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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

GORDON G. COOPER, MASTER IN EQUITY FOR SPARTANBURG COUNTY

CASE NO.: 2006-CP-42-3378

James Moore, ... Respondent.

v.

Jeannette M. Benson and Thomas Lee Benson, Jr. Appellants,

REDACTED
RECORD ON APPEAL
VOL. I OF II

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ATTORNEY FOR RESPONDENT

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INDEX

Order.....	Page No.: 4
Summons and Complaint (Jury Trial Requested).....	6
Summons, Answer & Counterclaim.(Jury Trial Demand).....	17
Defendant's Notice of Motion and Motion to Dismiss.....	26
Transcript Of Testimony August 19, 2008	
<u>Testimony of James Moore</u>	
Direct Examination By Mr. Haskell.....	47
Cross Examination By Mr. Bennett.....	63
<u>Testimony of Alice Cooper</u>	
Direct Examination By Mr. Haskell.....	96
Cross Examination By Mr. Bennett.....	104
<u>Testimony of Marcus Moore</u>	
Direct Examination By Mr. Haskell.....	109
Cross Examination By Mr. Bennett.....	117
<u>Testimony of Allean Moore</u>	
Direct Examination By Mr. Haskell.....	142
Cross Examination By Mr. Bennett.....	145
Redirect Examination By Mr. Haskell.....	154
Recross Examination By Mr. Bennett.....	154
<u>Testimony of Denis Preston Donaldson</u>	
Direct Examination By Mr. Haskell.....	154
<u>Testimony of James Luther Moore, Jr.</u>	
Direct Examination By Mr. Pye.....	158
Cross Examination By Mr. Bennett.....	165
<u>Testimony of Joyce Foster</u>	
Direct Examination By Mr. Pye.....	174
Cross Examination By Mr. Bennett.....	181

Transcript Of Testimony
August 25, 2008

<u>Testimony of James Maxwell Knox</u>	
Direct Examination By Mr. Pye.	196
Cross Examination By Mr. Bennett.	201
Redirect Examination By Mr. Pye. ...	204
Recross Examination By Mr. Bennett.	206
 <u>Testimony of Robert Lewis Moore</u>	
Direct Examination By Mr. Bennett.	214
Cross Examination By Mr. Pye.	223
 <u>Testimony of Robert James McMillian</u>	
Direct Examination By Mr. Bennett.	224
Cross Examination By Mr. Pye.	231
Redirect Examination By Mr. Bennett.	235
 <u>Testimony of Adrian Bennett</u>	
Direct Examination By Mr. Bennett.	235
Cross Examination By Mr. Haskell.	242
Redirect Examination By Mr. Bennett.	246
Recross Examination By Mr. Haskell.	245
 <u>Testimony of John Henry Heckman, III</u>	
Direct Examination By Mr. Bennett.	248
Cross Examination By Mr. Haskell.	256
Redirect Examination By Mr. Bennett.	265
Recross Examination By Mr. Haskell.	266
 <u>Testimony of Jeanette Benosn</u>	
Direct Examination By Mr. Bennett.	269
Cross Examination By Mr. Haskell.	289
Redirect Examination By Mr. Bennett.	306

Transcript Of Testimony
October 21, 2008

<u>Testimony of Thomas Lee Benson, Jr.</u>	
Direct Examination By Mr. Bennett.	320
Cross Examination By Mr. Haskell.	328

Redirect Examination By Mr. Bennett.	345
<u>Testimony of James Moore, Jr. (RECALLED)</u>	
Direct Examination By Mr. Haskell	350
Cross Examination By Mr. Bennett.	351
<u>Testimony of Marcus Moore (RECALLED)</u>	
Direct Examination By Mr. Haskell	353
Cross Examination By Mr. Bennett.	355
<u>Testimony of Willie Mae Hill</u>	
Direct Examination By Mr. Haskell	355
Cross Examination By Mr. Bennett.	358
Durable Power of Attorney of James Moore.	374
Purchase Contract.	381
Title to Real Estate.	384
Settlement Statement.	387
Cashiers Check.	389
BB&T Statement.	390
BB&T Signature Card.	391
BB&T Deposit Slip.	393
BB&T Official Check.	394
Miscellaneous Debit Slip.	395
BB&T Retirement Account Withdraw Slip.	396
Divorce Decree.	397
Order on Defendant's Motion to Alter or Amend.	405
Petition For Order of Protection	414
Certificate of Counsel.	416

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

James Moore

Plaintiff,

v

Jeannette M. Benson and Thomas Lee
Benson, Jr.,

Defendants.

ORDER

Case Number: 2006-CP-42337B

FILED
2008 OCT 28 AM 10:08
HARC KITCHEN

This matter is before this Court pursuant to the Order of Reference dated April 23, 2008 for the issuance of a Final Order in accordance with Rule 53 of the South Carolina Rules of Civil Procedure.

The final hearing was held on August 19, 2008, August 25, 2008 and October 21, 2008. The Plaintiff was represented by Chadwick D. Pye and Edwin C. Haskell, III and the Defendants were represented by Bradley Bennett.

After careful consideration of the facts, testimony, exhibits, and hearing argument of counsel for the parties, this Court finds as follows:

FINDINGS OF FACT

- 1) The Plaintiff, James Moore is 88 years of age and is the father of the Defendant, Jeannette M. Benson. The Defendants, Jeannette M. Benson and Thomas Lee Benson, Jr., are husband and wife.
- 2) As shown in the Decree of Divorce, Defendant's Exhibit 1, James Moore (the "Husband") married Allean Edwards Moore (the "Wife") in April of 1949. The Decree of Divorce is dated October 27, 2000. The parties had six children, one of whom was deceased at the time of the divorce. The Order on Defendant's Motion to Alter or Amend, Defendant's Exhibit 2, is dated January 3, 2001 (the "Order"). Paragraph 5 of the Order sets out a timeline within which the Husband was to either buy out the interest of the Wife in the real property that is the subject of this action or place the property up for sale. The Husband was to make the election within forty-five (45) days from the date of the January 2, 2001 Order if he desired to purchase the Wife's interest which was found by the Court to be \$52,851.00. If the Husband elected to purchase the Wife's interest, the purchase price was to be paid within ninety (90) days of the said Order. If he could not purchase the interest or elected not to purchase the interest, the subject property would be placed on the market for sale. If the property was not under contract for sale within six (6) months of the date of the Order, the Wife could petition the Court

#1 / [Signature]

for a judicial sale. The value of the real property that is the subject matter of this litigation was found to be \$154,000.00 as shown in the Decree of Divorce, Defendant's Exhibit 1.

3) From the testimony at the final hearing the Plaintiff relied on his former wife, Allean Moore, to handle all of his business affairs and pay the bills of the household. The Plaintiff was retired from Mayfair Mills and completed "about" the fifth grade in school. His testimony and that of Allean Moore was that he could not read to understand. During the time of the divorce, the Plaintiff came to rely on the Defendant, Jeannette M. Benson to help him out by paying his bills and handling other financial matters for him. On January 16, 1999, James Moore executed a Durable Power of Attorney appointing Jeannette M. Benson as his attorney in fact, Plaintiff's Exhibit 1.

4) On January 14, 1999, the Plaintiff withdrew all of the funds from his retirement account which totaled \$29,433.46 as shown in Defendant's Exhibit 6. A cashier's check dated January 14, 1999 was issued to James Moore, Defendant's Exhibit 7, in the amount of \$29,433.46. On the same day, January 14, 1999, a certificate of deposit, account number 3471 opened at BB&T in the name of Jeannette M. Benson in the amount of \$29,433.46 as shown in Defendant's Exhibit 8. Further, as shown in Plaintiff's Exhibit 7, the account was opened as an individual account in the name of Jeannette M. Benson with her Social Security Number and her signature as the owner of the account. The testimony of Jeannette M. Benson was that the Plaintiff had given her these funds because she had taken care of him for so many years.

5) Pursuant to the Paragraph 5 of the Order, the timeline for James Moore to pay Allean Moore the \$52,851.00 was as follows:

Date of Order	January 1, 2001
Election to pay	on or about February 15, 2001
Payment date	on or about April 1, 2001
Property to be	
Under contract	on or about July 1, 2001 (6 months from date of Order)

6) From the testimony of the Defendant, Jeannette M. Benson, it was clear that the Plaintiff was not aware of the timeline for compliance with the Order and relied on Jeannette M. Benson to read and explain the Order to him. It is also clear from the testimony of Jeannette M. Benson that she either did not understand the timeline in the Order or misrepresented the timeline to the Plaintiff and created in his mind an artificial emergency. The representations made to the Plaintiff created in his mind the fear of being held in contempt of Court. Further, from the testimony of Jeannette M. Benson, she never explained to the Plaintiff what options, in the way of refinancing, or other types of financing that might be available to him so that he could comply with the Order. The Defendant, Jeannette M. Benson, testified that she had contacted all of her siblings in an attempt to marshal the funds required to payoff the debt due to Allean Moore. However, there was testimony that contact was not made to all of the siblings requesting such contribution.

- 7) On March 1, 2001, the Plaintiff as Seller and the Defendants as Purchaser, entered into a Purchase Contract, Plaintiff's Exhibit 2, (the "Contract"). Pursuant to the terms of the Contract, the purchase price to be paid by the Purchaser was \$56,294.41.
- 8) On March 8, 2001, the Defendant, Jeanette M. Benson withdrew all of the funds in account number 3471 in the amount of \$30,215.82 and incurred a penalty of \$122.53 for early withdrawal as shown in Plaintiff's Exhibit 6. The timing of this withdrawal clearly indicates that the funds that were originally the property of the Plaintiff were used as part of the gross amount due from Buyer as shown on line 120 of the HUD-1, Plaintiff's Exhibit 4. In other words the Plaintiff's own money was used as part of the funds required to purchase the subject from the Plaintiff by the Defendants on March 9, 2001. The testimony of the Defendants was that they added the additional funds required to close the transaction.
- 9) On March 9, 2001, a closing was held in the office of The Heckman Law Firm located in Greenville, South Carolina. The Plaintiff executed a Title to Real Estate, Plaintiff's Exhibit 3. The Plaintiff and the Defendants executed a HUD-1 Settlement Statement, Plaintiff's Exhibit 4, which showed that from the proceeds of the transaction, Allean Moore was paid \$52,851.00 and a mortgage in favor of Farmers Home in the amount of \$3,024.36 was paid in full. The remaining funds were for closing costs and fees. The Plaintiff did not receive any funds from the transaction. It is clear from the examination of the HUD-1, that the purchase price to be paid for the subject real property as set out in the Purchase Contract, Plaintiff's Exhibit 2, was determined by adding the amount due to Allean Moore, the payoff of the first mortgage plus the Purchaser's attorney's fees and costs. The only amount not anticipated was the cost to be paid by the Seller in the amount of \$489.50. The total purchase price to be paid by Purchaser as shown on line 120 of the HUD-1 is \$56,783.91.
- 10) As to the actual closing, there was conflicting testimony as to how the transaction occurred, what the Plaintiff actually knew about transaction and who was in the room during the closing process.
- 11) The address of the Grantee as shown on the Title to Real Estate, Plaintiff's Exhibit 3, was Lyman, SC 29365 which is the address of the Defendants' residence. No documents or tax bills after the closing would have been sent to the subject property which was still occupied by the Plaintiff. Up to the closing date, Allean Moore or Jeannette M. Benson had paid all of the household bills including the tax bills, so the Plaintiff had no knowledge of the bills and if they were in fact paid. He totally relied on either Allean Moore or Jeannett M. Benson to pay the bills and to explain to him all documents that may have been received.
- 12) After the closing date of March 23, 2001, the Plaintiff continued to live on the subject property believing that he still owned the property as always. It was not until December, 2005 that the Plaintiff became aware that there may be something going on with the property. The Plaintiff testified that he and the Defendant, Thomas Lee Benson, Jr., were riding in the same car on the way to dinner and a comment was made

by Thomas Lee Benson, Jr., that aroused the Plaintiff's suspicions that something was not right as to property. After that date, the Plaintiff contacted his grandson, Marcus Moore to help him find out if anything was going on. This Court found and has ruled that based on the Plaintiff's inability to read and understand documents, that it was not until 2005 that the Plaintiff became aware of the transfer of his property to the Defendants. The testimony and exhibits are consistent with this finding and the Statute of Limitations did not begin to run until December, 2005.

13) On October 13, 2006, the Plaintiff filed this action against the Defendants seeking the re-conveyance of the subject from the Defendants to him, actual damages and punitive damages.

CONCLUSIONS OF LAW

- 1) The Court has jurisdiction over the parties, property, and subject matter in this action
- 2) This Court finds that on January 14, 1999, the Defendant Jeannette M. Benson converted the funds of the Plaintiff in the amount of \$29,433.46 to her own use. Conversion being defined as "the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. Moseley v Oswald 376 S.C. 251, 656 S.E. 2d 380. There is no question that the funds from the Plaintiff's personal retirement account were placed in an individual account of the Defendant Jeannette M. Benson. The Court is not swayed from this finding by the self-serving testimony of the Defendant Jeanette M. Benson that the Plaintiff had given her this money based on her taking care of him.
- 3) The Defendant Jeannette M. Benson owed a fiduciary duty to the Plaintiff, James Moore based on the Durable Power of Attorney. The Plaintiff relied on her to act in his best interests. She willfully breached her fiduciary duty owed to the Plaintiff by the way in which his funds were converted from him to her. The evidence and testimony produced at the final hearing clearly showed that the Defendant, Jeanette M. Benson created an artificial emergency situation relating to the Order and misrepresented the terms of the Order to the Plaintiff. The Defendant Jeannette M. Benson concocted a scheme whereby the Defendants could purchase the property of James Moore for \$56,294.41 which is approximately 37% of the value of the subject property which was shown in the Decree of Divorce to be \$154,000.00. In addition, the purchase price paid was funded partially from the funds that belonged to the Plaintiff. The Defendants through their intentional actions and representations made to the Plaintiff concealed the truth of the transaction from the Plaintiff. Defendants' actions were not only dishonest but in light of the facts of this case outrageous based on the fiduciary duty owed by Jeannette M Benson to the Plaintiff. In this case punitive damages are proper based on this Court's consideration of the factors pursuant to the holding in Gamble v. Stevenson, 305 S.C.104, 406 S.E. 2d 350 (1991)
- 4) The Defendants have failed to carry the burden of proving the allegations set out in their counterclaim either by way of testimony or documentation.

Based on the foregoing, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1 Within thirty (30) days of the date of this Order, the Defendants shall re-convey the subject property to the Plaintiff by warranty deed with no encumbrances except for the current year's taxes.

2 Defendants shall pay to the Plaintiff his actual damages in the amount of \$30,215.82 plus the early withdrawal penalty in the amount of \$122.53 which totals \$30,338.35. The Defendants will receive a credit against the awarded damages in the amount of \$26,568.09 which is the amount that the Defendants contributed to the total amount required to consummate the closing on March 9, 2001. This leaves a total balance due to the Plaintiff for actual damages in the amount of \$3,770.26.

3 Punitive damages in the amount of \$25,000.00.

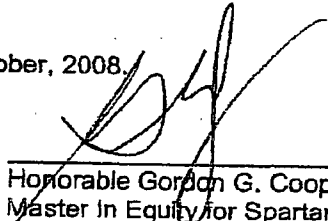
4 That the Counterclaim of the Defendants is dismissed.

5. The parties shall be responsible for their respective fees and costs.

6. This Court shall retain jurisdiction to do all necessary acts incident to this Order.

AND IT IS SO ORDERED.

Dated this 28th day of October, 2008.



Honorable Gordon G. Cooper
Master In Equity for Spartanburg County

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

James Moore,

Plaintiff,

vs.

Jeannette M. Benson and Thomas Lee Benson,
Jr.,

Defendants.

SUMMONS
(JURY TRIAL REQUESTED)

C. A. No. 2006-CP-42-

3378

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2006 OCT 13 AM 10:05
IARC KITCHENS

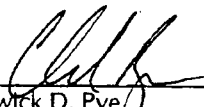
TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff or his undersigned attorney within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated at Spartanburg, South Carolina, on the 13th of October, 2006.

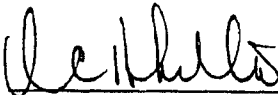
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Spartanburg, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2006 OCT 13 AM 10:05
JARC KITCHENS

James Moore,
Plaintiff,
vs
Jeannette M. Benson and Thomas Lee Benson,
Jr.,
Defendants.

COMPLAINT
(JURY TRIAL REQUESTED)

C. A. No. 2006-CP-42-3378

The Plaintiff, James Moore, would respectfully allege:

1. That he is a ~~citizen~~ and resident of Spartanburg County.
2. That the Defendants, Jeannette M. Benson and Thomas Lee Benson, Jr., are citizens and residents of Spartanburg County.
3. That prior to March 9, 2001, the Plaintiff ~~was the~~ owner of a house located on approximately 17.09 acres of land located at _____, South Carolina, Spartanburg County Tax Block Map Number 5-06-00-155.00 ("the subject property").
4. That the Defendant, Jeannette M. Benson, is the natural daughter of the Plaintiff.
5. That on November 16, 1999, the Plaintiff signed a durable power of attorney appointing Defendant Jeannette M. Benson as his true and lawful attorney in fact and granting her certain powers and duties to act on his behalf.
6. That on and prior to March 9, 2001, Defendant Jeannette M. Benson assisted her father in his banking and business affairs.
7. That the Plaintiff has very little formal education and cannot read and understand legal documents and other printed materials.

8. That, upon information and belief, the Defendants, Jeannette M. Benson and Thomas Lee Benson, Jr., knew that the Plaintiff did not have sufficient education to read and understand legal documents and other printed materials.

9. That the Defendant, Jeannette M. Benson, transported the Plaintiff to the Heckman Law Firm, P.A., at 409 Pettigru Street, Greenville, South Carolina, 29601, on March 9, 2001, for the purpose of having the Plaintiff sign a deed conveying the subject property to Jeannette M. Benson and Thomas Lee Benson, Jr..

10. That on or prior to March 9, 2001, the Plaintiff never had any discussion with any of the Defendants that Jeannette and Thomas Lee Benson, Jr. were purchasing the herein described property from him for \$56,294.41.

11. That at the closing of the sale of the subject property, the Plaintiff was presented with a deed conveying the subject property to Jeannette M. Benson and Thomas Lee Benson, Jr. and Defendant Jeannette M. Benson did not explain to the Plaintiff what he was signing.

12. That when the Plaintiff was asked to sign the deed, he was told by Defendant Jeannette M. Benson that she was taking care of his business.

13. That at the time the deed was presented to the Plaintiff for his signature, Jeannette M. Benson knew that the Plaintiff could not read the instrument nor would he understand what he was signing.

14. That had the Plaintiff known what he was being asked by Defendant Jeannette M. Benson to sign, he would not have done so.

15. That the \$56,294.41 which the Defendants paid the Plaintiff to purchase the subject property were funds in a bank account which was owned by the Plaintiff and which the Defendants had access to.

✓16. That following the execution of the deed conveying the herein described property to Jeannette M. Benson and Thomas Lee Benson, Jr., the Plaintiff continued to pay taxes and insurance on the property believing that he still owned it.

✓17. That the Plaintiff learned that he did not own the herein described subject property approximately one and a half years ago.

FOR A FIRST CAUSE OF ACTION
(FRAUD)

✓18. That Defendant Jeannette M. Benson represented to the Plaintiff at the time the Plaintiff was asked to sign the deed that she was taking care of his business when instead she was having him convey the subject property to the Defendants with the purchase price for the transaction being paid from the Plaintiff's own funds.

✓19. That such false representation was material to the transaction and the Defendants knew of its falsity or acted with a reckless disregard for its truth or falsity in having the Plaintiff sign the deed.

✓20. That the Defendants, by their actions, intended that the Plaintiff act upon the false representation made to him and the Plaintiff, due to not being able to read and understand legal documents, was ignorant of the falsity of the Defendants' representation to him.

✓21. That the Plaintiff relied upon the truth of the representation in thinking that by signing the deed he was taking care of his business and that he was not advised that he was signing a deed to convey the subject property to the Defendants with the purchase price for the transaction being paid by the Defendants from the Plaintiff's own funds.

✓22. That at the time of the transaction, Defendant Jeannette M. Benson was handling and/or assisting the Plaintiff in his banking transactions and other personal business pursuant to the Plaintiff's power of attorney.

✓23. That due to the fiduciary duties that Defendant Jeannette M. Benson had assumed with respect to handling the Plaintiff's personal business pursuant to the power of attorney, the Plaintiff had

a right to rely upon the statements made to him at the time the Defendants presented the deed to him for his signature.

24. That the actions of the Defendant proximately resulted in the Plaintiff losing the subject property and being damaged as a result.

FOR A SECOND CAUSE OF ACTION
(NEGLIGENT REPRESENTATION)

25. Each and every allegation contained in the preceding cause of action are incorporated into this cause of action.

26. That the Defendants had a pecuniary interest in making the herein described false representation to the Plaintiff about what the Plaintiff was being asked to sign.

27. That the Defendants owed a duty of care to communicate truthful information to the Plaintiff and that the Defendants breached that duty.

28. That the Plaintiff justifiably relied on the representation made to him that he was signing legal documents other than a deed conveying the subject property to the Defendants and that the Plaintiff has suffered a pecuniary loss and has been damaged as a result of his reliance on the Defendants' representations.

FOR A THIRD CAUSE OF ACTION
(CONVERSION)

29. Each and every allegation contained in the preceding causes of action are incorporated into this cause of action.

30. That in addition to taking advantage of the inability of the Plaintiff to read and understand legal documents by misrepresenting a legal document to him for his signature, the consideration which the Defendants paid for the Plaintiff's property, \$56,783.91, was taken by the Defendants from the Plaintiff's personal bank account without his knowledge.

31. That such actions by the Defendants constituted an unauthorized assumption and exercise of the right of ownership over the Plaintiff's real estate and money to the exclusion of the Plaintiff's rights in such real estate and money.

32. That the Plaintiff has been damaged as a direct and proximate result of the Defendants' actions.

FOR A FOURTH CAUSE OF ACTION
(ESTOPPEL)

33. Each and every allegation contained in the preceding causes of action are incorporated into this cause of action.

34. That the herein described Defendants' conduct amounted to a false representation or concealment of material facts, or which was calculated to convey the impression that the facts were otherwise than and inconsistent with those which the Defendants subsequently attempted to assert.

35. That the Defendants intended or expected that their conduct would be acted on by the Plaintiff executing the deed to the subject property.

36. That the Defendants had actual knowledge of the false representation which was made to the Plaintiff.

37. That the Plaintiff, due to not being able to read or understand legal documents, lacked the knowledge and the means of knowledge of the truth as to the facts in question.

38. That the Plaintiff relied upon the Defendant's actions and conduct in executing the deed which conveyed the subject property to the Defendants and that as a result, the Plaintiff had a prejudicial change in his position in that he lost the subject property and the funds from his bank account which the Defendants used to purchase such property from the Plaintiff.

39. That as a result of the Defendants' conduct, the Plaintiff has incurred damages.

FOR A FIFTH CAUSE OF ACTION
(CIVIL CONSPIRACY)

40. Each and every allegation contained in the preceding causes of action are incorporated into this cause of action.

41. That the Defendants, Jeannette M. Benson and Thomas Lee Benson, Jr., by their actions joined for the purpose of injuring and causing special damage to the Plaintiff.

42. That the Plaintiff, as a result of the Defendants' actions, has incurred damages.

FOR A SIXTH CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)

43. Each and every allegation contained in the preceding causes of action are incorporated into this cause of action.

44. That Defendant Jeannette M. Benson, by her personal relationship with the Plaintiff by virtue of being his daughter, by being designated as attorney in fact by the Plaintiff's power of attorney and by assuming the role of assisting him with his personal financial and business matters, owed a fiduciary duty to the Plaintiff in the performance of such duties.

45. That by misrepresenting the true facts to the Plaintiff by having the Plaintiff unknowingly sign a deed conveying the subject property to the Defendants without being informed of the true nature of the transaction by Defendant Jeannette M. Benson, and by the Defendants using the Plaintiff's own funds as the consideration paid by them for the Plaintiff's property, Defendant Jeannette M. Benson breached the fiduciary duty which she owed to the Plaintiff.

46. That as a result of such actions, the Plaintiff has incurred damages.

FOR A SEVENTH CAUSE OF ACTION
(INJUNCTIVE RELIEF)

47. Each and every allegation contained in the preceding causes of action are incorporated into this cause of action.

48. That the Plaintiff asserts that he is entitled to an order requiring the Defendants to reconvey the subject property to him by fee simple warranty deed.

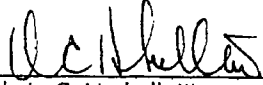
WHEREFORE, the Plaintiff prays for an order requiring the Defendants to reconvey the subject property to the Plaintiff by fee simple warranty deed, for actual and punitive damages, for costs, and for such other and further relief as the Court may deem just and proper.

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Fax: (864) 585-8358

September 6, 2006

Spartanburg, South Carolina

JURY TRIAL REQUESTED

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

James Moore,

Plaintiff,

vs.

Jeannette M. Benson and Thomas
Lee Benson, Jr.,

Defendants.

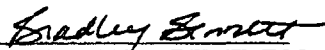
IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No. 2006-CP-42-3378

**SUMMONS
(COUNTERCLAIM)**

You are hereby summoned and required to answer the Counterclaim in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Counterclaim on the subscribers at their offices at 101 W. Park Ave. in Greenville, South Carolina 29601; within thirty days after the service hereof, exclusive of the date of such service; and if you fail to answer the Counterclaim within the time aforesaid, the Plaintiff in this action will apply to the Court for relief demanded in the Counterclaim and a judgment by default will be rendered against you for the relief demanded in the Counterclaim.

Respectfully Submitted,


BRADLEY BENNETT, ESQ.

Attorney for Defendant Jeannette M. Benson

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone No.: (864) 232-5800
Fax No: 864) 232-5888

Dated: 12/12/06
Greenville, SC

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MARC KITCHENS

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

James Moore,

Plaintiff,

vs.

Jeannette M. Benson and Thomas
Lee Benson, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No. 2006-CP-42-3378

**ANSWER & COUNTERCLAIM
OF DEFENDANT
JEANNETTE M. BENSON
(JURY TRIAL DEMANDED)**

The Defendant, Jeannette M. Benson, Answering the Complaint of the Plaintiff and Counterclaiming, would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE BY WAY OF ANSWER TO PLAINTIFF'S COMPLAINT

- 1) This Defendant respectfully requests a jury trial in this matter.
- 2) Each and every allegation of the Complaint not specifically admitted, denied, modified, or explained herein is deemed denied.
- 3) On information and belief, the following paragraphs of Plaintiff's Complaint do not require an Answer of this Defendant: 25, 29, 33, 40, 43, and 47; however, in the event this Court finds an Answer to the foregoing paragraphs of Plaintiff's Complaint is required of this Defendant, this Defendant denies the allegations of the foregoing paragraphs, with strict proof demanded thereof.
- 4) This Defendant admits the allegations contained in paragraph(s): 1, 2, 3, 4, and 5.
- 5) This Defendant denies the allegations contained in paragraph(s): 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 26, 27, 28, 30, 31, 32, 34, 35, 36, 37, 38, 39, 41, 42, 44, 45, 46, and 48.

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- 6) This Defendant states the following in Answering the allegations contained in paragraph 9, that this Defendant transported the Plaintiff to the Heckman Law Firm for the purpose of the Plaintiff attending a closing in which he was aware he was selling the real property located at 1, South Carolina, Spartanburg County Tax Block Map Number 5-06-00-155.00 ("the subject property").

**FOR A SECOND DEFENSE TO PLAINTIFF'S COMPLAINT
(Bad Faith)**

- 7) Plaintiffs' bad faith bars his claims or alternatively, any damages must be reduced as a result of Plaintiffs' bad faith.

**FOR A THIRD DEFENSE TO PLAINTIFF'S COMPLAINT
(Unclean Hands)**

- 8) Plaintiff's action is barred under the equitable doctrine of unclean hands.

**FOR A FOURTH DEFENSE TO PLAINTIFF'S COMPLAINT
(Failure to Mitigate)**

- 9) Plaintiff's claims are barred in whole or in part by his failure to mitigate his damages.

**FOR A FIFTH DEFENSE TO PLAINTIFF'S COMPLAINT
(Statute of Limitations)**

- 10) Plaintiffs' claims are barred in whole or in part by their failure to bring this cause of action within the statute of limitations period for such actions.

**FOR A SIXTH DEFENSE TO PLAINTIFF'S COMPLAINT
(Waiver & Estoppel)**

- 11) Defendant pleads the doctrines of waiver and estoppel as defenses and as a complete bar to Plaintiffs' actions.

**FOR A SEVENTH DEFENSE TO PLAINTIFF'S COMPLAINT
(Ratification)**

- 12) This Defendant pleads Plaintiff's ratification of the transaction as a defense and as a complete bar to Plaintiff's actions.

**FOR AN EIGHTH DEFENSE TO PLAINTIFF'S COMPLAINT
(Reservation of Right to Add Additional Affirmative Defenses)**

- 13) Defendant alleges that because Plaintiff's Complaint is couched in conclusory terms, Defendant cannot fully anticipate all affirmative defenses that may be applicable to this action. Accordingly, Defendant reserves the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable.

**FOR A NINTH DEFENSE BY WAY OF COUNTERCLAIM AGAINST PLAINTIFF
(Fraud)**

- 14) Defendant hereby incorporates the facts and allegations set forth in the preceding paragraphs as if fully restated herein.
- 15) The Plaintiff represented and in fact transacted for the sale of the subject property to the Defendant and her co-defendant in exchange for the sum of \$56,294.41. The Plaintiff misrepresented that he was selling the aforementioned property to the Defendants, inasmuch as Plaintiff seeks to overturn the sale of the subject property to Defendants.
- 16) The Plaintiff's representations were false and material.
- 17) The Plaintiff made the representations and transacted with the Defendants with the knowledge of its falsity or with reckless disregard for its truth.
- 18) The Plaintiff intended that the Defendants would act upon and in reliance upon his representations as set forth herein above and the Defendants did in fact rely thereon.
- 19) Defendants were unaware of the falsity of the Plaintiff's representations and justifiably relied upon them.

- 20) As a direct and proximate result of the Plaintiff's conduct, the Defendant has suffered actual, consequential and special damages, including, but not limited to attorney's fees and other costs and expenses associated with prosecuting this action.
- 21) The Plaintiff's conduct in this matter is unlawful and so egregious and outrageous as to warrant an award of punitive damages.
- 22) Defendant is entitled to a judgment against the Plaintiff in the amount to be proven at trial, including an award of punitive damages, plus interest, costs, attorney's fees, and any other relief this Court deems just and proper.

**FOR A NINTH DEFENSE BY WAY OF COUNTERCLAIM AGAINST PLAINTIFF
(Constructive Fraud)**

- 23) Defendant hereby incorporates the facts and allegations set forth in the preceding paragraphs as if fully restated herein.
- 24) The Plaintiff represented and in fact transacted for the sale of the subject property to the Defendant and her co-defendant in exchange for the sum of \$56,294.41. The Plaintiff misrepresented that he was selling the aforementioned property to the Defendants, inasmuch as Plaintiff seeks to overturn the sale of the subject property to Defendants.
- 25) The Plaintiff's representations were false and material.
- 26) The Plaintiff made the representations and transacted with the Defendants with the knowledge of its falsity or with reckless disregard for its truth or the Defendant should have known of their falsity.
- 27) The Plaintiff intended that the Defendants would act upon and in reliance upon his representations as set forth herein above and the Defendants did in fact rely thereon.
- 28) Defendants were unaware of the falsity of the Plaintiff's representations and justifiably relied upon them.

29) As a direct and proximate result of the Plaintiff's conduct, the Defendant has suffered actual, consequential and special damages, including, but not limited to attorney's fees and other costs and expenses associated with prosecuting this action.

30) The Plaintiff's conduct in this matter is unlawful and so egregious and outrageous as to warrant an award of punitive damages.

Defendant is entitled to a judgment against the Plaintiff in the amount to be proven at trial, including an award of punitive damages, plus interest, costs, attorney's fees, and any other relief this Court deems just and proper.

**FOR A TENTH DEFENSE BY WAY OF COUNTERCLAIM AGAINST PLAINTIFF
(Intentional Misrepresentation)**

31) Defendant hereby incorporates the facts and allegations set forth in the preceding paragraphs as if fully restated herein.

32) The Plaintiff represented to the Defendants that he was selling the subject property to the Defendants for the sum of \$56,294.41 and in fact engaged in a transaction selling the subject property to the Defendants for the aforementioned sum.

33) The Plaintiff's representations were material in that they induced Defendants to purchase the subject property.

34) The representations were false in that the Plaintiff now seeks to overturn the sale of the subject property to the Defendants and is accusing them of wrongdoing for the purpose of obtaining the subject property.

35) The Plaintiff knew at the time he made the representations to Defendants that his representations were false.

36) The Defendants were not aware the Plaintiff's representations were false and justifiably relied upon them.

- 37) The Plaintiff's representations were intentional, knowing, malicious, willful, wanton and in complete disregard for the truth and/or the rights of Defendants.
- 38) As a direct and proximate result of Defendants' reliance on the Plaintiff's representations, Defendants suffered ascertainable damages, including but not limited to actual, consequential, special damages, including but not limited to, attorneys fees and other costs and expenses associated with prosecuting this action.
- 39) The Plaintiff's conduct in this matter is willful and so egregious and outrageous as to warrant an award of punitive damages.
- 40) The Defendants are entitled to a judgment against the Plaintiff in the amount to be proven at trial, including an award of punitive damages, plus interest, costs, attorney's fees, and any other relief this Court deems just and proper.

**FOR AN ELEVENTH DEFENSE BY WAY OF COUNTERCLAIM AGAINST
PLAINTIFF**

(Promissory Estoppel)

- 41) Defendant hereby incorporates the facts and allegations set forth in the preceding paragraphs as if fully restated herein.
- 42) The Plaintiff entered into an agreement and/or contract for the sale of the subject property and did in fact sell the subject property to the Defendants.
- 43) The Defendants reasonably relied on the parties' agreement and/or contract and engaged in a transaction with the Plaintiff according thereto.
- 44) The Plaintiff expected and it was foreseeable the Defendants would rely on the parties' agreement and/or contract and the Defendants did in fact so rely.
- 45) As a direct and proximate result of Defendants' reliance on the Plaintiff's promise, Defendants suffered ascertainable damages, including but not limited to actual,

consequential, special damages, including but not limited to, attorneys fees and other costs and expenses associated with prosecuting this action.

46) The Plaintiff's conduct in this matter is willful and so egregious and outrageous as to warrant an award of punitive damages.

47) The Defendants are entitled to a judgment against the Plaintiff in the amount to be proven at trial, including an award of punitive damages, plus interest, costs, attorney's fees, and any other relief this Court deems just and proper.

**FOR A TWELFTH DEFENSE BY WAY OF COUNTERCLAIM AGAINST
PLAINTIFF**

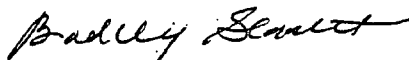
(Declaratory Relief)

48) Defendant hereby incorporates the facts and allegations set forth in the preceding paragraphs as if fully restated herein.

49) Defendant seeks an Order of this Court declaring the Defendants as the rightful owners of the subject property.

WHEREFORE, this Defendant respectfully requests this Court dismiss Plaintiffs' action with prejudice and enter a judgment in favor of Defendant as set forth above and in the amounts to be proven at trial, along with interest at the judgment rate, costs, reasonable attorney's fees, and such other relief as the Court deems just and proper.

Respectfully submitted this 12 day of Dec, 2006,



BRADLEY BENNETT, ESQ.
Attorney for Defendant

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone No.: (864) 232-5800
Facsimile No.: (864) 232-5888

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PROOF OF SERVICE BY FACSIMILE & 1ST CLASS MAIL

I am a citizen of the United States, my business address is 101 W. Park Avenue, Greenville, SC 29601. I am employed in the City and County of Greenville where this mailing occurs; I am over the age of eighteen years and not a party to the within cause. I served the attached:

ANSWER & COUNTERCLAIM

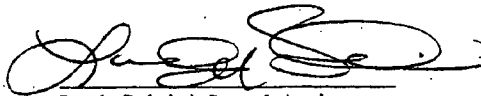
on the following person(s) on the date set forth below, by mailing a true copy thereof, in a sealed envelope, postage fully prepaid thereon and addressed to:

Chadwick D. Pye, Esq.
P.O. Box 18328
Spartanburg, SC 29318
(864) 583-5672 Facsimile

Edwin C. Haskell, III
218 E. Henry Street
Spartanburg, SC 29306
(864) 585-8358 Facsimile

I certify or declare under penalty of perjury that the foregoing is true and correct.

Executed on December 13, 2006, in Greenville, South Carolina.


Leah Salvini, Legal Assistant

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

James Moore

☐ Plaintiff

v.

Jeannette M. Benson And Thomas Lee Benson, Jr.

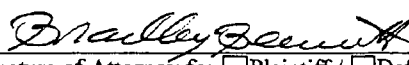
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2006-CP-42-3378

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Edwin C. Haskel, 111, Bar No. Address: 218 E. Henery Street Spartanburg, SC 29306 phone: 582-6727 fax: 585-8358 e-mail: other:	chadwick Rye 959 John B white Spartanburg SC 585-5658 583-5672	Defendant's Attorney: J. Bradley Bennett, Bar No. Address: 101 W. Park Avenue Greenville, SC 29601 phone: 232-5800 fax: 232-5888 e-mail: other:
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)		
SECTION I: Hearing Information Nature of Motion: <i>Motion to Dismiss to be heard on date of trial</i> Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO		
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted: <u>April 22, 2008</u>		
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:		
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE: CODE: Date:
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____		

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

James Moore,

Plaintiff,

vs.

Jeannette M. Benson and Thomas
Lee Benson, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No. 2006-CP-42-3378

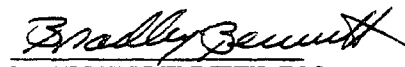
**DEFENDANTS' NOTICE OF MOTION
& MOTION TO DISMISS**

TO: PLAINTIFF ABOVE NAMED AND HIS ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as counsel for the Defendants, Jeannette M. Benson and Thomas Lee Benson, Jr., will move before the Presiding Judge for the Spartanburg County Court of Common Pleas on April 23, 2008 at 9:00 a.m. or as soon as the matter may be heard prior to the trial of this matter, for an Order of this Court dismissing this case on the grounds that the causes of action alleged by the Plaintiff are barred by the statute of limitations.

This motion is supported by the attached memorandum and any and all evidence presented at the trial of this matter, as well as all applicable South Carolina law.

Respectfully Submitted,



BRADLEY BENNETT, ESQ.
Attorney for Defendants
SALVINI & BENNETT, LLC
101 W. Park Ave.

Greenville, SC 29601
Telephone No.: (864) 232-5800; Fax No: 864) 232-5888

Dated: 4/22/08
Greenville, SC

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

James Moore,

Plaintiff,

vs.

Jeannette M. Benson and Thomas
Lee Benson, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No. 2006-CP-42-3378

**DEFENDANTS' MEMORANDUM
IN SUPPORT OF MOTION TO
DISMISS CASE**

COMES NOW the Defendants, who by and through this motion and any oral argument presented to this Court prior to the trial of this matter, move this Court for an Order dismissing this case as being barred by the applicable statute of limitations.

The Plaintiff brought a complaint against the Defendants on October 13, 2006, alleging seven causes of action: fraud, negligent misrepresentation, conversion, estoppel, civil conspiracy, breach of fiduciary duty and seeking injunctive relief. The Plaintiff instituted this action five years after the alleged torts occurred. Accordingly, the Plaintiff's claims herein are barred by the statute of limitations set forth by South Carolina law.

An action in tort such as this is governed by the limitations set forth in Section 15-3-530 of the South Carolina Code. This code section provides that actions for fraud, negligent misrepresentation, civil conspiracy and the like must be brought within three years of when the injury occurred. Section 15-3-530 states:

Within three years:

(1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520;

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- (2) an action upon a liability created by statute other than a penalty or forfeiture;
- (3) an action for trespass upon or damage to real property;
- (4) an action for taking, detaining, or injuring any goods or chattels including an action for the specific recovery of personal property;
- (5) an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law, and those provided for in Section 15-3-545;
- (6) an action under Sections 15-51-10 to 15-51-60 for death by wrongful act, the period to begin to run upon the death of the person on account of whose death the action is brought;
- (7) any action for relief on the ground of fraud in cases which prior to the adoption of the Code of Civil Procedure in 1870 were solely cognizable by the court of chancery, the cause of action in the case not considered to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;
- (8) an action on any policy of insurance, either fire or life, whereby any person or property, resident or situate in this State, may be or may have been insured, or for or on account of any loss arising under the policy, any clause, condition, or limitation contained in the policy to the contrary notwithstanding; and
- (9) an action against directors or stockholders of a monied corporation or a banking association to recover a penalty or forfeiture imposed or to enforce a liability created by law, the cause of action in the case not considered to have accrued until the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached or the liability was created, unless otherwise provided in the law under which the corporation is organized.

Plaintiff's claims for fraud, negligent misrepresentation, conversion, civil conspiracy, breach of fiduciary duty and injunctive relief are barred by the statute of limitation set forth in the preceding code section. The Plaintiff asserts the Defendants engaged in fraud in the purchase of real property belonging to him and that thereafter the Defendants converted the funds they paid to the Plaintiff for his real estate. Accordingly, this is an action for fraud, which should have been brought within the applicable statute of limitations period. See *Mckinnon vs. Summer*, 224 S.C. 331 (1953), attached hereto as Exhibit A.

In addition, the Plaintiff executed a document which transferred title to real property to his daughter and her husband in exchange for valid consideration. Title was recorded and made a public record. The funds were placed in an account of the Plaintiff. The Defendant knew or

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should have known that a cause of action for fraud existed, if one even did, upon the recording of the title transferring the land to the Defendants and receipt of the funds placed in his account.

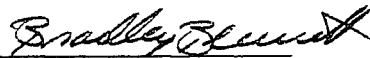
Under the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct. *See Dean v. Ruscon Corp.*, 321 S.C. 360, 468 S.E.2d 645 (1996); S.C. Code Ann. § 15-3-535. *See also Berry v. McLeod*, 328 S.C. 435, 492 S.E.2d 794 (Ct.App.1997). The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed. *Id.* (emphasis supplied). Under § 15-3-535, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of facts, diligently acquired, sufficient to put an injured person on notice of the existence of a cause of action against another. *True v. Monteith*, 327 S.C. 116, 120, 489 S.E.2d 615, 617 (1997).

Epstein vs. Brown, 363 S.C. 372, 376 (2005).

The Plaintiff failed to timely bring this action as required by South Carolina Law.

Accordingly, the Defendants seek an order of this Court dismissing this action with prejudice.

Respectfully Submitted,



BRADLEY BENNETT, ESQ.

