

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

**SC Court of Appeals**

William P. Keesley, Chief Administrative Judge

Appellate Case No. 2015-000348

Wilma Spikes..... Respondent,

v.

Roy Steven Cunningham and Roy Chester Cunningham..... Appellants.

**RECORD ON APPEAL**

S. Jahue Moore, SC Bar # 4063  
John C. Bradley, Jr., SC Bar # 7869  
Moore Taylor Law Firm, PA  
1700 Sunset Boulevard  
P.O. Box 5709  
West Columbia, SC 29171  
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Attorneys for Appellants

Brian P. Robinson, SC Bar # 8814  
Bruner, Powell, Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, SC 29260  
Attorney for Respondent

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P.O. Box 61110  
Columbia, SC 29260  
Attorney for Respondent

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|  |  |
|--|--|
| STATE OF SOUTH CAROLINA )<br>)<br>COUNTY OF LEXINGTON )<br>WILMA SPIKES, )<br>)<br>Plaintiff, )<br>)<br>vs. )<br>)<br>ROY STEVEN CUNNINGHAM, and )<br>ROY CHESTER CUNNINGHAM, )<br>)<br>Defendants. )<br>_____ ) | IN THE COURT OF COMMON PLEAS<br>Civil Action No. 2013-CP-32-01201<br>FILED<br>JAN 29 P 4:12<br>H. A. CARRIGG<br>CLERK OF COURT<br>LEXINGTON SC<br><b>ORDER OF JUDGMENT</b> |
|--|--|

The above matter came on for trial before this Court on September 29, 2014. The plaintiff was represented by Brian P. Robinson of the Richland County Bar, and the defendants were represented by S. Jahue Moore of the Lexington County Bar. After a full trial on the merits, this Court makes the following findings of fact and conclusions of law.

*WPC*  
#1

**FINDINGS OF FACT:**

1. The plaintiff is Wilma Spikes.
2. Spikes originally sued Roy Steven Cunningham on September 16, 2010.
3. Spikes effected service on Roy Steven Cunningham on September 20, 2010.
4. Roy Steven Cunningham ("Steven") owned property referred to hereinafter as Lot 7 in fee simple on September 20, 2014.
5. Steven executed a quit claim deed transferring Lot 7 to his father, Roy Chester Cunningham ("Chester") on December 25, 2010 for a recited consideration of \$1.00.
6. This Court issued an order of judgment against Steven on February 25, 2011 which was filed on March 11, 2011 in favor of Spikes.

7. Spikes sued Steven and Chester in the instant action on April 4, 2013, alleging violation of the Statute of Elizabeth with respect to the Lot 7 transfer.

8. The complaint in this matter mis-identified the address of the property at issue as 112 Harmon Creek Drive, Lexington, South Carolina.

9. The deed to Lot 7 was attached to the complaint as Exhibit "A."

10. Spikes moved to conform the pleading to the evidence, which motion this Court granted.

11. The defendants conceded that they were not surprised by the motion to conform the pleading to the evidence.

12. Spikes introduced into evidence a copy of the deed to lot 7, the original Spikes complaint against Steven (Pl. Exhibit 1), an affidavit of service of the original summons and complaint upon Steven filed with the Clerk of Court on September 24, 2010 (Pl. Exhibit 2), a Certified True Copy of the deed to Lot 7 from Steven to Chester filed in the Register of Deeds office on January 6, 2011 (Pl. Exhibit 3), a plat of the property showing lots A through G (Pl. Exhibit 4), and a deed transferring Lot 7 from Kimberley (Charles's daughter) and Norman Lloyd to Steven filed in the Register of Deeds office on March 26, 2009 (Pl. Exhibit 5).

13. Spikes also introduced a transcript of a hearing in supplemental proceeding in front of the Honorable James O. Spence on June 13, 2012 in which Steven was the witness.

14. Charles testified that he transferred lots shown on the Pl. Exhibit 4 plat to his children.

15. Charles testified that he told his children at the time he transferred the property that the property was "family property" and that they should transfer it back to him if they decided not to live on the property.

16. No such qualification appears in the deed entered as Pl. Exhibit 3 or the deed entered as Pl. Exhibit 5.

17. Steven testified that Charles told him when Charles transferred property to him that the property was family property and Steven should transfer it back to him if he should decide not to live on it.

18. Charles testified that he did not know when Steven moved off the property, it could have been anytime between 2006 and 2009.

19. Steven testified that he moved off the property in 2007.

20. Steven testified that he swapped his interest in lot D with his sister for her interest in Lot F.

21. Steven also testified the he did not know he owned Lot F until he got a tax bill for the 2010 property taxes.

22. Steven testified under oath in the supplemental proceeding hearing that he transferred Lot 7 to his father because his mother had contracted cancer and his father would need to sell the lot to help cover her hospital bills.

23. Spikes testified that she has not received any payment on the judgment at all.

24. THE CONFLICTING REASONS GIVEN BY STEVEN AS TO BASIS FOR THE TRANSFER MAKES THAT TESTIMONY NOT CREDIBLE. THE TRANSFER WAS TO DEFRAUD CREDITORS (WPA)

#### CONCLUSIONS OF LAW

1. The Statute of Elizabeth, § 27-23-10(A), reflects public policy that one should not transfer property for no value in an attempt to defraud one's creditors.

2. Under the Statute of Elizabeth "conveyances may be set aside under two conditions: first, where the transfer is made by the grantor with the actual intent of defrauding his creditors where that intent is imputable to the grantee, even though there is a valuable

consideration; and, second, where a transfer is made without actual intent to defraud the grantor's creditors, but without valuable consideration." Albertson v. Robinson, 371 S.C. 311, 316, 638 S.E.2d 81, 83 (S.C.App. 2006).

3. In this matter, I conclude that only the second condition is relevant, as the property was transferred without valuable consideration, the deed reciting only nominal consideration of \$1.00.

4. "Where a transfer is made without valuable consideration being exchanged, the transfer will be set aside only when the creditor establishes the following: (1) the grantor was indebted to the creditor at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay his indebtedness to the creditor in full, not merely at the time of transfer, but in the final analysis when the creditor seeks to collect the debt." Albertson at 317, 638 S.E.2d at 84.

WPK  
H4

5. "It is only necessary that the debt should have been in existence or the right of action have accrued at or before the time of the transfer. It may be reduced to judgment at a later date. To determine whether a person is such an existing creditor as can invoke the protection of the statute the inception of the debt or obligation is the time which controls; and not the date of the subsequent entry of judgment." Albertson 317-318, 638 S.E.2d at 84.

6. The testimony and Pl. Exhibit I establish that the Steven owed a debt to Spikes no later than September 16, 2010 when Spikes sued Steven. I conclude that this establishes the first element required under the Statute of Elizabeth as a matter of law.

7. Both Steven and Chester testified that the property was transferred to Chester by Steven because it was "family property" and there was an agreement that, if Steven decided to move from the property, he would transfer the property back to his father. However, Steven

)  
previously testified that he transferred the property to his father because his mother contracted cancer and his father would need to sell the property to pay hospital bills. Whichever of these stories is true, or if the truth lies elsewhere, the evidence is clear and convincing that the transfer was voluntary. I conclude that this establishes the second element required under the Statute of Elizabeth as a matter of law.

8. Spikes testified that Steven has not paid any amount at all on the debt established by the Order of Judgment filed on March 11, 2011 and attached to the complaint in this matter. Steven did not contradict Spikes' testimony regarding non-payment. The transcript of the supplemental proceeding indicates that Spikes was attempting to collect the debt at least as early as June 13, 2012. I conclude that this testimony, combined with the transcript, establishes the third element required under the Statute of Elizabeth as a matter of law.

WAL  
#5  
9. I conclude as a matter of law that the deed transferring Lot F from Steven to Chester is void as fraudulent.

#### ORDER

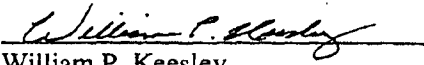
**IT IS ORDERED** that the deed, filed in Deed Book 14664, page 342 in the Lexington County Register of Deeds office is void.

**IT IS FURTHER ORDERED** that the Register of Deeds for Lexington County mark the deed filed in Deed Book 14664, page 342 in the Lexington County Register of Deeds office "Void".

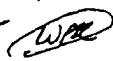
**IT IS FURTHER ORDERED** that Roy Steven Cunningham not transfer or attempt to transfer the property at issue here unless or until he has been ordered to do so by either the

Lexington County Court of Common Pleas or by the Lexington County Master-in-Equity.

**AND IT IS SO ORDERED.**

  
William P. Keesley  
Chief Administrative Judge  
Eleventh Judicial Circuit

Lexington, South Carolina

JAN.  
October 29, 2015 

#6

STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

WILMA SPIKES )

FILED )

2013 APR - 4 Plaintiff(s) )

vs. )

ROY STEVEN CUNNINGHAM, ET AL. )

Defendant(s) )

IN THE COURT OF COMMON PLEAS  
**COPY**

CIVIL ACTION COVERSHEET

2013-CP - 32-

Submitted By: Brian P. Robinson

Address: BPW&M, LLC, P.O. Box 61110, Columbia, SC  
29260

SC Bar #: 8814  
Telephone #: 252-7693  
Fax #: 888-726-9049  
Other:  
E-mail: brobinson@brunerpowell.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

**DOCKETING INFORMATION** (Check All that Apply) **2013 CP 3201201**

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

**NATURE OF ACTION** (Check One Box Below)

- |  |  |   |   |
|--|--|---|---|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> Employment (120)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Other (199)</li> </ul> | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intent Case #<br/>20__-CP-____-</li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul>  | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Assault/Slander/Libel (300)</li> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Other (399)</li> </ul> | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input checked="" type="checkbox"/> Other (499) Statute/Eitzabeth</li> </ul>                    |
| <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul>   | <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Drv. License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture-Consent Order (850)</li> <li><input type="checkbox"/> Other (899)</li> </ul> | <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> </ul>        | <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Public Service Comm. (990)</li> </ul> |
| <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699)</li> </ul>  | <ul style="list-style-type: none"> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> <li><input type="checkbox"/> Out-of State Depositions (650)</li> <li><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)</li> <li><input type="checkbox"/> Sexual Predator (510)</li> </ul>   | <ul style="list-style-type: none"> <li><input type="checkbox"/> Confession of Judgment (770)</li> <li><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)</li> <li><input type="checkbox"/> Other (799)</li> </ul>   | <ul style="list-style-type: none"> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul>   |

Submitting Party Signature: Brian P. Robinson

Date: April 2, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**



**COPY**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

**FILED** IN THE COURT OF COMMON PLEAS

2013 APR - 4 Civil Action No. 2013-CP-32-105

WILMA SPIKES, )  
 )  
Plaintiff, )

vs. )

**COMPLAINT**  
(Constructive Trust, Statute of Elizabeth)

ROY STEVEN CUNNINGHAM, and )  
ROY CHESTER CUNNINGHAM, JR., )  
 )  
Defendants. )

**2013CP3201201**

The Plaintiff, Wilma Spikes ("Spikes"), complaining of the Defendants, Roy Steven Cunningham ("Steven") and Roy Chester Cunningham, Jr. ("Chester"), alleges as follows.

1. Spikes is a citizen and resident of Lexington County, South Carolina.
2. Steven is a citizen and resident of Lexington County, South Carolina.
3. Chester is a citizen and resident of Lexington County, South Carolina.
4. Venue is proper in Lexington County, South Carolina.
5. Spikes filed suit against Steven on September 16, 2010.
6. Steven transferred property known as 112 Harmon Creek Drive, Lexington, South Carolina ("the Property") to Chester by quit claim deed filed on January 6, 2011 for the sum of \$1.00. (Attached as Exhibit "A.")
7. Chester is Steven's father.
8. Spikes was awarded judgment against Steven on February 25, 2011 in the amount of \$92,571.37, which judgment was entered on the judgment rolls on March 11, 2011. (Attached as Exhibit "B.")
9. Steven has no assets with which to pay the judgment

**FOR A FIRST CAUSE OF ACTION**  
**(Constructive Trust)**

10. Spikes repeats and realleges the foregoing to the extent required by, but not in contradiction of, the following allegations.

11. Steven transferred the Property to Chester knowing that there was a claim against him that he could not pay.

12. Chester received the Property for negligible consideration.

13. Steven defaulted on the suit.

14. Steven knew he was going to default on the suit at the time he transferred the property.

15. Once Spikes' right to execute on her judgment against Steven expires in 2021, there is nothing to stop Chester from transferring the Property back to Steven for \$1.00.

16. It would be inequitable for Steven to transfer a valuable asset to his father at a time when he knew he owed a substantial sum to Spikes.

17. The Court should, in equity, impress a constructive trust on the Property.

18. The Court should order the Property sold and the proceeds used to pay down the Spikes judgment.

**FOR A SECOND CAUSE OF ACTION**  
**(Statute of Elizabeth – S.C. Code Ann. § 27-23-10(A)(2007))**

19. Spikes repeats and realleges the foregoing to the extent required by, but not in contradiction of, the following allegations.

20. Steven knew of Spikes' claim long before the suit was filed.

21. Steven knew he did not have assets sufficient to pay Spikes except for the Property at issue.

22. The transfer of the Property from Steven to Chester was made to place the Property beyond the reach of Spikes.


23. The transfer from Steven to Chester was intended to defraud Spikes of her right to recover, in that it was made to defeat, delay, or hinder Spikes in her attempts to collect on her judgment.

24. Chester received the Property in exchange for negligible consideration.

25. This Court should unwind the transfer, order the Property sold and the proceeds used to pay down the Spikes judgment.

26. Spikes is also entitled to recover her reasonable attorney's fees and costs from Steven.

**WHEREFORE**, having fully pled, Spikes prays for the Property to be transferred to Steven, that the Property be sold, that the proceeds be used to pay down the Spikes judgment, for reasonable attorney's fees, for costs, and for such other and further relief as this Court finds just and fair.

  
Brian P. Robinson S.C. Bar No. 8814  
Bruner, Powell, Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, SC 29260  
(803) 252-7693  
Fax (888) 726-9049  
[brobinson@brunerpowell.com](mailto:brobinson@brunerpowell.com)  
Attorneys for the Plaintiff.

Columbia, South Carolina

April 2, 2013.

Exhibit "A"

2011080513 FILED, RECORDED, INDEXED  
2011-01-06 11:55:52:440  
REC FEE: \$18.00 ST FEE: \$1.30 Exempt  
CO FEE: \$0.55 Exempt Pages: 3  
Lexington County R.O.D. Debra M. Gunter  
DEED Bk:Pg 14664:342

THIS SPACE PROVIDED FOR RECORDER'S USE ONLY:

WHEN RECORDED RETURN TO:

Roy C Cunningham  
561 Boiling Springs Rd.  
Lexington, South Carolina, 29073

**QUIT CLAIM DEED**

THE GRANTOR(S),

- Roy Steven Cunningham, a single person,

for and in consideration of: \$1.00 conveys, releases and quit claims to the GRANTEE(S): ✓

- Roy Chester Cunningham, Jr., 561 Boiling Springs Rd., Lexington, Lexington County, South Carolina, 29073,

the following described real estate, situated in the County of Lexington, State of South Carolina:

(legal description): Parcel F N/S of Boiling Springs Rd. See Exhibit A

A map showing the property is recorded in Plat Book 99, Page 9846, Lexington County.

BK-9846 PG-99

Derivation: This property was acquire by the Grantor by a general warranty deed, dated 3/26/2009 and recorded with the Lexington recorder, in Book R 13488, Page 249, Lexington County.

Grantor grants, all of the Grantor's rights, title, and interest in and to the above described property and premises to the Grantee(s), and to the Grantee(s) heirs and assigns forever, so that neither Grantor(s) nor Grantor's heirs, legal representatives or assigns shall have, claim or demand any right or title to the property, premises, or appurtenances, or any part thereof.

Tax Parcel Number: 008600-02-040

**Grantor Signatures:**

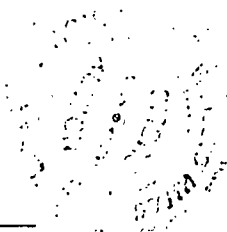
DATED: 12/25/2010

Roy Steven Cunningham

Roy Steven Cunningham  
112 Harmon Creek Dr.  
Lexington, South Carolina, 29072

STATE OF SOUTH CAROLINA, COUNTY OF LEXINGTON, ss:

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of December, 2010, by Melissa Asmer on behalf of Roy Steven Cunningham.



