 "Exhibits delivered to Kathryn Cook to go to the
5 Horry County Clerk of Court, by Order of the Court."

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CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for
South Carolina Court Administration, do hereby certify
that the foregoing Transcript was produced from the records
of Linda McCall, to the best of my ability, having been
heard in the Court of Common Pleas on May 12, 2011, in
Georgetown, South Carolina.

FURTHER, I certify that I am neither of kin nor of
counsel, nor do I have any interest in the outcome of the
matter.

This 2nd day of December, 2011.

A handwritten signature in cursive script, reading "Harriet P. Bennett", is written over the signature line.

RECEIPT FOR EXHIBITS

CASE NO. 09 CP 26-5743 JUDGE William Seale
 PLAINTIFF Hotel & Motel Holdings LLC PLTF'S ATTY. Andra Byrd
 DEFENDANT: BJC Enterprises, et al DEF'D ATTY. Kathryn Cook
 DATE TRIAL STARTED: 5-12-11 DATE TRIAL ENDED: 5-12-11

Received of Linda W McCall, Court Reporter for the above case, these exhibits:

	This space for Clerk of court's use
1. <u>Deposition - 10-10-10 Jack Jones</u>	
2. <u>Deposition 3-25-11 Jack Jones</u>	
3. <u>Deposition - Donald Godwin</u>	
4. <u>Deposition - Sammy Small SR</u>	
5. <u>Deposition - Sammy Small JR</u>	
6. <u>Deposition - Brent Hatto</u>	
7. <u>Deposition - Bhupendra Patel</u>	
8. <u>Deposition Wendy Bellamy</u>	
9. <u>Deposition Harvey Jones</u>	
10. <u>Group of Photographs</u>	
11. <u>Modification Agreement - 1-12-07 - BJC</u>	
12. <u>Modification Agreement - 1-17-08 - BJC</u>	
13. <u>Modification Agreement - 1-17-08 - Americana</u>	
14. <u>Modification Agreement - 1-17-08 - Wendy Bellamy</u>	
15. _____	
16. _____	
17. _____	
18. _____	
19. _____	
20. _____	

This _____ day of May, 20 11.

Page 1 of 1

HORRY COUNTY CLERK OF COURT

By: _____

1 State of South Carolina) In the Court
2 County of Horry) Of Common Pleas

3 Docket No.: 2009CP2605743
4

5
6 Hotel & Motel Holdings, LLC,)
Plaintiff,)
7)

8 vs.)
9)

10 BJC Enterprises, LLC, Wendy J. Bellamy,)
Americana, Inc., a/k/a Motel of Myrtle)
Beach, Inc., Mozingo and Wallace)
11 Architects, LLC, Kersi S. Shroff, and)
Shroff Management, Inc.,)
12 Defendants.)

Transcript of
Record

13)
14 BJC Enterprises, LLC, Wendy J. Bellamy,)
Americana, Inc., a/k/a Motel of Myrtle)
Beach, Inc.,)
15 Third Party Plaintiffs,)

16 vs.)
17)

18 FIRST PALMETTO SAVINGS BANK, F.S.B.,)
JACK JONES, DONALD D. GODWIN, AND)
19 BHUPENDRA PATEL,)
Third Party Defendants.)
20

21 August 24, 2011
22 Beaufort, South Carolina
23

24 Brenda J. Sigwald, Circuit Court
25 P.O. Box 206, Jackson, South Carolina 29831

1 B E F O R E:

2 The Honorable William H. Seals, Judge.
3
4
5

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

7 Audra Byrd, Esquire
8 Attorney for the Plaintiff
9

10 Tara Nauful, Esquire
11 Attorney for the Third Party Defendants

12 Kathryn N. Cook, Esquire
13 Attorney for the Defendants
14
15
16
17
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19
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22
23
24

25 Brenda J. Sigwald, Circuit Court
P.O. Box 206, Jackson, South Carolina 29831

1 THE COURT: Is everybody here?

2 MS. BYRD: Yes, sir, Your Honor.

3 THE COURT: All right. I'll be glad to hear any
4 motions that you have whenever you're ready.

5 MS. BYRD: Yes, sir, Your Honor. We have a motion
6 to strike the request for a jury trial in this matter. The
7 grounds for the motion are that based on the Court's prior
8 rulings, the only causes of action that are left in the
9 complaint are equitable, and therefore, the defendants are
10 not entitled to a jury trial.

11 Your Honor, the three causes of action that were
12 asserted in the initial complaint and amended complaint
13 were for foreclosure of real property and mortgages, a
14 claim and delivery, an appointment of receiver and
15 assignment of rents. By order dated April 20, 2010, Judge
16 John appointed a receiver for the properties and since that
17 time the receiver has been in exclusive position and
18 control of the properties. So our position is, Your Honor,
19 that based on the prior order of the Court and the receiver
20 being in place that the causes of action for claim and
21 delivery and appointment of a receiver are now moot.
22 Therefore, the only claim that is left is the foreclosure
23 action, which, as Your Honor knows, is an equitable action
24 where there is no right to the trial by jury.

25 Your Honor, the claim and delivery action, while I

1 have said that it is a claim and delivery action, it is
2 labeled that way in the complaint, we did not draft the
3 complaint initially and probably would not have drafted it
4 in that manner because while it's labeled a claim and
5 delivery cause of action, it is not in actuality in
6 substance a claim and delivery cause of action. We have
7 not requested the immediate possession of the property.

8 We have not attempted to go in and take the
9 property, Your Honor. And what we have asked for is that
10 the property be held by the receiver and sold -- the
11 proceeds be applied to a debt, just as they would in any
12 other foreclosure action, Your Honor. The case law from
13 the South Carolina Court of Appeals, NESC versus W. H.
14 Daniel, the site is 322, SC 2nd 689, provides that there
15 are three options when you have what we have here, which is
16 essentially a chattel mortgage, the UCC financing statement
17 was filed with the Horry County Register of Deeds.

18 We have three options, and those three are to
19 peaceably take the property and apply it to the debt and,
20 Your Honor, that's essentially what we've done here. There
21 is an order here where the defendants have consented to the
22 appointment of a receiver, the receiver is in place and the
23 plan is to proceed with the foreclosure and have Your
24 Honor, under your direction, apply the proceeds from the
25 sale of the property to the debt, and that would be done in

1 a foreclosure action. It second is that if the mortgagee
2 refuses to hand over possession, then we can file a claim
3 and delivery and, Your Honor, I know that that's the
4 argument that this is a claim and delivery action and
5 therefore, the defendants are entitled to a jury trial, but
6 that's not what the evidence in this case and the substance
7 of the claim indicates.

8 There was no demand and then refusal to turn over
9 the property. There was a consent order, there's a
10 receiver in place and the bottom line is, Your Honor,
11 there's -- the defendants don't have --

12 THE COURT: So there is no claim and delivery --

13 MS. BYRD: That's right. There's no claim and
14 delivery to be had.

15 THE COURT: All right.

16 MS. BYRD: And that's all, Your Honor.

17 THE COURT: Anything from the bank?

18 MS. NAUFUL: Tara Nauful, from First Palmetto, no,
19 Your Honor.

20 THE COURT: All right. I'll be glad to hear from
21 you, Ms. Cook.

22 MS. COOK: Yes, sir, Your Honor. Well, I do not
23 disagree and I've got a copy of the complaint, amended
24 complaint, and a copy of three cases, Your Honor. And I've
25 got a copy of that for Counsel as well, one for your clerk

1 and one for yourself; and I don't believe Audra would even
2 dispute this, but a claim and delivery is an action of law.
3 They have a claim and delivery cause of action that has --
4 that has been pending in this case since 2009 when it was
5 filed and these are the pleadings that -- I'm sorry I
6 didn't know you were coming.

7 That claim and delivery action has been pending in
8 this case since 2009 and since Ms. Byrd and her
9 father-in-law took over this case for the plaintiff. Your
10 Honor, the claim and delivery action is as Ms. Byrd said,
11 to prejudgment obtain the personal property, not real
12 property, but personal property. It is then to determine a
13 debt owed, and it is then to have the property, personal
14 property that has been garnered, sold and applied to the
15 debt once the debt has been determined.

16 The debt has not -- I concede that the personal
17 property is in the hands of the receiver, whether
18 rightfully or wrongfully, and that is an issue that is
19 still to be tried. But the mortgage foreclosure is a
20 different cause of action; and under the mortgage
21 foreclosure, they have as collateral for their note,
22 mortgages on three pieces of property. They do not have
23 mortgages on personal property, FF&E, rents and proceeds
24 and a certificate of deposit in the amount of \$500,000.
25 They have the security in those things by virtue of a UCC

1 filing and by virtue of a security agreement entered into
2 in 2008 when this renewal loan was made, and that is what
3 is pled in this second cause of action in this complaint
4 starting on page 8, Your Honor. They, with our consent,
5 have been holding that personal property. The right to the
6 personal property, the right to sell the personal property
7 and the debt is still at issue under that cause of action
8 to sell is FF&E to sell or obtain the \$500,000 CD, and the
9 rents and profits.

10 While we have voluntarily allowed them to hold the
11 proceeds, that does not end the claim and delivery action
12 because as they've asked in the claim and delivery action,
13 they asked that the debt be ascertained, they've asked that
14 the collateral be sold and applied to the debt. And so
15 that cause of action, the portion with regard to the
16 procedure of that personal property may be moot, but the
17 relief they have sought and the issues as to whether they
18 can sell that property are still very much viable.

19 Under the case law of Johnson versus South Carolina
20 National Bank, 354 SE 2nd, 895, but more particularly, Your
21 Honor, the case that is pretty much directly on point here
22 is the case of First -- interestingly, I don't think it's
23 the same First Palmetto, but interestingly, First Palmetto
24 State Bank and Trust versus Boyles -- and in that case --
25 and the site to that is 394, SE 2nd 313, Your Honor. I've

1 handed that up. That's a 1990 case from the Supreme Court.
2 And in that case, the plaintiff had brought an action for
3 claim and delivery. The defendant in that case answered
4 the complaint and asserted some counter-claims that were
5 equitable and legal, but the only complaint and the --
6 brought by the plaintiff was claim and delivery. Before
7 the defendant in that case answered the complaint, so
8 within the first 30 days, Your Honor, the bank in that case
9 went ahead and got the Court to enter an order of reference
10 and the Court had sign it, had order of reference referring
11 the claim and delivery to the master in that case before
12 the answer came in, wherein the defendants demanded a jury
13 trial.

14 Once they demanded the jury trial, the circuit
15 court heard the motion of the defendants that they were
16 entitled to a jury trial on the claim and delivery matter.
17 The circuit court denied that and had the matter heard by
18 the master. It was then appealed and the Court -- the
19 Supreme Court stated the right to a jury trial in an action
20 to recover specific personal property as expressly
21 preserved in South Carolina Rule of Civil Procedure 38(a),
22 the rule states, the right of trial by jury as declared by
23 the constitution or as given by the statutes of South
24 Carolina shall be to the parties inviolate. Issues of fact
25 in an action for the recovery of money only or for specific

1 real and personal property must be tried by a jury unless a
2 jury trial is waived.

3 The Bateman and Johnson cases I've handed up make
4 it also clear, Your Honor, that -- and we did demand a jury
5 trial in our answer and counter-claims which are now gone,
6 so we just have an answer. We demanded a jury trial and
7 the cases make it clear that it's both the plaintiff and
8 the defendant that have a right to the jury trial on the
9 legal claim and legal issues. So my client has not waived
10 their jury trial and the defendants respectfully request
11 that we be able to have a jury trial on the claim and
12 delivery action.

13 I believe under the Johnson and the case law -- the
14 MBSC case law, the way that would work, Your Honor, I don't
15 deny that the foreclosure action is equitable, but the
16 South Carolina cases and the Courts have said that the --
17 anything for the jury trial should be tried first and then
18 the foreclosure action can be tried with the findings of
19 issue of law as found by the jury to be taken as law of the
20 case by the trial court. And the Court has made it clear,
21 the Supreme Court has made it clear, that you could do that
22 either by way of severing the two actions, trying the legal
23 issues before a jury first, and then the Court trying the
24 equitable actions; or it could be tried in one case with
25 the jury handling the legal issues, the Court being bound

1 by their findings of fact on the legal issues and the Court
2 deciding the equitable issues.

3 So with respect to the motion to strike, we
4 respectfully request that you deny that motion to strike
5 and allow us to go forward and have a jury trial on the
6 claim and delivery cause of action, Your Honor.

7 THE COURT: Any response to that on specifically
8 the claim amend delivery?

9 MS. BYRD: Yes, sir, Your Honor. If I may
10 approach? I'd like to hand up a case. It's Barnwell
11 Production Credit Association versus J. L. Hartzhog. Your
12 Honor, we will concede that if this were a true claim and
13 delivery cause of action, there would be a right to a jury
14 trial. Our position is that this is not a claim and
15 delivery action because although it is labeled in the
16 complaint as a claim and delivery, the request, the relief
17 was that the property be held by the receiver, sold, the
18 proceeds applied to the debt. That's what we have
19 requested. In a claim and delivery, the only request that
20 you make is that you recover possession of the personal
21 property and only when the personal property can't be had
22 do you get money damages, which distinguishes what we've
23 asked for than what's addressed in the case law.

24 Your Honor, I'd also like to point out that the --
25 if this was a claim and delivery action that this is --

1 claim and deliveries are governed by statute, Your Honor,
2 and there are certain requirements that you must have to
3 file a claim and delivery, and I think that the fact
4 that -- specifically you have to file an affidavit, five
5 different sworn statements to the effect that the debtor is
6 in possession of the collateral; sufficiently identify the
7 collateral; the value of the collateral; the reason it's
8 wrongfully being detained; and that it is, in fact, being
9 wrongfully detained.

10 Your Honor, this complaint contains none of these
11 allegations. There's not an affidavit filed. So while,
12 Your Honor, we concede that if this were a claim and
13 delivery, where we were simply saying give us the furniture
14 and we'll sell it and do whatever we want, but that
15 satisfied a claim and delivery action, is possession. It
16 is not about the sell and so that is very distinctive of
17 what we've asked for, which is simply a foreclosure of a
18 chattel mortgage, Your Honor.

19 And I'd just also like the note that the case that
20 I referred to earlier provides that all pre UCC remedies
21 available to the creditor are still available and one of
22 those was foreclosure of the chattel mortgage, Your Honor,
23 which is a term I hadn't heard before preparing for today,
24 but apparently, Your Honor, it is still there and it's
25 essentially what is pled. It is not a true claim and

1 delivery and there is no right to trial by jury.

2 THE COURT: I'm going to grant your motion to
3 strike.

4 MS. BYRD: Thank you.

5 THE COURT: Are there any other motions that --

6 MS. COOK: Your Honor, there are other motions that
7 are outstanding, but they weren't noticed for today and
8 some of them would have to do with the bank, so I think --
9 would you like me to go over what -- I spent some time
10 trying to get organized in my little brain about what was
11 left. Would you like me, for the benefit of the Court and
12 the other parties, to go over what I believe is left? Not
13 to be heard, but just to go over it?

14 MS. BYRD: That would be fine, Your Honor.

15 THE COURT: All right.

16 MS. COOK: Okay. According to my list, what is
17 left to be heard is the defendant, BJC, my client, had made
18 a motion for the Court the reconsider some findings of fact
19 that the Court had made in denying H&M's motion for summary
20 judgment. We didn't get an order on -- we didn't get a
21 ruling on that, Your Honor. So I believe that is pending.
22 And I believe that is pending, maybe not for argument, but
23 for a decision by Your Honor.

24 Your Honor, there is also pending BJC, my client's
25 motion to reconsider your recent order, which struck

SOUTH CAROLINA
COUNTY OF HORRY

COURT OF COMMON PLEAS
15TH JUDICIAL DISTRICT

2009-CP-26-5550

HOTEL AND MOTEL HOLDINGS,
LLC.

PLAINTIFF

V.

WENDY J. BELLAMY,
DEFENDANT/THIRD
PARTY PLAINTIFF

V.

FIRST PALMETTO SAVINGS
BANK, FSB, JACK JONES,
DONALD D. GODWIN, AND
BHUPENDRA PATEL,

THIRD PARTY DEFENDANTS.

copy

DEPOSITION OF
JACK H. JONES

FROM 10:00 A.M. UNTIL 4:50 P.M.
OCTOBER 21, 2010

AS TAKEN AND TRANSCRIBED BY MICHAEL J.
MCCARTHY, NOTARY PUBLIC AND VERBATIM REPORTER, AT
TURNER PADGET GRAHAM & LACEY P.A., 2411 NORTH OAK
STREET, SUITE 301, MYRTLE BEACH, SOUTH CAROLINA.

****THIS IS AN OFFICIAL TRANSCRIPT GOVERNED BY
25A SOUTH CAROLINA CODE ANN. REGS. 67-615D (SUPP.
2000). THE UNAUTHORIZED COPYING OF THIS DOCUMENT
IS DEEMED TO BE CONVERSION OF AN ASSET BELONGING TO
THE COURT REPORTER.**

MABRY COURT REPORTING

(843) 957-7653

APPEARANCES**FOR PLAINTIFF: (GODWIN & JONES)**

**TURNER PADGET GRAHAM & LACEY P.A.
AUDRA M. BYRD, ESQ.
R. WAYNE BYRD, ESQ.
2411 NORTH OAK STREET, SUITE 301
MYRTLE BEACH, SC 29577**

FOR DEFENDANT:**WENDY BELLAMY**

**COOK & ROY
KATHRYN M. COOK, ESQ.
JAMES LEWIS, ESQ.
10409 NORTH KINGS HIGHWAY
MYRTLE BEACH, SC 29572**

FIRST PALMETTO:

**HAYNSWORTH SINKLER BOYD, P.A.
WILLIAM H. SHORT, JR. ESQ.
1201 MAIN STREET
22ND FLOOR
COLUMBIA, SC 29201**

BHUPENDRA PATEL:

**DESCHAMPS LAW FIRM
WILLIAM W DESCAMPS, JR.
1551 21ST AVENUE NORTH, SUITE 14
MYRTLE BEACH, SC 29578**

ALSO APPEARING:

**DONALD GODWIN
WENDY J. BELLAMY
HARVEY JONES
BHUPENDRA PATEL**

MABRY COURT REPORTING

(843) 957-7653

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CROSS EXAMINATION BY MR. DESCHAMPS.....PAGE 241

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100. COPY OF PAPERS BROUGHT
BY MR. JONES.....PAGE 67
101. GODWIN ACCOUNTING OF H&M.....PAGE 130
102. POWER OF ATTORNEY.....PAGE 208
103. REVOCATION OF POWER OF ATTORNEY.....PAGE 209

STIPULATIONS.

IT WAS STIPULATED BY AND BETWEEN COUNSELS
FOR THE PARTIES THAT THIS DEPOSITION IS
TAKEN PURSUANT TO NOTICE AND THAT ALL
QUESTIONS AS TO NOTICE ARE WAIVED; THAT
ALL OBJECTIONS, EXCEPT AS TO THE FORM OF
THE QUESTION ARE RESERVED UNTIL THE TIME
OF TRIAL; THAT THE DEPOSITION IS TAKEN
PURSUANT TO THE RULES OF CIVIL PROCEDURE
FOR THE PURPOSES ALLOWED THEREIN; AND THAT
THE DEPONENT WAS EXPLAINED HIS RIGHT TO
READ AND SIGN THE DEPOSITION AND EXERCISES
THAT RIGHT.

.....

JACK H. JONES, HAVING BEEN DULY SWORN, TESTIFIED AS
FOLLOWS:

DIRECT EXAMINATION BY MS. COOK:

Q MR. JONES, AS YOU ARE PROBABLY PAINFULLY AWARE,
MY NAME IS KIF COOK, AND THE REASON YOU ARE
HERE TODAY IS FOR ME TO TAKE YOUR DEPOSITION.
LET ME ASK YOU, ARE YOU CURRENTLY TAKING ANY
MEDICATIONS?

A YES, MA'AM.

Q CAN YOU TELL ME WHAT MEDICATION YOU ARE TAKING

1 **A** YES, MA'AM.

2 **Q** SO IT HAS A LOAN ACCOUNT?

3 **A** YES, MA'AM.

4 **Q** DOES H&M HAVE ANY INVESTMENTS, CD'S OR ANYTHING
5 LIKE THAT WITH FIRST PALMETTO?

6 **A** YES, MA'AM.

7 **Q** H&M DOES?

8 **A** YES, MA'AM.

9 **Q** TELL ME WHAT DEPOSIT ACCOUNTS H&M HAS WITH
10 FIRST PALMETTO?

11 **A** THEY PUT UP A MILLION DOLLARS WHEN WE PURCHASED
12 THE NOTE AND MORTGAGE.

13 **Q** THAT IS A CD? ONE MILLION DOLLAR CD THAT H&M
14 HAS WITH FIRST PALMETTO?

15 **A** YES, MA'AM, I THINK SO.

16 **Q** NOW, IS THAT ONE MILLION DOLLAR CD IN THE NAME
17 OF H&M OR IS THAT ONE MILLION DOLLAR CD IN THE
18 NAME OF JACK JONES?

19 **A** H&M.

20 **Q** WHERE DID H&M GET THE ONE MILLION DOLLARS THAT
21 WAS PUT UP FOR THE CD?

22 **A** JACK JONES LOANED IT TO THEM.

23 **Q** DOES H&M HAVE ANY LOAN RELATIONSHIP WITH HORRY
24 COUNTY STATE BANK?

25 **A** A LOAN RELATIONSHIP?

—MABRY COURT REPORTING—

(843) 957-7653

1 Q YES, SIR.

2 A NO, MA'AM.

3 Q THEY ONLY HAVE A CHECKING ACCOUNT?

4 A THAT'S CORRECT.

5 Q AND H&M ALSO HAS A CHECKING ACCOUNT WITH FIRST
6 PALMETTO?

7 A I DON'T KNOW IF IT HAS A CHECKING ACCOUNT, BUT
8 WE HAVE MONEY ON DEPOSIT.

9 Q DO YOU THINK YOU HAVE MONEY ON DEPOSIT OTHER
10 THAN THE ONE MILLION?

11 A NO. THE ONE MILLION IS FOR INTEREST.

12 Q OKAY. BUT YOU DON'T KNOW IF YOU HAVE A REGULAR
13 OPERATING OR CHECKING ACCOUNT?

14 A NO, MA'AM. NOT TO MY KNOWLEDGE.

15 Q TO YOUR KNOWLEDGE, H&M DOES NOT?

16 A THEY HAVE A CHECKING ACCOUNT.

17 Q THE H&M ACCOUNT THAT IS USED TO RUN H&M IS
18 PLACED WITH ... THEIR OPERATING ACCOUNT IS WITH
19 HORRY COUNTY STATE BANK?

20 A YES, MA'AM.

21 - Q ALL RIGHT. THANK YOU. WHEN DID YOU MEET BUPI.
22 PATEL?

23 A TWENTY-FIVE YEARS AGO.

24 Q HOW DID YOU MEET HIM? WHAT BROUGHT THE TWO OF
25 YOU TOGETHER?

MABRY COURT REPORTING

(843) 957-7653

1 **A** I WAS IN THE MOTEL BUSINESS. HE WAS IN THE
2 MOTEL BUSINESS.

3 **Q** IT WAS A EVEN SMALLER TOWN BACK THEN?

4 **A** WASN'T A WHOLE LOT HERE.

5 **Q** HAVE YOU EVER BEEN REPRESENTED BY AUDRA OR
6 WAYNE BYRD IN ANY LITIGATION BEFORE THIS
7 LITIGATION?

8 **A** NO, MA'AM.

9 **Q** I'M GOING TO CALL THIS LITIGATION THE H&M
10 LITIGATION, IS THAT OKAY?

11 **A** THAT WILL BE FINE.

12 **Q** THIS THE FIRST TIME AUDRA OR WAYNE BYRD HAVE
13 EVER REPRESENTED YOU?

14 **A** YES, MA'AM.

15 **Q** HAS BILL DESCHAMPS EVER REPRESENTED YOU OR ANY
16 OF YOUR BUSINESSES IN ANYTHING?

17 **A** NO, MA'AM.

18 **Q** HAS DICKIE OR JON LESTER EVER REPRESENTED YOU
19 IN ANYTHING OTHER THAN RELATED H&M?

20 **A** YES, MA'AM.

21 **Q** WHAT KIND OF REPRESENTATION DID DICKIE OR JON
22 PROVIDE TO YOU OTHER THAN H&M?

23 **A** THEY CLOSED A GOOD MANY UNITS AT WATERWAY
24 LANDING.