Attorney for Defendants

SALVINI & BENNETT, LLC

101 W. Park Ave.

Greenville, SC 29601

Telephone No.: (864) 232-5800; Fax No: 864) 232-5888

Dated: 4/22/08
Greenville, SC

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79 S.E.2d 146

224 S.C. 331, 79 S.E.2d 146

(Cite as: 224 S.C. 331, 79 S.E.2d 146)

Page 1

C

McKINNON v. SUMMERS
S.C. 1953

Supreme Court of South Carolina

McKINNON

v.

SUMMERS.

No. 16801.

Nov. 27, 1953.

Action to cancel deeds conveying four tracts of land to defendant and declare plaintiff the fee simple owner thereof on the grounds of previous conveyance of land including such tracts to plaintiff by defendant's alleged predecessors in title and forgery of plaintiff's name as a grantor on the deeds conveying the tracts to such predecessors. From an order of nonsuit by the Common Pleas Court of Richland County, Bruce Littlejohn, J., plaintiff appealed. The Supreme Court, Oxner, J., held that the complaint stated a cause of action for cancellation of deeds on the ground of forgery, not for recovery of real property, so that the action was governed by the six year statute of limitations applicable to actions for relief on the ground of fraud.

Order affirmed.

West Headnotes

[1] Limitation of Actions 241 ⚡ 37(4)

241 Limitation of Actions

241 Statutes of Limitation

241(B) Limitations Applicable to Particular Actions

241k37 Relief on Ground of Fraud or Mistake

241k37(4) k. Rescission or Cancellation. Most Cited Cases

A complaint, praying judgment cancelling deeds conveying certain tracts of land to defendant and declaring plaintiff fee simple owner thereof on

grounds of previous conveyance of land including such tracts to plaintiff by defendant's alleged predecessors in title and forgery of plaintiff's name as a grantor on deeds to such predecessors, stated cause of action for cancellation of deeds on ground of forgery within six year statute of limitations governing actions for relief on ground of fraud, not for recovery of real property within ten year statute. Code 1952, §§ 10-124, 10-143.

[2] Courts 106 ⚡ 99(5)

106 Courts

106II Establishment, Organization, and Procedure

106II(G) Rules of Decision

106k99 Previous Decisions in Same Case as Law of the Case

106k99(5) k. Trial or Evidence, Rulings Relating To. Most Cited Cases

(Formerly 106k99(1))

In action to cancel deeds conveying four tracts of land to defendant and declare plaintiff fee simple owner thereof on ground of forgery of his name as grantor on deeds conveying tracts to defendant's alleged predecessors in title, trial judge's order, not appealed from, denying defendant's motion for order of reference on ground that action was to try title and should be tried by jury, did not establish as law of case that action was to recover realty within ten year statute of limitations, rather than action for relief on ground of fraud within six year statute, where answer raised purely legal issues of defendant's title by adverse possession and presumption of grant and defendant made no motion for order of reference limited to equitable issue of cancellation. Code 1952, §§ 10-124, 10-143.

*146 John Gregg McMaster, Columbia, for appellant.

James D. Walters, Walter F. Goings, Jr., Columbia, for respondent.

OXNER, Justice.

The principal question on this appeal whether

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79 S.E.2d 146
 224 S.C. 331, 79 S.E.2d 146
 (Cite as: 224 S.C. 331, 79 S.E.2d 146)

Page 2

cause of action stated in the complaint is governed, as plaintiff contends, by the statute of limitations applicable to actions for recovery of real property, or, as contended by defendant and held by the trial Judge, by the statute of limitations applicable to actions for relief on the ground of fraud.

Section 10-124 of the 1952 Code is as follows: 'No action for the recovery of real property or for the recovery of the possession thereof shall be maintained unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question within ten years before the commencement of such action.' Section 10-143 fixes a limitation of six years for the commencement of 'any action for relief on the ground of fraud in cases which prior to the adoption of the Code of Civil Procedure in 1870 were solely cognizable by the court of chancery, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud'.

In order to determine which of the foregoing sections applies to the case before us, *147 it is necessary to analyze the pleadings. Mrs. Sarah E. McKinnon died intestate about 1900, seized and possessed of 201 acres of land in Richland County and leaving as her sole heirs at law and distributees nine children. Plaintiff, one of the children, claims that on October 12, 1901, his brothers and sisters conveyed the above tract of land to him. However, the deed was not recorded until 1935. On November 7, 1901, a plat showing a partitioning of the 201 acres into nine tracts of equal size was made and subsequently recorded. Plaintiff alleged in his complaint that on December 16, 1902, his brothers and sisters, notwithstanding the fact that they had previously conveyed the entire property to him, undertook to convey Tract No. 1 to his sister, Nancy McKinnon, Tract No. 2 to his sister, Flora McKinnon, Tract No. 3 to his sister, Lucille McKinnon, and Tract No. 4 to his sister, Mary McKinnon. All of these deeds were recorded in 1903. Plaintiff further alleged that while his name appears as a grant-

or on each of these conveyances, his signature was forged. It seems to be conceded that in 1944, defendant, by various mesne conveyances, acquired whatever title the grantees received under the foregoing four deeds.

Plaintiff asserts in his complaint that by reason of the deed to him on October 12, 1901, 'he is the owner in fee simple' of the four tracts of land mentioned, and 'is entitled to have the deed of conveyance into Annie J. Summers (defendant) set aside and cancelled, and that he be declared the owner in fee simple of said property.' The complaint was later amended by alleging that defendant denies the plaintiff's title and claims possession of said property, 'rendering it necessary for the plaintiff to apply to this court for relief and for the protection of his title.' The prayer of the complaint is for 'judgment against the defendant setting aside and cancelling deeds conveying the premises unto the defendant, and that the plaintiff be declared the owner in fee simple of said premises, and for the costs of this action.'

The defendant denied the alleged forgery, set up a claim of equitable estoppel, pleaded the six year statute of limitations contained in Section 10-143 of the 1952 Code and the ten year statute of limitations contained in Section 10-124, and further alleged title by adverse possession and presumption of grant, claiming that she and her predecessors in title had been in open, notorious, exclusive and uninterrupted possession of said property for more than forty years prior to the commencement of the action.

At the 1951 Spring term of the Court of Common Pleas, the defendant moved before Judge Griffith, the presiding Judge, for an order of reference. This motion was denied upon the ground 'that this is an action to try title and should be tried by a jury.' There was no appeal from this order. The case came on for trial before Judge Littlejohn and a jury at the 1951 Fall term of court. At the conclusion of plaintiff's testimony, the court ordered a nonsuit 'on the ground that the claim was barred by the six year

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 (Cite as: 224 S.C. 331, 79 S.E.2d 146)

Page 3

statute of limitations, and the further ground that an equitable estoppel had arisen in favor of the defendant. The plaintiff has appealed from this order of nonsuit.

Plaintiff testified that his brothers and sisters conveyed the entire 201 acre tract to him in October 1901; that shortly thereafter he went to Georgia, taking the unrecorded deed with him; that he returned to South Carolina in 1911, and sometime later was appointed a bailiff in the Circuit Court for Richland County, which position he has held for the last thirty-one years; that the deeds to his sisters on December 16, 1902 were made while he was in Georgia and that one of his brothers forged his name as grantor thereon; that when he moved to Georgia in 1901 he left the 201 acre tract in charge of his oldest sister, giving her the right to use the property with the understanding that she was to pay the taxes; that upon the death of this sister in 1938, he permitted another sister and two of his brothers to occupy the land under the same arrangement; and that thereafter the two brothers died, leaving only the sister on the premises. He said that while his oldest sister was in possession, the property was *148 returned for taxation in her name and she paid the taxes. The testimony shows that at least one, if not all, of the deeds attacked was witnessed by two outstanding lawyers, who have since died. Plaintiff placed the entire responsibility for the forgery on one of his brothers. This brother died in 1932.

[1] It further appears from plaintiff's testimony that in some litigation before the Master of Richland County about 1941 or 1942, some question arose as to the genuineness of his signature on the deeds to certain of his brothers and sisters conveying Tracts No. 5, 6, 7, 8 and 9. At the hearing before the Master, plaintiff claimed that his signatures on these conveyances were forged. The Master found otherwise. Plaintiff admits that during the course of this litigation, he learned that his signature also appeared on the deeds being attacked in the instant action. It is, therefore, clear that not later than 1942 plaintiff was aware of the alleged forgery and did

not commence this action until September 27, 1950.

We think the Circuit Judge correctly held that the gravamen of the cause of action stated in the complaint was cancellation of the deeds on the ground of forgery and that such cause of action was barred by the six year limitation governing actions for relief on the ground of fraud. This action is not one for the recovery of real property within the contemplation of Section 10-124. Whether plaintiff could have maintained an action at law to recover possession of the premises by ignoring the alleged forged deeds need not now be decided. It suffices to say that he states no such cause of action. On the contrary, he attacks the deeds in his complaint and seeks cancellation thereof. Even though the property was conveyed to plaintiff in 1901, if he joined in the conveyances now attacked, which were made in 1902, he divested himself of all title to the land in controversy. It is essential to plaintiff's claim of title and the right of possession that he show that his name was forged to the deeds made in 1902. Any right of possession on his part would follow merely as an incident to the successful determination of his equitable claim to cancellation. Stated differently, there is no attempt to recover possession or establish title otherwise than by nullifying the deeds alleged to be forged.

Considering the complaint in the light most favorable to plaintiff, it might be said that it contains two causes of action, the first to set aside certain deeds on the ground of forgery and the second to recover possession of the land, one equitable and the other legal. See *DuPont v. DuBos*, 33 S.C. 389, 11 S.E. 1073. As to the first cause of action, the statute of limitations contained in Section 10-143 would apply. In the second appeal of the case of *DuPont v. DuBos*, 52 S.C. 244, 29 S.E. 665, 668, where it was sought to cancel a forged deed, the court said: "At law, fraud must be taken advantage of within six years of its discovery. Where, however, an equitable action must be brought, by analogy to a cause of equity will follow the period fixed in law cases by statute." In *Brown v. Brown*, 44 S.C. 347, 22 S.E.

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79 S.E.2d 146
 224 S.C. 331, 79 S.E.2d 146
 (Cite as: 224 S.C. 331, 79 S.E.2d 146)

Page 4

412, 414, the court approved the following charge:

'A man has six years from the discovery of fraud to attack that fraud, to attack the deed for fraud, six years from the time he discovers it, that is, six years from the time he knows or has sufficient information to put him on inquiry as to the facts which constitute the fraud.'

[2] Finally, it is claimed that in the order of Judge Griffith denying defendant's motion for an order of reference, the court held that this was 'an action to try title,' and there being no appeal from this order, the construction adopted by Judge Griffith is the law of the case. But the language mentioned must be construed in the light of the question before Judge Griffith, namely, whether plaintiff was entitled to a jury trial. In determining this question, it was necessary for Judge Griffith to consider not only the complaint but the answer. The latter raised title by adverse possession and presumption of a grant, purely legal issues upon which plaintiff was entitled to a jury trial. In this respect, the issue of 'title' was involved. Under these circumstances, *149 a general order of reference would have been improper. There was no motion by defendant for an order of reference limited solely to the equitable issue of cancellation. It was, therefore, unnecessary for Judge Griffith to determine whether the complaint embodied an action for cancellation on the ground of fraud, and we do not think he undertook to do so.

In view of the foregoing conclusion, we deem it unnecessary to discuss or decide the question of equitable estoppel.

The order of nonsuit is affirmed.

BAKER, C. J., and STUKES and TAYLOR, JJ.,
 concur.
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 McKinnon v. Summers
 224 S.C. 331, 79 S.E.2d 146

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

James Moore,

Plaintiff,

vs.

Jeannette M. Benson and Thomas
Lee Benson, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No. 2006-CP-42-3378

CERTIFICATE OF SERVICE

I am a citizen of the United States, my business address is 101 W. Park Avenue,
Greenville, SC 29601. I am employed in the City and County of Greenville where this mailing
occurs; I am over the age of eighteen years and not a party to the within cause. I served the
attached:

Notice of Motion & Motion to Dismiss

on the following person(s) on the date set forth below, by hand delivering a true copy thereof to:

Edwin C. Haskell, III
218 E. Henry Street
Spartanburg, SC 29306

Chadwick D. Pye
959 John D. White Sr. Blv.
Spartanburg, SC 29306

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MARC KITCHENS

I certify or declare under penalty of perjury that the foregoing is true and correct.

Executed on 4-22-08, in Greenville, South Carolina.

Patricia H. Wyatt

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

COURT OF COMMON PLEAS

3 JAMES MOORE,
4 PLAINTIFF,

5 -VS-

6 JEANNETTE M. BENSON AND
7 THOMAS LEE BENSON, JR.,

8
9 DEFENDANTS.

TRANSCRIPT OF TESTIMONY

(2006CP42-3378)

10
11 REFERENCE HELD:

AUGUST 19, 2008.

12
13 BEFORE:

HONORABLE **GORDON G. COOPER**,
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

14
15 PYE & TALLEY
16 BY: **CHADWICK D. PYE**, ESQUIRE
Attorneys for the Plaintiff.

17
18 SMITH & HASKELL
19 BY: **EDWIN C. HASKELL, III**, ESQUIRE
Attorneys for the Plaintiff

20
21 SALVINI & BENNETT, LLC
BY: **BRADLEY BENNETT**, ESQUIRE
Attorneys for the Defendants.

22
23
24
25 Sarah Hollis, Court Reporter

1					
		<u>INDEX</u>			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	JAMES MOORE				
4	(Mr. Haskell)	11			
5	(Mr. Bennett)		27		
6	ALICIA COOPER				
7	(Mr. Haskell)	60			
8	(Mr. Bennett)		68		
9	MARCUS MOORE				
10	(Mr. Haskell)	73			
11	(Mr. Bennett)		81		
12	ALLEAN MOORE				
13	(Mr. Haskell)	106		118	
14	(Mr. Bennett)		109		118
15	DENIS PRESTON DONALDSON				
16	(Mr. Haskell)	118			
17	JAMES LUTHER MOORE, JR.,				
18	(Mr. Pye)	122			
19	(Mr. Bennett)		129		
20	JOYCE FOSTER				
21	(Mr. Pye)	138			
22	(Mr. Bennett)		145		
23					
24					
25					

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
<u>PLAINTIFF:</u>			
Pl. - 1	Copy of Durable Power of Attorney.		14
Pl. - 2	Copy of Purchase Contract.		16
Pl. - 3	Copy of Title to Real Estate, Book 73-N, Page 140.		17
Pl. - 4	Copy of Settlement Statement.		18
Pl. - 5	Copy of Sheet with Check, front and back.	22	64
Pl. - 6	Copy of Statement - BB&T-3/23/01.		62
Pl. - 7	Copy of Signature Card - 5822263471.		65
Pl. - 8	Copy of Deposit Slip for 5822263471.		66
Pl. - 9	Copy of Official Check, No. 70561387.		67
Pl.-10	Copy of Miscellaneous Debit Slip.		68
<u>DEFENDANT:</u>			
Def. - 1	Copy of Decree of Divorce (99DR42-3093).		30
Def. - 2	Copy of Order on Defendant's Motion to Alter or Amend.	113	
Def. - 3	Copy of Petition for Order of Protection.	133	
Def. - 4	Picture of House.	136	
Def. - 5	Picture of Trees.	136	

1 THE COURT: This is the case of James Moore versus Jeannette M. Benson and Thomas Lee
2 Benson, Jr. This is Case Number 2006CP42-3378. The Plaintiff, James Moore, is represented
3 by Mr. Chadrick Pye and Mr. Edwin Haskell. The Defendants, Jeannette M. Benson and
4 Thomas Lee Benson, Jr., are represented by Mr. Bradley Bennett. Gentlemen is there any
5 matters we need to take up before we begin the testimony.
6 MR. HASKELL: No sir. However, I would like to make an opening statement at the
7 appropriate time.
8 THE COURT: All right. What about the motions? Have they been disposed of?
9 MR. BENNETT: May it please the Court, Your Honor. No sir, they have not. At this time I
10 would like to reopen the pretrial matter, the Motion that was filed on April 22, 2006. The
11 Motion to Dismiss. Your Honor, as filed the Motion asserted affirmative defense of the Statute
12 of Limitations. Whether the Court treats this motion under Rule 12(b) or Rule 56. It is in my
13 opinion about the same. Rule 12(b) provides that the motion asserting Plaintiff failed to state
14 facts sufficient to stated cause of action and if treated as a motion under Rule 56. So therefore,
15 at this time I will proceed under Rule 56. And although Rule 56 provides for supporting
16 affidavits to be brought before the Court, no such affidavits are necessary for the Court to rule on
17 this motion based upon the facts that the pleadings themselves by the Plaintiff indicate that the
18 statute of limitations have run. Specifically, Your Honor the pleadings indicate that several
19 causes of action were alleged to have been brought based upon a transfer of certain real property
20 located – excuse me, March 19, 2001 was the date of the closing. It was the date in which the
21 Plaintiff took part in the closing and it was the date that the deed transferred title. This lawsuit
22 was then brought by a Complaint which was filed on October 13, 2006. Sometime, thereafter
23 the three (3) year statute of limitations had run. In addition to the pleadings itself the Court can
24 rely on the public record in which the deed was executed and filed with the register of deeds
25 office. The statute of limitations in this case, Your Honor, would affect the fraud cause of

1 action, the negligent cause of action, negligent misrepresentation, conversion, civil conspiracy,
2 breach of fiduciary duty and our belief is injunctive relief as well. The reason why we believe
3 the injunctive relief would also qualify under the statute of limitations is because the Plaintiff is
4 claiming a revocation or to get the property back based upon fraud. The basis for that injunctive
5 relief by the Plaintiff's own pleadings is specifically based upon the fraud. Specifically,
6 paragraph 48 of Plaintiff's Complaint indicates that the Plaintiff asserts that he is entitled to an
7 order requiring the Defendants to reconvey the subject property to him by fee simple warranty
8 deed. That would be based upon fraud which of course falls under the statutes of limitations
9 Therefore, Your Honor, at this time we would ask that the Causes of Action in Plaintiff's lawsuit
10 be dismissed with the exception of estoppel. Thank you.

11 THE COURT: Counsel.

12 MR. HASKELL: Your Honor, the statute of limitations that we assert runs from when Mr.
13 Moore had notice that the act occurred. Basically, he testified in his deposition, I don't have the
14 exact cite, this split second, but basically he did not know that he had signed a deed conveying
15 his house to his daughter until sometime in December of 2005. You know, that is the whole
16 basis of our case that all of this was done without his knowledge. And so we have a statute of
17 limitations that runs upon notice or actual knowledge that you had a legal right that is being
18 breached and here we would assert that once Mr. Moore had notice that he had signed the deed
19 unknowingly conveying his house to his daughter that the present action was commenced within
20 the three (3) year statute of limitations. So the whole basis is that Mr. Bennett's motion is from
21 the date that the actual event and we don't dispute that was the actual event, the date the event
22 occurred. However, our position is that he did not have notice until sometime in 2005 and the
23 statute begin to run at that time. And so we would assert that this action was timely
24 commenced. Of course, testimony will come out at the trial to that effect.

25 THE COURT: Counsel.

1 MR. BENNETT: Thank you, Your Honor. Obviously, Mr. Haskell is talking about the
2 discovery rule. Your Honor, the discovery rule indicates that he should have known, known or
3 should have known. These documents that put an individual on notice are such things as the
4 documents that transpired during the real estate closing. By the pleadings themselves, by the
5 Plaintiff's own statements they affirmed that a closing did in fact take place. In addition, those
6 documents are filed with ROD office here in Spartanburg County. The Plaintiff's Complaint is
7 silent as to any time in 2005 or any time that the Plaintiff allegedly know a certain fact different
8 than what is already included in the Plaintiff's Complaint about being taken and having a real
9 estate closing take place and those documents were in fact filed with the Register of Deeds
10 Office. Therefore, Your Honor, March 9, 2001, the date of the closing that Mr. Moore, by the
11 Plaintiff's own confirmation was present at the closing and he took part in the closing controls.
12 Therefore, the statute has run with the exception of the cause of action for estoppel. Thank you.
13 MR. HASKELL: Your Honor, I would point out that paragraph 17 in the Complaint states that
14 the Plaintiff learned that he did not own the herein described property approximately one and a
15 half years ago. The Complaint was signed on September 6, 2006. So based on the pleadings
16 we have alleged that he didn't know about it until a year and a half prior to the Complaint was so
17 we have allegedly specifically that the Complaint was filed within the three (3) year period of
18 time, one and a half years previously is when he learned about it. As to the fact that the
19 documents were on record and things of that nature the whole basis of our Complaint in
20 paragraph 13, the Plaintiff could not read and that the Defendant knew that the Plaintiff could not
21 read and that answers the door could he understand what he was signing. If someone doesn't
22 understand, can't read and doesn't understand what they are signing then it is fine to say well it is
23 on record and what have you has been filed with the Register of Deeds, well if you can't read it
24 and understand it when you sign it how is recording it magically make you then be able to read
25 and understand it. The whole basis of the Complaint is that our client can not read and

1 understand things. And that he, therefore, didn't know that he had done all of this stuff until
2 possibly a year and a half prior to the filing of the Complaint. So the whole basis for the
3 Plaintiff's motion is what we are litigating about. He didn't know. He had no way of knowing
4 but when he did he acted timely within a year and a half. We are here today, clearly there is a
5 question of fact presented of whether he could read, whether he knew. Counsel can renew his
6 motion for directed verdict at the close of our case but at the present time granting of motions for
7 summary judgment is strictly construed against the moving party and it has to be a clear question
8 or clear situation where there is no genuine issue or fact and here there is. It has been alleged and
9 it is in his deposition that he didn't know what he was signing. So I would submit that the
10 motion should be denied. We should proceed to trial and at the close of our case counsel can
11 renew his motion for a directed verdict on the same basis if we fail to prove our case.
12 THE COURT: All right. What I am going to do at this point is I am going to reserve my ruling
13 on the Defendant's motion and go ahead and proceed with the trial. Would you like to make
14 opening statements?
15 MR. HASKELL: I would. Your Honor.
16 THE COURT: All right.
17 MR. HASKELL: Your Honor, as you mentioned at the outset, Chad Pye and I represent James
18 Moore. This is Mr. Moore, I am just going to point you out, seated right here. Mr. Moore is
19 eighty-eight (88) years old and he retired from Mayfair Mills after working there for about forty
20 two (42) years. He married to Allean Moore when he was twenty seven (27) years old and was
21 recently divorced. Allean is here in court today with us, also. Mr. Moore lives at
22 a Lyman and he has done so for approximately sixty one (61) years. That
23 house and land is the subject of this action. Now Mr. Moore is not educated. He went to work
24 at a very young age to support himself and his family. He has very little formal education. He
25 can not read and write well. When he was married he would work and earn the money and

1 Allean would handle the bill paying, the marital finances and the running of the house. That was
2 because Mr. Moore was unable to do so himself due to his inability to read and understand
3 things. Now when he got divorced from Allean he gave a power of attorney to Jeannette
4 Benson, one of the Defendants. Jeanette is his daughter, one of his children. And essentially
5 Mrs. Benson assumed the role of handling his business and personal affairs as Allean had done
6 throughout his marriage. She was a subrogate for Allean. She stepped in and was doing those
7 things that Allean used to do for him because once again he couldn't do them himself. Now this
8 case is about how Mrs. Benson we feel took advantage of Mr. Moore's trust in her and his
9 inability to read. In this hearing we will present evidence to show the following: In 1999, Mrs.
10 Benson took some of Mr. Moore's money, retirement money, and converted it to her own use by
11 placing it in a CD in her name. And this was done without Mr. Moore's knowledge or consent.
12 The amount of this was Twenty nine thousand four hundred thirty three & 46/100 (\$29,433.46)
13 dollars. Later in March of 2001, Mr. Moore was presented with some documents to sign by Mrs.
14 Benson. Trusting her and not knowing what they were he signed them. Later in 2005, he
15 learned that the documents that he signed in 2001 were real estate contracts and deeds which
16 resulted in conveying this house at Mrs. Benson and her husband,
17 Thomas Lee Benson. Thomas Lee Benson is the other Defendant in the case. Essentially this
18 case is seeking, Mr. Moore is seeking to have his house at reconveyed to
19 him and to have his money returned. That is all that this action is about. And we will like I said
20 present evidence to prove those facts to the Court. Thank you.
21 THE COURT: All right. Counsel.
22 MR. BENNETT: Thank you, Your Honor. May it please the Court. Your Honor, this case is
23 similar to what Mr. Haskell has indicated. One of the areas, however, that Mr. Haskell has
24 brushed over that we are going to focus on during the Defendants' case in chief is that marriage
25 between Mr. James Moore and his ex-wife, Allean. Because, Your Honor, that marriage is

1 intricate in determining what transpired and why it transpired. The reason being, November of
2 2000, in Spartanburg County, the divorcee decree was final. That ended the relationship and the
3 marriage of the Moores. In that divorce decree the marital home, Mr. Haskell indicated the
4 home that had been used by the family for several decades. A home that was on approximately
5 seventeen (17) acres of land was in fact controlled by this divorce decree. Mr. Moore as the man
6 who had bought the house so many decades ago and had lost in the old age of his life, his wife
7 and saw him family crumbling before him. The evidence will indicate and show that Mr. Moore
8 wanted more than anything else to keep his home. To not have to be uprooted and move away
9 after losing his wife and being of such an old age himself. His daughter, Jeannette Benson and
10 her husband, Tom Benson, my clients. They worked with Mr. Moore to try to help him achieve
11 his goals of not losing his home and his land. At that end, the family which you see before you
12 here today was split down the middle. And I say down the middle probably partially because it
13 wasn't a fifty - fifty type of split within the family. There were certain family members that felt
14 that they were more aligned with Mrs. Allean Benson and they wanted to make sure that she got
15 as much out of this marital estate as she possibly could. There were other members that
16 identified with Mr. James Moore and wanted to make sure that he was taken care of and was not
17 subject to losing his home or paying more than they felt he should because of the divorce decree.
18 So all of the children, and this is a large family. You will hear evidence about that you will hear
19 from some of these family members. They got together to try to decide what they were going to
20 do because the Court will learn there was a large financial bill that Mr. James Moore had to pay
21 in order to comply with the provisions to the divorce decree. He didn't have that money. He in
22 fact, did not own the home and the land outright. The Court will learn that there was still a
23 payoff on that property. And Mrs. Jeannette Benson got together with her brothers and sisters
24 and tried to decide what they could do. Nobody in the family had the money. Nobody in the
25 family was willing to stand up and say that they were going to take care of the financial

1 obligations that their elderly father had to make sure that he wouldn't be held in contempt of
2 court and lose his home and land. Finally, as the date ballooned in Family Court to where Mr.
3 Moore was running out of time and was to be held in contempt. The family got together and had
4 an idea that somebody had to buy the property. Mrs. Jeanette Benson and her husband, Tom
5 Benson lived down the street and Jeanette at that time in her own estimation was her daddy's
6 favor. She called him Papaw and she took care of his every need. He is a man who has
7 diabetes and she was there for him. She made sure that he had all of his medications and that he
8 was well cared for and that he was healthy. On a daily basis she would provide for him not
9 because of his inability to read but because he has health problems and he is elderly and because
10 she loves him. She loved him then and she still loves him today. Unfortunately the family has
11 been torn apart and now some members of the family we believe have corrupted Mr. James
12 Moore's opinion about his daughter Jeanette and her husband Tom. Jeanette and Tom pulled
13 some money together and found a way to pay the divorce decree amounts and had a real estate
14 closing with an attorney in Greenville, South Carolina, by the name of Jack Heckman, who is a
15 member of the bar and has been for approximately twenty (20) years, whom you will hear from
16 who will indicate that he held a real estate closing at which he made sure that Mr. Moore knew
17 and understood what was transpiring and it was Mr. Moore's desire to execute the deed and to
18 transfer his property in part so that he could in turn take the proceeds from that sale and pay to
19 his ex-wife and keep from being held in contempt and to get through with all of the family court
20 troubles that he was involved in and to make sure that he could stay on his land and the reason
21 why he could stay on his land in spite of the transfer was because Tom and Jeanette and their
22 brother Robert and all of the other family members they had talked to had to agree that Mr.
23 James Moore was going to be able to stay on his land and use it as he has used it for the entire
24 time that he has owned it without any encumbrances or without any provisions keeping him from
25 using it in any way he sees fit until the day he dies. That is what he has done. And he has done

1 that since November 2001 when this real estate transfer took place. He has not paid rent. He
2 has not paid upkeep. He has been allowed to live there free of charge and to use that property in
3 any way or manner that he sees fit and he has done so. Your Honor, at the end of the day
4 unfortunately there is probably nothing any Court can do to bring this family back together based
5 upon land disputes which are historical in nature in this family. You may hear testimony in fact
6 that there is another parcel of land that these same members of the Moore family have been
7 fighting over for generations and in fact the property itself the Defense believes is the true issue
8 in understanding that Mr. Moore now has and he has that issue of understanding not based upon
9 anything that the Benson did at the real estate transfer or to solicit a real estate transfer but in fact
10 based upon what certain members of this family who have been aligning with this mother for so
11 long have now come together and Mr. Moore and Mrs. Allean Moore are now back together in a
12 pseudo type of relationship we believe for the sole purpose of trying to take advantage of an
13 elderly man who may not understand what is happening and being misled by certain family
14 members so that entire piece of property can again become the focus of Mrs. Allean Moore and
15 her supporters within the family in spite of the valid legal transfer that took place on March 9,
16 2001. Thank you.

17 THE COURT: All right, counsel.

18 MR. HASKELL: Yes sir.

19 **JAMES MOORE, BEING DULY SWORN,**

20 **TESTIFIES AS FOLLOWS:**

21 **DIRECT EXAMINATION BY MR. HASKELL.**

22 Q. What is your name please?

23 A. James Moore.

24 Q. How old are you Mr. Moore?

25 A. I am eighty-eight (88) years old.

- 1 Q. And where were you born?
- 2 A. Spartanburg County.
- 3 Q. Have you lived in Spartanburg County all of your life?
- 4 A. All of my life.
- 5 Q. Are you retired?
- 6 A. Retired.
- 7 Q. Who did you used to work for?
- 8 A. Fred Dent, Mayfair Mills.
- 9 Q. And how long did you work for Mayfair Mills?
- 10 A. About forty two (42) years.
- 11 Q. Okay. Are you married right now?
- 12 A. No.
- 13 Q. All right. Did you used to be married?
- 14 A. Yes.
- 15 Q. Who were you married to?
- 16 A. Allean Edwards.
- 17 Q. Is she in the court today?
- 18 A. Yes.
- 19 Q. Is this her right here?
- 20 A. That is right.
- 21 Q. Okay. How old were you when you first married Allean?
- 22 A. About twenty seven (27) years old as to the best of my recollection.
- 23 Q. Okay. You currently live at 43 Montgomery Road in Lyman?
- 24 A. That is right.
- 25 Q. And how long have you lived in that house approximately?

1 A. I don't know. I couldn't keep in account of it.
2 Q. More than fifty (50) years?
3 A. In the house that I am in now.
4 Q. Or on the property?
5 A. Oh yes, yes sir. It has been fifty (50) years or more.
6 Q. Did you build that house that you currently live in?
7 A. Yes, I had it built.
8 Q. Okay. How far did you go in school?
9 A. To about the fifth grade which minus nothing.
10 Q. Okay. Are you able to read and write?
11 A. No, I can't. I could read a little bit but now I have done got old and I have done forgot a
12 lots. I can't read to understand.
13 Q. All right. When you were married to Allean did Allean take care of the bills and
14 personal business in your house?
15 A. She sure did.
16 Q. All right. When you came home from work would you just give your check to Allean?
17 A. That is right. She paid the bills.
18 Q. Okay. Why did your wife pay the bills and not you?
19 A. Well I didn't understand. She had more understanding than I did and I let her do it.
20 Q. Okay. Do you remember what year you and Allean got divorced? Was it 2002?
21 A. That is right.
22 Q. All right. Now after you and Allean got divorced you signed a power of attorney in
23 November of 1999 to let Jeanette Benson take care of your business?
24 A. Well the way it was I signed them but I didn't know what I was signing and I had no one
25 to explain what I was signing.

1 Q. Okay. During the time that you were married to Allean could you read and write then?
2 A. No, not to do no good, not to understand.
3 MR. HASKELL: Your Honor, at this time I would like to mark this as Exhibit Number 1.
4 THE COURT: All right.
5 MR. HASKELL: This has been admitted in request for admissions.
6 THE COURT: All right. Plaintiff's Exhibit 1 will be the durable power of attorney.
7 MR. HASKELL: Yes sir.
8 THE COURT: Any objections counsel?
9 MR. BENNETT: No objections, Your Honor.
10 THE COURT: All right.
11 **MR. HASKELL INTRODUCES INTO EVIDENCE A COPY OF A DURABLE POWER**
12 **OF ATTORNEY FOR JAMES MOORE, DATED FEBRUARY 16, 1999, MARKED AS**
13 **PLAINTIFF'S EXHIBIT NUMBER 1.**
14 Q. Mr. Moore, I am going to show you a paper and ask you, this is Plaintiff's Exhibit
15 Number 1 for the record, is this your signature?
16 A. Yes, that is my signature.
17 Q. Okay. All right. I said earlier about the divorce being in 2002. I shouldn't have been
18 testifying. I think that was wrong. What year, if you know, were you divorced from
19 Allean?
20 A. In 2002, I don't know.
21 Q. You can't remember?
22 A. No.
23 Q. Okay. That is all right. Now did your daughter Jeanette after you were divorced take
24 over a lot of the business that Allean used to do while you were married?
25 A. Yes.

1 Q. Okay. Was that because you were not able to do that due to your lack of education?
2 A. That is right.
3 Q. In other words, was she taking the place of Allean?
4 A. That is right.
5 Q. Now when Jeanette, your daughter, was handling your business would she come to you
6 from time to time and ask you to sign certain papers?
7 A. Yes, she has did that.
8 Q. All right. Now if she did not tell you what those papers were, were you able to know
9 what you were signing?
10 A. I did not and she didn't explain nothing to me.
11 Q. Okay. Now when Jeanette would give you some papers to sign would you simply trust
12 what she told you?
13 A. I sure did. I had my faith in her. I didn't realize that Jeanette Benson would have
14 treated me like she done me.
15 MR. BENNETT: I object.
16 THE COURT: I am going to allow it under the circumstances.
17 Q. If she did not tell you about the paper that you were being asked to sign would you ask
18 her about it?
19 MR. BENNETT: Objection, leading Your Honor.
20 A. I put my trust in her.
21 THE COURT: Wait. Hold just a minute. Don't answer, don't answer. How is it leading?
22 MR. BENNETT: Your Honor, he is suggesting a specific document or time but there is no
23 specific document or time. By his question when she brought the document to you and you
24 didn't understand it. Which document? A lack of foundation and leading.
25 THE COURT: All right. Rephrase the question.

1 Q. If your daughter Jeanette gave you a paper to sign and she did not tell you what it was,
2 would you ask her what it was that you were being asked to sign?
3 MR. BENNETT: Objection, Your Honor.
4 THE COURT: I am going to allow it.
5 MR. BENNETT: A lack of foundation.
6 THE COURT: I understand. I am going to allow that.
7 Q. Would you ask her about it?
8 A. Well I didn't ask her because I had all of my trust in her that she was working in my
9 behalf. I asked her several times Jeanette when is you all going to get this thing
10 straighten out. It wasn't nothing to be straighten out.
11 Q. All right. We will get to that in a little bit.
12 MR. HASKELL: I would like to have this marked as an exhibit.
13 THE COURT: Any objections?
14 MR. BENNETT: No sir, Your Honor. No objections.
15 THE COURT: All right. This is Plaintiff's Exhibit 2, the purchase contract.
16 **MR. HASKELL INTRODUCES INTO EVIDENCE A COPY OF THE PURCHASE**
17 **CONTRACT, DATED MARCH 1, 2001, MARKED AS PLAINTIFF'S EXHIBIT**
18 **NUMBER 2.**
19 Q. Mr. Moore, I am going to show you a paper. For the record it is Plaintiff's Exhibit 2.
20 And I ask if that is your signature?
21 A. Yes, that is my signature.
22 Q. Mr. Moore can you read this to the Court?
23 A. No, I can't read it.
24 Q. Do you know what this is that I just handed you, Exhibit 2?
25 A. No, I don't know what it is. I don't know.

1 Q. Is this your signature?
2 A. That is my signature.
3 Q. Okay. Do you know when you signed this paper?
4 A. No, I don't know.
5 Q. Okay. That paper that I showed you do you know if Jeanette Benson gave you that paper
6 and asked that you sign it?
7 A. Yes, I signed it.
8 Q. Do you remember when or where you signed it?
9 A. I don't know one paper from another one that I signed. I signed them but I don't know.
10 But I signed them because it is my signature.
11 MR. HASKELL: I would like to have this marked as an exhibit.
12 MR. BENNETT: Without objections, Your Honor.
13 THE COURT: All right. This will be Plaintiff's Exhibit 3. This is title to real estate.
14 **MR. HASKELL INTRODUCES INTO EVIDENCE A COPY OF A TITLE TO REAL**
15 **ESTATE, RECORDED IN DEED BOOK 73-N, PAGE 140, MARKED AS PLAINTIFF'S**
16 **EXHIBIT NUMBER 3.**
17 Q. Mr. Moore, I am going to hand you another piece of paper. I am looking on Page 3,
18 Plaintiff's Exhibit Number 3 for the record, and I ask you if that is your signature?
19 A. I guess that is my signature.
20 Q. Keep speaking up loud you are getting a little soft.
21 A. That is my signature.
22 Q. Okay. I am showing you Exhibit 3. Would you read that to the Court and tell the Court
23 what that is?
24 A. I can not read.
25 Q. Do you know what this is?

1 A. I don't know what it is.

2 Q. Okay. Do you recall signing it? Do you recall where or when you signed it?

3 A. No, no.

4 Q. All right.

5 MR. HASKELL: I offer this.

6 MR. BENNETT: Without objections, Your Honor.

7 THE COURT: All right. Plaintiff's Exhibit 4 will be a copy of the settlement statement.

8 **MR. HASKELL INTRODUCES INTO EVIDENCE A COPY OF A SETTLEMENT**

9 **STATEMENT (HUD-1), MARKED AS PLAINTIFF'S EXHIBIT NUMBER 4.**

10 Q. Mr. Moore, I am going to show you another piece of paper, for the record it is Plaintiff's

11 Exhibit Number 4, and ask you if that is your signature?

12 A. Yes, that is my signature.

13 Q. All right. Will you read this to the Court?

14 A. I can't read it.

15 Q. Do you know what this is?

16 A. No, I don't.

17 Q. Do you remember signing this?

18 A. I don't know when I signed it but that is my signature.

19 Q. All right sir. Can you remember if Jeanette Benson asked you to sign that last piece of

20 paper that I showed you? I believe it is Exhibit 4 for the record? Do you remember

21 Jeanette showing you that piece of paper?

22 A. I can't remember when I signed it.

23 Q. Did you ever have a conversation with your daughter Jeanette about selling your house

24 and land at to her and Thomas Benson?

25 A. No, I never heard no mention of no property of selling.

1 Q. Was it your intention to sell your house and land at Jeanette and
2 Thomas Benson?
3 A. No. I had never thought about it.
4 Q. Do you remember Jeanette taking you to a lawyer's office in Greenville, South Carolina,
5 in March of 2001?
6 A. I remember going up there with her in Greenville.
7 Q. All right. Do you remember the reason or did Jeanette tell you why you were going to
8 this lawyer's office?
9 A. No, sure not.
10 Q. Did you ask her why you were going to the lawyer's office?
11 A. No, I did not.
12 Q. Okay. Do you remember the name of the lawyer?
13 A. Don't know him.
14 Q. When you were taken to this law office, were you asked to sign any papers?
15 A. Jeanette, Mrs. Benson brought the papers out in the hall we were coming out to come
16 home and put the paper down on something and said sign it right here and that is it. Now
17 I don't know what I was signing bit more than nothing. She ain't explained nothing.
18 She never explained nothing to me.
19 Q. All right. Now do you remember talking to a lawyer that day?
20 A. No, I didn't talk to him. He didn't come out. I was just in the hall fixing to come home
21 when she brought the papers and said sign this right here well I thought that she was
22 taking care of me. That is all the reason that I had all of my confidence in her. She
23 didn't explain nothing. When I asked her anything, I said when is you all going to get
24 things straighten out, oh it is in a mess, it is in a mess, that is as far as I could get out of
25 her.

1 Q. Okay. When you were sitting in the hall in this lawyer's office where was Jeannette
2 Benson?
3 A. She was in the office where he was at. She come out of the office and told me to sign
4 this paper.
5 Q. Okay. Did the lawyer talk to you at all?
6 A. He ain't said nothing to me.
7 Q. In March of 2001, did you know that you had signed papers giving your house a
8 Jeannette and Thomas Benson?
9 A. No sir. I sure didn't.
10 Q. All right. When was the first time that you suspected that something was suspicious or
11 gave you reason to think that something wasn't right with your house at 43 Montgomery
12 Road?
13 A. Well we were going to my son's house for a dinner.
14 Q. When was that?
15 A. That was 2005.
16 Q. All right.
17 A. And Mr. Benson looked down there and saw an old truck or something that my son had. I
18 told him to put it down there.
19 Q. And down there is where? Is that on your property?
20 A. Yes. He said who told them to put that truck down there and I said I told them to put it
21 down there and something hit me. I said he ain't got no business asking me no
22 questions, that is my property. And I give him authority to put it down there. And he
23 had no right to say no such stuff as that unless they known what he was talking about.
24 They had done took my property from me and I didn't know it.
25 Q. All right. When you were riding with the Benson were you going to a party or a dinner

1 or what?

2 A. Down to my son's house to a dinner. Christmas dinner.

3 Q. Christmas 2005?

4 A. Yes.

5 Q. Was that the first time that you suspected that something was wrong with your house?

6 A. Yes.

7 Q. Okay.

8 A. I know that talk wasn't supposed to be asked.

9 Q. Now as a result of that conversation did you talk to your grandson Marcus Moore?

10 A. I sure did.

11 Q. What did you tell Marcus?

12 A. I told him that I wanted him to help me. I didn't know how to take care of it. And he

13 said that he would.

14 Q. All right. When you say take care of it what are you talking about?

15 A. My business to see what was going on.

16 Q. Going on with what?

17 A. With my property by this conversation that was said to me.

18 Q. Okay. Did Marcus look into this situation for you?

19 A. He sure did.

20 Q. Did Marcus come back and tell you what he had learned?

21 A. He sure did.

22 Q. What did Marcus tell you?

23 A. He said they had done took my property—

24 MR. BENNETT: Objection.

25 A. —and they had their names on it.

1 THE COURT: Hold on. Okay.
2 MR. BENNETT: Hearsay.
3 THE COURT: All right.
4 MR. HASKELL: Marcus is here.
5 THE COURT: Is he here.
6 MR. HASKELL: And he is subject to be examine.
7 THE COURT: That was my question. Where is he. All right.
8 Q. What did Marcus tell you?
9 A. He told me that Jeannette Benson and Thomas Benson had done took my land.
10 Q. Okay. All right.
11 MR. HASKELL: I would like to have this marked for identification. I will have a witness
12 coming in to lay the foundation for it.
13 THE COURT: All right.
14 MR. HASKELL: It will be Plaintiff's Number 5.
15 MR. BENNETT: Your Honor, did we decide what we are going to call that for identification
16 purposes?
17 THE COURT: Plaintiff's Exhibit 5 for identification. Not yet admitted.
18 MR. BENNETT: Thank you.
19 **MR. HASKELL INTRODUCES FOR IDENTIFICATION A SHEET OF PAPER WHICH**
20 **SHOWS A COPY OF A CHECK, FRONT AND BACK, MARKED AS PLAINTIFF'S**
21 **EXHIBIT NUMBER 5 FOR IDENTIFICATION.**
22 Q. I show you this paper with a copy of two checks on it. It is made out to you in the
23 amount of Twenty nine thousand four hundred thirty three & 46/100 (\$29,433.46)
24 dollars?
25 A. I don't know anything about that.