Melissa Asmer  
Notary Public Melissa Asmer  
My Commission Expires 2/13/14

**Witness Signatures:**

Lee Cunningham  
Witness

Kimberly LLOYD  
569 Boiling Springs rd  
Lexington  
South Carolina

Serena E. Cunningham  
Witness

Serena E Cunningham  
112 Harmon Creek Dr.  
Lexington  
South Carolina

Exhibit A

2009013978 FILED, RECORDED, INDEXED  
2009-03-26 15:06:49:327  
REC FEE: \$18.00 ST FEE: \$1.30 Exempt  
CD FEE: \$0.35 Exempt Pages: 2  
Lexington County R.O.D. Debra M. Gantner  
DEED No: Pg 13488:249

RECORDING INFORMATION:

NO TITLE EXAMINATION

STATE OF SOUTH CAROLINA

GENERAL WARRANTY DEED

COUNTY OF LEXINGTON

KNOW ALL MEN BY THESE PRESENTS THAT, **KIMBERLEY C. LLOYD AND NORMAN W. LLOYD**, hereinafter referred to as Grantor, for and in consideration of the sum of FIVE AND 00/100 (\$5.00) DOLLARS and love and affection to Grantor paid by **ROY STEVEN CUNNINGHAM**, hereinafter referred to as Grantee, in the state aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does hereby grant, bargain and release unto the said Grantee, Grantee's heirs, successors and assigns forever:

All that certain piece, parcel or lot of land, with improvements thereon, situate lying and being in the County of LEXINGTON, State of South Carolina and being more particularly shown as LOT F, containing 2.37 ACRES on a plat for Roy C. Cunningham, Jr. by Collingwood Surveying, Inc., dated 05/18/2004 and recorded in the Recorder's Office for the above named county in Plat Book 9846 at page 99. The metes and bounds as shown on said plat are incorporated by reference herein.

This being the property conveyed to the Grantors by quitclaim deed of Roy C. Cunningham, Jr., recorded 01/14/2005 in the Lexington County ROD in Book 9846 at page 87.

Tax Map Number 008600-02-040

grantee  
Property Address: 112 Harmon Creek Dr.  
875 Boiling Springs Road  
Lexington, SC 29072

This conveyance is made subject to Easements, Restrictions, Covenants and Conditions of record.

Grantee's Address:

TOGETHER WITH ALL AND SINGULAR, THE RIGHTS, MEMBERS, HEREDITAMENTS AND APPURTENANCES TO THE SAID PREMISES BELONGING, OR IN ANYWISE INCIDENT OR APPERTAINING.

Debra M. Gantner

Lexington County Register of Deeds

ORIGINAL

Exhibit "B"

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )  
 WILMA SPIKES, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CALYPSO POOLS, INC. and )  
 STEVEN CUNNINGHAM, )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 Civil Action No. 2010-CP-32-3985

ORDER OF JUDGMENT

NETH A. CARRIGG  
 CLERK OF COURT  
 LEXINGTON SC

2011 MAR 11 A 9 43

FILED

This matter came before me on February 24, 2011 for a determination of the damages due the Plaintiff in this action, an order of judgment by default having been filed on December 29, 2010.

*WPE #1*

The Plaintiff presented evidence and testimony showing by a preponderance of the evidence that she suffered damages as a direct and proximate result of the Defendant Calypso Pools, Inc.'s breach of contract. Further, she presented evidence that the damages she suffered amount to \$29,714.34, and I so find.

The Plaintiff presented clear and convincing evidence and testimony showing that the defendants attempted to substitute pool equipment that was inferior, cost less, and required mor maintenance than the specified equipment, and did so in a deceptive and unfair manner, and I so find.

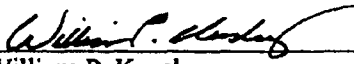
I find as a fact that the Plaintiff has been damaged in the amount of \$29,714.34 by Calypso Pools, Inc. I find as a fact that deceptive and unfair statements made by Steven Cunningham were equally responsible for the damages.

**THEREFORE**, I find that the Plaintiff should, and she hereby does, have judgment against Calypso Pools, Inc. and Steven Cunningham in the amount of \$29,714.34. I further find

that the Plaintiff should, and she hereby does, have that judgment trebled, resulting in judgment against Calypso Pools, Inc. and Steven Cunningham in the amount of \$89,143.02. Further, I award attorneys fees and costs to the Plaintiff in the amount of \$3,571.37, making a total verdict of \$92,714.39.

**JUDGMENT FOR PLAINTIFF IN THE AMOUNT OF \$92,514.39.**

**AND IT IS SO ORDERED.**

  
\_\_\_\_\_  
William P. Keesley  
Circuit Court Judge  
Eleventh Judicial Circuit

February 25, 2011

Lexington, South Carolina

#2

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2010CP3203985

**Wilma Spikes vs. Calypso Pools Inc**

**CHECK ONE:**

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

**IT IS ORDERED AND ADJUDGED:**  See attached order;  Statement of Judgment by the Court:

Court Reporter:

\_\_\_\_\_  
**PRESIDING JUDGE -**

This judgment was entered on the 11th Day of March 2011, and a copy mailed first class this 14th Day of March 2011, to attorneys of record or to parties (when appearing pro se) as follows:

**Matthew H. Stabler Bruner Powell Wall &  
Mullins Llc** Post Office Box 61110 Columbia,  
SC 292601110

**Calypso Pools Inc** 2 Office Park Court  
Columbia, SC 29202  
**Steven Cunningham** 112 Harmon Creek Drive  
Lexington, SC 29072

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

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

**Beth A. Carrigg/wh**

SCRCP APP-24/FORM 4

\_\_\_\_\_  
Beth A. Carrigg - Clerk of Court

COPI

STATE OF SOUTH CAROLINA ) FILED  
COUNTY OF LEXINGTON ) IN THE COURT OF COMMON PLEAS

Wilma Spikes, )  
 ) C.A. No.: 2013-CP-32-01201

Plaintiff, )

vs. )

Roy Steven Cunningham, and )  
Roy Chester Cunningham, Jr., )

Defendants. )

**ANSWER AND COUNTERCLAIM**

The Defendants above-named Answer the Complaint of the Plaintiff herein and Counterclaims as follows:

FOR A FIRST DEFENSE

1. This action has already been litigated. Any claim that Roy Chester Cunningham, Jr. has any liability to the Plaintiff should have been joined in the original action.
2. Based on the foregoing, Roy Chester Cunningham, Jr. has had no opportunity to litigate the issue of whether or not the Plaintiff is entitled to any money from anyone.
3. Based upon a failure to join, this action should be dismissed against Roy Chester Cunningham, Jr.

FOR A SECOND DEFENSE

4. Defendants hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim.
5. The allegations set forth in paragraphs one (1), two (2), three (3), four (4) and five (5) of the Complaint are admitted.

6. The allegations set forth in paragraph six (6) of the Complaint are denied, except it is admitted that Steven transferred the property in question in order correct an error which had been committed at a previous closing.

7. The allegations set forth in paragraphs seven (7), eight (8) and nine (9) of the Complaint are admitted.

8. The allegations set forth in paragraphs ten (10), eleven (11) and twelve (12) of the Complaint are denied.

9. The allegations set forth in paragraph thirteen (13) of the Complaint are admitted.

10. The allegations set forth in paragraphs fourteen (14) through twenty-six (26) of the Complaint are denied.

FOR A THIRD DEFENSE  
AND BY WAY OF COUNTERCLAIM

11. Defendants hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim.

12. The Plaintiff has filed this action without having properly joined Roy Chester Cunningham in the original action and without any notice to Mr. Cunningham.

13. This action amounts to a slander of title.

14. As a direct and proximate result of the aforementioned slander of title, the property has been encumbered; the property has been blighted; the property has been reduced in value; and Defendants are not entitled to the free use of the property.

15. The Defendant, Roy Chester Cunningham, is entitled to judgment against the Plaintiff for actual and punitive damages.

WHEREFORE, having fully Answered and Counterclaimed, the Defendants pray that the action be dismissed with costs; and the Defendant, Roy Chester Cunningham, prays for judgment against the Plaintiff for actual and punitive damages.

MOORE, FAYLOR & THOMAS, P.A.

BY: \_\_\_\_\_

S. Jahue Moore  
1700 Sunset Boulevard  
P. O. Box 5709  
West Columbia, SC 29171  
(803) 796-9160

ATTORNEY FOR THE DEFENDANTS

West Columbia, South Carolina  
June 10, 2013

FILED  
2013 JUN 10 7 22 AM

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS  
Civil Action No. 2013-CP-32-01201

WILMA SPIKES, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ROY STEVEN CUNNINGHAM, and )  
ROY CHESTER CUNNINGHAM, )  
 )  
Defendants. )  
\_\_\_\_\_ )

SPIKES REPLY TO COUNTERCLAIM

The Plaintiff replies to the counterclaim of the Defendants as follows.

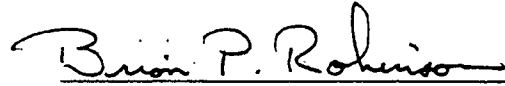
**FOR A FIRST DEFENSE**

1. The allegations of Paragraph 11 do not require an answer, but if an answer is required, then Plaintiff denies all such as are in contradiction to the allegations of the Complaint.
2. Plaintiff admits so much of the allegations of Paragraphs 12 of the Counterclaim as can be construed to allege that Roy Chester Cunningham had no interest in the original complaint by Spikes against Roy Steven Cunningham, and denies all other allegations thereof.
3. Plaintiff denies all the allegations of Paragraphs 13 through 15 of the Counterclaim.

**FOR A SECOND DEFENSE**  
**(Statute of Elizabeth)**

4. An attempt to collect on a debt cannot form the basis of slander of title if the Statute of Elizabeth would execute the transfer of that title from the debtor to a third person.
5. Spikes pleads protection of the Statute of Elizabeth as a complete defense to the Counterclaim.

**WHEREFORE**, having fully answered, Spikes prays for judgment in her favor on the Counterclaim, for costs, and for such other and further relief as this Court finds just and fair.



Brian P. Robinson S.C. Bar No. 8814  
Bruner, Powell, Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, SC 29260  
(803) 252-7693  
Fax (888) 726-9049  
[brobinson@brunerpowell.com](mailto:brobinson@brunerpowell.com)  
Attorneys for the Plaintiff.

Columbia, South Carolina

June 13, 2013.

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State of South Carolina  
County of Lexington

Court of Common Pleas

Wilma Spikes )  
 )  
 ) Plaintiff, )  
 ) v. )  
 )  
 ) Roy Steven Cunningham and )  
 ) Roy Chester Cunningham )  
 )  
 ) Defendants. )

Transcript of Record  
13-CP-32-2101

September 29, 2014  
Lexington, South Carolina

B E F O R E:

The Honorable William P. Keesley, Judge.

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

Brian P. Robinson, Esquire  
Attorney for the Plaintiff

S. Jahue Moore, Esquire  
Attorney for the Defendant

~~CONFIDENTIAL~~

Stacy L. Sheppard, RPR  
Circuit Court Reporter

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## E X H I B I T S

|    | <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID.</u> | <u>EVD.</u> |
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1 (The following proceedings were held on  
2 September 29, 2014.)

3 **THE COURT:** Do y'all want to make opening  
4 statements or you just want to start with your  
5 evidence?

6 **MR. ROBINSON:** I'm just as happy to start,  
7 Judge.

8 **MR. MOORE:** Sounds good to me.

9 **THE COURT:** Call your witness.

10 **MR. ROBINSON:** Call Wilma Spikes.

11 **THE COURT:** Ms. Spikes, I need you to come up,  
12 let the clerk swear you in, please.

13 WILMA CLARA SPIKES,  
14 having been duly sworn, testified as follows:

15 **THE CLERK:** If you'll have a seat there and  
16 state your full name for the record.

17 **THE WITNESS:** Wilma Clara Spikes.

18 DIRECT EXAMINATION

19 BY MR. ROBINSON:

20 **Q** Ms. Spikes, did you sue Calypso Pools and Steve  
21 Cunningham previously?

22 **A** I did.

23 **Q** I'm going to hand you what's been marked as  
24 Exhibit Number 1 and ask you if you recognize that  
25 document?

1           **A**     I do.

2           **Q**     What is that?

3           **A**     It's our suit against Mr. Cunningham and  
4           Calypso Pools.

5           **Q**     All right. And there's a stamp on that. When  
6           was that stamped in at the clerk's office?

7           **A**     16 September 2010.

8           **Q**     Okay.

9                   **MR. ROBINSON:** Move to admit Exhibit 1, Your  
10           Honor.

11                   **MR. MOORE:** I have no objection, Your Honor.

12                   **THE COURT:** Mark it in evidence, please.

13                           (Plaintiff's Exhibit Number 1, summons,  
14           admitted into evidence.)

15           BY MR. ROBINSON:

16           **Q**     Let me hand you what's previously been marked  
17           as Exhibit Number 2. Did you serve Mr. Cunningham?

18           **A**     I did.

19           **Q**     Now, can you tell us what date Mr. Cunningham  
20           got sued on?

21           **A**     September 20th, 2010.

22           **Q**     And did that get filed in the clerk's office?

23           **A**     It did.

24           **Q**     And what's the date on that filing?

25           **A**     September 24th, 2010.

1           **MR. ROBINSON:** Move to admit Exhibit Number 2,  
2 Your Honor.

3           **THE COURT:** Any objection to this?

4           **MR. MOORE:** I do not have any objection at all.

5           **THE COURT:** Mark it in evidence, please.

6                   (Plaintiff's Exhibit Number 2, affidavit,  
7 admitted into evidence.)

8 BY MR. ROBINSON:

9           **Q** Let me hand you what's been marked as Exhibit  
10 Number 3. Did you do some research to find out if  
11 Mr. Cunningham had any assets?

12           **A** I did.

13           **Q** What did you discover?

14           **A** That he had some property.

15           **Q** Okay. And did he deed that property out?

16           **A** He did.

17           **Q** Is that a -- what's Exhibit Number 3?

18           **A** It's a quitclaim deed.

19           **Q** Who's it from and who's it to?

20           **A** From Roy Steven Cunningham to Roy Chester  
21 Cunningham.

22           **Q** All right. Who is Roy Steven Cunningham?

23           **A** The owner of Calypso Pools.

24           **Q** Is that the person that you sued previously?

25           **A** Yes.

1 Q All right. And do you know who Roy Chester  
2 Cunningham is?

3 A I believe it's --

4 MR. MOORE: Objection, please, Your Honor, as  
5 to what she may believe. I would object to the  
6 speculation.

7 THE COURT: She can testify as to what she  
8 knows of her own knowledge.

9 BY MR. ROBINSON:

10 Q Have you been introduced to Roy Chester  
11 Cunningham?

12 A I have.

13 Q And when you were introduced to him, was  
14 Mr. Roy Steven Cunningham there?

15 A Yes.

16 Q And did Mr. Steven Cunningham tell you who Mr.  
17 Roy Chester Cunningham was?

18 A He said he was his father.

19 Q Okay. Now, what is the consideration in this  
20 transfer of property that's Exhibit Number 3?

21 A One dollar.

22 Q One dollar. And what's the date that this was  
23 filed in the clerk's office?

24 A January 6, 2011.

25 Q And what's the date that it was executed? That

1 would be on page two.

2 **A** December 25th, 2010.

3 **Q** And that is after you sued Mr. Cunningham?

4 **A** It is.

5 **Q** And it's after you served Mr. Cunningham with  
6 that lawsuit?

7 **A** It is.

8 **Q** You got a judgment against Mr. Cunningham?

9 **A** I did.

10 **Q** And has Mr. Cunningham paid you any money on  
11 that judgment?

12 **A** No.

13 **Q** All right. And what would you like the Court  
14 to do with respect to this deed?

15 **A** Transfer the title to me.

16 **Q** Back to Mr. Cunningham, Mr. Steven Cunningham.  
17 And then -- and then would you like that property to  
18 be sold?

19 **A** Yes.

20 **Q** Okay.

21 **MR. ROBINSON:** All right. I don't have any  
22 further questions for this witness, Your Honor.

23 **THE COURT:** Thank you.

24 Cross-examination.

25 **MR. MOORE:** Yes, please, Your Honor, very



1           **A**    Mediation. Thank you.

2           **MR. ROBINSON:** I'm sorry, Your Honor. I'm  
3 going to object to this. What was discussed in  
4 mediation is privileged.

5           **MR. MOORE:** I will tend to agree with that,  
6 Your Honor.

7 BY MR. MOORE:

8           **Q**    Other than what you learned in mediation, you  
9 have no idea the reason why he actually had the  
10 title in his name, do you?

11          **A**    When we were in court the first time --

12          **Q**    Yes, ma'am.

13          **A**    -- he made statements about -- that it was  
14 family property. And it was bought by his father  
15 and divided between the children for their use.

16          **Q**    And he also said in court that there was an  
17 understanding if he was not going to live on the  
18 property, he would give it back to his dad?

19          **A**    That I don't remember.

20          **Q**    All right. Let's talk about you testified that  
21 you served the lawsuit on Mr. Cunningham. You did  
22 not actually serve the lawsuit on Mr. Cunningham, a  
23 process server did that; correct?

24          **A**    Correct.

25          **Q**    Now, according to the Exhibit Number 2 that

1           apparently has been placed into evidence, the  
2           lawsuit would not have been served on  
3           Mr. Cunningham, it would have been served upon his  
4           daughter; is that correct?

5           **A**     His -- if I understand the system, his daughter  
6           accepted it.

7           **Q**     All right. Well, according to the paper that's  
8           been placed in, it was served upon his daughter;  
9           correct?

10          **A**     I'm sorry, I don't --

11          **Q**     Yes, ma'am. You identified this as Exhibit  
12          Number 2?

13          **A**     Yes.

