

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas

Walter Newman, Special Referee

Appellate Case No. 2015-000498

RECEIVED

AUG 10 2015
SC Court of Appeals

A&P Enterprises, LLC, ... Appellant,

v.

SP Grocery of Lynchburg, LLC and Suresh "Sam" Patel Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)

COUNTY OF LEE)

A&P Enterprises, LLC,)

Plaintiff)

Versus)

SP Grocery of Lynchburg, LLC.
Payal Suresh Patel and
Suresh "Sam" Patel)

Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2013-CP-31-194

ORDER



"Good fences make good neighbors." - from Robert Frost's "Mending Wall."

"Good contracts preserve family and business relationships." - Anonymous.

Background and Procedural History

The above-captioned case was referred to me as Special Referee by consent of the parties and Order of the Honorable James I. Davis on file herein. This matter came to trial before me on February 18, 2014 and both parties presented their respective testimony and documentary evidence.

This action was commenced by the filing by the plaintiff of an action for ejectment in the Lee County Magistrate's Court pursuant to South Carolina Code § 273720. The plaintiff seeks the ejectment of the defendant from property owned by the plaintiff situate in Lee County, South Carolina. The defendant filed a timely return to the Rule to Show Cause in which he set up his ownership or equitable interest in the property as a defense to the ejectment. The parties consented to transfer their respective claims to the Court of Common Pleas. The plaintiff subsequently filed an Amended Complaint to which the defendant filed a proper Answer and Counterclaim. The plaintiff made a timely reply.

A&P Enterprises, LLC is a South Carolina LLC whose sole member is Kamlesh K. Patel, known as "Kim" Patel. SP Grocery of Lynchburg, LLC is a South Carolina limited liability company whose sole member is Payal Suresh Patel. Payal Suresh Patel is the daughter of Suresh Patel, also known as "Sam" Patel. Sam Patel and Kim Patel are brothers.

WGN

At the outset of the trial in this matter, plaintiff stipulated to the dismissal of any claims against Payal Suresh Patel, individually. This stipulation was consented to and all claims against Payal Suresh Patel, individually, are hereby dismissed.

The principal parties in interest in this matter are two brothers, Sam and Kim Patel. Though they are associated with respective LLC's, as described above, this Order shall refer to the parties simply as Sam and Kim hereafter.

Sam Patel moved to the United States from India in approximately 1979. Sam's parents, his brother and sisters followed. The entire family had moved in with Sam and his wife in Chicago by the early 1980's. In approximately 1989, Sam bought a store located at Willow Grove Road in Lynchburg. Sam, his wife and children, along with Sam's parents and brother Kim moved from Chicago to South Carolina.

The entire extended family lived on the premises of the store in Lynchburg. Sam, along with the rest of his extended family, worked in the Lynchburg store. The business grew, and eventually a store in Sumter was acquired. There is some dispute as to the circumstances, but by approximately 1992, Kim took over the Sumter store as his own. From this point, Sam and Kim operated their own respective businesses. Both of brothers were apparently successful and came to have other stores and investments.

In 2010, the Defendant Suresh "Sam" Patel owned three parcels of improved real estate in Lynchburg, South Carolina (the "Property"). On two of these parcels, Sam Patel operated a liquor store and a convenience store called "Tommy's Grill." Sam's other businesses included construction and development. At this time, Sam Patel and his companies were experiencing serious financial difficulties which ultimately forced him to file a bankruptcy petition with the United States Bankruptcy Court, District of South Carolina in 2011. Kim loaned him \$5,000 in January 2011 to help pay for the bankruptcy filing.

The Lynchburg store, along with other properties that Sam owned, went into foreclosure. Prior to the foreclosure sale, the brothers talked, and, although they now disagree over the nature of the conversation, they do agree that the result was that Kim would bid on the property at the foreclosure sale. Kim was the successful bidder at the foreclosure sale held on May 9, 2011. The deed transferring the property was filed with the Lee County Clerk of Court on October 13, 2011 showing that A&P Enterprises, LLC, (Kim), had bought the property including the Lynchburg store. The purchase price for the property was \$350,001.00.

Due to Sam Patel's financial problems and pending bankruptcy case, the ownership of the convenience store that operated on the property was placed in the name of SP Grocery, LLC ("SP Grocery") during the summer of 2011. Sam Patel's daughter, Payal Patel, owned 100 percent of SP Grocery. SP Grocery obtained all operating, lottery, and alcohol licenses for the convenience store and liquor store.

WZN

Sam continued to operate the Willow Grove Road store, known as Tommy's Grill, after Kim's purchase of the property.

No rent has ever been paid to Kim by Sam. In August 2011, Kim, at the request of the Sam, purchased a truck load of fuel for Sam for \$17,415. Sam agreed to repay Kim for the cost of this fuel. In early 2013, the Kim purchased another tank of fuel for the Sam for \$20,000. Sam has repaid \$3,000 of this sum with \$17,000 still owed. In addition, in 2012 and 2013, Kim was forced to pay the property's real property taxes of \$3,785.47 for each year, for a total of \$7,570.

Kim's position is that the property was purchased solely as an investment and that he expected Sam to pay rent at some point as Sam had informed Kim while asking him to purchase the property that it would be a good investment since he would pay his brother a monthly rent along with paying all maintenance costs, insurance and real estate taxes for the property. Kim says that he relied on these representations, ultimately agreed to purchase the property, and made a high bid of \$350,001 for the property at the foreclosure sale. He says that he expected to make a reasonable profit of about 10% on this business deal. He denies that he bought the property just to help his brother. He says, in fact, that since 1992 he and Sam and their families had a poor relationship and that the only time he heard from Sam was if Sam needed money. Kim testified that he was, in essence, thrown into the Sumter store by Sam in 1991-1992 and that the relationship between the families was acrimonious. While he intended to give his brother Sam some time to "get on his feet", he anticipated he would receive rent of some \$5000.00 per month from Sam after a period of six months or so.

Kim further says that, beginning in 2012, he began contacting Sam in an effort to get him to pay the rent as was agreed. Sam, despite these requests, failed to pay any rent to the Plaintiff. In 2013, Kim Patel continued to request that the Defendants pay rent for the use of the Property and that they pay the real property taxes. Kim testified that the first time an actual lease was proposed to Sam was in April of 2013, in the form of a letter sent to Sam by counsel for Kim. No such payments were forthcoming from the Defendants.

Kim seeks Judgment against Sam evicting him from the property, awarding judgment for past due rental and property taxes he feels Sam should have paid under breach of contract, alternatively, for the same financial damages under Quantum Meruit, and for judgment on a final cause of action for the loan he made to Sam for the fuel purchase in August of 2011.