1 Q. Well I want to ask you is this your signature on the back of that check?
2 A. Yes, it looks like my handwriting.
3 Q. Speak up now.
4 A. I said it looks like my handwriting.
5 Q. Do you ever remember being asked to sign the back of that check by anybody?
6 A. I really don't know. I signed a heap of them. I signed them but I didn't know what I
7 was signing and nobody explaining what I was signing them for. I don't know anything
8 about signing no paper selling my property. I didn't have to sell it.
9 Q. Let me ask you this. When Jeannette Benson was handling your business would she ever
10 ask you to sign checks for anything related to a bank if you know?
11 A. I don't know. I don't know. I signed whatever was to be signed and she give it to me to
12 sign I signed it but no explaining.
13 Q. All right. Do you know why this Twenty nine thousand four hundred thirty three &
14 46/100 (\$29,433.46) dollars was paid to you?
15 A. That was from Mayfair Mill. My retirement check.
16 Q. Okay. Do you know what happened to that money?
17 MR. BENNETT: Objection Your Honor, a lack of foundation.
18 THE COURT: I am going to allow that. I don't know that he needs to have a foundation for
19 that. It is a simple question. Does he know what happened to that Twenty nine thousand. I am
20 going to allow the question.
21 Q. Do you know what happened to that Twenty nine thousand four hundred thirty three &
22 46/100 (\$29,433.46) dollars?
23 A. I put it in the bank.
24 Q. Okay. All right. How do you know that you put it in the bank?
25 A. Well that was what was supposed to have been done. I put it in the bank.

1 Q. Yes sir. Did you discuss your retirement money with your grandson, Marcus?
2 A. Did I trust him?
3 Q. Did you discuss – did you talk to Marcus about that money?
4 A. Oh yes, I had a talk with him. That was my retirement from Mayfair Mills.
5 Q. Did you ask Marcus to look into what happened to your money?
6 A. I sure did.
7 Q. Did he do that?
8 A. He did it
9 Q. Did Marcus come back and tell you what he found out?
10 A. Yes sir.
11 Q. What did he tell you?
12 A. He said that Jeannette and them had done drawn it out.
13 Q. Okay.
14 A. Made two draw-ments. Drawn it all out.
15 Q. At any time did you ever tell Jeanette Benson that you were giving her that retirement
16 money as a gift?
17 A. I have never heard no discussion about giving her no money.
18 Q. Did you give that money to anybody? Did you make a gift of that retirement money to
19 anybody?
20 A. No. Me and my wife was the only two that was supposed to draw that money.
21 Q. Okay. Now Mr. Bennett mentioned your divorce and having to pay your wife some
22 money as a result of the divorce. I want to ask you about that. Did you owe your wife
23 Allean any money because of the divorce?
24 A. No.
25 Q. All right. Did you get other people to tell you about the divorce and what you had to do?

1 A. Yes, yes.

2 Q. Okay. All right. Now if you owed your wife Allean some money and you didn't have it
3 in the bank, did you own property that you could have sold to pay that money?

4 A. I have got two tracts of land. The first tract of land I bought and my Momma put her
5 whole family in that house on that property. She was disabled. She told me, James, I
6 want you to look out and find us somewhere to go and I did it and I bought it and I was
7 thinking about getting married and I told my brother L. J.

8 Q. When was that? A long time ago or recently?

9 A. I am telling you about the first property and the other property comes down to me from
10 my brother. All of my brothers and sisters is dead and I am the only one left. And it
11 went to me.

12 Q. Well let me ask you this. Around March of 2005, was the County trying to buy some
13 land from you for a landfill?

14 A. Who did.

15 Q. The County?

16 A. Yes, they want to buy all of that land in there. I have got thirty-five (35) acres in land.

17 Q. If you had to sell some of your land to get some money and you had a choice would you
18 sell your house or would you sell the land for the landfill?

19 A. No, I wouldn't have sold my home where I lived. I wouldn't have done it.

20 Q. What would you have sold?

21 A. I would have sold some of the other property.

22 Q. And why is that?

23 A. If I had to have the money. I could have got money.

24 Q. From where?

25 A. Well my son could have loaned me the money.

1 Q. All right. Do you recall having a discussion or a talk with Jeannette about paying your
2 wife some money as a result of this divorce?
3 A. Well Miss. Jeannette come in there and took over and I didn't know nothing because she
4 didn't ever tell me nothing. She mistreated her Momma and had her thrown out of her
5 home without a cause.
6 Q. Okay.
7 A. In order to get it herself. That is what she was digging for.
8 Q. In this lawsuit are you asking the Court to have Jeannette and Thomas Benson give you
9 back your house and land at
10 A. That is right.
11 Q. Do you want your land and house back?
12 A. That is right. I want it back.
13 Q. Are you also asking to get that retirement money from Mayfair Mills back?
14 A. I want it back.
15 Q. Okay. Are you asking for interest on your money?
16 A. That is right because it would have been drawing interest.
17 Q. Okay. Is there anything else that you would like to tell the Court?
18 A. I never would have thought that my daughter would have treated me like she did. And
19 Mr. Benson, I have never had a conversation with you no kind of way less talking about
20 no property and you know that I ain't.
21 Q. Now Mr. Bennett here he has got the right to ask you some questions. So you need to
22 answer his questions the same way that you have answered mine. That sounded wrong.
23 Just answer his questions.
24 A. I will try.
25 THE COURT: Mr. Bennett.

1 MR. BENNETT: May it please the Court.
2 **CROSS EXAMINATION BY MR. BENNETT.**
3 Q. Good Morning Mr. Moore?
4 A. Good Morning.
5 Q. Do you remember me?
6 A. I have seen you.
7 Q. I am sorry sir. Do you remember me?
8 A. Were you up there at Greenville.
9 Q. Do you remember me sir?
10 A. Yes, I remember you.
11 Q. How is it that I remember me?
12 A. Because I seen you up there at your office in Greenville.
13 Q. When did you see me in my office in Greenville?
14 A. I come up there with -- Jeannette brought me up there.
15 Q. When was that?
16 A. I don't know.
17 Q. Was it this pass week?
18 A. No, it wasn't this week.
19 Q. What about this month? The month of August, was it the month of August?
20 A. No.
21 Q. Was it the month before that in July?
22 A. I don't know.
23 Q. Sir?
24 A. I don't know.
25 Q. I need you to try to think though, if you will. I am entitled to your best testimony. I am

1 entitled in this courtroom to have you answer any question that you can answer to the best
2 of your ability.

3 A. I will do that.

4 Q. I appreciate that. Thank you. Now what I want you to do though is I want you to think
5 back. You claim that you have seen me before in my office in Greenville and what I am
6 trying to find out is when that was? I understand that I don't understand sometimes or I
7 don't remember sometimes the exact dates and times and I am not going to hold you to
8 exact dates and exact times but lets try to narrow it down a little bit, okay. Can you do
9 that for me?

10 A. I will do the best that I know how.

11 Q. I appreciate that. Thank you. All right. So when you claim that you came to my
12 office in Greenville, South Carolina, with your daughter Jeannette was that in the year
13 2008 which is this year right now?

14 A. I don't know.

15 Q. Well do you think that it was?

16 MR. HASKELL: Your Honor, that is an asked and answered question.

17 THE COURT: Counsel explain to me where you are going here?

18 MR. BENNETT: Your Honor, I am trying to demonstrate and find the basis of knowledge on
19 Mr. Moore's behalf based upon the fact that he has never been to my office in Greenville, South
20 Carolina. And I am trying to find out if any of his testimony is going to be of any value or if he
21 is incapable of giving testimony?

22 THE COURT: All right. Lets go in chambers a moment.

23 MR. BENNETT: Yes sir.

24 (JUDGE AND ATTORNEYS GO IN CHAMBERS).

25 (HEARING RESUMED)

1 THE COURT: All right. Mr. Bennett you may proceed.
2 MR. BENNETT: Thank you, Your Honor.
3 Q. Mr. Moore lets talk about your health, okay?
4 A. I hear you.
5 Q. What kind of shape are you in? What is your health like?
6 A. I don't know. It is in bad shape.
7 Q. How is it in bad shape? What is wrong with you?
8 A. I have sugar.
9 Q. You mean diabetes? Sir?
10 A. Yes.
11 Q. How long have you had that?
12 A. I don't know, about five or six years.
13 Q. I am going to need you to keep your voice up if you don't mind so the court reporter can
14 hear you.
15 A. Five or six years.
16 Q. Now you got a divorce in 2000, isn't that right?
17 A. Yes sir.
18 Q. Or was it 2002, which one? I was wondering about what you had said on direct
19 examination?
20 A. In 2002.
21 Q. In 2002. Now what were the grounds for that divorce? Do you understand what I mean
22 by grounds?
23 A. No, I don't.
24 Q. Well what was the reason for the divorce?
25 A. I don't know.

1 Q. You don't know why you got a divorce?

2 A. My wife divorced me.

3 MR. BENNETT: I offer this as Defendant's Exhibit 1, Your Honor.

4 THE COURT: Any objections, counsel?

5 MR. PYE: No objections.

6 MR. HASKELL: No objections.

7 THE COURT: All right. This will be Defendant's Exhibit 1.

8 **MR. BENNETT INTRODUCES INTO EVIDENCE A COPY OF THE DECREE OF**

9 **DIVORCE, (99DR42-3093), MARKED AS DEFENDANT'S EXHIBIT NUMBER 1.**

10 Q. Mr. Moore, I am going to show you this paper right here, okay. It has got eight (8)

11 separate pages on it. Do you recognize this document?

12 A. I don't remember it. I can't remember what documents they are. I had so many. I

13 don't know one from another.

14 Q. Do you remember me taking your deposition at your lawyer's office, Mr. Haskell, back in

15 March of this year?

16 A. Yes, I remember it.

17 Q. Do you remember at that time that we talked about your divorce?

18 A. I can't remember.

19 Q. But isn't it a fact sir that you were the Plaintiff in your divorce case?

20 A. I can't remember it.

21 Q. You can't remember whether you were the Plaintiff or the Defendant in your divorce

22 case, is that correct?

23 A. I hear what you say but I don't know what you mean by that.

24 MR. PYE: He doesn't understand Plaintiff and Defendant.

25 THE COURT: Lets stop right here. Mr. Moore?

1 A. Yes sir.
2 THE COURT: You got divorced from your wife?
3 A. Yes sir.
4 THE COURT: Why did you get divorce?
5 A. I can't answer that.
6 THE COURT: Okay. Well let me ask you this? When you got divorced did you go to a lawyer
7 and have the lawyer file a divorce action for you?
8 A. Yes, I remember something like that.
9 THE COURT: All right. Did you go to the lawyer first and have your divorce filed by the
10 lawyer?
11 A. I remember that but I don't know what the answer is.
12 THE COURT; All right. I am going to ask you one other question. When I say why did you
13 get divorced is that you don't want to explain that or is that it is personal or is it just that you
14 don't remember why?
15 A. I just don't remember.
16 THE COURT: Did you just wake up one morning and say I want to get divorced?
17 A. My wife divorced me.
18 THE COURT: Okay.
19 A. That is all I know.
20 THE COURT: All right.
21 MR. BENNETT: Thank you, Your Honor.
22 Q. Mr. Moore your wife Allean was having an affair with another man wasn't she while you
23 all were married?
24 A. As far as I know, I don't know. That is what they say. What they told me.
25 Q. You don't know whether she was having an affair with a man by the name of Theodore

1 Drummond, the one that she was having an affair with?

2 A. Let me say it like I can say. You have to ask her them questions. James ain't had no
3 infection with nothing.

4 MR. BENNETT: Defendant's Number 2, Your Honor.

5 MR. HASKELL: Your Honor, we have not seen that before today.

6 MR. BENNETT: Your Honor, I brought it by -- I got it yesterday from my clients and I took a
7 copy, a hard copy in person, hand delivered over to Mr. Haskell's office. This is an exact copy
8 of the documents that I have taken over to Mr. Haskell's office.

9 THE COURT: Wait just a minute.

10 MR. HASKELL: I got it yesterday.

11 MR. BENNETT: That is when I got it.

12 MR. HASKELL: Yes. And we have had discovery outstanding for you know we have had
13 discovery outstanding since the call for trial in April. I don't know why -- I don't know where
14 this is going. That is the first I have heard of this guy, what is his name, Theodore Drummond.

15 MR. BENNETT: He was discussed during the deposition, Your Honor.

16 THE COURT: By name or just a person?

17 MR. BENNETT: By name.

18 THE COURT: All right. At whose deposition?

19 MR. BENNETT: Mr. Moore.

20 THE COURT: All right. Ask him again if he knows that name?

21 MR. BENNETT: Should I show him this?

22 THE COURT: No, don't show him that. Go ahead.

23 Q. Mr. Moore do you know Mr. Theodore Drummond?

24 A. Yes, I known him.

25 Q. Who was he?

1 A. I don't know. All I know is Theodore Drummond. I don't know nothing about him.
2 Q. You knew that your wife had been staying with him for several years while you were
3 married to her wasn't she?
4 A. No, I didn't know that.
5 Q. Have you found that out now?
6 A. Well I hear what you say.
7 Q. Sir I am not asking you if you hear me, I am asking you whether or not —
8 A. Yes.
9 Q. I am sorry sir. Let me finish my question and then I will be more than happy to listen to
10 anything that you have got to say but —
11 MR. PYE: Your Honor, I object to the relevance of this.
12 THE COURT: Wait a minute. Let me — what is the relevance of it?
13 MR. BENNETT: Your Honor, the basis of the divorce was that the Plaintiff, Mr. Moore filed on
14 the grounds of adultery. He filed upon the grounds of adultery based upon Mrs. Allean Moore's
15 relationship with a Mr. Theodore Drummond, who is now deceased. He can not be here. Mr.
16 Moore's impetus for transferring title to his real estate is based upon that family court divorce
17 because in the divorce Mr. Moore was required to make payment to Mrs. Moore.
18 MR. PYE: We will stipulate Your Honor that he got a divorce on the grounds of adultery and
19 the order has already been introduced in evidence.
20 THE COURT: Well lets see the Exhibit again. Defendant's Exhibit 1. It appears that this
21 states the basis for the divorce and the basis for the finding by the Court as far as the relationship
22 of the wife where else are you going with it?
23 MR. BENNETT: Your Honor, I was just trying to elicit the foundation for part of the ongoing
24 family dispute based upon the divorce decree's requirements and as in my earlier statement
25 describe the splitting of the family basically into two camps.

1 THE COURT: Well the point that I am trying to get to is there is no reason to slice that again.
2 We have already been there and it is in requirements for the responsibilities that he had are
3 specifically stated in that decree. And I don't know that it does any good to reopen that.
4 MR. BENNETT: I will be glad to make an offer of proof if the Court would like. What I am
5 attempting to elicit is that upon Mr. Theodore Drummond's death that Mr. Moore and Mrs.
6 Moore reconciled. They got back together in a relationship. And at that point in time is when
7 certain family members on Mrs. Moore's side got involved and brought forth this lawsuit on Mr.
8 Moore's behalf.
9 THE COURT: Well lets move then to that area. We have gotten the information as far as the
10 divorce and the grounds and the person. Lets get to where we are at this point. We don't need
11 to go through that ground again.
12 MR. BENNETT: All right.
13 Q. Mr. Moore, you know that Theodore Drummond died, don't you?
14 A. Yes.
15 Q. You know that he died on September 19, 2004, correct?
16 A. Yes, he is dead.
17 Q. Toward the end of '04? The end of 2004 is when he died?
18 A. I don't know when he died. I don't know what date. I didn't have no right to keep up
19 with what dates he died. He wasn't nothing to me.
20 Q. You say he wasn't anything to you. He was your ex-wife's lover, isn't that right?
21 A. Well seem like to me that ought to be asked to my wife. I ain't had nothing to do with
22 this here.
23 Q. Lets talk about your wife. After Mr. Drummond died in 2004, you and your wife got to
24 be friendly again didn't you?
25 A. We ain't never not been friendly.

1 Q. You have never not been friendly with your wife?
2 A. I ain't fell out with my wife about nothing. I ain't - I don't know nothing about my
3 wife's affair.
4 Q. Lets talk a little bit about you saying that you never had any problems or any falling outs
5 with your wife, is that correct?
6 A. I just don't know how to answer them questions. I don't know.
7 Q. Well you all had a very difficult marriage didn't you?
8 A. Fine.
9 Q. Sir?
10 A. Fine.
11 Q. I am sorry. I don't understand what that means?
12 A. We had a good life.
13 Q. But your marriage it was tough wasn't it? You all fought an awful lot, didn't you?
14 A. Did what.
15 Q. You all fought an awful lot didn't you sir, you and your wife?
16 A. No.
17 Q. Your wife spit on your one time in front of other people didn't she?
18 A. I don't know nothing about that.
19 Q. You don't remember your wife spitting on you?
20 A. No, I don't.
21 Q. Your wife locked you out of the house before didn't she?
22 THE COURT: Counsel —
23 A. Locked me out.
24 THE COURT: Wait just a minute. All of that was before the divorce?
25 MR. BENNETT: Yes sir. I am impeaching the witness—

1 THE COURT: All right. I understand what you are doing but everything up to the date of the
2 divorce is in the decree. Lets get after that and get where you started to go and that is whether
3 they are back together now or whatever because the divorce set out certain obligations and
4 responsibilities lets go into that area and there is no reason to open up —
5 MR. BENNETT: To impeach the witness.
6 THE COURT: —on this point.
7 Q. Mr. Moore, I am going to direct your attention now to when you and your wife started
8 seeing each other again after Mr. Drummond died, okay. Okay?
9 A. Yes, I see my wife. I go over there.
10 Q. She was living with her daughter in a small apartment at that time wasn't she?
11 A. I don't know. She is in a — I can't answer them questions, I don't know.
12 Q. Why can't you answer them?
13 A. Seems like to me the questions you are asking me ought to be said to my wife.
14 Q. I am asking you whether or not you knew about her living arrangements when you and
15 she got back together after Mr. Drummond died, was your wife living in a small
16 apartment with you all's daughter?
17 A. I don't know.
18 Q. You all started seeing each other again, didn't you? Going out on dates? Getting
19 together and so forth?
20 A. Oh no, no. No. I ain't never stop — I went to my wife's house. I went to her house. I
21 wasn't dating her. I ain't fell out with my wife.
22 Q. Your wife became upset when she found out that Jeannette and Tom had bought your
23 house from you?
24 A. They ain't bought my house Mister. I know nothing about selling no property to
25 Jeannette Benson and Mr. Benson. They ain't mentioned no buying my house. How

1 could I sell my house. Where was I going to live.

2 Q. Your wife wanted to come live back in the family house and land with you, didn't she?

3 A. Mister, I hate to say it. Ask my wife that. I can't speak for my wife.

4 Q. Your wife got upset when she found out that she wasn't going to be able to come back to

5 the house and she didn't think she could because Jeannette owned the house?

6 A. I really don't know nothing about that. I don't know. I don't know.

7 Q. And it was at that time that you got together because of your ex-wife with your grandson

8 and started trying to find a way to get the house back, isn't that right?

9 A. I didn't ever think that I had my house gone.

10 Q. Well lets explore that a little bit. You have lived in that house for a long time haven't

11 you?

12 A. Sure, I had it built for myself.

13 Q. You have been in that house over sixty (60) years isn't that right?

14 A. Sixty (60).

15 Q. That land where the house is about sixty years isn't that right?

16 A. Yes. I had that land before I even married.

17 Q. But you had the house built, correct?

18 A. Had the house built.

19 Q. And you were paying on that house weren't you?

20 A. I had done paid for it. I just owed – I can't explain it to you how it was.

21 Q. Well you were doing a good job. You just said that you just owed a certain amount and

22 then you stopped. Go ahead and tell me. How much did you still owe on it?

23 A. Well that was – I can't explain it to you. My wife was seeing to it. That is the reason. I

24 can't explain it because I didn't. She took care of my business and she did a good job

25 and I was well pleased with it and that is all I can tell you.

1 Q. Because you both love that house don't you and the land I am sure? You both love that
2 house and land don't you?
3 A. Sure. Anywhere I have a home, I am going to love it.
4 Q. You wouldn't want to give that home up would you?
5 A. Not under this – the way it is going.
6 Q. I am just talking in general. You didn't want to have to move out of your house, did
7 you?
8 A. No. I didn't. I sure didn't. Because I paid every dime of it myself. No help, no end.
9 Q. In fact, during you all's divorce you all fought over that house, you and your wife didn't
10 you?
11 A. Did what.
12 Q. During you all's divorce you and your wife fought over that house didn't you?
13 A. Fought over it.
14 Q. Yes sir. Fought over it?
15 A. I don't understand what you mean.
16 Q. Well isn't it true that according to you all's divorce decree—
17 MR. HASKELL: Your Honor, I object. The divorce decree is in evidence. I thought that what
18 we were talking about is the time from the divorce forward.
19 MR. BENNETT: I hadn't even asked my question, Your Honor.
20 THE COURT: What is your question?
21 Q. That during the divorce decree you were required to let your wife know within forty five
22 (45) days whether you were going to buy her out of that house or if you all were going to
23 sell that house, but she had an interest that was coming to her, isn't that true?
24 A. I don't know.
25 Q. You felt pressured by that forty five (45) day constraint in the divorce didn't you?

1 A. I don't understand you mister, I am sorry.
2 Q. Mr. Moore after you final divorce you still had things that you had to do for the family
3 court isn't that true?
4 A. I don't know.
5 Q. You were living in the house at the time of your divorce, correct?
6 A. Yes.
7 Q. Your wife was not living in that house at the time of your divorce isn't that correct?
8 A. Yes, that is correct.
9 Q. You will need to speak up, if you don't mind?
10 A. Yes, that is right I guess.
11 Q. That house and land however had been part of your divorce case isn't that correct?
12 A. I don't know.
13 Q. Well you wanted to still keep the house and land didn't you?
14 A. Well sure I had to have a place to stay.
15 Q. And your wife wanted to keep that house and land didn't she?
16 A. I don't know. I can't speak that for her.
17 Q. Well you had approximately Fifty six thousand & no/100 (\$56,000.00) dollars that you
18 had to either give your wife or you had to sell that property, do you remember that?
19 A. I don't know nothing about that.
20 Q. And you didn't want to sell your house and land at that time did you?
21 A. I sure didn't. I sure didn't.
22 Q. And you only had forty five (45) days to get that Fifty six thousand & no/100
23 (\$56,000.00) dollars and that is a round estimate, that is not the exact amount. So that
24 was the amount of time you had about forty five (45) days after your divorce to get that
25 money to her, isn't that true?

1 A. I don't know anything about that. Somebody else was running things and making plans.
2 That hasn't been explained to me.
3 Q. You were feeling pretty scared at that time, I would assume?
4 A. No, I ain't never been scared.
5 Q. You were probably upset though after getting that divorce weren't you?
6 A. I don't know how to speak for that. I really don't.
7 Q. You had been married since 1949, isn't that true?
8 A. I guess so.
9 Q. And you told Jeannette, your daughter, that you didn't want to leave that house and that
10 farm, isn't that right?
11 A. I haven't had no talk with Mrs. Benson about no house.
12 Q. When you say Mrs. Benson you mean your daughter, right?
13 A. That is right.
14 Q. And you asked her to help you so that you could stay in that house and farm until you
15 died, isn't that true?
16 A. No, that is not true. That is not true. That is not true.
17 Q. Let me ask you sir. During that forty five (45) day period of time after your divorce
18 decree where were you going to live if you didn't live in the house and farm?
19 A. Well there is always something that can come up. I would have had to make plans.
20 Q. Had you made any plans?
21 A. I didn't have to.
22 Q. Why not?
23 A. Because I was in my house.
24 Q. Where you were going to stay isn't that right?
25 A. That is all I can tell you.

1 Q. After the divorce decree and after you had expressed an interest or a desire to pay the
2 Fifty six thousand in money to your ex-wife so that you could stay in the house, you
3 asked for Jeannette to help you with that didn't you?
4 A. Look. Let me explain this my way. Mrs. Benson asked me that she would take care of
5 my business and that was what I depended on. That was what I depended on. It is
6 always a way for something.
7 Q. You asked other family members to help you out with that Fifty six thousand & no/100
8 (\$56,000.00) dollars, didn't you?
9 A. I don't know nobody I asked about no money, period.
10 Q. Nobody else in the family was able to come up with any of that money for you, did they?
11 A. Well I don't know that. I don't know that.
12 Q. Well did anybody give you any money at that time of your divorce decree?
13 A. I don't know. I can't answer that. Truly, I can not. I don't know the answer to it.
14 Q. So you and Jeannette and Tom and Robert, you all had a conversation about you selling
15 the house to Jeannette and Tom, isn't that right?
16 A. I haven't had no conversation with Jeannette Benson and Thomas Benson about no
17 house, about selling it.
18 Q. And they were going to buy that house from you and give you the money that you would
19 then need to pay off your ex-wife, isn't that correct?
20 A. I can't answer that.
21 MR. PYE: Your Honor, we have already established that Mrs. Benson was handling his
22 financial affairs and the attorney just keeps asking more and more questions about getting money
23 from people and borrowing money from people. We have already established that he didn't
24 know what he had and didn't have because she was handling his money. He trusted her and he
25 is just badgering the witness at this point. The gentleman keeps saying I haven't talked to them

1 about selling the house.

2 MR. BENNETT: Your Honor, the witness indicated that he did not know if anybody had given
3 him any money.

4 THE COURT: Right.

5 MR. BENNETT: I am trying to find out whether or not anybody on his side had given him any
6 money.

7 THE COURT: Well his answer was he didn't ask anybody and nobody gave him any. Now if
8 you get that information from somewhere else that is fine but his testimony to this point is that
9 nobody gave him any and he didn't ask for anybody to give him money. Is that correct?

10 A. That is the truth.

11 THE COURT: All right. That is his testimony and if you can find it that is fine but his either
12 recollection or his position is that he didn't ask and he didn't receive.

13 MR. BENNETT: Very well, Your Honor. And just to avoid the problem in the future, a point
14 of clarification or a point of, my mind is drawing blank, a point of order. This is Mr. Haskell's
15 witness —

16 THE COURT: I understand.

17 MR. BENNETT: Not Mr. Pye's witness.

18 THE COURT: I understand. Well they are co-counsel as I understand.

19 MR. BENNETT: Correct. But I believe Mr. Haskell was the one who did the direct for him.

20 THE COURT: That is fine.

21 Q. Mr. Moore you said that you had two tracts of land, correct?

22 A. That is right.

23 Q. Now you talked about tract 1 was your farm and your house, is that right?

24 A. Right.

25 Q. Now speak up?

1 A That is right.

2 Q Where was the second tract of land?

3 A I inherited it from my brother. All of my folks is dead and what they left went to me.

4 Q Okay. What is that land?

5 A I don't know what you mean by that.

6 Q I am sorry. Where is that land that you inherited from your brother and all of your

7 brothers and sisters?

8 A Just my brother. The other land I bought that land myself.

9 Q Well let me make sure that I understand. You bought your house and farm where you are

10 living at s that correct?

11 A Yes, I bought it..

12 Q I am not talking about that now. I am talking about the other land, okay. Okay? Sir I

13 need you to speak up so that they can put it on the record?

14 A I inherited it. It went to me. I am the last one living.

15 Q Yes sir, I understand. And what I want to know is where is that land?

16 A It is adjoining where my land is at.

17 Q Okay. So it is right next door there in Inman?

18 A Where I live at now.

19 Q How big is that land?

20 A How many acres.

21 Q Yes sir. How many acres?

22 A Thirty-five (35) acres.

23 Q Is there any house on there?

24 A Yes, it is a trailer on it.

25 Q Who lives in that trailer?

- 1 A. Joyce Foster.
- 2 Q. And who is Joyce Foster?
- 3 A. She is in the audience back there somewhere.
- 4 Q. Yes sir. But who is she? How do you know her?
- 5 A. That is my oldest sister's son's daughter.
- 6 Q. Have you ever sold any of those thirty-five (35) acres?
- 7 A. No.
- 8 Q. Do you pay the taxes on those thirty-five (35) acres?
- 9 A. The taxes were paid.
- 10 Q. Did you pay them?
- 11 A. Yes, I paid tax. I paid the taxes, I sure did.
- 12 Q. On those thirty-five (35) acres?
- 13 A. Yes.
- 14 Q. Do you still pay them?
- 15 A. Yes.
- 16 Q. That trailer that Joyce Foster lived in, do you collect the rent on that trailer?
- 17 A. I don't collect no rent.
- 18 Q. Do you charge any rent to Mrs. Foster?
- 19 A. No, I don't.
- 20 Q. Have you ever put that thirty-five (35) acres up for sale?
- 21 A. No.
- 22 Q. What is your plan for those thirty-five (35) acres?
- 23 A. I hadn't decided.
- 24 Q. Mr. Moore lets talk about your education a little bit, okay?
- 25 A. I don't have none.

1 Q. Well now you said that you had some when you were asked questions by your lawyer?
2 A. I am eighty-eight (88) years old and I have been put through so much, I hardly know my
3 name sometimes. I have been through some pressures that you don't know about.
4 Q. I am asking you about school. How far did you go in school?
5 A. Fifty grade.
6 Q. Here in South Carolina?
7 A. I am going to tell you like I told my lawyers. I got a bad weather education. When it
8 was bad I went to school and when it was dry I was working. I worked on the farm.
9 Sometimes the class done got so far I didn't know what it was in the book. Now that
10 was the kind of education that I got. Every now and then when it was bad I went to
11 school when it was dry, I had to work. You know why. Because back then when White
12 folks had land and someone rented it you had to do what they tell you to do or else. Do
13 you understand that Judge.
14 THE COURT: I understand you sir.
15 A. Now that is the kind of education I got. And had to do it or else you moved.
16 THE COURT: Counselor does that answer your question? I think that pretty well covered it.
17 A. Lets dismiss this, please.
18 Q. Mr. Moore you got a job over at Mayfair Mills working in the warehouse correct?
19 A. Yes.
20 Q. And in fact during our deposition you told me about how the owner of Mayfair Mills was
21 very kind to you, correct?
22 A. He was very nice to me.
23 Q. He was impressed with the kind of work that you did, right?
24 A. Yes.
25 Q. And you did a good job didn't you?

1 A. Every where I worked it was done and folk appreciated what I did.
2 Q. And at some point in time you became the head of that warehouse, correct?
3 A. I don't know about that. I was working there. And we worked at both mills. One mill
4 to another. Transferring one mill to another.
5 Q. And you in fact would take bails of cotton from one mill to the other mill sometimes
6 wouldn't you?
7 A. No, I drove the truck and hauled it.
8 Q. That is what I am talking about. I am sorry. You would move cotton from one
9 warehouse to the other warehouse?
10 A. Yes, that had to be done. That was the job.
11 Q. Okay. And you had to make sure when you got an order that told you a certain kind of
12 cotton had to go to a certain location you made sure that you got it done right, didn't you?
13 A. I wasn't over that. They had men over that department. They load my truck and I
14 hauled it wherever I had to carry it.
15 Q. And you made sure that you got the right stuff on that truck didn't you?
16 A. Well they put the right stuff on there. I wasn't over that. I wasn't over that. I drove the
17 truck.
18 Q. Well lets talk about driving a little bit. You ended up having a heart problem back in
19 1992, isn't that correct?
20 A. I don't know when I first come to having problems with my heart. They thought that I
21 had a heart problem but it wasn't. They couldn't find out. That is way back, I can't
22 think of all of that.
23 Q. Well because of those heart problems you ended up losing your driver's license didn't
24 you?
25 A. Say that again.

1 Q. Yes sir, I will be glad to. Because of your health problems you ended up losing your
2 driver's license, didn't you?
3 A. Do you want to see my driver's license now. They have never been took from me.
4 Q. Okay.
5 A. Never been took from me.
6 Q. Do you remember having to retake your driver test because your license had been
7 suspended?
8 A. No, I ain't had to do that.
9 Q. Do you remember bringing over the handbook, the driver's —
10 MR. HASKELL: What relevance does this have on anything in this case?
11 A. It is all about school.
12 THE COURT: Hold on. Explain to me where we are going counsel?
13 MR. BENNETT: Sure. The witness has indicated that he can not read or write.
14 THE COURT: Right.
15 MR. BENNETT: The witness has in fact read the driver's handbook with Mrs. Jeannette
16 Benson in preparing to his driver's test again after his driver's licenses were suspended because
17 of health reasons.
18 THE COURT: All right. What year was that?
19 MR. BENNETT: In 1992, I believe.
20 THE COURT: All right. It was post-divorce.
21 MR. BENNETT: I understand Your Honor. I am trying to also point out however that during
22 the work experience he claims that he wasn't able to read anything he was still working in 1992
23 prior to having his heart attack?
24 THE COURT: I understand where you are going but I think you need to move on to more
25 current and let me consider the other issues relating to his ability or non-ability.

1 MR. BENNETT: Very well, Your Honor.

2 THE COURT: I think that has pretty well been established and you may bring other witnesses
3 in on that issue.

4 MR. BENNETT: Yes sir, Your Honor.

5 Q. Mr. Moore you go to church with Jeannette and Tom Benson, you all go to the same
6 church don't you?

7 A. Me and Mrs. Benson do.

8 Q. Correct. And you all in fact sometimes sit beside each other in church don't you?

9 A. I don't know what you mean by that?

10 Q. Some time when you are in church you sit besides your daughter, Jeannette Benson, don't
11 you?

12 A. I don't know what that means.

13 Q. Well she in fact sits beside you and gives you your favorite candy in church sometimes
14 doesn't she?

15 A. Yes. She gives it not only to me but she gives it to a lots --. I have plenty of candy. I
16 have got candy in my pocket.

17 Q. And in church you have to have what is called responsive reading. When the preacher
18 says something and the people in the congregation says something back to them, isn't that
19 correct?

20 A. I don't know that much about the church. I don't know what you mean by that.

21 Q. And you in fact read that on the program that you are given when you go into the church
22 don't you?

23 A. I read it.

24 Q. Yes sir?

25 A. No, I don't read in the church.

1 Q. Now you said on your direct examination, you said earlier when your lawyer was asking
2 you questions that you first learned or had a suspicion about your land being sold when
3 you were driving to a Christmas party in 2005?
4 A. Right.
5 Q. Tell me about that please? Tell me about when that was?
6 A. It was 2005 Christmas. We were going down to my son's house to eat dinner and he
7 looked down there and seen the old car down there and he wanted to know who told them
8 to put that car down there.
9 Q. Yes sir. I am going to interrupt you —
10 A. And I known by that. That was my property and I felt like what he said he didn't have to
11 say that. I didn't know they had done took my property.
12 Q. Now who do you mean when you say he said who put that truck down there?
13 A. Mr. Benson there.
14 Q. Where were you when he said that?
15 A. I was in the car with him.
16 Q. Whose car?
17 A. Mr. Benson's car.
18 Q. Who else was in that car?
19 A. His wife, Mrs. Benson and myself.
20 Q. Was anybody else in there?
21 A. Just three (3) of us in there.
22 Q. Now when was this?
23 A. When was it.
24 Q. Yes sir?
25 A. I don't know what you mean.

1 MR. PYE: Your Honor, he has been asked that question and answered it.
2 MR. HASKELL: The question has been asked and answered.
3 THE COURT: Wait a minute.
4 MR. HASKELL: He said it was Christmas 2005. He testified to that earlier.
5 Q. Was it Christmas Day. Is that what you said, it was Christmas Day that this happened?
6 A. It was Christmas Day.
7 Q. December 25. Now tell me about the party that you were going to. Which son's house
8 was it that you were going to?
9 A. Robert raise your hand.
10 Q. What did you say at the time when he said that?
11 A. I ain't said anything. I ain't said a word.
12 Q. Why not?
13 A. I didn't want to.
14 Q. Why not?
15 A. Because I was going to have it checked and see what was going on by him speaking what
16 he did.
17 Q. Now let me get this straight. Because your son-in-law asked you about a vehicle on the
18 property you believed that something had transpired or taken place, is that right?
19 A. I sure did.
20 Q. What did you think had taken place?
21 MR. HASKELL: That wasn't the testimony, Your Honor.
22 A. I don't know.
23 THE COURT: Hold up. Wait a minute.
24 A. I can't go no further with that. I don't know.
25 MR. HASKELL: Counselor is repeating stuff that is not in the record. It is not in the record.

1 He never said in commenting about – he basically said that Mr. Benson comments what was that
2 vehicle doing down there and that raised his interest. He wasn't talking to him about it.
3 MR. BENNETT: That is exactly what I asked, Your Honor.
4 MR. HASKELL: It is not. It is not.
5 MR. BENNETT: It is. It is.
6 THE COURT: Wait. Wait.
7 MR. BENNETT: And the record will show that I asked —
8 THE COURT: Counsel my understanding and his response was and it was also on direct, it was
9 that he said to himself. There was no conversation between him and Mr. Benson. And I
10 understood that was the question that you just asked him.
11 MR. BENNETT: I will rephrase my question.
12 THE COURT: All right.
13 Q. Mr. Moore you say that you heard Tom, your son-in-law, ask you what is that truck doing
14 on the land, is that correct?
15 MR. HASKELL: That is not what his testimony was, Your Honor. He wasn't talking to him.
16 He has already testified to that. You are basically stating something that is not in evidence. As
17 a lawyer you can't do that. Now he basically testified that Mr. Benson made the comment. He
18 wasn't talking to my client. My client said that he heard him say – that is what the direct
19 examination was. He has testified to that and you are saying something different trying to trick
20 him up.
21 MR. BENNETT: I am not.
22 THE COURT: All right counsel. Lets get back to the point.
23 Q. Mr. Moore you were in the car with only two (2) other people, correct?
24 A. That is right.
25 Q. And is that the time that you heard Tom Benson say what is that truck doing on the

1 property?

2 A. He didn't mention no property. He just said, he told them to put that truck down there.

3 Q. You heard that in the car, correct?

4 A. Yes sir, I was in there.

5 Q. Where were you sitting in the car?

6 A. I was in the back seat.

7 Q. Did he whisper it?

8 A. He spoke it out loud. His wife there was there. She heard it, too. She was in there up

9 there on the seat with him.

10 Q. Okay. So after you heard that is that what led you to believe that something—

11 A. Now I didn't believe—

12 Q. I am sorry. I didn't get to ask my question sir. I am asking you, after you heard that,

13 what we just talked about in the car, after you heard that is that when you had some

14 concern about your property?

15 A. Yes. Oh, yes.

16 Q. Why?

17 A. Because it was supposed to have been my property.

18 Q. And so just because somebody asked a question about who told him to put that — made

19 you think that it wasn't your property any more?

20 A. I can't answer that. I can't answer it.

21 Q. Were you upset by this?

22 A. No, I didn't get upset. I didn't get upset about it.

23 Q. Did you talk to anybody at the party about it?

24 A. I had it seen after.

25 Q. I am asking you about the party that you all were on your way to. Did you ask anybody?

- 1 A. I ain't opened my mouth. No, I ain't asked nobody.
- 2 Q. Why not?
- 3 A. I didn't have nothing to say. I was thinking for myself. Why he spoke like that. I
- 4 thought the land was mine.
- 5 Q. I am sorry. I am trying to remember your grandson's name. What is your grandson's
- 6 name sir?
- 7 A. What grandson.
- 8 Q. You said that you talked to your grandson about that conversation that you heard?
- 9 A. Marcus. He is sitting right back of you. Right back behind you there.
- 10 Q. When did you have this conversation with Marcus?
- 11 A. Shortly after. I can't name the date or what date or what but I had a conversation with
- 12 him. I asked for his help.
- 13 Q. Okay. Tell me about that please. Did you call Marcus yourself?
- 14 A. I went to his house.
- 15 Q. Okay. When did you go to his house?
- 16 A. I don't know what day it was.
- 17 Q. Did you drive yourself there?
- 18 A. I walked out there.
- 19 Q. Who else was there at his house?
- 20 A. I don't know. I didn't see.
- 21 Q. You didn't see Marcus?
- 22 A. I seen Marcus. That is who I went to talk to.
- 23 Q. Did you see anybody else there with Marcus?
- 24 A. No, I didn't.
- 25 Q. What did you tell Marcus?

- 1 A. I don't know. I can't think like that. I wish that I could.
- 2 Q. Why did you go to Marcus?
- 3 A. I went for help. Someone could help me know something about things that I didn't know
- 4 nothing about.
- 5 Q. Why did you choose to go to Marcus? Why did you choose Marcus?
- 6 A. That is my grandson.
- 7 Q. Do you trust Marcus?
- 8 A. Oh yes, I trust him.
- 9 Q. Does he know things about real estate?
- 10 A. Can I say this. There he be right behind you. You have to ask him for information like
- 11 that. I can not answer it. I don't know enough to answer all of your questions. I wish I
- 12 could.
- 13 Q. I do too, Mr. Moore. Now you said when you were talking earlier today about the fact
- 14 that if you needed money you could have gotten it from your son. Which son is that?
- 15 A. He is right over there behind you.
- 16 Q. What is his name please?
- 17 A. James Luther.
- 18 Q. What does James Luther do for a living?
- 19 A. You have to ask him. He works like anybody else if they live they have got to work for a
- 20 living. That is all I can tell you.
- 21 Q. Did you ever go to James Luther and ask him for the money that you were going to have
- 22 to pay your ex-wife?
- 23 A. No, I didn't.
- 24 Q. Why not?
- 25 A. I didn't think that I had to. If my money had not been took out of the bank, I had the

1 money.

2 Q. Mr. Moore, I see you resting your head on your cane, are you tired?

3 A. I just don't know what to say.

4 Q. I am just asking you if you are tired because you were resting your head on your walking

5 cane?

6 A. I am eighty-eight (88) years old. And I am not no well person. I am not well enough to

7 be going through what I am going through.

8 Q. Would you like to take a little break right now?

9 A. No, that is all right.

10 Q. Are you sure?

11 A. That is all right.

12 Q. All right. I want to talk about when you went to Greenville with Jeannette to the lawyer's

13 office back in March of 2001, okay?

14 A. I hear you.

15 Q. Tell me about that? When did you learn that you were going to Greenville on March of

16 2001?