14          **Q**     And Exhibit Number 2 you told the Court that  
15          you served it on him, but you actually didn't, you  
16          had a process server that did that; correct?

17          **A**     Yes.

18          **Q**     And the process server served it on Ms. Mirna  
19          Cunningham, daughter?

20          **A**     Yeah.

21          **Q**     All right. So then according to the document  
22          you have, the lawsuit was not actually served upon  
23          Mr. Steven Cunningham, it was served upon his  
24          daughter?

25          **A**     The document was served upon his daughter. The

1 lawsuit was against Mr. Cunningham.

2 Q All right. Do you know what document was  
3 served on Mr. Cunningham?

4 MR. ROBINSON: Objection, Your Honor. She has  
5 no way of knowing that. There's an affidavit as to  
6 what got served. It speaks for itself.

7 MR. MOORE: Your Honor, she identified it in  
8 the record.

9 THE COURT: Well, if she doesn't know, she can  
10 say she doesn't know, but it's a proper question.  
11 Go ahead.

12 BY MR. MOORE:

13 Q Do you know what was actually served on  
14 Mr. Cunningham's daughter?

15 A I was not there; I would not know.

16 Q All right. So the answer is you don't know?

17 A Okay.

18 Q And do you know if Mr. Cunningham's daughter  
19 was an adult or a minor at the time?

20 A I believe she was 18 because Mr. Cunningham had  
21 brought her to our house a couple of years before  
22 when he was first -- when we were first signing our  
23 pool contract.

24 Q Of course, you know he has several daughters;  
25 correct? Did you know that?

1           **A**     No, I did not.

2           **Q**     Do you know which daughter it is that the  
3 papers were actually given to?

4           **A**     No, I would not.

5           **Q**     And since you don't know which one, you don't  
6 know if she was a minor or not; right?

7           **A**     Since he has more than one daughter, no, I do  
8 not.

9           **Q**     All right. And, of course, you don't have any  
10 firsthand knowledge about why the property was given  
11 to his daddy; is that correct?

12          **A**     No.

13          **Q**     Okay. Thank you so much.

14               **MR. MOORE:** Nothing further, Your Honor.

15               **THE COURT:** Redirect.

16               **MR. ROBINSON:** Thank you, Your Honor.

17                               REDIRECT EXAMINATION

18           BY MR. ROBINSON:

19           **Q**     Would you look at Exhibit 2, please?

20           **A**     (Witness complies.)

21           **Q**     See about halfway down, there's a parentheses  
22 that says D-E-S-C?

23           **A**     Yes.

24           **Q**     And what does it say for sex?

25           **A**     Female.

1 Q Race?

2 A White.

3 Q Color of hair?

4 A Blond.

5 Q Age?

6 A Eighteen to 21.

7 Q Height?

8 A Five foot six to five foot nine.

9 Q So according to this affidavit, how old was  
10 she?

11 A At least 18.

12 Q All right. (And there's an X in the second  
13 parentheses. What's it say there?)

14 A By delivering to Ms. Mirna Cunningham,  
15 daughter, a person of discretion and age residing at  
16 the residence and being at said residence at the  
17 time of service.

18 Q Thank you. And up at the top in the second  
19 line -- first line, read that into the record,  
20 please, Personally appeared.

21 A Personally appeared before me, the undersigned,  
22 who, being duly sworn, deposes and says that he  
23 served the following summons and complaint in the  
24 above-titled matter.

25 Q So what did he serve on the daughter?

1           **A**     The summons and complaint.

2           **Q**     All right. Thank you. And he says she's what?  
3           Suitable...

4           **A**     (Witness reviewing document.)

5           **Q**     See where the X is?

6           **A**     Yes. A person of discretion and age residing  
7           at the residence and being at the said residence at  
8           the time of service.

9                   **MR. ROBINSON:** All right. Thank you.

10                   **THE COURT:** Recross.

11                                   RECROSS-EXAMINATION

12           BY MR. MOORE:

13           **Q**     It says, At the residence. Do you know where  
14           Mr. Steve Cunningham was actually residing on the  
15           day Exhibit Number 2 was left with his daughter?

16           **A**     No.

17                   **MR. MOORE:** Thank you, ma'am, very much.

18                   **THE COURT:** Anything else of the witness?

19                   **MR. ROBINSON:** Nothing from us, Your Honor.

20                   **THE COURT:** Thank you, ma'am. You may step  
21           down.

22                   Call your next witness.

23                   **MR. ROBINSON:** We rest, Your Honor.

24                   **THE COURT:** Do you have any evidence, Mr.  
25           Moore.

1           **MR. MOORE:** Yes, please, Your Honor. If I  
2 might have one moment to get my client.

3           (Pause.)

4           **MR. ROBINSON:** Your Honor, at this time, I  
5 would like to move to conform the pleading to the  
6 evidence.

7           **THE COURT:** In what way?

8           **MR. ROBINSON:** Well, in my complaint, on  
9 paragraph six, I said Steven transferred property  
10 known as 112 Harmon Creek Drive, which is the  
11 incorrect address of the property that was  
12 transferred. If you look at the Exhibit Number A,  
13 that was his address at the time he transferred the  
14 property. The property that was transferred was  
15 actually lot F as set forth in the deed.

16           **THE COURT:** Do you want to be heard on this,  
17 Mr. Moore?

18           **MR. MOORE:** Your Honor, we were here today --  
19 we were here today to primarily -- that was one of  
20 our defenses that the property in question is not  
21 basically what they have sued on. We have known  
22 about this issue for a while, and they basically --  
23 we have never -- we certainly had no objection into  
24 placing into evidence the deed and so forth, but the  
25 truth of the matter is that the deed basically lists

1 his residence as being -- or at least the mailing  
2 address as being 112 Harmon Drive, but, again, they  
3 haven't sued in regard to the piece of property  
4 which they apparently now claim was transferred,  
5 which is one of the primary defenses in the case  
6 that they basically have not -- they have not listed  
7 the correct property.

8 **THE COURT:** Wasn't it an exhibit to the  
9 complaint?

10 **MR. ROBINSON:** Yes, it is, Your Honor.

11 **THE COURT:** Motion's granted.

12 **MR. MOORE:** Thank you, Your Honor.

13 **THE COURT:** Is your client out in the lobby or  
14 do you know where he is?

15 **MR. MOORE:** He's coming. If I might take one  
16 second -- may I have one moment with my client  
17 before we go in?

18 **THE COURT:** Sure.

19 All right. We're at ease.

20 (Brief recess: )

21 **THE COURT:** Mr. Moore, call your witness.

22 **MR. ROBINSON:** Your Honor, if I may, I  
23 neglected to move Exhibit Number 3 into evidence. I  
24 would like to do so at this time.

25 **THE COURT:** Any objection to that?

1           **MR. MOORE:** None.

2           **THE COURT:** Mark it in evidence, please.

3                   (Plaintiff's Exhibit Number 3, quitclaim  
4 deed, admitted into evidence.)

5           **THE COURT:** Call your witness, please.

6           **MR. MOORE:** Roy Cunningham.

7                   ROY C. CUNNINGHAM,

8           having been duly sworn, testified as follows:

9                                 DIRECT EXAMINATION

10          BY MR. MOORE:

11          **Q**     What is your name?

12          **A**     Roy C. Cunningham.

13          **Q**     And, Roy, how old are you?

14          **A**     Seventy-two.

15          **Q**     Are you used to courtrooms?

16          **A**     No, sir.

17          **Q**     In your life, have you ever been sued?

18          **A**     No.

19          **Q**     This is your first time in a courtroom?

20          **A**     Yes, sir.

21          **Q**     Now, you're 72 years old. Do you still work?

22          **A**     I do.

23          **Q**     Where do you work?

24          **A**     All American Heating and Air.

25          **Q**     And before that, where did you work?

- 1       **A**     I retired from Delta Airlines.
- 2       **Q**     Do you have children?
- 3       **A**     Yes.
- 4       **Q**     How many?
- 5       **A**     Three.
- 6       **Q**     Now, the piece of property that we're talking  
7       about here today, is that something you would refer  
8       to as family property?
- 9       **A**     Yes.
- 10      **Q**     When did you first acquire this property?
- 11      **A**     In the mid 80s.
- 12      **Q**     Who did you get the property from?
- 13      **A**     I got it from my father.
- 14      **Q**     What was your daddy's name?
- 15      **A**     Roy C. Cunningham, Sr.
- 16      **Q**     And do you know how long Mr. Cunningham, Sr.  
17      had the property before you got it?
- 18      **A**     Approximately ten years.
- 19      **Q**     Did Mr. Cunningham, Sr., did he buy the  
20      property or did it come to him from family?
- 21      **A**     He bought the property.
- 22      **Q**     When you got the property, did you buy it or  
23      did you get it from family?
- 24      **A**     I actually bought the property from my father.
- 25      **Q**     Does the property in question, is it -- does it

1 have a house on it or is it improved in any fashion?

2 A It does -- it has a double-wide mobile home on  
3 it.

4 Q All right. The property that Steve gave back  
5 to you, does it have the double wide?

6 A Yes, it does.

7 Q Who owns the double wide?

8 A I think it is in Serena Cunningham's name.

9 Q And that's Steve's wife?

10 A That's correct.

11 Q Now, at some point in time, did you transfer  
12 property to your children?

13 A Yes.

14 Q How many children do you have?

15 A I have three.

16 Q What are their names?

17 A Steve, Kim and Shawn.

18 Q Now, the property, when you transferred it to  
19 them, can you give me just an idea when it was that  
20 you transferred the property to them?

21 A It was approximately 1997.

22 Q And at some point in time, did your daughter  
23 and Steve swap some lots?

24 A Yes, they did.

25 Q Explain to me what they swapped.

1           **A**     Steve and Kim were side by side and Steve moved  
2           away from there and swapped properties with Kim.  
3           Kim got his house and he ended up with her house.

4           **Q**     All right.

5           **A**     And property.

6           **Q**     Now, when you transferred the property to your  
7           children, did they pay you anything for it?

8           **A**     No.

9           **Q**     Why did you transfer the property to your  
10          children?

11          **A**     I divided it up as family property. I divided  
12          it four ways and gave each one of them the same  
13          amount, approximately.

14          **Q**     Now, do you live on one of the pieces?

15          **A**     Yes, I do.

16          **Q**     And do two of your children live on other  
17          pieces?

18          **A**     Yes.

19          **Q**     When you gave the children the property, was  
20          there any understanding as to what was to be done if  
21          they didn't live there?

22          **A**     Yes.

23                 **MR. ROBINSON:** Objection, Your Honor. I don't  
24          think that's relevant to anything in this case.

25                 **THE COURT:** Do you wish to be heard, Mr. Moore?

1           **MR. MOORE:** Yes, sir, Your Honor. Basically,  
2 the concept is that this is an action brought to set  
3 aside a deed as being in fraud of creditors. If  
4 there was an understanding, and there was, as to  
5 what would happen to the property if the child  
6 didn't live there, what was to happen, then if that  
7 contingency happened and the property was simply  
8 transferred back, then there'd be no fraud. It will  
9 be simply part of an understanding and an  
10 arrangement. He got the property for no  
11 consideration and gave the property back for no  
12 consideration.

13           **THE COURT:** Anything else?

14           **MR. MOORE:** No, sir.

15           **THE COURT:** Anything else?

16           **MR. ROBINSON:** Yes, Your Honor. The property  
17 was transferred back to his father for no  
18 consideration after he got sued because it was the  
19 only asset that he had. And it's clear that the  
20 property was transferred back in order to take it  
21 out of the possibility of a sale in execution of the  
22 order that this Court filed back in 2011.

23           **THE COURT:** The objection's as to relevancy,  
24 the objection is overruled. You may ask your  
25 question.

1           **MR. MOORE:** Thank you, Your Honor.

2           BY MR. MOORE:

3           **Q**     What was the understanding you had with your  
4           son and your -- your sons and your daughter in  
5           regard to when you transferred the property to them?

6           **A**     When I transferred it to them, I told all three  
7           of them that the property was family property. If  
8           anything ever happened, they wasn't able to sell it.  
9           If they moved off, it was to go back into the  
10          family.

11          **Q**     All right. Now, in or about 2010, did Steve  
12          move off?

13          **A**     Yes, he did.

14          **Q**     And did he move to St. Thomas, Virgin Islands?

15          **A**     He did work in St. Thomas, yes, sir.

16          **Q**     All right. And was -- did he come to you and  
17          tell you that he planned to live there or not live  
18          there?

19          **A**     He said he would not live there anymore.

20          **Q**     All right. And when he told you that he was  
21          not going to live there anymore, did you want your  
22          property back?

23          **A**     Yes.

24          **Q**     Why?

25          **A**     Because it would remain in the family. It

1 wasn't to be sold or anything happen to it.

2 Q All right. And did he honor the original  
3 agreement and give you the property back?

4 A Yes, he did.

5 Q And have you held the property ever since?

6 A Yes.

7 Q Was this part of any prearranged way of  
8 cheating anybody or cheating creditors or was this  
9 part of an arranged deal that was there when the  
10 deed was delivered?

11 A It was part of an arranged deal originally when  
12 I gave the property to them.

13 Q And when was it that he moved off and told you  
14 that he was not going to live there?

15 MR. ROBINSON: Your Honor, I would like to  
16 object again. At this time, I object that this is a  
17 affirmative defense that has not been pled. What  
18 they're trying to do is to argue that Mr. Cunningham  
19 had some secret deal with his father to give the  
20 property back to him. They haven't pled that  
21 anywhere and I'm not willing to let them try that by  
22 consent. I think this is -- they're trying to try a  
23 defense they haven't pled and I think it's an  
24 affirmative defense.

25 THE COURT: Mr. Moore.

1           **MR. MOORE:** Your Honor, obviously, what they've  
2 done is to allege that it's a fraudulent conveyance  
3 in some form. They have the burden of proof. We  
4 have denied that the conveyance was fraudulent and  
5 we're simply trying to explain to the Court the  
6 reason for the transfer. I don't think that's an  
7 affirmative defense. It simply is part of the  
8 denial.

9           When they basically have alleged that the  
10 transaction is fraudulent and we bring in someone to  
11 explain the basis for the transaction, it would  
12 certainly seem to me that it's part of a general  
13 denial that we would be able to establish that the  
14 transaction was not fraudulent. But if we do need  
15 to allege that as an affirmative defense, I would  
16 make the same motion that he made, would simply be  
17 to conform my pleadings to the proof.

18           They've been told all along that the  
19 transaction was not fraudulent. It was part of a  
20 family transaction. Mr. Cunningham, the younger  
21 Mr. Cunningham, paid no money for the property and  
22 gave it back for no money as part of an arrangement  
23 with his daddy.

24           **MR. ROBINSON:** Judge, in the supplemental  
25 proceedings that was -- that were held in this

1 particular courthouse, Mr. Steven Cunningham said  
2 that he deeded the property back to his father  
3 because his mother got sick and he needed the  
4 property to fund her medical care. So we haven't  
5 heard anything about this secret deal to deed the  
6 property back.

7 **THE COURT:** All right. The complaint had  
8 stated that the dispute related to 112 Harmon Creek  
9 Drive. The complaint's now been amended to a  
10 different address, different property based on the  
11 fact that there was an attachment to the complaint  
12 that was a copy of the deed that covered the  
13 property that actually is in dispute.

14 So paragraph six of the complaint alleges that  
15 112 Harmon Creek Drive was transferred by a  
16 quitclaim deed for one dollar. The response was,  
17 The allegations set forth in paragraph six of the  
18 complaint are denied except that he's admitted that  
19 Steven transferred the property in question in order  
20 to correct an error which had been committed in a  
21 previous closing.

22 Was that for the 112 Harmon Creek Drive  
23 property?

24 **MR. MOORE:** That was the 112 Harmon Creek Drive  
25 property, yes, Your Honor.

1           **THE COURT:** All right.

2           **MR. MOORE:** We're now talking about a different  
3 piece of property than was originally at bar when we  
4 walked in today and we understand that. And if I  
5 were to stand here and tell you that I was caught by  
6 surprise in regard to the fact that what they really  
7 were talking about wasn't the -- was a different  
8 piece of property, I would be lying to the Court.  
9 We knew what they were talking about was this  
10 particular lot, but what they had actually put in  
11 their pleadings was a totally different piece of  
12 property. And I had assumed the Court would grant,  
13 and properly so, the motion to correct the error in  
14 the pleading. However, now that they've changed the  
15 pleadings, we now are talking about the piece of  
16 property we thought they were talking about, but not  
17 the one that the pleading said they were talking  
18 about.

19           **THE COURT:** All right. I'll take the ruling  
20 under advisement, but my inclination is based on the  
21 fact that the pleadings have been amended in the  
22 middle of the trial, I'm going to have to allow it  
23 in. I may make a different ruling in the final  
24 order, but I'm going to let the evidence in anyway.  
25 Go ahead. We don't have a jury here, so I'll sort

1 through it. Go ahead.