Sam gives a very different picture. He and his witnesses describe a long-standing history of working together. In the world they live in, as Sam describes it, he would have reasonably expected Kim would be willing to help them out as a family member. Sam contends that Kim purchased the store in order to convey it back to Sam, not to rent it to him. Sam testified that Kim offered to buy back the Lynchburg property for him and that Kim initially wanted to pay for the property and title it in Sam's name. Sam testified that he insisted on paying Kim back for what Kim paid for the property and that he did not

want Kim to put the property into his name until he had repaid Kim. Sam acknowledged that the ultimate purchase of the property was not as a gift, but rather, Sam intended to pay Kim back within five years. Sam testified that he did not object to making some monthly payments toward the amount Kim paid, but that he believed it was fair to credit this toward the purchase price. As evidence of improvements on the property and as evidence of reliance upon Kim's promise that the property would go back to Sam, Sam testified as to significant expenditures on the property. The testimony and accompanying exhibit reflects expenditures, after the purchase of the property by Kim, of over \$68,000.00. The expenditures were for gas pumps and installation, HVAC repairs and general repairs to the property.

Two other witnesses testified for the Defendant, Payal Patel and Terrence Wilson. Their testimony is important in several respects. Despite the fact that Payal Patel is Sam's daughter and arguably has some interest in her father's position in this litigation, I do find that her testimony was very credible as to her description of family relationships. Her description contradicted her uncle Kim's testimony significantly. Where Kim described a family that was fractured after 1992, Payal described family birthday parties, weddings and other events that all attended enjoyably. These events were all after the 1992 timeframe.

Terrence Wilson testified that he had been friends with both Sam and Kim for many years both personally and in a business capacity. Indeed, he testified that he owed fairly substantial sums of money to both Kim and Sam. Terrence testified that he had spoken with both Sam and Kim and was very aware that the arrangement was to be that the store would be Sam's when Sam could pay Kim back. Terrence testified that there was never any discussion of rent until the Kim and Sam's respective wives had an argument over a separate matter in early 2013.

Sam contends that he has an equitable ownership interest in the property in the form of a right to purchase it pursuant to the understanding as set forth above. He contends that Kim should be equitably estopped from proceeding in violation of that understanding. He points to his reliance upon Kim's representations that Sam would get the title to the property back which led him to expend over \$68,000 in repairs and upkeep of the property which would have normally been a landlord's expense.

There is no document in which the parties memorialized the terms of their understanding.

Applicable Law

The elements of promissory estoppel require that a claimant prove: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by a party to whom the promise is made; (3) the reliance is expected and foreseeable by a party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.



Promissory estoppel is a distinct and separate legal theory from contract. Where a contract requires a meeting of the minds and consideration, promissory estoppel looks at a promise, its subsequent effect on the promisee, and in certain cases bars the promisor from making an inconsistent disposition of the property. *Satcher, Id.* The applicability of the doctrine depends on whether the refusal to apply it "would be virtually to sanction the perpetration of a fraud *or would result in other injustice.*" *Citizens Bank v. Gregory's Warehouse, Inc.*, 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct. App. 1988). (Emphasis supplied.)

To prevail under the theory of promissory estoppel, the moving party must prove each element by clear, cogent, and convincing evidence. Clear and convincing evidence is that degree of proof that will produce in a fact finder a firm belief as to the allegations sought to be established. Such measure of proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal *Satcher v. Satcher*, 351 S.C. 477; 570 S.E.2d 535 (Ct. App. 2002); *Knight v. Stroud*, 214 S.C. 437, 53 S.E.2d 72 (1949).

Findings

I find that there was no "meeting of the minds" sufficient to establish a cause of action under contract on behalf of either party regarding the ownership of the property. Both parties have argued their position strongly in equity.

As to the parole gift, the parties have agreed that that did not happen. Even Sam, who said that Kim offered the gift, testified that he declined it and planned to repay Kim the money he invested.

The next issue to be resolved is whether Sam has an equitable interest in the real property in question pursuant to promissory estoppel? If so, what are the terms of Sam's equitable interest?

The context within which actions take place helps us to determine the credibility of one side as opposed to the other. Kim describes a poor family relationship and says that his involvement in this transaction was purely business and for profit. Sam describes a supportive family relationship and says that the transaction repurchasing the property was an example of one family member being willing to help another. The testimony of Payal Patel and of Terrence Wilson support Sam's position. The purchases of fuel by Kim for Sam in August 2011 and again in early 2013 are further indications of credibility for Sam. Further, I find that the improvements made by Sam were in the main of a nature that suggests that the person making them would not have undertaken them without some belief that the property was to be theirs. Finally, the first time a lease was proposed to Sam was in a letter from Kim's attorney of April, 2013.

Based upon my viewing of the witnesses, hearing the testimony; and reviewing the exhibits submitted in that context, I find that even under the burden of proof set forth in the *Satcher* decision, the credible evidence is overwhelmingly in favor of the position that Kim's purchase of this property was part of a course of action linked to a promise to Sam that the property would be conveyed back to him if he were able to repay Kim the amount owed within a reasonable time. Sam testified that this amount owed was comprised of the full amount of the purchase price to Kim of \$350,001.00 as well as additional funds that Kim had loaned Sam. I find that at the time the parties were contemplating the transaction and when the purchase was made by Kim, the only loan having been made was the loan for Five thousand (\$5,000.00) Dollars, so that the repurchase price was \$355,001.00.

I further find that Kim and Sam understood that Sam would be given a reasonable time to get on his feet before payments would begin, and that this time was defined at six months. I find that the payments should have begun no later than May 13, 2012, at the end of the seventh month after the deed into Kim was recorded.

I find an implied promise of up to five years for the payments to be made. I find that to exercise his equitable right to purchase this property from Kim, Sam must finish repaying Kim in full on or before May 13, 2017.

Kim stated that he should receive monthly payments, although by the time this lawsuit commenced he felt that such payments were rent instead of payments on a purchase price. Sam had no objections to monthly payments, he just wanted them to be credited to the purchase price. I conclude that the parties did contemplate monthly payments. Based on the entirety of the credible evidence before me, I find that, beginning with May 13, 2014, Sam must pay Kim no less than \$3,750.00 per month, a figure in line with the demand Kim made on Sam. *

In the context of the brothers' dealings with each other, it was reasonable that Sam would rely upon Kim's promise and that reliance was clearly foreseeable. Sam relied to his financial detriment. A finding to the contrary, that Sam's only interest in the premises was as a tenant and that he could simply be evicted, would result in injustice.