17 A. I can't answer that. I was going with her. She carried me up there.

18 Q. You were going to see a lawyer named Jack Heckman, correct?

19 A. I don't know his name.

20 Q. Have you ever met Jack Heckman? A lawyer from Greenville who does real estate law?

21 A. If that is the one that she went to, yes. I went where she carried me.

22 Q. Tell me about what happened when you got there? Who all was with you?

23 A. Just me and Mrs. Benson.

24 Q. I would assume that you all went together? You all didn't drive separately. You all

25 drove together?

1 A. She carried me up there with her.
2 Q. This was back in 2001, correct?
3 A. I don't know what it was.
4 Q. Well let me ask you this. Now 2001 was about seven or so years ago, correct?
5 A. I don't know.
6 Q. Well it is 2008 now isn't that right?
7 A. Yes.
8 Q. And 2001 was when you went out with Jeannette?
9 A. I don't know. Really I am giving you my answer. I don't know what. I went with her.
10 Q. All right. Well lets talk a little bit about how your health was in 2001. I am not trying
11 to embarrass you but you would agree wouldn't you that you were a little sharper back in
12 2001 than you are today, isn't that true?
13 A. Well I don't know.
14 Q. Well lets think about that?
15 A. I was disabled.
16 Q. Well let think about it.
17 A. You can take it from that. I was disable. I am not able to be down here now.
18 Q. Has your health gotten better as you have gotten older or has your health gotten worse as
19 you get older?
20 A. It is getting worse. An eighty-eight (88) year old, you can't say that you are getting
21 better.
22 Q. I understand. How about your memory? Your memory is getting worse too, isn't it?
23 A. It is bad.
24 Q. You have got a bad memory don't you? Don't you sir?
25 A. Yes, it is bad.

1 Q. In 2001 your memory was better than it is today, isn't that true?

2 A. I don't know. I didn't have nobody to check it. I don't know.

3 Q. Now you talked to the lawyer, Jack Heckman, that day in Greenville didn't you?

4 A. I don't know. I went with Mrs. Benson and all I know is Mrs. Benson came out with a
5 paper and said sign this right here. I just signed it and she carried it back into the office
6 where the lawyer whoever he was. That is all I did.

7 MR. BENNETT: One moment please, Your Honor

8 Q. Mr. Moore how do you feel towards your daughter, Jeannette Benson today?

9 A. Well it ain't how I feel. I wish you would ask her how do she feel.

10 Q. I will be glad to do that sir but I am asking you questions while you are on the witness
11 stand right now. And my question is, as you sit here today under oath how do you feel
12 about your daughter Jeannette Benson?

13 A. I feel terrible. I feel terrible that she treated me like she did and I had all confidence in
14 her. You see what it ends up to. Mrs. Benson sure has mistreated me.

15 Q. How so?

16 A. Listen. If you are not honest with a person what do you call that if you aren't honest. I
17 done everything a father could do for that child and for Mr. Benson. I kept them, fed
18 them, and didn't charge them a dime. Let them stay in my house and I didn't charge
19 them a dime. Me and my son has been sweeter to him than his own children. Look how
20 they treated me.

21 Q. What is it that you think that they have done to you?

22 A. You have got the papers. You see it on the papers. They took my property under
23 forgery.

24 Q. I thought that you claimed that you had signed those documents?

25 A. I signed them but I didn't know what I was signing. Ain't nobody explained nothing.

1 Q. Well let me ask you.
2 A. She said I will take care of you. But in her ways and actions and what she done it is
3 against me. She took everything that I had.
4 Q. Since that day that you were down with Jack Heckman at the law firm in Greenville, in
5 2001, you have lived at in the same house since that time haven't
6 you?
7 A. Yes.
8 Q. You haven't moved out a day have you?
9 A. No.
10 Q. You have been able to use that property exactly the way that you have used it for the last
11 sixty one (61) years, haven't you?
12 A. Yes, I have.
13 Q. In fact, you haven't paid a single penny in rent have you?
14 A. Well I wasn't supposed to pay no rent. I was in my own house. I was the one paying for
15 it.
16 Q. So I take that as no you haven't paid a single penny in rent for all of that time?
17 A. No, I ain't paid no rent.
18 Q. What about upkeep on the house? Hasn't Tom Benson come over and done work on
19 that house for you?
20 A. It ain't no work been done on that house.
21 Q. Hasn't he put in some working hours on that?
22 A. He ain't put in nothing.
23 Q. Have you paid for anything to be fixed on that house since 2001?
24 A. No. It needs it. It needs it now.
25 Q. But you haven't paid anything to have any work done on it since 2001?

1 A. No. She wouldn't let me.
2 Q Who is she?
3 A. Mrs. Benson.
4 Q. What do you mean specifically? What did you ask her that she said no to?
5 A. Me and my son was going to paint and do different things and put posts and she told us
6 not to do nothing to it.
7 Q. So you asked Mrs. Benson to paint the house?
8 A. I didn't ask her to do nothing.
9 Q. Did you ask her if you could paint the house, is that what you are saying?
10 A. No, I didn't think that I had to ask her to paint my own house.
11 Q. I am trying to understand what you just said sir? What were you talking about you and
12 your son wanting to paint the house?
13 A. Well we were going to paint it and put posts up because they are rotting and she told us
14 not to do nothing to it.
15 Q. When was that?
16 A. I don't know when it was. But it was said.
17 Q. Which son was that?
18 A. There he sit right over there.
19 Q. I understand sir. I just need to know his name for the record?
20 A. James Luther.
21 Q. Mr. Moore you haven't paid the taxes on that house have you?
22 A. Yes. I paid taxes on it.
23 Q. Since you sold that house you haven't paid the taxes on it have you?
24 A. I ain't sold it.
25 Q. Since March of 2001, you haven't paid the taxes on that house have you?

1 A. My grandson takes care of my business.

2 Q. When did that start?

3 A. Marcus.

4 Q. I am sorry sir. I am not asking you his name now I am asking you when that started?

5 A. I don't know. I don't keep in count of nothing like that. I am just trying to live my life.

6 I have done lived it out now.

7 MR. BENNETT: Your Honor, I will rest with Mr. Moore at this time subject to being able to
8 recall him.

9 THE COURT: All right.

10 Q. Thank you, Mr. Moore.

11 THE COURT: Mr. Haskell and Mr. Pye do you have anything of Mr. Moore?

12 MR. HASKELL: I don't think it would be proper for me to question him since he is still under
13 cross examination.

14 THE COURT: All right. Mr. Moore you can step down sir.

15 **ALICIA COOPER, BEING DULY SWORN,**

16 **TESTIFIES AS FOLLOWS;**

17 **DIRECT EXAMINATION BY MR. HASKELL.**

18 Q. What is your name for the record please?

19 A. Alicia Cooper.

20 Q. Mrs. Cooper where are you employed?

21 A. BB&T.

22 Q. What is your specific job with BB&T?

23 A. Corporate Administrator.

24 Q. How long have you worked in that position?

25 A. Three (3) years.

1 Q. Okay. Are you under a subpoena to be here today?

2 A. Yes sir.

3 Q. I previously issued a subpoena to BB&T to acquire all documents related to the
4 withdrawal of Thirty thousand two hundred fifteen & 82/100 (\$30,215. 82) dollars
5 and the account indicated belonging to Jeannette Benson in response to providing legal
6 documents is that correct?

7 A. Yes sir.

8 Q. Okay. I am just going to question you about each of the documents and lay the
9 foundation that they are true and exact and accurate copies so that we can introduce them
10 into evidence. First off, I would like to show you this page here?

11 A. Yes sir.

12 Q. And I ask you if you can identify that?

13 A. This is a portion, the third page of a statement for the account originally listed under
14 James Moore and Jeannette M. Benson. This particular page addresses the account
15 number 3471 which is a personal CD.

16 Q. Owned by whom?

17 A. From this document it appear that it is under the name of Jeannette Benson and James
18 Moore, however, it can be misleading because sometimes if one of the people have joint
19 accounts they can decide to have their information combined on one statement so that
20 they don't issue more than one - excessive documents, excessive paperwork. The only
21 way that I will be able to determine who is on that particular account would be to look at
22 the signature card.

23 Q. Okay. Well what is the statement date for this particular account number?

24 A. March 23, 2001.

25 Q. Is there an activity for this CD?

1 A. On March 8th there is a redemption of the CD with a penalty of Thirty thousand two
2 hundred fifteen & 82/100 (\$30,215.82) dollars.
3 Q. Does that mean that Thirty thousand two hundred fifteen & 82/100 (\$30,215.82) dollars
4 was withdrawn?
5 A. Yes.
6 Q. And as a result of this draw was a penalty accessed?
7 A. Yes, One hundred twenty two & 53/100 (\$122.53) dollars.
8 Q. Is this a true and exact copy of the BB&T record?
9 A. It is.
10 Q. Okay.
11 MR. HASKELL: I offer this.
12 THE COURT: Counsel any objections.
13 MR. BENNETT: One moment please, Your Honor.
14 THE COURT: All right.
15 MR. BENNETT: Yes, Your Honor thank you. No objections.
16 THE COURT: All right. This will be Plaintiff's Exhibit Number 6.
17 **MR. HASKELL INTRODUCES INTO EVIDENCE A COPY OF A STATEMENT FROM**
18 **BB&T FOR AN ACCOUNT FOR JAMES MOORE AND JEANNETTE M. BENSON,**
19 **DATED MARCH 23, 2001, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 6.**
20 THE COURT: All right.
21 Q. I hand you a document marked for identification as Plaintiff's Exhibit Number 5, it was
22 provided to me by you, and I ask if you can identify this?
23 MR. BENNETT: Excuse me counsel, which one was that?
24 MR. HASKELL: Exhibit 5 for identification.
25 MR. BENNETT: One moment please, Your Honor.

1 THE COURT: All right.

2 MR. HASKELL: Some of these checks might not have been in your stack.

3 MR. BENNETT: Is this the only one that you have got?

4 MR. HASKELL: This is out of the microfiche which she is testifying to.

5 Q. Did you provide that to me as a result of the subpoena?

6 A. I did.

7 Q. What is this please?

8 A. This is an official check draw for BB&T, check number 0715000 in the amount of

9 Twenty nine thousand four hundred thirty three & 46/100 (\$29,433.46) dollars dated

10 January 14, 1999, payable to what appears to be James Moore.

11 Q. All right?

12 A. And Mr. Moore's endorsement is on the back of the check. The endorsement of a Mr.

13 Moore.

14 Q. All right.

15 MR. BENNETT: I would like to mark that into evidence. It shows simply being for

16 identification purposes.

17 THE COURT: All right. Any objections counsel?

18 MR. BENNETT: Your Honor, if I may I am not sure what the objection would be it is just that

19 the copy of that document is so poor it seems like it is suggestive as far as what it says on the

20 check side. The copy that I have seen at least it is illegible to see what is in the paid to the order

21 of section.

22 MR. HASKELL: I submit it for what it says, Your Honor. It came from the BB&T records. I

23 obtained them from Mrs. Cooper.

24 A. That is the best copy that the bank had, I am sorry. When we are researching those we

25 have a magnifying tool when we pull that image up that allows you to look at things

1 closer but you are not able to print it off that way. So you can read the names that is
2 illegible and a little bit fuzzy there. It does say James Moore. I may be able to – do you
3 have the rest of the documents there? I may be able to clarify something.

4 Q. Yes.

5 A. What was the amount of that check sir?

6 THE COURT: This is \$29,433.46.

7 A. Okay. I don't think we have it here.

8 THE COURT: All right. I will accept this as being a check made to James Moore and it was
9 endorsed by James Moore in the amount of \$29,433.46.

10 **MR. HASKELL INTRODUCES INTO EVIDENCE PLAINTIFF'S EXHIBIT NUMBER 5**
11 **FOR IDENTIFICATION, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 5.**

12 THE COURT: All right.

13 Q. I ask if you can identify that please?

14 A. This is a BB&T signature card and that is what is used to identify the account holders
15 when an account is opened. This is for Jeannette M. Benson,
16 Lyman, South Carolina and the account number is 3471. Which the
17 aforementioned CD that I addressed in Exhibit Number 6.

18 Q. This was the opening. It is your testimony that document is for the opening of the
19 account for which we have a statement marked as Exhibit Number 6?

20 A. That is correct.

21 Q. Okay.

22 A. The only signature or the only signer on the account appears to be Jeannette M. Benson
23 and that was executed on January 14, 1999, which I believe is the same date of the
24 official check that this addressed.

25 Q. The one that was —

1 A. Payable to James Moore.
2 Q. Payable to James Moore of the same date?
3 A. If I recall correctly. January 14, 1999, that is correct.
4 Q. Okay. Now who is the owner of this account, with the last four numbers of 3471?
5 A. Jeannette Benson.
6 MR. HASKELL: I offer this.
7 MR. BENNETT: Without objections, Your Honor.
8 THE COURT: All right. That will be Plaintiff's Exhibit 7.
9 MR. BENNETT: I believe that would be 8, Your Honor.
10 THE COURT: Where is 7? What is 7?
11 MR. BENNETT: Seven (7) is the official check that I objected to.
12 THE COURT: That was 6..
13 MR. HASKELL: Five. Five was for identification purposes.
14 THE COURT: Yes. That was originally for ID purposes.
15 MR. BENNETT: Okay.
16 THE COURT: It is now omitted and it is five (5). So this would be seven (7).
17 MR. BENNETT: Thank you.
18 **MR. HASKELL INTRODUCES INTO EVIDENCE A COPY OF THE SIGNATURE**
19 **CARD FOR ACCOUNT NUMBER 3471, MARKED AS PLAINTIFF'S EXHIBIT**
20 **NUMBER 7.**
21 Q. What is the date that this account 3471 was opened by Mrs. Benson?
22 A. January 14, 1999.
23 Q. I show you this document here that you provided to me and I ask you if you can identify
24 that for us?
25 A. It appears to be the best I can read and again these documents were pulled from our

1 microfilm, but it appears to be a deposit slip for the account number 3471 in the
2 name of Jeannette Benson on January 14, 1999 for Twenty nine thousand four hundred
3 thirty three & 46/100 (\$29,433.46) dollars.

4 Q. Is that the same account that was opened by the paperwork as Plaintiff's Exhibit Number
5 7?

6 A. Yes.

7 Q. And is this deposit slip dated the same date that the account was opened?

8 A. It is.

9 Q. And that date again is what?

10 A. January 14, 1999.

11 Q. Okay. And the amount of the deposit into Mrs. Benson's account is what?

12 A. Twenty nine thousand four hundred thirty three & 46/100 (\$29,433.46) dollars, the same
13 amount of the previous check.

14 MR. HASKELL: We would like to mark that as an exhibit.

15 THE COURT: Any objections?

16 MR. BENNETT: The same objections as to Exhibit Number 5. I believe that would be the best
17 evidence rule objection.

18 MR. HASKELL: I would point out that clearly shows the account number for the amount being
19 deposited into it which is clearly seen on Exhibit 7.

20 THE COURT: All right. I am going to allow this. This will be Plaintiff's Exhibit 8. This is
21 basically a deposit slip, right?

22 MR. HASKELL: Yes. Depositing money into the account.

23 THE COURT: All right.

24 **MR. HASKELL INTRODUCES INTO EVIDENCE A COPY OF A DEPOSIT SLIP,**
25 **FRONT AND BACK, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 8.**

1 Q. I show you another document which you provided to me and I ask if you can identify this
2 please?

3 A. This is an official check number 70561387 in the amount of Thirty thousand two hundred
4 fifteen & 82/100 (\$30,215.82) dollars. And that was dated on March 7, 2001.

5 Q. Is the amount of that check the same as the redemption of the CD on account number
6 3471 shown in Plaintiff's Exhibit Number 6?

7 A. It is.

8 Q. Okay. Is this check where the money was withdrawn as you indicated on the statement?

9 A. Yes.

10 Q. Okay.

11 MR. HASKELL: I offer this.

12 THE COURT: Is it a composite?

13 MR. HASKELL: A withdrawal of the money.

14 THE COURT: It will be number 9.

15 MR. BENNETT: The same objection Your Honor as to 5 and 8. And also now 9.

16 THE COURT: All right. This will be Number 9.

17 **MR. HASKELL INTRODUCES INTO EVIDENCE A COPY OF AN OFFICIAL CHECK,**
18 **FRONT AND BACK, DATED MARCH 7, 2001, CHECK NUMBER 70561387, MARKED**
19 **AS PLAINTIFF'S EXHIBIT NUMBER 9.**

20 THE COURT: All right.

21 Q. The last document which you provided. I ask if you can identify that?

22 A. This is the debit ticket that we run with that check. It shows that Jeannette Benson
23 closed out this CD and her signature for the closure of the CD. The amount appears to
24 be Thirty thousand two hundred fifteen & 82/100 (\$30,215.82) dollars.

25 MR. HASKELL: I offer that as an exhibit.

1 MR. BENNETT: The same objection, Your Honor.
2 THE COURT; Exhibit 9.
3 MR. HASKELL: Exhibit 10, I believe.
4 THE COURT; Plaintiff's Exhibit 10,
5 MR. BENNETT; Do you call that a miscellaneous debit slip?
6 A. Miscellaneous debit slip.
7 THE COURT: Miscellaneous debit slip.
8 **MR. HASKELL INTRODUCES INTO EVIDENCE A COPY OF A MISCELLANEOUS**
9 **DEBIT SLIP, FRONT AND BACK, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 10.**
10 THE COURT: All right.
11 Q. Now Mrs. Cooper these exhibits 5, 6, 7, 8, 9, and 10, were these generated from the
12 records at BB&T that are on file?
13 A. Yes sir.
14 Q. And are these the best records that BB&T would have to show the existence of these
15 documents?
16 A. They are.
17 Q. Okay. That is all I have. Answer any questions that Mr. Bennett may have.
18 **CROSS EXAMINATION BY MR. BENNETT.**
19 Q. Good afternoon Mrs. Cooper. I am Bradley Bennett.
20 A. Good afternoon.
21 Q. The three (3) years that you have been with the Bank have they all been with the
22 investigation department?
23 A. Yes sir.
24 Q. In your experience in the investigation department of the Bank, does the Bank destroy cut
25 checks that come into the Bank ever?

1 A. I believe there is a retention period. I don't know what that retention period is but most
2 of the documents imaged that we have we don't keep hard copies of hardly anything.
3 Q. When you say they are imaged there is some type of a scanning process once a document
4 comes in and that scan then puts it on some type of computer program is that correct?
5 A. I would assume. I don't have knowledge of that.
6 Q. Well what is your understanding of where the documents themselves are that you have
7 brought or supplied photo copies of to Mr. Haskell?
8 A. You are questioning me as to where they are housed.
9 Q. Right?
10 A. I don't have any idea where they are housed.
11 Q. Did you ever ask anybody in your three (3) years where is the check?
12 A. The check would have been destroyed.
13 Q. Okay. So that was my first question. Does the Bank make a habit of destroying checks
14 that come into the Bank?
15 A. And I answered that to the best of my knowledge, yes. They only maintain the images.
16 I don't know where the server is for the images that retains that information.
17 Q. And that destruction of the actual check when does that take place?
18 A. I have no idea.
19 Q. You have never asked anybody in your three (3) years with the Bank?
20 A. I don't have any idea.
21 Q. I am sorry ma'am. I asked you if you ever asked anybody?
22 A. No, no.
23 Q. Look at Plaintiff's Exhibit 5, what does it say right there, I guess that is what I would call
24 the to pay order or pay line?
25 A. Pay to the order of line.

1 Q. Pay to the order of line. In your opinion what does that say?
2 A. Well there was a legible one here when we pulled up the document. Again I stated that
3 we have magnification tool on imagining that allows you to read a portion of that and you
4 could read that it was a James Moore.
5 Q. So you agree with me that you can't read that on this document itself right in front of
6 you?
7 A. You can not read the pay to the order of.
8 Q. Or the name that is out beside pay to the order of?
9 A. The payee, no.
10 Q. Now when you looked at the document with some type of visual aid or whatever, did you
11 do that specifically yourself or did somebody else in your office do that?
12 A. I did. I reviewed that because we can do it online with our computers but again you can't
13 print that out on documents performed several months ago.
14 Q. But you actually looked at it with that visual enhancing device?
15 A. Yes.
16 Q. Did you make any notes about that?
17 A. No.
18 Q. You just remembered it in your head?
19 A. I recalled it, yes.
20 Q. And did you call Mr. Haskell and tell him what it said?
21 A. Yes.
22 Q. Did you ever provide that web site - is it a web site that allows you to pull it up on line?
23 A. It is a intranet web site through BB&T. It is not accessible by anybody else.
24 Q. It is intranet. It is just within the Bank and that is it?
25 A. Yes.

1 Q. Could you pull that up on a computer here in the courtroom?
2 A. No.
3 Q. You would have to be at the Bank, is that right?
4 A. Yes.
5 Q. What does this say on the signature line of Plaintiff's Exhibit 5?
6 A. That would appear to be somebody by the last name of Gregory and that would be a
7 BB&T employee.
8 Q. Do you know a BB&T employee named Gregory?
9 A. Not off the top of my head. Of course, BB&T has over thirty thousand (30,000)
10 employees.
11 Q. It is hard to know them all isn't it?
12 A. Yes.
13 Q. I show you Plaintiff's Exhibit 8. I believe that we are calling that as counsel of record,
14 deposit slip. On the left hand side of that deposit slip you would agree that the written
15 words on that deposit slip on the left hand side that those are illegible wouldn't you?
16 A. They are blurred.
17 Q. They are blurry. Do you consider that to be legible or not legible?
18 A. This section appears to be legible. You can infer what may be written.
19 Q. Well if you have to infer something doesn't that by its own definition indicate that it is not
20 legible?
21 A. I don't know the definition of inferring, I am sorry.
22 Q. Well as you point to that area of this deposit slip are you reading that or are you inferring
23 what that says?
24 A. I am inferring it is based on the information for that account number.
25 Q. So in other words you are not reading it you are just inferring it?

1 A. I believe that I stated that I was inferring it.

2 Q. Plaintiff's Exhibit 9, an official check. Do you agree that you can't even see what is
3 written as being the amount of that check? Would you agree with that?

4 A. No, verbally written correct she can read that numeric.

5 Q. That is what I am pointing at, is where it has been written. You can't read that can you?

6 A. That is correct.

7 Q. So if you infer what that is going to say you would infer that from looking over at the
8 numerical section of the check?

9 A. I would read that amount, Thirty thousand two hundred fifteen & 82/100 (\$30,215.82)
10 dollars and also in the maker line Thirty thousand two hundred fifteen & 82/100
11 (\$30,215.82) dollars which is printed at the bottom of the check.

12 Q. And the name right below. It is the signature, right. And the name here right below the
13 signature right below the term copy non negotiable which is on the bottom right hand
14 corner of that check. What does that name? That signature of that name?

15 A. I don't have any idea.

16 Q. You can't read it can you?

17 A. No. It is a BB&T employee.

18 Q. Now you are inferring that too, aren't you?

19 A. No. A BB&T employee has to sign our official checks.

20 Q. Has BB&T ever had documents forged to your knowledge as an investigator for three (3)
21 years?

22 A. That is entirely possible.

23 Q. I am sorry. Was that a yes or a no? Do you know of the fact —

24 MR. HASKELL: She said it was possible.

25 Q. Yes?

1 A. Yes.

2 Q. Thank you. Plaintiff's Exhibit 10, entitled, miscellaneous debit. On this document you
3 can't see any type of -- can you read anything on the back of that document? The bottom
4 image is the back of the document?

5 A. Yes.

6 Q. And on that bottom image can you read anything or can you only infer from what you
7 know on the front?

8 A. I can read Wilson, North Carolina.

9 Q. And that is it?

10 A. Yes.

11 Q. Thank you ma'am.

12 MR. BENNETT: No further questions, Your Honor.

13 THE COURT: All right. Anything further?

14 MR. HASKELL: No, Your Honor. May she be excused?

15 THE COURT: Counsel.

16 MR. BENNETT: Your Honor, she can be excused. I would request the ability to subpoena
17 Mrs. Copper if need be on Monday's case if it warrants it. Thank you.

18 THE COURT: All right.

19 MR. BENNETT: On Monday's day of trial.

20 THE COURT: All right.

21 **MARCUS MOORE, BEING DULY SWORN,**

22 **TESTIFIES AS FOLLOWS:**

23 **DIRECT EXAMINATION BY MR. HASKELL.**

24 Q. What is your name please?

25 A. Marcus Moore.

1 Q. Speak up just a little bit.

2 A. Okay.

3 Q. Marcus where do you live?

4 A. I live on road.

5 Q. Okay. Where do you work?

6 A. I own my own company. It is called Genesis Professional Staffing.

7 Q. Okay. What is your educational background?

8 A. I have got a Bachelor's in Sociology and a minor in Business Administration from

9 Hampton University and I got a Masters in Urban Various Regional Planning from

10 Virginia Tech.

11 Q. Okay. Do you know James Moore?

12 A. Which one, my grandfather.

13 Q. The gentleman here. James Moore?

14 A. Yes, I do know him. He is my grandfather.

15 Q. All right. Do you also know Jeannette and Thomas Benson?

16 A. I do. They are my aunt and uncle.

17 Q. Are you familiar with your grandfather's house and land located at

18 in Lyman, South Carolina?

19 A. I am. It is right up the street.

20 Q. And has your grandfather lived on that property all of your life?

21 A. All thirty one (31) years that I have been living, yes.

22 Q. So you are very familiar with this property?

23 A. Yes sir.

24 Q. Approximately how many acres of land surround your grandfather's house at 43

25 Montgomery Road?

1 A. Well the property in question is about a little more than seventeen (17) acres. Seventeen
2 point zero nine.
3 Q. Okay. Prior to your grandfather's divorce from your grand momma, who took care of
4 your grandfather's personal business affairs?
5 A. That was my Aunt Jeannette. You said prior to —
6 Q. Prior to the divorce? When he was living with your grandmother?
7 A. Oh, it was my grandmother, Allean Moore.
8 Q. How do you know that?
9 A. Well I mean I think that was a widely known fact in family that she pretty much took care
10 of the business stuff.
11 Q. All right. Do you know why your grand momma took care of your grandfather's
12 business affairs?
13 A. After all the years that I have known my grandfather I mean I would say it is like he said
14 she was better than he was. He is not very educated in that capacity but it was well
15 known that she took care of it.
16 Q. Do you know if your grandfather is able to read and understand written documents?
17 A. I know that he is not because we went over a lot of documents where I have to read them
18 to him so it is not something that he is capable of doing.
19 Q. Do you know if he has been that way all of your life or all of your memory?
20 A. All to my memory, yes.
21 Q. Okay. There has been testimony that your grandfather and your grand momma divorced
22 and I would ask you that following their divorce, after they were divorced who assisted
23 your grandfather in doing those things that you grandmother used to do for him?
24 A. That was my Aunt Jeannette.
25 Q. How do you know that?

1 A. It was pretty well known that she took care of all of his business and I think it is
2 evidenced by his saying their names were on the bank accounts and she took care of his
3 bills and took care of things as far as that was concerned.

4 Q. Okay.

5 A. Again I think that was pretty widely known throughout the family that she did after the
6 divorce.

7 Q. At some point in time did you grandfather ask you to assist him in his business and
8 personal affairs?

9 A. He did.

10 Q. Approximately when was that?

11 A. I know for sure it was around Christmas of 2005. I know because I have a December
12 birthday and I remember the comment that was made because I was actually out of town
13 when I got called. I was in New York. I was visiting in New York in Town Square and
14 I remember getting a call from my father and he was at the house and he was like - we
15 call my grandfather Papa. That is the name everybody calls him. Hey Papa wants to
16 talk to you for a minute. And that doesn't usually happen so I thought something was
17 wrong and he was kind of sad and it was like I have this feeling and I want to know if you
18 can check on something for me. That was my first involvement with it.

19 Q. All right. And what was the feeling that he was concerned about that he wanted you to
20 check on?

21 A. Well we didn't elaborate too much while I was out of town. He waited until I flew back
22 in town. I got back from New York and upon my return home one day I was outside and I
23 guess he saw me out there and I don't know if I was giving some water to the dog but he
24 was walking down the street which he does sometimes picking up cans and he does it to
25 get exercise and stuff like that and he saw me out there and he stopped by the house.

1 And that is when he elaborated that a comment had been made by my Uncle that kind of
2 made him feel a little uncomfortable and he had even made a comment at the time that he
3 saw my Uncle Thomas was picking up cans or something around his property and he said
4 that seemed kind of strange to him. So he said something just doesn't feel right so can
5 you check into it. And because of my background in planning I just know that through
6 working with HUD and other things you can find out everything about property on line.
7 So I went to you know Spartanburgcounty.org just to see the property and to see who was
8 on the street and everything like that. At the time my Aunt Barbara, if I am not mistaken,
9 was trying to sell her home that she had their. So I was curious. So who would be our
10 new neighbors possibly, I didn't know. So I think that I will just look and see. And I
11 noticed that I didn't see James Moore's name on his property, on the land any more and
12 that is when I discovered like, well wait a minute, I saw that my Uncle and Aunt's name
13 was on two (2), you know two (2) different sections of land on [REDACTED] and
14 that was pretty much how I discovered that he no longer owned the land any more.

15 Q. Was this in 2006, that he called you?

16 A. Yes. Because I didn't get back until after New Year's.

17 Q. Okay. What did you do when you acquired this information about his property?

18 A. Well I mean it was like I told him when he came there -- well it was just he and I there at
19 the time and I think we had conversations about it later on when my father was there but
20 you know I told him what happened, what I thought had happened, I didn't know the
21 whole ordeal. I mean to be very honest with you we live on the same street but we all
22 have busy lives and we don't see each other every day. It is not like we sit around and
23 talk every day. So I didn't know if there was some kind of explanation to it. So I just
24 told him hey this is what had happened. And he was like I had a feeling and he got pretty
25 emotional about it and I will be very frank I didn't want to get involved with it to be

1 honest with you because like my family, we are family, we fight hard and we love hard.
2 That is our way and usually everybody makes up and we live to do this again. But this
3 time something felt different. He was really sad. So I was like okay let me do something
4 and that is how I got involved with it. That is the only way that I got involved was
5 because of that.

6 Q. All right. When you told him this was that the first time that he was made aware of that
7 fact?

8 A. As far as I ever knew when I came in and I told him I guess that he had thought that
9 something was going on but as far as he ever told me and he has said the same thing since
10 the moment that I got involved. He didn't know. He had suspicions but that was when
11 he knew.

12 Q. All right. Do you know what your grandfather did in response to this information that
13 you gave him about his house?

14 A., Well at first he was asking me - well it took a little while for him to kind of calm down
15 from it because he was pretty upset. And I was like lets do this. Lets don't say too
16 much about it. Lets don't alarm anybody. Maybe it is some explanation. But if this
17 has happened and you did not know and this is not your intention then we should look
18 into other things and see if anything like that has happened and that is when you know I
19 was like do you have any insurance policies. Where are you banking at. Lets just see if
20 there are any irregularities. And he was like would you check on it for me and I won't
21 say anything until I find out you know until I hear back from you and that was the next
22 step.

23 Q. All right. As a result of that conversation did you review your grandfather's banking
24 accounts and statements?

25 A. I did. I went to the bank.

1 Q. From what period of time?

2 A. Well I knew because of it being his bank records, I wasn't privy to his accounts. So he
3 went with me to the bank and when we went there I discovered that my Aunt's name was
4 on the bank account, too. So it is good that he was there because I asked for the bank
5 records. And we received the bank records from 2000 to the present.

6 Q. Okay. What did you do with those records?

7 MR. BENNETT: Objection, Your Honor. If we could the time. When is the time that they
8 went there. He has testified up until 2003.

9 MR. HASKELL: You can ask him that.

10 MR. BENNETT: I am trying to elicit from your questions what time frame are you asking him
11 about?

12 MR. HASKELL: Well you know I decide what questions I ask him and you can ask him on
13 cross.

14 THE COURT: Lets move on.

15 Q. All right. Beginning with what year with the bank statements - what year did you start
16 with reviewing the bank records if you recall?

17 A. Bank records. Are you asking what year did I go to get the bank records.

18 Q. No, no. You went to the bank and you got the bank records. For example, was it
19 through January 1, 2000 or what date?

20 A. I am sorry. I went from January of 2000 until present.

21 Q. Okay. Now did you discover anything unusual in your review of those records?

22 A. Really there was the one thing. I knew that there was a huge deposit which attributed to
23 being his retirement because he is on social security so you don't see a huge influx of
24 money in there you know that is pretty obvious. And I saw the withdrawal and the
25 amount was pretty close to the amount that had been taken out so I decided to ask him. I

1 said have you ever taken out any money for something borrowed or something of that
2 nature and he was like no. So I further asked him, I said do you know where this money
3 went and I highlighted it and everything so he could see it and kind of understand what I
4 was saying. He said that he had never withdrew any money like that. So then I further
5 looked into it.

6 Q. I show you Plaintiff's Exhibit Number 6. Plaintiff's Exhibit 6 is a copy of a statement
7 dated March 23, 2001, is this one of the statements that you looked at?

8 A. Yes sir, it is. It is a larger amount.

9 Q. Exhibit 6 was that the money coming in or going out?

10 A. This will be what was taken out.

11 Q. All right. Did you ask your grandfather about this?

12 A. Yes sir, I did.

13 Q. Did he know anything about that?

14 A. He didn't. We actually even set up an appointment at BB&T so they could try to explain
15 it to him. So we went to the bank because obviously I wasn't aware. I wasn't there
16 when the money was taken out nor was I there when it was put in. So we went there and
17 set up an appointment and that is when the bank kind of explained that it had been taken
18 out and I asked for copies of all of the bank records and so forth.

19 Q. Were you here when Alicia Cooper testified?

20 A. Yes sir.

21 Q. She basically testified about certain documents. Tracking the flow of that money. Is
22 that basically the general understanding that you got from your meeting with the BB&T
23 folks as to what happened?

24 A. For everything and everything she said was the way that we found it, that was correct.

25 Q. Okay. Based on your review of your grandfather's banking records did you see another

1 incident where a similar amount of money was put back in at a later date?

2 A. There was a lot of – if I may kind of expand on your question. One of the things that I
3 saw was there was quite a few overdraft charges there for whatever reason on his account
4 and it totaled for a pretty fair amount of money. I would say somewhere in the range of
5 twelve to fifteen hundred dollars over a portion of those years, from 2000. There was
6 CD as well that was for about that same amount of money.

7 Q. All right. Was it your understanding from a review of the banking records that this close
8 to thirty thousand dollars had been withdrawn from your grandfather's account?

9 A. That is correct.

10 Q. And did you see another incident where a similar amount, say thirty thousand dollars was
11 deposited back into your grandfather's account?

12 A. Being put back into his account.

13 Q. Into your grandfather's account?

14 A. After it was taken out.

15 Q. Yes?

16 A. No.

17 Q. Okay. One minute please. That is all I have. Please answer any questions that Mr.
18 Bennett might have for you.

19 MR. BENNETT: May it please the Court.

20 THE COURT: All right.

21 **CROSS EXAMINATION BY MR. BENNETT.**

22 Q. Mr. Moore where is Genesis Professional Staffing?

23 A. Well, I have two locations. I have one in Burbank, California, which is right outside of
24 Los Angeles. And I have one in Greenville, South Carolina. But I have employees in
25 about fifteen (15) states.

1 Q. Just kind of briefly tell me what it does? How do you get staffing?
2 A. I am sorry.
3 Q. I was just saying that I am sure that it is a staffing company of some sort by the name but
4 if you will just describe it for me?
5 A. I hire for the government. I hire for private entities. I do direct hire. I do temp to hire,
6 temps, the whole things, co-ops, interns, anything where a person needs a job we fulfill
7 the need.
8 Q. And you own it?
9 A. I do.
10 Q. Is it a sole proprietorship or what?
11 A. It is a corporation.
12 Q. Do you have any other share holders in the company?
13 A. I own it one hundred (100) percent.
14 Q. Now you went off to school to Hampton?
15 A. That is correct. Hampton, Virginia.
16 Q. When was that?
17 A. Let me think when I graduated. From '95 to '99. And I went to Virginia Tech directly
18 afterwards from '99 to 2001.
19 Q. So prior to 1995 were you living at
20 A. I was.
21 Q. And had you lived there your whole life before that time?
22 A. Yes.
23 Q. So you were born and started living there at
24 A. Yes.
25 Q. And basically from what I have been able to understand basically is

1 the Benson-Moore home place area, do you agree with that?

2 A. Yes. On the street. Yes, it is Moores, Bensons, Montgomerys. That is the gist, the road
3 is named

4 Q. And there in fact, is a lot of property around there that has been in issue in the family, do
5 you agree with that statement?

6 A. Again a lot of the issues you may be speaking of I mean I may have been away at college
7 or I may have been younger so I wouldn't be really privy to it but like I said in the
8 beginning this is a family that is very spirited to say the least. I wouldn't say that it is a
9 conversation that I have been privy to quite often but I am sure that there are some
10 questions about it but I haven't heard any fights about the land, I mean really I haven't.
11 This is one of the first times that I have really heard a lot about people fighting over land
12 besides this parcel of land that my grandfather has, where his home is located.

13 Q. I believe you said that you are a family that loves hard and fights hard?

14 A. Yes.

15 Q. So you have heard even though you might not have been a part of it. You knew that
16 there was a discrepancy between certain members of the family against other members of
17 the family about some of that property that your grandfather supposedly had, correct?

18 A. Definitely, definitely so.

19 Q. In fact, you all have got kin folks up in Ohio, is that right?

20 A. We do.

21 Q. And that group up in Ohio, that group of kin folks they kind of got involved in that
22 dispute about the property at one time didn't they?

23 A. I can honestly say without any revocation, I don't really know my relatives very well in
24 Ohio. I have never dealt with them or heard about it. I can't speak to that but I have
25 never heard of any fighting between the Moores and what have you in South Carolina

1 versus the Moores that are in Ohio. I honestly can say that.

2 Q. You heard about fighting between your grandparents, James Moore and his wife, or ex-
3 wife, your grandmother?

4 A. Fighting. And I would say this and this is my honest opinion I am going to answer your
5 question directly. I don't think anybody in this entire Moore family don't fight. I am
6 just going to be honest. It is what we do. I mean it is like the McCoys and whatever the
7 other family is named. I mean this is what we do but typically when we fight everybody
8 at some point in time we all laugh together. Even through this ordeal everyday or what
9 ever day whenever my aunt pass me on the street, this whole case, she still waves at me to
10 today and I think she would say that. And I throw my hand up. I just feel like that is
11 what we do. So I don't think that there fighting is any more different than what I do with
12 my girlfriend or I don't know if you are married or whatever. And that is definitely a
13 huge part of our DNA. That is what we do. We argue and we move on. So I don't
14 think that it is any different from anything else. I mean a lot of times during my youth I
15 spent my Christmas's there, everybody got along fine. What happened after that when I
16 wasn't there, I can't speak to. But I don't think anybody in this family can say that they
17 hadn't fought with ten (10) other people in this family. If anybody gets up here and says
18 that I can tell you now you should hold them in contempt because they are lying. And I
19 am no different. I hope you don't mind my frankness.

20 Q. I am delighted to have you be frank. But I also need you to respond to my question.
21 And I am speaking specifically about your grandparents.

22 A. Okay.

23 Q. And their relationship. Take it from this point of few. At the time that you were in
24 college up in Virginia Tech, I believe?

25 A. Well two (2) years I was at Virginia Tech and four (4) years I was at Hampton University.

1 Q. Okay. But in 2000 and 2001, you were at Virginia Tech?

2 A. Correct.

3 Q. You knew that your grandparents were getting a divorce didn't you?

4 A. Yes sir.

5 Q. And you in fact, it is safe to say that you were closer to your grandmother than you were

6 your grandfather at that time?

7 A. Oh no. I would not say that at all. Not at all. I wouldn't agree with that statement at

8 all. I wouldn't say that I was any closer to one than I was the other. But if you wanted

9 to be specific only because of where my grandfather was living after the divorce. I mean

10 he lived a few yards, fifty yards away. I saw him more but in no way would I say that I

11 was closer to one than I was the other, by no means.

12 Q. Now you have come back to the Upstate of South Carolina?

13 A. I spent some time here. I travel quite a bit. I mean this is where I consider home.

14 Q. And are you still residing at

15 A. I am. I came back here because my mother's mom which is on the other side of my

16 family was diagnosed with Alzheimer. So I came here to help out. So yes, I moved

17 back.

18 Q. And when you moved back what year was that?

19 A. In 2001. I would have graduated in May. So I did spent some time away a little while but

20 I was probably back by July of 2001.

21 Q. And since July of 2001 until you had the conversation with who you call Papa on the

22 telephone when you were in New York , from that time period, from July 2001 until you

23 were in New York City talking on the phone with your grandfather, you had seen your

24 grandfather pretty reasonable, regularly hadn't you?

25 A. Yes I would say so. I mean nothing but passing, but yes I would say so.

1 Q. Right. Because you are literally down the street from him?

2 A. Correct.

3 Q. Did you talk to him during that four (4) year period of time or so?

4 A. Yes, periodically. I mean again I travel a lot. I mean just last year I was on a plane over

5 fifty (50) times and there are only fifty-two (52) weeks in a year. So my weeks are

6 chopped up and I some time get back really late in the evenings.

7 Q. Lets talk about one of those travels. You were in New York you said when you got a

8 phone call. Was that from your father or from Papa?

9 A. I got the call from my father.

10 Q. If you don't mind. Let me stop you there so we can make sure that everybody is on the

11 same page in the hymnal. Your father he goes by the name of Brut, right?

12 A. Yes, short for brother. That is correct.

13 Q. And Brut is James Luther Moore.

14 A. Junior.

15 Q. Junior?

16 A. Correct.

17 Q. Okay. So your father James Luther Moore, Jr., a/k/a Brut gives you a call while you are

18 in New York?

19 A. That is correct.

20 Q. When was this? You had alluded to the fact that it was around Christmas time?

21 A. It was after Christmas because I had a flight up to Newark, New Jersey. I may be off by

22 a day or two but not by much, I left the 27th or the 28th of December and I came back

23 probably I would say January 3 or 4. I remember it because it was after the bowl games.

24 I remember that. I don't remember who played but I remember it was after the bowl

25 games. And it was after New Year's that I returned to Greenville - Spartanburg.

1 Q. What did your father say to you in that phone call?

2 A. He was like you know he kind of gave me because my grandfather was in the room with
3 him waiting to get on the phone. It was like hey you know Papa is pretty upset. He
4 wants to ask you something real quick. Have you got a minute to give him. I was like
5 sure. So immediately he passed the phone and it was nothing more than a petty
6 conversation. Do you want me to go further and continue.

7 Q. If you will tell me what Papa told you on the telephone?

8 A. And so then from there Papa said to me it is like you know hey Tory. I have just got a
9 feeling that something ain't going right and everything and I was just curious if you could
10 help me out. You know I know you just came out of school and you might able to help
11 me out. And I was like okay. But you don't have to have gone to school to do this but
12 okay fine. He was like when you get back in town. I said when I get back in town I will
13 call you. And we will talk about whatever it is. And it was pretty loud in New York
14 where I was at that time. I was in a restaurant or something. So when I got back I never
15 even got a chance to call him quite frankly he actually saw me you know pulling up or
16 like I said I was giving some water to my dog or something like that and he was picking
17 up cans down the street and he just stopped by and we ended up spending a couple of
18 hours together when I returned.