2 BY MR. MOORE:

3 Q The lot that we're talking about, as I  
4 understand it, you had given each child one lot?

5 A That's correct.

6 Q Steve and your daughter swapped lots?

7 A That's correct.

8 Q When it was recognized that Steve wasn't going  
9 to live there, he gave you the property back?

10 A That's correct.

11 Q That was pursuant to a prearranged agreement  
12 that everybody had?

13 A That's correct.

14 Q None of this was intended to cheat anybody, you  
15 just wanted your property back when Steve told you  
16 he wasn't going to live there?

17 A That's exactly right.

18 MR. MOORE: Nothing further. Thank you.

19 THE COURT: Cross.

20 CROSS-EXAMINATION

21 BY MR. ROBINSON:

22 Q This particular family property, as you call  
23 it, consists of how many pieces of property?

24 A It's three -- four pieces of property.

25 Q Let me hand you this document and ask if you've

1           seen this before. You're Roy C. Cunningham, Jr.;  
2           right?

3           **A**     That is correct.

4           **Q**     Okay. And this is a plat for this property,  
5           isn't it?

6           **A**     Yes.

7           **Q**     And it's A, B, C, D, E, F and G; right?

8           **A**     (Witness reviewing document.)

9           **Q**     Is that correct, sir?

10          **A**     Yeah. I was looking at -- let me look at it.  
11          It is, but it's only divided four ways.

12          **Q**     Okay. And the piece of property we're talking  
13          about is the piece of property that's designated as  
14          lot F; correct?

15          **A**     F.

16          **Q**     All right. And lot G, that's owned by Robert  
17          Shawn -- Robin Shawn Cunningham; is that right?

18          **A**     That's him, yes.

19          **Q**     Okay. And does he live on that property?

20          **A**     Yes.

21          **Q**     All right. And over here on D, there's a Roy  
22          S. and Serena Cunningham, one-story vinyl-sided  
23          mobile home; right?

24          **A**     That's correct.

25          **Q**     That's not on F, is it?

1           **A**     No, that's on D.

2           **Q**     It's on D.  Are you telling the Court that  
3           there's another mobile home on F?

4           **A**     Yes.

5           **Q**     Okay.  So Roy S. owns both D and F?

6           **A**     No.

7           **Q**     All right.  What's going on there?

8           **A**     Right now my sister -- I mean, my daughter,  
9           Kim, lives on D.

10          **Q**     Okay.

11          **A**     Steve transferred property from D to F and then  
12          he moved off.

13          **Q**     All right.  And when did he move off?

14          **A**     I don't know when it was, be honest with you,  
15          2007, '08, '09, '10, somewhere along...

16          **Q**     2007, '08, '09 or '10?

17          **A**     I have no idea.

18          **Q**     Did he transfer the property back to you as  
19          soon as he moved off?

20          **A**     No.  He did it later on.

21          **Q**     He did it later on.  How many years later on  
22          was it?

23          **A**     I don't know when he left, so I can't answer  
24          that.

25          **Q**     Where does your third child live?

1           **A**     My third child?

2           **Q**     Yeah, you said you had three children.

3           **A**     She lives at D now. Originally, she lived in  
4           F.

5           **Q**     All right. So all three -- excuse me -- two of  
6           your children are living on the property; is that  
7           correct?

8           **A**     That's correct.

9           **Q**     Are you living on the property?

10          **A**     Yes.

11          **Q**     All right. But Mr. Cunningham is not. Is his  
12          wife living on the property?

13          **A**     Whose wife?

14          **Q**     Mr. Cunningham's wife, his ex-wife?

15          **A**     Which Cunningham are you talking about?

16          **Q**     I'm talking about Steve.

17          **A**     No, she does not.

18          **Q**     Did she occupy it at one point in time?

19          **A**     She did when he lived on it.

20          **Q**     All right. So what you're telling us is you  
21          don't know when he moved out and you don't know how  
22          long it was between the time he moved out and the  
23          time he transferred the property back; is that  
24          correct?

25          **A**     That's correct.

1 Q All right.

2 MR. ROBINSON: I don't think I have any further  
3 questions, Your Honor.

4 THE COURT: Redirect.

5 MR. MOORE: Nothing further.

6 THE COURT: Thank you, sir. You may step down.  
7 Call your next witness.

8 MR. MOORE: Call Steve Cunningham.

9 THE COURT: Come around, please.

10 ROY STEVEN CUNNINGHAM,

11 having been duly sworn, testified as follows:

12 THE CLERK: Have a seat and state your name.

13 THE WITNESS: Roy Steven Cunningham.

14 DIRECT EXAMINATION

15 BY MR. MOORE:

16 Q And they call you Steve?

17 A Yes, sir.

18 Q Steve, I want to ask you one thing about this  
19 Exhibit Number 2. This is the affidavit of service.  
20 It appears to have been served on Mirna  
21 Cunningham --

22 MR. ROBINSON: Your Honor, if I may, that case  
23 is long since over. Any question about service  
24 should have been handled before you filed this order  
25 of -- with the Court back in 2011. I just don't

1 think that's relevant to anything at all.

2 **THE COURT:** Mr. Moore.

3 **MR. MOORE:** The truth of the matter is he's  
4 probably right. The only reason that I'm examining  
5 in this regard is they placed the document into  
6 evidence. If he hadn't put it into evidence, I  
7 think that I probably wouldn't be entitled to  
8 examine in regard to it, but they now have opened  
9 the door by placing it in. I simply thought an  
10 explanation would be appropriate.

11 However, I will concede that by the time I got  
12 the case, the judgment was more than a year old and  
13 I don't think I had the right to collaterally attack  
14 it, so I'm certainly happy with any ruling the Court  
15 appears to make. I think that if he hadn't placed  
16 this into evidence, I couldn't have asked him about  
17 it.

18 **THE COURT:** I don't know what he's going to  
19 say. I can speculate about it. It's difficult for  
20 me to envision how you're going to go behind that  
21 judgement, but it's nonjury and I have to let you  
22 make the proffer.

23 **MR. MOORE:** Sure. He -- if he hadn't put the  
24 affidavit of service in, the question would have  
25 been irrelevant. I can't collaterally attack the

1 judgment. I understand that.

2 **MR. ROBINSON:** Well, Judge, I had to put the  
3 thing in in order to show when he was served so that  
4 you'd know that he transferred the property after he  
5 was served.

6 **THE COURT:** Right. Well, I'm going to sustain  
7 the objection, but if you want to make a proffer of  
8 the evidence that you would put into the record, I'd  
9 be happy to let you do it.

10 **MR. MOORE:** No, sir, because, again, I'm trying  
11 to be as candid as I can with the Court. I have no  
12 problem with it. And I thank you very much.

13 **THE COURT:** All right. Go ahead.

14 BY MR. MOORE:

15 **Q** Steve, when you bought -- when you got the  
16 property from your daddy, did you pay any money for  
17 it?

18 **A** No, sir.

19 **MR. ROBINSON:** I'd like to renew my objection,  
20 Your Honor.

21 **THE COURT:** It's noted. Go ahead.

22 BY MR. MOORE:

23 **Q** Did you swap your lot with your sister?

24 **A** Yes, sir.

25 **Q** When that happened, did you pay any money for

1 that transfer?

2 A No, sir.

3 Q At some point in time, did you live out there?

4 A On lot F?

5 Q Yes.

6 A No, sir.

7 Q Did you live on the property that -- or did you  
8 live on lot D?

9 A Yes, sir.

10 Q And is that the property that was actually,  
11 ultimately, wound up in your name after the swap  
12 with your sister?

13 A Actually lot F ended up in my name after I  
14 traded properties and sold her my residence on lot  
15 D.

16 Q Okay. Now, did you pay your daddy anything for  
17 the property?

18 A No, sir.

19 Q Was there an understanding that you had with  
20 your dad when you got your property?

21 A That it was never to be sold. It was always to  
22 remain family land.

23 Q What happened if you didn't live there?

24 A It had to go back to him.

25 Q All right. And at some point in time, did you

1 decide to move?

2 **A** Yes, sir. 2007 my wife and I made a decision  
3 that the particular area, school district-wise, and  
4 because of some of the things that were happening  
5 with methamphetamine, to be quite frank with you,  
6 were not conducive for us to raise our children.

7 **Q** Was that 2007 or 2009?

8 **A** 2007 we bought our house.

9 **Q** When did you actually move off?

10 **A** 2007.

11 **Q** All right. And you told your dad that you  
12 weren't coming back?

13 **A** That's correct.

14 **Q** And, at some point in time, you decided to give  
15 the property back to him?

16 **A** Correct.

17 **Q** Was it his property?

18 **A** Of course.

19 **Q** Is there anything on the property now?

20 **A** F.

21 **Q** The property that was titled in your name?

22 **A** Yes. There is a mobile home that my sister  
23 owned that was separately deeded from the property,  
24 that's why, it's not showing on the plat. And  
25 there's an outbuilding or -- two outbuildings.

1 Q Are the outbuildings worth anything?

2 A No. I built them out of scrap.

3 Q How old is the mobile home?

4 A I think it's past the point where it can be  
5 moved. So I'm not sure of the year, but it can't be  
6 moved it's so old.

7 Q All right. You gave the property back, though,  
8 to your dad because you weren't going to live there  
9 anymore?

10 A Right.

11 MR. MOORE: Okay. Nothing further. Thank you,  
12 Your Honor.

13 THE COURT: Cross.

14 MR. ROBINSON: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. ROBINSON:

17 Q Mr. Cunningham, you moved off the property in  
18 2007; is that right?

19 A Correct.

20 Q And you didn't transfer it back to your father  
21 until December 25th of 2010; is that right?

22 A Correct.

23 Q All right. And so you -- and you transferred  
24 it after you got sued; correct?

25 A I transferred it when I realized that it was

1 still in my name. No designation to anything with  
2 the case. It was simply because I realized it was  
3 in my name.

4 Q Okay. Why did you transfer it back to your  
5 father?

6 A That was the agreement we had, sir.

7 Q Okay, sir. Do you recall when I asked you in  
8 supplemental proceedings in this case why you  
9 transferred it to your father?

10 A Absolutely.

11 Q What did you tell me?

12 A I told you that it was because my mother had  
13 just died and I had no idea if he was going to need  
14 to liquidate the property himself since he's the  
15 only one that could, and it was his property anyway.

16 Q Actually, I think what you told me is your  
17 mother had cancer?

18 A No. At the time, she was passed away.

19 MR. ROBINSON: If I may, Your Honor, I have --

20 THE COURT: You may open it.

21 MR. ROBINSON: Thank you.

22 BY MR. ROBINSON:

23 Q All right, sir. So let me hand you this  
24 transcript. We're on page five. If you don't mind,  
25 I'll stand here.

1       **A**     Do you mind if I do this to keep it open?

2       **Q**     That's fine. You said, All right, records of  
3       real estate, either you or Calypso owned either in  
4       the mob -- in whole or in part from January 2005 to  
5       present. And you said what?

6       **A**     I had. Actually, my dad put a piece of  
7       property in my name when my mother got pancreatic  
8       cancer. But when my mother got pancreatic cancer, I  
9       knew I was going to have to -- I knew he was going  
10      to have to have it, so I gave it back to my dad last  
11      year.

12      **Q**     All right. Thank you. Now, this says your dad  
13      put the piece of property in your name, but actually  
14      it was your sister, wasn't it?

15      **A**     It was actually, to be quite frank with you, it  
16      was in my wife's and my dad's name for the longest  
17      time because the attorney that did the paperwork  
18      messed it up. So it took us several years, and it's  
19      still not rectified totally yet, that the property  
20      was put into my name after we got it resolved from  
21      his and my wife's name, which was still incorrect.

22      **Q**     So at the end of the day, we have two different  
23      stories about why it went back to your father: One  
24      was your mom got pancreatic cancer and you thought  
25      he would need the property. The other was you had

1 some secret deal with him where if you weren't  
2 living there, you were going to give it back. But  
3 you moved out in 2005; right?

4 **A** No, I didn't --

5 **MR. MOORE:** Your Honor, that's about three  
6 different questions and part of it wasn't even a  
7 question. I object to the form of the question.

8 **THE COURT:** Rephrase your question.

9 **MR. ROBINSON:** Thank you, Your Honor.

10 BY MR. ROBINSON:

11 **Q** You told the court under oath in the  
12 supplemental proceedings that you gave the property  
13 back to your father because your mother got  
14 pancreatic cancer; is that correct?

15 **A** That was the reason for the urgency for me to  
16 transfer it back to his name.

17 **Q** And you told this Court, and your father  
18 testified, that you had some deal that's not in the  
19 deed that you would give the property back if you  
20 moved off the property; is that right?

21 **A** That is correct also.

22 **Q** But you didn't do it when you moved off the  
23 property, did you?

24 **A** I couldn't because it wasn't in my name.

25 **Q** Well, sir, let me hand you this document and

1 ask you if you recognize that deed?

2 **A** I recognize it.

3 **Q** And that's a deed to you from who?

4 **A** From my sister.

5 **Q** All right. And what's the date on that deed?

6 **A** (Witness reviewing document.)

7 **Q** When was it recorded?

8 **A** 3/26/09.

9 **Q** All right. So in 2009, your sister deeded that  
10 property to you. I thought you said you moved off  
11 the property in 2005?

12 **A** Actually, I never lived on the property. I  
13 said I moved in 2007.

14 **Q** I'm sorry, '07, excuse me. So you never did  
15 live on the property?

16 **A** Not lot F.

17 **Q** And the property, lot F, was in your name not  
18 in somebody else's name?

19 **A** No. It was in my father's and my wife's name.  
20 That's why it was just done in 2009 because it took  
21 the records division that long to get it all  
22 straightened out.

23 **Q** In 2009, the property was put in your name?

24 **A** Inadvertently.

25 **Q** Okay. Inadvertently?

1           **A**     I did -- I mean, you don't -- do you see my  
2           signature on there?

3           **Q**     Mr. Cunningham, first of all, I get to ask  
4           questions. I don't answer them.

5           **A**     All right. Sorry.

6           **Q**     Nonetheless, the buyer doesn't sign the deed,  
7           the seller signs the deed.

8           **A**     Okay.

9           **Q**     So you got the property in 2009, didn't give it  
10          back to your father until 2010 and hadn't been  
11          living on it the whole time that you were there?

12          **A**     Correct. When I got the tax notice for 2010  
13          from the county and realized it was in my name, we  
14          started figuring out how we could get it back into  
15          his name.

16          **Q**     All right. Was there some trick to getting it  
17          back in his name? You just have to write a  
18          quitclaim deed; right?

19          **A**     The problem was, sir, I needed to make sure  
20          that it was back in the proper name instead of two  
21          or three different people owning lot F1 or F2. I  
22          mean, there was a lot of confusion by the  
23          transactions of transfer.

24                   **MR. ROBINSON:** I don't think I have any further  
25          questions.

1           **MR. MOORE:** I don't have any further questions.

2           **THE COURT:** You may step down. Thank you.

3           **MR. ROBINSON:** I would move that we put this  
4 deed in as Exhibit Number 4.

5           **THE COURT:** Any objection?

6           **MR. ROBINSON:** Let's do this, I move that we  
7 put the plat in as Exhibit 4 since I've already  
8 marked it as 4.

9           **THE COURT:** Any objection to that?

10          **MR. MOORE:** None, Your Honor.

11          **MR. ROBINSON:** And then the deed, which I have  
12 not marked, would be Number 5.

13          **THE COURT:** The deed from Steve to his sister?

14          **MR. ROBINSON:** From Kimberly Lloyd and Norman  
15 Lloyd into Roy Steven Cunningham.

16          **THE COURT:** Any objection to that?

17          **MR. MOORE:** None, Your Honor.

18          **THE COURT:** Mark those in evidence, please.

19                 (Plaintiff's Exhibit Number 4, plat,  
20 admitted into evidence and Plaintiff's Exhibit  
21 Number 5, deed, was marked and admitted into  
22 evidence.)

23          **THE COURT:** Do you have another witness?

24          **MR. MOORE:** No, sir, that's our case.

25          **THE COURT:** Do you have any reply?

1           **MR. ROBINSON:** No, Your Honor, I don't have any  
2           reply. I don't know what I did with that  
3           transcript, though.

4           **COURT REPORTER:** It's over here.

5           **THE COURT:** Give that to the court reporter.

6                   (Court's Exhibit Number 1, deposition,  
7           marked for identification.)

8           **MR. ROBINSON:** No reply, Your Honor.

9           **THE COURT:** All right. So what's -- the  
10          motions is next. What's -- do either of you wish to  
11          make motions?

12          **MR. ROBINSON:** Well, Your Honor, I'd move that  
13          the Court give us judgment that the property be  
14          transferred back to Mr. Steven Cunningham and then  
15          sold. The facts are that the property was given to  
16          him in 2009 from his sister. It wasn't transferred  
17          back until the end of 2010, wasn't filed until 2011,  
18          curiously enough right after he got sued. They'd  
19          given the Court two different reasons why that  
20          property was given back to dad: One was mom got  
21          sick, and now that it suits their purpose, it was  
22          some secret deal that dad and the kids had.

23                 It's clear to me, I hope it's clear to the  
24          Court, but it's clear to me that the property was  
25          given to Steven C. Cunningham -- I mean, from Roy C.