25 **Q** WAS THAT JON OR WOULD THAT HAVE BEEN DICKIE?

1 GIVE HIS BACK.

2 MR. BYRD: BILL AND BILL, HOW
3 ABOUT YOU?

4 MR. SHORT: I'LL HAVE ONE.

5 Q HAVE YOU EVER DONE BUSINESS WITH OR USED ERNEST
6 RABON THE ACCOUNTANT HERE IN TOWN?

7 A NO, MA'AM.

8 Q SO WHATEVER WORK H&M OR WHATEVER WORK MR. RABON
9 IS DOING FOR H&M, IF ANY, WOULD BE THE FIRST
10 TIME THAT YOU HAD ANY BUSINESS DEALINGS WITH
11 MR. RABON? IS THAT A FAIR STATEMENT?

12 A I HAVE NEVER HAD NO BUSINESS WITH MR. RABON.

13 Q HAS DOTTY JONES EVER REPRESENTED YOU OR ANY
14 MEMBER OF YOUR FAMILY IN ANY DOMESTIC DISPUTES?

15 A I COULDN'T ANSWER THAT.

16 Q HAVE YOU EVER LENT ANY MONEY TO CASEY SCHROFF?

17 A NO, MA'AM.

18 Q HOW ABOUT JASON SCHROFF?

19 A NO, MA'AM.

20 Q HOW ABOUT BUPI PATEL?

21 A YES, MA'AM.

22 Q HOW MANY TIMES HAVE YOU LENT MONEY TO BUPI
23 PATEL?

24 A I DON'T KNOW. A NUMBER OF TIMES.

25 Q WOULD THE TIMES THAT YOU LENT MONEY TO BUPI

1 PATEL BE EVIDENCED BY ANYTHING IN WRITING?

2 WHEN YOU WOULD LEND HIM MONEY, WOULD YOU MAKE

3 HIM SIGN A NOTE OR ANY KIND OF AGREEMENT OR

4 ANYTHING OF THAT NATURE?

5 A YES, MA'AM.

6 Q WHO WOULD HAVE POSSESSION OF THOSE DOCUMENTS?

7 A THE TRASH CAN.

8 Q DOES MR. PATEL, CURRENTLY OWE YOU ANY MONEY?

9 A NO, MA'AM.

10 Q OVER THE LIFE OF YOUR LENDING RELATIONSHIP WITH

11 MR. PATEL, HOW MUCH WOULD YOU SAY YOU HAVE

12 LOANED HIM?

13 A PROBABLY, A COUPLE MILLION.

14 Q WHEN YOU WOULD LEND MONEY TO BUPI, WOULD YOU

15 HAVE TAKEN OUT OR GOTTEN SOME SECURITY A

16 MORTGAGE ON PROPERTY TO SECURE ANY LOANS YOU

17 MADE TO MR. PATEL OR HIS BUSINESSES?

18 A NO, MA'AM.

19 Q YOU WOULD ALWAYS, IF YOU LENT HIM MONEY, IT

20 WOULD BE UNSECURED LOANS?

21 A YES, MA'AM.

22 Q HAS HE ALWAYS PAID YOU BACK?

23 A YES, MA'AM.

24 Q ALL THE MONEY YOU LENT HIM?

25 A YES, MA'AM.

1 Q TO YOUR KNOWLEDGE, HAVE YOU AND MR. GODWIN
2 JOINTLY LOANED MR. PATEL ANY MONEY, BUPI PATEL?

3 A YES, MA'AM.

4 Q WHEN WAS THE LAST TIME THAT YOU AND MR. GODWIN
5 LOANED MR. PATEL ANY MONEY?

6 A IT WOULD HAVE BEEN SOME YEARS BACK. TWO OR
7 THREE. I DON'T KNOW.

8 Q ABOUT HOW MUCH WAS THAT?

9 A I DON'T KNOW. IT MIGHT HAVE BEEN HALF A
10 MILLION.

11 Q COULD IT HAVE BEEN AS MUCH AS 800,000?

12 A POSSIBLY.

13 Q WOULD YOU STILL HAVE ANY RECORDS OF THAT
14 LENDING TRANSACTION THAT YOU AND MR. GODWIN
15 LENT TO BUPI SOMEWHERE IN THE NEIGHBORHOOD THAT
16 COULD BE AS MUCH AS A HALF MILLION DOLLARS AND
17 AS MUCH AS 800,000? WOULD YOU HAVE ANY
18 PAPERWORK ON THAT?

19 A NO, MA'AM.

20 Q WAS THERE ANY PAPERWORK DONE THAT EVIDENCED
21 THAT TRANSACTION?

22 A YES, MA'AM.

23 Q TO YOUR KNOWLEDGE, WHAT KIND OF PAPERWORK WOULD
24 HAVE BEEN DONE?

25 A IT WAS HANDWRITTEN.

1 Q WOULD IT HAVE BEEN A HANDWRITTEN PROMISSORY
2 NOTE THAT SET OUT THE TERM OF REPAYMENT? WOULD
3 YOU AND MR. GODWIN GOTTEN ANY MORTGAGES OR ANY
4 SECURITY INTERESTS TO SECURE THAT LOAN?

5 A NO, MA'AM.

6 Q WERE DID YOU GET YOUR FUNDS FROM THAT YOU WENT
7 TO BUPI IN THAT TRANSACTION AND I'M REFERRING
8 TO YOU AND MR. GODWIN?

9 A I COULDN'T TELL YOU.

10 Q WHAT BANK WOULD YOU ... DID YOU HAVE CASH
11 STUFFED UNDER YOUR MATTRESS OR WOULD YOU HAVE
12 WITHDRAWN SOME MONEY FROM A BANK ACCOUNT?

13 A COULD HAVE BEEN A NUMBER OF BANKS.

14 Q TELL ME WHAT BANKS IT COULD HAVE BEEN?

15 A COULD HAVE BEEN WACCAMAW BANK.

16 Q WHAT OTHER BANK?

17 A COULD'VE BEEN NBSC.

18 Q ANYWHERE ELSE YOU COULD HAVE WITHDRAWN THE
19 MONEY?

20 A CENTURA.

21 Q CENTURA?

22 A CENTURA, I MEAN, WACCAMAW OR HORRY COUNTY.

23 Q WAS HE TO PAID BACK PRINCIPAL AND INTEREST OR
24 JUST PRINCIPAL?

25 A PRINCIPAL AND INTEREST.

1 Q DO YOU REMEMBER WHAT THE INTEREST RATE WAS ON
2 THAT WAS?

3 A NO, MA'AM, NOT OFFHAND.

4 Q BUT YOU REMEMBER YOU WERE PAID IN FULL?

5 A YES, MA'AM.

6 Q NOW, OF THE MONEY THAT WAS LENT TO MR. PATEL,
7 IN THAT TRANSACTION, WHAT PERCENTAGE OF IT OR
8 HOW MUCH OF IT WAS LENT BY YOU AND HOW MUCH OF
9 IT WAS LENT BY MR. GODWIN?

10 A FIFTY/FIFTY.

11 Q HAD YOU AND MR. GODWIN EVER LENT MR. PATEL
12 MONEY BEFORE THAT JOINTLY?

13 A NOT TO MY KNOWLEDGE.

14 Q HAVE YOU EVER LENT ANY MONEY TO NICK PATEL?

15 A I COULD HAVE. I DON'T KNOW.

16 Q TO YOUR KNOWLEDGE HAVE YOU AND MR. GODWIN EVER
17 LENT ANY MONEY TO NICK PATEL?

18 A I COULD HAVE. I DON'T KNOW.

19 Q HAVE YOU EVER DONE ANY BUSINESS WITH TONE
20 TRASK? HAS TONE TRASK EVER REPRESENTED YOU?
21 HE'S A LAWYER AND A CPA. TAX ATTORNEY. HAVE
22 YOU EVER MET MR. TRASK?

23 A IS HE A FINANCIAL ADVISOR?

24 Q YES, SIR.

25 A YES, MA'AM.

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1 **A** KENIN WALKER AND TERRY COLLIER OUT OF COLUMBIA.

2 **Q** BEFORE THAT, YOU RECOMMENDED BUPI PATEL BUT THE
3 COURT WOULDN'T APPOINT BUPI, RIGHT?

4 **A** RIGHT.

5 **Q** LET ME HAND YOU WHAT I HAVE MARKED AS EXHIBIT
6 "100". IF YOU WOULD JUST CHECK AND MAKE SURE
7 THAT IT IS A COPY OF THE PAPERS THAT YOU HAD
8 WITH YOU THERE IN FRONT OF YOU DURING THIS
9 DEPOSITION.

10 **A** YES, MA'AM.

11 PAPERS BROUGHT BY MR. JONES
12 MARKED FOR IDENTIFICATION.
13 AND INTRODUCED INTO EVIDENCE
14 AS DEFENDANT'S EXHIBIT "100".

15 **Q** IT CONSISTS OF NINE PAGES, CORRECT?

16 **A** YES, MA'AM.

17 **Q** YOU SAID THIS FIRST PAGE OF EXHIBIT "100" WAS
18 PREPARED BY MS. BYRD, YOUR ATTORNEY, CORRECT?

19 **A** YES.

20 **Q** YOU SAW IT FOR THE FIRST TIME THIS MORNING?

21 **A** YES, MA'AM.

22 **Q** THIS WRITING ON THE BOTTOM HERE THE HANDWRITING
23 IT SAYS, "OCTOBER, DONALD BECAME A ...

24 **A** MANAGER/MEMBER.

25 **Q** MANAGER/MEMBER." DO YOU RECOGNIZE THAT

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1 HOTEL/MOTEL. TELL ME WHO ORIGINALLY FORMED
2 HOTEL/MOTEL HOLDINGS, LLC?

3 **A** DONALD GODWIN IS THE ONE THAT GOT ... HE WAS
4 THE REGISTERED AGENT.

5 **Q** I PHRASED THAT QUESTION BADLY AND I APOLOGIZE.
6 WHO CAME UP WITH THE IDEA TO FORM HOTEL/MOTEL
7 HOLDINGS, LLC?

8 **A** I DID.

9 **Q** WHY WERE YOU FORMING A CORPORATION CALLED
10 HOTEL/MOTEL HOLDING, LLC?

11 **A** TO BUY PROPERTY.

12 **Q** WHAT PROPERTY WERE YOU GOING TO BUY?

13 **A** I LOOKED AT THE POINDEXTER. I LOOKED AT THE
14 SEA DIP. I LOOKED AT A NUMBER OF PROPERTIES.

15 **Q** WHEN WAS HOTEL/MOTEL HOLDING, LLC FORMED?

16 **A** JUNE 15, 2009.

17 **Q** AND YOU ARE LOOKING AT EXHIBIT NUMBER "1" THAT
18 MS. BYRD PREPARED, AND IT SAYS, "JUNE 15
19 HOTEL/MOTEL HOLDING, LLC FORMED BY FILING WITH
20 THE SOUTH CAROLINA SECRETARY OF STATE", IS THAT
21 RIGHT?

22 **A** YES, MA'AM.

23 **Q** WHEN THAT WAS FORMED ON JUNE 15, 2009, AS YOU
24 SAID, I BELIEVE, AND WE HAVE MARKED THE
25 EXHIBITS AND PULLED THEM OUT AND LOOKED AT

1 THEM, BUT DONALD GODWIN WAS SIGNED AS THE
2 REGISTERED AGENT ... BUT LET ME GET IT SO WE
3 CAN SEE. YOU LOOK AT WHAT WE HAVE MARKED AS
4 EXHIBIT NUMBER "27" EARLIER IN DEPOSITIONS AND
5 I'M GOING TO SHOW YOU THE ORIGINAL DEPOSITION
6 NOTEBOOK. I'M GOING TO ACTUALLY REFER YOU BACK
7 TO EXHIBIT NUMBER "26" FIRST. IF YOU LOOK AT
8 WHAT WE MARKED AS EXHIBIT "26" ...

9 **A** YES, MA'AM.

10 **Q** AM I CORRECT, IN THAT, THAT IS THE ARTICLES OF
11 ORGANIZATION THAT WERE FILED WITH THE SECRETARY
12 OF STATE'S OFFICE TO FORM HOTEL AND MOTEL
13 HOLDINGS, LLC AS FAR AS YOU UNDERSTAND?

14 **A** YES, MA'AM.

15 **Q** IT'S GOT THAT THE INITIAL ORGANIZER OF THIS
16 CORPORATION DONALD GODWIN?

17 **A** YES, MA'AM.

18 **Q** ON JUNE 15, 2009, IS IT TRUE THAT DONALD GODWIN
19 WAS THE ONE THAT WAS ORGANIZING AND
20 INCORPORATING THIS LLC?

21 **A** YES, MA'AM. HE FILED THE CORPORATE PAPERS.

22 **Q** AND IN JUNE OF 2009, DID MR. GODWIN HAVE ANY
23 FINANCIAL INTEREST IN THE HOTEL AND MOTEL
24 HOLDINGS, LLC?

25 **A** HE DIDN'T HAVE NO INTEREST IN IT.

1 Q HE WAS THE ORGANIZER AND HE FILING AS THE
2 REGISTERED AGENT, BUT HE HAD NO INTEREST IN THE
3 BUSINESS?

4 A THAT'S RIGHT.

5 Q WHY WAS MR. GODWIN FORMING IT THEN, IF YOU
6 KNOW?

7 A BECAUSE IF WE BOUGHT SOME PROPERTY, THERE WOULD
8 BE SOMETHING IN THE CORPORATION ...

9 Q WAS HE A MEMBER OF THE CORPORATION?

10 A NO, MA'AM.

11 Q WELL, IF HE WASN'T A MEMBER WHY WAS HE AN
12 ORGANIZER?

13 A AS FAR AS I KNOW, I CAN FILE WITH THE STATE
14 TODAY AN GET THE LLC OR CORPORATION EITHER ONE
15 AND NOT OWN NO STOCK AND HAVE NO SAY SO IN IT.
16 TO MY UNDERSTANDING.

17 Q AND YOU'RE CORRECT. MY QUESTION REALLY WAS,
18 AND YOU MAY NOT KNOW THE ANSWER TO THIS, IF HE
19 DIDN'T OWN ANY STOCK AND HE WASN'T GOING TO
20 HAVE ANY INTEREST IN THE BUSINESS, WHY DID HE
21 FILE FOR IT AND SIGN UP AS THE ORGANIZER OF THE
22 BUSINESS AND AS THE AGENT OF THE BUSINESS? IF
23 HE WASN'T GOING TO HAVE ANY INTEREST IN IT AND
24 DIDN'T HAVE ANY MEMBERSHIP IN IT, WHY WOULD HE
25 WANT TO FORM A CORPORATION?

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1 **A** BECAUSE WE WAS GOING TO GO IN IT.

2 **Q** AT THE TIME IT WAS FORMED ON JUNE 12, 2009,
3 WHEN HE SIGNED THIS AND FILED IT, HE DIDN'T
4 HAVE AN INTEREST IN IT, BUT HE WAS GOING TO
5 HAVE AN INTEREST IN IT IF IT EVER DID ANYTHING
6 IN TERMS OF BUSINESS. WOULD THAT BE AN
7 ACCURATE STATEMENT?

8 **A** I THOUGHT HE WAS GOING TO HAVE AN INTEREST IN
9 IT UNTIL HE TOLD ME HE WAS NOT INTERESTED IN
10 IT.

11 **Q** SO, AT THE TIME THIS WAS FILED, WERE YOU UNDER
12 THE IMPRESSION THAT HE WAS GOING TO HAVE AN
13 INTEREST IN IT AND THEN HE TOLD YOU HE WASN'T?

14 **A** YES, MA'AM.

15 **Q** IT WAS SIGNED JUNE 12, 2009, AND FILED WITH THE
16 SECRETARY OF STATE, THREE DAYS LATER ON
17 JUNE 15, 2009. SO, AFTER IT WAS FILED, WHEN
18 DID HE TELL YOU THAT HE DIDN'T WANT TO BE
19 INVOLVED IN IT? THAT HE DIDN'T HAVE ANY
20 INTEREST IN IT?

21 **A** SOME TIME LATER, THE 20TH OR SOMEWHERE ALONG
22 THOSE DATES. THAT HE HAD OTHER PROBLEMS GOING
23 ON. THAT HE COULDN'T GO INTO IT.

24 **Q** SO, SOMEWHERE BETWEEN JUNE 12TH AND JUNE 20,
25 2009, HE DECIDED, MR. GODWIN, TOLD YOU THAT HE

1 DIDN'T WANT TO BE INVOLVED ANYMORE?

2 A YES, MA'AM.

3 Q DID HE TELL YOU WHAT THOSE OTHER ISSUES OR
4 PROBLEMS WERE THAT MADE HIM CHANGE HIS MIND IN
5 THAT NINE DAY TIME FRAME OR SEVEN DAY TIME
6 FRAME?

7 A YES, MA'AM. HE WAS HAVING PROBLEMS WITH HIS
8 PARTNER DOWN AT COASTAL ENERGY DOWN IN
9 MURRELL'S INLET.

10 Q AND WHO WAS THAT PARTNER, IF YOU KNOW?

11 A I DON'T KNOW.

12 Q DID HE INDICATE TO YOU WHAT KIND OF PROBLEMS HE
13 WAS HAVING WITH THAT PARTNER AT COASTAL ENERGY?

14 A HE WAS GOING THROUGH SOME KIND OF LAWSUIT THAT
15 HE THOUGHT WAS GOING TO BE STRAIGHTENED OUT BUT
16 IT WASN'T STRAIGHTENED OUT.

17 Q SO THAT IS THE REASON THAT HE TOLD YOU THAT HE
18 WASN'T GOING TO BE INVOLVED IN IT?

19 A THAT'S RIGHT.

20 Q DID HE EVER CHANGE HIS MIND?

21 A LATER ON, LIKE IN OCTOBER.

22 Q WHAT DID HE TELL YOU WHEN HE CHANGED HIS MIND?
23 HOW DID THAT COME ABOUT, DO HE CAME TO YOU OR
24 DID YOU GO TO HIM?

25 A I WENT TO HIM.

1 Q TELL ME WHY YOU WENT TO HIM?

2 A BECAUSE I NEEDED A PARTNER.

3 Q WHY DID YOU NEED A PARTNER?

4 A BECAUSE I MIGHT NOT HAVE ENOUGH MONEY.

5 Q WHAT HAD HAPPENED BETWEEN JUNE OF 2009, WHEN HE
6 WAS HAVING PROBLEMS AND DIDN'T WANT TO BE
7 INVOLVED AND OCTOBER OF 2009, WHEN YOU WENT TO
8 HIM THAT ALLOWED HIM TO CHANGE HIS MIND, IF YOU
9 KNOW?

10 A I DON'T KNOW. YOU'D HAVE TO ASK HIM.

11 Q WHEN YOU WENT TO HIM, DID HE DECIDE TO COME ON
12 BACK AND BE INVOLVED, IN OCTOBER OF '09?

13 A YES, MA'AM.

14 Q WHAT DID YOU GO TO HIM AND OFFER OR ASK HIM,
15 AND THEN WHAT DID HE DECIDE TO DO IN TERMS OF
16 HOTEL AND MOTEL?

17 A I ASKED HIM IF HE WANTED TO COME IN AND LIMITED
18 PARTNER, BE A PARTNER.

19 Q DID YOU OFFER A CERTAIN PERCENTAGE, YOU WANTED
20 HIM TO COME IN FIFTY/FIFTY?

21 A FIFTY/FIFTY.

22 Q IF YOU WOULD, TELL ME A LITTLE BIT ABOUT WHAT
23 YOU WERE OFFERING AND WHAT HE DECIDED TO DO?

24 A I OFFERED HIM FIFTY/FIFTY AND HE WAS GOING TO
25 PUT UP A MILLION, WHICH HE PUT UP A MILLION

1 DOLLAR NOTE, AND I AGREED TO CARRY IT FOR FIVE
2 YEARS.

3 Q WHEN YOU WENT BACK IN OCTOBER AND WANTED A
4 PARTNER FOR FINANCIAL REASONS AND HE AGREED TO
5 DO THAT AND IT WAS GOING TO BE FIFTY/FIFTY
6 MEMBERSHIP, FIFTY/FIFTY OWNERSHIP AND FOR HIS
7 FIFTY PERCENT HE WAS GOING TO PUT IN A MILLION,
8 IS THAT RIGHT?

9 A A NOTE FOR IT.

10 Q WHEN YOU SAID, "HE WAS PUTTING UP A NOTE", HE
11 WAS GOING TO BUY INTO THE LLC HIS FIFTY PERCENT
12 MEMBERSHIP AND THAT COST A MILLION AND YOU
13 FINANCED THAT? DO I HAVE THAT CORRECT?

14 A HE SIGNED A NOTE FOR A MILLION DOLLARS. I
15 FINANCED IT.

16 Q AND THAT NOTE WAS FROM MR. GODWIN PERSONALLY?

17 A YES.

18 Q WAS IT FROM YOU PERSONALLY, OR TO H&M?

19 A MIGHT'VE BEEN H&M.

20 Q YOU DON'T KNOW, OKAY. BUT THERE WOULD BE A
21 MILLION DOLLAR NOTE? WOULD THAT MILLION DOLLAR
22 NOTE, WOULD IT BE TO ANYBODY OTHER THAN EITHER
23 YOU PERSONALLY OR H&M?

24 A NO, MA'AM.

25 Q IT WOULD BE TO ONE OF THE TWO?

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1 **A** YES, MA'AM.

2 **Q** AND THERE ACTUALLY IS A WRITTEN DOCUMENT?

3 **A** YES, MA'AM.

4 **Q** AND WHO WROTE THAT DOCUMENT?

5 **A** FAYE TODD, I THINK.

6 **Q** WHO IS A FAYE TODD?

7 **A** SHE WORKS FOR RICHARD BOOTH.

8 **Q** MR. BOOTH STILL PRACTICING OR HAS HE RETIRED?

9 **A** AS FAR AS I KNOW HE IS STILL PRACTICING AS FAR
10 AS I KNOW.

11 **Q** STILL PRACTICING. DO YOU HAVE A COPY OF THAT
12 NOTE?

13 **A** NO, MA'AM.

14 **Q** DO YOU HAVE THE ORIGINAL OF THAT NOTE?

15 **A** NO, MA'AM.

16 **Q** WHO HAS THE ORIGINAL OF THAT NOTE?

17 **A** MY CPA?

18 **Q** AND THAT IS THE YOUNG LADY'S NAME THAT YOU GAVE
19 ME?

20 **A** MORGAN LEWIS.

21 OFF THE RECORD.

22 **Q** I'M GOING TO BACK UP A MINUTE. WHEN MR. GODWIN
23 FORMED H&M IN JUNE OF '09, YOU SAID THE PURPOSE
24 OF THAT WAS TO BUY AND SELL PROPERTY?

25 **A** YES, MA'AM?

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1 Q WHAT ATTORNEY?

2 A RICHARD BOOTH.

3 Q DID H&M PAY MR. BOOTH FOR HIS SERVICES IN
4 FORMING THIS LLC?

5 A YES, MA'AM.

6 Q THERE WOULD BE A BILL PAID?

7 A YES, MA'AM. I'M SURE THERE WAS.

8 Q WHO HAS POSSESSION OF THE BILLS OF H&M?

9 A MR. GODWIN.

10 Q HE HAS POSSESSION OF THE BILLS NOW?

11 A HE HAS HAD THEM FROM DAY ONE.

12 Q EVEN AFTER MR. GODWIN TOLD YOU, SOME SEVEN DAYS
13 AFTER HE INCORPORATED THIS BUSINESS AS THE
14 ORGANIZER AND THE REGISTERED AGENT, THAT HE NO
15 LONGER WANTED TO BE INVOLVED, HE STILL
16 MAINTAINED THE RECORDS OF THE CORPORATION?

17 A YES, MA'AM.

18 Q DID MR. GODWIN PAY ANY MONEY TOWARDS MR.
19 BOOTH'S BILL OR THE FILING FEE, WHICH, I THINK,
20 IT'S \$110.00 ...

21 A NO, MA'AM.

22 Q ... OR THE FILING FEE?

23 A NO, MA'AM. NOT TO MY KNOWLEDGE.

24 Q DID YOU PAY IT?

25 A I BELIEVE SO.

1 Q WHEN YOU FIRST FORMED H&M HOLDINGS, LLC OR MR.
2 BOOTH DID, DID YOU OPEN AN OPERATING ACCOUNT OR
3 CHECKING ACCOUNT SOMEWHERE?