I find that Sam possesses an enforceable promise from his brother under the doctrine of promissory estoppel. The summary of the terms is \$355,001.00, to be paid in full no later than May 13, 2017, payments of at least \$3,750.00 per month for the duration, beginning May 13, 2014 and payable on or before the eighth day of every month thereafter until paid in full or until May 13, 2017, whichever comes first, at which time Suresh "Sam" Patel shall be entitled to the title to the property if he has paid in full. Should Sam not have paid in full for the property by May 13, 2017, he will forfeit his rights under this equitable interest and his status and that of any business he may be operating on this property will convert into that of a tenant. The real property taxes for each year are the responsibility of Sam.

This leaves the breach of contract issues of the two gasoline purchases and the taxes to be determined.

On the issue of the fuel purchases, throughout these proceedings before me, Sam acknowledged the debts arising from these two purchases. The parties through their actions have agreed that both of these should be part of any judgment. In view of my finding that these fuel purchases were not a part of the discussion between the parties when the understanding was reached concerning the purchase of the property, it is appropriate for this Order to include both now in my finding regarding the separate cause of action for breach of contract. On the first sum, Seventeen thousand four hundred and fifteen and no/100 (\$17,415) Dollars, Sam has made no effort to make payments to Kim. I am aware that Kim had indicated he would give Sam "six months or so" to get back on his feet before looking for payments. Plaintiff indicates to the Court a date of May 13, 2012 as the date when the payments should have begun. I find that date to be reasonable. He asks in his complaint for prejudgment interest. The debt being one of a liquidated amount, Kim should be and is allowed prejudgment interest beginning May 13, 2012, which is the earliest date that Sam was expected to pay on this debt and did not.

Regarding the admitted debt from 2013 in the amount of \$17,000, the same factors would apply, except that I do not find in the record the date of the transaction. My recollection of the testimony at trial on this particular loan was that the loan was made in early 2013. Allowing for the same six-month period would mean that payments should have begun no later than January 1, 2014. I conclude that Kim should have judgment against Sam for this amount, plus prejudgment interest to be computed from the date of January 1, 2014.

Regarding the real estate property taxes paid by Kim, I find that Sam's claim to equitable ownership of the property means that Sam also owns the property taxes for that property. Since the court does not have evidence of the date of these payments, I cannot issue an order as to prejudgment interest. However, I do grant Kim judgment against Sam for the amount of \$3785.45 for each of those two years, for a total of \$7,570.90.

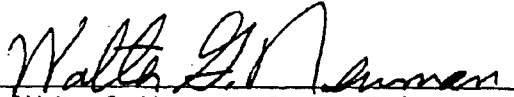
Now, referring to the parties as their names should appear in the judgment rolls, I grant judgment as follows:

IT IS ORDERED, that Suresh "Sam" Patel owns an equitable interest in the subject real estate, that he cannot be evicted at this time, and that he has the right to purchase the property from A&P Enterprises, LLC according to the terms set forth above, and that owes the annual real property taxes as an incident of ownership of the equitable interest in this property. It is further

ORDERED, that A&P Enterprises, LLC is granted judgment against Suresh "Sam" Patel in the amount of \$17,415, plus prejudgment interest on this sum from May 1, 2012, plus judgment for sum of \$17,000, plus prejudgment interest on this sum from

the date of January 1, 2014; plus the sum of \$7570.90, without prejudgment interest, for a total monetary judgment of \$41,985.90, plus prejudgment interest to be computed as indicated.

AND IT IS SO ORDERED.


Walter G. Newman, Special Referee
for Lee County

Sumter, South Carolina

 April 17, 2014

* These payments are the minimum to be paid each month. Clearly, Sam will be required to make payments far beyond this minimum per month in order to pay the debt in full in the time allowed.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF LEE	)	THIRD JUDICIAL CIRCUIT
	)	CASE NUMBER:2013-CP-31-194
A&P Enterprises, LLC,	)	
	)	
Plaintiff	)	
	)	
Versus	)	
	)	ORDER DENYING PLAINTIFF'S
	)	RULE 59(e) AND 60 MOTIONS
	)	
SP Grocery of Lynchburg, LLC	)	
And Suresh "Sam" Patel	)	
	)	
Defendants.	)	
	)	

This Order is in response to the Plaintiff's motion, pursuant to SCRCP 59(e) and 60, requesting this Court alter, amend or reconsider the Order filed April 21, 2014. The plaintiff's motion was timely filed on May 1, 2014 and properly served on this Court and Defendants. A hearing on Plaintiff's motion was held on October 22, 2014. Present and appearing at this hearing were all of the parties as well as their respective counsel of record. Following the hearing, both parties requested and were granted the opportunity to submit memoranda of law in support of their respective positions. Based upon the arguments of the parties counsel, review of the record and consideration of the memorandums of law submitted by the parties, I make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Plaintiff's arguments in support of its motion, summarized from its memorandum of law, are as follows:
 - a. The Defendant lacks standing to assert a claim for promissory estoppel because any interest of Defendant in the property would be for the benefit of a Bankruptcy Estate.
 - b. The Defendant is barred from seeking the equitable remedy of promissory estoppel because of the doctrine of unclean hands.
 - c. The Defendant's claim for promissory estoppel fails as a matter of law because 1) Defendant did not prove existence of a contract unambiguous in its terms, and 2) the Defendant did not prove reasonable reliance.
2. I find that the first and second arguments made by Plaintiff are both linked to the filing of bankruptcy by Sam Patel. The first position is that Defendant could not have any interest, equitable or otherwise, if such interest is an asset of a bankruptcy estate. The second position is that Sam Patel's agreement with his brother to buy back the store constitutes an agreement to circumvent his creditors and therefore results in unclean hands.

I do not find that there is evidentiary support for these positions. The evidence of record is testimony by Kim Patel that he loaned Sam Patel \$5000.00 to pay for a bankruptcy filing. No further evidence as to the nature of the bankruptcy proceeding or the outcome are in evidence. I do find that, as to the bankruptcy filing, Kim Patel was certainly aware of the event. I do not find that either of the first two arguments, even if there was evidence to support them, could be made for the benefit of Kim Patel. I do not find that these arguments of Plaintiff give this Court any reason to alter the previous Order.

3. The Plaintiff asserts that the Defendant's claim for promissory estoppel must fail as a matter of law because the Plaintiff contends: 1) Defendant did not prove existence of a contract unambiguous in its terms, and 2) the Defendant did not prove reasonable reliance.
4. The elements of promissory estoppel, as set forth in the Order, are: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by a party to whom the promise is made; (3) the reliance is expected and foreseeable by a party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.