19 Q. At the time of this telephone call did your father tell you that this problem or this thing
20 that was upsetting your grandfather involved property there on

21 A. No, he didn't. All he told me was that Papa wants to talk to you. Have you got a
22 second. And that was the extent of that.

23 Q. When you talked to Papa on the phone that day when you were in New York did Papa
24 have an opportunity or did he tell you that the thing that was upsetting him involved
25 property there on Montgomery Road?

1 A. He said I have got some things that I want you to look into. I said well what would you
2 like for me to look into. He said well Thomas and Jeannette they came by – that Thomas
3 made the comment when they were coming back from a Christmas party or something at
4 my Uncle Bay or Robert Moore. We call him Bay. I think that stand for baby because
5 he is the baby boy in the family and they made a comment and he said something about
6 your father's truck being there and it kind of made him mad. And I was like what is up.
7 And he was like he was making some comment about his truck being there and not
8 wanting it there or something like that. And I didn't really get the relation. I am out of
9 town and I am not thinking about it and again I am just being very honest I was just
10 thinking it was another one of those the Moores, that is our way. So I was thinking it
11 was just another one of those moments. So I was like oh, you know. And to be honest I
12 kind of brushed it off. I was like oh well lets talk about it when I get there and that was
13 the extent of it. Honestly, that is the gist.

14 Q. Lets talk about your Aunt Jeannette?

15 A. Okay.

16 Q. She had been in 2001 to 2005 was very close to your grandfather, Papa, wasn't she?

17 A. Yes. I would say all of the kids were. They are all close, very close knit.

18 Q. In fact, you know from the fact of being around the family that even when your
19 grandfather and grandmother were still married there were times when your grandmother
20 wasn't really around physically, correct?

21 A. I can not say. I did not spend a lot of time at my grandfather's house. I will be very
22 honest with you, I didn't. And that is the truth. I would say in that time frame that you
23 asked me from the moment, from 2001 up until what year you asking me —

24 Q. To 2005.

25 A. To 2005, honestly I probably spent five times at his house and that is the truth I mean

1 because he walks down the street a lot. He likes to get out and get some exercise. He
2 typically comes to my house and again with my work schedule I don't really have a ton of
3 free time so it is very rare that I am free. That is just something that I was not privy to.
4 Q. Well you know that your grandmother was divorced from your grandfather from 2002
5 approximately onto 2005?
6 A. That is correct.
7 Q. And your Aunt Jeannette was taking care of your grandfather almost fully by herself,
8 would you agree with that?
9 A. Well when you are saying she took care of him by herself do you mean like she stayed
10 there with him or she took him places because I would say and this is how it works in my
11 family all the years that I was growing up in the family Jeannette was kind of the
12 matriarch. Most things went through Jeannette. My grandfather said you know what
13 Jeannette has always kind of taking that role and I think she would agree with that. When
14 it came time to deal with the bills and the divorce was over he was like you know what let
15 me go to Jeannette. Now do I think that Jeannette did everything, no. I mean my
16 grandparents had six (6) children and five (5) are still living today. I am sure my Uncle
17 Robert came by there. I know my father cut his grass every single week and did stuff
18 outside and worked on his car and did stuff like that. I am sure that my aunts Willie and
19 Barbara came over there and fed him. So no, I am not going to say that one did more
20 necessarily than the others. There were certain task that Jeanette was more efficient with
21 but he was like hey lets give this to Jeannette. So I don't think she did more but I think
22 she did different things. That is my opinion of it. I mean obviously I am not there to
23 witness every single action. I wouldn't ever say that one of them did more than the other
24 one. I just don't think that happened.
25 Q. Did Jeannette take him to the doctor?

1 A. I am sure she did. I don't know if the other ones did. I know my father has taken him to
2 the doctor, too. So I don't know the dynamics of if Barbara or Willie or Robert or any of
3 the rest of the children took him to the doctor. I can't say. But I am sure that somebody
4 took him to the doctor other than Jeannette some time.

5 Q. When you said that your grandfather indicated that he had thoughts and suspicions but
6 that this was the first time that he ever knew that something had happened to his property.
7 Do you remember saying that on direct?

8 A. I did say that.

9 Q. What were you mentioning there? What were you talking about? What were those
10 thoughts and suspicions?

11 A. Well again I kind of elaborated on that the thing that he told me on the phone was like to
12 have my uncle make a comment about my father's truck being on his property it is a little
13 bit suspicious because he is thinking that is his land why did he care. And then he made
14 a reference you know to him picking up cans and stuff around his yard and Thomas is a
15 very busy person as well. He owns a business and I see him in passing as well. But I had
16 never seen Thomas picking up cans or anything before. I don't know what aroused my
17 grandfather's suspicions but all I know is that he is an older man and he asked me for my
18 help and he is my grandfather so I went, okay. I said okay let me humor him. Let me
19 look into it. I didn't think anything of it. And to be quite honest with you other than him
20 being concerned I could have cared less. I really could have. Until I looked it up on line
21 and I noticed that the land wasn't in his name any longer. And I don't know when it
22 started and when it didn't but when I saw that I thought okay maybe there is something to
23 it and that was the gist.

24 Q. Well after you saw that you didn't go and ask Jeannette, your aunt, or Thomas, your
25 uncle, did you?

1 A. No. I didn't see a need to. I mean again, it could have been any explanation. I don't
2 know the explanation. But I did think that it was worth looking into especially since it
3 was obviously you know disturbing my grandfather so much and again my family, I can
4 not really stress this to you enough. This is a family that we sometimes bicker but we
5 usually move on and I was thinking there is not going to be much to it but after seeing
6 that the land was no longer in his name and then seeing some things that looked
7 suspicious to me in his bank account, you know, all of this. I look at numbers every day.
8 Okay. I have hired almost a thousand people so I am used to looking at how much
9 money is going out and what is going in. When you have a social security check coming
10 in each month and it is nine hundred bucks or so and then all of a sudden you see you
11 know Thirty thousand dollars gone. It doesn't take a lot. It like something might -- well
12 there is something to it.

13 Q. Exactly. And so that explanation that you were searching for you chose not to go ask the
14 people that you were concerned about?

15 A. I asked the person. I went to the person who came to me. That is who asked me to do it.
16 If it was Jeannette and Thomas and it was somebody else and they would have came to
17 me, I would have acted on their interest. There is no issue of favoritism here. I don't
18 have any qualms or any issues with my uncle Thomas or my Aunt Jeannette or my
19 cousins. I don't have any issues. I will be very frank, I have an issue with how it has
20 been done. Okay, because all I know is that I have got an eighty some odd year old man
21 who is in the twilight years of his life who has done a lot for all of us and he is having a
22 hard time. And there is no coercion here. Nobody coerced him to do something. He
23 came to me. That is the way that it is. Quiet honestly and I am just very blunt, most
24 people in this world are typically closer to their mother's side of the family, well a lot of
25 the people I know. But most of my life I spent a lot of time with my mother's side of the

1 family. That is the way that it was. That is the way that I was raised. But when they
2 needed something or whatever even when my grandmother moved out of the house I
3 helped her move out. I didn't spend as much time with the family on my father's side
4 initially because I was closer to my mother's side of the family but when something was
5 needed and I was asked that was what I did. So I didn't see every single thing that ever
6 happened. I just didn't. A lot of things that you hear through the family you hear from
7 you know word of mouth you know because rumors fly easy when you go to the same
8 churches and you live on the same street. We are the African Americans in Lyman, we
9 are the African Americans. I am just being very honest.

10 Q. And you went with your grandfather to the bank sort of looking into the records?

11 A. Yes.

12 Q. What was your grandfather demeanor like? Did he understand what you were telling
13 him and explaining to him?

14 A. He did. I mean when we got there. What I made it a point to do because I knew when
15 things started looking suspicious I didn't ever want it to be my word versus Jeannette and
16 I didn't want to go through that dynamic because again this is a family that fights to the
17 nail. So I don't want it to seem like I am trying to do anything to him. I don't want it
18 to seem like I am trying to accuse Jeannette of anything. I didn't want to. The
19 accusations that came out actually came from my grandfather. When he start seeing that
20 his land wasn't in his name and he start seeing that his money wasn't in his account and
21 he started saying that I wasn't taking care of his business then. It was post my
22 grandmother taking care of his business. There was no accusations and there was no me
23 pointing a finger. He made that judgment call on his own. He was the one who felt
24 something suspicious was going on. I rarely talked to my cousins and my uncle and aunt,
25 The Bensons. I had no reason to have any agenda. He made those accusations and

1 when he did some of his accusations started looking like they had some validity. And
2 after that I started looking into it.

3 Q. Those accusations that you are speaking about that your grandfather brought up, did your
4 grandfather tell you that he was under a family court order after the divorce to pay your
5 grandmother Fifty two thousand & no/100 (\$52,000.00) dollars?

6 A. We did not talk about his divorce because by the time that I found out about the case the
7 divorce had already gone and pass. But I do understand again when you have a big
8 family and we have a big family you hear things whether you are in Virginia or wherever
9 and you hear that there is a divorce and you hear – and again I was there to help my
10 grandmother when she moved out and my Aunt Jeannette was there. It was a very
11 difficult time for everybody and it was not comfortable by any stretch of the imagination
12 but at the same time by the time that I started getting involved with this that divorce was
13 over so I had no reason to make any comments regarding the divorce whatsoever.

14 Q. I understand that. I am just trying to figure out when you were talking to the bank
15 personnel with your grandfather?

16 A. Okay.

17 Q. When did this occur?

18 A. When did we go to the bank.

19 Q. The first time?

20 A. I would say that it was sometime in January of 2006. It was very shortly after, if it
21 wasn't January it was late January or early February at the latest.

22 Q. Now which bank specifically did you go to?

23 A. We went to the BB&T branch in Greer. I can not tell you the name of the street, I am
24 sorry. But it was right across from the courthouse in Greer. If we end up having to
25 continue and come Monday perhaps I can even tell you who I spoke to. It was an

1 African American female, that I know. I may have her card some where.

2 Q. Do you remember what her title was?

3 A. Oh wow, I am sorry.

4 Q. Was she a teller or was she a manager or did she have an office or what?

5 A. I am sorry, I do not know her title. I don't know if she was a teller. I just know that we

6 sat down in an office. I don't know if it was her office or she just used the office so we

7 could sit down and have that conversation.

8 Q. You said earlier that obviously I wasn't aware because I wasn't there when talking about

9 the debits out of the account in Exhibit Number 6. Did you at that time ask your

10 grandfather about whether or not he took part in any kind of real estate transfer?

11 A. Did I ask him about it.

12 Q. That is correct?

13 A. I had no reason.

14 Q. I am not asking you if you had a reason. I am just asking you did you ask him?

15 A. No, I did not ask him.

16 Q. Now after you had this meeting with the African American lady at the bank sometime in

17 2006, January or February, what did you do next in relationship to the information that

18 you got?

19 A. Actually I got the information and I saw that and I decided to go further and I believe that

20 I went and tried to – once I saw that the money had been taken out then we started having

21 discussions about – that is when the divorce, that is the first time that the divorce ever

22 came into place. We started talking about, did she buy the land from you. He said I

23 never had a conversation, I never sold it. I never signed anything. I said are you sure

24 that you didn't sign anything. I don't know what month it was and I can not give you a

25 date. I am sure that the attorney that you are sometime going to bring in here, Heckman

1 or whatever, we went over there. Me and my grandfather went to his office and I was
2 like lets just see if we can make sense of all of this. Because here I am. I have got a
3 blank canvass and I am hearing what my grandfather is saying and he is upset so I am
4 trying to put the pieces together. So that is the gist. So we go to Heckman, to
5 Heckman's office if that is his name, so I am like could you please give me whatever
6 documentation that you have about this land because I was able to find out that he was the
7 lawyer that had something to do with it. So I am like could you please give me some
8 information regarding the case. The reason that I brought my grandfather is I know I
9 have worked with two lawyers in my life when I was in school, interning, so like I know
10 the process. Let me go and bring my grandfather. They are not just going to give me
11 these documents without him and since I am looking into something that my grandfather
12 said my aunt did. I didn't expect her to just be like oh here is you some information do
13 what you will with it. So we went over there and got the information. Because at this
14 time they are looking suspicious enough to me that I might just in case I may have to
15 build a case to say hey this didn't happen and I actually thought that if it happened and we
16 kept going down this process, if something irregular did take place maybe everything
17 could be worked out to where he could get his stuff back. So I started seeing a pattern
18 that something didn't look right.

19 Q. Okay. You said that you were able to find out Heckman's name?

20 A. Yes.

21 Q. And how were you able to find that out?

22 A. Well actually I didn't really have to find out very much. My grandfather got to kind of
23 was able to wiggle his way to figure out the name of the lawyer for that brief period of
24 time. I think he had only met this gentleman, at least what he said to me, he doesn't
25 remember meeting him but like one time and as you saw he didn't really remember his

1 name. I think because he met you so few times he wasn't sure if you were him. But he
2 was like the guy's name is Heckman, I remember him being in Greenville. I just
3 remember my grandfather saying to me that we went to several different people trying to
4 find a lawyer and we ended up with this guy in Greenville. I don't know if he found out
5 through one of his children or he found out from you know Jeannette specifically but
6 somehow he found the name of this guy Heckman. And he told me, he said well this guy
7 named something like a Heckman or something. It didn't take long. My office is in
8 Greenville and I know a lot of lawyers. I am on the Chamber. I went oh, let me dig
9 around and that was him. So I called him and asked him could I set up a time and I got
10 his secretary and we came to pick it up and he introduced himself to me and he said hi
11 James, we got the paperwork and left.

12 Q. So it was your grandfather who gave you the name?

13 A. He did. He said I will figure out what his name is. I don't know his name but I will get
14 it but he got it probably within a couple of days and we went to his law office in
15 Greenville, it was downtown Greenville.

16 Q. And you got the documents?

17 A. We did.

18 Q. And did you look at them?

19 A. I did review them.

20 Q. I hand you what has been entered into evidence as Plaintiff's Exhibit 4. Did you look at
21 that document?

22 A. I did. I saw this.

23 Q. What is that document?

24 A. This is a settlement statement.

25 Q. And is that the document referred to as a HUD?

- 1 A. Yes. Correct. Department of HUD.
- 2 Q. And does that refer to your grandfather's property?
- 3 A. It does.
- 4 Q. The 43 Montgomery?
- 5 A. Yes.
- 6 Q. On that document does it indicate that there was in fact a payoff on the mortgage?
- 7 A. Yes, Three thousand twenty four & 36/100 (\$3,024.36) dollars.
- 8 Q. So in your experience what did that mean? That your grandfather didn't have the
- 9 property completely paid for at the time of the sale?
- 10 A. That is definitely what that means, yes.
- 11 Q. And in fact there was an opportunity that you had with Jack Heckman, that day did you
- 12 all go over any of the documents?
- 13 A. Actually Jack Heckman, he was actually I think, maybe his secretary said that he was
- 14 going to be tied up for the rest of the day. She already had the documents and she just
- 15 handed them to me but on our way out he just came out and said hey James and shook my
- 16 hand and I walked out of the door. So there was no opportunity to talk to him.
- 17 Q. When Jack Heckman came out and said hello to your grandfather did your grandfather
- 18 shake his hand?
- 19 A. Yes. Well I mean he would shake a homeless person's hand. Yes, he did. If you reach
- 20 out your hand he is going to shake it.
- 21 Q. Did it seem like he recognized him?
- 22 A. Yes, I mean I think once he saw him he recognized his face, yes.
- 23 Q. Now when you got that package of documents what did you do with it?
- 24 A. I held onto them.
- 25 Q. Did you show them to anybody else in the family?

1 A. No.

2 Q. Did you ever meet with your grandmother about it?

3 A. No, never.

4 Q. Did you ever show it to your dad, James Luther Moore, Jr?

5 A. No.

6 Q. Did you ever talk to —

7 A. I mean he might have been in the room when I was talking to my grandfather, but did I

8 specifically bring his business - - let me tell you something else about that. I don't tell

9 my father too much stuff, because one, it wasn't his business and two, my father talks a

10 lot and he can't hold water. So if I want everybody to know I tell my dad. My father is

11 not very good you know at keeping things confidential.

12 Q. So during this whole process only you and your grandfather have discussed the specifics

13 of it?

14 A. Correct. Even when I went and we retained for my grandfather attorneys Pye and

15 Haskell. Even then it was me and my grandfather. Occasionally if my father did come

16 because I had to meet them somewhere my father never went in the room with us. He

17 always stayed in the lobby. He was not privy to any of that information.

18 Q. Now you said that we went and retained Mr. Pye and Mr. Haskell, correct?

19 A. Correct.

20 Q. They are in different law firms, correct?

21 A. That is correct.

22 Q. Do you have a relationship or do you know Mr. Pye?

23 A. No, I don't know Mr. Pye but we have mutual friends and everything. In the business

24 community you are going to meet other lawyers and when you are in the Chamber you

25 know people and people refer you.

1 Q. Was there any one person particularly that referred you to Mr. Pye?
2 A. Not any one person, no.
3 Q. And whose idea was it to go and see a lawyer? Was Mr. Pye the first lawyer that you
4 saw?
5 A. Yes.
6 Q. Whose idea was it to go and see Mr. Pye?
7 A. It was my idea. Once my grandfather – well if you feel like this is your situation and this
8 is your case, I can't do any more than I have done. All I am able to do is to find out these
9 are the facts. This is what happened. I can't say what order and I can't tell you why it
10 happened but what I can tell you is this is what the bank account said and this is what
11 happened with your land and he told me just like he said to you earlier in his testimony
12 that when he went to Attorney Heckman's office he told me that he never even went into
13 the board room or the office where they were. That he sit in the hallway the whole time.
14 And he said that Mrs. Benson brought him the paperwork and had him sign it. And I was
15 like okay. And he was so adamant about not selling his land well I am like your name,
16 this is your signature. You know my grandfather doesn't write a lot but he writes his
17 signature so it is very distinct and so I am like this is your handwriting. This is not
18 Jeannette's handwriting. Jeannette was over the PTA my whole life so I have seen her
19 signature and she has a very distinct handwriting, it is a female handwriting which means
20 it is a lot nicer than a male's. I said this is your handwriting. So when he kept saying
21 that he didn't sign it and then when he told he how he did sign it because he said that he
22 didn't sell his land. Then I was like okay then if you didn't know what you were signing
23 and you signed it and this money is taken out of your account and you didn't give
24 anybody permission then you need to talk to somebody and that is how the attorney came
25 up.

1 Q. Now when was this that you went and saw an attorney about it?

2 A. I am sorry. I really don't recollect what my first meeting with them was. They may
3 have the documentation in their notes but I don't recall. I am sorry.

4 Q. Well I understand that but you are the one that is giving testimony?

5 A. Well I don't recall, I am sorry.

6 Q. It was some time after February of 2006 though to the best of your recollect?

7 A. I would definitely say that was the case.

8 Q. Did you make the decision to hire Mr. Pye at that time?

9 A. No, I didn't make a decision. I said that we should go talk to somebody. Whether or not
10 my grandfather decided to retain his services was totally up to him.

11 Q. Okay.

12 A. Because I felt like when we got in there, again I stress, I did not really want this to go to
13 this tense. I don't want to be up here just like nobody else wants to in this room. It is
14 that simple. Everybody has got a job or something else that they can be doing. He
15 decided that he wanted to retain. He told the case to Chad and Chad said well let me
16 look into it. I don't have a lot of time right now but I will review it and I will call you
17 back. Well my grandfather and since I was the one that brought him there he was like
18 okay well Marcus I will call you and you can bring your grandfather. My grandfather
19 drives but he rarely drives any where pass Lyman, Duncan, Reidville, Wellford. He is not
20 going to drive to Spartanburg , Greenville or something like we would. So that is when I
21 knew then that it was going to take a little commitment on my behalf. And that was the
22 extent of it. You know when Chad looked at some things it was like you know there are
23 some things here based on what your grandfather tells me that don't sound right. I said
24 that is what I thought, too. I am not an expert that is why I took him there, that is it.

25 Q. So that sounds like that was that first initial meeting that took place, is that correct?

1 A. Right.

2 Q. So there was a second meeting?

3 A. Well actually Mr. Pye looked at everything and he said based on what your grandfather is
4 saying and based on what you have here if this is the case something doesn't add up.

5 Q. And was that in a telephone conversation or was that in person or in his office in a
6 meeting or what?

7 A. Well you say his, would you—

8 Q. You are explaining some conversation that took place?

9 A. Mr. Pye gave me a call and said you know it looks like this is something that you may
10 want to look at because your grandfather is obviously upset about it and it looks like there
11 is some validity to it. As soon as I heard that it basically confirmed what I was feeling
12 and so from that point forward we decided, I was like can we set up a time and meet with
13 you. I don't know when the next meeting was. Again my schedule makes things a little
14 convoluted but we ended up having the discussion and Chad was like you know this is the
15 case and at some point in time he felt like it would be good for Mr. Haskell to become
16 involved too because he had some experience with some of the issues that we are dealing
17 with and that is how both of them became my grandfather James's lawyers.

18 Q. That second meeting that you had that you are describing with Mr. Pye, did that meeting
19 just include you, your grandfather, and Mr. Pye?

20 A. Yes.

21 Q. Is that where you retained Mr. Pye's services?

22 A. I don't know if I can give you the chronological order that it was —

23 MR. HASKELL: He is not our client. Mr. Moore is.

24 MR. BENNETT: I will rephrase it.

25 Q. Is that when Mr. Pye was retained in this case, at the second meeting?

1 A. I can not say that for certain. I can give you an estimate. I would say within the first
2 maybe three to four times we met with Mr. Pye but I can't tell you what date or how
3 much time elapsed between each meeting. Again my schedule doesn't allow it to be the
4 case but at some point in time Mr. Pye said to my grandfather this is what has to happen
5 if you want to pursue this. In no way was he coerced into pursuing it and my grandfather
6 was adamant like this ain't right. This shouldn't happen to me. I want my stuff back.
7 All I want is my stuff back. He kept saying the same thing. And I am sitting there like
8 if that is what you want that is what you want. At some point in time his services were
9 rendered and at some point in time later on I don't remember how many meetings we had
10 before Attorney Haskell came along but he came along at some point in time and we
11 proceeded.

12 Q. I am just trying to get when he was retained. And you can't tell me an idea or an
13 estimate of that?

14 A. I can not at this time. I am sorry. I just don't remember the exact date. I can not tell
15 you that.

16 Q. I am not looking for the exact date but if you have some estimate? Your best estimate?

17 A. I know it was within the first four meetings but how much time elapsed between that I
18 really can not tell you.

19 Q. Do you remember if you paid the retainer fee if a fee was paid?

20 A. At the time —

21 MR. HASKELL: Your Honor, I don't see the relevance of any of this. This has nothing to do
22 with the case.

23 THE COURT: All right counsel. Give me a basis for this continued line of questioning?

24 MR. BENNETT: Based upon the statute of limitations argument, Your Honor. I am trying to
25 find out when the case was actually brought to a lawyer and he was retained. I have elicited

1 testimony potentially that there is a document or a cancel check of some sort that the witness has
2 written that will indicate that.

3 THE COURT: Well the statute of limitations is directed to the filing date not to the retaining
4 date.

5 MR. BENNETT: The argument from the Plaintiff's side is that the discovery rule applies and it
6 is not the filing date but instead it is when they knew or should have known.

7 MR. HASKELL: It is December of 2005, Your Honor. That is what he has been saying. My
8 grandfather called me and I was in New York and I didn't come back until after the new year and
9 something was wrong and that is well within -- that is a year and a half within the filing date.
10 What we talked about after that meeting I don't see that it has any relevance whatsoever as to the
11 statute of limitations.

12 THE COURT: Counsel?

13 MR. BENNETT: I will move on.

14 THE COURT: All right.

15 Q. Do you have any financial interest from any kind of promise that your grandfather has
16 made to you to pay you back for all of the work that you have done on his behalf?

17 A. No. I am very okay. My grandfather doesn't have to give me anything but his hat.
18 How ever many more years he has got on this earth I just want him to enjoy them. He
19 hasn't promised me anything and I just want to say this because I want to say it in this
20 arena and I hope you don't mind if I cue just a little bit. Like I say we have got a big
21 family and you hear a lot of rumors and a lot of things get to you. I have been promised
22 nothing. I will say it in front of every person in this room. And he has done a will and I
23 am not in it and I don't want nothing and don't need nothing and wouldn't ask for
24 anything and I am not getting anything. I needed that to be stated for this record which it
25 is and whenever the time comes that he leaves this earth I still won't get anything. So

whatever anybody thinks or says it needs to be said here under oath. And that is the reason why I wanted to make sure that was brought out. So to answer your question I get nothing but satisfaction that he is happy and he is fine because when you are eighty-eight (88) years old you just want to enjoy the rest of your time. The last thing you want is to have grumbling with your own family. So that is my answer.

Q. And you know that also because your grandfather has had a strong attachment to that land and that home your whole life hasn't he?

A. Yes. Definitely.

Q. You can't imagine probably your grandfather living any where else other than there is that true?

A. I can't imagine my grandfather living any where else and everybody that is on Montgomery Road. Everybody that lives on ; lived there since I was born so I can't imagine it if the Bensons moved, you know. So no I couldn't imagine him not being our next door neighbor.

Q. And I am sure you felt some pressure even though it was out of love but you felt some pressure to try to do whatever you could to make sure that your grandfather in your mind didn't have to move out of his home place?

A. Well yes. But you know one of the things that I never thought of, I never once thought of him moving. Not once. From everything that I have seen I feel that he was within his rights and that house was his. Two, I really never even thought and it never even crossed my mind that my Aunt wouldn't want him to live there any way. Even once I saw that the land was in she and her husband's, in Thomas's name, my uncle, never once did I ever imagine him having to move out any way. I mean I don't think anybody in this room could imagine an eighty eight (88) year old man living somewhere different than he lives his whole life. I can't see somebody kicking him out of his home and I don't even

1 think that Jeannette would do something like that. I wouldn't have done something like
2 that. So I didn't have that question or that qualm in my mind because my grandfather is
3 stable. In my mind, if I think of Lyman you know other than that Hardee's up there I
4 think of my grandfather because he has always been there. He is the Black African
5 American person that everybody knows because he started the whole Moore clan in
6 Lyman, South Carolina. We are Lyman to be honest with you. That is just my – that is
7 how I look at it. How many of us came out of Byrnes High School, half of the people in
8 this room.

9 Q. And you know that your aunt and your uncle did not kick him out of this house?

10 A. No. He is still there.

11 Q. And in fact they have been the rightful owner within the law since 2001?

12 MR. HASKELL: Objection. The question calls for a legal conclusion.

13 THE COURT: I sustain that. Don't answer the question.

14 Q. You have known since 2001 that your grandfather has lived on that property and in that
15 house without once having to move out haven't you?

16 A. Yes, I know that.

17 Q. And in your conversations with your grandfather and resurrecting all of these financial
18 documents and so forth, did you ever ask your grandfather does he pay rent to Jeannette
19 and Tom?

20 A. I know that he doesn't. I didn't have to ask him. I take care of all of his accounts now.
21 So if that was the case I would be the one writing the checks.

22 Q. And in fact, he has never paid any rent to Jeannette and Thomas?

23 A. Not to my knowledge. He has not.

24 Q. And today he still lives in that house at

25 A. He still lives at home.

1 Q. Thank you.

2 MR. BENNETT: Thank you, Your Honor.

3 MR. HASKELL: No questions, Your Honor.

4 THE COURT: All right. You may step down sir. Thank you.

5 **ALLEAN MOORE, BEING DULY SWORN,**

6 **TESTIFIES AS FOLLOWS:**

7 **DIRECT EXAMINATION BY MR. HASKELL.**

8 Q. What is your name for the record please?

9 A. Allean Moore.

10 Q. Mrs. Moore, I am going to ask you like every other witness has been asked to speak up

11 like you are in church.

12 A. All right.

13 Q. How old are you currently? Well I shouldn't ask that.

14 A. I will be seventy-eight (78) in October.

15 Q. And where do you currently live?

16 A. I live at in Duncan, South

17 Carolina.

18 Q. Okay. Now do you know the Plaintiff in the case, Mr. James Moore?

19 A. I was married to him fifty three (53) years. I guess I do.

20 Q. And you are not married to him at this time?

21 A. No, no.

22 Q. You got divorced?

23 A. Yes. We talked about the divorce but it got entered before we got to it.

24 Q. You got what ma'am?

25 A. I say we were divorced before we got to it.

1 Q. What does that mean?
2 A. That means that it was reinforced. That is right.
3 Q. All right. Now when you were married to Mr. Moore which of the two of you looked
4 after the business and financial affairs and paying the bills and things like that?
5 A. I done all of that the whole time we were married. The whole time and I did a good job.
6 Q. Why did you do it instead of him?
7 A. Well I tried to show him but he couldn't understand. He couldn't understand. I would
8 always explain it to him but he couldn't understand it. And he said you just go ahead
9 and take care of it.
10 Q. Okay. How would you describe Mr. Moore's ability to read and write and understand?
11 A. He don't understand. He can write a little bit and count money, you know pretty good,
12 but as far as understanding when I done explained it to him he still couldn't understand.
13 Q. Okay. Would you say that he has difficulty reading?
14 A. Oh, I know that. And understanding he can't. He just can't.
15 Q. Has it been that way as long as you have known him?
16 A. Every since we have been married.
17 Q. Throughout your married life when there would be a document or something presented to
18 him for his signature would someone have to explain what it meant to him?
19 A. Oh, I told him. I would. When we built the new house he did sign for that.
20 Q. Okay. So you got a loan when you built the new house?
21 A. Yes. Yes. And I told him you know to sign it.
22 Q. Okay. Were you the one who explained what his signature meant?
23 A. Yes. And then we had a lawyer, too.
24 Q. All right. There have been some statement made that you and Mr. Moore have gotten
25 back together following the death of Mr. Drummond ---

1 A. We haven't. We haven't gotten back together. I ain't never hated him. We ain't got
2 back together. We are still friends, we have got children together. We haven't got back
3 together. I don't know where that come from.

4 Q. Okay.

5 A. I really don't.

6 Q. There has been some statement made that since you all were getting back together?

7 A. Well we are not ---.

8 MR. BENNETT: Excuse me.

9 A. And I am not having nothing to do with ---

10 MR. BENNETT: Excuse me ma'am. Lets make sure the record is clear. Without talking over
11 each other. The witness is answering the question prior to the question being finished, Your
12 Honor. If we could instruct the witness to please wait until the question is asked before she
13 answers so that the record remains clear, thank you.

14 THE COURT: All right.

15 Q. There has been some statements made here in this courtroom today that since you and Mr.
16 Moore were getting back together that somehow you were behind this lawsuit or there
17 was some reason that you had for causing this lawsuit to take place. Is that true?

18 A. No sir. I mean I am fine with it. I am out of it. I am fine. I ain't had nothing to do
19 with it whatsoever.

20 Q. All right. From the start of the divorce until today have you and Mr. Moore remained
21 friends?

22 A. We never have fell out from being friends, not that I know of. No more than when the
23 divorce was going on. It was where I couldn't contact him on account of the agreement
24 that she had that I couldn't get in contact with him. I didn't have no contact with him
25 then.

- 1 Q. Let me ask you this and I don't know the answer to this question but I am going to ask
2 you anyway. What role, if any, did your daughter Jeannette have in this divorce?
- 3 A. A plenty.
- 4 Q. Can you explain that? Explain that to the court?
- 5 A. A plenty. Because she had me put out and everything. She give me six (6) hours to get
6 out and I didn't even have a place to go. You sure did. She sure did. We had talked
7 about it but we hadn't got to it because we were just going to get a lawyer. We had
8 divided everything and said what we wanted and everything.
- 9 Q. What do you mean by she told you to get out?
- 10 A. That is what she told me. She give me six (6) hours to get out and that is what I done.
- 11 Q. Did it ever come up what business it was of hers to be telling you to get out?
- 12 A. Oh, I knew it wasn't but you know I was just tied of it. You know. I really was.
- 13 Q. Why did she want you out of the house if you know?
- 14 A. So she could take over like she did. But it is okay. I am fine.
- 15 Q. Thank you. That is all I have. Thank you ma'am.
- 16 **CROSS EXAMINATION BY MR. BENNETT.**
- 17 Q. Good afternoon Mrs. Moore?
- 18 A. Good afternoon sir.
- 19 Q. Who is Theodore Drummond?
- 20 A. We have already been through that and there is no need for that. That is not pertaining to
21 this.
- 22 Q. Ma'am isn't it true that Theodore Drummond was your boyfriend?
- 23 A. Well he was and I admitted that he was.
- 24 Q. And that in fact is the basis —
- 25 A. That was my business.

1 Q. Well it is not just your business because that was part of the reason for the —
2 A. It was not the reason. It is not the reason.
3 MR. HASKELL: Objection.. Counsel is testifying, Your Honor.
4 THE COURT: All right.
5 A. That is right. That has done been done.
6 THE COURT: When he asks you the question respond to the question. He will ask you a
7 question you respond to the question and if I don't want you to answer the question I will tell you
8 not to answer it or I will tell you to answer the question, all right. So we can move along.
9 A. All right.
10 Q. Ma'am, I am going to show you what has been introduced into evidence as Defendant's
11 Exhibit 1. Now you read don't you?
12 A. You know I do.
13 Q. Just making sure ma'am, I wasn't trying to be rude.
14 A. I got a copy of it. I got a copy of everything.
15 Q. So you have seen this already, this divorce decree?
16 A. I got a copy of all of it.
17 Q. I understand that you have got a copy but you have read this before haven't you?
18 A. I sure have.
19 Q. Okay. And in fact you know then because of reading it that your husband, James Moore,
20 was the Plaintiff in the lawsuit and you were the Defendant?
21 A. Yes, I know.
22 Q. You understand that means that he brought the case against you for the divorce?
23 A. Yes, I know.
24 Q. Go ahead I am sorry?
25 A. I said I know.

1 Q. And he brought that case against you based upon what is called adultery, correct?
2 A. Yes.
3 Q. And in fact it was the adultery with Mr. Theodore Drummond, correct?
4 A. Yes, that is right.
5 Q. And in fact you were fairly open in the family court system and you admitted that you had
6 an affair with Mr. Drummond?
7 A. I did.
8 Q. And you had an affair with Mr. Drummond which you admitted to at that time which had
9 lasted for approximately fifteen (15) years, correct?
10 A. Yes.
11 Q. And in fact at that time and we are speaking about the time of the divorce, you admitted
12 to the fact that was still an ongoing affair you were having with Mr. Drummond, isn't that
13 true?
14 A. Yes.
15 Q. Now Mr. Drummond —
16 THE COURT: Counsel. All right. Counsel come up a moment. Lets go in chambers for a
17 moment.
18 (TESTIMONY RESUMED)
19 THE COURT: All right, Mr. Bennett.
20 MR. BENNETT: Thank you, Your Honor. One moment please.
21 THE COURT: All right.
22 Q. Mrs. Moore just a few more brief questions about this divorce decree. You have read it
23 and you indicated that you remember it. You were going to get about Forty two thousand
24 dollars because of this document. Do you remember that?
25 A. I got more than that.

1 Q. Right. Because you went back to court and you got —
2 A. My lawyer went back to court.
3 Q. You went back and told your lawyer to get a motion to alter or amend this divorce decree,
4 do you remember that?
5 A. I said my lawyer did. I didn't give him authority. He said that he was going back to
6 court. I remember it.
7 MR. BENNETT: We would like to have this marked as Exhibit 2.
8 MR. HASKELL: It is marked for identification purposes?
9 THE COURT: All right. Have you got a copy?
10 MR. BENNETT: I have a copy for opposing counsel.
11 THE COURT: All right.
12 Q. Now ma'am because of this amendment to the original order you ended up getting more
13 money by about Ten thousand two hundred thirty eight & no/100 (\$10,238.00) dollar, is
14 that correct?
15 A. I know that. Yes sir. But my lawyer said that he was going back for it. I didn't tell him.
16 Q. So you ended up getting Fifty two thousand eight hundred fifty one & no/100
17 (\$52,851.00) dollars from your ex-husband, is that correct?
18 A. Yes.
19 Q. And you have read this document?
20 A. Yes.
21 Q. Do you remember reading the part where your ex-husband got forty five (45) days?
22 A. Yes sir, I know about that. My lawyer explained every bit of that. Thank you.
23 Q. Yes ma'am. Thank you.
24 MR. BENNETT: Your Honor, I would move that into evidence.
25 MR. HASKELL: It is a document in evidence in my case in chief Your Honor. It can just be

1 marked for identification.

2 MR. BENNETT: I am sorry, for identification. For 1 and 2.

3 THE COURT: All right.

4 MR. HASKELL: The Decree is in evidence.

5 THE COURT: Yes. Defendant's Exhibit 1 was entered without objections.

6 MR. BENNETT: For the record you are objecting to 2, is that correct?

7 MR. HASKELL: No, I am just saying that you can't introduce evidence with —

8 MR. BENNETT: I understand that. I was wondering whether or not you were objecting?

9 MR. HASKELL: I am not objecting — I am saying that I object to it being entered into evidence

10 but you have the right to mark it for identification.

11 **MR. BENNETT INTRODUCES FOR IDENTIFICATION A COPY OF AN ORDER ON**

12 **DEFENDANT'S MOTION TO ALTER OR AMEND, FILE NO. 99DR42-3093, JR#**

13 **244840, AS DEFENDANT'S EXHIBIT NUMBER 2 FOR IDENTIFICATION.**

14 Q. You were in court when you heard your ex-husband talk about you all's marriage weren't

15 you?

16 A. Yes sir, I heard him.

17 Q. Did you agree with what he said?

18 A. I did.

19 Q. He claimed that you all had a good marriage and you got along?

20 A. Hey, but you know what. He had his problems also every since we have been married.

21 See he left out that part but I am going to tell it.

22 Q. Now this document, Defendant's Exhibit 1, the divorce decree that you have said that you

23 have read. The Judge, Judge Tunstall in his order didn't he find on page 2, paragraph 4,

24 that you were particularly in the latter years of the marriage verbally abusive to your

25 husband?

1 A. No.

2 MR. HASKELL: That document speaks for itself, Your Honor.

3 THE COURT: All right. Counsel what is your —

4 MR. BENNETT: Your Honor, I am trying to impeach this witness based upon her testimony

5 that they had a good marriage. The document is in evidence. I am asking her a question that

6 she can respond yes or no to, as to whether or not.

7 THE COURT: All right. I will give you a little leeway on it.

8 Q. Ma'am, I am going to ask you again. Do you agree with what is in the order where it

9 says that particularly in the latter years of the marriage that you were verbally abusive to

10 your husband?

11 A. I said no, I wasn't.

12 Q. How about striking him on several occasions?

13 A. No. He has never hit me and I never hit him. No. No, that is not true.

14 Q. You never did that?

15 A. No.

16 Q. What about the spitting on him?

17 A. No.

18 Q. You never did that either?

19 A. If I had spitted on him I would be dead. I wouldn't be here today. I will tell you that.

20 You don't know him. He is a little slow now but he ain't always been that way. I can

21 tell you that right now. No, I didn't do that.

22 Q. If you would please turn to page 5 of that document that is in front of you. Now that

23 section on Page 5, that basically is a summary of all of the assets that you had or that your

24 ex-husband had in the divorce, do you agree with that?

25 A. Yes.

1 Q. Have you had a chance to read that prior to today?

2 A. I didn't need to read it again because I thought that was over. We are done through with
3 that.

4 Q. But you have read this prior?

5 A. I have read it, yes.

6 Q. And if there was anything missing from your husband's columns you would have notified
7 your family court lawyer wouldn't you?

8 A. Oh yes.

9 Q. Because you would want that to be counted as part of the marital estate, correct?

10 A. Yes. We went back over that. That is why he went back. He went over it and
11 explained all of that to me. My lawyer explained everything from step to step.

12 Q. Now on page 7 of the divorce decree isn't it true that the Judge found that your husband
13 had given substantial non-economic and indirect contributions compared to your
14 contributions?

15 A. Well I was there raising the children, that is why.

16 MR. PYE: Your Honor, this is totally irrelevant as to how happy their marriage was.

17 THE COURT: Counsel lets give me a basis for where you are going from this point on?

18 MR. BENNETT: Thank you, Your Honor. I believe that the fault that the Judge found in the
19 family court about the inequity of the contribution to the family from one party to the other is
20 something that impeached what Mr. Moore said on the witness stand which was that they were
21 happily married and they had a good marriage. The family court judge didn't see it that way.
22 The family court judge saw it as just the opposite.

23 THE COURT: Well what is the point?

24 MR. BENNETT: Mr. Moore would not testify to that, maybe Mrs. Moore will.

25 THE COURT: And ultimately what is the point of going back over this plowed ground again?

1 MR. BENNETT: I am trying to impeach what the witness, Plaintiff, said during direct
2 examination.
3 THE COURT: All right. But my question to you still is so what is the point of that?
4 MR. BENNETT: I believe as an attorney on behalf of my clients' representation any time I can
5 impeach the opposing parties's witnesses it is my obligation to do so.
6 THE COURT: I understand what you are saying counsel but the point is so you have impeached
7 him on that point that the marriage was not happy. That the marriage was not solid but nobody
8 knows whether it was or not. The findings are in the document itself. And again tell me the
9 point of that impeachment on that point?
10 MR. BENNETT: Your Honor, I am impeaching the witness. The witness herself has stated
11 that they had a good marriage.
12 THE COURT: Right.
13 MR. BENNETT: The family court —
14 A. Yes, he was a good husband. He took care of me. He sure did and the children.
15 THE COURT: Excuse me ma'am. Don't say any more. I want to get to where I want to be
16 here but I am losing the issue here as far as impeaching her on this issue? Are you trying to
17 impeach her totally, all of her testimony?
18 MR. BENNETT: Of course not, Your Honor. Nobody could ever do that with one question, I
19 am aware of that.
20 THE COURT: All right.
21 MR. BENNETT: I am trying to build a defense to demonstrate that what the witnesses say at
22 certain times is not what they say at other times. I am trying to impeach them, their creditability
23 while I have them on cross examination.
24 THE COURT: All right.
25 MR. BENNETT: I will be glad to move along.

1 THE COURT: Move along we have spent a lot of time and the document says what it says and
2 these witnesses have said otherwise. And I will take notice of that particular fact.
3 A. And one of my daughters —
4 THE COURT: Excuse me, ma'am. When he ask you a question then answer it or if I tell you
5 to answer a question then answer it but don't answer it otherwise, okay.
6 A. Okay. Thank you.
7 THE COURT: All right. All right counsel.
8 Q. Is it safe to say that during your divorce you and your husband were not getting along that
9 well?
10 A. Well we were doing all right but we just decided that we were going to get a divorce.
11 We had talked about it and talked about going to a lawyer and during it like that.
12 Q. Well like any divorce weren't you upset while you were going through it?
13 A. No, I wasn't upset. No.
14 Q. You wanted the Fifty two thousand dollars you were awarded though, didn't you?
15 A. Yes. I was due for it.
16 Q. Exactly. And you were going to make sure that you were going to get it weren't you?
17 A. I told them that I could wait. To just give me part and I could wait. I told them that.
18 Q. Who did you tell that to?
19 A. I told my lawyer that.
20 Q. But you knew that your lawyer could take your ex-husband back into court and hold him
21 — and get him in trouble, it is called contempt, if he didn't pay. Your lawyer told you
22 that didn't he?
23 A. No, no he didn't tell me that. No.
24 Q. And that was for the Fifty two thousand dollars, correct?
25 A. Yes, it was before.