4 A YES.

5 Q WHEN IS THE FIRST TIME YOU OPENED A CHECKING
6 ACCOUNT FOR H&M?

7 A I'LL BE HONEST WITH YOU, I DON'T KNOW.

8 Q THAT IT WOULD EITHER BE A CHECKING ACCOUNT THAT
9 IS WITH HORRY COUNTY STATE BANK OR AN ACCOUNT
10 THAT IS WITH FIRST FEDERAL, WOULD THAT BE
11 CORRECT?

12 A HORRY COUNTY STATE BANK.

13 Q WHAT MONEY, WHAT CAPITAL, WAS PUT INTO HOTEL
14 AND MOTEL HOLDINGS, LLC ON OR BEFORE JUNE 12TH
15 WHEN THE ARTICLES OF ORGANIZATION WERE FILED?

16 A TWO MILLION.

17 Q WHERE WAS THAT TWO MILLION HELD?

18 A \$250,000.00 IN ... WHAT DATE ARE YOU TALKING
19 ABOUT?

20 Q THE CORPORATION WAS INCORPORATED ACCORDING TO
21 THE SECRETARY OF STATE'S OFFICE WHEN THIS WAS
22 FILED, EXHIBIT "26" ON JUNE 15, 2009. MY
23 QUESTION IS, BEFORE JUNE 15, 2009, WHAT CAPITAL
24 MONEY, WHAT ASSETS, HAD THE MEMBERS PUT INTO
25 HOTEL AND MOTEL HOLDINGS, LLC BEFORE JUNE 15,

1 2009?

2 **A** NONE.

3 **Q** AFTER IT WAS FORMED ON JUNE 15, 2009, BUT
4 BEFORE A LOAN WAS MADE BY FIRST PALMETTO TO
5 H&M, WHAT CAPITAL, WHAT MONEY, HAD BEEN PUT
6 INTO HOTEL AND MOTEL HOLDINGS, LLC?

7 **A** WOULD YOU REPHRASE THAT ONE QUESTION AT A TIME?

8 **Q** BETWEEN WHEN YOU FORMED THE CORPORATION ON
9 JUNE 15, 2009, AND WHEN FIRST PALMETTO LOANED
10 H&M THE MONEY ON JUNE 30, 2009, DURING THAT
11 FIFTEEN DAY PERIOD, WHAT MONEY OR ASSETS WERE
12 PUT INTO HOTEL AND MOTEL HOLDINGS DURING THAT
13 FIFTEEN DAY TIME PERIOD?

14 **A** THERE WAS NONE 'TIL JUNE 30TH.

15 **Q** THE FIRST TIME HOTEL AND MOTEL HOLDINGS, LLC
16 WAS CAPITALIZED BY ASSETS OR MONEY WAS JUNE 30,
17 2009, IS THAT CORRECT?

18 **A** YES, MA'AM.

19 **Q** WHAT CAPITAL WAS PUT IN ON JUNE 30, 2009?

20 **A** \$250,000.00 I SENT TO FIRST PALMETTO. I HAD TO
21 SIGN CD'S THAT MATURED IN OCTOBER FOR
22 \$1,750,000.00.

23 **Q** WHAT ELSE?

24 **A** THAT'S IT.

25 **Q** SO THE FIRST CAPITALIZATION, THE FIRST INFLUX

1 OF ANY ASSET INTO HOTEL AND MOTEL HOLDINGS
2 AFTER IT WAS FORMED ON JUNE 15TH, WOULD HAVE
3 BEEN WHEN YOU SENT \$250,000.00 TO FIRST
4 PALMETTO AND YOU ASSIGNED CD'S WORTH
5 1.75 MILLION TO FIRST PALMETTO THAT WERE DUE TO
6 BECOME AVAILABLE IN OCTOBER OF 2009, IS THAT
7 RIGHT?

8 **A** (NO RESPONSE.)

9 **Q** THAT 250,000.00 THAT YOU SENT TO FIRST
10 PALMETTO, THAT WAS JACK JONES' MONEY, RIGHT?

11 **A** YES, MA'AM.

12 **Q** YOU TOOK OUT OF ASSETS OF JACK JONES, IS THAT
13 CORRECT?

14 **A** LOANED IT TO H&M.

15 **Q** JACK JONES LOANED \$250,000.00 TO H&M. WAS
16 THERE A PROMISSORY NOTE EXECUTED FOR THAT?

17 **A** IT COULD'VE BEEN.

18 **Q** HAVE YOU EVER SEEN ONE?

19 **A** I DON'T KNOW IF I HAVE SEEN ONE, BUT I WILL
20 FIND OUT FROM HIM.

21 **Q** THAT \$250,000.00 THAT JACK JONES SENT TO FIRST
22 PALMETTO, WASN'T PUT IN AN ACCOUNT FOR H&M?
23 WHAT WAS DONE WITH THAT \$250,000.00?

24 **A** IT WAS TO BE APPLIED AGAINST THE LOAN.

25 **Q** THAT \$250,000.00 THAT JACK JONES SENT FIRST

1 PALMETTO WAS AS PART OF A LOAN TRANSACTION
2 WHERE H&M WAS BORROWING MONEY, IS THAT CORRECT?

3 A YES, MA'AM.

4 Q HOW MUCH MONEY WAS H&M BORROWING?

5 A TWO MILLION.

6 Q AND H&M BORROWED TWO MILLION ON JUNE 30TH, IS
7 THAT RIGHT?

8 A NO, MA'AM.

9 Q WHAT DID IT BORROW?

10 A \$250,000.00.

11 Q H&M BORROWED FROM YOU \$250,000.00? HOW MUCH
12 DID H&M BORROW FROM FIRST PALMETTO?

13 A \$1,750,000.00 PLUS \$250,000.00 THAT I SIGNED
14 THE NOTES FOR.

15 Q THOSE WERE NOTES THAT YOU SIGNED, JACK JONES
16 PERSONALLY?

17 A CD'S.

18 Q OTHER THAN THE LOAN PROCEEDS THAT H&M GOT FROM
19 FIRST PALMETTO, H&M HAD NO OTHER ASSETS AS OF
20 JUNE 30, 2009, IS THAT CORRECT?

21 A CORRECT.

22 Q DO YOU REMEMBER WHEN H&M DRAFTED IT'S OPERATING
23 AGREEMENT? DID YOU PARTICIPATE IN H&M'S
24 OPERATING AGREEMENT?

25 A YES, MA'AM, BUT I COULDN'T TELL YOU WHEN.

1 TO HANDLE FOR YOU OR TO HELP YOU HANDLE?

2 **A** HE DONE CLOSING ON PROPERTIES AND STUFF.

3 **Q** HAS HE EVER DONE ANY WORK FOR YOU IN WHICH MR.
4 GODWIN WAS NOT INVOLVED?

5 **A** YES, MA'AM.

6 **Q** SO YOU HAVE USED MR. BOOTH IN THE PAST?

7 **A** YES, MA'AM.

8 **Q** IRRESPECTIVE OF MR. GODWIN?

9 **A** YES, MA'AM.

10 **Q** MR. GODWIN USED MR. HYMAN BEFORE HE WENT ON THE
11 BENCH A LOT, DIDN'T HE?

12 **A** I COULDN'T ANSWER THAT.

13 **Q** AT THE TIME THIS WAS DRAWN UP BY MR. BOOTH FOR
14 YOU OR FOR H&M ON JUNE 25TH, HAD MR. GODWIN
15 ALREADY TOLD YOU THAT HE WASN'T GOING TO BE
16 INVOLVED?

17 **A** YES, MA'AM.

18 **Q** AT THE TIME THIS WAS DRAWN UP, I THINK YOU
19 THOUGHT IT WAS AROUND THE 20TH OF JUNE YOU
20 SAID?

21 **A** SOMEWHERE AROUND THE 25TH.

22 **Q** WHEN YOU SIGNED THIS, YOU ARE THE ONLY MEMBER
23 OF H&M, RIGHT?

24 **A** THE SOLE MEMBER.

25 **Q** YOUR ATTORNEY AND YOU SIGNED OFF ON EXHIBIT 'A'

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1 THAT YOU HAD CONTRIBUTED AS OF THE 25TH THE
2 ONLY CAPITAL OR THE CASH CAPITAL CONTRIBUTION
3 TO THIS LLC WAS \$10.00, RIGHT? IF YOU LOOK AT
4 PAGE 17. ISN'T THAT RIGHT? YOUR ATTORNEY
5 PREPARED THIS FOR H&M SAYING THAT YOU MADE AN
6 INITIAL CASH CONTRIBUTION OF \$10.00 ON JUNE 25,
7 2009? THAT IS WHAT THE DOCUMENT SAYS, RIGHT?

8 **A** I AM ASSUMING SO.

9 **Q** IF YOU LOOK BACK AT PAGE 17 AND TELL ME IF THAT
10 IS WHAT THE DOCUMENT SAYS?

11 **A** YES, MA'AM.

12 **Q** THEN YOU LOANED H&M \$250,000.00 ABOUT JUNE 30TH
13 SO THAT H&M COULD GET A LOAN FROM FIRST
14 PALMETTO, RIGHT?

15 **A** NO, MA'AM. I LOANED THEM \$250,000.00 TO BUY A
16 NOTE AND MORTGAGE.

17 **Q** YOU LOANED WHO \$250,000.00 TO BUY A NOTE AND
18 MORTGAGE?

19 **A** HOTEL AND MOTEL.

20 **Q** SO THE ONLY CASH CONTRIBUTIONS WAS \$10.00 IN
21 JUNE OF '09?

22 **A** RIGHT.

23 **Q** OTHER THAN \$10.00 YOU PUT IN, JACK JONES, AS A
24 CAPITAL CONTRIBUTION TO H&M ON JUNE 25TH, HAVE
25 YOU, JACK JONES, MADE ANY OTHER CASH CAPITAL

1 CONTRIBUTIONS SINCE THAT TIME?

2 **A** WHAT TIME WAS THAT?

3 **Q** AFTER JUNE 25, 2009.

4 **A** YES, MA'AM.

5 **Q** WHAT OTHER CASH CONTRIBUTIONS, CAPITAL
6 CONTRIBUTIONS, HAVE YOU PUT INTO H&M AFTER
7 JUNE 25TH, 2009?

8 **A** THE \$250,000.00 ON JUNE 30TH.

9 **Q** BUT I THOUGHT YOU SAID THAT WAS A LOAN? WAS IT
10 A LOAN OR A CASH CONTRIBUTION?

11 **A** IT WAS A LOAN, BUT IT WENT TO HOTEL MOTEL.

12 **Q** \$250,000.00 LOAN BY YOU TO H&M ...

13 **A** A LOAN OR CASH CONTRIBUTION, WHATEVER YOU WANT
14 TO CALL IT.

15 **Q** HAVE YOU MADE ANY OTHER CAPITAL CONTRIBUTIONS
16 TO H&M AFTER THE \$250,000.00 TRANSACTION ON
17 JUNE 30, 2009?

18 **A** ANOTHER \$1,750,000.00 IN ASSIGNMENTS OF CD'S ON
19 THAT SAME DATE I THINK.

20 **Q** JACK JONES ASSIGNED \$1,750,000.00 WORTH OF
21 CD'S. DID YOU ASSIGN THOSE TO H&M OR DID YOU
22 ASSIGN THOSE TO FIRST PALMETTO?

23 **A** FIRST PALMETTO.

24 **Q** CASH CONTRIBUTIONS OR OTHER ASSET CONTRIBUTIONS
25 TO H&M, NOT FIRST PALMETTO, BUT TO H&M?

1 JONES, BECAUSE I BELIEVE THAT IS THE DATE THAT
2 MR. WALKER TOOK OVER. THAT IS THE SIGNIFICANCE
3 OF THAT DATE IN MY QUESTION.

4 **A** NOTHING MORE THAN WHAT MR. GODWIN BROUGHT AND
5 WHAT I BROUGHT.

6 **Q** I AM NOT SURE THAT YOU UNDERSTOOD MY QUESTION.
7 I KNOW THAT YOU'VE BOUGHT THINGS FOR H&M IN
8 ORDER FOR THE PROPERTIES TO BE OPERATED, IS
9 THAT CORRECT?

10 **A** I PUT MONEY IN STUFF THAT MR. WALKER NEEDED TO
11 KEEP OPERATING.

12 **Q** MR. WALKER SHOULD HAVE DOCUMENTS AND PROOF OF
13 ALL THAT?

14 **A** YES, MA'AM.

15 **Q** MY OTHER QUESTION IS, TO YOUR KNOWLEDGE, HAS
16 H&M RECEIVED THE INCOME FROM THE OPERATION OF
17 THE PROPERTY SINCE MR. WALKER TOOK OVER?

18 **A** NO, MA'AM. OTHER THAN WHAT I JUST SAID.
19 REALLY AND TRULY THAT MIGHT BE JUST ME
20 PERSONALLY. I DON'T KNOW I WROTE A CHECK FOR
21 H&M.

22 **Q** I HAD ASKED YOU ABOUT THINGS THAT YOU HAD
23 BOUGHT AND WHAT H&M HAD BOUGHT. WHAT I'M
24 ASKING YOU ABOUT, AS H&M, YOU'RE ONE OF THE
25 MEMBERS OF H&M, RIGHT? TO YOUR KNOWLEDGE, HAS

1 H&M EARNED ANY MONEY OR HAVE THEY GOTTEN ANY
2 MONEY ...

3 A NO, MA'AM.

4 Q ... FROM OPERATING THE HOTELS? HAVE THEY
5 GOTTEN ANY MONEY FROM OPERATING THE HOTEL?

6 A NO, MA'AM.

7 Q THE MONEY THAT HAS BEEN RECEIVED FROM THE
8 STUDENTS RENTING THE PROPERTIES DURING THE
9 SEASON FOR THE STUDENTS STAYING AT EMERALD
10 SHORES, WHERE HAS THAT MONEY GONE?

11 A YOU WOULD HAVE TO ASK MR. WALKER.

12 Q AS FAR AS YOU KNOW, MR. WALKER HAS MADE NO
13 DISTRIBUTIONS OF THE INCOME OR CAPITAL TO H&M?

14 A NO, MA'AM.

15 Q FROM THE H&M SIDE OF THINGS, ARE YOU HANDLING
16 THE BOOKS AND RECORDS OR IS MR. GODWIN?

17 A MR. GODWIN.

18 Q DO YOU KNOW HOW MR. WALKER BEING PAID?

19 A I COULDN'T TELL YOU.

20 Q YOU, JACK JONES, PERSONALLY, HAVEN'T PAID MR.
21 WALKER ANY MONEY, ISN'T THAT TRUE?

22 A THAT'S TRUE.

23 Q TO YOUR KNOWLEDGE, HAS H&M PAID MR. WALKER ANY
24 MONEY?

25 A NO, MA'AM.

1 Q THAT LOAN THAT H&M WAS GETTING AT THE END OF
2 JUNE OF 2009, WAS THE MONEY THAT H&M NEEDED TO
3 PURCHASE A NOTE AND MORTGAGE FROM FIRST
4 PALMETTO, ISN'T THAT TRUE?

5 A NO, MA'AM. THEY DIDN'T NEED NO MONEY TO
6 PURCHASE.

7 Q H&M DIDN'T NEED ANY MONEY TO PURCHASE THE NOTE
8 AND MORTGAGE ON THE EMERALD SHORES?

9 A NOT MORE THAN I COULD LEND IT.

10 Q OKAY. I AM NOT SURE I UNDERSTAND. WE'LL GO
11 BACK INTO THAT IN A LITTLE MORE DEPTH TOO. WHY
12 WAS IT IF MR. GODWIN WASN'T GOING TO BE
13 INVOLVED IN H&M THAT YOU WANTED HIM TO STAY AS
14 THE REGISTERED AGENT?

15 A I DON'T KNOW.

16 Q IS THERE A REASON YOU DECIDED TO USE DICKIE
17 LESTER? THAT H&M DECIDED TO USE DICKIE LESTER
18 TO DO THE LOAN CLOSING WITH FIRST PALMETTO
19 RATHER THAN TO CONTINUE USING MR. BOOTH?

20 A DICKIE HAD ALWAYS DONE MY REAL ESTATE, ANY
21 LARGE AMOUNT OF REAL ESTATE CLOSURE, DICKIE HAD
22 BASICALLY DONE MINE.

23 - Q NOW, BEFORE YOU FORMED H&M, BEFORE JUNE 12,
24 2009, HAD YOU HAD CONVERSATIONS WITH ANYBODY AT
25 FIRST PALMETTO ABOUT BUYING A NOTE AND MORTGAGE

1 THAT FIRST PALMETTO HELD ON THE EMERALD SHORES
2 AND RAINBOW COURT PROPERTY?

3 A YES, MA'AM. SOME TIME IN JUNE OF 2009, MR.
4 SMALL CAME DOWN WITH ANOTHER GENTLEMAN.

5 Q WHEN YOU SAY, "MR. SMALL" YOU MEAN THE OLDER
6 GENTLEMAN?

7 A YES, MA'AM.

8 Q I'M GOING TO CALL THE YOUNGER ONE JUNIOR. SO,
9 IT WOULD'VE BEEN ...

10 A SENIOR.

11 Q ... SENIOR. AND I BELIEVE HE IS THE PRESIDENT
12 OF THE BANK?

13 A YES, MA'AM.

14 Q SO IT WAS SOME TIME, YOU BELIEVE, IN JUNE OF
15 2009?

16 A IT WAS THE FIRST PART OF JUNE.

17 Q OKAY. TELL ME ABOUT THAT A LITTLE BIT?

18 A HE JUST CAME DOWN. ME AND BUPI AND WENDY WERE
19 SITTING IN THE OFFICE AND THERE MIGHT'VE BEEN
20 SOME OTHER PEOPLE, SOME DESK CLERKS, BUT HE PUT
21 US ON NOTICE THAT HE WAS GOING TO SELL IT TO
22 ANYBODY. HE HAD DONE HAD SOME CALLS ON IT. HE
23 HAD PEOPLE THAT WANTED TO PURCHASE IT. SO, I
24 HAD CALLED MR. SMALL LATER ON AND TOLD HIM THAT
25 I WOULD GIVE TWO MILLION. ONE MILLION DOWN AND

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1 ONE MILLION IN INTEREST AND ASSUME THE FOUR
2 MILLION, HOTEL AND MOTEL.—

3 Q SAY THAT TO ME AGAIN. I DIDN'T FOLLOW THAT.
4 YOU CALLED MR. SMALL BACK AND TOLD HIM THAT YOU
5 WOULD GIVE TWO MILLION?

6 A RIGHT. THAT'S AFTER HE LEFT THE MOTEL SAYING
7 HE WAS GOING TO SELL IT TO ANYBODY.

8 Q SO, YOU TOLD MR. SMALL THAT YOU WOULD BUY IT.
9 YOU WOULD BUY THE NOTE AND MORTGAGE OR HOTEL
10 AND MOTEL WOULD BUY THE NOTE AND MORTGAGE FOR
11 TWO MILLION?

12 A YES, MA'AM.

13 Q YOU'D PUT ONE MILLION DOWN?

14 A AND FIVE MILLION DOLLARS IN INTEREST. FIVE
15 YEARS INTEREST.

16 Q BUT YOUR TOTAL PURCHASE PRICE FOR THE NOTE AND
17 MORTGAGE WAS GOING TO BE TWO MILLION?

18 A ONE MILLION FOR THE NOTE AND MORTGAGE, AND A
19 MILLION DOLLARS FOR FIVE YEARS WORTH OF
20 INTEREST.

21 Q SO, YOUR OFFER WAS, YOU WOULD PAY HIM ONE
22 MILLION RIGHT THEN TO TRANSFER THE NOTE AND
23 MORTGAGE TO YOU AND YOU WOULD PAY HIM ANOTHER
24 MILLION OVER A FIVE YEAR PERIOD AS INTEREST ON
25 BUYING THAT NOTE AND MORTGAGE?

1 **A** I PUT UP A MILLION WHERE YOU WOULD HAVE IT IN
2 ESCROW.

3 **Q** DID HE AGREE, AS YOU UNDERSTOOD IT, TO SELL YOU
4 A 4.75 MILLION DOLLAR NOTE AND MORTGAGE FOR TWO
5 MILLION?

6 **A** NO, MA'AM. HE WAS NOT SELLING IT TO ME FOR TWO
7 MILLION.

8 **Q** WHAT WAS HE SELLING IT TO YOU FOR?

9 **A** SELLING IT TO ME FOR FIVE MILLION.

10 **Q** OKAY. SO, YOU AFFORDED TWO, BUT HE WAS GOING
11 TO SELL IT TO YOU FOR FIVE? HIS COUNTER WAS
12 FIVE?

13 **A** NO, MA'AM. IT WAS FIVE MILLION ALL THE TIME,
14 HONEY.

15 **Q** IT WAS FIVE MILLION ALL THE TIME, BUT WHAT YOUR
16 OFFER WAS, WAS HOW YOU WOULD PAY THAT FIVE
17 MILLION.

18 **A** I WOULD PAY A MILLION DOLLARS AGAINST THE
19 PRINCIPAL AND I WOULD PAY A MILLION DOLLARS FOR
20 FIVE YEARS.

21 **Q** THEN WHAT WOULD HAPPEN AFTER THE END OF THE
22 FIVE YEARS?

23 **A** THEN AFTER FIVE YEARS, I WOULD EITHER PAY IT
24 OFF OR IT WOULD BELONG TO THE BANK.

25 **Q** NOW, WHO CAME DOWN IN EARLY JUNE WITH MR.

1 SMALL, SENIOR, YOU SAID SOMEONE CAME DOWN AND
2 MADE IT KNOWN THERE IN THE OFFICE WITH YOU AND
3 BUPI AND WENDY THAT FIRST PALMETTO WAS GOING TO
4 SELL THE NOTE?

5 **A** YES, MA'AM.

6 **Q** HAD HE ALREADY RECEIVED SOME CALLS ABOUT IT AND
7 WERE JUST TELLING Y'ALL THEY WERE GOING TO SELL
8 THE NOTE, HAVE I GOT THAT RIGHT?

9 **A** YES, MA'AM.

10 **Q** THAT'S WHAT YOU SWORE TO WHEN YOU SWORE TO TELL
11 THE WHOLE TRUTH TOO. I MEAN, AND AT THAT
12 MEETING, DID HE TELL YOU WHAT THE SALES PRICE
13 WAS? THAT DAY, ON-SITE THERE IN THE OFFICE,
14 DID HE TELL YOU WHAT THE SALES PRICE WAS? I
15 KNOW YOU SAID HE WAS GOING TO SELL IT. DID HE
16 TELL YOU WHAT THE SALES PRICE WAS?

17 **A** NO, MA'AM.

18 **Q** HOW DID YOU LEARN WHAT THE SALES PRICE WAS?

19 **A** I CALLED HIM AND ASKED HIM.

20 **Q** THAT WAS AFTER HE LEFT AND SOME TIME LATER YOU
21 CALLED HIM AND ASKED HIM, AND WHAT DID HE TELL
22 YOU?

23 **A** I TOLD HIM WHAT I COULD DO.

24 **Q** WHAT DID HE TELL YOU THE PRICE WAS?

25 **A** FIVE MILLION TWENTY-TWO THOUSAND. I OFFERED

1 HIM FIVE MILLION.

2 Q THEN YOU TOLD ME HOW YOU OFFERED TO PAY IT.

3 A YES, MA'AM.

4 Q SO, YOU OFFERED HIM A MILLION DOWN AND YOU PUT
5 UP ANOTHER MILLION, SO HE KNEW HE WOULD HAVE
6 HIS INTEREST FOR A FIVE YEAR PERIOD?

7 A RIGHT.

8 Q AT THE END OF THAT FIVE YEARS, EITHER SOMEBODY
9 WAS GOING TO PAY OFF SOMETHING, THE BALANCE OF
10 THIS FIVE MILLION, OR THE BANK WAS GOING TO GET
11 THIS PROPERTY BACK, RIGHT?

12 A RIGHT.

13 Q IN THAT CONVERSATION THEN, WERE YOU ... AND DID
14 YOU UNDERSTAND THAT YOU OR SOMEBODY HAD TO
15 BORROW THE BALANCE OF THE FIVE MILLION AND YOU
16 WERE GOING TO GIVE HIM THE MILLION DOWN, BUT
17 YOU UNDERSTOOD SOMEONE WOULD HAVE TO BORROW THE
18 BALANCE OF THE FIVE MILLION, RIGHT?

19 A YES, MA'AM.

20 Q SO YOUR OFFER WAS TO PAY ONE MILLION DOWN AND
21 TO BORROW FOUR MILLION, BUT TO PUT A MILLION IN
22 THE BANK TO PAY THE INTEREST DURING THAT FIVE
23 YEARS?