5. I am convinced by the overwhelming weight of the credible evidence, and find by clear and convincing evidence, that Kim unambiguously promised Sam that he would convey the property to Sam and that Sam relied on this promise to his detriment. I find the evidence established that Kim Patel offered to buy back the Lynchburg property for his brother Sam and that Kim initially wanted to pay for the property and title it in Sam's name. Sam insisted on paying Kim back for what Kim paid for the property and that he did not want Kim to put the property into his name until he had done so. Sam acknowledged that the purchase of the property was not intended as a gift, but rather, Sam would pay Kim back within five years. I find that there was an unambiguous promise that the property was to be Sam's upon payment to Kim of the amount Kim paid for the property.
6. In reaching these conclusions, I specifically address and incorporate this Court's previous findings as to credibility of witnesses. This Court had the opportunity to observe the witnesses, both parties and non-parties, their demeanor, and the overall context with which the events that were the subject of their testimony unfolded. Kim Patel testified that he purchased this property solely as an investment to rent it back to his brother.

I do not find that Kim Patel's testimony was credible. I do find that the testimony of Sam Patel was credible and was supported by evidence of the other witnesses. Based on this credible evidence, I find and conclude that there was an unambiguous promise that Kim would convey the property back to Sam.

7. I find that, based upon the unambiguous promise that Kim would convey this property back to Sam, Sam did act in reasonable reliance on the promise. Further, I find that this reasonable reliance was to Sam's detriment. I find that the evidence established that Sam made improvements of a nature and extent that would have been made only if Sam believed the property was going to be his.
8. I find that, to allow Kim Patel to back out of his unambiguous promise would be to countenance the perpetration of an injustice, whereas enforcing the agreement between the parties gives both parties the benefit they each contemplated at the time the promise was made. Sam Patel will end up getting the property back, assuming he makes the payment due Kim, and Kim will end up with the economic benefit anticipated.
9. I find and conclude that the elements necessary to sustain recovery in promissory estoppel are proved by credible evidence and evidence that this Court finds

clear and convincing. Based upon all of the foregoing,
the Plaintiff's Motions pursuant to Rules 59(e) and 60 of
the South Carolina Rules of Civil Procedure are
respectfully denied.

AND IT IS SO ORDERED.


Walter Newman
SPECIAL REFEREE- Lee County

Sumter, South Carolina

Feb. 18, 2015

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February 19, 2015

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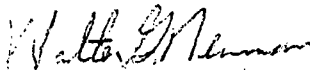
Re: A & P Enterprises, LLC vs. SP Grocery of Lynchburg, LLC
Payal Syresh Patel and Suresh "Sam" Patel
Your File No.: 13-5810

Dear Mr. Wheeler:

Please find enclosed the duly executed ORDER DENYING PLAINTIFF'S RULE 59 (e) AND 60 MOTIONS in the above-styled matter. Once same has been filed with the Court, would you please provide me with a clocked copy by forwarding same to me in the enclosed, self-addressed, and stamped envelope?

With warmest personal regards, I am

Sincerely yours,



Walter G. Newman

WGN:mdag
Enclosures(2)
CC:John C. Bradley, Jr., Esquire

ROA000015

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF LEE	)	THIRD JUDICIAL CIRCUIT
	)	CASE NUMBER:2013-CP-31-194
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	)	
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	)	
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	)	
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 - a. The Defendant lacks standing to assert a claim for promissory estoppel because any interest of Defendant in the property would be for the benefit of a Bankruptcy Estate.
 - b. The Defendant is barred from seeking the equitable remedy of promissory estoppel because of the doctrine of unclean hands.
 - c. The Defendant's claim for promissory estoppel fails as a matter of law because 1) Defendant did not prove existence of a contract unambiguous in its terms, and 2) the Defendant did not prove reasonable reliance.
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3. The Plaintiff asserts that the Defendant's claim for promissory estoppel must fail as a matter of law because the Plaintiff contends: 1) Defendant did not prove existence of a contract unambiguous in its terms, and 2) the Defendant did not prove reasonable reliance.
4. The elements of promissory estoppel, as set forth in the Order, are: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by a party to whom the promise is made; (3) the reliance is expected and foreseeable by a party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.

5. I am convinced by the overwhelming weight of the credible evidence, and find by clear and convincing evidence, that Kim unambiguously promised Sam that he would convey the property to Sam and that Sam relied on this promise to his detriment. I find the evidence established that Kim Patel offered to buy back the Lynchburg property for his brother Sam and that Kim initially wanted to pay for the property and title it in Sam's name. Sam insisted on paying Kim back for what Kim paid for the property and that he did not want Kim to put the property into his name until he had done so. Sam acknowledged that the purchase of the property was not intended as a gift, but rather, Sam would pay Kim back within five years. I find that there was an unambiguous promise that the property was to be Sam's upon payment to Kim of the amount Kim paid for the property.
6. In reaching these conclusions, I specifically address and incorporate this Court's previous findings as to credibility of witnesses. This Court had the opportunity to observe the witnesses, both parties and non-parties, their demeanor, and the overall context with which the events that were the subject of their testimony unfolded. Kim Patel testified that he purchased this property solely as an investment to rent it back to his brother.

I do not find that Kim Patel's testimony was credible. I do find that the testimony of Sam Patel was credible and was supported by evidence of the other witnesses. Based on this credible evidence, I find and conclude that there was an unambiguous promise that Kim would convey the property back to Sam.

7. I find that, based upon the unambiguous promise that Kim would convey this property back to Sam, Sam did act in reasonable reliance on the promise. Further, I find that this reasonable reliance was to Sam's detriment. I find that the evidence established that Sam made improvements of a nature and extent that would have been made only if Sam believed the property was going to be his.
8. I find that, to allow Kim Patel to back out of his unambiguous promise would be to countenance the perpetration of an injustice, whereas enforcing the agreement between the parties gives both parties the benefit they each contemplated at the time the promise was made. Sam Patel will end up getting the property back, assuming he makes the payment due Kim, and Kim will end up with the economic benefit anticipated.
9. I find and conclude that the elements necessary to sustain recovery in promissory estoppel are proved by credible evidence and evidence that this Court finds

clear and convincing. Based upon all of the foregoing,
the Plaintiff's Motions pursuant to Rules 59(e) and 60 of
the South Carolina Rules of Civil Procedure are
respectfully denied.

AND IT IS SO ORDERED.


Walter Newman
SPECIAL REFEREE- Lee County

Sumter, South Carolina

Feb. 18, 2015

STATE OF SOUTH CAROLINA

COUNTY OF LEE

A&P Enterprises, LLC,

Plaintiff,

v.

SP Grocery of Lynchburg, LLC, Payel Suresh
Patel and Suresh "Sam" Patel,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A # 2013-CP-31-194

**CONSENT
ORDER OF REFERENCE**

James I. Davis
FILED
Lee County, SC
C.C.P. & G.S.

