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APR 06 2015

SC Court of Appeals

April 3, 2015

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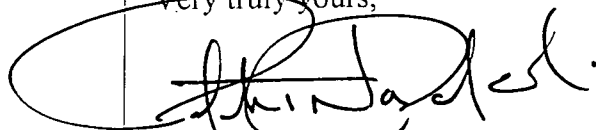
Shaun C. Blake, Esq.  
Rogers, Lewis, Jackson, Mann & Quinn, LLC  
P.O. Box 11803  
Columbia, SC 29201

In Re: Virgil "Ray" Passailaigue v. Henry Kuznik, Alfred L. Saad, III  
Paul D. Hollen, III and Thornwell Partners, LLC  
Case No. 2013-CP-10-01647

Dear Counselors:

Enclosed please find the transcript of record for the hearing before The Honorable Markley Dennis, Jr. on September 10, 2014, a copy of the payment for the transcript and correspondence regarding payment to court reporter Frances Bakis-Ray in the above referenced matter. Please do not hesitate to contact our office with any questions or concerns.

Very truly yours,

  
Patrick Napolski

PTN/cms  
Enclosures

cc: Rosalyn W. Frierson, Esq.  
Jenny Abbott Kitchings, Esq.

Larkin Hegler

---

**From:** Ray, Frances Bakis <fray@sccourts.org>  
**Sent:** Wednesday, March 11, 2015 2:40 PM  
**To:** larkin@richterfirm.com  
**Subject:** Virgil Passailaigue v. Henry Kuznik  
**Attachments:** Bill to attorneys - civil.doc

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Third Circuit Court Reporter  
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State of South Carolina  
The Circuit Court of the Twelfth Judicial Circuit

Frances B. Ray  
Registered  
Professional  
Reporter

555 Jeffries Lane  
Florence, SC 29505  
FRay@sccourts.org

March 11, 2015

TO: The Richter Firm, LLC  
Patrick T. Napolski, Esq.  
622 Johnnie Dobbs Boulevard  
Mount Pleasant, South Carolina 29464

---

Re: Virgil Passailaigue v. Henry Kuznik  
Date of request: January 22, 2015  
Transcript provided on: Upon payment

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| Date billed: March 11, 2015                 |    |       |
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## Larkin Hegler

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**From:** Ray, Frances Bakis <fray@sccourts.org>  
**Sent:** Thursday, March 12, 2015 2:47 PM  
**To:** Larkin Hegler  
**Subject:** RE: Virgil Passailaigue v. Henry Kuznik

sure, thanks!

Frances B. Ray, RPR  
Third Circuit Court Reporter  
555 Jeffries Lane  
Florence, SC 29505-2733

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**From:** Larkin Hegler <[Larkin@RichterFirm.com](mailto:Larkin@RichterFirm.com)>  
**Sent:** Thursday, March 12, 2015 9:22 AM  
**To:** Ray, Frances Bakis  
**Cc:** Patrick Napolski; Michelle Stith  
**Subject:** RE: Virgil Passailaigue v. Henry Kuznik

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Larkin W. Hegler  
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**From:** Ray, Frances Bakis [<mailto:fray@sccourts.org>]  
**Sent:** Wednesday, March 11, 2015 2:40 PM  
**To:** [larkin@richterfirm.com](mailto:larkin@richterfirm.com)  
**Subject:** Virgil Passailaigue v. Henry Kuznik

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**Larkin Hegler**

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**From:** Larkin Hegler <Larkin@RichterFirm.com>  
**Sent:** Monday, March 16, 2015 8:43 AM  
**To:** 'Ray, Frances Bakis'  
**Subject:** RE: Virgil Passailaigue v. Henry Kuznik

Thank you!