24 A TO PAY THE INTEREST.

25 Q AND AT THE END OF THAT, EITHER YOU WOULD HAVE

1 TO PAY THAT NOTE OFF OR THE BANK WOULD
2 FORECLOSE ON IT?

3 A THAT'S RIGHT.

4 Q HOW MUCH TIME ELAPSED BETWEEN THE MEETING DOWN
5 HERE ON-SITE AND YOUR PHONE CALL BACK TO MR.
6 SMALL?

7 A YOU WANTING THE TIME FRAME?

8 Q YES, SIR.

9 A THE NEXT DAY. THE SAME DAY. I CAN'T REMEMBER.

10 Q A SHORT TIME FRAME?

11 A YES.

12 Q WHEN HE WAS DOWN HERE AND HE TOLD YOU THAT THEY
13 HAD RECEIVED CALLS, DID HE TELL YOU WHO HAD
14 CALLED HIM ABOUT MAYBE BUYING OR WHO HE TALKED
15 TO ALREADY ABOUT BUYING THE NOTE AND MORTGAGE?

16 A NO, MA'AM.

17 Q THAT WASN'T THE FIRST TIME THAT YOU MET MR.
18 SMALL, WAS IT?

19 A NO, MA'AM.

20 Q WAS THAT THE FIRST TIME YOU DISCUSSED BUYING
21 THE NOTE AND MORTGAGE?

22 A YES, MA'AM.

23 Q AND THAT WAS THE FIRST TIME YOU TALKED TO HIM
24 ABOUT BUYING IT?

25 A YES, MA'AM. AND HE TOLD ME HE WOULD GET BACK

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1 WITH ME.

2 Q AFTER YOU MADE HIM THE OFFER ABOUT WHAT YOU
3 WOULD DO?

4 A RIGHT. HE SAID, "I'LL GET BACK WITH YOU."

5 Q AND HOW LONG WAS IT BEFORE HE GOT BACK TO YOU?

6 A ABOUT A WEEK OR TEN DAYS, SOMEWHERE IN THAT
7 TIME.

8 Q WHEN HE GOT BACK TO YOU, WHAT DID HE TELL YOU?

9 A HE TOLD ME WE COULD WORK OUT THE DEAL.

10 Q HOW YOU PROPOSED IT, HE COULD MAKE THAT WORK?

11 A YES.

12 Q THE MILLION DOWN AND A MILLION SITTING IN
13 SECURITY TO PAY THE INTEREST FOR FIVE YEARS AND
14 YOU WERE GOING TO BORROW THE BALANCE?

15 A YES, MA'AM.

16 Q YOU THINK THAT TOOK ABOUT A WEEK IN BETWEEN
17 YOUR FIRST CALL BACK TO HIM?

18 A I DONT KNOW EXACTLY HOW LONG THAT TOOK.

19 Q THEN BY JUNE 30TH, THE DEAL WAS DONE BECAUSE
20 THAT'S WHEN H&M CLOSED ON THE LOAN, RIGHT?

21 A THAT'S CORRECT.

22 Q WITH THOSE LOAN PROCEEDS YOU BOUGHT THE NOTE
23 AND MORTGAGE ON EMERALD SHORES AND RAINBOW
24 COURT, IS THAT RIGHT?

25 A YES, MA'AM. NOTE AND MORTGAGE.

1 Q NOTE AND MORTGAGE, RIGHT. MR. GODWIN WASN'T IN
2 THE PICTURE AT THAT TIME?

3 A NO, MA'AM.

4 Q HE DIDN'T COME BACK INTO THE PICTURE UNTIL
5 OCTOBER OF '09?

6 A OCTOBER.

7 Q WHEN H&M BORROWED THE MONEY FROM FIRST PALMETTO
8 TO BUY THE NOTE AND MORTGAGE, DID YOU HAVE TO
9 SIGN A PERSONAL GUARANTY FOR THE BALANCE OF
10 THAT LOAN?

11 A NO, MA'AM.

12 Q DID THEY ASK YOU ... WAS THAT PART OF SOME
13 NEGOTIATION OR THAT WAS JUST SOMETHING YOU
14 WEREN'T GOING TO DO?

15 A I WASN'T GOING TO SIGN NO PERSONAL GUARANTY.

16 Q BUT DID THEY ASK YOU TO? DID THEY TRY TO? DID
17 THEY TRY TO GET YOU TOO IS THAT PART OF THE
18 DEAL? THEY WERE TRYING TO WORK WITH YOU, BUT
19 THAT WASN'T A DEAL YOU WERE GOING TO TAKE OR
20 NOBODY EVEN ASKED YOU TO SIGN A PERSONAL
21 GUARANTY?

22 A RIGHT UP FRONT, YOU KNOW, I LET THEM KNOW.

23 Q YOU LET THEM KNOW YOU WEREN'T INTERESTED IN
24 THAT RIGHT UP FRONT?

25 A THAT'S RIGHT.

1 Q NOW, WAS H&M FORMED TO CARRY OUT THIS
2 TRANSACTION OR WAS H&M ALREADY IN THE WORKS
3 BEFORE ALL THIS CAME ABOUT?

4 A H&M WAS FORMED TO DO MANY THINGS.

5 Q BUT IT HADN'T DONE ANYTHING ELSE?

6 A IT HADN'T DONE ANYTHING.

7 Q H&M WAS FORMED IN THE MIDDLE OF JUNE AND YOUR
8 MEETING WITH MR. SMALLS WHEN HE CAME DOWN HERE
9 AND LET IT BE KNOWN TO YOU ON SIGHT THAT HE WAS
10 GOING TO SELL THE NOTE AND MORTGAGE WAS THE
11 BEGINNING OF JUNE?

12 A THAT'S RIGHT.

13 Q THEN BY JUNE 30TH, H&M HAD BEEN FORMED. H&M
14 HAD BOUGHT THE NOTE AND MORTGAGE AFTER
15 RECEIVING A LOAN FROM FIRST PALMETTO AND YOU
16 PUT UP THE MILLION DOLLARS WORTH OF INTEREST
17 AND YOU PUT UP \$250,000.00, AS PART OF THE LOAN
18 TRANSACTION, RIGHT?

19 A WELL, A MILLION AND A HALF, A TOTAL OF TWO
20 MILLION.

21 Q WELL, YOU PUT UP A MILLION AND YOU HAVE GOT A
22 MILLION SITTING IN THE BANK THAT THEY ARE
23 DRAWING INTEREST ON, RIGHT?

24 A I PUT UP 250,000.00. I SIGNED A 1,750,000.00
25 CD TO THE BANK.

1 Q OKAY. THOSE WERE JACK JONES CD'S? THOSE
2 WEREN'T CD'S THAT WERE IN THE NAME OF H&M, IS
3 THAT CORRECT?

4 A THAT'S RIGHT.

5 Q THOSE WEREN'T CD'S THAT WERE EVER SOLD BY JACK
6 JONES TO H&M, IS THAT CORRECT?

7 A THEY WERE SOLD TO ANYBODY.

8 Q THOSE CD'S, ONCE THEY MATURED, BECAUSE THE CD'S
9 DIDN'T MATURE UNTIL OCTOBER. THOSE FUNDS WENT
10 INTO FIRST PALMETTO, RIGHT?

11 A THEY WENT INTO FIRST PALMETTO OR HOTEL/MOTEL.

12 Q THOSE FUNDS, ARE THEY HELD IN A CD BY FIRST
13 PALMETTO OR ARE THEY JUST HELD IN AN ACCOUNT SO
14 THEY CAN DRAW THE INTEREST OFF, OR DO YOU KNOW?

15 A I DONT KNOW.

16 Q DID H&M SIGN A PROMISSORY NOTE TO YOU FOR THE
17 1,750,000.00?

18 A I DON'T REMEMBER. I WOULD HAVE TO ASK MY CPA
19 THAT.

20 Q THAT'S MORGAN LEWIS?

21 A YES, MA'AM.

22 Q TO YOUR KNOWLEDGE, IS FIRST PALMETTO DRAWING
23 FUNDS DOWN OFF THOSE JACK JONES CD'S TO PAY THE
24 INTEREST EVERY MONTH ON THE H&M LOAN?

25 A IT MIGHT BE IN HOTEL AND MOTEL. IT MIGHT BE

1 SHOULD JUST TURN TO EXHIBIT "33". I'
2 JUNE 24TH, AND IF YOU LOOK OVER ON P.
3 WOULD YOU TELL ME IF THAT IS YOUR SIGNATURE?

4 **A** YES, MA'AM.

5 **Q** IN THE LOAN AGREEMENT THAT WAS SIGNED, IF YOU
6 LOOK AT PARAGRAPH SIX, PAGE THREE, SECTION SIX,
7 IT'S TALKING ABOUT FORECLOSURE COUNSEL AND THE
8 FACT THAT THE NOTE AND MORTGAGE. WHAT H&M WAS
9 BUYING WAS ALREADY IN FORECLOSURE AND THAT H&M
10 WAS GOING TO USE THE FORECLOSURE COUNSEL THAT
11 WAS ALREADY IN PLACE. AND THAT THE BANK WAS
12 GOING TO PAY FOR ALL THE FEES AND EXPENSES. DO
13 YOU REMEMBER HAVING ANY DISCUSSIONS WITH ANYONE
14 WHETHER IT WAS A BANK OR IT WAS DICKIE ABOUT
15 THE FACT, NUMBER ONE, THAT THE PROPERTY WAS
16 ALREADY IN FORECLOSURE AND NUMBER TWO, THAT
17 THERE WAS GOING TO BE A PROVISION THAT YOU WERE
18 GOING TO KEEP THE FORECLOSURE COUNSEL THAT WAS
19 ALREADY IN PLACE AND THAT THE BANK HAD TO PAY
20 FOR THAT, WAS THAT PART OF THE DEAL THAT YOU
21 WANTED STRUCK?

22 **A** THAT PART OF THE DEAL WAS STRUCK.

23 **Q** BUT IS THAT SOMETHING THAT YOU INITIATED ON OR
24 WAS THAT SOMETHING THAT THE BANK OFFERED TO
25 YOU, DO YOU REMEMBER?

1 A NO. THE BANK DID NOT OFFER IT TO ME. I PUT UP
2 TWO MILLION AND THAT'S ALL I'VE GOT AND I CAN'T
3 PUT NO MORE MONEY UP.

4 Q SO THE BANK ... FOR THIS DEAL TO WORK FOR YOU
5 AND FOR YOU TO CLOSE ON THIS, IT WAS YOUR
6 REQUIREMENT THAT YOU BE ABLE TO USE THE BANK'S
7 LAWYER WHO WAS ALREADY FORECLOSING AND THAT THE
8 BANK KEEP PAYING FOR THAT LAWYER? THAT WAS ONE
9 OF YOUR REQUIREMENTS, IS THAT CORRECT?

10 A THAT WAS ONE OF THE REQUIREMENTS THAT WAS IN
11 THAT. THAT WAS WHAT WE AGREED TO.

12 Q AND YOU AGREE TO THAT AND THE BANK AGREED TO
13 THAT, RIGHT?

14 A I AGREED TO IT.

15 Q LOOK ON PAGE 11, TO YOUR KNOWLEDGE, IS THAT THE
16 BANK SIGNATURE ON PAGE 11 AGREEING TO THE TERMS
17 OF EXHIBIT "33"?

18 A YES, MA'AM.

19 Q AND AFTER THIS WAS CLOSED IN JUNE 30, 2009, HAS
20 H&M, TO YOUR KNOWLEDGE, PAID ANY ATTORNEY FEES
21 FOR THE FORECLOSURE OF THE BJC NOTE AND
22 MORTGAGE?

23 A YES, MA'AM.

24 Q WHAT ATTORNEYS FEES HAS H&M PAID?

25 A ROBINSON & DEBOSE, DEBOSE & ROBINSON, WHATEVER.

1 Q SO, NOW, H&M FRONTED SOME COST FOR THE
2 ATTORNEYS YOU HAVE NOW. HAVE YOU BEEN
3 REIMBURSED BY FIRST PALMETTO FOR THOSE COSTS,
4 RIGHT?

5 A YES, MA'AM.

6 Q AND THAT WAS PART OF THE DEAL YOU STRUCK WITH
7 THE BANK WHEN H&M BOUGHT THE NOTE AND MORTGAGE,
8 RIGHT?

9 A YES, MA'AM.

10 Q THE MONEY THAT WAS REIMBURSED FROM FIRST
11 PALMETTO, I WON'T SAY THE MONEY, BUT AFTER
12 FIRST PALMETTO REIMBURSED Y'ALL, MR. GODWIN
13 WROTE HIMSELF A CHECK FOR THE SAME AMOUNT OF
14 MONEY, \$20,691.06 ACCORDING TO THIS SHEET?

15 A YES, MA'AM.

16 Q OTHER THAN \$5,000.00 YOU PUT IN CASH OR CHECK
17 OR CURRENCY IN '09, HAVE YOU PUT ANY MORE CASH,
18 CURRENCY OR CHECKS IN H&M?

19 A NOT UNLESS IT WOULD BE REIMBURSEMENT OR A CHECK
20 FROM THE BANK. YOU WOULD HAVE TO ASK MR.
21 GODWIN.

22 Q NO, SIR. I'M ASKING ABOUT YOU. OTHER THAN THE
23 \$5,000.00 THAT IS SHOWN ON THE RECORDS OF 2009,
24 HAVE YOU MADE ANY OTHER CASH CONTRIBUTIONS OR
25 CURRENCY CONTRIBUTIONS TO HOTEL AND MOTEL SINCE

1 YOU STARTED IT?

2 **A** THAT'S MY RECOLLECTION.

3 **Q** AND WHAT H&M BOUGHT FROM FIRST PALMETTO IN
4 2009, YOU BOUGHT WAS A 2008 NOTE FROM BJC AND
5 YOU BOUGHT SOME MORTGAGES ON PROPERTIES AND
6 BOUGHT SOME PERSONAL GUARANTIES OF INDIVIDUALS
7 AND YOU BOUGHT SOME ASSIGNMENTS OF RENTS AND
8 PROFITS, CORRECT?

9 **A** THAT'S MY UNDERSTANDING.

10 **Q** AND WHEN YOU BOUGHT THAT ON JUNE 3RD, WHEN H&M
11 BOUGHT THAT ON JUNE 30, 2009, YOU KNEW THAT A
12 FORECLOSURE ACTION ON THOSE MORTGAGES HAD
13 ALREADY BEGUN?

14 **A** YES, MA'AM.

15 **Q** AND YOU KNEW THAT ACTIONS ON THE GUARANTIES OF
16 THE THREE PEOPLE, YOU BOUGHT THEIR GUARANTIES
17 OF MS. BELLAMY, HARVEY JONES, AND TRIPP COAN.
18 YOU KNEW THAT AN ACTION LAWSUIT ON EACH OF
19 THOSE GUARANTIES HAD ALREADY BEEN STARTED, DID
20 YOU NOT?

21 **A** HONESTLY, I COULDN'T TELL YOU.

22 **Q** IF I UNDERSTOOD YOU CORRECTLY, YOU SAID THE
23 BANK AGREED TO SELL, AND YOU AGREED TO BUY, THE
24 BJC NOTE, THE MORTGAGE AND THE RELATED
25 DOCUMENTS FOR A TOTAL PRICE OF FIVE MILLION,

1 BANK LEDGER OF H&M, IT APPEARS THAT THE ONLY
2 ATTORNEYS FEES THAT H&M HAS PAID WAS TO THE
3 TUNE OF ABOUT 20,000 AND CHANGE, WHICH FIRST
4 PALMETTO HAS REIMBURSED YOU? H&M IN SEPTEMBER
5 OF ... REIMBURSED YOU LAST MONTH, CORRECT?

6 **A** YES, MA'AM. THAT IS MY UNDERSTANDING.

7 **Q** IS IT YOUR UNDERSTANDING THAT FROM NOW UNTIL
8 THE END OF THIS LAWSUIT IS OVER THAT FIRST
9 PALMETTO HAS TO PAY YOUR ATTORNEY FEES, H&M
10 ATTORNEYS FEES?

11 **A** THAT'S MY UNDERSTANDING.

12 **Q** DO YOU KNOW IF FIRST PALMETTO HAS BEEN PAYING
13 ANY OF THE COMPENSATION OR CHARGES OF KENIN
14 WALKER?

15 **A** I HAVE NO IDEA.

16 **Q** FROM EXHIBIT "101", IS IT YOUR KNOWLEDGE FROM
17 WHAT'S GOING ON WITH H&M, IS IT YOUR
18 UNDERSTANDING THAT H&M HAS NOT PAID KENIN
19 WALKER?

20 **A** THAT IS CORRECT.

21 **Q** DO YOU KNOW IF KENIN WALKER HAS BEEN PAID
22 ANYTHING?

23 **A** NO, MA'AM, I DON'T.

24 **Q** DO YOU KNOW IF KENIN WALKER HAS BEEN PAID ANY
25 MONEY OUT OF THE RENTALS THAT WERE GENERATED

1 THAT MEETING, HAD YOU A DISCUSSION WITH ANYBODY
2 ELSE AT THE BANK AT ANY TIME? AND YOU TOLD ME
3 ... LET ME FINISH SO THAT WE'RE ALL CLEAR ABOUT
4 WHAT I'M ASKING AND GIVE IT A PROPER TIME
5 FRAME, OKAY? YOU TOLD ME THAT MEETING WITH MR.
6 SMALLS AND ANOTHER BANKER REPRESENTATIVE CAME
7 TO THE MOTEL. IT WAS YOU AND BUPI AND WENDY
8 AND YOU SAID MAYBE SOME OTHER WORKERS WERE IN
9 THERE. YOU SAID THAT WAS IN JUNE OF 2009. MY
10 QUESTION IS BEFORE THAT CONVERSATION, HAD YOU
11 TALKED WITH ANYONE ELSE AT FIRST PALMETTO ABOUT
12 THEIR WILLINGNESS TO SELL THE NOTE AND MORTGAGE
13 AND/OR YOUR WILLINGNESS TO BUY IT BEFORE THAT
14 TIME?

15 **A** NO, MA'AM.

16 **Q** SO, NOT ONLY HAD YOU NOT TALKED TO MR. SMALLS
17 ABOUT THAT BEFORE THAT TIME, YOU HAD NOT TALKED
18 TO ANYBODY ELSE AT THE BANK ABOUT THE POTENTIAL
19 OF BUYING THE NOTE AND THEY HADN'T TALKED WITH
20 YOU ABOUT THE POTENTIAL OF SELLING THE NOTE?

21 **A** THAT IS CORRECT.

22 **Q** WHEN YOU STRUCK THE DEAL WITH FIRST PALMETTO
23 ... WHEN H&M STRUCK THE DEAL WITH FIRST
24 PALMETTO TO BUY THE NOTE AND MORTGAGE FOR
25 EMERALD SHORES AND RAINBOW COURT IN 2009, DID

1 FIRST PALMETTO REQUIRE YOU TO GIVE THEM A
2 PERSONAL FINANCIAL STATEMENT?

3 A NO, MA'AM.

4 Q DID THEY REQUIRE YOU TO FILL OUT, YOU, I'M
5 MEANING JACK JONES, DID THEY REQUIRE YOU TO
6 FILL OUT A LOAN APPLICATION?

7 A NOT TO MY KNOWLEDGE.

8 Q DID THEY REQUIRE YOU TO GIVE THEM AUTHORITY TO
9 PULL A CREDIT CHECK ON YOU?

10 A WILL YOU REPEAT THAT?

11 Q DID THEY REQUIRE YOU TO SIGN ANYTHING TO
12 AUTHORIZE THEM TO PULL A CREDIT REPORT OR
13 CREDIT CHECK ON YOU?

14 A I'M NOT SURE.

15 Q DID THEY ASK YOU OR REQUIRE YOU TO GIVE THEM
16 ANY PRIOR YEARS TAX RETURNS BEFORE THEY WOULD
17 LEND H&M THE MONEY?

18 A NO, MA'AM.

19 Q WHEN IS THE LAST TIME YOU HAD TO FILL A
20 PERSONAL FINANCIAL STATEMENT FOR ANYTHING?

21 A PROBABLY, APRIL OF LAST YEAR.

22 Q SO, YOU MIGHT HAVE ONE AS CURRENT AS OF APRIL
23 OF 2009?

24 A YES, MA'AM.

25 Q WHAT WOULD YOU HAVE FILLED OUT THAT FINANCIAL

1 STATEMENT WITH REGARD TO? WAS THERE A
2 TRANSACTION THAT YOU NEEDED A FINANCIAL
3 STATEMENT OR ANYTHING?

4 **A** NO, MA'AM. I FILL IT OUT EVERY YEAR.

5 **Q** KEEP ONE KIND OF UPDATED?

6 **A** THERE YOU GO.

7 **Q** WITHIN A TWELVE MONTH PERIOD?

8 **A** RIGHT.

9 **Q** WHO WOULD HAVE A COPY OF THAT CURRENTLY?

10 **A** ANY OF THE BANKS.

11 **Q** WELL, WOULD YOUR ACCOUNTANT OR YOU HAVE A COPY
12 OF IT?

13 **A** I MIGHT HAVE A COPY OF IT.

14 **Q** WE ALREADY SAID THE BANK DIDN'T REQUIRE YOU TO
15 GIVE A PERSONAL GUARANTY ON THAT \$4,750,000.00
16 LOAN, DID THEY?

17 **A** NO, MA'AM.

18 **Q** DO YOU KNOW IF THE PAYMENTS ON THE H&M LOAN
19 WITH FIRST PALMETTO ARE CURRENT?

20 **A** TO THE BEST OF MY KNOWLEDGE.

21 **Q** DID THE BANK REQUIRE YOU OR H&M TO GIVE THEM
22 ANY SECURITY FOR THE \$4,750,000.00 LOAN THAT
23 THEY GRANTED OTHER THAN AN ASSIGNMENT OF THE
24 NOTE AND MORTGAGE YOU WERE BUYING AND THE
25 MILLION DOLLARS THAT'S SITTING IN THE BANK TO

1 **A** YES, LET ME REFRESH MY MEMORY HERE. IT SEEMED
2 LIKE ME, BUPI, AND WENDY WENT BACK IN, IT MUST
3 HAVE BEEN IN FEBRUARY. I THOUGHT IT WAS IN
4 MARCH, I BELIEVE WE WHEN IN MARCH.

5 **Q** SO YOU THINK THE NEXT TIME THAT YOU MIGHT HAVE
6 MET WITH ANYBODY WITH THE BANK WAS WHEN YOU,
7 BUPI, AND WENDY MIGHT HAVE GONE BACK TO SEE
8 SOMEBODY WITH THE BANK?

9 **A** YES, MA'AM.

10 **Q** DID YOU GO TO CAMDEN? DID YOU GO HERE LOCALLY?
11 DID THEY COME SEE YOU?

12 **A** WE WENT TO CAMDEN.

13 **Q** YOU THOUGHT THAT WAS IN MARCH OF 2009?

14 **A** YES, MA'AM.

15 **Q** IT WAS YOU, WENDY, AND BUPI?

16 **A** RIGHT.

17 **Q** TELL ME ABOUT, WHY Y'ALL WERE GOING BACK UP
18 THERE THEN, WHY WERE YOU GOING UP IN MARCH?

19 **A** TRYING TO WORK OUT SOMETHING ON THE LOAN.

20 **Q** TRYING TO GET IT EXTENDED OR SOMETHING?

21 **A** BUYING SOME TIME.

22 **Q** WHO DID YOU MEET WITH IN THAT MARCH TRIP IN
23 CAMDEN?

24 **A** SAMMY SENIOR AND MIGHT'VE BEEN 1 OR 2 OTHER
25 PEOPLE THERE, BUT I DONT KNOW WHO THEY WERE.

1 Q BUT YOUR RECOLLECTION WAS SAMMY SENIOR AND
2 EITHER 1 OR 2 MORE?

3 A RIGHT.

4 Q AND THIS TIME NONE OF CASEY'S CROWD WAS THERE?
5 ED FARMER WASN'T THERE? TRIPP WASN'T THERE?

6 A NO, MA'AM.

7 Q BECAUSE WAS IT YOUR UNDERSTANDING THAT, I MEAN,
8 SAMMY HAD ALREADY TAKEN TRIPP'S 500,000, RIGHT?

9 A YES, MA'AM.

10 Q SO, YOU GO BACK UP THERE IN MARCH, TELL ME
11 ABOUT THAT TELL ME WHAT HAPPENS, TELL ME WHAT
12 THE CONVERSATION IS IN MARCH?