It appearing that pursuant to Rule 53 of the South Carolina Rules of Civil Procedure that this action is one which should be referred to Walter Newman as Special Referee for Lee County.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, that the case is hereby referred to the Walter Newman as Special Referee for Lee County and that the Special Referee shall preside over all future matters against said Defendants with appeal directly to the South Carolina Court of Appeals or Supreme Court as provided by the South Carolina Appellate Court Rules.

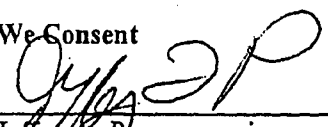
AND IT IS SO ORDERED.

James I. Davis, South Carolina
9/25, 2013

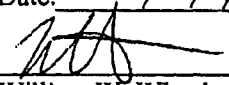
George C. James, Jr.
~~Lee County Clerk of Court or~~
Presiding Judge of the Third Judicial Circuit
George C. James, Jr.

A&P Enterprises, LLC v. SP G of Lynchburg, et al
Civil Action No.: 2013-CP-31-194
Order of Reference

We Consent


Jeffrey L. Payne, esquire
Attorney for Plaintiff

Date: 9-17-2013


William W. Wheeler, III
Attorney Defendants

Date: 9/17/2013

STATE OF SOUTH CAROLINA

COUNTY OF LEE

A&P Enterprises, LLC,

Plaintiff,

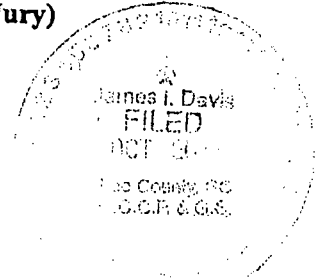
vs.

SP Grocery of Lynchburg, LLC, Payal Suresh
Patel and Suresh "Sam" Patel,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A # 2013-CP-31-194

AMENDED COMPLAINT
(Non-Jury)



The Plaintiff complaining of the Defendants allege as follows:

FACTUAL ALLEGATIONS

1. The Plaintiff is a South Carolina limited liability company which owns real estate in Lee County, South Carolina.
2. The Defendant SP Grocery of Lynchburg, LLC is a South Carolina limited liability company which operates a convenience store in Lynchburg, South Carolina that is the subject of this dispute.
3. The Defendant Payal Suresh is upon information and belief a citizen and resident of Florence County, South Carolina who is an owner/member of SP Grocery of Lynchburg, LLC.
4. The Defendant Suresh "Sam" Patel is upon information and belief a resident of Florence County, South Carolina who operates the convenience store at issue.
5. On July 8, 2011, the Plaintiff purchased the convenience store and real estate located at 40 East Willow Grove Road (Highway 76), Lynchburg, South Carolina the ("Property") at a foreclosure sale. A true and correct copy of the deed into the Plaintiff is attached hereto as Exhibit A.

6. After acquiring the Property the Plaintiff and the Defendants agreed to lease it to the Defendants for a monthly rental of \$3,750, and the parties agreed that the Defendants would pay for all maintenance, insurance, personal property taxes and real property taxes on the Property.
7. The Defendants have failed to pay Plaintiff any rent for their use of the Property, despite repeated demands.
8. The Defendants have also failed to pay the 2012 Lee County real property taxes that were due on the Property, forcing the Plaintiff to pay \$3,785.45.

FOR A FIRST CAUSE OF ACTION
(Eviction)

9. The Plaintiff repeats and realleges the allegations set forth in preceding paragraphs as though set forth herein verbatim.
10. As a result of the Defendants failure to pay the Plaintiff the required rent and the Lee County real property taxes, the Defendants have breached their lease agreement with the Plaintiff and consequently the Defendants should be evicted from the Property.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

11. The Plaintiff repeats and realleges the allegations set forth in preceding paragraphs as though set forth herein verbatim.
12. As of October 1, 2013, the Defendants presently owe the Plaintiff \$82,500 for outstanding rent for their use of the Property, and \$3,785.45 for the 2012 Lee County real property taxes.
13. As a consequence of the Defendants' breach of its agreement with the Plaintiff, the Plaintiff is entitled to a judgment against the Defendants for \$86,285.45 plus prejudgment interest on each month's rent along with any cost of attorney's fees that may be allowed by law.

FOR A THIRD CAUSE OF ACTION
(Quantum Meruit)

14. The Plaintiff repeats and realleges the allegations set forth in preceding paragraphs as though set forth herein verbatim.
15. The Plaintiff has conferred a benefit upon the Defendants which the Defendants have realized through their use of the Property and their refusal to pay any rent to the Plaintiff.
16. The Defendants have retained this benefit and under the circumstances it is inequitable for them to have retained it without paying its fair market value.
17. The Plaintiff is entitled to recover a judgment against the Defendants as a result of the Defendants unjust enrichment and in quantum meruit for \$82,500 for their rent that they have failed to pay for the use of the Property, as well as, \$3,785.45 for the taxes that the Defendants failed to pay, and prejudgment interest.

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract)

18. The Plaintiff repeats and realleges the allegations set forth in preceding paragraphs as though set forth herein verbatim.
19. In August, 2011, the Defendants requested that the Plaintiff loan them money so that they could purchase gas for use at the convenience store/the Property.
20. On or about August 19, 2011, the Plaintiff purchased \$17,415 worth of gas from Turner Oil Company for the Defendants which was used at the Defendants' business. The Defendants agreed to repay this amount on demand by the Plaintiff.
21. The Defendants, despite repeated demands from the Plaintiff, have failed and refused to pay the Plaintiff the \$17,415.
22. As a consequence of the Defendants' breach of their agreement by their refusal to repay the loan, the Plaintiff is entitled to recover a judgment against them for \$17,415 plus

prejudgment interest and reasonable attorney's fees as may be allowed by South Carolina law.

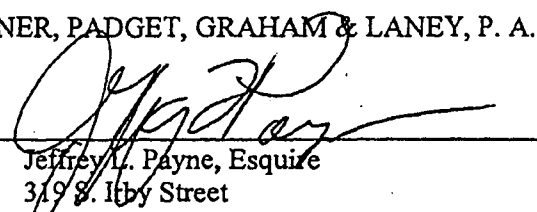
WHEREFORE, the Plaintiff requests the following relief:

- a. As to the First Cause of Action – That the Court immediately evict the Defendants from the Property.
- b. As to the Second Cause of Action – That the Court award the Plaintiff a judgment against the Defendants for \$86,285.45 plus prejudgment interest, costs and any attorney's fees as allowed by South Carolina law.
- c. As to the Third Cause of Action – That the Plaintiff recover from the Defendants a judgment in the amount of the fair market value of the benefits that have been conferred upon the Defendants for which they have failed to pay along with prejudgment interest.
- d. As to the Fourth Cause of Action – That the Court award a judgment against the Defendants for \$17,415 plus prejudgment interest, costs and any attorney's fees that may be allowed to be recovered under South Carolina law.
- e. As to All Causes of Action – For such other and further relief as the Court deems just and proper.