1 Q. Thank you.
2 MR. BENNETT: Thank you, Your Honor.
3 THE COURT: Anything further?
4 MR. HASKELL: Yes sir.
5 **REDIRECT EXAMINATION BY MR. HASKELL.**
6 Q. You stated just to the last question that you told your lawyer that you could wait on that
7 Fifty two thousand?
8 A. I did.
9 Q. What did the lawyer tell you?
10 A. Well he told me you know he would discuss it you know with his lawyer.
11 Q. All right. So you were willing to work with your husband on paying that?
12 A. Yes. That is what I told them.
13 Q. Thank you.
14 MR. HASKELL: That is all I have.
15 **RECROSS BY MR. BENNETT.**
16 Q. Lets make it clear. You said he, you mean you told your lawyer you don't mean you told
17 your husband?
18 A. I told my lawyer.
19 Q. Right. Thank you ma'am.
20 THE COURT: All right. You may step down.
21 **WILLIAM PRESTON DONALDSON,**
22 **BEING DULY SWORN, TESTIFIES AS FOLLOWS:**
23 **DIRECT EXAMINATION BY MR. HASKELL.**
24 Q. State your name for the record please?
25 A. Dennis Preston Donaldson.

- 1 Q. And Mr. Donaldson where do you live?
- 2 A. At Greenville, South Carolina.
- 3 Q. And what is your profession?
- 4 A. I am a residential real estate appraiser.
- 5 Q. How long have you been in the appraising business?
- 6 A. Since 1987.
- 7 Q. Are you a full time appraiser?
- 8 A. Yes sir.
- 9 Q. Do you work for a company or are you self employed?
- 10 A. I am self employed.
- 11 Q. Do you hold any professional licenses or accreditations in real estate appraising?
- 12 A. Yes sir, I am a certified residential in the state of South Carolina.
- 13 Q. Now have you had any special training or schooling or have you attended any special
- 14 courses in the real estate appraisal area?
- 15 A. Yes sir. I have to attend courses every years.
- 16 Q. Okay. What types of courses do you attend?
- 17 A. All specializing in residential real estate appraisal work. The types and ways of
- 18 developing appraisals. Things like that.
- 19 Q. Is that required to keep your license?
- 20 A. Yes sir.
- 21 Q. Approximately how many real estate appraisals have you performed over your appraisal
- 22 career?
- 23 A. I have averaged about a hundred appraisals a year since I started.
- 24 Q. So about two thousand?
- 25 A. Yes sir, approximately.

1 Q. All right. Have you ever been qualified as an expert witness in any court proceedings
2 before?

3 A. Yes sir.

4 MR. HASKELL: Your Honor, at this time I would like to ask that Mr. Donaldson be qualified as
5 an expert witness in the field of real estate appraisal and be authorized to give his opinion as to
6 the value of the subject property in this case.

7 MR. BENNETT: Your Honor, I would object under the basis that the discovery in this case, the
8 defense requested from Plaintiff whether they were noticing anyone as an expert and they
9 indicated that they were not. I am not prepared for him to be testifying today as an expert based
10 upon the fact that the discovery response was that he was not.

11 MR. HASKELL: Let me check that, Your Honor. He might be correct, I don't know.

12 THE COURT: All right.

13 MR. HASKELL: We did identify Mr. Donaldson, Your Honor but we did not put him down as
14 an expert witness. I think by identifying him in discovery it would not preclude his testifying.
15 We had an issue come up previously in another case where this was the issue and it was decided
16 by the Court that since the witness had been identified and existence was made known to me in
17 that particular case that I had the opportunity to depose him and to find out the nature of his
18 testimony. I am not prepared to brief Your Honor on the law as to whether or not the none
19 disclosure of a witness who had been identified in the interrogatories would preclude that
20 testimony. I would also say that the appraisal has been made available to the other side so
21 they had the identify of the individual witness with the interrogatories and the appraisal had been
22 provided so it is a technical point of we have got a real estate appraiser with an appraisal would
23 he be precluded simply because we did not list his name under the heading of an expert witness
24 in the interrogatories. And I don't think that there is any undue surprise that Mr. Donaldson is
25 here to testify about his appraisal.

1 THE COURT: Counsel.

2 MR. BENNETT: Thank you, Your Honor. I agree that there is no surprise that he was going
3 to testify about his appraisal but I do disagree wholeheartedly in regards since there is no undue
4 surprise based upon the fact that the law makes accommodations specifically for a specific type
5 of witness and that being an expert witness who is held to a standard that employs a greater
6 degree of knowledge and therefore the testimony has a greater degree of importance to the trial,
7 in fact. Your Honor, we specifically asked in our discovery whether or not there were any
8 experts who were going to testify. Everything that counsel indicates is a reason why the defense
9 had the opportunity at an earlier time to take a look at the appraisal and so forth counsel had the
10 exact amount of time, if not more, and I would submit that they did have more to notify opposing
11 party, the defense, that this witness was going to in fact be called and hopefully be set up before
12 the Court as an expert so that his opinion could not only be held to a higher caliber but also so he
13 could testify about certain specifics and things that a layman would not be allowed to. I am like
14 Mr. Haskell who has had other cases. I have had other cases. The indication of someone being
15 an expert witness is of such prominence that is why in fact it is a discovery request. So that you
16 don't have a situation like we have right now where at ten to four the date of trial, I find out that
17 this witness is going to be hopefully by the Plaintiff's assertion qualified as an expert witness to
18 testify. I do not believe that it is appropriate to allow this witness to go forward based upon
19 what is an assertion of Mr. Haskell that he has had this issue come up previously. I am not
20 doubting that he has but I am indicating to the Court that I believe that the nomenclature of an
21 expert witness and that status is of such great importance that I as a defense attorney should have
22 prior and ample opportunity to be prepared not only for the cross examination but also for the
23 direct examination of this witness, in particular, because as the Court is aware in a direct
24 examination of an expert witness counsel is allowed to ask certain types of questions or illicit
25 certain types of responses that they would not normally be allowed to get from a layman.

1 THE COURT: Mr. Haskell any response?

2 MR. HASKELL: Well Your Honor, he would testify to the value. It looks like his testimony
3 may be cumulative because it is already listed in the divorce decree as to what the value of the
4 marital home was. It says that it is One hundred fifty four thousand & no/100 (\$154,000.00)
5 dollars less a Four thousand ninety three & no/100 (\$4,093.00) dollar balance. That is actually
6 more than the appraised value so I think his testimony would be cumulative, Your Honor. And
7 rather than create some error in the trial, I would simply rely on the evaluation placed in the
8 divorce decree of One hundred forty nine thousand nine hundred seven & no/100 (\$149,907.00)
9 dollars.

10 THE COURT: All right. I will rule that because of the failure to disclose that the expert was
11 going to testify he will not be allowed to testify.

12 MR. HASKELL: Right. I had rather since it would be cumulative testimony.

13 THE COURT: Right.

14 MR. HASKELL: Rather than create an error in the trial, I would simply ask that Mr. Donaldson
15 be excused.

16 THE COURT: All right. Mr. Donaldson thank you for coming. You may be excused.

17 MR. PYE: Your Honor, our next witness is James Moore, Jr.

18 THE COURT: All right.

19 **JAMES LUTHER MOORE, JR., BEING DULY**

20 **SWORN, TESTIFIES AS FOLLOWS:**

21 **DIRECT EXAMINATION BY MR. PYE.**

22 Q. What is your full name sir?

23 A. James Luther Moore, Jr.

24 Q. Okay. Do you know Mr. James Moore sitting back here in the courtroom?

25 A. That is my father.

1 Q. Okay. Do you know Mrs. Jeannette Benson?

2 A. Yes, that is my sister.

3 Q. Okay. Speak up a little bit for us if you will. Do you recall a family Christmas dinner in
4 2005?

5 A. Yes.

6 Q. What do you recall about that dinner?

7 A. Well we went down to my brother's house for Christmas dinner. My dad rode with my
8 sister and brother-in-law.

9 Q. Mr and Mrs. Benson?

10 A. Right. And I got down there, I went late. And when I got down there my dad wasn't
11 looking right and he called me to the side and —

12 Q. Who did?

13 A. My father.

14 Q. Okay.

15 A. And he said don't leave without me because I am going to ride back home with you.
16 And I said okay. Then well he stayed and we started back home and he told me about the
17 incident, what happened about the old jeep. It was mine and he told me that I could put it
18 down there.

19 Q. Okay. The incident about the old jeep is what has been testified to earlier about Mr.
20 Benson asking why the jeep was down at the house?

21 A. Yes.

22 Q. Okay.

23 A. And so he said Thomas asked who told me to put the jeep down there and he told them,
24 my daddy spoke up and said I told him to put it down there. And then he said my sister
25 told him to be quiet. And we come back and he said something ain't right. He said

1 because you know they act like that is their land.

2 Q. Why else would he think that they thought that it was their land? Because of this

3 incident that happened?

4 A. Well he said another incident he was out there picking up bottles and cans on the land.

5 Q. Who is he?

6 A. Thomas, my brother-in-law.

7 Q. Picking up bottles and cans on your father's land?

8 A. Yes. Well I thought it was at the time. And he said that ain't normal because he don't

9 do that at home. That is what my daddy said. He said that ain't right. We are going to

10 have to check that. He said I am going to have to put my man on that and get it checked.

11 Q. Who is his man?

12 A. That is my son. We call him Marcus Moore.

13 Q. Okay. Do you have a nickname for Marcus?

14 A. Yes. Tory.

15 Q. Tory. Okay. So was your dad upset about it?

16 A. Yes. He was upset some, you know.

17 Q. Okay. Did he get Marcus involved?

18 A. Yes.

19 Q. And did Marcus tell your father what he discovered through his research?

20 A. Yes.

21 Q. Okay. Which was what?

22 A. When he researched it he said that the land had been transferred into Jeannette Benson

23 and Thomas Benson.

24 Q. Okay. Now can your dad read?

25 A. No.

1 Q. Now how do you know that?
2 A. Because I grew up in the house. My mom always took care of all the business and
3 finances.
4 Q. Did he tell you that he can't read?
5 A. Well I carry him to the doctor a lot of times and I always fill out the papers and stuff for
6 him.
7 Q. Have you ever seen him try to read?
8 A. Not really.
9 Q. Okay. Are you confident that he can't read?
10 A. Yes.
11 Q. Did your dad ever confront Jeannette about taking his house?
12 A. Yes.
13 Q. When was that?
14 MR. BENNETT: Objection. Lack of foundation to make sure that the witness was present at
15 that time.
16 THE COURT: All right.
17 Q. Were you present?
18 THE COURT: Rephrase the question.
19 Q. Were you present for any confrontations between your father and Mrs. Benson about the
20 house?
21 A. Yes.
22 Q. Okay. About when was that when you were present?
23 A. A few months, probably in 2006.
24 Q. A few months in 2006?
25 A. Yes.

- 1 Q. And again you were present for that?
- 2 A. Yes.
- 3 Q. What happened?
- 4 A. Well she came out there and then my daddy asked her. He said Jeannette when did I sell
5 you any land and my house. That is what he asked her.
- 6 Q. Now was this after Marcus had done this research?
- 7 A. Yes sir, And you know they had words and he told you if I sold you my land and house
8 where is the money and where is the papers that I sold it to you. He said I don't have
9 nothing. No money, no papers.
- 10 Q. Was he upset about it?
- 11 A. Yes, he was upset about it.
- 12 Q. And did they have any other confrontations after that one that you were present for about
13 the house?
- 14 A. Yes.
- 15 Q. Okay. What was that about?
- 16 A. One day after that she come out there and he asked her about it again and she got kind of
17 upset. She told my daddy, she said you keep messing with me I will sell everything.
18 And then she said if you don't like it I will put your Black ass out, out there where Brut
19 and Marcus stay.
- 20 Q. You are Brut, right?
- 21 A. Yes.
- 22 Q. You heard the defense attorney say earlier that she had never made any threats about
23 kicking your father out of his house, that is not true is it?
- 24 A. That is not.
- 25 Q. You were present and heard her threaten to kick him out of his house, right?

- 1 A. Yes.
- 2 Q. What was your dad's reaction when she said that?
- 3 A. Well my daddy got afraid of being put out then and that is when he talked to my son and
- 4 he said that he was probably going to have to see about a lawyer or something.
- 5 Q. Now you have a house near your father, right?
- 6 A. Yes.
- 7 Q. But where do you live?
- 8 A. I live up there with my dad.
- 9 Q. Is your house vacate right now?
- 10 A. No, my wife lives in it.
- 11 Q. Okay. Why don't you live with your wife? Why do you live with your dad?
- 12 A. Well I stay up there and help take care of him.
- 13 Q. How often do you talk to your wife?
- 14 A. I see her about every day.
- 15 Q. Okay. And your only reason for living with your dad is to take care of him?
- 16 A. Yes, to take care of him.
- 17 Q. Do you recall receiving some eviction papers in July of 2006?
- 18 A. Yes.
- 19 Q. What was that about?
- 20 A. My sister was trying to have me put out of my dad's house.
- 21 Q. You were served with eviction papers?
- 22 A. Yes.
- 23 Q. Okay. What happened with that? Was it successful?
- 24 A. No, when they found out about the suit they threw it out.
- 25 Q. This lawsuit that we are here about today?

1 A. Yes.

2 Q. So it was dismissed as far as you know, the eviction was?

3 A. Yes.

4 Q. And there has been some testimony here today about how good a marriage your parents
5 had. You lived in the household your whole life until you were 18 or whatever and you
6 moved out, as an adult, correct?

7 A. Yes sir. I have always lived right around there. I had a trailer in the yard and I built a
8 house right out there on the road. As a matter of fact on the same farm.

9 Q. How was your parents' marriage?

10 A. Well they were like anybody else you know. Ain't nobody perfect. My marriage isn't
11 and there's isn't perfect. Ain't nobody got a perfect marriage. Everybody have their ups
12 and downs. But I can truly say one thing. I had good parents. I never wanted for
13 nothing. My dad worked forty two (42) years and we didn't want for nothing. We are
14 probably one of the best families in the neighborhood because we never wanted for
15 nothing.

16 Q. And they were married 53 years?

17 A. That is right. And my Mom took care, she was blessed to stay home when most women
18 wasn't able to stay home and raise their kids. They had to work. My momma never had
19 to work. She was blessed to be in our home all the time until we got up older to work.

20 Q. Do you ever recall any physical violence or anything going on?

21 A. No. My Mom and Dad they argued. That was common.

22 Q. All right.

23 A. All of them know that, the kids.

24 Q. Before December of 2005 did you ever hear your dad question or wonder about this
25 property being taken by anybody?

1 A. No.

2 MR. PYE: That is all I have of this witness.

3 THE COURT: Mr. Bennett.

4 MR. BENNETT: Thank you, Your Honor.

5 **CROSS EXAMINATION BY MR. BENNETT.**

6 Q. Mr. Moore you are a convicted felony aren't you?

7 A. No.

8 Q. You didn't get in trouble, get a felony on your record for trying to take contraband into
9 the women's prison?

10 A. No. What I got was I went to visit somebody in the prison and I had a firearm in the car
11 and I didn't know that I had not took it out and that is illegal or a law to carry one on
12 there. So it wasn't no big issue. I just had it in the car and they saw it. It wasn't
13 nothing I did.

14 Q. That was a visit that was going to be a conjugal visit wasn't it?

15 A. Yes.

16 Q. And you were going to be able to go in and out into the women's facility?

17 A. Yes.

18 Q. And you got in trouble for that didn't you?

19 A. I didn't get in trouble for that. I got for having a firearm, it wasn't illegal to have my gun
20 in the car but it was on that ground.

21 Q. Right. And you got in trouble because of that didn't you?

22 A. It was just illegal to have it on the grounds.

23 Q. And therefore you got in trouble because it was illegal didn't you?

24 A. If you want to call it that.

25 Q. Did you have to go to court because of it?

1 A. Yes, I went to court.
2 Q. When you allegedly heard this conversation at the Christmas Dinner in 2005, okay. Who
3 was with you?
4 A. When I heard the conversation.
5 Q. That is correct?
6 A. Me and my dad.
7 Q. Who else?
8 A. Nobody.
9 Q. You had meetings with your brothers and sisters in trying to determine what was going to
10 happen with your dad, when he was under the family court order to pay that money didn't
11 you?
12 A. I didn't have no meeting with my sisters and brothers about getting no money up for my
13 father.
14 Q. You know your father – did you know that, did you know that he was under a court order
15 to pay the money?
16 A. I know that.
17 Q. So you knew that your father was under a court order to pay some money and you knew
18 that your father wasn't working at the time, was he?
19 A. That is right.
20 Q. He was retired and was on social security, correct?
21 A. That is right.
22 Q. In poor health, would you agree with that?
23 A. Well he is eighty-eight (88) years old. To me, he is doing good.
24 Q. Well at the time he was about eighty-one (81), right?
25 A. He was doing good then.

1 Q. But he had a heart attack before, correct?
2 A. He get around just like I am getting around.
3 Q. I understand that sir but I am just asking you. He had a heart attack hadn't he?
4 A. Yes.
5 Q. And you knew that he had some heart troubles didn't you?
6 A. Yes.
7 Q. And he wasn't working, was he?
8 A. No, he was retired.
9 Q. And he had a Fifty two thousand & no/100 (\$52,000.00) dollar bill he had to pay and you
10 didn't talk to any of your brothers and sisters about this?
11 A. I did not talk to my sisters and brothers about no money paying out when my daddy had a
12 divorce.
13 Q. Did you talk to your dad about it?
14 A. No.
15 Q. You weren't concerned about it at all?
16 A. I said I hadn't talked to him about it.
17 Q. Well if you were concerned about it you would have talked to him wouldn't you?
18 A. My daddy had money in the bank.
19 Q. How did you know that?
20 A. Because I know my daddy. I have been knowing him all of my life. I have never known
21 my daddy not to have money.
22 Q. How much money did he have at that time?
23 A. I don't know exactly what he had.
24 Q. What is your wife's name sir?
25 A. Edna Moore.

1 Q. Now you claim that you don't live with Edna Moore just because you are taking care of
2 your father, is that true?
3 A. That is right.
4 Q. That is what you claim?
5 A. At this point, yes.
6 Q. Now what do you mean by that? What do you mean by at this point?
7 A. I come there to help take care of my father. That was the question you asked me. Why
8 was I staying there, right.
9 Q. Yes sir. But I am wondering what you meant when you said at this point. So at another
10 time were you living with your father instead of with Mrs. Edna Moore for a different
11 reason?
12 A. Not really.
13 Q. Well not really sounds like possibly or maybe, is that true?
14 A. Listen I have always been - I could be at my momma and daddy's house any time. It
15 ain't never had to be no certain time.
16 Q. I understand that sir. What I am asking about though is your testimony that you are
17 staying at your father's house only because you are wanting to take care of him?
18 A. That is right.
19 Q. And you said something to the effect of that is true at this time?
20 A. Yes.
21 Q. My question to you is does that mean that there was a time previously that your taking
22 care of your father was not the primary reason why you were living there?
23 A. Well once upon a time it probably was.
24 Q. Well tell me about that once upon a time?
25 A. Well I have stayed there. I have stayed with my father.

1 Q. Right.

2 A. And I ain't the only one in the family that has stayed there with my father and momma.

3 Q. Well I am asking you about ----

4 A. I don't understand your question. What you asked, I answered.

5 Q. I am sorry. I will try to rephrase it to make it a little more specific for you, okay. Did

6 you in fact go and stay at your father's house because your wife, Edna Moore, had filed a

7 petition with the court to be protected from you and to keep you away from your home?

8 A. It ain't never been one filed really to keep me. You know, I know that there was one - it

9 was dropped I know.

10 MR. BENNETT: Defendant's Exhibit 3 for identification purposes, Your Honor.

11 THE COURT: All right.

12 **MR. BENNETT INTRODUCES A COPY OF A PETITION FOR ORDER OF**

13 **PROTECTION, MARKED AS DEFENDANT'S EXHIBIT 3 FOR IDENTIFICATION.**

14 Q. Sir I am going to show you a document --

15 A. I know the document.

16 Q. You say that you know that document?

17 A. Right.

18 Q. How do you know that document?

19 A. Because I know that it was dropped.

20 Q. Sir have you ever seen that document?

21 MR. HASKELL: I object.

22 A. What has that got to do with this.

23 THE COURT: Wait just a minute.

24 MR. HASKELL: Your Honor, I am not sure this is a basis for the petition to impeach someone

25 because there is a petition for order of protection filed in 2001?

1 MR. PYE: There is no order pursuant to that in Court.

2 MR. HASKELL: I don't understand what — you know is he trying to get him to say that he was
3 staying down there because he couldn't stay with his wife or that somehow he is not truthful for
4 that. I don't understand. I don't know that this has ever been adjudicated. There is no order.
5 Mine is not a filed copy. I just don't know if this is a proper, if a proper foundation has been
6 laid to I guess to try to impeach the witness on the basis of this petition.

7 MR. BENNETT: Your Honor, I can impeach a witness with anything that I can use and the
8 question is related to whether or not the status of this particular order has been resolved is a
9 series of questions I am going to ask next.

10 MR. HASKELL: Well what is the relevance of that?

11 THE COURT: Wait just a minute. This petition was not filed by him.

12 MR. BENNETT: Your Honor.

13 THE COURT: Now how can he even testify that petition was even filed. He said that he was
14 aware of it but he didn't file it.

15 MR. BENNETT: That is my next question. Did his wife file it? Did she tell him? Did she in
16 fact tell him to move out of the house? Did she in fact tell him that if he came back to the house
17 she was going to call the police on him.

18 MR. HASKELL: So what?

19 THE COURT: Is there an order on it? Is there an order that has been entered on that case?

20 MR. BENNETT: I do not know. I will ask the witness.

21 THE COURT: All right. Go ahead and ask him.

22 Q. Sir do you know if there is an order?

23 A. No, they dropped it. And the only reason that you got this is because my sister got it out
24 of my room at my daddy's house. That I the only reason that you got the copy.

25 Q. You say that there was —

1 A. Wait a minute. I say the only reason you got that copy is because my sister got it out of
2 my room out there at my daddy's house. Because I had it on the dresser.
3 Q. I heard your opinion sir. What I am asking you though is you said ---
4 A. It was dropped. It was dropped.
5 Q. If you will let me finish my question please. You said they dropped it. When you say
6 they, who do you mean?
7 A. The Judge down there. We went down there. They dropped it and dismissed it.
8 Q. So you did go to Court with your wife?
9 A. I didn't have to. We went down there and they dropped it. I just had to show up.
10 Q. You say that you showed up. Did you show up at court?
11 A. No. We were just down there at the thing and they dropped it.
12 Q. What do you mean by thing?
13 A. Down there here we had to go. And I just had to come down there and they dropped it.
14 MR. PYE: Your Honor, for the record I am going to object to that document being introduced
15 into evidence. There is nobody here to authenticate it. The person that drafted it is not here.
16 THE COURT: It is not admitted at this time. The only thing it was for was for ID. It is not
17 admitted.
18 Q. You go by Brut, correct?
19 A. Sometimes.
20 Q. Mr. Moore your house it abuts or is right next door, it shares a common line with the
21 property that is your father's correct?
22 A. I guess you could say that.
23 Q. I am asking, I mean?
24 A. My house is built on the same farm as the land is. But I bought a place. My daddy sold
25 me where I am at.

1 Q. When did he do that?

2 A. I can't remember the year but he sold it to me when I built my house.

3 Q. Okay. So it is where you built your house?

4 A. Right.

5 Q. And right next door to that house there is some land that used to have trees until about

6 three or four months ago, correct?

7 A. What trees.

8 Q. Well that is what I am asking you. There were some trees on the land that was your

9 father's land?

10 A. And there are still trees on my father's land.

11 Q. I understand that too, but I am asking you specifically about some trees that you

12 bulldozed down didn't you?

13 A. What do you mean bulldozed down.

14 Q. I mean got in a bulldozer and pushed them over?

15 A. I don't drive no bulldozer. I don't own a bulldozer.

16 MR. BENNETT: For identification purposes if we could mark these two as 4 and 5. The one of

17 the house, if we could, number 4 please.

18 THE COURT: All right counsel. It is for identification only.

19 **MR. BENNETT INTRODUCE FOR IDENTIFICATION A PICTURE OF A HOUSE,**

20 **MARKED AS DEFENDANT'S EXHIBIT NUMBER 4 FOR IDENTIFICATION.**

21 **MR. BENNETT INTRODUCES FOR IDENTIFICATION A PICTURE OF SOME**

22 **TREES, MARKED AS DEFENDANT'S EXHIBIT NUMBER 5 FOR IDENTIFICATION.**

23 Q. Mr. Moore, I am handing you what has been marked for identification purposes as

24 Defense Exhibit 4, what does that photograph show?

25 A. That is my house.

1 Q. That is your house?
2 A. That is right.
3 Q. That is not where you live though but that is your house?
4 A. That is my house.
5 Q. Where Edna lives?
6 A. It is my house.
7 Q. I understand that sir?
8 A. I think it is registered in my name.
9 Q. Okay. And I hand you now Defendant's Exhibit 5.
10 A. What.
11 Q. That photograph, that is Defendant's Exhibit 5.
12 A. What about it.
13 Q. What does that picture depict?
14 A. I don't see nothing but trees. And there are trees out there.
15 Q. In your opinion does it look like those trees have been pushed over?
16 A. I don't see nothing but trees.
17 Q. Do you know where that land is in relationship to your house?
18 A. I pushed some trees off of my line and I pushed them down on daddy. So what is the
19 problem.
20 Q. When did you do that?
21 A. I don't remember.
22 Q. Well try to help me out a little bit?
23 A. I don't remember. I know that I pushed some trees down. I don't remember.
24 Q. Okay Do you think that was sometime this year?
25 A. Some of them were and some of them wasn't.

1 Q. When you say on your dad's land, that is the land that is in question here in court today?
2 A. My land is right next to it. I got land there.
3 Q. I understand that sir but you just testified that you pushed some trees down onto your
4 dad's land. I am asking you sir —
5 A. Well the trees—
6 Q. Let me finish please. I am asking you whether that land that you refer to as being your
7 dad's is the land that is in question here today in court?
8 A. I am tied to it, yes.
9 Q. Now you testified about a confrontation between your sister Jeannette and your father
10 sometime in 2006, do you remember that? What you testified about?
11 A. Yes.
12 Q. Who all was present during that confrontation?
13 A. There wasn't nobody but me and my daddy and her.
14 Q. Whether did this alleged confrontation take place?
15 A. In his house in the den.
16 Q. When did it take place?
17 A. I can't remember the date. Sometime in 2006. I don't remember the dates or what.
18 MR. BENNETT: One moment please, Your Honor.
19 THE COURT: All right.
20 MR. BENNETT: Thank you, Your Honor.
21 THE COURT: All right. Anything further counsel? Mr. Pye?
22 MR. PYE: No sir.
23 THE COURT: All right. You may step down.
24 **JOYCE FOSTER, BEING DULY SWORN,**
25 **TESTIFIES AS FOLLOWS:**

- 1 **DIRECT EXAMINATION BY MR. PYE.**
- 2 Q. What is your name?
- 3 A. Joyce Foster.
- 4 Q. Do you know James Moore?
- 5 A. Yes, I do.
- 6 Q. How do you know him?
- 7 A. He is my great uncle.
- 8 Q. What relation would that make you to Jeanette Benson?
- 9 A. She and I are cousins.
- 10 Q. Are you also neighbors?
- 11 A. We are neighbors and cousins.
- 12 Q. Okay. Growing up were you close to Mr. Moore?
- 13 A. Yes.
- 14 Q. Did you live near him?
- 15 A. Yes.
- 16 Q. How often would you see him?
- 17 A. Every day.
- 18 Q. Can he read?
- 19 A. No.
- 20 Q. How do you know he can't read?
- 21 A. Growing up we know he can not read. Allean took care of everything.
- 22 Q. When did Mr. Moore first express to you that he suspected something wrong with his
- 23 property?
- 24 A. He came by my house on January 1, New Year's of 2006, and he was very upset.
- 25 Q. What did he say?

1 A. He was blurring out everything. It was just all bubbling out of him all at one time. He
2 was trying to tell me that he had found out that he didn't own his land any more. He was
3 trying to apologize for earlier incidents in the family with the division.
4 Q. Let me stop you right there. When you said he found out that he didn't own his house
5 any more elaborate on that?
6 A. He had found out that the property had been transferred into Thomas and Jeannette's
7 name.
8 Q. He knew that on January 1, 2006?
9 A. Well he suspected it and they were researching it. And he was just about to confirm it.
10 Q. Okay. What made him suspect it?
11 A. He told me the incident about the jeep. Because he tells it in a story. You have to listen
12 to him but he tells you in a story and he tells it over and over. He told me about going to
13 Christmas dinner with Thomas and Jeannette down to Robert's and getting up to his
14 driveway has an incline so as you get to the incline of his driveway you are looking over
15 at his old homestead. That is what he failed to tell you. And down at the old homestead
16 there is a house still standing down there surrounded by these trees. Brut, James, Jr., that
17 we call Brut, had parked an old jeep and Thomas makes the comment what is that doing
18 down there and you know Papa he is alert to stuff like that.
19 Q. Papa is Mr. Moore, right?
20 A. Yes, Mr. Moore.
21 Q. All right.
22 A. Well he is alert to it. In his mind he said to me I didn't say nothing but I was listening to
23 him when he said that. And then he said Jeannette tried to hush him.
24 Q. When Mr. Benson made that comment he was talking to Jeannette?
25 A. Yes, Mr. Benson was talking to Jeannette.

1 Q. All right.

2 A. And Papa heard him.

3 Q. To your knowledge is that the first incident that would have made him aware that his
4 house may not be in his name any more?

5 A. He went on to tell me about the picking up of the beer cans on the road because Papa
6 picks up beer cans. Everybody knows he did that when he had his open heart surgery.
7 He goes throughout the neighborhood picking up beer cans. Well he said on this
8 particular day, he was standing out in the yard because it was a sunny December and
9 Thomas stops the truck and picks up a beer can. And he said you know something ain't
10 right with that because he don't pick up beer cans. He said everybody in the
11 neighborhood knows that I do it. And he, you know, just little things like that started
12 him curiosity. But then later on you know he told me about Tory. Getting Tory to look
13 up stuff for him.

14 Q. And tell me about the incident that occurred in July of 2006?

15 A. We had all attended Jamie Moore's, who is James Luther Moore, Jr's son, wedding
16 announcement.

17 Q. So that would be Marcus's brother?

18 A. That is Marcus's brother, the oldest one. He is James, III. He goes by Jamie. His
19 wedding announcement. We had attended it at the Evangel Cathedral and we were all
20 coming back home on Montgomery Road. Well we noticed some of the family members
21 were not there. Well that wasn't unusual because I think my daughter had been - my
22 daughter was one of the people that didn't attend, my oldest daughter. She was in contact
23 with Jeannette Benson and she found out that they had a wedding that day in their family
24 or some event going on and that is why they said that they didn't attend. But most of the
25 family attended Jamie's announcement. And when we get back on Montgomery Road

1 there are police officers all over the place. And that is so unusual for police officers,
2 especially to be at James Moore, Sr's house.

3 Q. The police officers were at James, Sr.'s house?

4 A. Yes, all of these cops. There was five (5) car loads of police, black and white units at his
5 house. So I had my daughter, Valida, my oldest daughter to pull into the driveway. I
6 said lets check on papa because he might be sick you know. And we get there and I
7 mean it is fire and hell storms up there. I mean people are out there shouting and
8 screaming and yelling out in the yard and the policemen you know are trying to - they are
9 going in and out of his house and James, Jr., Brut, is in the house with Papa. Well once
10 we found out that he was okay. Once I found out that Papa was okay, I got back into the
11 car and I let the windows down because I wanted to hear some of these comments being
12 made out there. Do you want me to go on.

13 Q. Yes ma'am. Go on.

14 A. And they were shouting you know about each other.

15 Q. Who was shouting?

16 A. Jeannette was doing most of the shouting. She was trying to get the police officers to put
17 James, Jr., Brut, out.

18 Q. Okay.

19 A. She was trying to get him put out.

20 Q. Okay.

21 A. She was trying to get him put out.

22 Q. All right.

23 A. And everybody was trying to appease her. My daughter was, because I was just sitting in
24 the car looking at it because I was just in shock. And my daughter said why do you want
25 him put out because he is taking care of Papa. And she was shouting, oh! He has got a

1 gun in there and all of that kind of stuff and you know that is a dangerous thing to say
2 with five (5) car loads of policemen, he has got a gun.

3 Q. Right.

4 A. Well my daughter approached the officer and said he has guns but he is not violent like
5 that. He doesn't run out shooting and carrying on and doing all of these things. So Papa,
6 being Papa he told the policemen yes I have guns and I am laying on two of them right
7 now under my bed. I mean he told them the truth. Well we kept on and Jamie and Tory
8 finally came back from Evangel. They get home.

9 Q. Let me ask you a question. Why were the police officers there any way, do you know?

10 A. I don't know who called them.

11 Q. Okay.

12 A. I don't have an idea how all of those cops got out there.

13 Q. All right.

14 A. And to what degree. Why so many car loads of them came.

15 MR. BENNETT: Excuse me ma'am. Your Honor, I object to the relevance. The answer has
16 gone on. I don't even know what the question was.

17 MR. PYE: All right.

18 THE COURT: All right. Lets stop the narrative and ask her a question if you want to proceed
19 at this point.

20 Q. Mrs. Foster did you hear Mrs. Benson make any threats that day?

21 A. Yes. Mrs. Benson was very angry. She was very upset.

22 Q. Who did she threaten?

23 A. She was threatening her daddy again. She was talking about putting him out and putting
24 him over there in the house with Brut and Edna. She was wanting to put him across the
25 road. And I thought you know that is just not right. That is kind of ugly to be saying

1 about your daddy. Especially elderly, and he was sick, too. He wasn't feeling good that
2 day. He couldn't even attend the event. And I knew she was his care giver so we were
3 kind of divided.

4 THE COURT: Lets make sure we are responsive to the question.

5 MR. PYE: Okay.

6 A. She had been—

7 THE COURT: Wait, wait. If he asks you a question then answer it.

8 Q. For the record you heard Mrs. Benson threaten Mr. Moore with an eviction? Yes or no?

9 A. Yes.

10 Q. And that was in July of 2006?

11 A. Yes.

12 Q. Okay. Was anyone arrested that day?

13 A. No. But you could hear the officer tell her ma'am you need to take this to court. You
14 need to go back to court and get the proper paperwork. Go get an eviction paper.

15 MR. BENNETT: Objection, Your Honor. I asked that everything after no be stricken. It is
16 unresponsive to the question. The question was did she hear anything – well was anybody
17 arrested at that time, no. The answer was no. Everything pass no is unresponsive to the
18 question and I ask that it be stricken from the record.

19 THE COURT: All right. Everything after the answer to the question. The question was, was
20 anybody arrested that day and the answer to that is no. Strike the rest of that response.

21 Q. Was Mrs. Benson told to so file eviction papers if she wanted Mr. Moore, Jr., out?

22 A. Yes.

23 Q. Did she in fact do that?

24 MR. BENNETT: Objection. Speculation or lack of foundation.

25 THE COURT: I will overrule that.

1 Q. Did Mrs. Benson file eviction papers to your personal knowledge?

2 A. Shortly after that James, Jr., Brut, came out with his paper in his hand, yes.

3 Q. You saw him?

4 A. Yes.

5 Q. Do you know where Mrs. Benson lives now?

6 A. Yes. She still resides at I am sorry. She lives out at 93.

7 Q. She has moved recently, correct?

8 A. No, that is her home. is.

9 Q. Okay. Is she living in a five (5) bedroom home now?

10 A. The five (5) bedroom home. Jeannette and I are involved in so many organizations

11 together. We have similar friends. Talking to our mutual friends she has told them she

12 has —

13 MR. BENNETT: Objection, Your Honor.

14 THE COURT: All right. I will sustain that.

15 Q. Has Mrs. Benson ever told you that she has a new home?

16 A. No, no. She has never told me.

17 Q. Does her daughter now have a new home —

18 MR. BENNETT: Objection, Your Honor. Relevant.

19 THE COURT: I will allow that. I will allow that. Go ahead.

20 A. I don't know. I don't know if it is not over five or six years old.

21 Q. All right.

22 MR. PYE: That is all I have, Your Honor.

23 THE COURT: All right. Counsel?

24 **CROSS EXAMINATION BY MR. BENNETT.**

25 Q. Just so I am clear. Mrs. Foster the eviction papers that you claim that you have seen.

1 Those were not for James Moore, Sr.?
2 A. No.
3 Q. Those were for James Moore, Jr., also known as Brut?
4 A. Yes.
5 Q. That is correct?
6 A. Yes.
7 Q. Now this allegedly altercation for lack of a better word there on Montgomery Street that
8 you said that you saw and the police officers and so forth, okay. When was that?
9 A. That was Jamie's party and it was somewhere, June or July of 2006. He got married in
10 November.
11 Q. And you say that you were there and you rolled your windows down so that you could
12 hear what was going on, correct?
13 A. They were outside, yes.
14 Q. So you just parked in the street and rolled down your windows?
15 A. We were parked in the yard.
16 Q. Whose yard?
17 A. James, Sr.
18 Q. Okay. And the police were there at James, Sr.'s house?
19 A. Yes sir.
20 Q. And nobody asked you to move your car?
21 A. No.
22 Q. There were five or six other cop cars there?
23 A. There was so many things going on that day. You have just got to know when families
24 are hooping and hollering and yelling and screaming and running in and out of the house
25 and slamming doors, it is a lot going on. That is why I chose not to get out there and get

1 involved in it.

2 Q. Well walk me through it a little bit because it sounds like if you pulled into the driveway

3 and there were five or six cop cars there – was there an ambulance?

4 A. No. No ambulance.

5 Q. Just five or six cop cars?

6 A. Yes.

7 Q. How was there any room to pull into the driveway?

8 A. We are out in the country. You pull on the grass, you pull to the side. We are in the

9 country.

10 Q. A pretty long driveway?

11 A. Yes, he has got a long driveway and a big yard.

12 Q. And you pulled over there and the police they have their lights and sirens going?

13 A. They have got everything going.

14 Q. And you are just sitting there with your windows down?

15 A. Yes.

16 Q. And this is when you claim that you heard all of this?

17 A. Yes.

18 Q. Is that a yes ma'am, I am sorry? We need to have that for the court reporter.

19 A. Yes.

20 Q. Who else was in the car with you?

21 A. My older daughter, Valida.

22 Q. What is her name?

23 A. Valida, v-a-l-i-d-a. Valida Foster.

24 Q. And how old is Valida?

25 A. Valida is twenty-seven (27).

1 Q. Where does she live?
2 A. She lives at ad in Duncan.
3 Q. Now when you said that in January of 2006, Mr. Moore, Sr., came to you and he was very
4 upset and he was trying to apologize for earlier incidents. What is that incident?
5 A. He is upset. He is upset because things were starting to make sense. Like he mentioned
6 earlier Jeannette when are you going to get this land straighten out. The straightening
7 out of the land. After his sister died, his sister Ambrose died, who I was taking care of.
8 I was paying the taxes on that property and it had all the heirs on it, listed on that
9 property.
10 Q. I hate to interrupt you but this will make it a little easier, I hope. When you are talking
11 about that property you are talking about the thirty five to thirty six acres?
12 A. That adjoins the seventeen (17).
13 Q. That adjoins the seventeen (17) right there at
14 A. Yes.
15 Q. Okay. I apologize for interrupting you. Go ahead? So you say that you have been
16 paying the taxes on the land?
17 A. Yes. Paying the taxes on it and the heirs' names are still on the property. Well
18 Jeannette got upset about that somewhere around the time of this divorce and stuff and
19 she was using Jack Heckman. She had me pulled into court with Jack and she accused
20 me of taking the land. Well I told her, I tried to explain then. I didn't take the property.
21 I am only paying taxes on it so that the state doesn't take it. So that Spartanburg County
22 doesn't take this property up here. And that is what Papa was alluding to. Jeannette
23 kept telling him, I am going to get it straighten out. I am going to get a lawyer and I am
24 going to work on dividing that property up right.
25 Q. Okay. And what happened with that property?

1 A. What has happened to it now.

2 Q. Right?

3 A. I don't know. I haven't paid taxes on it since she got involved in it. After she got
4 involved with it I went up to Jack and signed off on it and she has been involved in it.

5 Q. When was that?

6 A. I don't know. That has been a while.

7 Q. Ma'am, I am not trying to harass you. I am just trying to see if you can't, when you think
8 about it a little more quietly, can you give me some idea of when it was? Like a year?
9 Was it before the divorce, 2002?

10 A. Yes, that was before that divorce.

11 Q. Okay. So you think that it might be around 2000?

12 A. Yes. Something like that. My father was still living and he was on the property.

13 Q. So what was your father's name?

14 A. Artis Moore.

15 Q. Artis Moore?

16 A. Yes.

17 Q. Now is this the property that the Moores had some kin folk up in Ohio that were also on
18 the deed or were part of the property owners?

19 A. They are a part of the property owners. They were supposed to have been on the deeds,
20 yes. They are heirs. It is heir property.

21 Q. Now in your opinion, you have been in court all day today is that right?

22 A. Yes, I have.

23 Q. Did you hear Mr. Moore, Sr., testify about the fact that he had inherited property from all
24 of his brothers and sisters?

25 A. Yes, I heard his testimony.

1 Q. In your opinion is that property that he inherited or that he claims that he inherited on the
2 witness stand today, is that the same thirty five (35) acres that we have been talking
3 about?
4 A. No, because you have thirty five (35) acres that adjoin him directly. It is right beside his
5 seventeen (17) and then you have a second thirty five (35) that is in Wellford, up by the
6 landfill.
7 Q. The second thirty five (35) that is in Wellford by the landfill, is that in your opinion what
8 he was talking about when he said that he inherited land from his brothers and sisters?
9 A. Yes.
10 Q. Let me ask you a question ma'am. Why is it that you know all of this about his property?
11 A. I am fifty seven (57) years old. I was born there in that family. I was born in that family.
12 It is just like Tory said. We are a family. Everything is discussed. The property, all the
13 children and grands know that it is heir property.
14 Q. You say everything was discussed. So were you privy or did you know about the
15 divorce papers that had Mr. Moore, Sr., having to pay his ex-wife Fifty two thousand
16 dollars?
17 A. I wasn't aware of the financial amount of money but I was aware of the divorce.
18 Q. So the money was not apart of that everything that was discussed?
19 A. Well there was some money and some figures thrown around but it wasn't out in the
20 public.
21 Q. Lets talk about the first thirty five (35) acres that adjoin the property that is in issue here
22 today, okay?
23 A. Okay.
24 Q. Did you ever file any paper work with the probate court?
25 A. I did.