13 A HE WAS WANTING MONEY.

14 Q YEAH. DID Y'ALL HAVE AN MONEY ... DID WENDY
15 HAVE ANY MONEY TO GIVE THEM IN MARCH?

16 A NO, MA'AM. I DON'T THINK SO, NOT WHEN WE WENT.

17 Q BUT TELL ME ABOUT THE CONVERSATION AND THEN
18 JUST TELL ME WHEN YOU LEFT, WHAT WAS YOUR
19 UNDERSTANDING?

20 A WHEN WE LEFT MY UNDERSTANDING WAS HE GIVE TO
21 MAY 31ST, TO COME UP WITH \$150,000.

22 Q OKAY?

23 A OR HE WAS GOING TO FORECLOSE, AND HE WASN'T
24 GOING TO WAIT ONE DAY, TWO DAYS IT WAS GOING TO
25 BE THAT DAY.

1 Q SO, WHEN YOU LEFT THAT DAY ... NOW, WAS BUPI IN
2 THE MEETINGS THIS WHOLE TIME?

3 A YES, MA'AM.

4 Q YOU WERE IN THE MEETING THE WHOLE TIME?

5 A YES, MA'AM.

6 Q WAS WENDY IN THE MEETING THE WHOLE TIME?

7 A YES, MA'AM.

8 Q AND WHEN Y'ALL LEFT THAT DAY FROM CAMDEN YOUR
9 UNDERSTANDING WAS THEY WERE GOING TO HOLD OFF
10 ON WHATEVER THEY WERE DOING, IF THEY GOT
11 150,000 BY MAY 31ST, OR IF THEY GOT ...
12 EXPLAINED THAT TO ME AGAIN? I'M SORRY.

13 A WENDY HAD MADE A PAYMENT OF \$95,000 FOR
14 SOMETHING, BACK INTEREST OF WHATEVER.

15 Q SO, BEFORE THAT MAY MEETING ... I'M GETTING
16 TIRED TOO. BEFORE THAT MARCH MEETING YOUR
17 UNDERSTANDING WAS WENDY HAD GIVEN THEM SOME
18 MONEY, Y'ALL GO ON MARCH AND HE WANTS MORE
19 MONEY, BUT HE DOES AGREE THAT THEY WILL HOLD
20 OFF ON DOING ANYTHING UNTIL MAY 31ST? AND THEY
21 HAVE TO HAVE \$150,000 BY MAY 31ST, AND IF THEY
22 DON'T HAVE IT BY THAT DAY, THEY WILL NOT
23 WAITING ANOTHER DAY THEY'RE GOING TO MOVE
24 FORWARD, RIGHT?

25 A YES, MA'AM.

1 Q SO WHEN YOU LEFT, IS IT FAIR TO SAY YOU THOUGHT
2 ENOUGH TIME HAD BEEN BOUGHT THAT IF YOU COULD
3 GET 150,000 BY MAY 31ST, YOU WERE GOING TO BE
4 OKAY?

5 A YES, MA'AM.

6 Q WHAT WAS YOUR UNDERSTANDING IF YOU GOT ANOTHER
7 ... IF WENDY GOT ANOTHER 150,000 AND GOT IT TO
8 THEM BY MAY 31ST, AND I KNOW THAT DIDN'T
9 HAPPEN. BUT IF SHE HAD, DID YOU HAVE AN
10 UNDERSTANDING OF WHAT WOULD HAPPEN AFTER THAT?

11 A NO, MA'AM.

12 Q ALL YOU KNEW WAS IF YOU ... SHE COULD GET
13 ANOTHER 150,000 ...

14 A IT WOULD BUY SOME TIME.

15 Q WOULD I BUY TIME PAST MAY 31ST, IF SHE PAID
16 THEM OR ...

17 A I'M ASSUMING, I DON'T KNOW.

18 Q BECAUSE AT LEAST, THEN YOU WOULD HAVE BEEN IN
19 THE SUMMER SEASON, RIGHT? YOU ASSUMED THAT IF
20 WENDY TO GET THEM PAID ANOTHER 150 BY MAY 31ST,
21 THEY WOULD WORK WITH HER IN SOME WAY OR
22 FASHION, BUT YOU DIDN'T KNOW HOW, BUT WOULD
23 WORK A LITTLE BIT FURTHER WITH HER?

24 A THAT'S, KIND OF, OF WHAT I GOT OUT OF THE
25 CONVERSATION.

1 WOULD TALK ... OTHER THAN TALKING TO MR. SMALLS
2 ON THE TELEPHONE BETWEEN THE MARCH TIMEFRAME
3 AND THE MAY 31ST, TIMEFRAME. DID YOU TALK TO
4 ANYBODY ELSE WITH THE BANK ON THE TELEPHONE?

5 **A** NOT TO MY KNOWLEDGE.

6 **Q** BETWEEN THAT MARCH AND MAY 31ST, TIMEFRAME DID
7 YOU LEND ANY MONEY TO WENDY OR TO THE MOTELS TO
8 TRY AND GET THEM UP AND OPEN?

9 **A** YES, MA'AM. I LOANED THE PATEL MANAGEMENT AND
10 I GOT MY BROTHER TO LOAN THEM 50,000.

11 **Q** SOMETIME BETWEEN MARCH AND MAY YOU AND YOUR
12 BROTHER LOANED PATEL MANAGEMENT \$100,000?

13 **A** 70,000.

14 **Q** YOU LOANED PATEL MANAGEMENT 20, AND SOMEBODY
15 LOANED 50?

16 **A** MY BROTHER WILBUR JONES, 50.

17 **Q** YOU LOANED 20, AND YOU LOANED THAT TO PATEL
18 MANAGEMENT?

19 **A** RIGHT.

20 **Q** THE 20, THAT YOU LOANED PATEL DID YOU GIVE THAT
21 TO PATEL MANAGEMENT BY CHECK, WIRE TRANSFER, OR
22 DID YOU GIVE IT IN CASH?

23 **A** I GIVE HIM A CHECK FOR PART OF IT AND THEN
24 BILLS FOR THE BALANCE OF IT.

25 **Q** SO YOU GAVE PATEL MANAGEMENT A CHECK FOR PART

1 OF IT AND THEN, YOU ACTUALLY PAID FOR THING OR
2 BOUGHT THINGS THAT EQUALED UP TO THE TOTAL OF
3 THE 20?

4 **A** YES, MA'AM.

5 **Q** HOW ABOUT WILBUR, HIS 50, DID HE PAY PATEL
6 MANAGEMENT CASH OR WIRE TRANSFER OR ...

7 **A** CHECK.

8 **Q** FOR THE WHOLE 50?

9 **A** TO THE BEST OF MY KNOWLEDGE. I BELIEVE SO.

10 **Q** SO NEITHER, YOU NOR WILBUR LOANED WENDY OR
11 AMERICANA OR BJC ANY MONEY? YOU LOANED PATEL
12 MANAGEMENT MONEY?

13 **A** RIGHT.

14 **Q** OTHER THAN LENDING PATEL MANAGEMENT MONEY, DID
15 YOU DO ANYTHING ELSE TO ASSIST IN GETTING THE
16 MOTEL'S OPEN?

17 **A** YES, MA'AM.

18 **Q** AND I DON'T MEAN TO DISCOUNT THAT. YOU WENT
19 AND BOUGHT THINGS AND PAY FOR THINGS AND THAT
20 KIND OF STUFF, BUT WHAT ELSE DID YOU DO BESIDES
21 BUYING THINGS TO GET IT OPEN AND GIVING MONEY
22 TO THE TUNE OF \$20,000, DID YOU DO ANYTHING
23 ELSE?

24 **A** YES. I HAD HUCKS POOL TO COME AND FIX THE
25 POOLS AND STUFF.

1 Q AND THAT'S ON TOP OF THE \$20,000?

2 A YES.

3 Q THAT IS PART OF THE ... I'M TALK OUT ABOUT
4 THINGS THAT WOULD BE ON TOP OF, OR IN ADDITION
5 TO THE 20,000?

6 A NO, MA'AM.

7 Q DID YOU SIGN THESE MANAGEMENT CONTRACTS? YOU
8 HAD WENDY'S POWER OF ATTORNEY, CORRECT?

9 A RIGHT.

10 Q DID YOU SIGN THE MANAGEMENT CONTRACTS ON
11 WENDY'S BEHALF, TO PATEL MANAGEMENT?

12 A NO, MA'AM.

13 Q WHO DID?

14 A I'M ASSUMING, WENDY DID.

15 Q BUT YOU HAD HER POWER OF ATTORNEY?

16 A YES, MA'AM.

17 Q WAS IT A DURABLE POWER ATTORNEY?

18 A I DON'T KNOW WHAT DURABLE, I MEAN, HER ATTORNEY
19 TOLD ME SHE COULD TAKE ME OFF ANYTIME SHE
20 WANTED TO, SHE DIDN'T REALLY NEED ME.

21 Q WHO DREW UP THAT POWER OF ATTORNEY?

22 A MICHAEL MUNDEN.

23 Q WHERE DID YOU EXECUTE THE POWER OF ATTORNEY OR
24 WHERE DID SHE EXECUTE THE POWER OF ATTORNEY?

25 A HIS OFFICE.

1 Q I'M SORRY. WHAT WAS YOUR UNDERSTANDING OF THE
2 OUTCOME OF WHETHER OR NOT ANYONE AGREED TO BUPI
3 OR BUPI'S COMPANY MANAGING THE EMERALD SHORES
4 AND RAINBOW COURT?

5 A THEY CAME TO AN AGREEMENT.

6 Q THEY CAME TO AN AGREEMENT. WERE YOU THERE WHEN
7 THEY CAME TO AN AGREEMENT?

8 A YES, MA'AM.

9 Q DID YOU HELP PREPARE ANY KIND OF AGREEMENT?

10 A NO, MA'AM.

11 Q DID AN ATTORNEY PREPARE ANY KIND OF AGREEMENT
12 AS FAR AS YOU KNOW?

13 A NOT TO MY KNOWLEDGE.

14 Q DO YOU KNOW WHAT THE TERMS OF THAT AGREEMENT
15 WERE?

16 A SIX YEARS. TO THE BEST OF MY KNOWLEDGE.

17 Q SIX YEARS. THAT WAS THE LENGTH OF THE
18 MANAGEMENT AGREEMENT FOR BOTH PROPERTIES?

19 A AS FAR AS MY UNDERSTANDING WAS.

20 Q AND THAT'S ALL I'M ASKING YOU. DID YOU
21 UNDERSTAND WHAT BUPI WAS GOING TO BE PAID FOR
22 MANAGING THE PROPERTIES FOR SIX YEARS?

23 A \$30,000.00 FOR EACH ONE.

24 Q PER YEAR OR FOR A TOTAL OF THE SIX YEARS?

25 A PER YEAR.

1 Q SO, \$60,000.00 A YEAR FOR SIX YEARS WAS YOUR
2 UNDERSTANDING?

3 A YES, MA'AM.

4 Q AND YOU HAD LOOKED AT THE PAPERWORK, THE
5 FINANCIAL'S THAT BUPI HAD ASKED TO SEE BEFORE
6 HE WOULD CONSIDER WHETHER OR NOT HE WOULD LEASE
7 THE PROPERTY. HAD YOU LOOKED AT THAT
8 PAPERWORK?

9 A NO, I DIDN'T SEE IT. WENDY HANDED IT TO ME.

10 Q BUT HE REVIEWED IT WHEN WENDY HAD IT, RIGHT?

11 A I LOOKED AT IT.

12 Q DID YOU THINK THE PROPERTIES GENERATED ENOUGH
13 INCOME THAT THE PROPERTIES COULD SUSTAIN PAYING
14 THE LOANS THAT WERE DUE ON THE PROPERTIES AND
15 PAYING BUPI \$60,000.00 A YEAR?

16 A FROM WHAT I KNEW OF IT, IT WOULDN'T MAKE THE
17 PAYMENTS AND PAY BUPI \$60,000.00.

18 Q LET ME SHOW YOU WHAT WE HAVE MARKED AS
19 DEFENDANT'S EXHIBIT NUMBER "70". IT IS A
20 DOCUMENT ENTITLED, "MANAGEMENT CONTRACT BETWEEN
21 BJC, EMERALD SHORES AND AMERICANA AND PATEL
22 MANAGEMENT, LLC." DID YOU HELP TYPE THIS UP?

23 A NO, MA'AM.

24 Q DID YOU HELP PUT ANY OF THE TERMS IN HERE?

25 A NO, MA'AM.

1 Q IT SAYS, "THAT THE AGREEMENT IS EFFECTIVE MARCH
2 30TH, 2009 FOR A SIX YEAR TERM RUNNING FROM
3 MARCH 23, 2009 TO MARCH 23, 2015, IS THAT
4 CORRECT?

5 A SAYS FROM MARCH 23RD, 2009 FOR A SIX YEAR
6 PERIOD TO MARCH 23, 2015.

7 Q FROM WHAT YOU HAD LOOKED AT FINANCIALLY, YOU
8 DIDN'T THINK THAT THE PROPERTY COULD GENERATE
9 ENOUGH TO PAY HIM \$60,000.00, TO PATEL
10 MANAGEMENT \$60,000.00 A YEAR AND PAY THE NOTES
11 AND MORTGAGES THAT WERE OWED ON THE PROPERTY,
12 RIGHT?

13 A I DON'T THINK IT COULD DO IT TODAY AND NO OTHER
14 DAY.

15 Q RIGHT. DO YOU KNOW THIS DENISE HARB?

16 A YES, MA'AM.

17 Q AND YOU KNOW TINA CORELLI?

18 A YES, MA'AM.

19 Q WHAT'S ON EXHIBIT NUMBER "70" WAS THAT YOUR
20 UNDERSTANDING OF THE AGREEMENT THAT WENDY AND
21 HARVEY AND BUPI ENTERED INTO?

22 A YES, MA'AM.

23 Q LET ME SHOW YOU WHAT WE HAVE MARKED AS EXHIBIT
24 NUMBER "71". THIS EXHIBIT NUMBER "71", AS FAR
25 AS I CAN TELL SAYS THE SAME THING BUT IT HAS A

1 SECOND PAGE TO IT. THE SECOND PAGE SAYS,
2 "WENDY JONES BELLAMY AND HARVEY L. JONES AND
3 BHUPENDRA PATEL APPEARED BEFORE ME ON MARCH 21,
4 2009, AND SIGNED A MANAGEMENT CONTRACT." AND
5 IT'S GOT TINA CORELLI'S AFFIDAVIT ON IT. DO
6 YOU KNOW HOW THIS WENT FROM BEING A ONE PAGE
7 AGREEMENT TO A TWO PAGE AGREEMENT?

8 **A** NO, MA'AM.

9 **Q** NOW, LET ME SHOW YOU WHAT WE MARKED AS EXHIBIT
10 NUMBER "72". EXHIBIT NUMBER "72", IS THAT YOUR
11 SIGNATURE ON IT?

12 **A** YES, MA'AM.

13 **Q** IT SAYS, "I, JACK JONES, AS POWER OF ATTORNEY
14 FOR WENDY JONES BELLAMY ATTACHED ATTEST TO THIS
15 DATE OF MARCH 21, 2009, I WITNESSED AND
16 AUTHORIZED WENDY JONES BELLAMY'S SIGNING OF THE
17 MANAGEMENT CONTRACT BETWEEN BJC, ETC.
18 AMERICANA, AND PATEL MANAGEMENT," AND IT'S
19 SIGNED BY YOU AND IT'S WITNESSED BY DENISE HARB
20 AND NOTARIZED BY TINA CORELLI. DO YOU REMEMBER
21 SIGNING THIS?

22 **A** THAT'S MY SIGNATURE.

23 **Q** YOU AUTHORIZED WITH YOUR POWER OF ATTORNEY
24 WENDY TO SIGN A CONTRACT, THAT YOU SAID YOU
25 KNEW THEN AND YOU KNOW NOW, THAT THE PROPERTIES

1 WOULD NOT SUPPORT PAYMENT OF THE NOTES AND
2 MORTGAGES AND BUPI \$60,000.00 A YEAR, RIGHT?

3 **A** RIGHT.

4 **Q** YOU KNOW IF BUPI WAS PAID ANY MONEY IN 2009,
5 FOR MANAGING EITHER OF THE PROPERTIES?

6 **A** NO, MA'AM?

7 **Q** NO, HE WASN'T PAID ANY OR, NO, YOU DON'T KNOW?

8 **A** NO, I DON'T KNOW.

9 **Q** I WAS JUST TRYING TO CLARIFY YOUR ANSWER.

10 **A** I WILL SAY THIS. WHEN WE WENT THERE EVERYTHING
11 WAS C.O.D. WE WERE LUCKY BUPI HAD CREDIT.
12 THAT'S ALL I CAN SAY.

13 **Q** WHEN YOU LEFT THERE, BUPI HADN'T PAID MANY OF
14 THE BILLS, HAD HE?

15 **A** TO THE BEST OF MY KNOWLEDGE, I DON'T KNOW OF NO
16 BILLS OUTSTANDING.

17 **Q** LET ME SHOW YOU WHAT I HAVE MARKED AS EXHIBIT
18 NUMBER "73". THIS IS YET ANOTHER MANAGEMENT
19 CONTRACT DATED THE SAME DAY. THIS ONE IS
20 BETWEEN AMERICANA HOTEL OF MYRTLE BEACH AND
21 BHUPENDRA PATEL?

22 **A** WHO?

23 **Q** BHUPENDRA PATEL. THIS ONE SAYS BUPI GOING TO
24 BE THE MANAGER OF THE DAY-TO-DAY OPERATIONS OF
25 AMERICANA AND THAT'S RAINBOW COURT, AND THAT

1 **A** FAR AS I KNOW HE DID.

2 **Q** AND IN TERMS OF MANAGING THE PROPERTIES, DID HE
3 GET THE INCOME, DEPOSIT THE INCOME, PAY THE
4 BILLS, PAY PAYROLL? WAS HE IN CHARGE OF DOING
5 ALL THAT?

6 **A** YES, MA'AM.

7 **Q** TO YOUR KNOWLEDGE, DID HE DO ALL THAT?

8 **A** I DON'T KNOW. I'M ASSUMING HE DID.

9 **Q** DID YOU GO DOWN TO THE PROPERTY FROM TIME TO
10 TIME?

11 **A** YES, MA'AM.

12 **Q** HOW OFTEN WOULD YOU SAY YOU WERE DOWN THERE,
13 AND THIS IS ALL MARCH OF 2009. SO, LET'S SAY
14 FROM MARCH OF 2009 UNTIL THE END OF THE
15 TRANSACTION WHERE H&M BOUGHT ... I'M GOING TO
16 TALK ABOUT THE TIME PERIOD, MARCH OF 2009 WHEN
17 BUPI CAME IN AS MANAGER TO JUNE 30, 2009, WHEN
18 H&M BOUGHT THE NOTE AND MORTGAGE FROM FIRST
19 PALMETTO, DURING THAT TIME FRAME, HOW MUCH
20 WOULD YOU SAY YOU WERE DOWN THERE AT EITHER
21 PROPERTY?

22 **A** I WAS DOWN THERE A GOOD BIT.

23 **Q** WOULD YOU SAY ALMOST DAILY?

24 **A** YES, MA'AM.

25 **Q** WERE YOU ASSISTING BUPI IN PAYING BILLS OR

1 DECIDING WHAT TO PAY AND WHAT NOT TO PAY OR
2 TAKING IN MONEY OR WHATEVER?

3 **A** NO, MA'AM.

4 **Q** YOU WEREN'T? OKAY. DO YOU KNOW WHERE BUPI
5 MAINTAINED THE CHECKING ACCOUNT OR THE
6 OPERATING ACCOUNT FOR THE BUSINESS?

7 **A** DO I KNOW WHERE?

8 **Q** DO YOU KNOW WHERE HE HAD THE BANK ACCOUNT FOR
9 RAINBOW COURT AND/OR EMERALD SHORES?

10 **A** I BELIEVE IT WAS FIRST PALMETTO.

11 **Q** DO YOU KNOW IF THERE WAS ONE ACCOUNT OR IF
12 THERE WAS TWO? DID HE KEEP IT SEPARATE OR DID
13 HE COMBINE 'EM TOGETHER OR DO YOU KNOW?

14 **A** TO BE HONEST, I DON'T KNOW.

15 **Q** IN ADDITION TO EMERALD SHORES, THE HOTEL THAT'S
16 ON THE FRONT AND RAINBOW COURT, THAT IS THE
17 LONG BUILDING THAT'S TWO BLOCKS BACK, WAS PART
18 OF THAT ALSO WHAT WE KIND OF COMMONLY REFER TO,
19 I DON'T KNOW IF YOU DO, BUT RAINBOW ANNEX? WAS
20 THAT PART OF THAT MANAGEMENT CONTRACT AS WELL?
21 YOU KNOW WHICH BUILDING AND TALKING ABOUT?

22 **A** YES, MA'AM. ALONG THE BOULEVARD?

23 **Q** YES, SIR.

24 **A** YES, MA'AM.

25 **Q** SO BUPI WAS MANAGING ALL THREE OF THOSE

1 DECIDING WHAT TO PAY AND WHAT NOT TO PAY OR
2 TAKING IN MONEY OR WHATEVER?

3 **A** NO, MA'AM.

4 **Q** YOU WEREN'T? OKAY. DO YOU KNOW WHERE BUPI
5 MAINTAINED THE CHECKING ACCOUNT OR THE
6 OPERATING ACCOUNT FOR THE BUSINESS?

7 **A** DO I KNOW WHERE?

8 **Q** DO YOU KNOW WHERE HE HAD THE BANK ACCOUNT FOR
9 RAINBOW COURT AND/OR EMERALD SHORES?

10 **A** I BELIEVE IT WAS FIRST PALMETTO.

11 **Q** DO YOU KNOW IF THERE WAS ONE ACCOUNT OR IF
12 THERE WAS TWO? DID HE KEEP IT SEPARATE OR DID
13 HE COMBINE `EM TOGETHER OR DO YOU KNOW?

14 **A** TO BE HONEST, I DON'T KNOW.

15 **Q** IN ADDITION TO EMERALD SHORES, THE HOTEL THAT'S
16 ON THE FRONT AND RAINBOW COURT, THAT IS THE
17 LONG BUILDING THAT'S TWO BLOCKS BACK, WAS PART
18 OF THAT ALSO WHAT WE KIND OF COMMONLY REFER TO,
19 I DON'T KNOW IF YOU DO, BUT RAINBOW ANNEX? WAS
20 THAT PART OF THAT MANAGEMENT CONTRACT AS WELL?
21 YOU KNOW WHICH BUILDING AND TALKING ABOUT?

22 **A** YES, MA'AM. ALONG THE BOULEVARD?

23 **Q** YES, SIR.

24 **A** YES, MA'AM.

25 **Q** SO BUPI WAS MANAGING ALL THREE OF THOSE

1 PROPERTIES, IS THAT RIGHT?

2 A YES, MA'AM.

3 Q WAS HE DOING ANYTHING IN TERMS OF MANAGING ANY
4 OF THE OTHER RAINBOW COURT PROPERTIES ... I'M
5 GOING TO CALL THOSE MORE THE LONG TERM RENTAL
6 PROPERTIES. WAS HE DOING ANYTHING IN REGARDS
7 TO THOSE PROPERTIES?

8 A HE MANAGED THE WHOLE PROPERTY.

9 Q HE MANAGED THE WHOLE THING. SO, TO THE EXTENT
10 THAT RENTERS KIND OF IN THE BACK IN THOSE
11 HOUSES, IN THE APARTMENTS AND STUFF, HE TOOK IN
12 THE RENT MONEY FROM THEM AND HE PAID THE BILLS,
13 IF THERE WERE BILLS ASSOCIATED WITH THOSE
14 PROPERTIES AS FAR AS YOU KNOW?

15 A I ASSUME SO.

16 Q DO YOU KNOW IF THE PROPERTIES GENERATED ENOUGH
17 MONEY THAT BUPI HAD TO HAVE SUFFICIENT INCOME
18 TO PAY THE BILLS OF ALL THE PROPERTY?

19 A NO, MA'AM. I DON'T KNOW.

20 Q YOU DON'T KNOW. WAS BUPI PAYING THE MORTGAGE
21 PAYMENT, THE INTEREST ON THE MORTGAGE PAYMENT
22 WHEN IT CAME DUE TO FIRST PALMETTO?

23 A I CAN'T ANSWER THAT. I DON'T KNOW.

24 Q WELL, YOU COULD ANSWER THAT COULDN'T YOU,
25 BECAUSE YOU WERE GOING TO THE BANK AND KNEW

1 THAT THE LOAN WAS IN DEFAULT AND THAT THEY WERE
2 GOING TO FORECLOSE? SO, YOU DID KNOW THAT,
3 DIDN'T YOU?

4 **A** NO, MA'AM.