Florence, South Carolina

October 10, 2013

TURNER, PADGET, GRAHAM & LANEY, P. A.

By: 

Jeffrey L. Payne, Esquire
319 S. Itby Street
Post Office Box 5478 (29502)
Florence, South Carolina 29501
(843) 662-9008
(843) 667-0828 fax
Email: jpayne@turnerpadget.com

ATTORNEYS FOR THE PLAINTIFF

This document prepared by:

Jake S. Barker

Please return document to:

Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202

201100003543
Filed for Record in
LEE COUNTY, SC
JAMES I. DAVIS, CLERK OF COURT
10-13-2011 At 03:30 pm.
DEED 11.00
STATE TAX 911.30
COUNTY TAX 385.55
Book 280 Page 201 - 205

STATE OF SOUTH CAROLINA) SPECIAL REFEREE'S TITLE
COUNTY OF LEE) IN THE COURT OF COMMON PLEAS
2010-CP-31-30



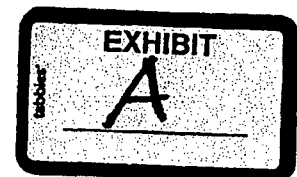
TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, MARTIN S. DRIGGERS, SR., SPECIAL REFEREE IN AND FOR THE COUNTY
AFORESAID, SEND GREETING:

WHEREAS, Williamsburg First National Bank n/k/a First Citizens Bank and Trust Company, Inc., on or about February 16, 2010, exhibited its Complaint in the Court of Common Pleas for the County aforesaid, against OWNER OF RECORD Suresh Patel, demanding judgment in relation to the real property hereinafter mentioned and described; and the cause being at issue, came to be heard on April 12, 2011 and such proceedings were had therein as resulted in a judgment and foreclosure sale dated April 12, 2011 of said court, whereby it was adjudged and decreed that the said real property hereinafter mentioned and described be sold by Martin S. Driggers, Sr., Special Referee in and for the County aforesaid on the terms and for the purposes mentioned in the said Complaint as by reference thereto on file in said Court, will appear; and the said Special Referee, after having duly advertised the said real property for sale by public outcry on May 9, 2011, did then openly and publicly, and according to the custom of auctions, sell and dispose of the same unto A&P Enterprises, LLC, for the sum of Three Hundred Fifty Thousand One and 00/100 (\$350,001.00) Dollars, being at that price the highest bidder therefor,

NOW, THEREFORE, Know all men by these Presents, that I, Martin S. Driggers, Sr., Special Referee in and for the County of Lee aforesaid, in consideration of the sum of Three Hundred Fifty Thousand One and 00/100 (\$350,001.00) Dollars, to me paid by the said A&P Enterprises, LLC, the receipt whereof is hereby acknowledged, HAVE GRANTED, bargained, sold and released, and by these presents, DO GRANT, bargain, sell and release unto the said A&P Enterprises, LLC, its successors and assigns forever, the following described real property, to-wit:

PARCEL ONE: ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the Lynchburg Township, County of Lee, State of South Carolina and being more particularly shown on that certain plat



ROA000028

prepared for Suresh K. Patel by John L. Johnson, Surveyor, dated April 22, 1994, and recorded October 24, 1994 in the office of the Clerk of Court for Lee County in Plat Book B-1 at Page 162 and having such metes, courses and distances as are delineated and shown on said plat, reference to which is hereby made pursuant to authority contained in 30-5-250 of the Code of Laws of South Carolina, 1976, as amended.

This being the same property conveyed to Suresh Patel by Deed of Thomas B. Langston executed August 3, 1989 and recorded on August 4, 1989 in Deed Book K-4 at Page 99 and by Deed of Thomas B. Langston executed July 9, 1990 and recorded on July 11, 1990 in Deed Book U-4 at Page 108 in the office of the Clerk of Court for Lee County.

Tax Map Nos. 068-04-00-054 and 068-04-00-053

LESS HOWEVER: ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the Lynchburg Township, County of Lee, State of South Carolina and being more particularly shown and delineated as Tract A as shown on that certain plat prepared for Suresh K. Patel and Lynchburg Methodist Church by Huel C. Bailey, dated January 9, 2006 and recorded in the office of the Clerk of Court for Lee County in Plat Book K-1 at Page 162 and having such metes, courses and distances as delineated and shown on said plat, reference to which is hereby made pursuant to authority contained in 30-5-250 of the Code of Laws of South Carolina, 1976, as amended. Tract A was deeded out from Suresh Patel to the Trustees of Lynchburg Methodist Church by Deed dated August 17, 2006 and recorded on August 21, 2006 in Book D0212 at Page 64 in the Lee County Clerk of Court's Office.

PARCEL TWO: ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the Lynchburg Township, County of Lee, State of South Carolina and being more particularly shown and delineated as Tract B as shown on that certain plat prepared for Suresh K. Patel and Lynchburg Methodist Church by Huel C. Bailey, dated January 9, 2006 and recorded in the office of the Clerk of Court for Lee County in Plat Book K-1 at Page 162 and having such metes, courses and distances as are delineated and shown on said plat, reference to which is hereby made pursuant to authority contained in 30-5-250 of the code of Laws of South Carolina, 1976, as amended.

THIS being the same property conveyed to Suresh Patel by deed of Trustees of Lynchburg Methodist Church dated June 7, 2006 and recorded August 21, 2006 in Deed Book D-0212 at Page 59 in the Office of the Clerk of Court for Lee County.

TMS Nos. (p) 068-04-00-053; (p) 068-04-00-054; and (p) 068-04-00-055

Property Address: 20 E. Willow Grove Road, Lynchburg, SC 29080

PARCEL THREE: *ALL that certain piece, parcel or lot of land containing 0.274 acres, a little more or less, together with the buildings and other improvements situate thereon, lying and being in the Town of Lynchburg, County of Lee, State of South Carolina, and being designated as Tract B on that certain plat of Lind, Hicks and Associates, Surveyors, dated October 1986 and revised June 6, 1988, which plat is of record in the office of the Clerk of Court for Lee County, SC, in Plat Book W at Page 193, according to which plat, as amended, the said Tract B is bounded as follows: On the North by Lot B1; on the East by Griffin Street; on the South by Potts Street (US Rt. 76); and on the West by Lot A.*

THIS being the same property conveyed to Suresh Patel by Deed of Eugene H. Smith executed July 25, 2000 and recorded on July 25, 2000 in Deed Book D111 at Page 293 in the Office of the Clerk of Court for Lee County.