1           Cunningham from Steven -- from Roy S. Cunningham in  
2           order to take it out of the possibility of execution  
3           because he wasn't planning on paying anything on the  
4           debt that he had and that was the only asset. So  
5           what I'd do is I'd move the Court for a judgment in  
6           favor of Ms. Spikes and that the property be sold at  
7           auction.

8           **THE COURT:** Mr. Moore, do you have any motions?

9           **MR. MOORE:** Your Honor, we actually believe the  
10          question as to whether or not the transaction was  
11          fraudulent is a question of fact for the finder of  
12          fact. I would love to be in a position to make a  
13          legitimate legal argument that I'm entitled to a  
14          judgment as a matter of law, but, quite frankly, I  
15          believe it's a question of fact.

16          I do believe that the defendant should be  
17          awarded -- that the action should be dismissed as I  
18          do not think there has been any actual proof of  
19          fraud. When you have a situation that is brought in  
20          for zero consideration and goes out for zero  
21          consideration pursuant to a preconceived family  
22          arrangement, I do not believe that that comes within  
23          the purview of the Statute of Elizabeth. I do  
24          believe that there's a prima facie case made, but  
25          that prima facie case is certainly subject to

1 rebuttal and there have been legitimate explanations  
2 provided as to why the transaction took place.

3 I would also respectfully submit that there is  
4 no prayer in the complaint for any sale of the  
5 property nor do I think that a sale would be  
6 anywhere close to appropriate under a Statute of  
7 Elizabeth action. I think the only remedy, if there  
8 were found to be a fraudulent transaction, would be  
9 the setting aside of the deed. I would also point  
10 out that in South Carolina, there's a 50,000 dollar  
11 personal exemption that would preclude any form of  
12 sale or any form of execution against the property  
13 in any event. So I would respectfully submit that  
14 the request for a setting aside of a deed should be  
15 denied because they haven't proved actual fraud.

16 I also would respectfully submit that the  
17 request that a sale take place be denied because  
18 there have been no prayer for a sale. And the only  
19 way to properly execute would be to go through the  
20 execution process and to move to foreclose on the  
21 lien.

22 And thirdly of all, that any action to  
23 foreclose upon the lien would be barred based upon  
24 the 50,000 dollar personal exemption which exists by  
25 virtue of the code. But I do not think I have any

1 motions at this time, Your Honor, because I do think  
2 what we're dealing with is a question of fact for  
3 His Honor, and I thank you for hearing us.

4 **THE COURT:** Anything else?

5 **MR. ROBINSON:** Yes, Your Honor. As I'm sure  
6 the Court is aware in the Statute of Elizabeth case,  
7 proof of fraud is not required. And Mr. Moore makes  
8 an eloquent argument, but there's no law. And also  
9 the personal exemption, as I understand it, is for  
10 your residence. And he has already told us he  
11 doesn't live on the property, so I don't think that  
12 makes any difference.

13 **MR. MOORE:** Your Honor, personal exemption is  
14 not just for a residence, it's for any property.  
15 And I thank you very much. And I learned that  
16 lesson the hard way, but I thank you very much for  
17 listening to us.

18 **THE COURT:** Well, I haven't looked this up. I  
19 didn't know it was going to be an issue. The  
20 exemption, if he has a house somewhere else, you're  
21 saying he can claim an exemption on the land?

22 **MR. MOORE:** My understanding is that there's a  
23 50,000 dollar personal exemption on assets in  
24 general. That basically there is a -- there's a  
25 threshold amount that they must basically prove, but

1 we don't even get there in this case because there's  
2 no request in the pleadings that I know of for a  
3 sale.

4 **THE COURT:** Well, it wasn't brought out in  
5 evidence and if y'all don't want to answer it, you  
6 don't have to, I don't guess, but he testified he  
7 had a house, but I'm assuming that he doesn't have a  
8 house in his name or else we wouldn't be doing this.

9 **MR. MOORE:** He has nothing in his name that we  
10 know of. The only house he has is basically he's  
11 living in a house that's in his wife's name. The  
12 only piece of property that he would have any  
13 potential claim to, and we've given this in  
14 discovery, he has some tools -- he has some tools  
15 and a little tiny bit of equipment and then there is  
16 this, arguably, this vacant lot in a methamphetamine  
17 infested area.

18 So the lot, I think, on tax purposes, the  
19 county has it, I think, assessed at about 18,000.  
20 It's probably worth somewhere around 10 to 12 max.  
21 The mobile home that's on there is such that it  
22 doesn't meet the permission to even move it. It's  
23 basically dilapidated.

24 We're simply in a posture where there's nothing  
25 really there. And we also think that they -- the

1 Statute of Elizabeth does require a proof of fraud,  
2 a transfer in fraud of creditors. And I agree that  
3 there's a prima facie case made when you have an  
4 action brought within a close proximity; however,  
5 it's not an irrebuttable presumption. If the  
6 defendant is able to come and show that he got the  
7 property back legitimately, then the Statute of  
8 Elizabeth does not apply. So those were the issues,  
9 I think, we laid before the Court and we thank you  
10 for listening to us.

11 **THE COURT:** Well, what about the counterclaim?

12 **MR. MOORE:** Your Honor, the counterclaim we're  
13 abandoning. The counterclaim is not something we  
14 wish to pursue. I mean, the action was brought in  
15 good faith. We have no qualms at all. We think  
16 they're just wrong in what they think happened. We  
17 think there's actually a legitimate explanation as  
18 to why the transfer took place, when it took place,  
19 as it took place.

20 **THE COURT:** Do you need to put anything else on  
21 the record, Mr. Robinson?

22 **MR. ROBINSON:** Nothing from us, Your Honor. I  
23 appreciate the Court's time.

24 **THE COURT:** Before y'all go, let me look at the  
25 exhibits.

1           **MR. ROBINSON:** Okay.

2           **MR. MOORE:** Your Honor, I'm going to let one of  
3 the Mr. Cunninghams go to the restroom.

4           **THE COURT:** That's fine. I may not have any  
5 questions. Since I haven't seen them, I want to  
6 look at the exhibits before you leave.

7                   (Pause.)

8           **THE COURT:** How does a person access F on the  
9 plat?

10          **MR. ROBINSON:** There's a road that runs in  
11 front of there.

12          **THE COURT:** Cunningham Road?

13          **MR. ROBINSON:** I believe that's right.

14          **THE COURT:** How do you access F? G's on the  
15 road.

16          **MR. ROBINSON:** I think Boiling Springs Road  
17 runs through here {indicating}.

18          **THE COURT:** I see it now. I'm sorry. I've  
19 seen most of these because they were attached to the  
20 complaint. They were in the file. Thank you very  
21 much. I'll notify you of a decision in writing.

22          **MR. ROBINSON:** Thank you, Your Honor.

23          **MR. MOORE:** Thank you, Your Honor.

24

25

END OF PROCEEDINGS

C E R T I F I C A T E

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 29th of September, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 6, 2015



Stacy L. Sheppard, RPR  
Circuit Court Reporter

COUNTY OF LEXINGTON

WILMA SPIKES,

Plaintiff(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

COPY

2010-CP - 19-

vs.

2010 SEP 16 11:17

CALYPSO POOLS, INC., and Steve Cunningham,

Defendant(s)

(Please Print)

Submitted By: Brian P. Robinson

Address: Bruner, Powell, Wall & Mullins, LLC,

P.O. Box 61110, Columbia, SC 29260

SC Bar #: 8814

Telephone #: 803-252-7693

Fax #: 888-726-9049

Other: 2010CP 320398

E-mail: brobinson@brunerpowell.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint. This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Construction (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental (200), Legal (210), Medical (220), Previous Notice of Intent Case # 20-CP-..., Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex/Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of-State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

ALL-STATE LEGAL PLAINTIFF'S EXHIBIT 1

Submitting Party Signature: Brian P. Robinson

Date: September 16, 2010

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,  
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA FILED IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Civil Action No. 2010-CP-32-

2010 SEP 16 3 4 11

WILMA SPIKES,

Plaintiff,

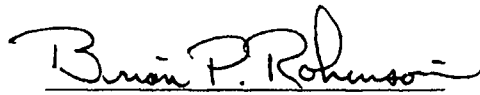
vs.

SUMMONS

CALYPSO POOLS, INC. and  
STEVEN CUNNINGHAM,

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint upon the undersigned subscriber at his offices at 1735 St. Julian Place, Suite 200, Columbia, South Carolina 29204, or at Post Office Box 61110, Columbia, South Carolina 29260, within thirty (30) days after service upon you, 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.



Brian P. Robinson  
Bruner, Powell, Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, SC 29260  
(803) 252-7693  
Attorneys for the Plaintiff

Columbia, South Carolina

September 16, 2010.

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )  
WILMA SPIKES, )  
Plaintiff, )  
vs. )  
CALYPSO POOLS, INC. and )  
STEVEN CUNNINGHAM, )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
Civil Action No. 2010-CP-32-  
2010 CP 15 P 4 17

**COMPLAINT**

The Plaintiff, Wilma Spikes (“Spikes”), complaining of the Defendants, Calypso Pools, Inc. (“Calypso”) and Steven Cunningham (“Cunningham”), alleges as follows.

1. Spikes is a resident of Lexington County, South Carolina.
2. Calypso is a domestic corporation with its principal place of business in Lexington County, South Carolina.
3. Cunningham is believed to be a resident of Lexington County, South Carolina.
4. Venue is proper in Lexington, South Carolina.
5. Spikes and Calypso entered into a contract dated September 24, 2009 for the construction of a pool at 105 Seafarer Lane, Batesburg, SC 29006. A copy of the contract is attached hereto as Exhibit “A.”
6. The pool construction was delayed until mid-December 2009.
7. Once preliminary problems were resolved in mid-December 2009, Calypso started construction of the pool.
8. Upon information and belief, Calypso has received new contracts for at least four other pools and completed them all since it started on the pool in question.

9. Despite repeated assurances that the pool was just two weeks away from completion, the pool has not been completed.
10. The work Calypso has performed has serious defects.
11. Additionally, Calypso has billed Spikes and been paid more than it is entitled to receive.

**FOR A FIRST CAUSE OF ACTION AGAINST CALYPSO**  
**(Breach of Contract)**

12. Spikes repeats and realleges the foregoing to the extent required by, but not in contradiction of, the following allegations.
13. Calypso breached the contract when it failed and refused to complete the work in a reasonable time, performed work not in accordance with the contract, supplied material not in accordance with the contract, refused to restore the adjacent property to its former condition, constructed portions of the pool that are failing even before water is in the pool, performed defective work, provided defective or damaged equipment, and when it failed to prosecute the work diligently,
14. Spikes has been damaged as a direct and proximate result of Calypso's breach of contract.
15. Spikes' damage is believed to exceed \$30,000.
16. Spikes is entitled to recover her damages from Calypso in an amount to be determined by the trier of fact.

**FOR A SECOND CAUSE OF ACTION AGAINST CALYPSO**  
**(Breach of Warranty of Good Workmanship)**

17. Spikes repeats and realleges the foregoing to the extent required by, but not in contradiction of, the following allegations.

18. Calypso held itself out as an expert in the construction of swimming pools.
19. Calypso extended an implied warranty of good workmanship when it held itself out as an expert in the construction of swimming pools.
20. Calypso extended an express warranty of good workmanship in the contract.
21. Calypso breached its warranty of good workmanship when it performed substandard work and work that is failing.
22. Calypso performed substandard work on at least the following elements of the project:
  - a. The backfill; and
  - b. The retaining wall/pool side; and
  - c. The coping; and
  - d. The tile work; and
  - e. The structural portion of the pool; and
  - f. The seat in the low end of the pool.
23. The breaches of the warranty of good workmanship are the proximate cause of damages suffered by Spikes.
24. Spikes' damage is believed to exceed \$30,000.
25. Spikes is entitled to recover her damages from Calypso in an amount to be determined by the trier of fact.

**FOR A THIRD CAUSE OF ACTION AGAINST CALYPSO**  
**(Breach of the S.C. Unfair Trade Practice Act)**

26. Spikes repeats and realleges the foregoing to the extent required by, but not in contradiction of, the following allegations.
27. Calypso agreed to perform the work in a reasonable time period.

28. Calypso agreed to provide certain types of pool equipment.
29. Calypso failed both to provide the types of equipment it contracted to perform or to complete the pool in a reasonable period of time.
30. The equipment provided by Calypso is of markedly lesser standard as the equipment required by the contract.
31. Calypso, upon information and belief, has provided equipment of markedly lesser standard to previous pool clients.
32. Calypso professed diligence in performing its work on the Spikes pool
33. Calypso, upon information and belief, has taken unreasonable time to complete pools for others while professing diligence in that construction.
34. Calypso's actions are unfair and deceptive.
35. Calypso's actions are willful.
36. Calypso breached the Unfair Trade Practices Act when it unfairly and deceptively promised equipment and work which it did not do and had no intention of doing.
37. Spikes has been damaged by at least \$30,000 as a direct and proximate result of Calypso's breaches of the Unfair Trade Practices Act.
38. Spikes is entitled to recover from Calypso treble her damages and her attorney's fees.

**FOR A FIRST CAUSE OF ACTION AGAINST CUNNINGHAM**  
**(Fraud)**

39. Spikes repeats and realleges the foregoing to the extent required by, but not in contradiction of, the following allegations.
40. Cunningham controls Calypso.

41. Cunningham represented to Spikes that the work would be performed in less than six months.

42. Cunningham represented to Spikes that he would supervise the work.

43. Cunningham represented to Spikes that the equipment supplied by Calypso was "even better" than the equipment required by the contract.

44. Cunningham represented to Spikes that the work was complete in accordance with good construction practices.

45. All of the representations Cunningham were material to the contract and to the payment Calypso received from Spikes.

46. Cunningham knew the representations were false when he made them.

47. All of the representations made by Cunningham were false.

48. Spikes was ignorant of the falseness of Cunningham's representations.

49. Spikes acted upon all of the representations Cunningham made.

50. Cunningham expected and intended Spikes to act upon his representations.

51. Spikes was entitled to rely upon Cunningham's representations.

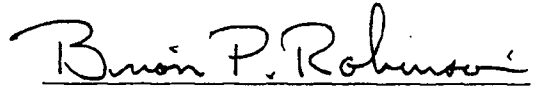
52. Spikes had no means of determining the truthfulness of Cunningham's representations.

53. Spikes has suffered damages as a direct and proximate consequence of Cunningham's false representations.

54. Spikes is entitled to recover her damages, both direct and punitive, from Cunningham in an amount to be determined by the trier of fact.

**WHEREFORE**, Spikes prays for judgment in her favor, for an award of her actual damages against Calypso under the First Cause of Action Against Calypso and the Second Cause

of Action against Calypso, for an award of her direct damages and for treble damages against Calypso in the Third Cause of Action Against Calypso, for an award of her direct damages and punitive damages against Cunningham under her First Cause of Action Against Cunningham, for costs, and for such other and further relief as this Court finds just and fair.



Brian P. Robinson S.C. Bar No. 8814  
Bruner, Powell, Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, SC 29260  
(803) 252-7693  
Fax (888) 726-9049  
[brobinson@brunerpowell.com](mailto:brobinson@brunerpowell.com)  
Attorneys for the Plaintiff.

Columbia, South Carolina

September 16, 2010.

FILED  
2010 SEP 16 2 46 17  
LI 41 C 11 153 007



MCCOLLUM Landscaping  
 Mt. Winding Rd.  
**Exhibit "A"**

569 Bolling Springs Rd.  
 Lexington, SC 29073  
 ph (803) 208-0612  
 fax (800) 362-3231  
 toll free (866) 330-7169  
 info@calypsopoolsinc.com  
 www.calypsopoolsinc.com

**CONTRACTOR AGREEMENT - RESIDENTIAL**

THIS AGREEMENT made this 24<sup>th</sup> day of SEPT., 2009, by and between Calypso Pools, Inc, hereinafter called the contractor, and Mr. & Mrs. SPIES (contact nos. 445 5761) hereinafter called the owner.

WITNESSETH, that the Contractor and the Owner for the consideration named agree as follows:

**ARTICLE 1. SCOPE OF THE WORK**

The Contractor shall furnish all the materials and perform all of the work shown on the drawings and/or described in the specifications entitled Exhibit A, as annexed hereto as it pertains to work to be performed on property located at:

235 SENECA LN, BATESBURG, ZIEGLER

**ARTICLE 2. THE CONTRACT PRICE**

The owner shall pay the Contractor for the material and labor to be performed under the Contract the sum of \$50,457.00 Dollars (\$), subject to additions and deductions pursuant to authorized change orders.