5 **Q** YOU DIDN'T KNOW THAT? YOU HAD BEEN TO THE BANK
6 ON JANUARY 22, 2009, AND HEARD THE MAN SAY THAT
7 IT WAS IN DEFAULT AND THAT HE WAS TAKING THE
8 \$500,000.00 FROM MR. COAN, RIGHT? YOU KNEW
9 THAT?

10 **A** YES, MA'AM.

11 **Q** AND YOU KNEW ON THE 22ND WHEN HE WENT WITH
12 HARVEY TO THE BANK THAT THE LOAN WAS PAST DUE,
13 THE WHOLE THING HAD BEEN DUE ON JANUARY 17,
14 2009? THE WHOLE FIVE MILLION PLUS, RIGHT?

15 **A** I DIDN'T KNOW HOW MUCH WAS DUE.

16 **Q** YOU KNEW THAT IT WAS A CHUNK OF CHANGE?

17 **A** YEAH.

18 **Q** AND YOU KNEW WHEN YOU WENT WITH WENDY AND BUPI
19 TO THE BANK IN MARCH AND BOUGHT THAT TIME `TIL
20 MAY 31ST. YOU KNEW THAT THE FORECLOSURE HAD
21 ALREADY BEEN FILED, BUT THEY BOUGHT THEMSELVES
22 A LITTLE TIME? YOU KNEW THAT, DIDN'T YOU?

23 **A** YES, MA'AM.

24 **Q** SO YOU KNEW BUPI WASN'T PAYING THE MORTGAGE
25 PAYMENT? THERE WASN'T ENOUGH MONEY, WAS THERE?

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1 **A** YOU JUST GOT THROUGH SAYING THAT THERE WASN'T.
2 ... THERE WASN'T NO MORTGAGE PAYMENT. THERE
3 WAS A PAYMENT DUE MAY 31ST, FOR APPROXIMATELY,
4 \$150,000.00. SO I DONT KNOW IF BUPI HAD THE
5 150,000. I DON'T KNOW. I DON'T HAVE NO IDEA.
6 YOU'D HAVE TO ASK HIM.

7 **Q** YOU WERE DOWN THERE DAILY, RIGHT?

8 **A** NOT EVERY DAY, BUT I WAS DOWN THERE A GOOD BIT.

9 **Q** LET ME ASK YOU THIS, WHO MADE THE DEPOSITS?
10 WHEN THE RECEIPTS WOULD COME IN AND THE MONEY
11 WOULD WHO MADE THE DEPOSITS?

12 **A** YOU WOULD HAVE TO ASK BUPI.

13 **Q** WAS THERE A SAFE IN THE HOTEL?

14 **A** YES, MA'AM.

15 **Q** DID YOU HAVE ACCESS TO THAT SAFE?

16 **A** NO, MA'AM.

17 **Q** WERE THERE TIMES WHEN BILLS WOULD COME IN AND
18 YOU AND BUPI ... WENDY WOULD SHOW YOU A BILL
19 AND Y'ALL WOULD JUST PUT THE BILL IN THE TRASH?

20 **A** NO. ANY BILLS CAME TO THE EMERALD SHORES, I
21 WOULD TAKE THEM OVER TO BUPI.

22 **Q** YOU NEVER WERE OF THE OPINION AND TOLD BUPI OR
23 TOLD WENDY THAT, "WE'RE NOT GOING TO PAY THIS.
24 JUST PUT IT IN THE TRASH."?

25 **A** NOT TO MY KNOWLEDGE.

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1 Q WHEN BUPI WAS IN MANAGING THESE TWO PROPERTIES,
2 EMERALD SHORES AND RAINBOW COURT, WHICH
3 INCLUDED RAINBOW ANNEX AND THEN ALL THE LONG
4 TERM RENTALS, YOU SAID THAT WILBUR LOANED HIM
5 \$50,000.00, AND THAT YOU LOANED HIM A TOTAL OF
6 \$20,000.00 WHETHER IT WAS PART IN CASH AND PART
7 THINGS YOU NEEDED TO BUY FOR THE HOTEL TO GET
8 OPEN. DID BUPI OR PATEL MANAGEMENT EVER PAY
9 YOU BACK THAT MONEY?

10 A I THINK HE STILL OWES ME CLOSE TO \$2,000.00.

11 Q TO YOUR KNOWLEDGE, DID BUPI OR PATEL MANAGEMENT
12 EVER PAY WILBUR BACK THE 50,000.00?

13 A YES, MA'AM.

14 Q WAS WILBUR PAID BACK ANY INTEREST ON THE
15 50.000.00?

16 A NO, MA'AM.

17 Q WERE YOU PAID BACK ANY INTEREST ON THE 18 THAT
18 YOU HAD GOTTEN BACK?

19 A NO, MA'AM.

20 Q LET ME HAND YOU WHAT WE MARKED AS EXHIBIT
21 NUMBER "78". THIS IS A DOCUMENT THAT WAS FILED
22 WITH THE COURT HOUSE EITHER THE DAY AFTER OR
23 THE DAY OF THE HEARING WE HAD WHERE JUDGE JOHNS
24 WOULDN'T LET BUPI BE NAMED A RECEIVER. DO YOU
25 KNOW ANYTHING ABOUT THIS AGREEMENT BETWEEN

1 **A** NO, MA'AM.

2 **Q** DO YOU REMEMBER YOU AND THE BANK OFFICIAL
3 HAVING A CONVERSATION AFTER YOU EXCLUDED MR.
4 JONES FROM THE ROOM, HARVEY JONES FROM THE
5 ROOM? DO YOU DENY THAT HAPPENING?

6 **A** I DON'T REMEMBER TALKING TO SAMMY SMALL BY
7 MYSELF.

8 **Q** YOU'RE NOT DENYING IT HAPPENED, YOU JUST DON'T
9 REMEMBER IT HAPPENING?

10 **A** YES, MA'AM. IF IT HAPPENED, I DONT REMEMBER
11 IT.

12 **Q** DO YOU REMEMBER HAVING A CONVERSATION WITH
13 SAMMY SMALL BY YOURSELF AFTER YOU MADE MS.
14 WENDY LEAVE THE ROOM?

15 **A** I DONT KNOW WHAT YOU TALKING ABOUT. MADE WENDY
16 LEAVE THE ROOM.

17 **Q** WELL, Y'ALL ASKED WENDY TO LEAVE THE ROOM SO
18 THAT YOU AND MR. SMALL COULD HAVE A PRIVATE
19 CONVERSATION?

20 **A** NO, MA'AM.

21 **Q** DO YOU RECALL THAT?

22 **A** NO, MA'AM. WHEN WAS THAT? I WOULD LIKE TO SEE
23 A DOCUMENT OR SOMETHING TO THAT. I'M KIND
24 OF...

25 **Q** WHEN IS THE FIRST TIME YOU HEARD OF WENDY

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1 TRYING TO KILL HERSELF?

2 **A** LIKE NOVEMBER OR SOMETHING LIKE THAT. SOMEONE
3 CALLED ME AND TOLD ME SHE WAS IN THE HOSPITAL
4 OR SOMETHING.

5 **Q** HOW MUCH TIME WAS THERE WHEN SHE WAS RELEASED
6 FROM THE HOSPITAL AND WHEN SHE GAVE YOU POWER
7 OF ATTORNEY, DO YOU KNOW?

8 **A** NO, MA'AM. DON'T HAVE NO IDEA.

9 **Q** WE DO KNOW FROM THE POWER OF ATTORNEY THAT IT
10 WAS EXECUTED ON DECEMBER 9TH, RIGHT?

11 **A** YES, MA'AM. I RECKON SO.

12 **Q** WE CAN FIND OUT. WE CAN GET SOME DOCUMENTS TO
13 SHOW WHEN SHE WAS RELEASED FROM THE HOSPITAL.
14 SO THAT WILL KIND OF GIVE US A TIMEFRAME. DID
15 YOU EVER GO WITH HER TO MIKE MUNDUN'S OFFICE TO
16 TALK ABOUT RECEIVING THE POWER OF ATTORNEY?

17 **A** YES, MA'AM.

18 **Q** HOW LONG A TIME WAS IT BETWEEN YOU WENT TO MIKE
19 MUNDUN'S OFFICE WITH WENDY TO TALK ABOUT THE
20 POWER OF ATTORNEY AND WHEN IT WAS ACTUALLY
21 EXECUTED?

22 **A** I COULDN'T TELL YOU.

23 **Q** WHAT YOU DID MR. MUNDEN DISCUSS WITH YOU ABOUT
24 ACCEPTING THE POWER OF ATTORNEY? DID HE GO
25 OVER WHAT YOUR RESPONSIBILITIES WOULD BE?

1 **A** I HAD LIMITED RESPONSIBILITIES. I COULD ACT ON
2 WENDY'S BEHALF, BUT SHE COULD TERMINATE ME ANY
3 TIME SHE WANTED TO.

4 **Q** DID HE TELL YOU ANYTHING ABOUT WHAT AUTHORITY
5 WENDY WOULD HAVE DURING THE TIME YOU HAD HER
6 POWER OF ATTORNEY?

7 **A** MY UNDERSTANDING WAS SHE HAD AS MUCH AUTHORITY
8 AS I HAD.

9 **Q** HAVE YOU EVER HAD ANY DISCUSSIONS ABOUT BJC,
10 EMERALD SHORES, AMERICANA OR RAINBOW COURT WITH
11 BOB WILDER? BOB WILDER IS AN OFFICIAL LOCALLY
12 HERE WITH FIRST PALMETTO?

13 **A** NO, MA'AM. I MIGHT HAVE HAD A CONVERSATION
14 WITH BOB WILDER AFTER I PURCHASED THE NOTE AND
15 MORTGAGE BUT NOT BEFORE.

16 **Q** NOT BEFORE, OKAY. NOW, DURING THE SUMMER OF
17 2009 AFTER JUNE 30TH OF 2009, SO AFTER H&M HAD
18 BOUGHT THE NOTE AND MORTGAGE FROM FIRST
19 PALMETTO, DID YOU ADVISE MRS. BELLAMY THAT H&M.
20 HAD BOUGHT THE NOTE AND MORTGAGE?

21 **A** YES, MA'AM.

22 **Q** WHEN DID YOU TELL HER THAT H&M HAD BOUGHT THE
23 NOTE AND MORTGAGE?

24 **A** I TOLD HER SOME TIME AFTER THAT.

25 **Q** SOME TIME AFTER. OKAY. YOU DID NOT TELL HER

1 BEFORE H&M BOUGHT THE MORTGAGE?

2 **A** NO, MA'AM.

3 **Q** DURING THE SUMMER OF 2009, AFTER H&M HAD BOUGHT
4 THE MORTGAGE, DID BUPI PATEL CONTINUE TO MANAGE
5 THE PROPERTY UNDER ONE OF THESE MANAGEMENT
6 AGREEMENTS THAT ARE SITTING HERE?

7 **A** YES, MA'AM.

8 **Q** DID YOU LET BUPI PATEL KNOW THAT H&M HAD BOUGHT
9 THE NOTE AND MORTGAGE?

10 **A** SOMETIME LATER I TOLD BUPI THAT I HAD BOUGHT
11 IT.

12 **Q** NOT AT THE TIME YOU BOUGHT IT OR BEFORE YOU
13 BOUGHT IT, BUT SOMETIME LATER?

14 **A** YES, MA'AM.

15 **Q** DO YOU RECALL MRS. BELLAMY ASKING YOU DURING
16 THE SUMMER OF 2009, AFTER THE MAY 31, 2009
17 PAYMENT WAS NOT MADE, AND THE FORECLOSURE WAS
18 STARTED, AND THE FORECLOSURE WAS ALREADY
19 STARTED BEFORE H&M BOUGHT ON JUNE 30TH, RIGHT?

20 **A** BY MY UNDERSTANDING.

21 **Q** DO YOU REMEMBER ANY TIME AFTER THE FORECLOSURE
22 WAS STARTED, MRS. BELLAMY ASKING YOU WHO OWNED
23 THE NOTE AND MORTGAGE?

24 **A** IF SHE ASKED ME, I TOLD HER. IF I OWNED IT.

25 **Q** SO, IT'S YOUR TESTIMONY THAT IF SHE ASKED YOU

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Hotel & Motel Holdings, LLC,)
Plaintiff,)

-versus-

) Case No.: 2009-CP-26-05548

Henry C. Coan, III,)

Defendant.)

COPY

**THE DEPOSITION OF
JACK JONES**

Friday, March 25, 2011
12:49 p.m. --- 1:28 p.m.

The deposition of Jack Jones, taken on behalf of the Defendant, at the office of Turner Padgett Graham & Laney, PA, located at Founders Centre, Suite 301, 2411 North Oak Street, Myrtle Beach, South Carolina, on Monday, March 28, 2011.

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413 Paul Street
Conway, South Carolina 29527

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1 Bhupi Patel, and Wendy.

2 Q: All right. Was it June or was it January?

3 A: June.

4 Q: June, okay. And put you on notice they were
5 getting ready to foreclosure?

6 A: Yes, sir.

7 Q: Now, at that point did you have any money
8 whatsoever tied up in the Emerald Shores or The
9 Rainbow?

10 A: No, sir.

11 Q: None at all?

12 A: No, sir.

13 Q: All right. After June when the banker put you on
14 notice June 15th Mr. Godwin forms Hotel Motel?

15 A: Yes, sir.

16 Q: Then he gets out, right, sometime after June 15?

17 A: Yes, sir.

18 Q: Then you put in two million dollars?

19 A: I bought the note after it was in foreclosure.

20 Q: You bought the note after it was in foreclosure?

21 So foreclosure -- Your understanding foreclosure
22 had been filed, and after the foreclosure was
23 filed you bought the note?

24 A: Yes, sir.

25 Q: Mr. Godwin was not involved at that time?

- 1 A: That's correct.
- 2 Q: Now, how much did you pay for the note?
- 3 A: I paid \$250,000 to begin with.
- 4 Q: Okay.
- 5 A: I signed a note for four million seven fifty.
- 6 Q: All right.
- 7 A: And I signed them a million and seven fifty in a
- 8 CD.
- 9 Q: Now, the million seven fifty CD, that was
- 10 collateral?
- 11 A: Yes. That would be applied as ---
- 12 Q: How much did you actually pay? What was the
- 13 purchase price for the note and the documents
- 14 that went with the note, the ---
- 15 A: Five million dollars.
- 16 Q: --- mortgage and -- Five million dollars even?
- 17 And that represented a discount of how much from
- 18 ---
- 19 A: 22,000.
- 20 Q: 22,000? All right. So you paid 250 down and
- 21 gave them a note for 4,750,000?
- 22 A: The CDs for a million and seven fifty.
- 23 Q: Now, was the CD collateral or was that ---
- 24 A: That was in Waccamaw Bank, I signed it over to
- 25 First Palmetto.

1 (ON THE RECORD)

2 MR. THOMAS CONTINUES:

3 Q: Now, in June of 2009, June 30, 2009, when you
4 bought the property or bought the note you had no
5 interest in BJC?

6 A: No, sir.

7 Q: You had no obligation on the loan?

8 A: No, sir.

9 Q: And so you bought -- What was your purpose in
10 buying the loan?

11 A: I bought it because I thought it'd be -- It was
12 in foreclosure and I thought it was a good deal.

13 Q: You bought it to make money?

14 A: Yes, sir.

15 Q: You understood that part of your making money was
16 to sue your nephew and your niece and Mr. Coan on
17 their guaranty?

18 A: No. At that point I figured as a foreclosure it
19 would bring enough, there wouldn't be no money
20 owed.

21 Q: You heard Mr. Coan testify a few minutes ago that
22 you had a conversation with him where he said,
23 "Don't worry, son, I'm not going to hurt you.
24 I'm not doing anything to hurt you." Do you
25 remember that testimony?

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1 A: I'm not going to hurt nobody, Jack. But what I'm
2 trying to say is at the time we was talking I did
3 not own the mortgage.

4 Q: Did you have a conversation at any time with Mr.
5 Coan about your intent or your desire to buy the
6 mortgage?

7 A: No, sir.

8 Q: You never did?

9 A: No.

10 Q: So if he says -- If he testified to that you'd
11 disagree with that?

12 A: Yes, sir.

13 Q: Did you have a conversation with Mr. Coan or
14 anybody else that if you bought the mortgage you
15 weren't looking to hurt any of them? You weren't
16 looking to hurt Wendy, you weren't looking to
17 hurt Harvey, and you weren't looking to hurt
18 Tripp?

19 A: No, sir.

20 Q: You never had such a conversation?

21 A: No, sir.

22 Q: Now, was it your intent when you bought the note
23 in June of -- June 30, 2009, it was in default as
24 I understand it, and you understood that you were
25 getting Tripp's guaranty, Wendy's guaranty, and

1 Harvey's guaranty?

2 A: Yes, sir.

3 Q: Was it your intention at that time to sue them

4 all on the guaranty?

5 A: Yes, sir, if it didn't bring it.

6 Q: Well, did you wait to see if the property brought

7 enough to pay you off before you brought it or

8 did you haul off and sue them right then?

9 A: Well, the bank had done started the suit.

10 Q: Yes, sir. But did you go hire a lawyer to go in

11 and take over and pursue what the bank had

12 already started?

13 A: No, I just used the bank's lawyer.

14 Q: You used the bank's lawyer?

15 A: Yes, sir.

16 Q: Mr. DuBose was the bank's lawyer?

17 A: Yes, sir.

18 Q: Well, now you understand Ms. Byrd's representing

19 you now?

20 A: That's right.

21 Q: Okay. You have continued what the bank started.

22 You didn't stop to wait to see how the

23 foreclosure came out; do you agree with me?

24 A: Ain't been no foreclosure.

25 Q: Well, you're trying to have a foreclosure, right?

1 A: I'm assuming so.

2 Q: All right. But in the meantime you're asking for
3 judgment against Mr. Coan for the full amount of
4 the loan; isn't that right?

5 A: And Wendy and Harvey.

6 Q: And Wendy and Harvey for six million and some odd
7 dollars; is that right?

8 A: Whatever it is.

9 Q: And your intention is that if you're successful
10 in getting a judgment you're going to take
11 whatever it is they've got and sell it to pay
12 your judgment; is that what your intent is?

13 A: If I come up short.

14 Q: Okay. And that was what your intent was in June
15 the 30th of 2009 when you bought the note?

16 A: Yes, sir.

17 Q: Is a straight business deal?

18 A: Straight business deal.

19 Q: You weren't looking to help Mr. Coan, you weren't
20 looking to help your niece, and you weren't
21 looking to help your nephew; is that right?

22 A: Looking to help myself.

23 Q: You were looking to help yourself?

24 A: That's right.

25 Q: All right. Now, when you got Mr. -- Now, Mr.

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1 Godwin did not get back in until October of ---

2 A: That's right.

3 Q: --- is that right? Did you tell Mr. Godwin when
4 he got in what your intent was? That you were
5 going to make money on this deal, you thought
6 you'd make money on this deal?

7 A: Yes, sir.

8 Q: And that the money you were going to make was
9 going to come either out of the property, out of
10 Mr. Coan's pocket, out of your niece's pocket, or
11 out of your nephew's pocket, is that what you
12 told him?

13 A: Come out of the courthouse or come out of them
14 individually.

15 Q: And he was agreeable to that and that's the
16 program he signed up for?

17 A: Yes, sir.

18 Q: Do you know whether or not the loan to First
19 Palmetto was renewed in 2009?

20 A: I was in a meeting in 2009, and then some time
21 later Wendy took some money to Sammy Small.
22 Whether it was renewed or not, I don't know. I
23 know that he extended till May the 31st payment.

24 Q: They extended it till May 31st, and when that
25 wasn't paid you bought it the next day?

1 A: No. He said ---

2 Q: I'm sorry.

3 A: --- the next day ---

4 Q: You're right. June 30 is not the next day after
5 May 31. I withdrawal the question. All right.
6 When did you reach a deal with the bank to buy
7 the note and the mortgage?

8 A: I believe June the 12th, 13th, something like
9 that.

10 Q: Did you ever tell Mr. Coan that your intention
11 was to put the property into foreclosure?

12 A: No, sir.

13 Q: Never told him that?

14 A: (Indicates negatively.)

15 Q: And you never instructed Patel on what to pay and
16 what not to pay?

17 A: No, sir.

18 Q: What did Mr. Patel do with the money, with the
19 income from the operation of the motel?

20 A: Best of my knowledge he paid bills.

21 Q: Okay. Did you receive any payment for your
22 services to the motel?

23 A: No, sir.

24 Q: Did you personally guaranty the loan to First
25 Palmetto?

1 A: No, sir.

2 Q: You did not? You mean First Palmetto made you
3 the loan and didn't require a personal guaranty?

4 A: That's exactly right.

5 Q: Did anybody personally guarantee that loan?

6 A: No, sir.

7 Q: Tell me, how long have you known Bobby Wilder?

8 A: I just met -- I've met Bob Wilder and that's it.

9 Q: You've never done any banking business with Bob
10 Wilder? Had you ever done any business with this
11 bank before?

12 A: No, sir.

13 Q: Did they have -- Before they -- I take it then
14 that before you got the loan the \$4,750,000 loan
15 they wouldn't have had your financial statement
16 on file?

17 A: No, sir.

18 Q: Because you hadn't done any business with them?

19 A: That's right.

20 Q: Now, did you give them your financial statement
21 when you bought the loan?

22 A: No, sir.

23 Q: No financial statement?

24 A: No, sir.

25 Q: All right. Did anybody other than you guaranty

1 the loan?

2 A: No, sir. Hotel Motel.

3 Q: Sir?

4 A: Hotel Motel.

5 Q: Hotel Motel guaranteed the loan?

6 A: Yes.

7 Q: Now, does Hotel Motel have any assets other than

8 this mortgage?

9 A: No, sir.

10 Q: Did anybody else give them a financial statement

11 to induce them to make a \$4.75 million loan?

12 A: No, sir.

13 Q: Now, the million -- You told me the million seven

14 fifty CD.

15 A: Yes, sir.

16 Q: A million of that went to reduce the balance?

17 A: All of it went to First Palmetto, the whole

18 million seven fifty.

19 Q: Yes, it all went to First -- But some of it went

20 to reduce the balance and some of it went to pay

21 interest for five years in advance?

22 A: That's correct.

23 Q: Do you know how that was split?

24 A: I think a million dollars reduced the principal,

25 a million dollars for five years.

*****OFF THE RECORD*****

(ON THE RECORD)

MR. THOMAS CONTINUES:

Q: Have you attempted to market the property?

A: No, sir.

Q: Have you attempted to sell the mortgage?

A: I had some people to call me, and I told them to call Wendy. You know, if they wanted to buy my position the most I could sell was a note and the mortgage. I didn't own nothing.

Q: Right. And the note and mortgage that you bought that you intended to make a profit on or hoped you were going to make a profit on you were willing to sell it?

A: Yes, sir.

Q: For a profit?

A: I say a profit.

Q: Excuse me one minute. I'm pretty close to done.

*****OFF THE RECORD*****

(ON THE RECORD)

MS. BYRD: ALL RIGHT. YOU'RE DONE.

(This deposition concluded at 1:28 p.m.)

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1217

1
2 STATE OF SOUTH CAROLINA
3 COUNTY OF HORRY

IN THE COURT OF
COMMON PLEAS

09-CP-26-5550

4
5 HOTEL AND MOTEL HOLDINGS, LLC,
6 PLAINTIFF,

7 -VS-

8 WENDY J. BELLAMY,

9 DEFENDANT/THIRD PARTY PLAINTIFF,

10 -VS-

11 FIRST PALMETTO SAVINGS BANK, F.S.B.; JACK
12 JONES; DONALD D. GODWIN; AND BHUPENDRA
13 PATEL,

THIRD PARTY DEFENDANTS,

14
15 DEPOSITION OF

16
17 **SAMMY RICHENBACKER**
18 **SMALL, SENIOR**

19
20 AUGUST 25, 2010
21 9:40 A.M. THROUGH 3:45 P.M.

22 AS TAKEN AND TRANSCRIBED BY JERRY S.
23 MABRY, NOTARY PUBLIC AND VERBATIM REPORTER, IN LAW
24 THE OFFICES OF TURNER PADGET, 2411 OAK STREET,
25 SUITE 300, MYRTLE BEACH, SOUTH CAROLINA 29572.