TMS No. 068-03-00-142

THESE conveyances are subject to all visible and/or recorded easements, restrictions, covenants, rights-of-way and zoning ordinances which affect said property.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

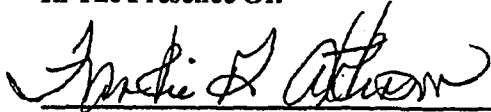
**Grantee's Address: A&P Enterprises, LLC
30 Mere Court
Sumter, SC 29150**

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining; and all the estate, right, title, claim, and interest whatsoever of the parties to the cause aforesaid, and each of them, in and to the same, and of all other persons rightfully claiming, from, under, or by these or any of them.

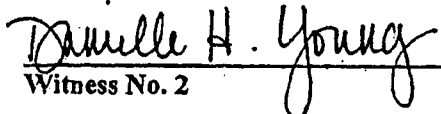
TO HAVE AND TO HOLD, all and singular, the premises before mentioned, unto the said A&P Enterprises, LLC, its successors and assigns forever.

IN WITNESS WHEREOF, I, the said Special Referee in and for the County aforesaid, under and by virtue of the aforesaid Decree, have hereunto set my hand and seal this 8 day of July, 2011.

Signed, Sealed, and Delivered
In The Presence Of:


Witness No. 1


Martin S. Driggers, Sr.
Special Referee for Lee County

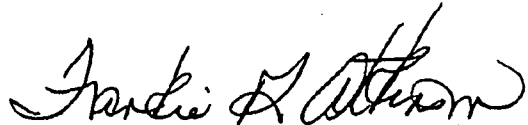

Witness No. 2

STATE OF SOUTH CAROLINA)

COUNTY OF LEE)

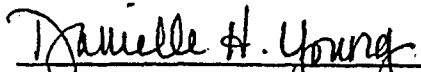
PROBATE

PERSONALLY APPEARED the above named witness and made oath that (s)he saw the within named Martin S. Driggers, Sr., as Special Referee for Lee County, sign, seal and as his act and deed, deliver the within Deed; and that (s)he with the other above named witnessed the execution thereof.


Witness No. 1

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 8 DAY OF July, 2011


Notary Public for South Carolina
My Commission Expires: 12/20/2011

STATE OF SOUTH CAROLINA)

AFFIDAVIT

Instrument
201100003543

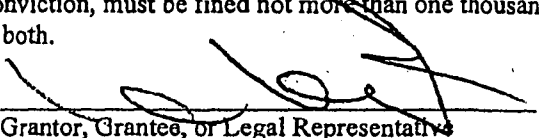
Book Page
280 204

COUNTY OF LEE)

Date of Transfer of Title
(Closing Date) July 8, 2011

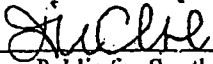
PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred by Martin S. Driggers, Sr., Special Referee to A & P Enterprises, LLC on July 8, 2011.
3. Check one of the following: **The DEED is**
 - (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) _____ EXEMPT from the deed recording fee because _____
(If exempt, please skip items 4-6 and go to item 7 of this affidavit)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 350,001.00.
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ ____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ ____.
5. Check YES _____ or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES" the amount of the outstanding balance of this lien or encumbrance is \$ ____.
6. The DEED Recording Fee is computed as follows:
 - (a) 350,001.00 the amount listed in item 4 above;
 - (b) -0- the amount listed in item 5 above (no amount place zero)
 - (c) 350,001.00 Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantee
8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.



Grantor, Grantee, or Legal Representative
connected with the transaction

SWORN TO and subscribed before me
this 13th day of October, 2011.

 (SEAL)
Notary Public for South Carolina

My Commission Expires: September 27, 2017

ROA000032

STATE OF SOUTH CAROLINA	)	
	)	IN THE SUMMARY COURT
COUNTY OF LEE	)	THIRD JUDICIAL CIRCUIT
	)	CASE NUMBER:2013-CP-31-194
A&P Enterprises, LLC,	)	
	)	
Plaintiff	)	
	)	
Versus	)	ANSWER TO AMENDED COMPLAINT
	)	AND AMENDED COUNTERCLAIM
	)	
SP Grocery of Lynchburg, LLC	)	
Payel Suresh Patel and	)	
Suresh "Sam" Patel	)	
	)	
Defendants.	)	
	)	

The Defendants by way of Answer to the Amended Complaint of the Plaintiff herein dated October 10, 2013, and by way of Counterclaim herein, would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. That each and every allegation of the Amended Complaint not hereinafter specifically admitted, qualified or explained, is denied and strict proof is demanded thereof.
2. That the Defendant admits so much of Paragraphs 1 and 2 of the Amended Complaint, as allege that the Plaintiff is a South Carolina limited liability company which owns real estate in Lee County, South Carolina and that the Defendant SP Grocery of Lynchburg, LLC is a South Carolina limited

liability company which operates a convenience store in Lynchburg, South Carolina.

3. That the Defendants admit the allegations contained in paragraphs 3 & 4.

4. That the Defendants admit the allegations contained in paragraph 5 with the exception that the correct address of the store is "20 East Willow Grove Road".

5. That the Defendants deny the allegations contained in paragraphs 6, 7 and 8.

FOR A SECOND DEFENSE AND BY WAY OF ANSWER TO FIRST CAUSE OF

ACTION (Eviction)

6. The Defendant repeats and realleges the responses to allegations as set forth in preceding paragraphs as though set forth herein verbatim.

7. That the Defendant denies the allegations contained in paragraphs 9 and 10.

FOR A THIRD DEFENSE AND BY WAY ANSWER TO THE SECOND CAUSE

OF ACTION (Breach of Contract)

8. The Defendant repeats and realleges the responses to allegations as set forth in preceding paragraphs as though set forth herein verbatim.

9. That the Defendant denies the allegations contained in paragraphs 11, 12, and 13.

FOR A FOURTH DEFENSE AND BY WAY OF ANSWER FOR A THIRD CAUSE

OF ACTION (Quantum Meruit)

10. The Defendant repeats and realleges the allegations set forth in preceding paragraphs as though set forth herein verbatim.

11. That the Defendant denies the allegations in paragraphs 14, 15, 16, & 17.

FOR A FIFTH DEFENSE AND BY WAY OF ANSWER TO THE FOURTH

CAUSE OF ACTION (Breach of Contract)

12. The Defendant repeats and realleges the allegations set forth in preceding paragraphs as though set forth herein verbatim.

13. That the Defendant denies the allegations in paragraph 18 of the Amended Complaint.

14. That the Defendants admit that Sam Patel requested the loan to purchase fuel as set forth in Paragraph 19 of the Amended Complaint and admit that the funds are owed as alleged by Paragraph 20.