1 Q. Based on that property?
2 A. Yes.
3 Q. And you filed that on your own?
4 A. I did.
5 Q. Did you by chance lie in filing that paper?
6 A. No, I did not.
7 Q. Did you claim that you were the biological daughter of Mr. James Moore, Sr.?
8 A. No. I said that I was his sister's daughter, who raised me. Yes. No, I have never
9 claimed to be James Moore's daughter. No, I haven't.
10 Q. Did you ever fill out any paper work that indicated that you were the biological daughter
11 of James Moore, Sr?
12 A. No.
13 Q. Did you ever make any statements to anyone that you were the last remaining heir on that
14 property?
15 A. No.
16 Q. What is your personal opinion or what are your personal feelings about Mrs. Jeannette
17 Benson?
18 A. I love Jeannette. Jeannette and I were raised up like sisters. We all are family.
19 Q. You don't have any problems with her?
20 A. The only problem that I am having right now is Papa, because he is unhappy and it has
21 been stated that we want him happy. We want him happy
22 Q. Since you have known Jeannette have you known her to be a loving and supportive
23 daughter to her daddy?
24 A. I don't know how to answer that right now because I have since found out things about
25 her that she has done to him and other family members. On one hand she was loving but

1 then on the other she was doing things and telling other people and she was rightly
2 dividing us.

3 Q. How can you say that you are still her friend and you love her if you believe that?

4 A. I believe it because it is true. I know things that she had divided this family on and this
5 property is one of those issues.

6 Q. You say that in spite of the fact that it wasn't Mrs. Benson that brought this lawsuit, do
7 you realize that?

8 A. It was Mrs. Benson that initiated it though. She knew that taking Papa's land from him
9 and giving it to her and her husband would set this family off. She knew that.

10 Q. Do you know that she did that at Mr. Moore's request?

11 A. Did he request that of her.

12 Q. That is what I am asking you. Did you know that?

13 A. Oh, I thought that you were telling me that. Did he request that of her.

14 Q. I am asking you a question ma'am..

15 A. I don't know why she started that.

16 Q. I am asking you specifically ma'am?

17 A. I don't know. I can't answer what her reasons for doing it were because she knew that
18 Papa would be upset.

19 Q. If you don't mind let me ask my question and then you can answer. Did you know that
20 she was requested by Mr. Benson, Sr.

21 MR. HASKELL: Mr. Moore.

22 A. Mr. Moore, James Moore.

23 Q. I am sorry, Mr. Moore, Sr., to do that?

24 A. To take his property.

25 Q. To buy his property from him so he can payoff what he owed his ex-wife?

1 A. No.
2 Q. You didn't know that?
3 A. No. That has never been mentioned, no.
4 Q. What do you do for a living ma'am?
5 A. Right now or before.
6 Q. Well I am speaking about right now?
7 A. I am retired from District 5, Spartanburg District 5. I was a school bus driver and a
8 personal assistant, teacher's assistant.
9 Q. When did you retire?
10 A. I retired in '05.
11 Q. What did you do prior to that?
12 A. In '05, well let me go back to when I went to work in District 5. I stayed home three (3)
13 years and took care of James Moore, Sr., his sister, Ambrose. I kept her for three (3)
14 years at home.
15 Q. I am sorry. Is that Ambrose.
16 A. Ambrose, Aunt Pat. I kept her for three (3) years in my house and before that I worked
17 for the Department of Social Services.
18 Q. Did you retire from the Department of Social Services?
19 A. Yes, I did.
20 MR. BENNETT: One moment please, Your Honor.
21 THE COURT: All right.
22 MR. BENNETT: Thank you, Your Honor. I have no further questions.
23 THE COURT: All right. Mr. Pye anything further?
24 MR. BENNETT: Your Honor, I am sorry. Subject to recall.
25 THE COURT: Anything?

1 MR. PYE: No sir.

2 THE COURT: All right. Gentlemen it is twenty till five. I don't know that we will get
3 through another witness before the end of the day. So we are going to stop for the day and
4 reconvene at nine thirty on Monday morning. At nine thirty on Monday morning and you have
5 the day set aside on Monday. That is August 25th, all right.

6 MR. BENNETT: Yes sir, Your Honor.

7 MR. HASKELL: Thank you, Your Honor.

8 -----HEARING CONTINUED-----

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1 STATE OF SOUTH CAROLINA

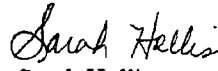
2 COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

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5 CERTIFICATE

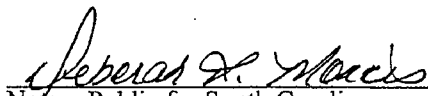
6
7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County
8 of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and
9 accurate Transcript of Testimony of the proceedings had at the hearing of the captioned case,
10 before the Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South
11 Carolina, on the 19th day of August, 2008.

12 I do further certify that I am neither of kin, counsel nor interest to any party hereto.

13 
14 Sarah Hollis
15 Court Reporter

16
17 **SWORN** to before me this
18 31st day of December, 2008.

19 Spartanburg, South Carolina.

20 
21 Notary Public for South Carolina
22 My Commission Expires: January 4, 2011.

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

COURT OF COMMON PLEAS

3 JAMES MOORE,

4 PLAINTIFF,

5 -VS-

6 JEANNETTE M. BENSON AND
7 THOMAS LEE BENSON, JR.,

8
9 DEFENDANTS.

TRANSCRIPT OF TESTIMONY

(2006CP42-3378)

10
11 REFERENCE HELD:

AUGUST 25, 2008.

12
13 B E F O R E:

HONORABLE **GORDON G. COOPER**,
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

14
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Attorneys for the Plaintiff.

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18 SMITH & HASKELL
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Attorneys for the Plaintiff

20
21 SALVINI & BENNETT, LLC
22 BY: **BRADLEY BENNETT**, ESQUIRE
Attorneys for the Defendants.

23
24 Sarah Hollis, Court Reporter
25

1					
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	JAMES MAXWELL KNOX				
4	(Mr. Pye)	4		12	
5	(Mr. Bennett)		9		14
6	ROBERT LEWIS MOORE				
7	(Mr. Bennett)	22			
8	(Mr. Pye)		31		
9	ROBERT JAMES MCMILLIAN				
10	(Mr. Bennett)	32		43	
11	(Mr. Pye)		39		
12	ADRIAN BENNETT				
13	(Mr. Bennett)	43		54	
14	(Mr. Haskell)		50		55
15	JOHN HENRY HECKMAN, III				
16	(Mr. Bennett)	56		73&74	
17	(Mr. Haskell)		64		74&75
18	JEANNETTE M. BENSON				
19	(Mr. Bennett)	77		114	
20	(Mr. Haskell)		97		
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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
<u>DEFENDANT:</u>			
Def. - 2	Copy of Order on Defendant's Motion to Alter or Amend.		68
Def. - 6	Individual Retirement Account Withdrawal. (copy)	82	83
Def. - 7	Copy of Cashier Check - January 14, 1999.		84
Def. - 8	Copy of Certificate of Deposit Receipt.		84

1 THE COURT: This is the case of James Moore versus Jeannette M. Benson and Thomas Lee
2 Benson, Jr. This is Case Number 2006CP42-3378. This is a continuation of the hearing that
3 was started on August 19, 2008. The Plaintiff was presenting its case. Counsel are you ready to
4 proceed?

5 MR. PYE: Yes sir.

6 THE COURT: All right.

7 **JANE MAXWELL KNOX, BEING DULY**
8 **SWORN, TESTIFIES AS FOLLOWS:**

9 **DIRECT EXAMINATION BY MR. PYE.**

10 Q. Please state your full name please?

11 A. Jane Maxwell Knox.

12 Q. Do you know James Moore, Sr?

13 A. Yes, I do.

14 Q. How do you know him?

15 A. My uncle.

16 Q. Okay. Do you know Jeannette Benson?

17 A. Yes, I do.

18 Q. How do you know her?

19 A. Second cousin.

20 Q. How familiar are you with Mr. Moore and the Bensons?

21 A. We live on the same street. I saw them every day. I used to babysit for the Bensons
22 when their kids were small.

23 Q. That was my next question. Did you spend much time with the Bensons growing up?

24 A. We lived next door. Like I said, I babysit her kids.

25 Q. You would see them every day?

- 1 A. Yes.
- 2 Q. Do you have personal first hand knowledge as to whether Mr. Moore can read?
- 3 A. Yes, I do.
- 4 Q. Can he read?
- 5 A. No, he can not.
- 6 Q. And you know that first hand?
- 7 A. Yes. I have seen him try to read something myself.
- 8 Q. Could he do it?
- 9 A. No.
- 10 Q. Who took care of Mr. Moore's finances prior to his divorce?
- 11 A. His wife, Allean.
- 12 Q. Can she read and write?
- 13 A. Yes.
- 14 Q. Is Mr. Moore still married?
- 15 A. No.
- 16 Q. Do you know when he got divorced?
- 17 A. I don't know exactly. I know that it was probably around 2000, I think.
- 18 Q. Do you have first hand knowledge of the circumstances surrounding the divorce?
- 19 A. Yes.
- 20 Q. What do you know about it first hand?
- 21 A. Mrs. Allean told me that Jeannette got involved in their marriage. She hired a private
- 22 investigator and made them get a divorce.
- 23 Q. Okay. Was this with your great uncle Mr. Moore's approval?
- 24 A. It was not with his approval. She just coerced him into doing it.
- 25 Q. Okay. Well if he didn't want a divorce why did he get one?

1 A. Because she made him Jeanette made him.
2 Q. Who took over his finances after the divorce?
3 A. Jeannette.
4 Q. Have you ever seen Jeannette get involved in any other marriages?
5 A. Yes, my parents.
6 Q. What are you talking about?
7 MR. BENNETT: Objection, Your Honor. Objection.
8 THE COURT: Hold on. Don't answer. What is your basis?
9 MR. BENNETT: Irrelevant.
10 MR. PYE: Your Honor, under Rule 406 it shows a pattern. She has done this before and she is
11 now doing it again.
12 THE COURT: Counsel?
13 MR. BENNETT: Your Honor, under Rule 404(b) this is impermissible character evidence. An
14 attempt to show conformity within testimony based upon Mrs. Knox's testimony is not to the
15 facts of this case but she is being asked to pass judgment as to whether or not she knows of
16 another incident where my client, Mrs. Benson, was involved in somebody's divorce. That is
17 not the issue in this trial. This is not regarding someone's marital status or whether or not there
18 ever was a divorce. The issue is whether or not Mr. Moore fraudulently or inadvertently
19 transferred ownership in this property. Even if, and we don't believe that he did but even if
20 Mrs. Benson did get involved in somebody else's marriage and we don't even believe that she
21 got involved in her parents' marriage, but if that is the case, that still doesn't show conformity
22 therewith for the acts and the specific conduct that is at trial here in this case. That being the
23 real estate transfer.
24 THE COURT: All right.
25 MR. PYE: Your Honor, Rule 404 that he is talking about is in criminal court. Talking about

1 the crimes. We are not saying that she committed a crime by doing what she did to this lady's
2 family. We are talking about Rule 406, we are in a civil proceeding here. And Rule 406 deals
3 with habit practice. It is a very short rule and it is very clear and it says that you can discuss
4 prior acts of a litigant to prove that they have a habit or routine of doing these things. We are
5 certainly not saying that she committed a crime by interfering with a marriage.

6 THE COURT: Counsel.

7 MR. BENNETT: Your Honor, specifically what 406 says is the evidence and the habit of a
8 person or the routine practice organization whether they are collaborated or not. Your Honor,
9 one person's testimony as to her opinion about another person's marriage does not demonstrate
10 habit, routine or any kind of organization. It is in essence testimony that counsel is trying to
11 elicit in an effort to try to sway this Court from feeling or to try to temper the feelings of this
12 court into believe that Mrs. Benson is not a good person in some manner because of her allegedly
13 involvement in Mrs. Knox's mother and father's marriage. It does not show habit or routine.

14 THE COURT: All right.

15 MR. PYE: Your Honor, counsel brought up 404(b) specifically and if you look at that it
16 includes not just crimes, other acts. And the last sentence of that Rule says it may, however, be
17 admissible to show motive, identity, the existence of a common scheme or plan, the absence of
18 mistake or accident or intent. And I am going to show the Court that Mrs. Benson did the exact
19 same thing to this lady's parents and now has her daddy's checking account in her name just like
20 she does Mr. Moore. Those facts are way to similar to ignore. It shows the scheme that this
21 lady has.

22 MR. BENNETT: Your Honor, again this Court is here today to find the ruling in the case
23 regarding the transfer of real property of James Moore, Sr. I do not believe that counsel would
24 be able, in his own assessment of 404(b) which does take it out of the criminal arena and does
25 allow it to come into civil court. But he can not show any type of connection to a common plan

1 schemes or artifice or organization to have this lady's mother and father's real property
2 transferred to my client because it is not there and therefore there is no common plan or scheme.
3 It does not go to show motive. It does not go to show identity. It would have to be offered for
4 the common scheme or plan scenario of Rule 404(b) and because it is not common. The fact,
5 the allegation that Mrs. Benson may in fact hold a power of attorney for another individual does
6 not mean that Mrs. Benson was planning what the Plaintiff's lawyer claims is the same plan or
7 scheme in trying to fraud somebody of their real property and therefore it should not be allowed
8 under 404(b).
9 MR. PYE: May I say something?
10 THE COURT: Yes.
11 MR. PYE: Your Honor, it is almost ire, if you let this lady testify. It is not just about money.
12 Mrs. Benson also took this lady's dad's house just like she did to Mr. Moore. She now has his
13 house and his bank account. It is very similar, if not exact.
14 THE COURT: All right. I am going to allow the testimony and overrule the objection.
15 Q. What happened with Mrs. Benson and your father after his divorce from your mother?
16 A. She took over the checking account, his house, power of attorney.
17 Q. She has the power of attorney over your father now?
18 A. Yes, she does.
19 Q. Is she on his checking account?
20 A. Yes, she is.
21 Q. Does she write checks off of his checking account?
22 A. Yes, she does.
23 Q. Do you have personal knowledge of that?
24 A. Yes.
25 Q. Okay. Is her name on the deed to his house?

1 A. Yes.

2 Q. Do you have personal knowledge of that?

3 A. Yes.

4 Q. Do you know whether or not she is now the beneficiary of his life insurance policy?

5 A. My father said so.

6 MR. BENNETT: Objection, hearsay.

7 MR. PYE: That is all I have, Your Honor.

8 THE COURT: All right. Is he here?

9 Q. Is your father here today?

10 A. No, he is not here.

11 THE COURT: All right. I will sustain that.

12 **CROSS EXAMINATION BY MR. BENNETT.**

13 Q. You don't like Mrs. Benson do you ma'am?

14 A. I don't dislike Mrs. Benson.

15 Q. Do you like her?

16 A. Yes.

17 Q. Do you think that she has done something sinister by all of this?

18 A. Yes, she has. It is not right to take from somebody else.

19 Q. So even though you think that she has done something wrong or sinister you still like her

20 is that what you said?

21 A. I have love for everybody. You love your enemies and you love your friends. You love

22 everybody.

23 Q. Lets talk a little bit about these claims of yours that Mrs. Benson has somehow put herself

24 in your father's life? When did that happen? When in fact did she take over in your

25 word's Mr. Knox, is that his name, your daddy's name?

1 A. No.

2 Q. What is his name?

3 A. White.

4 Q. Mr. White's checking account. When did that take place?

5 A. Soon after my parents were divorced.

6 Q. When was that?

7 A. They got divorced I believe in '97 or '98, somewhere around there.

8 Q. So you can't pen it down any closer than two years? You don't know when she

9 supposedly took over your father's checking account?

10 A. I don't know the exact day, no, I do not.

11 Q. How is it that you know that she did?

12 A. Because I saw her name on his checking account and my father told me.

13 Q. Any chance your father wanted Mrs. Benson to help him out?

14 A. At that time I am assuming that he did.

15 Q. So in other words there is nothing sinister there. She was doing what your father

16 requested her to do?

17 A. At that time.

18 Q. What about his house? You claim that she had the deed put into her name?

19 A. Yes.

20 Q. When did that take place?

21 A. I do not know an exact date or time.

22 Q. Give me a range ma'am?

23 A. I do not know.

24 Q. So you made these claims and you say that you know this but you don't know when you

25 knew this?

1 A. It was shortly after their divorce in like '98, in '97 or '98, somewhere around then.
2 Q. What is your relationship like with your father?
3 A. What do you mean, what is it like.
4 Q. You didn't get along with your father during your parents' divorce did you?
5 A. We got along until Mrs. Benson would always interfere and tell lies on me and then there
6 were problems.
7 Q. You took your momma's side during your parents' divorce, didn't you?
8 A. No, I didn't.
9 Q. You ended up not having a relationship with your father for a long time isn't that true?
10 A. I have always had a relationship with my father.
11 Q. You have not had a relationship where you were apart of his life on a daily basis however
12 after this divorce did you?
13 A. That was because of Mrs. Benson.
14 MR. BENNETT: One moment please, Your Honor.
15 Q. You are claiming Mrs. Benson was the reason behind your parents getting a divorce, is
16 that true?
17 A. Yes.
18 Q. What is your momma's name?
19 A. Margie.
20 Q. Margie what? White?
21 A. Alexander.
22 Q. Margie Alexander. Isn't it true that Margie Alexander was the Plaintiff in the family
23 court divorce. In other words, she brought that lawsuit against your father for a divorce?
24 A. I believe my father is the one that divorced my mother, I think.
25 Q. But you don't know that for a fact, do you?

1 A. No.

2 MR. BENNETT: Thank you, Your Honor. No more questions.

3 THE COURT: Counsel.

4 MR. PYE: One followup.

5 THE COURT: All right.

6 **REDIRECT EXAMINATION BY MR. PYE.**

7 Q. Mr. Bennett asked you about Mrs. Benson being the cause for your parents' divorce. Do

8 you know anything about a phone tap?

9 A. Yes. She put a tap on my father's phone.

10 MR. BENNETT: Objection, Your Honor. Objection, Your Honor. Beyond the scope of cross.

11 MR. PYE: He crossed her on how she interfered with her parents' marriage and what caused the

12 divorce. That opens the door for me giving a specific reason of why the divorce occurred.

13 MR. BENNETT: I crossed her, Your Honor, on whether or not she knew that her Mom was in

14 fact the impetus for the divorce, as the Plaintiff in the lawsuit for divorce.

15 MR. PYE: That question came up later, Your Honor.

16 THE COURT: I am going to allow it. Overruled.

17 MR. BENNETT: Your Honor, I would ask for an offer of proof then prior to it being elicited in

18 the testimony?

19 MR. PYE: She testified that she has first hand knowledge.

20 THE COURT: I am not going to require that. I am going to rule that your objection is

21 overruled and your cross opened the door. All right.

22 MR. BENNETT: Your Honor, I am not trying to argue with the base of your ruling. I do have

23 some concerns about any possible criminal liability that my client might be facing as a result of

24 this questioning. I have not been told of this. I didn't know anything about this. And I am just

25 curious as to where it is leading and I would like to have the ability to know that prior to it

1 coming out on the record.

2 MR. PYE: Well if he is asking if we are going to turn her into the solicitor's office, we are not

3 going to do that.

4 MR. BENNETT: That I not my question, Your Honor. I am obviously concerned about what

5 the testimony allegedly is going to —

6 THE COURT: All right. Why don't you ask some other questions relating to that before we

7 get to that.

8 MR. BENNETT: Thank you, Your Honor.

9 THE COURT: That particular issue.

10 MR. PYE: All right.

11 Q. Mrs. Knox do you have any desire to see Mrs. Benson criminally prosecuted?

12 A. No.

13 Q. Okay. Do you have first hand knowledge of any interference between your parents'

14 marriage and Mrs. Benson?

15 A. Yes.

16 Q. Okay.

17 A. She would always tell my father lies about my mother and my father would believe her

18 and it always caused problems to the point where they were divorced.

19 Q. Okay. Do you have first hand knowledge of a wire tap?

20 A. I do.

21 Q. Okay. What happened?

22 A. I saw the wire tap on the phone where she put it in my father's garage where he works on

23 the cars and the phone line it was hooked up to the home phone. So it was a tap on the

24 phone. And it was recording all phone conversations.

25 Q. And do you know personally Jeannette Benson put the tap on the phone or had it put on

1 the phone?

2 A. Later my father said that she did.

3 Q. Okay.

4 MR. PYE: That is all I have

5 MR. BENNETT: Objection Your Honor. Again hearsay in regards to the last question and

6 answer.

7 THE COURT: I will sustain that.

8 MR. PYE: No more questions, Your Honor.

9 THE COURT: All right. Counsel any further questions?

10 **RECROSS EXAMINATION BY MR. BENNETT.**

11 Q. Mrs. Knox you didn't see Jeannette Benson put any kind of listening device into the

12 telephone did you?

13 A. No, I didn't.

14 Q. You didn't see her engage in any type of criminal conduct have you?

15 A. No.

16 Q. Thank you.

17 MR. BENNETT: Thank you, Your Honor.

18 THE COURT: Mr. Pye?

19 MR. PYE: Nothing further, Your Honor.

20 THE COURT: All right.

21 MR. HASKELL: Your Honor, that concludes our case. Ordinarily Your Honor, I would move

22 for a directed verdict under Rule 50 but since this is a non-jury matter, with Your Honor being

23 the trier of fact, I don't know that is necessary. However, I would like to place it on the record

24 that the motion was made. If you would like for me to argue in support, I would be glad to do so

25 at this time. Your Honor, could preserve or I could preserve my argument.

1 THE COURT: Do you want to go ahead and argue on the motion, that is fine.

2 MR. HASKELL: Your Honor, basically this case involves a situation where we have a man
3 who was illiterate, unable to read, who relied on his wife pretty much most of his adult life to
4 handle his business affairs and to take care of all business that involved reading and
5 understanding documents and things of that nature. Once, he became divorced from his wife he
6 turned to one of his daughters, known as Jeannette Benson, to basically become his surrogate and
7 take the position that his wife had formerly held to handle his affairs. Our case deals with a very
8 specific situation involving the transfer of the house and the taking of some money. There has
9 been some question addressed at this time about the statute of limitations has expired. The
10 evidence presented by several witnesses, including the Plaintiff, was that he first learned of his
11 house being moved and became suspicious of that around December of 2005. It involved a
12 vehicle parked on his property and he turned to his grandson Marcus Moore to investigate and
13 basically early in 2006 they found out what had happened. But there is no evidence that my
14 client knew that he had signed any documents transferring his home to the Defendants until
15 December 2005 - January 2006, time frame. The Complaint was filed well within the three year
16 period of statute of limitations from that date. That is the first time that they had notice that this
17 had occurred. The most important evidence in this case, Your Honor, are the documents. I
18 would submit that people can testify to what they remember, to what they saw. The documents
19 are clear. They are objective. They say what they say. Basically, we have documents in the
20 record that show that Mr. Moore endorsed a check for Twenty nine thousand two hundred thirty
21 three dollars, I might be wrong on that, in the same day and the same amount of money was
22 deposited into an account for a CD in the name of Jeannette Benson, the very same day. Also,
23 the documents show that around the time of the purchase of this house, of this transaction, this
24 purchase transaction this CD was taken down. It was taken down earlier. One hundred twenty
25 two dollars and some cents early withdrawal penalty was assessed. We would submit that

1 money, Mr. Moore's own money was used by Mrs. Benson to purchase his own house.
2 Importantly, testimony in the case is the house is worth around One hundred fifty four thousand
3 & no/100 (\$154,000.00) dollars. The sales price was only Fifty six thousand two hundred ninety
4 four & 41/100 (\$56,294.41) dollars. So we have got a transaction where only thirty six point
5 five (36.5) percent value of the house was paid. And Mr. Moore has testified that he didn't
6 know what he was signing. There has been no evidence presented that he could read and write.
7 It seems to be common knowledge with everybody in his family and I would submit that the best
8 evidence is his wife, who is divorced from him, and has no dog in this fight so to speak, because
9 they are divorced. There was some inclination that they were going to get back together and that
10 somehow she has some interest in having this house returned but she testified directly to that
11 question and said it is not true. So we have got a situation you know where Mr. Moore basically
12 signed a deed conveying his house to the Bensons for thirty six and a half percent of its fair
13 market value and the evidence by the documents is that money was used, his own money was
14 used as part of the consideration that the Bensons paid for his property. Now there has also been
15 some discussion that this was all for Mr. Moore's benefit and you know we were at the eleventh
16 hour where if the house wasn't sold you know he would get in trouble with the court but on the
17 Order of the Defendant's Motion to Alter or Amend, it specifically addresses that and basically
18 on page 7, paragraph 5, it says the husband can buy out the wife's interest in the house, if he is
19 able or elects to do so. He should pay the wife Fifty two thousand eight hundred fifty one &
20 no/100 (\$52,851.00) dollars from the date of this order, which was dated January 3, 2001. It
21 says in the alternative, if Mr. Moore is unable or unwilling to buy out the wife's interest then
22 within forty five (45) days the marital residence should be placed on the market for sale under the
23 control of the husband. So the transaction is basically the first part of March and he still have
24 you know, that might be bumping up on the forty five (45) days from the date of the Order but
25 then the only obligation that he had was to place it on the market for sale. He wasn't going to be

1 held in contempt. If he wasn't able to buy it out then he could put it on the market for sale.
2 Upon the sale of the residence and the wife then the wife's interest should be paid forthwith and
3 if the residence is not under contract for sale within six (6) months. So he has got six (6) months
4 from the date of the order. The wife may petition the Court for a judicial sale. So it is not an
5 automatic thing. You know he had plenty of time, if he knew about this order, there has been no
6 evidence that he even knew or understood what it said. But assuming that he did, then we have
7 got six (6) months from the date of the order to sell the house and then if it is not sold then Mrs
8 Moore could petition the Court before any type of judicial sanction could occur. Now we also
9 heard Mrs. Moore testify that she was going to work with him. It wasn't a real problem with
10 her. So I would submit that this whole theory of the defense that this was this urgent situation
11 and that they were only trying to help out Mr. Moore by this magnanimous gesture of buying the
12 house for thirty seven percent of its fair market value doesn't support with the facts in the case. I
13 refer to the documents as the best evidence on that. So we have got a situation where our client
14 can not read or write and he signed documents and he said that he didn't know what they were
15 and I would ask Your Honor if someone had explained to him fully as it has been intonated that it
16 was. Then if he knew the facts where I am selling my house for Thirty seven (37) percent of its
17 fair market value six months prior to when I have to have it sold by you know would a
18 reasonable person go ahead and do that. And as Mr. Moore testified he had other property that
19 he could have sold plus he said I had money or he thought that he had money but Mrs. Benson
20 the documents show took his money. That is a conversion. We are asking for punitive damages
21 in this case because it was an intentionally act. This is a calculated intentional planned out act.
22 It merits no award of punitive damages in this case. There has been evidence presented that this
23 was a pattern of practice. So I would submit that this was an accident. I didn't mean for this to
24 happen, doesn't hold water because this is the second time that something like this has occurred.
25 So in our case we are asking for the return of the house. And we are also asking for the return of

1 the money. And once our client is placed back in the original position that he was then he can
2 deal with whatever he owes to his wife and they can work it out. But I would submit that this
3 order, this theory, that they are trying to help him out based on the literal specific language in the
4 Order is not correct. Six (6) months put it on the market and it could sit there for six months
5 from the date of this order which was January 3. So we are looking at July of 2001 before Mrs.
6 Moore would even be in a position to petition the Court and she may or may not have chosen to
7 do so. The evidence is that she was going to work with him. There has been no evidence that
8 she was going to immediately hold his feet to the fire or something to that effect. So I think that
9 we have showed an intentional, by the documents they do not lie. They speak to exactly what
10 happened. An intentional act where his money was taken and converted and that money was
11 taken down from that CD to incur an early withdrawal penalty. What would be the explanation
12 for that. He needed the money to put into this transaction. It is clear that Mrs. Benson took his
13 money. It is clear that he signed a deed to his house conveying it for thirty seven (37) percent of
14 what it was worth. I don't think that any reasonable person is not under some immediate threat
15 which did not exist would not have sold the house just on a whim for thirty seven (37) percent of
16 its fair market value. So I think that we have proven our case. What we need to prove in order
17 to have the deed set aside, the property reconveyed to Mr. Moore and also to have his money
18 returned. I believe also that we have proven a case for punitive damages because it was an
19 intentional, calculated plan or act to take his money. It is breach of a fiduciary duty. She was
20 his power of attorney and she used her position to take his stuff. To steal his money. It is no
21 different than the headline on the paper this past weekend of a lady taking Two hundred fifty
22 thousand dollars from the Christian Supply. It is the same thing. She used the position to take
23 money to put into their pockets. That is exactly what this lady did. It is reprehensive, your own
24 father. Taking advantage of his trust and taking advantage of the fact that he can't read to enrich
25 yourself. This is a horrible situation. It is a horrible case and our client has come here today

1 seeking justice. He is entitled to it. Thank you.

2 THE COURT: Counsel.

3 MR. BENNETT: Thank you, Your Honor. May it please the Court. The plain meaning of the
4 document of Exhibit 2, the Motion to Alter or Amend indicates that the Plaintiff, Mr. Moore, was
5 on a forty five (45) day clock. It commenced on January 3, 2001. By counsel's own concession
6 that was taking the contempt possibility and putting it on the doorstep for Mr. James Moore. A
7 man who at the time was eighty one (81) years old and who had just lost his wife and saw his
8 family being torn apart. A long term marriage that was ending in divorce not of his choosing but
9 because of his wife's infidelity over a fifteen (15) year period of time that the family court judge
10 indicates that the relationship of the parties was inequitable sixty five - thirty five split and that
11 Mr. Moore was worried and by his own testimony on last Tuesday indicated that he did not want
12 to loose his house. His main focus at that time was to keep this house. He didn't want to have
13 to move out. He didn't want to have to sell it to strangers or put it up on the auction block. He
14 wanted to stay at home and live out his remaining days there where he had grown up and where
15 he had property for the last sixty two to sixty seven years. That forty five (45) day clock, that is
16 the order of the court. And the Defense will contend that the forty five (45) days clock was what
17 was motivating Mr. Moore to try to get some resolution at a point in time so that he did not have
18 to go back into family court and potentially be held in contempt under SC Section 27-13-50. The
19 Plaintiff's motion is to be determined in the light most favorable to the non-moving party,
20 specifically the claims that Mrs. Benson or Mr. Benson along with her defrauded Mr. Moore are
21 untrue. The documents themselves as counsel said they prove that it was not. It is not illegal
22 for someone to sell an asset that they hold for less than fair market value. It happens every day.
23 People choose for whatever reason what price they affix to their assets. Mr. Moore had
24 difficulty in remembering specifics from seven (7) years ago. He is eighty eight (88) years old
25 now. So it is understandable to some degree. But Mr. Moore had a difficult time recalling or

1 testifying to anything other than a very narrow and I would suggest scriptive response to any
2 questions in regard to this transfer. But the fact remains clear that the transfer took place under
3 the guides of South Carolina law. It was closed by an attorney. An attorney in good standing.
4 An attorney name Jack Heckman, who filed the paperwork. Who did everything in the letter of
5 the law as far as written documents require and it was filed. That in and of itself, helps to lend
6 credence to the Defendant's own motion based on the statute of limitations. And I raise that at
7 this time along with my rebuttal. In the fact that, the motion to dismiss this case based upon the
8 fact that prior to December of 2005, when Plaintiff now claims that he had the first opportunity
9 or knowledge of this transfer and therefore that is when the statute begin totally. The fact is that
10 in November of 2001, was when the real estate transfer took place. That was a transfer that took
11 place based upon in part by Mr. James Moore, Sr., own's presence at the real estate closing. In
12 addition, documents which James Moore, Sr., indicate on the witness stand that he signed were
13 indicate that he signed were in fact recorded with the register of deed's office. That gives proper
14 sufficient notice and should allow the statute to begin totally in November of 2001, which would
15 conclude this case going any further due to the fact that the statute of limitations. The lawsuit
16 again Your Honor was filed in October, October 13, 2006. It is interesting to note that Mr.
17 Moore, Sr.'s own testimony seems to call into question whether he knew where he went that day
18 of the closing and yet it is interesting to note that for probably thirty to forty five minutes later in
19 the testimony Mr. Moore's grandson took the witness stand and indicated that Mr. Moore, Sr.,
20 told the grandson who was the closing attorney for the real estate closing, a man by the name of
21 Heckman and that it was in Greenville. Who gave specifics enough sufficient to inform the
22 grandson of who Mr. Jack Heckman is or was of the Greenville County Bar and in fact was able
23 to go with Mr. Moore, Sr., to Mr. Heckman's office in Greenville and to communicate with Mr.
24 Heckman and to get a copy of his file. It is interesting to note that in light of the fact that Mr.
25 Moore, Sr., tries to indicate while he was on the witness stand that he didn't have any knowledge

1 of that. He couldn't remember. He didn't know. But yet his own grandson indicated that Mr.
2 Moore, Sr., did in fact know and was able to relay that information in a sufficient manner to
3 allow them to go to Mr. Heckman's office, which they did. Plaintiff's motion should be
4 thought of in a light most favorable to the Defendants. The Defendants haven't had an
5 opportunity as of yet to place testimony in the record to refute some of the outlandish claims that
6 came in as testimony through direct evidence being testimony of some of the witnesses. In fact,
7 it has been stated that Mr. Jack Heckman, himself, who is under subpoena will be here today to
8 testify as to the facts of the real estate closing and allow this case to go forward. The objection
9 that was made on behalf of the defense in regards to the banking documents which was
10 specifically Plaintiff's Exhibit 5, 7, 8, 9 and 10. By the Plaintiff's own witness, these documents
11 were illegible. These were documents that the Plaintiff's witness used in forming an opinion
12 based upon other information that the Plaintiff's witness has to infer and that was her testimony
13 that she inferred from all of these things parts of her testimony. Your Honor, in light of the
14 foregoing this case – the Plaintiff's motion under Rule 50 should be denied. This case should be
15 allowed to continue through the motion phase and the Court find in favor of the Defendants
16 based upon the statute of limitations allowing for none of the causes of action to proceed except
17 for the cause of action of estoppel. Thank you, Your Honor.
18 MR. HASKELL: Nothing further, Your Honor.
19 THE COURT: All right. I am going to reserve ruling as far as the Plaintiff's motion for a
20 directed verdict. What I am going to rule on at this time though as far as the motion to dismiss
21 that was originally made by the Defendant —
22 MR. BENNETT: I apologize Your Honor, I just want to for the record indicate that I raise that
23 again at this time at the close of Plaintiff's case.
24 THE COURT: All right.
25 MR. BENNETT: Thank you.

1 THE COURT: And my finding on the motion to dismiss based on the testimony that I have
2 heard and the documentation that I have seen is that the statute of limitation has not run and that
3 the Plaintiff first became aware of its property being sold in 2005 and one of the documents
4 which further supports that finding is the deed itself. The address of this property is 43
5 Montgomery Road and the deed had a return address for the grantee of [REDACTED] ad in
6 Lyman which when the deed had been recorded it would have been sent to the
7 Road address and not to the address which is the address of [REDACTED]. So as far as the
8 motion to dismiss that is my finding as far as that is concerned and as far as the motion for a
9 directed verdict I will reserve ruling on that. Defendant are you ready to proceed?
10 MR. BENNETT: Yes sir, Your Honor.
11 THE COURT: All right.
12
13 **ROBERT LEWIS MOORE, BEING**
14 **DULY SWORN, TESTIFIES AS FOLLOWS:**
15 **DIRECT EXAMINATION BY MR. BENNETT.**
16 Q. Mr. Moore if you will please state your full name?
17 A. Robert Lewis Moore.
18 Q. And how are you related to the parties here?
19 A. Jeannette Benson is my sister and James Moore is my father.
20 Q. How old are you sir?
21 A. Fifty three (53).
22 Q. And where do you live?
23 A. At [REDACTED] Moore, South Carolina.
24 Q. How long have you lived there?
25 A. About fourteen (14) years.
26 Q. And prior to living there, where did you live?

1 A. On Powell Mill Road.

2 Q. Are you familiar with the property that is in dispute in this case?

3 A. Yes sir.

4 Q. How are you familiar with that property?

5 A. I grew up on it all of my life.

6 Q. And what do you do for a living now sir?

7 A. I am the logistics distribution manager.

8 Q. Where?

9 A. At Gibbs International.

10 Q. Where is that located?

11 A. At 9855 Warren H. Abernathy Highway on Highway 29.

12 Q. And that is in Spartanburg County?

13 A. Yes sir.

14 Q. Mr. Moore, I want to focus your attention to the property that is in issue here,

15 Are you familiar with that property and its relationship to your

16 parents' divorce?

17 A. Yes.

18 Q. Please explain?

19 A. Basically my parents went through a divorce and my dad came to my house prior to the

20 divorce and said basically you know he wanted a divorce based on some of the things that

21 were happening in the house and I would like to say that our parents were harmonious but

22 they were not. About every day there was a cussing or a threatening or whatever,

23 whatever. It wasn't a good marriage. I mean everybody in this room knows that. You

24 know we can play it down that it was but it wasn't a good marriage. My dad came to my

25 house, he came to my house, he had called me several times and at the time I was the

1 trustee chairman at our church and he was on my trustee board. He would talk to me at
2 the trustee meetings about some of the things that were going on and prior to that we had
3 always tried to encourage our parents to stay together. But he got to the point to where
4 he said that he was being spit on, he was having to sit out in his car, the air conditioning
5 was turned up high and all of these other things but the thing that I think that kind of
6 broke the camel's back he basically came up one day and he said that he saw some suits
7 in the back of my mom's car and he thought that the suits were going to be for him for
8 Christmas and he realized that the suits were not his that they were given to Theodore, the
9 man that my momma was seeing. So at that point in time he came to my house and said
10 that he wanted a divorce.

11 Q. Approximately when was this?

12 A. This was probably '99. In 1999.

13 Q. What if anything did you do as a result of your father's request for this divorce?

14 A. The first thing we did was we talked about it. Daddy are you sure that you want to do
15 that because the biggest concern that I had was the issue that we have got right now. That
16 there is going to be a split in assets. What has been your land all of your life and Mom
17 you are going to have to split that and I said are you sure. You have lived with her now
18 for forty nine (49) years and you have made it through. Are you sure that you want to do
19 that and he said yes.

20 Q. Based upon those concerns did you do anything?

21 A. Shortly thereafter, I think that they came down to my house again about a month or so
22 later and at that time I said what do you want to do and he said I want to get a divorce and
23 I said there has got to be a ground and we basically at that time we sought a private eye,
24 you know to kind of find out what was going on and to make sure that he had grounds to
25 get a divorce.

1 Q. What if anything did that prove?
2 A. It basically proved that my Mom was having a relationship, which he knew that. I mean
3 everybody in the family knew it. I have known it most of my life.
4 Q. Did you in fact hire a private investigator?
5 A. Yes, we did.
6 Q. And who was that, do you remember?
7 A. I can't remember the guy's name but he came through the lawyer that we got.
8 Q. And who was that lawyer?
9 A. I can't remember his name.
10 Q. Did you in fact help your father to retain a lawyer?
11 A. We did. We absolutely did. We found him a lawyer in Spartanburg.
12 MR. HASKELL: We will stipulate that they got a divorce for whatever reasons they have
13 testified to.
14 MR. BENNETT: The adultery of the wife, Your Honor.
15 THE COURT: Right. I think that is in the document itself.
16 MR. HASKELL: Right. We will stipulate to what the divorce decree says. If we could kind
17 of move along.
18 THE COURT: All right.
19 Q. Your parents in fact did get a divorce?
20 A. They did, in fact, get a divorce.
21 Q. And what if anything came about as far as the family issue because of that divorce?
22 A. Well after the decree came about the split of the settlement I think in the beginning it was
23 like sixty five - thirty five or something like that and it was appealed and it became a fifty
24 - fifty. Then we got the decree and then we said now daddy you know this is what you
25 have got to pay and I think it was said that he had forty five (45) days that he had to come

1 up with that money. Basically dad didn't have that money. When he testified that he
2 has other property that property that is in probate it is not my dad's. He thinks that it is
3 his because the general rule back in them days was when someone died the next of kin
4 got it but that land is divided between this —

5 MR. PYE: I am going to object, Your Honor. He is drawing legal conclusions apparently and
6 he is not a lawyer.

7 THE COURT: I sustain that. If you have got the documents from the probate that would be the
8 best evidence.

9 MR. BENNETT: Your Honor, Mr. Moore is testifying not necessarily to the truth of the matter
10 but based upon his acts because of what he heard from what his father said. Could I have a little
11 leeway to try to get that testimony out?

12 THE COURT: Does he know as far as the intestate succession or the testate succession of this
13 property?

14 MR. BENNETT: Yes sir.

15 THE COURT: How does he know that?

16 MR. BENNETT: Your Honor, through hiring a lawyer.

17 THE COURT: All right. I will give you a little bit further on that but lets move along.

18 MR. BENNETT: Yes sir. Thank you.

19 Q. Mr. Moore you were speaking about the thirty five or thirty one acres?

20 A. It is a total of about seventy one (71). It is two sections. It is a thirty five (35) and a
21 thirty six (36) section.

22 Q. Did you in fact do anything to try to clarify the ownership issue in regards to that
23 property?

24 A. Yes.

25 Q. What did you do?

1 A. We took my dad to Jack Heckman based on the situation that had happened. My dad
2 called me in November and he was upset and crying and saying that they were getting
3 ready to run a road up to the Johnsons and he was questioning to Joyce Foster why that
4 was happening and my dad said that Joyce said that you waited twenty (20) years of doing
5 nothing and we are going to go ahead on and let them do the land. He said well how can
6 Joyce do that. I told my dad at the same thing which I think he was at my house for
7 Thanksgiving. I said I tell you what, if we can get out pass the holidays we will look into
8 it. That is when we employed Jack Heckman to look into those proceedings and we have
9 received and we found out that the document was forged. Joyce had said that she was the
10 remaining last sibling to Ambrose Pat Moore which is my dad's sister when she in turn is
11 not.

12 MR. PYE: Your Honor, I object. If he has documents to prove this then we will go forward. He
13 can't just sit there and refer to documents that may not be in existence and if so, I am sure they
14 are going to have them in this courtroom today.

15 MR. BENNETT: We may have Jack Heckman provide them, Your Honor. We may if another
16 witness has them but again he is more to testifying not to the truth of the matter asserted but as to
17 what is his acts or reaction was. What effect it had on the hearer.

18 MR. PYE: Your Honor, under the best evidence rule he needs to produce the documents, not sit
19 there and testify about what was in the documents.

20 THE COURT: What I will allow him to do is to testify to what he did, not about the documents
21 themselves because they are not here. I am not saying that he doesn't know what is on the
22 documents but the documents would be the best evidence. Taking all of that aside when he
23 found out what he found out, what did he do.