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Verbatim Reporters

Jerry S. Mabry
1607 Magnolia Drive
N. Myrtle Beach, SC 29582
(843) 249-2831

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8
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10
11 A P P E A R A N C E S

12
13 FOR THE PLAINTIFF; AUDRA M. BYRD, ESQ.
14 JONES AND GODWIN, TURNER PADGET
15 THIRD PARTY DEF: 2411 N. OAK STREET, SUITE 301
 MYRTLE BEACH, S.C. 29577

16
17 FOR THE DEFENDANT, KATHRYN M. COOK ESQ.
18 THIRD PARTY PLF: COOK & ROY
 10409 N. KINGS HIGHWAY
 N. MYRTLE BEACH, S.C. 29572

19
20 FOR THIRD PARTY WILLIAM H. SHORT, JR., ESQ.
21 DEFENDANT: HAYNSWORTH, SINKLER & BOYD
 1201 MAIN ST., 22ND FLOOR
 COLUMBIA, S.C. 29201

22 AND

23
24 FOR FIRST PALMETTO: SAMMY R. SMALL, JR., ESQ.
25 FIRST PALMETTO BANK
 CAMDEN, S.C.

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— Sammy R. Small, Sr.-Cross
Examination by Ms. Cook —

1 THIRD COUSIN FOURTH TIME REMOVED. I DON'T
2 KNOW `EM.

3 Q HAVE YOU EVER, INDIVIDUALLY, BEEN A PARTY TO
4 A LAWSUIT, EITHER PLAINTIFF OR DEFENDANT?

5 A NO RESPONSE.

6 Q YOU PERSONALLY? DO YOU UNDERSTAND THE DIS-
7 TINCTION BETWEEN YOU PERSONALLY AND ANY
8 BUSINESSES THAT YOU'RE INVOLVED IN? I'M NOT
9 ASKING ABOUT BUSINESSES. I'M ASKING ABOUT
10 YOU INDIVIDUALLY, PERSONALLY?

11 A NOT THAT I REMEMBER.

12 Q OKAY. HAVE THERE BEEN ANY BUSINESSES OTHER
13 THAN THE BANK IN WHICH YOU HAVE BEEN A
14 MEMBER OR ANY VENTURES IN WHICH YOU HAVE
15 BEEN A MEMBER, STOCKHOLDER, ANYTHING OF THAT
16 NATURE, HAD ANY TYPE OF OWNERSHIP INTEREST,
17 THAT HAS BEEN PARTY TO A LAWSUIT OTHER THAN
18 THE BANK?

19 A OR SOME PUBLICLY TRADED COMPANY?

20 Q YEAH. NOW, IF YOU OWN G.E., I DON'T ...

21 A NOT THAT I KNOW OF.

22 Q WHAT DO YOU DO FOR EMPLOYMENT?

23 A I'M THE PRESIDENT, CEO, AND CHAIRMAN OF THE
24 BOARD FOR FIRST PALMETTO BANK.

25 Q YOU'RE THE PRESENT ...

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- 1 A NO.
- 2 Q WHO WITHIN FIRST PALMETTO IS IN CHARGE OF
- 3 LITIGATION THAT IS BROUGHT BY THE BANK
- 4 AGAINST ENTITIES OR INDIVIDUALS?
- 5 A GENERAL COUNSEL.
- 6 Q AND THAT WOULD BE MR. SMALL, JUNIOR?
- 7 A THAT'S CORRECT.
- 8 Q DO YOU PLAY ANY PART OR HAVE ANY INPUT INTO
- 9 WHEN OR IF OR WHY THE BANK IS GOING TO BRING
- 10 A LAWSUIT AGAINST ANY INDIVIDUAL OR ENTITY?
- 11 A OUTSIDE OF BEING CEO, I DON'T GET DIRECTLY
- 12 INVOLVED IN MUCH OF IT.
- 13 Q WELL, AS CEO, WHAT ROLE DO YOU HAVE IN THE
- 14 DECISION-MAKING PROCESS TO INSTITUTE
- 15 LITIGATION?
- 16 A THAT'S DONE BY GENERAL COUNSEL.
- 17 Q AS CEO, DO YOU PLAY ANY ROLE IN THE DECISION
- 18 TO INSTITUTE LITIGATION?
- 19 A ANY ROLE? I PLAY THE ROLE OF MAKING SURE
- 20 THAT THE APPROPRIATE LEGAL STANDARD IS
- 21 INVOLVED.
- 22 Q DO YOU OR THE BOARD HAVE TO AUTHORIZE
- 23 LITIGATION TO BE INSTITUTED?
- 24 A NO.
- 25 Q DO YOU OR THE BOARD HAVE TO BE NOTIFIED IF

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1 NOT ME.

2 Q AS A BANKER AND CEO FOR FORTY-TWO YEARS, IN
3 LAYMEN'S TERMS, AND AS A MEMBER OF THE BOARD
4 OF DIRECTORS OF FIRST PALMETTO AND AS PRESI-
5 DENT OF FIRST PALMETTO, AND AS CHIEF
6 EXECUTIVE OFFICER OF FIRST PALMETTO, WHAT
7 WAS YOUR LAYMAN'S UNDERSTANDING OF WHAT
8 SHOULD HAVE HAPPENED WHEN THIS LOAN MATURED
9 IN JANUARY OF 2007?

10 A THE LOAN WOULD EITHER BE PAID OFF OR WE
11 NEGOTIATED IT.

12 Q YOU SAID YOUR FIRST INVOLVEMENT WITH THIS
13 LOAN AFTER IT WAS INITIALLY MADE WAS WHEN
14 THE LOAN BECAME ... I DON'T KNOW IF YOU SAID
15 A PROBLEM LOAN OR DELINQUENT. I DON'T
16 REMEMBER THE EXACT WORDS, BUT THAT WAS MY
17 INTERPRETATION OF YOUR COMMENT. WAS THAT A
18 CORRECT INTERPRETATION?

19 A MY INVOLVEMENT IN THIS LOAN WOULD BE TO READ
20 THE CREDIT MEMO WHEN IT WAS ORIGINATED.

21 Q NO, SIR. I DON'T NEED YOU TO ANSWER THAT
22 QUESTION. I NEED YOU TO ANSWER THE QUESTION
23 I ASKED, OKAY? AND THAT QUESTION WAS: DID I
24 UNDERSTAND YOU CORRECTLY THAT AFTER THIS
25 LOAN WAS INITIALLY MADE, YOUR NEXT INVOLVE-

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1 `08, YOU HAD BECOME INVOLVED OR BEEN MADE
2 AWARE OF THE DELINQUENCY IN PAYMENTS OF THIS
3 LOAN? IS THAT YOUR RECOLLECTION?

4 A LET'S SEE. THIS IS AUGUST OF `10?

5 Q THIS IS AUGUST OF `10, YES, SIR.

6 A IT WOULD BE SOMEWHERE IN MID TO LATE `08,
7 EARLY `09, SOMEWHERE IN THERE.

8 Q FAIR ENOUGH. LET'S FOCUS ON THIS LOAN, THE
9 BJC LOAN. AM I CORRECT THAT LOAN WAS DUE TO
10 MATURE AGAIN, ACCORDING TO EXHIBIT "19",
11 JANUARY 17, 2009?

12 A ACCORDING TO WHAT I'M READING, IT WAS.

13 2008 NOTE FOR \$5,573,146.62
14 MARKED FOR IDENTIFICATION AND
15 INTRODUCED INTO EVIDENCE
16 AS DEFENDANT'S EXHIBIT "19".

17 Q WITH THAT DATE AS KIND OF A REFERENCE POINT,
18 AND BACKING UP FROM THERE, AND I UNDERSTAND
19 YOU SAID YOU BECAME COGNIZANT OF THIS
20 COLLECTION PROBLEM LOAN SOMEWHERE IN THE MID
21 TO LATE `08 ON UP TO EARLY `09 TIME FRAME?

22 A THAT'S WHEN I GOT INVOLVED IN IT THIS LAST
23 TIME. WHETHER THERE WAS COLLECTION PROBLEMS
24 SOONER, I'D HAVE TO RECONSTRUCT THAT. I
25 DON'T KNOW.

1 Q THE TIME FRAME THAT REALLY BRINGS US TO
2 WHERE WE ARE TODAY, CAN YOU TELL ME, AND
3 JUST WALK ME THROUGH THE STEPS AND YOUR
4 INVOLVEMENT ONCE YOU BECAME AWARE OF THIS
5 COLLECTION PROBLEM IN MIDDLE, LATE '08?

6 A WHAT I RECALL, MY INVOLVEMENT CAME WHEN IT
7 APPEARED THAT IT WAS GOING TO BE A SERIOUS
8 PROBLEM, AND WE REQUESTED A MEETING OF ALL
9 THE PARTIES OF BJC. THAT WAS MY INITIAL
10 MEETING WITH ANY OF THEM I BELIEVE. THAT
11 WAS IN '09, LATE '08. I DON'T KNOW WHEN IT
12 WAS. IT WAS WITHIN THE LAST YEAR AND A HALF
13 OR SO.

14 Q SO YOU THINK THAT MEETING WAS LATE '08,
15 EARLY '09, SOMEWHERE ALONG THERE?

16 A YES. SOMEBODY CAN ESTABLISH THAT TIME.

17 Q I'M GOING TO HAVE SOME DOCUMENTS THAT WILL
18 PROBABLY HELP US, BUT I WANT TO BREAK DOWN A
19 LITTLE BIT OF WHAT YOU SAID.

20 A OKAY.

21 Q YOU SAID THAT WHEN YOU BECAME AWARE IT WAS
22 GONNA BE A SERIOUS PROBLEM, WHAT DO YOU MEAN
23 BY A "SERIOUS PROBLEM?"

24 A A SERIOUS PROBLEM TO ME IS ...

25 Q AND I WANT TO FOCUS ON THIS LOAN.

1 Q AND THEN DOES THERE APPEAR TO BE A CREDIT IN
2 OCTOBER?

3 A 48,345 IS WHAT THE TRANSACTION AMOUNT IS.

4 Q NOW, FROM YOUR REVIEW OF THOSE CREDITS TO
5 THE ACCOUNT FROM JANUARY '08 TO OCTOBER 28TH
6 '08, WAS THIS ... WERE THE PAYMENTS,
7 ACCORDING TO THE TERMS OF THE LOAN, BEING
8 MADE TIMELY?

9 A I HAVE NO IDEA.

10 Q OKAY. AND THEN, WERE TWO CREDIT TRANSAC-
11 TIONS ON NOVEMBER 26, '08, ONE IN THE AMOUNT
12 OF 47,905.19 AND ONE FOR 19,135.29?

13 A RIGHT.

14 Q NOW, IT APPEARS FROM THIS REPORT THAT PAY-
15 MENTS WERE MADE MONTHLY ON THIS LOAN FROM
16 JANUARY THROUGH NOVEMBER OF '08. THAT'S
17 WHAT IT APPEARS.

18 A I DON'T KNOW THAT. BUT IT APPEARS. AGAIN,
19 I DO NOT READ THESE ON A REGULAR BASIS. I
20 CERTAINLY READ THEM AND IT APPEARS THAT IT
21 WAS NOT CONSISTENTLY MADE BECAUSE OF LATE
22 CHARGES PLACED AGAINST IT ON ALMOST EVERY
23 MONTH.

24 Q OKAY.

25 A THAT MEANS THAT IT WAS NOT BEING DONE IN A

1 A TO THE LEFT WOULD BE COAN.
2 Q TRIPP?
3 A I DON'T KNOW HIS NAME. NEXT TO HIM WOULD BE
4 THAT CPA. NEXT TO HIM WOULD BE JACK JONES.
5 NEXT TO HIM WOULD BE HARVEY. NEXT TO HIM
6 WOULD BE THE SHROFF.
7 Q WOULD THAT BE CASEY?
8 A WHATEVER HIS NAME IS. I CAN'T COME UP WITH
9 HIS NAME. THEN I HAD ... I'D HAVE TO GO
10 BACK BUT I DO NOT HAVE MEETINGS WITHOUT ONE
11 OR TWO SENIOR OFFICES SITTING IN THE MEETING
12 TO HEAR SPECIFICALLY WHAT I SAY. THAT WOULD
13 HAVE BEEN TIM HUDSON, LYNT BRIDGES OR I'LL
14 HAVE TO GO BACK AND FIND WHO THEY WERE, BUT
15 THERE WAS AT LEAST ONE OR TWO OF THE SENIOR
16 OFFICERS LISTENING TO EVERYTHING THAT WAS
17 SAID.
18 Q WHO WAS IN THE MEETING?
19 A IN THE MEETING.
20 Q WAS YOUR SON IN THAT MEETING?
21 A I DON'T REMEMBER. I REMEMBER ...
22 Q WAS WENDY IN THE MEETING?
23 A NO, SHE WAS NOT.
24 Q DID YOU HAVE AN UNDERSTANDING AS TO WHY
25 WENDY WAS NOT AT THE MEETING?

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- 1 A YES, I DID.
- 2 Q WHAT WAS YOUR UNDERSTANDING OF WHY WENDY WAS
- 3 NOT IN THE MEETING?
- 4 A MY UNDERSTANDING WENDY WAS INCAPACITATED TO
- 5 COME TO THE MEETING. SHE DESIGNATED JACK
- 6 JONES TO BE IN THE MEETING ON HER BEHALF.
- 7 AT THE TIME WE CALLED THE MEETING, THE FIRST
- 8 THING I HAD TO DO WAS LOOK AT THE PARTIES
- 9 THERE. THE PARTIES SITTING THERE. IF THEY
- 10 WERE NOT ON THE NOTE, THEY HAD NO RIGHT TO
- 11 BE THERE UNLESS THE OTHER PARTY SAID IT WAS
- 12 OKAY FOR THEM TO BE THERE. SO, I WENT
- 13 THROUGH AND I TURNED TO MR. JACK JONES, WHO
- 14 I HAD NEVER MET BEFORE, AND I SAID, "YOU ARE
- 15 NOT A PARTY TO THIS, AND I LOOKED AT MR.
- 16 SHROFF, I BELIEVE IT WAS, "YOU ARE NOT A
- 17 PARTY TO THIS." DOES EVERYBODY AGREE THAT
- 18 THESE PEOPLE CAN SIT IN ON THESE CONVERSA-
- 19 TIONS? IF NOT, THEY WILL HAVE TO BE
- 20 DISMISSED FROM THIS OFFICE."
- 21 Q WHAT DID THE PARTIES ...
- 22 A EVERYBODY SAID YES.
- 23 Q NOW, YOU SAID ... DID YOU HAVE AN UNDER-
- 24 STANDING OF WHY MS. BELLAMY WAS INCAP-
- 25 ACITATED AND COULD NOT COME TO THE MEETING?

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1 A THEY JUST SAID THAT JACK JONES WAS THERE ON
2 HER BEHALF.

3 Q HOW DID YOU COME TO THE UNDERSTANDING SHE
4 WAS INCAPACITATED AND COULDN'T COME TO THE
5 MEETING?

6 A BECAUSE THEY SAID SHE WAS INCAPACITATED.

7 Q WERE YOU AWARE OR WERE YOU TOLD THAT DAY
8 THAT SHE HAD TRIED TO KILL HERSELF?

9 A I HAD HEARD THAT. I DON'T KNOW IF IT WAS
10 THAT DAY. I FEEL FAIRLY CONFIDENT IT WAS
11 NOT THAT DAY.

12 Q DO YOU THINK YOU HAD HEARD THAT EARLIER?

13 A IT MIGHT HAVE BEEN THAT DAY. I DON'T KNOW
14 WHAT THE DAY WAS. I DON'T KNOW.

15 Q DO YOU KNOW BEFORE THIS PARTICULAR MEETING
16 THAT YOU'RE TALKING ABOUT IN CAMDEN, DO YOU
17 KNOW IF YOUR SON HAD EVER MET WITH ANY ONE
18 OF MY CLIENTS?

19 A NOT THAT I KNOW OF AND DO NOT KNOW THAT.

20 Q DO YOU KNOW IF ANY OF THE BANK OFFICIALS,
21 NOT LOCAL HERE IN MYRTLE BEACH, BUT ANY OF
22 YOUR CAMDEN BANK OFFICIALS HAD MET WITH MY
23 CLIENTS?

24 A NOT THAT I KNOW OF.

25 Q NOW, YOU SAID JACK JONES WAS THERE AS

- 1 HOUR RANGE?
- 2 A THAT WOULD BE A GUESS.
- 3 Q WERE THE PARTIES THAT YOU JUST ITERATED TO
- 4 ME AS BEING IN THE MEETING THE WHOLE TIME?
- 5 A THEY WERE IN THE MEETING THE WHOLE TIME
- 6 UNLESS ONE OF THEM WANTED TO ASK ME A
- 7 QUESTION. I CAN'T REMEMBER IF COAN WANTED
- 8 TO ASK A QUESTION ABOUT HIS CD BECAUSE HE
- 9 GOT THE INTEREST OFF OF IT. I CAN'T
- 10 REMEMBER EXACTLY.
- 11 Q DO YOU RECALL A TIME WHEN YOU MET WHEN OTHER
- 12 PEOPLE LEFT THE ROOM OR YOU ASKED ... I
- 13 DON'T KNOW. OTHER PEOPLE LEFT THE ROOM AND
- 14 YOU MET WITH ANY ONE OR MORE OF THESE
- 15 INDIVIDUALS SEPARATELY?
- 16 A THEY COULD HAVE LEFT THE ROOM AND SOMEBODY
- 17 MIGHT HAVE ASKED ME A QUESTION ABOUT THEIR
- 18 INDIVIDUAL SITUATION.
- 19 Q DO YOU RECALL THAT HAPPENING WITH TRIPP
- 20 COAN?
- 21 A I DON'T KNOW. COULD HAVE. I DON'T KNOW.
- 22 Q DO YOU RECALL HAVING A PRIVATE CONVERSATION
- 23 WITH JACK JONES?
- 24 A NO, I DO NOT.
- 25 Q NOT AT THAT MEETING?

1 BELIEVE ... I BELIEVE THE NEXT TIME BASIC-
2 ALLY ... THE NEXT MEETING I HAD OF ANY
3 IMPORT WAS WITH MS. BELLAMY AND MR. JONES.

4 Q WHERE DID THAT MEETING TAKE PLACE?

5 A IN MY OFFICE.

6 Q IN CAMDEN?

7 A UH-HUH. (AFFIRMATIVE RESPONSE.)

8 Q AND THAT WAS ... WHAT TOOK PLACE AT THAT
9 MEETING?

10 A THEY DISCUSSED HOW TO GET THE LOAN REIN-
11 STATED. WHAT WOULD WE DO AND WHAT WOULD WE
12 NOT DO. I CAN'T COME UP WITH THE DETAILS
13 RIGHT HERE, BUT I THINK THEY TOOK SOME
14 ACTIONS TO TRY TO GET ... I'LL HAVE TO GO
15 BACK AND LOOK ... TO REINSTATE. NOT REIN-
16 STATE. EXTEND OR WHATEVER THE LEGAL TERM IS
17 TO ...

18 Q YOU DON'T HAVE TO USE LEGAL TERMS.

19 A HOLD IN ABEYANCE OR WHATEVER, AND THEY WOULD
20 DO CERTAIN THINGS. NOW, I BELIEVE THEY
21 AGREED ... THAT MIGHT HAVE BEEN ... I'M NOT
22 SAYING IT FOR A FACT. THAT MIGHT HAVE BEEN
23 WHERE THE NINETY THOUSAND DOLLARS CAME UP
24 THAT PAID INTEREST OR WHATEVER IT WAS. I
25 THINK WE REQUIRED THAT THE TAXES BE PAID ON

1 THE PROPERTY AND THAT THAT BE SENT TO US. I
2 BELIEVE THAT'S CORRECT. I BELIEVE THAT'S
3 CORRECT. AND THE PROPERTY TAXES, I BELIEVE
4 ... I DON'T KNOW THAT. COUPLE HUNDRED THOU-
5 SAND DOLLARS OR A HUNDRED THOUSAND. I DON'T
6 KNOW WHAT IT WAS.

7 Q AND THAT DISCUSSION WAS IN A MEETING IN YOUR
8 OFFICE WITH WENDY AND JACK?

9 A THAT'S CORRECT.

10 Q DID YOU COME TO AN AGREEMENT? I MEAN, DID
11 YOU TELL THEM, "IF YOU DO X, Y AND Z, THEN
12 WE WILL DO A, B AND C? LIKE, IF YOU PAY THE
13 TAXES OR SEND THE MONEY TO US TO PAY THE
14 TAXES, AND WHATEVER ELSE? I MEAN, DID YOU
15 COME UP WITH CRITERIA ...

16 A I DON'T. IF THEY PAID US ... IF THIS IS
17 THEIR NINETY THOUSAND DOLLARS, AND THEY SUB-
18 MITTED THE TAXES, THERE WAS AN AGREEMENT ON
19 WHAT WE WOULD DO IF THEY DID THOSE THINGS.
20 NOW, I DON'T HAVE THAT. I DON'T KNOW WHAT
21 THAT IS. I CAN'T RECOLLECT.

22 Q AND YOU DON'T RECALL ANY PARTICULARS OF WHAT
23 YOU AGREED THAT IF THEY WOULD DO WHAT Y'ALL
24 WOULD DO?

25 A I DON'T KNOW IF WE'D GIVE THEM SIXTY MORE

1 DAYS OR THIRTY MORE DAYS, NINETY MORE DAYS.
2 I DON'T REMEMBER. I MEAN, YOU KNOW, THE
3 EXACT EXTENSION PERIOD OR FORBEARANCE PERIOD
4 OR WHATEVER.

5 Q DID YOU REDUCE ANY OF THAT TO WRITING
6 ANYWHERE?

7 A I DO NOT KNOW WHERE IT IS. I DO NOT KNOW.
8 I DID NOT REDUCE IT TO WRITING, BUT I MIGHT
9 HAVE HAD SOMEBODY IN THE BANK REDUCE IT TO
10 WRITING. IF I DID, THEY SHOULD HAVE
11 PROVIDED IT TO YOU.

12 Q OKAY. WOULD IT BE YOUR NORMAL PRACTICE TO
13 REDUCE THAT KIND OF THING TO WRITING?

14 A IT'S ACCORDING TO WHAT THE CIRCUMSTANCES
15 ARE.

16 Q OKAY. NOW, WHAT WAS THE NEXT CONTACT YOU
17 HAD WITH ANYONE ABOUT THIS LOAN AFTER THAT
18 MEETING?

19 A I CAN'T REMEMBER IF THAT'S WHEN MR. JONES
20 AND MS. BELLAMY WERE IN, I THINK. WE HAD
21 ANOTHER MEETING. I DON'T KNOW. THE NEXT
22 TIME WE HAD A MEETING, AND I BELIEVE WE HAD
23 A MEETING ... IT MIGHT HAVE BEEN AT THAT
24 MEETING IN WHICH WE DISCUSSED ... WHEN THIS
25 DIDN'T WORK OUT, SOMETHING HAPPENED.

1 PREVIOUS YEAR, AND EIGHTY-NINE THOUSAND
2 DOLLARS ON THIS LOAN REPRESENTS, I DON'T
3 KNOW, NOT A LONG PERIOD OF TIME.

4 Q NOW, SO YOU SAID AFTER WHATEVER CONDITION
5 THEY COULDN'T MEET FOR THIS FORBEARANCE
6 OCCURRED, THE NEXT CONTACT WAS WHEN THEY ...
7 I'M SORRY. I DON'T EVEN REMEMBER WHAT YOU
8 JUST SAID. WHEN THEY CONTACTED YOU ABOUT
9 BUYING THE LOAN, IS THAT WHAT YOU SAID?

10 A I CAN'T REMEMBER WHETHER IT WAS DURING THIS
11 MEETING OR WE HAD ANOTHER MEETING. WE'VE
12 HAD A MEETING IN WHICH I DO RECOLLECT THAT
13 THE INITIAL DISCUSSIONS ABOUT PURCHASING THE
14 LOAN OF WHICH I LAID OUT CONDITIONS WHICH
15 ONE, IT WOULD BE SOLD. THAT WE DID ... I
16 DID INFORM EVERYBODY, I BELIEVE, THAT WE HAD
17 OTHER PEOPLE WANTING TO BUY THE LOAN. BUT
18 WE HAD A PRICE, A FIGURE WE WOULD SELL IT
19 AT, AND THAT'S ALL WE WOULD SELL IT AT.

20 Q NOW, AT ...

21 A I BELIEVE THAT MR. SHROFF, AND I BELIEVE MR.
22 COAN, I BELIEVE ... I HAD PEOPLE CALLING ME
23 ABOUT TRYING TO PURCHASE THE LOAN. THEY
24 JUST DIDN'T WANT TO PAY THE RIGHT PRICE.