Larkin W. Hegler  
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-----Original Message-----

**From:** Ray, Frances Bakis [<mailto:fray@sccourts.org>]  
**Sent:** Sunday, March 15, 2015 9:24 PM  
**To:** [larkin@richterfirm.com](mailto:larkin@richterfirm.com)  
**Subject:** Virgil Passailaigue v. Henry Kuznik

Attached is the above transcript you requested. Thank you for your quick payment too. If I can be of further assistance please let me know.

Kindly,?

Frances B. Ray, RPR  
Third Circuit Court Reporter  
555 Jeffries Lane  
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STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

COURT OF COMMON PLEAS

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APR 06 2015

SC Court of Appeals

VIRGIL "RAY" PASSAILAIGUE )  
PLAINTIFF, )

v.

TRANSCRIPT OF RECORD  
13-CP-10-01647

HENRY KUZNIK, ALFRED L., )  
SAAD, III, PAUL D. HOLLEN, )  
III, AND THORNWELL PARTNERS, )  
LLC,

DEFENDANT. )

September 10, 2014  
Charleston, South Carolina

**BEFORE :**

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

**APPEARANCES:**

PATRICK T. NAPOLKSI, ESQ.  
Attorney for the Plaintiffs

JOHN M. BLEECKER, ESQ.  
SHAUN C. BLAKE, ESQ.  
Attorneys for the Defendants

FRANCES B. RAY, RPR  
Circuit Court Reporter

**INDEX**

|                               | Page |
|-------------------------------|------|
| Remarks by Mr. Bleecker       | 3    |
| Remarks by Mr. Mr. Napolski   | 5    |
| Reply remarks by Mr. Bleecker | 8    |
| Ruling of the Court           | 11   |

(There were no exhibits submitted.)

1 THE COURT: It appears we have a motion  
2 for summary judgment, two motions for summary  
3 judgment; is that correct? That's still -- that's  
4 what we have?

5 MR. BLEECKER: I believe so.

6 MR. NAPOLSKI: Yes, Your Honor.

7 THE COURT: All right.

8 MR. BLEECKER: Your Honor, I'm John  
9 Bleecker and I represent one of the defendants in  
10 this case Mr. Henry Kuznik, who is an elderly man  
11 approximately my age and has been my client for ---

12 THE COURT: Young fella.

13 MR. BLEECKER: We filed -- this is a very  
14 simple case, Your Honor.

15 THE COURT: Thank you, I need that.

16 MR. BLEECKER: There have been, there are  
17 lots of lawyers and there are lots of pleadings and  
18 there's been lots of discovery; but it comes down to  
19 this simple fact, there was a one term joint  
20 venture, an LLC created to develop property on the  
21 new Commerce Parkway in north Charleston. It came  
22 at a inauspicious time in our economy, and there was  
23 a lot of struggling to get through and finish it and  
24 pay off the bank loans and whatnot. We filed a  
25 motion of summary judgment because one of the

1 parties to this action, Virgil Passailaigue, the  
2 plaintiff, received a note and that note called for  
3 the payment of 130,000-dollars. And if you read the  
4 note it says from the net proceeds of future sales.  
5 Our position is there have been no net proceeds. We  
6 have filed with our, with our motion, an affidavit  
7 of the accountant who handled the money, the books  
8 for the company till the end. He shows 200 some  
9 thousand dollar loss.

10 THE COURT: Okay.

11 MR. BLEECKER: There have been no net  
12 proceeds and so it's pretty simple; it's black and  
13 white. If -- you'll have to determine what net  
14 proceeds are, but everything I've seen in the  
15 dictionary is net proceeds means what you walk away  
16 with after you pay the costs and expenses of  
17 transaction. And that's where we get to and the  
18 bottom line. In the -- cleverly Mr. Passailaigue's  
19 lawyers have suggested, well, we gave them a note  
20 with also personal guarantees of all of the makers  
21 of the note, not only the company but the partners,  
22 the individuals, so yes, they have that. And but  
23 the note itself has to trigger the guarantee. These  
24 guarantees are typical bank guarantees which I have  
25 seen a thousand times on mortgage loans, but it --

1 if there's not a default under the note, then our  
2 position is there's no default under the note  
3 because there has been no net profits, net proceeds  
4 from future sales.