24 Q. When he found out that there was a problem with this document, what did you do?

25 A. That is when we told Jack that we wanted to basically look at it and that is when we

1 started contacting siblings that were up in Ohio. Because at that time Jack had said that my dad
2 would get like twenty one (21) percent based on it because my Uncle L. J. didn't have a will and
3 it was basically going to be divided to all of his equal siblings and my dad I think because he was
4 a brother got twenty one percent or twenty two, I can't remember and then it kind of dribble it
5 down that way. I think Eric got so much and the ones up in Columbus, Ohio got so much.

6 Q. What year was this?

7 A. That would have been about the year 2000.

8 Q. And in your experience throughout that period of time did you ever have reason to see
9 your father, James Moore, Sr., in Jack Heckman's office?

10 A. Yes, several times. We had several meetings there.

11 Q. In Greenville?

12 A. In Greenville.

13 Q. Did your father participate in those meetings?

14 A. He was at every one.

15 Q. From your experiences and from witnessing did you see that your father had a good
16 relationship, professional relationship with Jack Heckman?

17 A. Yes.

18 Q. Did they work well together?

19 A. Very well.

20 Q. Now lets move now toward the facts relating to the forty five (45) days that you testified
21 to earlier?

22 A. All right.

23 Q. Did you have any cause to go see any legal professional related to the amended divorce
24 decree?

25 A. Say that again.

1 Q. I am sorry. It was a poor question. Did you have any cause to go see a legal
2 professional in relationship to that amended divorce decree?
3 A. Yes. We took him back because I can remember the attorney's name now, Holland. We
4 went back to see his attorney and said you know basically what happened because when
5 we left the proceedings the split again was sixty five - thirty five and then I guess they
6 amended that or they went to Greenwood or something he said that basically that Judge
7 had granted a fifty- fifty split. So basically he said that Daddy would have forty five (45)
8 days to basically you know be give my Mom fifty (50) percent of the total.
9 MR. HASKELL: Objection, Your Honor. The best evidence is the divorce decree and what it
10 says.
11 THE COURT: I will sustain that.
12 Q. Based upon what you heard or your meeting with Mr. Bob Holland did you see any
13 concern on your father's part about losing his land?
14 A. Yes sir.
15 Q. Please describe to the Court about that?
16 A. That was his biggest concern. Again he grew up in that area. That is the only place that
17 he knew. He bought that property, the 17 acres that we are talking about on 43
18 Montgomery Road. He bought that property. He was proud of that. Because that was
19 his first initial purchase. Most of our life we lived in a house that was owned by my
20 uncle, L. J. My dad bought the house that he is in now approximately about thirty five or
21 thirty eight years ago. Prior to that he had always lived in somebody else's house and the
22 only thing that he owned was those seventeen (17) acres of land and there was a little
23 house, the one that we were talking about that was in front that we had moved out of
24 probably when I was about 3, probably 3 or 4 years old.
25 Q. During this period in November of 2001 or early 2002, how would you describe your

1 father's mental well being?

2 A. He understood everything that was going on around him.

3 Q. How was his emotional well being?

4 A. I think that he was distraught. Again, I mean anytime you have a marriage for 49 year

5 and it is hard to explain this but again that is all he knew. I mean the marriage that was

6 it.

7 MR. HASKELL: Objection. He doesn't know what his father knew.

8 THE COURT: I sustain that.

9 Q. Just if you will describe his emotional outlook or how you interrupted what he seem to be

10 demonstrating through his emotions?

11 A. I think he was showing hurt. He didn't really want to show that he was hurt that the

12 marriage didn't work. I think that he was embarrass of the facts ----

13 MR. HASKELL: Objection. He doesn't know any of his father's emotions. He might have

14 observed something but he can't say my dad did this and felt that. He can say that I observed my

15 father but not---

16 MR. BENNETT: That is exactly right. And that is what we are asking.

17 Q. If you will Mr. Moore what did you observe first hand about your father's emotions at

18 this time?

19 A. I observed and seeing hurt in him and embarrassment. I observed that. And the fact that

20 he just, well he thought that his family was crumbling apart.

21 Q. In relationship to his house what was his number 1, concern?

22 A. He did not want to let it go. He wanted to be able to live the rest of his life in the house?

23 Q. All right. Please answer any questions from the Plaintiff.

24 MR. HASKELL: One moment, Your Honor.

25 THE COURT: All right.

1 CROSS EXAMINATION BY MR. PYE.

2 Q. Mr. Moore isn't it true that Mrs. Benson is the beneficiary of your life insurance policy?

3 A. No.

4 Q. So if we have documents that show otherwise you disagree with that?

5 MR. BENNETT: Objection, Your Honor.

6 THE COURT: Wait a minute. What grounds?

7 MR. BENNETT: Irrelevant.

8 THE COURT: He has already asked the first question which you did not object to which is was
9 she on his life insurance as beneficiary and there was no objection there.

10 MR. BENNETT: I would object under the best evidence rule then, Your Honor.

11 THE COURT: Well he knows or he should know what is on his life insurance policy. I will
12 allow it.

13 Q. So would you disagree with the document if I had one that shows that she is the
14 beneficiary of your life insurance policy?

15 A. Which document are we talking about?

16 Q. A life insurance policy making her the beneficiary in the event of your death Mrs. Benson
17 would receive the money? Do you have that? I mean is there such a document to your
18 knowledge?

19 A. Not to my knowledge.

20 Q. Okay.

21 MR. PYE: That is all I have.

22 THE COURT: Counsel?

23 MR. BENNETT: Your Honor, I ask that line of questioning be stricken. They did not
24 introduce any document. They asked questions in essence and no document has been
25 introduced.

1 THE COURT: I am going to allow it.
2 MR. BENNETT: May the witness step down?
3 THE COURT: Is everyone through with Mr. Moore?
4 MR. PYE: Yes sir.
5 THE COURT: All right, Mr. Moore you may step down.
6 MR. BENNETT: Your Honor, I have contacted Mr. Jack Heckman in regards to being here
7 today to testify. He is under subpoena. I ask if we could take about a five minute break so that I
8 could step out in the hallway and make a phone call to make sure that he is present. He wasn't
9 real familiar with the Spartanburg Courthouse and I don't want him to be stuck in some other
10 area.
11 THE COURT: All right. Lets take ten minutes.
12 MR. BENNETT: Thank you, Your Honor.
13 (BREAK)
14 THE COURT: Mr. Bennett.
15 MR. BENNETT: Thank you, Your Honor. I appreciate the Court's indulgence on the break.
16 At this time we would like to call Robert McMillian to the stand please.
17 **ROBERT JAMES MCMILLIAN, BEING**
18 **DULY SWORN, TESTIFIES AS FOLLOWS:**
19 **DIRECT EXAMINATION BY MR. BENNETT..**
20 Q. Mr. McMillian please state your full name for the court?
21 A. Robert James McMillian.
22 Q. And where do you live currently?
23 A. Atlanta, Georgia.
24 Q. And are you related to the Defendants Jeannette and Tom Benson in this case?
25 A. I am. They are my aunt and uncle.

1 Q. And where did you grow up?

2 A. At I was the first born grand and I lived there basically all of my
3 life.

4 Q. I am sorry. I need you to speak up a little bit more.

5 A. I was the first born grandchild of the Moores, James and Allean. And I was basically
6 raised like a sibling. I was raised in their house and lived in their house most of my life.

7 Q. And do you know everybody that has testified over the last two days?

8 A. I do.

9 Q. And you were here and present in the courtroom all day on Tuesday, the first day of this
10 trial?

11 A. Yes, I was.

12 Q. If you would, you heard Mrs. Joyce Foster testify did you not?

13 A. I did.

14 Q. And she testified in regards to some day when she came over to I and
15 saw the police cars out in front of your grandfather's house?

16 A. Yes. I was there.

17 Q. You were there. You were there at your grandfather's house that day?

18 A. Yes, I was.

19 Q. Please describe for the court what you saw?

20 A. There was two (2) police cars out there. Joyce Foster's daughter Valida Foster was there
21 and spoke with myself and several other people. Joyce Foster, if she was there she was
22 invisible, we did not see her. And if she was there she would have been in a car parked
23 down the driveway which is where Valida's car was parked and there is no way that she
24 could have heard any commotions going on.

25 MR. HASKELL: Objection.

1 THE COURT: I sustain that.

2 Q. Tell us not your opinion but what you saw that day?

3 A. Well first of all my aunt Jeannette as well as my cousin Nikki, the police were called

4 because of my uncle James Moore who was very threatening to them that day.

5 MR. PYE: Objection, unless he has first hand knowledge.

6 MR. BENNETT: Objection, Your Honor. He is testifying.

7 A. I was there.

8 THE COURT: Wait a minute. Wait a minute. You can't object to his objection. What is

9 your response to his objection?

10 MR. BENNETT: Your Honor, he is testifying to what he saw first hand.

11 THE COURT: All right. Your objection counsel?

12 MR. PYE: Well if that is the hypothetical, I mean I have no objections.

13 THE COURT: All right. Testify to what you saw.

14 Q. If you will, you said James Moore. We have got so many James and Roberts here?

15 A. I was at James Moore, Sr.'s house at ad.

16 Q. Okay.

17 A. James Moore, Jr., Brut, was being aggressive toward Nikki Bennett and Jeannette and

18 them being females and warranting James Moore, Jr., Brut's history, they called in the

19 police. I told my Aunt Jeannette that she should call the police to have a mediator. It

20 was more so to have a mediator than calling the police on someone per say. But to have

21 a mediator there and that is what they did.

22 Q. And you were there at that time?

23 A. I was there at that time.

24 Q. And were you present and listening to the discussion or argument between Brut and -

25 well when you say that he was being aggressive to your aunt and to your niece?

1 A. Yes.

2 Q. Describe for us please what you mean by his aggressiveness?

3 A. Him saying that he don't know why they are out there that is not their house and not her
4 house and he called Nikki Bennett and he said you will be just like your mother and I
5 mean that was the gist of the conversation and myself as far as him coming up to me and
6 approaching me and saying that I needed to go back to Atlanta and there is nothing here
7 for you. I don't know what he meant by that because I wasn't up there to get anything, I
8 was there to visit my grandfather. The visiting situation out there was not pleasant. I,
9 myself had told my Aunt Jeannette that is why she needed to call the police because she
10 needed to get a hold on that so she could feel comfortable going out to the property and
11 visiting my grandfather whether it was her property or his. You know because that is my
12 grandfather's home, everyone knew that. That has always been my grandfather's home.
13 You know that was never a thought of mine.

14 Q. But you instructed your aunt to call the police based in part on your great uncle Brut, well
15 I guess it is your uncle Brut's?

16 A. Yes.

17 Q. His past history. Please describe for us what you mean by that?

18 A. Past history in that he has a temper. His wife and his kids have had to call the police on
19 him because he is violent.

20 Q. Have you seen that personally?

21 A. From the time that I was a child until the time that I am a adult. I mean I have witnessed
22 that. I mean fights, a lot of fights between him and his wife, from money being torn up
23 when I was a child and thrown into the air to her trying to run over him with a car. To
24 her going to work with bruises on her—

25 MR. PYE: Your Honor, I object. What is the relevance of this line of questioning.

1 THE COURT: Lets move along.
2 MR. BENNETT: I will move along, Your Honor.
3 Q. Robert describe for us your relationship with your grandfather James Moore, Sr?
4 A. Up until a few years ago my relationship with James Moore, Sr., my grandfather was
5 great. I would call from Atlanta on Sundays to speak with him. We would go over
6 church stuff that is how I kept up with church. He would complain about my Uncle
7 James being there and him making messes and not wanting him in the house. And all of
8 a sudden it took a twist. It changed. I noticed the conversations were short because he
9 would keep me on the phone sometimes an hour plus at a time just basically telling me
10 old stories that I had already heard and going over stuff at church and complaining about
11 our pastor. That is my grandfather. Until the conversations would get short. He seem
12 like he didn't really want to speak and he was very happy with James all of a sudden.
13 Q. When did this change take place?
14 A. I would probably say that it was probably in 2005. That it sort of just seem to make a
15 turn.
16 Q. Had you been close to your grandfather you said prior to that?
17 A. All of my life. I was raised there. My grandfather was like a father to me.
18 Q. There has been a lot of testimony from the Plaintiff's side that your grandfather is unable
19 to read basically anything. In your experience from living with your grandfather when
20 you were little do you have any information regarding that?
21 A. I find that interesting that everyone is saying that my grandfather can't read at all because
22 I know that he can read.
23 Q. How is it that you know that he can read?
24 A. From me being a child and he has I mean read by us going place and him knowing how to
25 read documents when we were at places and when I say documents I mean things in

1 everyday reality. The newspaper my grandfather always read the obituaries.

2 Q. You have actually seen your grandfather read the obituaries?

3 A. Yes, yes. Whenever he was over at we call our Aunt Pat's house, Pat and Lonnie's

4 house, which is the family house. I mean any time he would go in over there that would

5 be one of the first things that he would do is pick up the paper and read the paper because

6 they always got the paper over there. But even more recent whenever there were

7 statement put out at church, financial, he would always read that. I mean if you can't

8 read it why would you pick it up and look at it. And he would complain and say oh this

9 can't be right, ditto, ditto. I mean my grandfather does not have the best education and

10 he is not the most knowledgeable person but to say that he is illiterate to the place that he

11 can't read anything is truly false in my opinion.

12 Q. And that opinion is based on what you have seen personally?

13 A. Right and being raised in the house and being around him forever. Out of all the

14 grandkids my relationship with my grandfather has been the closest. Again he was like a

15 father to me. From discipline to everything, I mean, it was James Moore. And I mean

16 that is why it was such a shock to me when the kids that weren't -- well that never played

17 any part in his life all of sudden gravitated toward him. Not to say that they shouldn't,

18 because that is their grandfather, but it is a turn of events and it makes them look like

19 there has to be an opportunity there.

20 Q. Lets talk a little bit about your aunt and your uncle, Tom and Jeannette?

21 A. Okay.

22 Q. Is it safe to say that you have known them your entire life?

23 A. Yes.

24 Q. And you grew up around them as well?

25 A. Yes.

1 Q. What is your opinion of your Aunt Jeannette and her treatment of your grandfather?
2 A. I think it was exceptional. I mean I —
3 Q. What do you base that opinion on?
4 A. I base it on that my grandfather never wanted for anything from his health care. She
5 always carried him to the doctors.
6 Q. You have seen that?
7 A. Oh yes, most definitely. I mean my Aunt Jeannette she would make sacrifices for herself
8 and everything. Even with Jeannette, I mean his good and worrying about Papa and
9 making sure that he, Papa -my grandfather, making sure that he took his medication on
10 time and I told her I said you know he is an adult you know he is going to do something,
11 eat something that he is not supposed to, I mean his diet everything. Jeannette has given
12 Papa the best care any person could want for.
13 Q. In your opinion based upon what you have seen as a member of this family for what you
14 say 35 years old?
15 A. Thirty nine (39).
16 Q. Based upon your opinion of what you have witnessed for thirty nine (39) years, who do
17 you feel has taken the most and best care of your grandfather, James Moore, Sr?
18 A. Jeannette Benson. And it is not because of her running people off because Jeannette's
19 love is unconditional whether it is for me or whether it is for anyone else in this
20 courtroom and I say that in that even after today some of these very people may need
21 Jeannette Benson and they will call her and I wouldn't but she would probably still be
22 there for them. And that is because Jeannette has unconditional love for people and that
23 is the type of person that she is.
24 Q. Thank you, Mr. McMillian. Sir if you would stay there and answer questions from the
25 Plaintiff.

1 **CROSS EXAMINATION BY MR. PYE.**

2 Q. Your name is Robert James McMillian, correct?

3 A. Correct.

4 Q. Your birthday is February 21, 1969, correct?

5 A. Correct.

6 Q. You have been convicted of fraudulent checks haven't you?

7 A. Yes, that was in 1995.

8 Q. And you have been convicted of breach of trust haven't you—

9 MR. BENNETT: Objection, Your Honor. Mr. McMillian's verity or honesty is not in question.
10 A permissible bolstering of his reputation in the community.

11 MR. PYE: Your Honor, I am impeaching this witness. He testified contrary to what some of
12 the other testimony was shown and I believe that I have the right to show that he is not telling the
13 truth and he has the tendency to do that and he has many convictions of moral turpitude.

14 THE COURT: Counsel.

15 MR. BENNETT: Your Honor, it is impermissible character evidence. It doesn't go to the
16 weight or proficiency of Mr. McMillian's testimony. It is in fact used to try to show conformity
17 there within.

18 MR. PYE: Your Honor. Rule 609, it is clear as day that you can use evidence of prior crimes
19 to impeach the witness.

20 MR. BENNETT: In and of themselves, yes sir. Based upon a statement or anything in
21 particular that the record could demonstrate but to just bring the information in for an effort to try
22 to discredit the witness without any impeachment to be brought out, this is improper.

23 THE COURT: I am going to allow that and overrule the objection.

24 A. I can give you. I know you are asking me questions but I can give you my history if you
25 would like. I am not ashamed of where I have been and where I have come from.

1 Q. Okay.

2 A. In '95, when I went through that with the check and went through the problem the person
3 that was there for me out of all of the people in this family was Jeannette Benson. She
4 raised the money to help get me out. Beyond anyone else she was there and raised more
5 money. I think that is the only case I should have against me you may have a court case
6 now where I am being in litigation because I am an accountant in Atlanta. I have lived in
7 Atlanta since 1995 and in practicing accounting one of my former employees, employers
8 and I are in litigation right now which is being handled by my attorney and that is court
9 record. As far as what I have. I live a very nice life. I have not had to take money or
10 embezzle anything from anyone. Do you have any further questions on my character.

11 Q. So you owe a great deal of gratitude to Mrs. Benson don't you?

12 A. And my grandfather, yes.

13 Q. Okay. And she helped you out when you needed her, didn't she?

14 A. Yes and my grandfather.

15 Q. Okay. You are currently a fugitive from justice in Cobb County, Georgia aren't you?

16 A. No, I am not. And let me say this. That would be for me getting pulled over with South
17 Carolina and they had a problem with my drivers license and there is an attorney that is
18 handling that. So, no I am not. That was on suspended licenses and I have Georgia
19 licenses and if I was a fugitive I wouldn't be able to have my license.

20 Q. Well you ----

21 A. I am an accountant and I get a background check every time I get a job and I have been at
22 my company for three (3) years and that has been sitting on my record now every since
23 '98.

24 Q. Well it is interesting that you say that your license have been revoked because it has been
25 revoked hasn't it? It is on your credit report?

1 A. My licenses were revoked because of taxes because I switched my car to Georgia.
2 Q. Okay. But you are a fugitive from justice in Cobb County, Georgia?
3 A. No, I am not. No, I am not. If I were a fugitive, I would be in jail sir.
4 Q. And as recently as 2005 you have been charged with forgery haven't you?
5 A. Okay, I just addressed that. I said I am an accountant and I just stated to you that I am
6 being sued by my former employer.
7 Q. Sir you didn't address that. We are not talking about a civil law suit. We are talking
8 about criminal charges here. You have been charged with criminal forgery as late as
9 2005, have you not?
10 A. I have the documentation in my truck. I know that I am being sued by my former
11 employer but no I have no criminal charges pending on me.
12 Q. Okay. Let me inform you that you do have criminal charges pending against you.
13 MR. BENNETT: Objection, Your Honor.
14 THE COURT: Counsel. What is your objection?
15 MR. BENNETT: Counsel is testifying.
16 THE COURT: All right.
17 MR. HASKELL: It is cross.
18 MR. PYE: He said that he didn't know he had it so I am telling him - I can show it to him, if he
19 would like to see his credit report.
20 MR. BENNETT: That is not a question, Your Honor. He is telling him.
21 A. I have seen my report.
22 THE COURT: I will sustain the objection. Rephrase that question.
23 Q. Do you also realize that you have a current charge for theft by conversion—
24 A. Let me say this to you again. I just said I am an accountant and my former employer is
25 suing me for the sum of Fifteen thousand & no/100 (\$15,000.00) dollars. I have the

1 documentation in my truck. I am being sued because I terminated my employment with
2 him and would not continue to work there. I had worked for him for about two or three
3 years. He did this to all of his employees. And because I would not do some of the stuff
4 that he wanted me to do and I left and did not work a notice, I went in and left, he chose
5 to sue me for my pay increase, every cell phone bill that he had paid, and any advances or
6 anything that he had given me while I was there because I quit without a notice. Again
7 my attorney in Atlanta, Georgia is taking care of this.

8 Q. And what company was that you were working for at the time?

9 A. I am sure you have it there but it Architectural Brass—

10 Q. I thought that you might have been talking about Webster, you were charged with
11 embezzlement from there. Tell us about that?

12 A. Well first of all that was in '92 and there is nothing to be discussed because that is not
13 even supposed to be a court record.

14 Q. You were convicted of it, weren't you?

15 MR. BENNETT: Objection, Your Honor.

16 A. No, I wasn't.

17 THE COURT: The grounds for it?

18 MR. BENNETT: Irrelevant.

19 THE COURT: I will allow it. Overruled.

20 Q. All right. I wasn't sure if you may have been talking about the time that you worked for
21 NationsBank? Tell us about being fired from there for issuing false receipts?

22 A. I never worked for NationsBank.

23 Q. It is your testimony today that you have never worked for NationsBank?

24 A. I have never worked for NationsBank.

25 Q. Have you ever worked for a subsidiary of NationsBank?

1 A. I wouldn't know what their subsidiaries are but I have never worked for NationsBank.

2 Q. Have you ever worked for a bank?

3 A. No.

4 MR. PYE: That is all I have, Your Honor.

5 MR. BENNETT: Briefly, Your Honor.

6 **REDIRECT EXAMINATION BY MR. BENNETT.**

7 Q. Mr. McMillian you said that you owe a debt of gratitude to your Aunt Jeannette. Would
8 you lie based upon that gratitude that you feel towards her?

9 A. I am not going to sit in this court under oath and lie about my aunt or anyone else.

10 Q. You also said that you owe a debt of gratitude to your grandfather?

11 A. I do.

12 Q. What is that for?

13 A. I lived with my grandfather like I said, with he and my grandmother both, and I love my
14 grandfather to death but there is a thin line between right and wrong, you know there is right and
15 wrong, and I am not here because of love or dislike it is because of right and wrong.

16 Q. Has your testimony here today been truthful?

17 A. Yes.

18 Q. Thank you. You may step down.

19 THE COURT: Wait just a minute.

20 MR. BENNETT: I am sorry.

21 THE COURT: Counsel?

22 MR. PYE: Nothing further, Your Honor.

23 THE COURT: All right, now you may step down Mr. McMillian.

24 **ADRIAN BENNETT, BEING DULY SWORN,**

25 **TESTIFIES AS FOLLOWS:**

1 **DIRECT EXAMINATION BY MR. BENNETT.**

2 Q. Good morning Mrs. Bennett?

3 A. Good morning.

4 Q. If you would, please state your full name for the record?

5 A. Adrian Nicole Bennett.

6 Q. And how are you related to the Defendants in this case?

7 A. Thomas and Jeannette Benson are my parents and James Moore, Sr., is my grandfather.

8 Q. And did you grow up around [redacted] ie?

9 A. At [redacted] d, yes I did.

10 Q. I am sorry.

11 A. I lived at [redacted] until September of 2001.

12 Q. Have you been actively involved in your grandfather's life?

13 A. Yes, I have.

14 Q. In your grandmother's?

15 A. Up until they got a divorce, yes.

16 Q. And if you will please tell the Court at some point in time you were studying for your
17 driver's test, is that correct?

18 A. Yes. In 1992 - 1993, I would have turned around 15, October 6, and that was during the
19 same thing that Papa, is what we call him, suffered his condition with his heart. So he
20 received the driver's manual from me that he took home every night to read.

21 Q. So in other words you were studying to get your licenses?

22 A. Exactly.

23 Q. And your grandfather had lost his because of the heart problem?

24 A. Exactly.

25 Q. Now did you have an occasion to ever read the handbook with your grandfather?

1 A. I did. We both studied the driver's manual at the same time. I would ask him questions
2 and he would ask me questions.

3 Q. During that period of time when you were studying with your grandfather did you ever
4 have an experience where your grandfather read out loud to you?

5 A. Yes. When we would be in church reading the responsive reading Papa would read as
6 well also he would read the newspaper every day because he wanted to see the obituary to
7 see who all had passed away and to see if he knew of anyone that was kin to whomever
8 had passed away.

9 Q. And have you physically witnessed your grandfather reading?

10 A. I have physically witnessed him reading. I had a set of twins in 2002 in which my
11 grandfather came to my mother's house every day, at 11:00 o'clock he was always there,
12 every day. And to the point he read to my girls until they were 2 years old and my mom
13 stop keeping them every day.

14 Q. And what year was that?

15 A. They were born May 21, 2002. She started keeping them when they were three months
16 old all the way to them being two years old.

17 Q. So that take it to approximately 2004 or 2005?

18 A. To 2005, exactly.

19 Q. You have been present in the courtroom all day today, correct?

20 A. That is true.

21 Q. And you were present in the courtroom all day last week, I believe it was Tuesday?

22 A. That is correct.

23 Q. And you saw and heard the trial testimony of Mrs. Joyce Foster, correct?

24 A. That is correct.

25 Q. Is there anything that you disagree with regarding Mrs. Foster's testimony?

1 A. Due to the fact that she stated when there was an episode when the police were called out
2 she said that there was several police cars when in fact there was only two police cars.
3 Mrs. Foster also stated that my mother was being verbally abusive to my grandfather,
4 Papa, which that was a lie. To the simply fact that he was sick and had just gotten out of
5 the hospital that day and he was laying in his bed at his home at 43 Montgomery Road.
6 Valida Foster, her daughter, was at the end of the driveway. One of the police officers
7 that was called to the scene, his name is Gregg Satterfield. He went to school with my
8 brother, Chuckie Benson, and my cousin James Moore, Jamie is what we call him, he was
9 also there that night.

10 Q. Lets talk about your grandfather's care. Have you had personal knowledge by your own
11 witnessing of your Mom and dad taking care of your grandfather?

12 A. Yes, I have.

13 Q. Please describe that to the Court?

14 A. To the point that is all for the past seven years, eight years almost that when my Papa and
15 Big Momma were divorced that is what consumes my momma's life is to make sure that
16 Papa was taken care of. She made sure that every Friday she took him to the grocery
17 store. She made sure that he got his medicine. She made sure that when my uncle Brut,
18 I think that you have him as James, Jr. My uncle Brut would come out and during the
19 hot summer days would have my Papa out in the field to the point he would almost get
20 sick with his sugar would go up sky high. So to the point she always made sure that he
21 was taken care of always. He went with us on family vacations. He always came to my
22 momma's house every single day and at 11:00 he would sit and hold my babies and watch
23 the Family Feud without a doubt he always during that time brought his mail to the house
24 which he had opened as well and every day, every Friday without a beep she would sit
25 down with Papa and Papa knew exactly what his power bill was, he knew exactly what

1 his water bill was and made sure when they sit down to do his bills every Friday to mail
2 them off he understood exactly what was due and she always explained everything to
3 him.

4 Q. Since Christmas of 2005, have you witnessed a change in your grandfather?

5 A. I have not spoken to him since then.

6 Q. Why is that?

7 A. Due to the fact and I remember this distinctly because the month of April my brother and
8 I paid for my mom and her friend to go to Chicago. We had tickets for her to the Oprah
9 Winfrey Show. That was in April. My mom was due for a hysterectomy during the first
10 week of May 2005. I distinctly remember it because May 21, was when my girls were
11 turning - it is their birthday and that was when my mother received in the mail from
12 Papa's life insurance, May of 2005, that my cousin Tory, what I have always grown up
13 calling him.

14 Q. I am sorry, let me interrupt you. Tory is?

15 A. Marcus.

16 Q. Marcus.

17 A. He is my first cousin. That Marcus had taken my grandfather, Papa, James, Sr., to
18 increase his life insurance policy. That is when my mom first had knowledge that
19 something was going on. It was in May of 2005.

20 Q. How did that affect your relationship with your grandfather?

21 A. To that point it just dwindled. My girls that is all they knew was Papa. Even to this day
22 and they are six years old they ask about Papa. They know that he lives in that house and they
23 know that he is still alive but they know that we don't go out to see Papa. It is just, I have no
24 relationship with him. I am to the point when him and big Momma got a divorce we all felt
25 compassion for Papa because we knew to the point when she had spit in his face and he came out

1 to my momma's house crying. And my mom's exact words to him were Papa what do you want
2 me to do and he said I want Allean gone and from that day forward everybody that can sit in here
3 and testify they all know we always felt compassion for Papa because we knew how hateful
4 Allean, my big momma could be toward him.

5 Q. During this time were you present and did you personally see or have knowledge of any
6 request that your grandfather, Papa, made to your mother Jeannette Benson?

7 A. During which the point where he wanted a divorce.

8 Q. That is right?

9 A. It was the day where she had spit in his face and I remember sitting on the couch and my
10 momma was sitting at the kitchen table and Papa was standing up in the kitchen at my momma's
11 house and he said it to my mom. He said I can not take it any more. He said I am not going to
12 deal with it. He said I want Allean gone. My mom said what do you want me to do. And he
13 said I want her gone. And from that day forward my momma and my uncle Bray, Robert Moore,
14 worked with my Papa and asked him are you sure, every day, once they got him a lawyer for the
15 divorce are you sure this is what you want and his words were always yes. I want a divorce.

16 Q. What about after the divorce were you present at any time when your grandfather, Papa,
17 made another request to your mom, Jeannette Benson?

18 A. After they received the divorce which would have been final in 2001, I got married in
19 September of 2001, and I started to send out my wedding invitations around the end of
20 May and I distinctly remember my Papa telling me, I do not want Allean to come to the
21 wedding. If she comes to your wedding, I am not coming because I am not going to sit
22 any where near Allean. I can't stand it.

23 Q. What about your presence any time that Papa made a request to Jeannette after the
24 divorce?

25 A. A request as far as to what. He had request for her all of the time.

1 Q. What kind of request did he make?

2 MR. HASKELL: Your Honor, I don't know the relevance of any of this. This doesn't have
3 anything to do with our case.

4 THE COURT: All right.

5 MR. BENNETT: It is going to show the care that Mrs. Jeannette Benson took with James
6 Moore, Sr.

7 MR. HASKELL: Care has nothing to do with taking his house and taking his money. She could
8 be the best care-giver in the world. It has no relevance whatsoever if she took his money and she
9 took his house. There is no correlation between the two.

10 MR. BENNETT: Laying the foundation, Your Honor, to see whether or not Mr. Bennett heard
11 Mr. Moore request from Mrs. Benson that he be allowed to stay in the house and not be forced to
12 move out or sell the house.

13 MR. HASKELL: There is no foundation required counsel. Just ask the question. This stuff
14 about foundation and —

15 THE COURT: Just go ahead and ask the question.

16 Q. Mrs. Bennett were you present any time when your grandfather asked your mother for
17 help so he wouldn't have to move out of the house?

18 A. I distinctly remember when she sat down and she talked to Papa and she informed him
19 you know what is the situation and what is it Papa that you want us to do and he said I
20 want to be able to stay in my house. That is my house. I do not want Allean to have that
21 house at all. And he said I know the only way that I can get to keep is if you and Tom
22 buy the house.

23 Q. Thank you.

24 MR. BENNETT: Thank you, Your Honor.

25 THE COURT: Counsel.

1 CROSS EXAMINATION BY MR. HASKELL.

2 Q. Is your maiden name Adrian Nicole Benson?

3 A. That is right.

4 Q. You were born on October 6, 1977?

5 A. That is correct.

6 Q. Okay. Isn't it true that you lost your job at Adidas because you embezzled checks from
7 the payroll?

8 A. That is absolutely incorrect. Had I been able to do that I would have been charged and I
9 would have been in jail.

10 Q. Did you loose your job at Adidas?

11 A. That is incorrect.

12 Q. What about did you ever work for an insurance company?

13 A. I did. I worked for Liberty Mutual for almost seven (7) years and I was laid off on March
14 13.

15 Q. Okay. Now you mentioned about your grandfather and church.

16 A. Yes.

17 Q. Responsive reading in your place of worship is that not where the pastor will say
18 something and the congregation will repeat back what he says?

19 A. The responsive reading is they will give you the scripture, the scripture that they are going
20 to read it from and you take the book from the pew and then you look for that scripture
21 which he can find on his own.

22 Q. Answer my question.

23 MR. BENNETT: Objection, Your Honor.

24 A. I am answering it.

25 MR. BENNETT: She is answering the question.

1 MR. HASKELL: I object to you interrupting my cross examination.
2 THE COURT: All right. All right, that is enough. Lets go back to where we started as far as
3 the request for your statement. The responsive reading in your place of worship.
4 MR. HASKELL: My question is —
5 THE COURT: And answer his question. Lets don't give an editorial. Just answer his question
6 as far as what it entails, all right.
7 Q. The responsive readings in your church, I have been told that with the responsive reading
8 the pastor will say something and that the congregation will repeat back what the pastor
9 says, is that correct?
10 A. That is incorrect.
11 Q. Does the pastor in this service read from the bulletin at any time?
12 A. The bulletin meaning.
13 Q. Whatever is passed out when you enter the place of worship?
14 A. No, he does not read from the program, no.
15 Q. Is it ever referred to in the service?
16 A. The only thing that is referred to in the program that you are handed when you first walk
17 into the church is to let you know where the scripture is going to be read from.
18 Q. The scripture that is read from does — in my church the pastor will read one thing and the
19 congregation will read —
20 MR. BENNETT: Objection, Your Honor. Counsel is testifying.
21 MR. HASKELL: I am entitled to ask a question counsel.
22 THE COURT: Wait a minute.
23 MR. BENNETT: Exactly. To ask a question.
24 THE COURT: Counsel, counsel. Listen to me. He hasn't finished his question yet. I
25 understand what he is doing. He is phrasing his question. So let him phrase his question and

- 1 you can object at that point. All right.
- 2 Q. What I am saying is at some places of worship in a responsive reading the pastor will say
3 one thing and the congregation will say something totally different. And in some other
4 religions the pastor will say something and the congregation will repeat back exactly what
5 was said. How does that work in your place of worship:?
- 6 A. In our place of worship at Mount Pilgrim Baptist Church it may be different depending on
7 you know what your nationality is and what your place of worship should be but the way
8 that it goes for us is that you are given the scripture that it is going to be read from and
9 you have the minister who stands at the podium to read one line, he reads a verse, and
10 then the congregation read the other one, and then it is back and forth until you get to the
11 end of that scripture.
- 12 Q. So there is a difference —
- 13 A. The preacher reads one verse and the congregation reads the second verse.
- 14 Q. Okay. I see. All right. Now you mentioned the drivers manual with your grandfather.
15 To understand your testimony were you studying together for this test?
- 16 A. That is correct. I was trying to get my permit and he was trying to get his drivers license.
- 17 Q. So would you sit down and you both would go over the same material together?
- 18 A. That is correct.
- 19 Q. At some point would you discuss what you read with him?
- 20 A. No, he can read the book on his own. He took it home.
- 21 Q. What did you do when you sat there together?
- 22 A. I would ask him a question that was in the book and he would ask me a question,
23 whatever was in the book.
- 24 Q. Okay. So at points you would tell him what was in the book and your testimony is that at
25 times he would tell you what was in the book?

- 1 A Or there was a question that was parked in there where you can —
- 2 Q If you would answer my question?
- 3 A I am trying to.
- 4 Q Answer my question and then you can explain?
- 5 A What is your question.
- 6 Q Okay. I will repeat it. You studied together. At some point you would read out of the
- 7 book to him and your testimony is that at other times he would read out of the book to
- 8 you?
- 9 A That is correct.
- 10 Q And you would have questions and there was a dialogue going back and forth between
- 11 the two of you?
- 12 A That is correct.
- 13 Q All right. You also testified that your grandfather brought his bills to your mother's
- 14 house and she explained things to him so he always got his bills right, is that correct?
- 15 A You didn't necessarily have to explain anything to him. Papa always opened all of his
- 16 bills. The mail always came to his house. He always opened everything and brought it
- 17 to my mom and in turn that is when they would sit at the table and they would write his
- 18 bills out. Whether it was power bill, phone bill.
- 19 Q All right. If he fully understood everything and needed no assistance why would he bring
- 20 it to your mom and seek her assistance? Why would he need her?
- 21 A Because that is what my mom did. That is what big Momma used to do. So when they
- 22 got a divorce that is what my mom did. He wanted her to, he brought that to my mom.
- 23 He brought his check book to my mom for my mom to sit and to write out all of his bills
- 24 for him and he signed all of his checks that was the routine.
- 25 Q It was a routine. Why did he need to do that? Are you saying that he did not need to

1 bring them over to your momma?
2 A. No, he didn't need to. He just didn't want to.
3 Q. Okay. You heard your grandmomma testimony where she had to do that for him because
4 he was unable to do so.
5 A. She was just controlling.
6 Q. I asked if you heard the testimony?
7 A. I did. I did.
8 Q. Just answer my question. So you are saying that your grandmother was not truthful here
9 when she was testifying?
10 A. She was truthful in the part about her writing out all of the bills, yes.
11 Q. Are you saying that your grandmother was not truthful when she said that your
12 grandfather was unable to read and comprehend the bills and that she had to therefore do
13 that for him?
14 A. That is correct. She was untruthful.
15 Q. Okay. So you are saying that you are telling the truth and your grandmother lied up here
16 on the stand?
17 A. That is correct, that is correct.
18 Q. All right.
19 MR. HASKELL: That is all I have Judge.
20 THE COURT: Counsel.
21 MR. BENNETT: Briefly.
22 **REDIRECT EXAMINATION BY MR. BENNETT.**
23 Q. Mrs. Bennett just to make sure everybody is clear. When you say the bulletin or the
24 program would give the responsive reading. Is that true that is a page number basically?
25 A. It is.

1 Q. Of another book?
2 A. That is correct.
3 Q. And what is that other book?
4 A. The other book being the bible.
5 Q. And you witnessed with your own eyes your grandfather reading out of the bible out
6 loud?
7 A. That is correct.
8 Q. Thank you.
9 MR. BENNETT: Thank you, Your Honor.
10 THE COURT: Counsel.
11 **RECROSS EXAMINATION BY MR. HASKELL.**
12 Q. Go back to your grandmomma. The entire time of marriage would you say that your
13 grandmother knows your grandfather better than anybody else?
14 MR. BENNETT: Objection, Your Honor. Improper recross. The sole area of questioning that
15 I asked on redirect is based upon the responsive reading at church.
16 THE COURT: All right. I sustain it. Gentlemen, anything further?
17 MR. HASKELL: No sir.
18 MR. BENNETT: May she step down, Your Honor?
19 THE COURT: All right. You may step down Mrs. Bennett.
20 MR. BENNETT: Your Honor, it is twenty till 12 and Mr. Jack Heckman is here and now
21 present in the courtroom. I don't anticipate his testimony being too awfully long but I would like
22 an opportunity if I may at this time to take a brief break so that I can go over a few items with
23 him since he was not able to be present during the testimony so far today. I don't know if the
24 Court would like to go ahead and break for lunch at this time and come back earlier or what is
25 the Court's pleasure?

1 THE COURT: Well how long do you think that his testimony will take? I will give you ten
2 minutes to break. Do you think he will go pass twelve thirty?

3 MR. BENNETT: No sir.

4 THE COURT: Then we will do that I will give you ten minutes for a break and we will start
5 back at ten till twelve and we will go to twelve thirty.

6 MR. BENNETT: Thank you, Your Honor.

7 THE COURT: And then we will break for lunch.

8 (BREAK)

9 **JOHN HENRY HECKMAN, III, BEING DULY**

10 **SWORN, TESTIFIES AS FOLLOWS:**

11 **DIRECT EXAMINATION BY MR. BENNETT.**

12 Q. Mr. Heckman if you will please state your full name for the court reporter?

13 A. John Henry Heckman, III.

14 Q. And where do you reside?

15 A. At 112 Doverdale Road in Greenville, South Carolina.

16 Q. And you are an attorney?

17 A. Yes.

18 Q. Please tell us your professional qualifications?

19 A. I was admitted to the bar in 1996. I practice for four years with William B. James &
20 Associates and I have been on my own with my own firm since 2000.

21 Q. What is the name of that firm?

22 A. The Heckman Law Firm.

23 Q. And where is it located?

24 A. At 409 Pettigru Street in Greenville.

25 Q. And what does the Heckman Law Firm specialize in, if anything?

- 1 A. It specializes in real estate transactions.
- 2 Q. And in your history as an attorney is there any way that you can estimate how many
3 closing you have done?
- 4 A. Thousands and thousands.
- 5 Q. All right. Now specifically in regards to this case, are you familiar with this case?
- 6 A. Yes, I am.
- 7 Q. And how is it that you are familiar with it?
- 8 A. Well I grew up in Lyman not far from the Moores and the Bensons. And my sisters went
9 to school with relatives. So I have known the family for a long time. Originally, just I
10 guess the first time I had any representation of the family was about the family land out
11 on, well forgive me the name of the road.
- 12 Q. Was it a large tract of land?
- 13 A. Yes, a large tract of land that had been in the family for fifty plus years and we were
14 trying to figure out what was the ownership and it was an extensive project and even at
15 one time pretty much everyone in the courtroom, well a great number of the people in the
16 courtroom today were in my office sitting around the table to try to resolve how we were
17 going to do the family land and it was decided that it always wanted to remain in the
18 family and I don't know that anything to this day has been done to resolve the ownership.
19 My memory is the ownership is splintered amongst several of the family members. For
20 the large tract of land.
- 21 Q. When you say the large tract what is your estimate, if you remember?
- 22 A. Eighty to a hundred acres, somewhere in that range.
- 23 Q. Now are you familiar with the Plaintiff in this case, Mr. James Moore, Sr.?
- 24 A. Yes, I am.
- 25 Q. And how is it that you are familiar with him?

1 A. Mr. Moore was in my office and we discussed the large tract of land and the disposition
2 of the ownership and then also he was in my office when Jeannette bought the house from
3 him.

4 Q. Lets talk about that specifically. Now this was around 2001, is that correct?

5 A. In 2001, yes.

6 Q. And if you will please describe to the Court your recollection of the events that took place
7 in regards to that selling in March of 2001?

8 A. I believe that it was Jeannette who would have called me and made the first contact to lay
9 out the situation and that Mr. Moore owed his ex-wife Fifty two thousand dollars, ball
10 park, and the idea was that her and Tom would bail him out by buying the house and give
11 the lady you know the cash amount so he wouldn't have a contempt charge with the
12 family court. I prepared a sales contract. I think what we made it equal to was that the
13 price would be the amount of money that he needed to pay the family court judgment and
14 to payoff of the mortgage that was on the property and any closing cost. So that is how
15 the price was arrived at, it was Fifty six thousand and some change which would equal
16 the family court judgment, the payoff of the mortgage, and then the incidental closing
17 cost and it would show a net zero to the seller and then Jeannette had to come with the
18 price plus her closing cost.

19 Q. Now in your experience as a real estate attorney did you have any concerns about that
20 price of Fifty six thousand dollars for this property?

21 A. To me it seem to be a reasonable price in fact often times as an estate planning devise you
22 would have a child and parent come to you and say we just want to take the property out
23 of my father and mother, parent's name to avoid it being held up in probate for a year. So
24 I would have not batted an eye if they said we just want you to deed the property over five
25 dollars love and affection.