**ARTICLE 3. PROGRESS PAYMENTS**

Payments of the Contract price shall be paid in the manner following:

|                   |              |                        |             |
|-------------------|--------------|------------------------|-------------|
| Deposit (25%)     | \$ 12,614.25 | Tile/Liner (10%)       | \$ 5,045.70 |
| Dig (15%)         | \$ 7,568.55  | Equipment (10%)        | \$ 5,045.70 |
| Steel (10%)       | \$ 5,045.70  | Plaster (5%)           | \$ 2,522.85 |
| Gunite/Floor(20%) | \$ 10,091.40 | Start-up/Training (5%) | \$ 2,522.85 |

Total \$ 50,457.00

**OPTIONS**

|                    |         |
|--------------------|---------|
| SPA                | \$ 6300 |
| EXTRA DECKING      | \$ 2225 |
| EXTRA CONSTRUCTION | \$ 820  |
| LIGHTING           | \$ 512  |
| CHLORINATOR        | \$ 1495 |
| WATER FEATURE      | \$      |
| COVERING CHANGE    | \$ 1500 |
| PLASTER UPGRADE    | \$      |
| COMPUTER SYSTEM    | \$ 2200 |
| POOL CLEANER       | \$      |
| SLIDE              | \$      |
| DIVING BOARD       | \$      |
| ACCESSORIES        | \$ 2000 |
|                    | \$ 2000 |
|                    | \$ 2000 |

**ARTICLE 4. GENERAL PROVISIONS**

- All work shall be completed in a workmanship like manner and in compliance with all building codes and other applicable laws.
- To the extent required by law all work shall be performed by individuals duly licensed and authorized by law to perform said work.
- Contractor may at its discretion engage subcontractors to perform work hereunder provided Contractor shall fully pay said subcontractor and in all instances remain responsible for the proper completion of this Contract.
- All change orders shall be in writing and signed by both Owner and Contractor.
- Contractor warrants it is adequately insured for injury to its employees and others incurring loss or injury as a result of the acts of Contractor or its employees and subcontractors.
- Contractor shall at its own expense obtain all permits necessary for the work to be performed.
- Contractor agrees to remove all debris generated by Contractor.
- In the event Owner shall fail to pay any periodic or installment payment due hereunder, Contractor may cease work without breach pending payment or resolution of any dispute. Non-payment may result in legal action taken.
- All disputes hereunder shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association.
- Contractor shall not be liable for any delay due to circumstances beyond its control including strikes, casualty, inclement weather or general unavailability of materials.
- Contractor warrants all work for a period of 12 months following DHEC Final Inspection.

**ARTICLE 5. OTHER TERMS**

Signed in the presence of

[Signature] (Owner/Representative) 9/24/09 Date  
[Signature] (Contractor) 9/24/09 Date

ROA000085

fsandwj@hughes.net

**From:** "Steve Cunningham" <smartpig@windstream.net>  
**To:** <fsandwj@hughes.net>  
**Sent:** Monday, September 21, 2009 12:54 PM  
**Subject:** Pool Breakdown

FILED

2009 SEP 16 3 4:17

Hello Mrs. Spikes,

Following is the breakdown of the pool price before and after additions:

|   |                                   |
|---|-----------------------------------|
| (1) Pool  | \$20,475 ✓                        |
| (2) Spa   | \$6300 ✓                          |
| (3) Infinity Edge                                     | \$8200 ✓                          |
| (4) Salt system                                       | \$1495 ✓                          |
| (5) Intelli-flo pump                                  | \$1500 ✓                          |
| (6) Deck Removal                                      | \$2000 ✓                          |
| (7) lights [4] @256                                   | \$768.512 <sup>40</sup> 2 EXTRA ✓ |
| (8) Extra support and forming<br>of lake side of pool | \$2225 ✓                          |
| (9) Tile for raised lip of pool                       | \$2300 ✓                          |
| <b>Total (before additions)</b>                       | <b>\$46,763</b>                   |

Additions:

|   |          |
|---|----------|
| (1) Computer control                    | \$2200 ✓ |
| (2) Retaining for deck                  | \$2250 ✓ |
| (3) Increase jets and pump size for spa | \$1500 ✓ |

Total (with additions) ~~\$51,213~~ <sup>50</sup> 957<sup>00</sup>

\*Deck approx. at 800 sq. ft. @ 5.00 per \$4500  
Possible total with Deck \$55,713

\*\* Deck is approximate and could vary some  
No charge for moving bushes as I cant promise their survival

Thank you,  
Steve Cunningham  
Calypso Pools, Inc.

9/23/2009

ROA000086

COPY

# Affidavit of Service

**Re: Wilma Spikes v. Calypso Pools, Inc. and Steven Cunningham**  
**Civil Action No.: 2010-CP-32-**  
**File No.: 1-2160.100**

PERSONALLY APPEARED before me the undersigned, who being duly sworn, deposes and says that he served the following: Summons and Complaint in the above title matter

The foregoing was served upon: **Mr. Roy S. Cunningham**

- ( ) By delivering to her personally;
- (X) By delivering to Ms. Myrna Cunningham (daughter) a person of discretion and age residing at the residence and being at said residence at the time of service.
- ( ) By delivering to \_\_\_\_\_ NA \_\_\_\_\_ a person of discretion employed at the place of business and being at said place of business at the time of service and authorized to accept service.

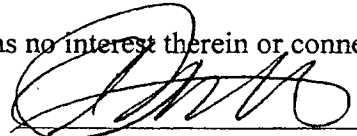
(Desc) Sex: Female Race: White Color of hair: Blonde Age: 18 - 21 Height: 5'6/5'9

Weight: 145-155 Note:

Place of Service: 112 Harmon Creek Drive  
Lexington, South Carolina 29072  
Date of Service: September 20, 2010 @ 6:15 PM

Defendant is not a member of the U.S. Armed Forces

Deponent is not a party to this action and has no interest therein or connection therewith.



**Server: Clarence Portee**  
Clarence Portee Process Service  
P.O. Box 50872  
Columbia, South Carolina 29250-0872  
(803) 312-0081 Office (803) 446-9818 Cell

SWORN to before me this 21<sup>st</sup> day of September, 2010

Glenn Leggett  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My commission expires: October 26, 2019

FILED  
2010 SEP 21 10 12 AM  
CLERK OF COURT  
LEXINGTON, SC

ALL-STATE LEGAL®  
PLAINTIFF'S  
EXHIBIT  
2

2011000513 FILED, RECORDED, INDEXED  
2011-01-06 11:55:52:440  
REC FEE: \$10.00 ST FEE: \$1.30 Exempt  
CD FEE: \$0.55 Exempt Pages: 3  
Lexington County R.O.D. Debra M. Gunter  
DEED Bk:Pg 14664:342

THIS SPACE PROVIDED FOR RECORDER'S USE ONLY:

WHEN RECORDED RETURN TO:  
Roy C Cunningham  
561 Boiling Springs Rd.  
Lexington, South Carolina, 29073

**QUIT CLAIM DEED**

**THE GRANTOR(S),**

- Roy Steven Cunningham, a single person,

for and in consideration of: \$1.00 conveys, releases and quit claims to the GRANTEE(S):

- Roy Chester Cunningham, Jr., 561 Boiling Springs Rd., Lexington, Lexington County, South Carolina, 29073,

the following described real estate, situated in the County of Lexington, State of South Carolina:

(legal description): Parcel F N/S of Boiling Springs Rd. *See Exhibit A*

A map showing the property is recorded in Plat Book 99, Page 9846, Lexington County.

*BK-9846 PG-99*

Derivation: This property was acquire by the Grantor by a general warranty deed, dated 3/26/2009 and recorded with the Lexington recorder, in Book R 13488, Page 249, Lexington County.

Grantor grants, all of the Grantor's rights, title, and interest in and to the above described property and premises to the Grantee(s), and to the Grantee(s) heirs and assigns forever, so that neither Grantor(s) nor Grantor's heirs, legal representatives or assigns shall have, claim or demand any right or title to the property, premises, or appurtenances, or any part thereof.

Tax Parcel Number: 008600-02-040

**TRUE CERTIFIED COPY**

Lexington County Register of Deeds

By *[Signature]*

Date *4/22/14* No. of pgs. *3*

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ALL-STATE LEGAL®  
**PLAINTIFF'S EXHIBIT**  
3

Lexington County Register of Deeds

Debra M Gunter

**Grantor Signatures:**

DATED: 12/25/2010

*Roy Steven Cunningham*

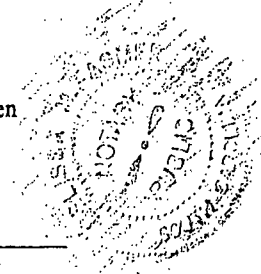
Roy Steven Cunningham  
112 Harmon Creek Dr.  
Lexington, South Carolina, 29072

STATE OF SOUTH CAROLINA, COUNTY OF LEXINGTON, ss:

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of December, 2010, by Melissa Asmer on behalf of Roy Steven Cunningham.

*Melissa Asmer*

Notary Public Melissa Asmer  
My Commission Expires 2/13/19



**Witness Signatures:**

*Lee Cunningham*  
Witness

Kimberly LLOYD  
569 Boiling Springs rd  
Lexington  
South Carolina

*Serena E Cunningham*  
Witness

Serena E Cunningham  
112 Harmon Creek Dr.  
Lexington  
South Carolina

Lexington County Register of Deeds

Debra M. Gunter

Exhibit A

2009013978 FILED, RECORDED, INDEXED  
2009-03-26 15:06:149:327  
REC FEE: \$18.00 ST FEE: \$1.39 Exempt  
CD FEE: \$4.55 Exempt Pages: 2  
Lexington County R.O.D. Debra M. Gunter  
DEED Bk:Pg 13488:249

RECORDING INFORMATION:

NO TITLE EXAMINATION

STATE OF SOUTH CAROLINA

GENERAL WARRANTY DEED

COUNTY OF LEXINGTON

KNOW ALL MEN BY THESE PRESENTS THAT, **KIMBERLEY C. LLOYD AND NORMAN W. LLOYD**, hereinafter referred to as Grantor, for and in consideration of the sum of FIVE AND 00/100 (\$5.00) DOLLARS and love and affection to Grantor paid by **ROY STEVEN CUNNINGHAM**, hereinafter referred to as Grantee, in the state aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does hereby grant, bargain and release unto the said Grantee, Grantee's heirs, successors and assigns forever:

All that certain piece, parcel or lot of land, with improvements thereon, situate lying and being in the County of LEXINGTON, State of South Carolina and being more particularly shown as LOT F, containing 2.37 ACRES on a plat for Roy C. Cunningham, Jr. by Collingwood Surveying, Inc., dated 05/18/2004 and recorded in the Recorder's Office for the above named county in Plat Book 9846 at page 99. The metes and bounds as shown on said plat are incorporated by reference herein.

This being the property conveyed to the Grantors by quitclaim deed of Roy C. Cunningham, Jr., recorded 01/14/2005 in the Lexington County ROD in Book 9846 at page 87.

Tax Map Number 008600-02-040

grantee  
Property Address: 112 Hanna Creek Dr.  
1875 Bolling Springs Road  
Lexington, SC 29072

This conveyance is made subject to Easements, Restrictions, Covenants and Conditions of record.

Grantee's Address:

TOGETHER WITH ALL AND SINGULAR, THE RIGHTS, MEMBERS, HEREDITAMENTS AND APPURTENANCES TO THE SAID PREMISES BELONGING, OR IN ANYWISE INCIDENT OR APPERTAINING.

Lexington County Register of Deeds

Debra M. Gunter

Lexington County Register of Deeds

Debra M. Gunter

2009013978 FILED, RECORDED, INDEXED  
2009-03-26 15:06:49:327  
REC FEE: \$10.00 ST FEE: \$1.30 Exempt  
CD FEE: \$0.55 Exempt Pages: 2  
Lexington County R.O.D. Debra M. Gunter  
DEED Bk:Pg 13488:249

RECORDING INFORMATION:

NO TITLE EXAMINATION

STATE OF SOUTH CAROLINA

GENERAL WARRANTY DEED

COUNTY OF LEXINGTON

KNOW ALL MEN BY THESE PRESENTS THAT, **KIMBERLEY C. LLOYD AND NORMAN W. LLOYD**, hereinafter referred to as Grantor, for and in consideration of the sum of FIVE AND 00/100 (\$5.00) DOLLARS and love and affection to Grantor paid by **ROY STEVEN CUNNINGHAM**, hereinafter referred to as Grantee, in the state aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does hereby grant, bargain and release unto the said Grantee, Grantee's heirs, successors and assigns forever:

All that certain piece, parcel or lot of land, with improvements thereon, situate lying and being in the County of LEXINGTON, State of South Carolina and being more particularly shown as LOT F, containing 2.37 ACRES on a plat for Roy C. Cunningham, Jr. by Collingwood Surveying, Inc., dated 05/18/2004 and recorded in the Recorder's Office for the above named county in Plat Book 9846 at page 99. The metes and bounds as shown on said plat are incorporated by reference herein.

This being the property conveyed to the Grantors by quitclaim deed of Roy C. Cunningham, Jr., recorded 01/14/2005 in the Lexington County ROD in Book 9846 at page 87.

Tax Map Number 008600-02-040

*grantee +*  
Property Address: 112 Hamm Creek Dr.  
675 Boiling Springs Road  
Lexington, SC 29072

This conveyance is made subject to Easements, Restrictions, Covenants and Conditions of record.

Grantee's Address:

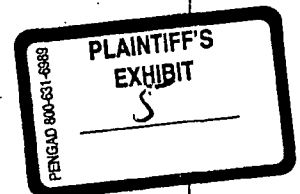
TOGETHER WITH ALL AND SINGULAR, THE RIGHTS, MEMBERS, HEREDITAMENTS AND APPURTENANCES TO THE SAID PREMISES BELONGING, OR IN ANYWISE INCIDENT OR APPERTAINING.

**TRUE CERTIFIED COPY**

Lexington County Register of Deeds

By [Signature]

Date 4/22/14 No. of pgs. 2



Lexington County Register of Deeds

Debra M. Gunter

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the Grantee, Grantee's heirs, successors and assigns forever.

AND THE GRANTOR hereby binds Grantor's heirs, successors and assigns to warrant and forever defend all and singular, the said premises unto the Grantee, Grantee's heirs, successors and assigns against Grantor and Grantor's heirs, successors and assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Any reference, in this instrument, to the singular shall include the plural and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee and/or Grantor.

WITNESS my hand and seal this 20th day of March, in the year 2009

WITNESSES:

*[Handwritten signature]*

*[Handwritten signature]*  
KIMBERLEY C. LLOYD

*[Handwritten signature]*

*[Handwritten signature]*  
NORMAN W. LLOYD

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

I, the below-signed Notary Public, do hereby certify that the above-signed parties personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN TO BEFORE ME THIS  
20th day of March, 2009

NOTARY PUBLIC FOR THE STATE  
OF SOUTH CAROLINA

MY COMMISSION EXPIRES: *[Handwritten date]*

Lexington County Register of Deeds

Debra M. Gunter

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

COURT OF COMMON PLEAS

WILMA SPIKES,  
Plaintiff,  
Civil Action No.: 2010-CP-32-3985  
vs  
CALYPSO POOLS, INC., AND  
STEVEN CUNNINGHAM,  
Defendants.

H E A R I N G  
BEFORE THE HONORABLE JAMES O. SPENCE

DATE: Wednesday, June 13, 2012

TIME: 10:30 a.m.

REPORTED BY: GINA M. SMITH  
Certified Shorthand Reporter  
Registered Professional Reporter

APPEARANCES: BRIAN P. ROBINSON, ESQ.  
For the Plaintiff  
S. JAHUE MOORE, ESQ.  
For the Defendants

-----  
Gina M. Smith, CSR, RPR  
117 Harmon Creek Court  
Lexington, SC 29072  
803-359-5705

1 THE JUDGE: We're here on Spikes versus  
2 Calypso Pools. This is Case 2010-CP-32-3985. We  
3 have Mr. Brian Robinson for plaintiff and Jake  
4 Moore for defendant. This is the supplemental  
5 proceeding. If y'all have got a lot of documents  
6 and you're more comfortable just sitting at the  
7 table, you can. Otherwise, the witness needs to  
8 come here and be sworn.

9 MR. ROBINSON: Okay. I don't have any  
10 documents from them yet, your Honor.

11 THE JUDGE: Okay.

12 MR. ROBINSON: So --

13 THE JUDGE: All right. If you'll swear  
14 the witness in, please. If you'll come right here.

15 THE WITNESS: Yes, sir.

16 ROY STEVEN CUNNINGHAM, having been first  
17 duly sworn, was examined and testified as follows:

18 THE BAILIFF: Please have a seat in the  
19 witness stand there. Once seated, give your name  
20 to the court reporter and spell your last name.

21 THE WITNESS: Yes, sir. It's Roy Steven  
22 Cunningham, C-U-N-N-I-N-G-H-A-M.

23 THE JUDGE: All right. And I'll just --  
24 I'll caution all three of y'all just one moment  
25 before we begin, we've had a spat of spilled water

1 jugs, so if y'all -- recently, so if y'all get  
2 water, go very slowly and out the side because  
3 those things tend to -- all the ice run out, don't  
4 let your stuff spill. So just heads up on that.