5 THE COURT: Okay.

6 MR. BLEECKER: And that's -- I can make it  
7 simpler, and there are more complex issues in here  
8 that we can discuss whether the plaintiff himself is  
9 actually a party to the action. And I'll let my  
10 cohort here, my fellow attorney Shaun Blake discuss  
11 that if we get to that point.

12 THE COURT: Okay, that's fine. Why don't  
13 I hear from the opposition to this, ---

14 MR. NAPOLSKI: Thank you, Your Honor.

15 THE COURT: ---as to what is the  
16 scintilla.

17 MR. NAPOLSKI: Patrick Napolski here on  
18 behalf of Mr. Ray Passailaigue.

19 THE COURT: Sure.

20 MR. NAPOLSKI: I appreciate Mr. Bleecker's  
21 position this boils down to how simple it is, and I  
22 can, I think, even simplify that even further. He  
23 says that net is in the note, that net proceeds is  
24 discussed in the note, but net proceeds or net isn't  
25 defined in the note. Net can have several meanings

1 if it's not defined. Net proceeds can be net  
2 proceeds above the line accounting. Net proceeds  
3 can be net proceeds below the line accounting. It  
4 can have several meanings. The fact that the term  
5 net isn't defined in the note shows that there's,  
6 there's a huge question of fact as to what the  
7 parties thought that net proceeds meant. My client  
8 is of the position that net proceeds is, that  
9 property sold whether or not there's a profit made  
10 at the end, he's still entitled to his ---

11 THE COURT: To what? It's sold and  
12 there's no money distributed to anybody, what's he  
13 entitled to?

14 MR. NAPOLSKI: There was mon-- there was  
15 money distributed back to the remaining members of  
16 this LLC. They just didn't make any money on the  
17 deal, and so, therefore feel that they no longer  
18 need to pay Mr. Passailaigue.

19 THE COURT: Well, I understand that, but  
20 if they didn't make any money you just kind of said  
21 what it is. The bottom line is ---

22 MR. NAPOLSKI: Well, I take that back.  
23 They received money back from their investment.  
24 It's just that they didn't earn a profit from that.  
25 And nowhere in that, in the note, is net defined to

1 say that only that it'll be paid only if there is  
2 profit made. Net in this instance seems to indicate  
3 that it may be, it's more of a time limitation that  
4 once the property is sold and the net proceeds ---

5 THE COURT: Where is anywhere defined it  
6 as a time limitation?

7 MR. NAPOLSKI: A reading of the promissory  
8 note, I think is, it can be construed to be that the  
9 net proceeds, once the property is sold, then that  
10 is what triggers the time for repayment; not  
11 necessarily that, nowhere in there is that the  
12 amount of remaining after cost of sale of the  
13 Dasinger (ph) tract. Nowhere is that defined or is  
14 that stated. This — in addition, this note was  
15 given to Mr. Passailaigue in exchange for his  
16 membership interest in the LLC. The defendants will  
17 say that initially there's an assignment of contract  
18 that they purchased from Mr. Passailaigue for a  
19 little over a million dollars, and they had held the  
20 position that in addition to the assignment of  
21 contract that also was to get him out of the LLC.  
22 But according to the testimony of my own client  
23 during his deposition as well as the affidavit, he  
24 says that promissory note was given to him in  
25 exchange for his membership in Thornwell Partners,

1 LLC. He had met with the three client, with the  
2 three remaining members of the LLC, the Harvard Club  
3 downtown Charleston. They all agreed that for  
4 130,000-dollars, because Mr. Passailaigue was a  
5 financial liability to the LLC as they're trying to  
6 receive increased funding for this project, that  
7 they would need him gone. And in exchange for his  
8 membership interest they would be willing to give  
9 him a promissory note for 130,000-dollars. Now each  
10 one of these defendants in their respective  
11 depositions have identified the signatures on the  
12 promissory note and the personal guarantees, but  
13 conveniently, each of them have a severe case of  
14 amnesia and they can't remember signing it.