25 Q ALL RIGHT. LET ME STOP YOU. I WANT TO GO

- 1 A I DON'T KNOW.
- 2 Q DID YOU NEGOTIATE WITH JACK?
- 3 A I DON'T KNOW. HE NEVER ... I DON'T KNOW. I
- 4 CAN'T RECALL WHO I NEGOTIATED WITH. IN OTHER
- 5 WORDS, IT WAS A HUNDRED THOUSAND DOLLARS AND
- 6 I DON'T KNOW THE EXACT THING AND I DON'T EVEN
- 7 REMEMBER THE EXACT NEGOTIATIONS. THE REASON
- 8 I SAID I PROBABLY AUTHORIZED THE FIFTY
- 9 THOUSAND DOLLARS ... PROBABLY DIDN'T NEGOTI-
- 10 ATE, I JUST AUTHORIZED IT.
- 11 Q WELL, DID YOU NEGOTIATE WITH JACK'S PURCHASE
- 12 OF THIS LOAN?
- 13 A I NEGOTIATED WITH JACK. WHOEVER PURCHASED
- 14 THE LOAN. IF YOU'LL TELL ME ANOTHER NAME FOR
- 15 JACK. WHO ELSE?
- 16 Q I WANT TO KNOW WHO YOU NEGOTIATED THIS ONE
- 17 WITH?
- 18 A I NEGOTIATED WITH JACK.
- 19 Q A DIRECT ANSWER, MARVEL OF MARVELS. ANOTHER
- 20 THING IT STATES WAS ... LET ME SEE WHAT ELSE
- 21 CHANGED. IT STATES IN PARAGRAPH 12 OF THE
- 22 DRAFT THAT THERE ... THAT THE BUYER, YOU KNEW
- 23 IT AS JACK, DOCUMENTS CALLED IT H&M, WERE
- 24 WITHIN FIVE BUSINESS DAYS AFTER THE CLOSING
- 25 GIVING NOTICE OF THE TRANSFER TO BJC AND ALL

1 GUARANTORS OF THE LOAN, WITH A COPY OF THE
2 NOTICE TO THE SELLER. DO YOU KNOW IF THAT
3 WAS DONE?

4 A I HAVE NO IDEA.

5 Q THEN, LET ME ASK YOU TO LOOK AT EXHIBIT
6 NUMBER "32", WHICH I GETTING READY TO HAND
7 YOU. "32" IS ANOTHER LOAN AGREEMENT BETWEEN
8 ... THIS TIME IT'S FIRST PALMETTO AS THE
9 SELLER AND THIS TIME THEY'RE STILL USING THE
10 NAME HOTEL AND MOTEL HOLDINGS, LLC, AND HAND-
11 WRITTEN IN THE TOP RIGHT-HAND CORNER OF THAT
12 DOCUMENT SAYS, "FIRST DRAFT." FIRST OF ALL,
13 DO YOU RECOGNIZE THE HANDWRITING THAT SAYS,
14 "FIRST DRAFT" ON THE FIRST PAGE?

15 A NO.

16 FIRST DRAFT LOAN AGREE-
17 MENT MARKED FOR IDENTI-
18 FICATION AND INTRODUCED
19 INTO EVIDENCE AS DEFEN-
20 DANT'S EXHIBIT "32".

21 Q IN THIS PARTICULAR DRAFT UNDER SECTION 3.1,
22 IT PROVIDES THAT THE BUYER, H&M, IS GOING TO
23 PUT DOWN EARNEST MONEY TO BE APPLIED AFTER
24 CLOSING, AN AMOUNT NO LESS THAN TWO MILLION
25 DOLLARS IN CDS AS A PLEDGE ACCOUNT. IS THAT

- 1 A IT APPEARS SO.
- 2 ADDENDUM TO LOAN AGREE-
- 3 MENT MARKED FOR IDENTI-
- 4 FICATION AND INTRODUCED
- 5 INTO EVIDENCE AS DEFEN-
- 6 DANT'S EXHIBIT "34".
- 7 Q NOW, WHAT DUE DILIGENCE DID THE BANK DO IN
- 8 DECIDING TO MAKE A FOUR MILLION SEVEN HUNDRED
- 9 AND FIFTY THOUSAND DOLLAR LOAN TO AN ENTITY
- 10 BY THE NAME OF H&M ... NO, EXCUSE ME. HOTEL
- 11 AND MOTEL HOLDINGS, LLC?
- 12 A WHAT DUE DILIGENCE WE DID?
- 13 Q UH-HUH. (AFFIRMATIVE RESPONSE.)
- 14 A WE CONFIRMED THAT THE CASH WAS THERE.
- 15 Q YOU CONFIRMED THAT WHAT CASH WAS WHERE?
- 16 A THE CASH TO MAKE THE DEAL. THAT THE FUNDS
- 17 WERE AVAILABLE TO CONSUMMATE THE DEAL.
- 18 THAT'S ALL THE DUE DILIGENCE WE NEEDED.
- 19 Q SO, WHAT FUNDS DID YOU CONFIRM WERE NEEDED TO
- 20 DO THE DEAL?
- 21 A TWO MILLION DOLLARS.
- 22 Q HOW DID YOU CONFIRM THAT WAS THERE?
- 23 A IT WAS AUTHORIZED ... OR MY INSTITUTION WAS
- 24 AUTHORIZED TO GO DIRECTLY TO THE SOURCE AND
- 25 GOT VERIFICATION AND THAT WAS IT. THAT TWO

1 MILLION DOLLARS WOULD BE REQUIRED. IT WAS
2 SUPPOSED TO BE PAID AT THE CONSUMMATION. HAD
3 TO BE THERE AND THEN IT WAS TO BE TRANSFERRED
4 OVER TO US, I THINK. I THINK, PRIOR TO THE
5 CLOSING.

6 Q DID THAT HAPPEN?

7 A I DON'T KNOW. I THINK SO. WHATEVER WE DID,
8 IT WAS DONE.

9 Q NOW, DID YOU REQUIRE H&M TO FILL OUT A LOAN
10 APPLICATION?

11 A NO. I SAY NO. I DON'T KNOW WHETHER THEY
12 FILLED OUT A LOAN APPLICATION.

13 Q DID YOU REQUIRE JACK JONES TO FILL OUT A LOAN
14 APPLICATION?

15 A I DIDN'T REQUIRE HIM TO DO ANYTHING EXCEPT TO
16 FUND TWO MILLION DOLLARS. HOW THEY HANDLED
17 IT INTERNALLY, YOU'LL HAVE TO SEE.

18 Q DID YOU REQUIRE ... DID YOU REQUIRE THIS TO
19 GO BEFORE THE LOAN COMMITTEE BEFORE A ... FOR
20 A DECISION OF THE THREE MEMBERS OF THE LOAN
21 COMMITTEE TO DO A CREDIT MEMO TO DECIDE TO
22 MAKE A FOUR MILLION SEVEN HUNDRED AND FIFTY
23 DOLLAR LOAN TO H&M?

24 A A CREDIT MEMO ON WHOM?

25 Q ON H&M, THE BORROWER. WHOEVER WAS BORROWING

1 FOUR MILLION SEVEN HUNDRED AND FIFTY THOUSAND
2 DOLLARS FROM FIRST PALMETTO?

3 A NO. THEY BORROWED FOUR MILLION DOLLARS FROM
4 US. AND THEY BORROWED FOUR MILLION DOLLARS
5 FROM US. THE DUE DILIGENCE WAS THEY PUT UP
6 TWO MILLION IN CASH.

7 Q OKAY. LET ME ASK YOU TO LOOK AT EXHIBIT
8 NUMBER "47" PLEASE, SIR.

9 A ALL RIGHT.

10 Q HOW MUCH MONEY DID FIRST PALMETTO LOAN H&M?
11 THAT'S MY SHORTHAND, BUT HOTEL MOTEL
12 HOLDINGS, LLC TO BUY ... WELL, HOW MUCH YOU
13 LENT?

14 A WE LENT ... ACCORDING TO THIS DOCUMENT, FOUR
15 MILLION SEVEN FIFTY, OF WHICH SEVEN HUNDRED
16 AND FIFTY THOUSAND DOLLARS OF WHICH WE HAD
17 THE FUNDS REFERENCE WHERE WE WERE PAID THAT
18 ON 10/15/09.

19 Q SO, ON JUNE 30TH, YOU DID LOAN FOUR MILLION
20 SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS, IS
21 THAT CORRECT?

22 A I WOULD HAVE TO GO BACK AND CHECK. THIS NOTE
23 COULD BE FOR FOUR MILLION SEVEN HUNDRED AND
24 FIFTY. WE COULD HAVE THE SEVEN HUNDRED FIFTY
25 PLEDGED IN A CD AT OUR BANK DURING THE

- 1 A I HAVE NO IDEA.
- 2 Q TO YOUR KNOWLEDGE, DOES OR DID H&M HAVE ANY
- 3 SOURCE OF INCOME?
- 4 A TO MY KNOWLEDGE, NO. TO MY KNOWLEDGE, I
- 5 DON'T HAVE ANY IDEA WHAT H&M DID AND DID NOT
- 6 HAVE.
- 7 Q THE BANK WAS SATISFIED BY KNOWING THAT MR.
- 8 JONES WAS PAYING A MILLION DOLLARS DOWN AND
- 9 PUTTING A MILLION DOLLARS IN THE BANK?
- 10 A WE WERE SATISFIED BY RECEIVING TWO MILLION
- 11 DOLLARS.
- 12 Q AND YOU RECEIVED THAT FROM MR. JONES?
- 13 A I'D HAVE TO LOOK AND SEE EXACTLY WHERE IT
- 14 CAME FROM. I NEGOTIATED WITH MR. JONES.
- 15 COULD HAVE BEEN HIS MONEY, YOUR MONEY, I
- 16 DON'T KNOW.
- 17 Q AS PART OF THIS LOAN, WAS THE BORROWER
- 18 REQUIRED, IN THIS CASE H&M, TO KEEP INSURANCE
- 19 ON THE REAL ESTATE THAT'S COLLATERAL FOR THIS
- 20 LOAN?
- 21 A YOU'D HAVE TO ASK MR. HUDSON ABOUT THAT.
- 22 Q A RECEIVER WAS APPOINTED BY THE COURT WITH
- 23 REGARDS TO THE OPERATION OF BOTH RAINBOW
- 24 COURT AND EMERALD SHORES. I BELIEVE THAT
- 25 APPOINTMENT WAS SOME TIME IN APRIL OF 2010.

1 THING THAT YOU'VE REFERRED TO EARLIER AS A
2 CREDIT MEMO?

3 A THIS IS NOT NORMALLY WHAT I WOULD SEE. THIS
4 COULD BE ... I DON'T KNOW. COULD BE. THEY
5 MIGHT HAVE HANDLED THIS ONE THIS WAY BECAUSE
6 ... I DON'T KNOW.

7 Q THE INFORMATION THAT'S ON THIS DOCUMENT,
8 FIRST OF ALL, IT SAYS, "LOAN OFFICER NAMED
9 BWH." WHOSE INITIALS ARE THOSE?

10 A I THINK THAT IS BRENT HUTTO.

11 Q AND IT'S GOT, "DATE OF REQUEST, JUNE 30,
12 2009." SO, THAT'S THE DATE OF THE LOAN
13 CLOSING WHERE THE BJC LOAN WAS SOLD TO JACK
14 JONES OR H&M. IS IT TYPICAL TO HAVE THE LOAN
15 APPROVAL, LOAN SUMMARY MEMORANDUM, DONE ON
16 THE SAME DAY AS THE LOAN IS CLOSED?

17 A NOT NORMALLY. IF ... EXCEPT WE DO HAVE START
18 UP LLCs WHEN THERE'S NOTHING THERE.

19 Q UNDER THE FINANCIAL SUMMARY, IT'S GOT THE
20 NAME OF THE BORROWER AS HOTEL MOTEL HOLDINGS
21 LLC, AND THEN IT'S GOT LINE ITEMS FOR CERTAIN
22 THINGS AS TOTAL ASSETS, TOTAL LIABILITIES,
23 NET WORTH, LIQUIDITY, ALL OF THAT UNDER THERE
24 SAYS, "NEW ENTITY." SO, THE BANK RECOGNIZED
25 THAT HOTEL MOTEL HOLDINGS, LLC DID NOT HAVE A

1 HISTORY WITH REGARDS TO INCOME OR LIABILITY
2 OR CREDIT WORTHINESS. WOULD THAT BE A FAIR
3 STATEMENT?

4 A IT LOOKS LIKE A BRAND NEW ENTITY WITH NO
5 TRACK RECORD AS FAR AS THOSE THINGS ARE
6 CONCERNED.

7 Q AND THEN UNDER THE COMMENTS ON THE FIRST PAGE
8 IT SAYS, "THIS LOAN IS NON-RECOURSE AGAINST
9 THE SOLE MEMBER OF THE LLC, JACK H. JONES.
10 HE HAS PLEDGED ONE POINT SEVEN MILLION IN CDS
11 TO THE LOAN, WHICH WILL SERVE AS A REDUCTION
12 IN PRINCIPAL. SEVEN HUNDRED AND FIFTY
13 THOUSAND DOLLARS AND ONE MILLION IN INTEREST
14 CARRIED."

15 A THAT'S CORRECT.

16 Q SO, THE BANK RECOGNIZED FUNDING FOR THE LOAN
17 AND THE PAYMENTS ON THE INTEREST WERE COMING
18 FROM MR. JONES?

19 A THAT'S THE FIRST ONE WE HAD TALKED WITH,
20 YEAH. WE DON'T KNOW IF IT CAME FROM HOTEL
21 MANAGEMENT OR JACK JONES AT THAT TIME. THEY
22 MIGHT HAVE. I NEVER LOOKED TO CHECK TO SEE
23 WHAT NAME THEY CAME IN.

24 Q AND IF YOU'D LOOK ON THE BACK PAGE UNDER LOAN
25 AUTHORIZATION, IT'S GOT, "NAME OF AUTHORIZED

1 Q DID YOU EVER SEE PROOF AS IS REQUIRED UNDER
2 THE LOAN AGREEMENT THAT H&M HAD NOTIFIED THE
3 GUARANTORS AND BJC THAT THE LOAN HAD BEEN
4 PURCHASED BY H&M? DID YOU EVER SEE PROOF OF
5 THAT?

6 A I WOULDN'T HAVE ANY REASON TO SEE THAT.

7 Q DO YOU HAVE A PERSONAL CELL PHONE?

8 A YES, I DO.

9 Q WHAT'S THAT CELL PHONE NUMBER?

10 A (803) 309-6103.

11 Q WHO IS YOUR SERVICE PROVIDER?

12 A I THINK IT'S NEXTEL.

13 Q HAVE YOU HAD THAT SAME CELL PHONE NUMBER AND
14 HAS YOUR PROVIDER BEEN NEXTEL SINCE THE END
15 OF 2008 FORWARD?

16 A YES.

17 MS. COOK: Y'ALL THAT'S ALL I'VE
18 GOT.

19

20

21

22

23

(SIGNATURE WAIVED
SAMMY R. SMALL, SR.

24

25

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

15TH JUDICIAL CIRCUIT

CASE NUMBER 2009-CP-26-5550

HOTEL AND MOTEL HOLDINGS,
LLC.

PLAINTIFF

V.

WENDY J. BELLAMY,

DEFENDANT/THIRD

PARTY PLAINTIFF

V.

FIRST PALMETTO SAVINGS
BANK, FSB, JACK JONES,
DONALD D. GODWIN, AND
BHUPENDRA PATEL,

THIRD PARTY DEFENDANTS.

COPY

DEPOSITION OF
WENDY J. BELLAMY

FROM 8:58 P.M. UNTIL 5:07 P.M.

NOVEMBER 23, 2010

AS TAKEN AND TRANSCRIBED BY MICHAEL J. MCCARTHY, NOTARY
PUBLIC AND VERBATIM REPORTER, AT TURNER PADGET GRAHAM & LACEY
P.A., 2411 NORTH OAK STREET, SUITE 301, MYRTLE BEACH, SOUTH
CAROLINA.

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DEFENDANT'S
EXHIBIT

5-16 8 Lem

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BHUPENDRA PATEL

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ALSO APPEARING:

SAMUEL SMALLS, JR., ESQ.
DONALD GODWIN
WENDY J. BELLAMY
HARVEY JONES
BHUPENDRA PATEL

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1 Q. DO YOU HAVE ANY IDEA WHEN THAT ESTATE WILL BE
2 CLOSED?

3 A. HOPEFULLY SOON. NO, MA'AM.

4 Q. NOW, I'M GOING TO ASK YOU A LITTLE BIT ABOUT BJC
5 ENTERPRISES, LLC. WHEN WAS THAT COMPANY FORMED?

6 A. 2004. I BELIEVE THE END OF 2004.

7 Q. AND WHO WERE THE INITIAL MEMBERS OF THE BJC?

8 A. WENDY BELLAMY, TRIPP COAN, AND HARVEY JONES.

9 Q. AND HOW DID IT COME TO BE THAT YOU THREE DECIDED
10 TO FORM AN LLC?

11 A. MR. JOURNEY OWNED THE EMERALD SHORES, JIM JOURNEY,
12 AND HE WAS A FRIEND OF MINE AND HE CAME TO ME AND
13 TOLD ME THAT HE WANTED TO SELL IT. AND HE GIVE ME
14 THE PRICE AND THAT IS HOW. TRIPP COAN HAD ALWAYS
15 SAID THAT IF WE GOT AN OPPORTUNITY TO BUY IT THAT
16 HE WOULD BE OUR PARTNER.

17 Q. WHAT WAS YOUR HISTORY WITH TRIPP?

18 A. I MEAN, FAMILY. HE'S NOT BLOOD FAMILY, BUT I
19 MEAN, FAMILY. OUR FAMILIES ARE CLOSE.

20 Q. SO MR. JOURNEY APPROACHED TO YOU AT THE END OF
21 2004?

22 A. YES, MA'AM.

23 Q. AND THEN YOU WENT TO TRIPP AND LET HIM KNOW ...

24 A. TRIPP CAME TO ME BUT, YES. I HAD TOLD HIM, YES,
25 MA'AM.

1 HARVEY JONES, TRIPP COAN. WHAT WERE YOUR
2 RESPECTIVE MEMBERSHIP INTEREST IN BJC?

3 A. A THIRD, A THIRD, AND A THIRD.

4 Q. DID ANY OF YOU CONTRIBUTE MONEY TO THE LLC?

5 A. YES, MA'AM. TRIPP PUT IN ONE MILLION IN CASH AND
6 A \$500,000 CD FROM HIS MOTHER'S TRUST ACCOUNT.

7 Q. HOW ABOUT YOU OR HARVEY?

8 A. NO CASH, NO, MA'AM.

9 Q. SO YOU AND HARVEY BROUGHT THE PROPERTY?

10 A. THAT IS CORRECT. YES, MA'AM.

11 Q. AND THE PROPERTY THAT YOU BROUGHT WAS THE RAINBOW
12 COURT AND THE PROPERTIES THAT ARE THE SUBJECT OF
13 THIS ACTION OTHER THAN THE EMERALD SHORES?

14 A. CORRECT.

15 Q. AND WHEN YOU PURCHASED THE EMERALD SHORES, DID YOU
16 ALL LOOK AT ANY OF THEIR PROFITS AND LOSSES OR ANY
17 OF THEIR INCOME STATEMENTS TO GET AN IDEA OF WHAT
18 KIND OF MONEY THEY WERE GENERATING?

19 A. NO, MA'AM.

20 Q. THE 1.5 MILLION ... YOU SAID ONE MILLION IN CASH
21 AND A \$500,000 CD FROM TRIPP. WHAT DID THE ONE
22 MILLION IN CASH GO TO THAT TRIPP BROUGHT TO THE
23 LLC?

24 A. THE DOWN PAYMENT.

25 Q. HOW DID YOU COME TO APPLY OR SEEK A LOAN FROM

1 Q. WAS JACK JONES INVOLVED IN GETTING YOU TO FIRST
2 PALMETTO IN 2005?

3 A. NO, MA'AM.

4 Q. WAS DONALD GODWIN INVOLVED IN GETTING YOU TO FIRST
5 PALMETTO BANK?

6 A. NO, MA'AM.

7 Q. AND AS A PART OF THAT INITIAL LOAN IN 2005, WERE
8 YOU REQUIRED TO SIGN A PERSONAL GUARANTY?

9 A. I SIGNED A PERSONAL GUARANTY.

10 Q. I'M GOING TO SHOW YOU WHAT HAS BEEN INTRODUCED AS
11 EXHIBIT "85". DO YOU RECOGNIZE THAT DOCUMENT?

12 A. I SIGNED IT.

13 Q. DO YOU RECOGNIZE THAT DOCUMENT?

14 A. HONESTLY, IT'S A PERSONAL GUARANTY. I BELIEVE
15 YOU.

16 Q. I BELIEVE THIS IS THE NOTE?

17 A. OH, THE NOTE.

18 Q. AND IF YOU WILL LOOK UP AT THE TOP THAT DATE IS
19 01/14/2005.

20 MS. COOK: DO YOU MIND IF I POINT IT OUT TO
21 HER?

22 MRS. BYRD: SURE.

23 A. THAT'S '07. THAT'S 2007.

24 MS. COOK: IT'S HARD TO SEE, WENDY.

25 A. YES. I'M SORRY. I SEE AT 1/14/2005, YES.

1 Q. DOES THIS APPEAR TO BE THE ORIGINAL NOTE FROM
2 FIRST PALMETTO?

3 MS. COOK: YOU MEAN A COPY OF THE ORIGINAL
4 NOTE?

5 MRS. BYRD: I'M SORRY.

6 Q. I MEAN THE INITIAL NOTE THAT WAS SIGNED BY YOU AS
7 MANAGING MEMBER OF BJC, LLC?

8 A. YES, IT APPEARS TO BE.

9 Q. AND CAN YOU TELL ME WHAT THE AMOUNT OF THAT NOTE
10 IS?

11 A. \$5,580,000.00.

12 Q. WHAT WAS THE PURCHASE PRICE FOR EMERALD SHORES?

13 A. 6.3.

14 Q. YOU TOLD ME EARLIER THAT THE REMAINDER, THE
15 BALANCE OF THAT 6.3 CAME FROM TRIPP COAN, IS THAT
16 RIGHT, AS A DOWN PAYMENT?

17 A. THE ONE MILLION IN CASH AND THAT \$500,000.00 CD
18 FROM HIS MOTHER'S TRUST, CORRECT.

19 Q. AND WHAT IS YOUR UNDERSTANDING OF THE TERMS OF THE
20 2005 NOTE?

21 A. MY UNDERSTANDING, SITTING THERE WITH BOB WILDER,
22 THAT WE GOT ONE YEAR INTEREST ONLY AND THAT WE
23 COULD RENEW IT, BUT WITHIN THAT ONE YEAR, JOHN
24 GANDY AND MR. PATEL WERE GOING TO, YOU KNOW ...
25 WELL, YOU DON'T KNOW. TAKE IT ALL OVER AND PUT IT

1 ALL INTO AN LLC.

2 Q. SO IS IT YOUR UNDERSTANDING THAT THE ORIGINAL NOTE
3 WAS FOR ONE YEAR OR WAS ... I BELIEVE IT WAS FOR
4 TWO.

5 A. I'M SORRY. YES. IT WAS FOR TWO. THAT WAS MY
6 MISTAKE.

7 Q. WHAT WAS THE MATURITY DATE FOR THAT NOTE?

8 A. IT WAS BORROWED IN 2005. 2007.

9 Q. AT THE TOP AGAIN IN THE TOP RIGHT-HAND CORNER.

10 A. IT SAYS 1/14/2007.

11 Q. WAS THE BALLOON PRINCIPAL PAYMENT MADE IN JANUARY
12 OF 2007?

13 A. NO, MA'AM.

14 Q. AND YOU TOLD ME THAT IT WAS YOUR UNDERSTANDING
15 THAT MR. PATEL AND MR. GANDY WERE GOING TO MAKE
16 THE LOAN PAYMENTS UNDER THIS NOTE?

17 MS. COOK: OBJECTION TO THE FORM OF THE
18 QUESTION.

19 Q. IS IT YOUR UNDERSTANDING THAT MR. PATEL AND MR.
20 GANDY WERE GOING TO MAKE THE LOAN PAYMENTS UNDER
21 THIS NOTE?

22 A. THEY WERE GOING TO FORM AN LLC AND WE WERE GOING
23 TO ALL BE PARTNERS IN THIS. THEY WERE GOING TO
24 GET FIFTY PERCENT AND WE WERE GOING TO GET
25 FIFTY PERCENT, AND UNDER THAT AGREEMENT, THEY