5 Mr. Robinson.

6 MR. ROBINSON: Thank you, your Honor.

7 EXAMINATION

8 BY MR. ROBINSON:

9 Q. Mr. Cunningham, where do you work?

10 A. I am currently working in St. Thomas at  
11 Sugar Bay Resort because my business is pretty much  
12 closed.

13 Q. And your business was what?

14 A. Calypso Pools.

15 Q. Okay. And who was the owner or owners of  
16 Calypso Pools?

17 A. Me alone.

18 Q. You alone?

19 A. Yes, sir.

20 Q. All right. And did you draw a salary from  
21 Calypso Pools?

22 A. Yes, sir.

23 Q. Okay. And what was that salary?

24 A. It varied depending on the workload.

25 Sometimes it was nothing, sometimes it was \$1,500 a

1 week.

2 Q. Okay. And what was the amount that  
3 Calypso Pools intended to make on a particular job  
4 percentagewise?

5 A. It averaged out, sir. Somewhere around  
6 22 -- 18 to 22 percent is where we were with the  
7 economy because things were always constantly  
8 changing. The rebar, the concrete, it always  
9 changed prices.

10 Q. All right. You said you're working  
11 somewhere else. What salary are you making now?

12 A. I make \$3,000 a month, and I work three  
13 weeks on and one week off.

14 Q. Okay. What do you do there?

15 A. I am essentially a maintenance person at a  
16 resort.

17 Q. Okay. All right, sir. Did you bring some  
18 documents with you this morning?

19 A. No, sir. I had no idea that this court  
20 was here. I arrived at 2:30 in the morning this  
21 morning, and Mr. Moore called me and told me that  
22 court was today. I had no idea. So I rushed just  
23 to try to at least make an appearance.

24 Q. Okay. You've received rules to show cause  
25 previously to this. Is that correct?

1           A. That is correct.

2           Q. Did you gather up the documents that were  
3 required under those rules?

4           A. The ones that are the most troublesome for  
5 me is the tax forms. Blue Tax -- we turned  
6 everything over to Blue Tax, and I'm currently  
7 having a little communication problem with them, so  
8 I'm trying to get my tax documents that they've  
9 completed and get them sent to me.

10          Q. All right.

11          A. So apparently -- I'm sorry -- apparently  
12 the guy that I was working with has left the  
13 company, and we're trying to find out where we  
14 stand right now.

15          Q. I understand. How about the other  
16 documents that we asked for, did you gather those  
17 up?

18          A. I don't -- I don't own anything except the  
19 2001 Chevy Suburban, and I have one business  
20 account is all I have. So other than the other  
21 documents, I don't -- I don't own any land or  
22 anything, so I don't -- I don't know what I can  
23 give you.

24          Q. All right. So you're trying to get your  
25 taxes. Do you have any insurance policies, home,

1 automobile?

2 A. I have insurance on the automobiles, yeah,  
3 and the home.

4 Q. All right. How about financial books and  
5 records for Calypso Pools?

6 A. Calypso Pools, I don't really have a P and  
7 L statement if that's what you're looking for.. I  
8 have the stuff that we turned over to Blue Tax, and  
9 they've got all that information, so I mailed  
10 everything to them.

11 I don't -- I mean, I don't know what  
12 you're looking for from me on that exactly.  
13 Specific information I could probably give you, but  
14 as far as a document, I can't right this moment.

15 Q. All right. Records of real estate either  
16 you or Calypso owned either in whole or in part  
17 from January 2005 to the present?

18 A. I had -- actually my dad had put a piece  
19 of property in my name, but when my mother got  
20 pancreatic cancer, I knew he was going to have to  
21 have it, so I just gave it back to my dad last  
22 year -- it was probably a year and a half ago --  
23 because I knew he was probably going to have to  
24 sell it to pay the hospital bills. But other than  
25 that, I have no property at all.

1 Q. Where do you live?

2 A. 112 Harmon Creek Drive in Lexington.

3 Q. Is that the piece of property you're  
4 talking about?

5 A. No. That's my wife's home.

6 Q. Okay. Well, you're Roy Steven Cunningham?

7 A. That's correct.

8 Q. And Roy Chester Cunningham, Jr., who's  
9 that?

10 A. That's my father.

11 Q. Okay. Is this the property that you're  
12 speaking of?

13 A. Yes, sir.

14 Q. Okay.

15 Your Honor, if I may approach. Here's a  
16 quitclaim deed from Mr. Cunningham to his father  
17 which is dated -- or which was filed on 12/25/2010  
18 which is after this lawsuit was filed.

19 MR. MOORE: Your Honor, I don't doubt  
20 that. I'm not sure I understand why counsel would  
21 be saying that. I would assume that the  
22 appropriate remedy there if he would want to try to  
23 set aside a deed would be an action against the  
24 present titleholder pursuant to the Statute of  
25 Elizabeth.

1 I don't think that his father was a party  
2 to this action, and I don't think there's any way  
3 the Court can set aside a deed without dad being a  
4 party to the action. I can't imagine how you can  
5 do that, but maybe Mr. Robinson can enlighten me  
6 how that could be done.

7 THE JUDGE: I understand that the date of  
8 the deed and the recordation date was after the  
9 filing of the lawsuit. What exactly are you  
10 requesting that I do within the confines of the  
11 supplemental proceeding?

12 MR. ROBINSON: I'm just right now just  
13 filing that as an exhibit.

14 THE JUDGE: All right.

15 MR. MOORE: I have no objection to that  
16 coming into evidence.

17 THE JUDGE: And that -- just for the  
18 record, this is Record Book 14664 at page 342, and  
19 it is dated December 25, 2010, and it's filed  
20 January 6, 2011, in Lexington ROD office.

21 MR. ROBINSON: Thank you, your Honor.

22 THE JUDGE: Thank you.

23 BY MR. ROBINSON:

24 Q. Mr. Cunningham, do you have any contracts,  
25 any notes, any mortgages, anything where someone

1 owes you money?

2 A. No, sir. My business is completely gone.

3 Q. Well, there's -- maybe I should make this  
4 clear.

5 A. Yeah.

6 Q. There's two entities here. There's  
7 Calypso Pools and there's you individually, okay?  
8 So when I ask you a question about something, I'm  
9 talking about both Calypso Pools --

10 A. Sure.

11 Q. -- and you individually so we don't have  
12 to do this twice --

13 A. I'm sorry.

14 Q. So just so we're clear on that, does  
15 anybody owe either you or Calypso Pools any money?

16 A. No, sir.

17 Q. All right. Everybody you -- Calypso Pools  
18 did work for has paid you?

19 A. That's correct.

20 Q. Okay. And you don't have any financial  
21 statements or year-end statements that you prepared  
22 other than those you have sent off to your tax  
23 preparer. Is that correct?

24 A. That's correct.

25 Q. Okay. Have you had any financial

1 transactions between you and members of your family  
2 or between Calypso Pools and members of your family  
3 other than that quitclaim deed we looked at?

4 A. In what time frame?

5 Q. From 2005 until now.

6 A. We -- my wife and I owned the house  
7 adjacent to that property, and we sold it before  
8 any of this happened to my sister. So before this  
9 pool was ever even thought of, we had sold my  
10 sister and my brother-in-law the property that we  
11 owned, and then my wife bought this house that  
12 we're living in now.

13 Q. Did she buy the house you're living in now  
14 with the proceeds from that sale?

15 A. I'm sorry?

16 Q. Did she buy the house you're living in now  
17 with the proceeds from that sale?

18 A. Which sale?

19 Q. The one you just described which is  
20 next -- the property you sold to your sister?

21 A. Oh, absolutely not. There was pretty much  
22 a break-even deal because it was a mobile home.  
23 It's in 29073. So actually the property value had  
24 gone down. She actually just bought it for the  
25 price of the loan, so she paid off the loan.

1 Q. All right. Does your wife work?

2 A. Part time.

3 Q. How much does she make?

4 A. About -- she works one day a week every  
5 Friday, so I'm thinking somewhere around \$200 a  
6 week.

7 Q. Is that true for 2005, 2006?

8 A. It's been that way since we've -- she's  
9 gone back to work for a few years because she  
10 stopped working because we had children. She  
11 wanted to be at home with the children.

12 Q. Good. All right, sir. Where did she get  
13 the money -- when you purchased the house at  
14 112 Harmon -- is that where you live, right?

15 A. Uh-huh.

16 Q. Did y'all purchase that together? Did you  
17 purchase, you and your wife purchase, that  
18 together?

19 A. She bought the house.

20 Q. She bought the house in her name?

21 A. That's correct.

22 Q. Where did she get the money to do that?

23 A. It was pretty much no down payment because  
24 the house was starting to go under water already.  
25 It had been off the market for I can't remember how

1 long, but, you know, she -- there was minimal money  
2 to put down, and of course my sister worked -- not  
3 of course, but my sister worked at the mortgage  
4 company, so that helped us with the appraisals and  
5 the other items there.

6 Q. And how much is the mortgage on that  
7 house?

8 A. Presently, it's 1383.

9 Q. I'm sorry, that was a bad question. How  
10 much is the mortgage payment per month on that  
11 house?

12 A. Okay. 1383, I'm sorry.

13 Q. So your wife makes \$200 a week and she's  
14 making \$1,300 payments on a monthly basis?

15 A. No. She's having to use the money that --  
16 we live together. We're spouses. So any money  
17 that I make is her money as well as mine. So what  
18 I make now trying to survive with my three children  
19 at home from St. Thomas we're using to pay our  
20 mortgage and our electricity and our food bill.

21 Q. All right. I understand. Other than this  
22 claim from Ms. Spikes, are there any other claims  
23 against you?

24 A. Absolutely.

25 Q. Who else has claims against you?

1           A. I don't have that list of names. There's  
2 a few.

3           Q. Well, tell us what you can remember.

4           A. I don't remember the names, sir. I'm  
5 sorry.

6           Q. All right. Can you get us a list of  
7 those?

8           A. Can I get you a list?

9           Q. Yes, sir.

10          A. Absolutely. They should be right across  
11 the street.

12          Q. All right. Are you the beneficiary of any  
13 trust, bequest, anything like that?

14          A. No, sir.

15          Q. Is there a trust extent in which you have  
16 any interest?

17          A. I'm sorry, I don't understand that  
18 question. Could you --

19          Q. Do you know what a trust is?

20          A. I'm assuming that it's something set in  
21 the future for somebody to receive.

22          Q. That's a pretty good layman description.  
23 Is there any trust that you know of which you have  
24 any interest in --

25          A. No, sir.

1 Q. -- somebody left you?

2 A. No.

3 Q. Okay. Supposed to pay you money in the  
4 future?

5 A. No.

6 Q. All right. Calypso Pools owned a Bobcat  
7 and a trailer. Is that correct?

8 A. Both repossessed, yes, sir.

9 Q. They got repossessed.

10 Calypso Pools also owned a van?

11 A. That van was totaled in an accident, and  
12 the employee that I had at the time that I was  
13 working when we had work to do, when our company  
14 pretty much died, I just told him to take the van.  
15 I didn't even charge him for it because it was  
16 totaled anyway. Somebody had run into the side and  
17 destroyed the whole side of the van.

18 Q. When was that?

19 A. I'm not sure exactly, but I think it was  
20 somewhere around March of last year.

21 Q. So somebody ran into your van and totaled  
22 it. Did you sue them?

23 A. Absolutely not. It was my fault -- it was  
24 my employee's fault. So they sued me. They sued  
25 the insurance company and got their car fixed.

1 Q. All right.

2 A. However, mine was just liability, so there  
3 was no recompense for me.

4 Q. As of October of 2011, the Department of  
5 Motor Vehicles said you owned a 1989 Nissan 240SX?

6 A. Yes.

7 Q. Do you still own that?

8 A. No, sir.

9 Q. What happened to that?

10 A. That car was -- we paid 600 bucks for it,  
11 and before I knew that I wasn't supposed to sell  
12 anything, this car was sold. I don't know exactly  
13 what date it was, but my wife sold the car while I  
14 was in St. Thomas because she had to make a house  
15 payment.

16 Q. Do you know what she got for it?

17 A. I have no idea. I haven't asked her yet  
18 because I just got back in at 2:30 this morning  
19 from St. Thomas.

20 Q. I understand that. She didn't sell it  
21 yesterday, did she?

22 A. No, she didn't, but I didn't -- after she  
23 said she had to sell it for the mortgage payment, I  
24 didn't -- I didn't even ask her. I can find out.  
25 With the car in the condition it was, I told her at

1 the most she was going to get was the 600 we put in  
2 it, so I would assume it was somewhere around  
3 there.

4 Q. All right. You had a 1989 Chevy SPT?

5 A. I don't know what that is.

6 Q. Well, I don't either, but the DMV says you  
7 owned it.

8 A. That must be a mistake, because I don't  
9 know what an SPT is unless it's my Suburban and  
10 that's a 2001.

11 Q. No, I have the Suburban listed. All  
12 right.

13 How about a 1991 Dodge, you don't know  
14 about that one either?

15 A. I don't own a Dodge.

16 Q. All right. 1976 Chevy C30 van?

17 A. Junkyard.

18 Q. 2001 Ford van?

19 A. Junkyard. Those were all work vans that  
20 the motors went out. They had 300,000 miles on  
21 them, so I drove them until that point and took  
22 them -- scrapped them.

23 Q. All right. A 2001 Chevy Blazer?

24 A. I don't own a Chevy Blazer. That's a  
25 mistake or something.

1 Q. So that's two of them you don't know  
2 about?

3 A. No, sir.

4 Q. All right. How about a 2003 Ford  
5 Econoline van?

6 A. That one is probably still sitting up at  
7 my brother's shop, the 2003. Again, blown motor.

8 Q. All right. What is your wife's name?

9 A. Serena.

10 Q. What car are you driving now?

11 A. 2007 Chevy Silverado.

12 Q. Do you own any other cars?

13 A. No, sir, just the Suburban. That's the  
14 only one currently I own.

15 Q. And is the Chevy Silverado yours?

16 A. No, sir.

17 Q. Whose is that?

18 A. That's my wife's.

19 Q. Okay. How do you get down to your job?

20 A. They pay my plane fair. The resort pays  
21 my plane fair.

22 Q. Okay. How many cars are at your house?

23 A. Three presently.

24 Q. And that would be the Chevy Silverado?

25 A. Yes, sir.

1 Q. And what else?

2 A. There is a Honda station wagon, 1989, and  
3 my daughter just moved back in with us. She has a  
4 car of her own.

5 Q. Okay.

6 A. Some Ford Taurus or something.

7 Q. Who owns the Honda?

8 A. My wife.

9 Q. So your wife has two cars?

10 A. She does.

11 Q. Okay. And when did she buy the 2007 Chevy  
12 Silverado?

13 A. In 2008.

14 Q. And how about the Honda?

15 A. She bought that from a church member a  
16 year ago, year and a half, something like that, I'm  
17 not sure, because of gas mileage.

18 Q. Does your wife owe any money on the  
19 Silverado?

20 A. Oh, yeah. It's upside down. It's -- I  
21 think there's -- there's currently about \$14,000  
22 owed on it.

23 Q. Have you transferred title from any  
24 vehicles to somebody in the last year?

25 A. The van that was totaled.

1 Q. And who did that get transferred to? What  
2 was that guy's name?

3 A. Troy Whitaker. Now, when you say  
4 transfer, I'm assuming that includes me just giving  
5 it to him.

6 Q. Yeah.

7 A. Okay. I just want to be clear.

8 Q. All right. How many bank accounts do you  
9 have?

10 A. I currently have two.

11 Q. And what bank are they with?

12 A. First Premiere. I'm sorry, First  
13 Reliance.

14 Q. I'm sorry, I couldn't hear you.

15 A. First Reliance.

16 Q. And where is that bank?

17 A. It's next to the Hess station. I don't  
18 know how else to describe it.

19 Q. I mean, is it in Lexington?

20 A. Yes, sir, it's in Lexington.

21 Q. Does Calypso Pools have any bank accounts?

22 A. One there and one personal, our joint with  
23 my wife. That's the two accounts that I was just  
24 speaking of.

25 Q. Okay. Do you have any savings accounts?

- 1 A. No, sir.
- 2 Q. Do you own any stocks?
- 3 A. No, sir.
- 4 Q. Bonds? Any financial instruments?
- 5 A. Nothing.
- 6 Q. Are you affiliated with any other
- 7 businesses besides Calypso Pools?
- 8 A. No, sir.
- 9 Q. Tell me what tools Calypso Pools still
- 10 has.
- 11 A. There's some smaller hand tools, maybe a
- 12 drill or two, nothing major, but you know, I can
- 13 give you a comprehensive list if that's what you'd
- 14 like.
- 15 Q. I would. I think we asked for that in the
- 16 rule to show cause. We would like a list.
- 17 A. Okay.
- 18 Q. Scaffolding? Walk boards? Ladders?
- 19 A. No, sir, not for a swimming pool.
- 20 Q. Lifts?
- 21 A. No.
- 22 Q. Nail guns? Compressors?
- 23 A. No, sir.
- 24 Q. Saws?
- 25 A. Skill saw.