15 THE COURT: Okay. Anything else?

16 MR. NAPOLSKI: That's it, Your Honor.

17 THE COURT: All right. Reply,

18 Mr. Bleecker?

19 MR. BLEECKER: Your Honor, whether they  
20 had amnesia or not, the facts are, if you read the  
21 note the note itself is a triggering device and it  
22 says net proceeds from future sales. They're  
23 talking about a profit, making a profit to pay him  
24 from their profits from future sales. The affidavit  
25 of the CPA for the firm, for the partnership, the

1 affidavit there is compelling and they -- and  
2 surprisingly, in all of this discovery they have not  
3 ---

4 THE COURT: Let me ask you, Mr. Bleecker,  
5 as I read this it says basically, as you stated, it  
6 says the principal sum of 130,000-dollars. This sum  
7 is to be repaid in its entirety from the net  
8 proceeds from the future sales of the property known  
9 as the Dasinger track consisting of two parcels  
10 further identified as Lot A, 17 acres, gives a TMS  
11 number, and then Lot B, 28.15 acres. Both of those  
12 have been sold?

13 MR. BLEECKER: That is the -- that's what  
14 the whole development was ---

15 THE COURT: I understand that.

16 MR. BLEECKER: ---those tracts.

17 THE COURT: And they've been all sold?

18 MR. BLEECKER: They have been sold. Every  
19 parcel has been sold.

20 THE COURT: And moneys were distributed?

21 MR. BLEECKER: And the money distributed.

22 THE COURT: To the people?

23 MR. BLEECKER: Well, to the banks, to the  
24 banks and to pay -- what happened in the instance  
25 there was the two million dollar farm, the

1 Dasingers, so ---

2 THE COURT: Well, I understand that, but  
3 my question is how am I -- if there's money  
4 distributed there was money that was after went to  
5 banks went to your -- went to the individuals?

6 MR. BLEECKER: No, Your Honor, it didn't  
7 go to the individuals. The accountant ---

8 THE COURT: That's what they just  
9 represented. I know your affidavit ---

10 MR. BLEECKER: The accountant says ---

11 THE COURT: Where is your, where is the  
12 affidavit that said the individuals got something  
13 out of them?

14 MR. BLEECKER: They ---

15 THE COURT: No, I'm asking the plaintiff.

16 MR. NAPOLSKI: We -- they just have the  
17 records from the tax ID records showing that there  
18 was a sale.

19 THE COURT: Well, I don't quarrel with the  
20 sale. Where is the -- you made a representation to  
21 me that moneys were distributed to the individuals.

22 MR. NAPOLSKI: I apologize, money was ---

23 THE COURT: So that was not correct?

24 MR. NAPOLSKI: That was incorrect. I'm  
25 sorry for that statement, Your Honor.

1           THE COURT: All right, then that's fine.  
2 That's fine. I heard moneys were ultimately paid,  
3 then I wanted to know how they could get money if  
4 the net moneys would ultimately go 'cause that's  
5 what net means. Thank you, your motion is granted.  
6 Y'all can argue that one, what does net mean, up in  
7 Columbia if they have a definition for it, thank  
8 you. I assume that's all three motions on the same  
9 basis; is that correct?

10           MR. BLEECKER: Yes, Your Honor.

11           MR. NAPOLSKI: Yes, Your Honor.

12           THE COURT: Very well. Then I'll grant  
13 all three of them, do form orders for all three.  
14 Thank you.

15

16           \* \* \* END OF REQUESTED TRANSCRIPT OF RECORD \* \* \*

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