

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF YORK  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2010CP4602267**

Marjorie Cato Burton      David A Burton  TE Cato Estate LLC	Carroll M Pitts Jr      Robinson Bradshaw & Hinson PA
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<b>PLAINTIFF(S)</b>	<b>DEFENDANT(S)</b>
<b>Submitted by:</b>	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**       Rule 12(b), SCRPC;       Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);       Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**       Rule 40(j) SCRPC;       Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;       Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;     Reversed;     Remanded;     Other:

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

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:  
**ORDER INFORMATION**

**This order**  ends  does not end the case.  
 Additional Information for the Clerk: **ORDER**

<b>INFORMATION FOR THE JUDGMENT INDEX</b>		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

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

s/ John C. Hayes, III.      2049      4/28/2015  
 Circuit Court Judge      Judge Code      Date

**For Clerk of Court Office Use Only**

This judgment was entered on **April 30, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **April 30, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

**Roger B. Jellenik** 1106 Little Street Camden, SC 29020  
**Matthew B. Rosbrugh** MBR Law, LLC PO Box 292290  
Columbia, SC 29229

**Samuel W. Outten** Poinsett Plaza, Suite 900 104 South Main  
Street Greenville, SC 29601  
**Everett Eugene McMillian** 1320 Main Street Columbia, SC  
29201

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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**ATTORNEY(S) FOR THE DEFENDANT(S)**

David Hamilton

**Court Reporter**

**David Hamilton - Clerk of Court**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 Marjorie Cato Burton as Trustee of the )  
 Sloan Marvin Burton and Marjorie Cato )  
 Burton, AB Living Trust by and through )  
 David A. Burton as Attorney-in-Fact, )  
 Individually and in the right and on )  
 behalf of T.E. Cato Estate, LLC, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Carroll M. Pitts, Jr., Esq. and Robinson )  
 Bradshaw & Hinson, P.A., )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

Civil Action No. 2010-CP-46-2267

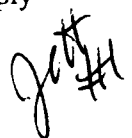
**ORDER**

FILED-RECEIVED  
 2015 APR 30 AM 10:06  
 DAVID HAMILTON  
 C.C.P. & GS  
 YORK COUNTY, SC

This Court issued an Order in this matter dated April 3, 2015. Pursuant to the South Carolina Rules of Civil Procedure, David Alan Burton individually and as Successor Trustee of the Sloan Marvin Burton and Marjorie Cato Burton, AB Living Trust individually and in the right and on behalf of T.E. Cato Estate, LLC (hereinafter "Plaintiff ") timely filed a Rule 59(e) motion for reconsideration.

Rule 59(g) SCRCF provides that a Rule 59(e) motion shall be provided to the trial judge within 10 days of the filing of the motion. The word "shall" is generally interpreted to be a mandatory term however it can be precatory. See "shall," *Black's Law Dictionary*, 7<sup>th</sup> Ed. p. 1379. In the context of Rule 59(b) it is mandatory. See Rule 59(b)(c)(e) and (f) SCRCF.

Rule 59 is a rule of limitations, not of jurisdiction. *In re Beard*, 359 SC 351, 597 S.E.2d 835 (Ct. App. 2004). Rule 59 places a requirement for consideration of Rule 59 motions. The reason for the Rule is noted to be "to help insure that the judge is promptly notified that the motion has been filed." The undersigned discovered the Plaintiff's Rule 59(e) motion simply



because it anticipated such and inquired after 10 days as to whether or not such motions had been filed. But for the initiative of the Court based on the firm belief that the case would not end with the Order of April 3, 2015, the Plaintiff's motion for reconsideration would, up to and including this date, be buried in the Court's file to languish until someone at some point in the future was concerned that the motion had not been addressed.

As noted, the limitations of Rule 59(g) is not jurisdictional, but limiting. The undersigned is not sure exactly where this postures the motion, dead or alive. The Court will below address the motion as alive and dispose of on its merits. However, the ruling herein is not to be deemed a waiver (if such is indeed possible) of Rule 59(g) but an exercise of caution.

The undersigned will address each of the numbered and lettered issues raised in Plaintiff's motion by reference to its number or letter.

1. Taken as a whole the operative, necessary facts, and facts pertinent to the Court's Order are set forth therein. Other facts raised by the evidence presented at trial were not developed as such did not impact the Court's analysis and holdings.
2. This item simply requests the Court reverse its findings and holdings in the Order and enter findings favorable to Plaintiff. The Court denies this requested alteration of the April 3, 2015 Order.
3. See 2
4. See 2
5. See 2
6. This assertion regarding the statute of limitation is true and noted in the Order. At the worst, the language regarding the statute of limitations is surplusage and had no impact on the Court's holdings as set forth in the April 3, 2015 Order.

  
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7. See 2
8. See 2
9. See 2
10. See 2
11. See 2
12. Based on the Court's findings and holdings the set-off issue is moot.
13. See 2
14. See 2. Also, as set forth in the April 3, 2015 Order, there exists in this case, based on the record, no issue relating to the character or quality of the general warranty deed into the LLC.
15. See 2 (also this issue is a collateral issue, see below)
16. See 2

Additionally:

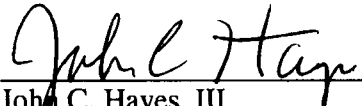
- A. The collateral matters/issues are any matters/issues germane to this litigation which have resulted in an Order from the Court. Collateral matters would include, but are not necessarily limited to the following issues:
  1. Deed predating organization of the LLC;
  2. Plaintiff's motion to amend the complaint;
    - a. As to adding Joshua Vann and Morton and Gettys as parties Defendant.
    - b. To add Plaintiff's claim based on an assignment.
  3. Discovery Order of March 13, 2014;
  4. Order of the undersigned dated August 11, 2011;
  5. Order of the undersigned dated December 9, 2011.



B. The Court has assessed, reviewed, studied, and considered the relevant testimony and court filings extensively. Counsel has had ample time to address all of the issues it asserts prior to the Court's issuance of the April 3, 2015 Order and has voluminously done so. Further memoranda, briefs, or arguments are not necessary and of course the record is closed.

For the above reasons, Plaintiff's Rule 59(e), SCRCF, motion is DENIED.

IT IS SO ORDERED

  
\_\_\_\_\_  
John C. Hayes, III  
Sixteenth Judicial Circuit #4

April ~~28~~<sup>29</sup> 2015  
York, South Carolina