- 1 Q. Okay. Storage boxes? Toolboxes?
- 2 A. No, sir.
- 3 Q. Small buildings?
- 4 A. Buildings?
- 5 Q. Buildings.
- 6 A. No, sir.
- 7 Q. Tractors?
- 8 A. No, sir, those are gone.
- 9 Q. Riding mowers?
- 10 A. No, sir.
- 11 Q. Do you own property in any other state?
- 12 A. No, sir.
- 13 Q. Other than your wife's \$200 and your
- 14 \$3,000 a month, excluding reimbursements for
- 15 expenses --
- 16 A. Yes, sir.
- 17 Q. -- do you have any other source of income?
- 18 A. No, sir. I take that back. When I come
- 19 back home for my one week, I may pick up a service
- 20 call or something, so I may make 70 to a hundred
- 21 bucks extra when I'm here, but I try to spend most
- 22 of the time with my family because I'm gone for
- 23 four weeks at a time, three to four weeks.
- 24 Q. Do you have a boat at your home?
- 25 A. No, sir.

- 1 Q. Do you have a boat in storage someplace?
- 2 A. No, sir.
- 3 Q. Do you have an ATV?
- 4 A. No, sir.
- 5 Q. Does your wife have an ATV?
- 6 A. No, sir.
- 7 Q. How about a boat?
- 8 A. No, sir.
- 9 Q. Do you own any firearms?
- 10 A. No, sir.
- 11 Q. You don't own any firearms?
- 12 A. None.
- 13 Q. Do you collect anything?
- 14 A. No, sir.
- 15 Q. Stamps? Baseball cards?
- 16 A. Oh, no, sir.
- 17 Q. Comic books left over?
- 18 A. Nothing collectible, no, sir.
- 19 Q. How many watches do you own?
- 20 A. Two.
- 21 Q. What's the other one?
- 22 A. It's another type of Timex watch. It's
- 23 just a --
- 24 Q. Have you given anybody a watch or any kind
- 25 of jewelry in the last year?

1 A. No, sir.

2 Q. Do you have any life insurance?

3 A. Term life.

4 Q. All right, sir. Could I see your car  
5 keys? All right. Thank you.

6 Those keys -- that car key fits what?

7 A. The Suburban -- Silverado.

8 Q. Okay. Are those your keys?

9 A. It's the keys that I use.

10 Q. Okay. And there are two of what appear to  
11 be door keys on there?

12 A. Uh-huh.

13 Q. What do those go to?

14 A. One of them is an old one and one of them  
15 is the new one to our house because I had to change  
16 the locks on the house. I never took the old key  
17 off.

18 Q. I suffer from that problem myself.

19 A. Yeah, I just procrastinated taking the key  
20 off.

21 Q. All right. Have you loaned any money to  
22 anybody?

23 A. No, sir.

24 Q. Do you own any collectible books?

25 A. No, sir.

1 Q. All right. Other than the house owned by  
2 your wife, does she own any other property?

3 A. No, sir.

4 Q. Real property I'm talking about.

5 A. You're talking about real estate?

6 Q. Real estate.

7 A. No, sir, none that I know of.

8 Q. And other than the two vehicles we've  
9 discussed, does she own any other vehicles of any  
10 sort?

11 A. No, sir, that's the only three vehicles  
12 that we have: the Suburban, the Silverado and the  
13 Honda.

14 Q. All right. I don't believe I have any  
15 further questions at this time.

16 THE JUDGE: Mr. Moore.

17 MR. MOORE: None, your Honor.

18 THE JUDGE: All right. I'm going to do a  
19 form order that says was continued to allow for  
20 further discovery since there's some tax  
21 documentation. So I'll ask y'all to discuss that  
22 and make a timely -- agree on a timeline for that.

23 And just remind everybody this was a 2010  
24 judgment. Judgments are good for ten years. So  
25 they can -- he can reexamine you periodically

1 during that time.

2 THE WITNESS: Yes, sir.

3 THE JUDGE: I appreciate you coming on  
4 short notice.

5 THE WITNESS: I'm sorry, if I had known --

6 THE JUDGE: That's not a problem.

7 Anything further from either counsel?

8 MR. ROBINSON: I do have a question. Do  
9 you know the address of the tax preparation office?

10 THE WITNESS: No, sir. I did everything  
11 by phone or either I faxed it to them.

12 MR. ROBINSON: Okay.

13 THE WITNESS: And then I sent the hard  
14 copies -- actually my wife sent those off. So I  
15 can find out Blue Tax's address.

16 MR. ROBINSON: What I'm thinking is you  
17 asked them for the stuff, you haven't gotten it.  
18 If you can get me or Mr. Moore a copy of the  
19 address or something, we can serve them with a  
20 subpoena and that way they'll hopefully respond  
21 with the documents.

22 MR. MOORE: Steve, I don't have any  
23 problem with you taking his card and getting him  
24 that address. That will work.

25 THE WITNESS: Okay.

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THE JUDGE: We're concluded.  
(The proceeding concluded at 10:57 a.m.)

## 1 CERTIFICATE OF REPORTER

2

3

I, Gina M. Smith, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

4

5

That the foregoing proceeding was taken before me on the date and at the time and location stated on page 1 of this transcript; that all statements made on the record at the time of the proceeding were recorded stenographically by me and were thereafter transcribed; that the foregoing proceeding as typed is a true, accurate and complete record of the proceeding to the best of my ability.

6

7

8

9

10

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

11

12

Witness my hand, I have hereunto affixed my official seal this 28th day of June, 2012, at Columbia, Richland County, South Carolina.

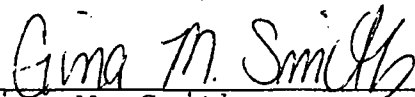
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Gina M. Smith  
RPR, CSR, Notary Public,  
State of South Carolina  
at Large.  
My Commission expires  
July 23, 2013.

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-32-01201

WILMA SPIKES, )

Plaintiff, )

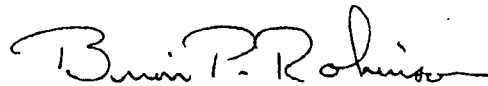
vs. )

ROY STEVEN CUNNINGHAM, and )  
ROY CHESTER CUNNINGHAM, )

Defendants. )

**Lis Pendens**

NOTICE IS HEREBY GIVEN that an action has been commenced and is pending or is about to be commenced in the Court of Common Pleas for Lexington County upon an action affecting ownership against the above-named defendants. The premises that is the subject of this action is described generally as set forth in Exhibit "A" attached hereto and incorporated herein by reference.



Brian P. Robinson  
Bruner, Powell & Robbins, LLC  
Post Office Box 61110  
Columbia, South Carolina 29260  
(803) 252-7693  
Attorneys for Plaintiff

Columbia, South Carolina

April 4, 2014.

ROA000120

EXHIBIT "A" TO LIS PENDENS

PROPERTY DESCRIPTION

All that certain piece, parcel or lot of land, with improvements thereon, situate lying and being in the County of LEXINGTON, State of South Carolina and being more particularly shown as LOT F, containing 2.37 ACRES on a plat for Roy C. Cunningham, Jr. by Collingwood Surveying, Inc., dated 05/18/2004 and recorded in the Recorder's Office for the above named county in Plat Book 9846 at page 99. The metes and bounds as shown on said plat are incorporated by reference herein.

Tax Map Number: 008600-02-040

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
CIRCUIT COURT FOR THE ELEVENTH JUDICIAL DISTRICT

William P. Keesley, Chief Administrative Judge

Case No. 2013-CP-32-01201

**RECEIVED**

FEB 23 2015

**SC Court of Appeals**

Roy Steven Cunningham and Roy Chester Cunningham..... Appellants,

v.

Wilma Spikes..... Respondent.

NOTICE OF APPEAL

Roy Steven Cunningham and Roy Chester Cunningham, hereby appeal the Order of Judgment of the Honorable William P. Keesley, Chief Administrative Judge. A copy of Judge Keesley's Order is attached hereto and incorporated herein.

Appellants received written notification of entry of Judge Keesley's Order of Judgment on February 4, 2015.

MOORE TAYLOR LAW FIRM, P.A.

BY: 

S. Jahue Moore  
1700 Sunset Boulevard  
Post Office Box 5709  
West Columbia, SC 29171  
(803) 796-9160  
ATTORNEY APPELLANTS

West Columbia, South Carolina  
February 23, 2015

ROA000122

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-32-01201

WILMA SPIKES,

Plaintiff,

vs.

ROY STEVEN CUNNINGHAM, and  
ROY CHESTER CUNNINGHAM,

Defendants.

FILED

SEP 29 P 4: 12

J. A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

ORDER OF JUDGMENT

The above matter came on for trial before this Court on September 29, 2014. The plaintiff was represented by Brian P. Robinson of the Richland County Bar, and the defendants were represented by S. Jahue Moore of the Lexington County Bar. After a full trial on the merits, this Court makes the following findings of fact and conclusions of law.

WPK  
#1

**FINDINGS OF FACT:**

1. The plaintiff is Wilma Spikes.
2. Spikes originally sued Roy Steven Cunningham on September 16, 2010.
3. Spikes effected service on Roy Steven Cunningham on September 20, 2010.
4. Roy Steven Cunningham ("Steven") owned property referred to hereinafter as Lot 7 in fee simple on September 20, 2014.
5. Steven executed a quit claim deed transferring Lot 7 to his father, Roy Chester Cunningham ("Chester") on December 25, 2010 for a recited consideration of \$1.00.
6. This Court issued an order of judgment against Steven on February 25, 2011 which was filed on March 11, 2011 in favor of Spikes.

7. Spikes sued Steven and Chester in the instant action on April 4, 2013, alleging violation of the Statute of Elizabeth with respect to the Lot 7 transfer.

8. The complaint in this matter mis-identified the address of the property at issue as 112 Harmon Creek Drive, Lexington, South Carolina.

9. The deed to Lot 7 was attached to the complaint as Exhibit "A."

10. Spikes moved to conform the pleading to the evidence, which motion this Court granted.

11. The defendants conceded that they were not surprised by the motion to conform the pleading to the evidence.

12. Spikes introduced into evidence a copy of the deed to lot 7, the original Spikes complaint against Steven (Pl. Exhibit 1), an affidavit of service of the original summons and complaint upon Steven filed with the Clerk of Court on September 24, 2010 (Pl. Exhibit 2), a Certified True Copy of the deed to Lot 7 from Steven to Chester filed in the Register of Deeds office on January 6, 2011 (Pl. Exhibit 3), a plat of the property showing lots A through G (Pl. Exhibit 4), and a deed transferring Lot 7 from Kimberley (Charles's daughter) and Norman Lloyd to Steven filed in the Register of Deeds office on March 26, 2009 (Pl. Exhibit 5).

WPK  
#2

13. Spikes also introduced a transcript of a hearing in supplemental proceeding in front of the Honorable James O. Spence on June 13, 2012 in which Steven was the witness.

14. Charles testified that he transferred lots shown on the Pl. Exhibit 4 plat to his children.

15. Charles testified that he told his children at the time he transferred the property that the property was "family property" and that they should transfer it back to him if they decided not to live on the property.

16. No such qualification appears in the deed entered as Pl. Exhibit 3 or the deed entered as Pl. Exhibit 5.

17. Steven testified that Charles told him when Charles transferred property to him that the property was family property and Steven should transfer it back to him if he should decide not to live on it.

18. Charles testified that he did not know when Steven moved off the property, it could have been anytime between 2006 and 2009.

19. Steven testified that he moved off the property in 2007.

20. Steven testified that he swapped his interest in lot D with his sister for her interest in Lot F.

21. Steven also testified the he did not know he owned Lot F until he got a tax bill for the 2010 property taxes.

22. Steven testified under oath in the supplemental proceeding hearing that he transferred Lot 7 to his father because his mother had contracted cancer and his father would need to sell the lot to help cover her hospital bills.

23. Spikes testified that she has not received any payment on the judgment at all.

24. THE CONFLICTING REASONS GIVEN BY STEVEN AS TO BASIS FOR THE TRANSFER MAKE THAT TESTIMONY NOT CREDIBLE. THE TRANSFER WAS TO DEFRAUD CREDITORS. (WPK)

#### CONCLUSIONS OF LAW

1. The Statute of Elizabeth, § 27-23-10(A), reflects public policy that one should not transfer property for no value in an attempt to defraud one's creditors.

2. Under the Statute of Elizabeth "conveyances may be set aside under two conditions: first, where the transfer is made by the grantor with the actual intent of defrauding his creditors where that intent is imputable to the grantee, even though there is a valuable

consideration; and, second, where a transfer is made without actual intent to defraud the grantor's creditors, but without valuable consideration." Albertson v. Robinson, 371 S.C. 311, 316, 638 S.E.2d 81, 83 (S.C.App. 2006).

3. In this matter, I conclude that only the second condition is relevant, as the property was transferred without valuable consideration, the deed reciting only nominal consideration of \$1.00.

4. "Where a transfer is made without valuable consideration being exchanged, the transfer will be set aside only when the creditor establishes the following: (1) the grantor was indebted to the creditor at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay his indebtedness to the creditor in full, not merely at the time of transfer, but in the final analysis when the creditor seeks to collect the debt." Albertson at 317, 638 S.E.2d at 84.

5. "It is only necessary that the debt should have been in existence or the right of action have accrued at or before the time of the transfer. It may be reduced to judgment at a later date. To determine whether a person is such an existing creditor as can invoke the protection of the statute the inception of the debt or obligation is the time which controls; and not the date of the subsequent entry of judgment." Albertson 317-318, 638 S.E.2d at 84.

6. The testimony and Pl. Exhibit 1 establish that the Steven owed a debt to Spikes no later than September 16, 2010 when Spikes sued Steven. I conclude that this establishes the first element required under the Statute of Elizabeth as a matter of law.

7. Both Steven and Chester testified that the property was transferred to Chester by Steven because it was "family property" and there was an agreement that, if Steven decided to move from the property, he would transfer the property back to his father. However, Steven

previously testified that he transferred the property to his father because his mother contracted cancer and his father would need to sell the property to pay hospital bills. Whichever of these stories is true, or if the truth lies elsewhere, the evidence is clear and convincing that the transfer was voluntary. I conclude that this establishes the second element required under the Statute of Elizabeth as a matter of law.

8. Spikes testified that Steven has not paid any amount at all on the debt established by the Order of Judgment filed on March 11, 2011 and attached to the complaint in this matter. Steven did not contradict Spikes' testimony regarding non-payment. The transcript of the supplemental proceeding indicates that Spikes was attempting to collect the debt at least as early as June 13, 2012. I conclude that this testimony, combined with the transcript, establishes the third element required under the Statute of Elizabeth as a matter of law.

WMC  
#5  
9. I conclude as a matter of law that the deed transferring Lot F from Steven to Chester is void as fraudulent.

#### **ORDER**

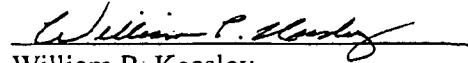
**IT IS ORDERED** that the deed, filed in Deed Book 14664, page 342 in the Lexington County Register of Deeds office is void.

**IT IS FURTHER ORDERED** that the Register of Deeds for Lexington County mark the deed filed in Deed Book 14664, page 342 in the Lexington County Register of Deeds office 'Void'.

**IT IS FURTHER ORDERED** that Roy Steven Cunningham not transfer or attempt to transfer the property at issue here unless or until he has been ordered to do so by either the


Lexington County Court of Common Pleas or by the Lexington County Master-in-Equity.

**AND IT IS SO ORDERED.**



William P. Keesley  
Chief Administrative Judge  
Eleventh Judicial Circuit

Lexington, South Carolina

JAN.  
October 29, 2015 

#6

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2013CP3201201

|              |   |
|--------------|---|
| Wilma Spikes | Roy Steven Cunningham Roy Chester Cunningham Jr<br><br>Roy Chester Cunningham |
|--------------|---|

PLAINTIFF(S) DEFENDANT(S)

|               |   |
|---------------|---|
| Submitted by: | Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant<br><input type="checkbox"/> Self-Represented Litigant |
|---------------|---|

**DISPOSITION TYPE (CHECK ONE)**

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

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

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

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

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

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|--|--|--|
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

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

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

1/30/2015

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on 1/29/2015, and a copy mailed first class or placed in the appropriate attorney's box on 1/30/2015, to attorneys of record or to parties (when appearing pro se) as follows:

**Brian Pratt Robinson, Esq.**  
Post Office Box 61110  
Columbia, SC 29260

**S. Jahue Moore, Esq.**  
Post Office Box 5709  
West Columbia, SC 29171

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*Beth A. Carrigg*

Court Reporter

Beth A. Carrigg - Clerk of Court

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

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

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**  
JUL 08 2015  
SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Chief Administrative Judge

Appellate Case No. 2015-000348

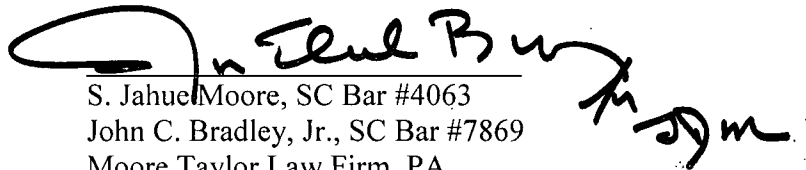
Wilma Spikes ..... Respondent,

v.

Roy Steven Cunningham and Roy Chester Cunningham ..... Appellants.

**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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John C. Bradley, Jr., SC Bar #7869  
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ATTORNEYS FOR APPELLANTS

July 8, 2015