15. That the Defendants deny paragraphs 21 and 22 of the Amended Complaint.

That the preceding allegations of this Answer to Amended Complaint are incorporated by reference fully as if set

forth verbatim herein; Those allegations of Defendants Counterclaim of August 31, 2013 are herein incorporated as follows:

FOR A SIXTH DEFENSE AND BY WAY OF FIRST COUNTERCLAIM CAUSE

OF ACTION

16. That the Defendants are informed and believe that, the Plaintiff has conveyed due and legal title of the subject premises to the Defendants. The Defendant would affirmatively allege that the Defendants were promised title to the property by the Plaintiff and that in due reliance upon this promise, the Defendants' expended considerable sums of money and large amount of labor in making numerous improvements to the premises at issue herein.

17. That the Defendants are therefore informed and believe that they are the true owner of the real property at issue in this case, and is therefore not subject to eviction therefrom by the Plaintiff.

FOR A SEVENTH DEFENSE AND BY WAY OF SECOND COUNTERCLAIM

CAUSE OF ACTION

18. That the preceding allegations of this Answer and Counterclaim are incorporated by reference as fully as if set forth verbatim herein.

19. That if the Defendants are not the true owner of the real property at issue in this case by virtue of the actions of the Plaintiff as alleged more fully herein above, then the Plaintiff has obtained a substantial benefit, in the form of the improvements to the real property at issue in this case, made by the Defendant as is alleged more fully herein above.

20. That the Defendants are therefore informed and believe that if the Defendant's are adjudged not to be the true owner of the subject premises, that they are entitled to a judgment against the Plaintiff, in an amount equal to the reasonable value of the services and betterments rendered by the Defendants.

WHEREFORE, having fully answered the Amended Complaint in this action, and having counterclaimed herein, the Plaintiffs pray as follows:

1. For an Order from this Court, finding the Defendants to be the true owner of the real property at issue in this case and therefore, not subject to eviction therefrom and dismissing the Order to Vacate and Rule to Show Cause with prejudice.

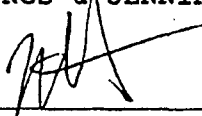
2. In the alternative, to a judgment against the Plaintiff in an amount equal to the reasonable value of the services rendered by the Defendants to the Plaintiff in making improvements to the premises at issue in this case as alleged more fully herein above, and also, to a judgment against the Plaintiff in an amount equal to the reasonable value of the improvements to the real property, carried out by the Defendants as alleged more fully herein above.

3. For the costs of this action.

4. For such other and further relief as the court may deem just and proper.

RESPECTFULLY SUBMITTED:

JENNINGS & JENNINGS, P.A.



WILLIAM W. WHEELER, III
JENNINGS & JENNINGS, P.A.
Post Office Box 106
Bishopville, S. C. 29010
(803) 484-5454
ATTORNEY FOR DEFENDANTS

Bishopville, South Carolina

October 21, 2013

STATE OF SOUTH CAROLINA

COUNTY OF LEE

A&P Enterprises, LLC,

Plaintiff,

vs.

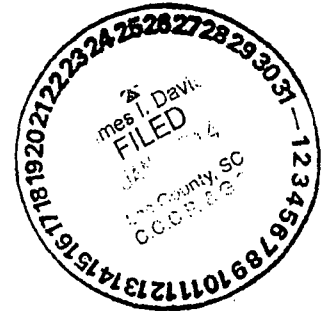
SP Grocery of Lynchburg, LLC, Payal Suresh
Patel and Suresh "Sam" Patel,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A # 2013-CP-31-194

REPLY



The Plaintiff replies to the Defendants counterclaims as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted is denied.
2. The Plaintiff reasserts each and every allegation contained in the complaint in response to each allegation of the counterclaim.
3. The Plaintiff denies the allegations contained in paragraphs 16, 17, 18, 19 and 20.

FOR A SECOND DEFENSE

4. Any allegations made by the Defendants claiming a gift of real estate or any type of oral agreement regarding the sale or transfer of real estate is prohibited by the South Carolina Statute of Frauds.

FOR A THIRD DEFENSE

5. Any oral agreement being alleged by the Defendants is barred by the Defendants' failure to pay any consideration for such an oral agreement.

FOR A FOURTH DEFENSE

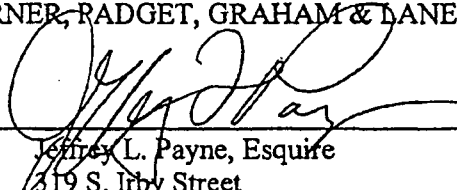
6. The Defendants claims are barred by the statute of limitations.

WHEREFORE, having replied to the Defendants counterclaims, the Plaintiff would request that the same be dismissed with prejudice and that the court award the Plaintiff the relief sought in its complaint along with such other and further relief as it deems just and proper.

Florence, South Carolina

January 23, 2014

TURNER, RADGET, GRAHAM & LANEY, P. A.

By: 

Jeffrey L. Payne, Esquire

319 S. Irby Street

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Florence, South Carolina 29501

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(843) 667-0828 fax

Email: jpayne@turnerpadget.com

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF LEE

A&P Enterprises, LLC,

Plaintiff,

vs.

SP Grocery of Lynchburg, LLC., Payel
Suresh Patel and Suresh "Sam" Patel
Defendants

COURT OF COMMON PLEAS

CASE NO. 2013-CP-31-194

FILED
MAY 2014
LEE COUNTY, SC

**NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION AND/OR
MOTION FOR RELIEF FROM JUDGMENT
OR ORDER**

**TO: DEFENDANTS ABOVE-NAMED AND THEIR ATTORNEY, WILLIAM W. WHEELER,
III, ESQUIRE**

PLEASE TAKE NOTICE that the Plaintiff intends to move before the Special Referee for Lee County Walter G. Newman and hereby does move pursuant to Rule 59(e), South Carolina Rules of Civil Procedure for a reconsideration of the Order filed with the Lee County Clerk of Court's office on April 21, 2014, (and mailed to the Defendants on April 21, 2014, and received by Defendants on April 24, 2014). A copy of the Special Referee's Order is attached hereto and incorporated herein as **Exhibit A**.

Additionally, the Defendant moves pursuant to Rule 60 of the South Carolina Rules of Civil Procedure for relief from the Order.

The Motion to Reconsider, Alter and Amend; and Motion for Relief from Order shall be based in part upon the following grounds:

1. The Order of the Special Referee contains numerous errors with respect to its Findings of Fact and Conclusions of Law.

2. The Findings of Fact contained in the Order are not supported by the evidence presented at the February 18, 2014, hearing.

3. The Order of the Special Referee misconstrues the evidence as the Court overlooked significant factual matters and has mis-applied laws relating to eviction and promissory estoppel.

4. The Order of the Special Referee misconstrues and misapplies the applicable law of South Carolina to the facts of this case.

5. The Special Referee erred by failing to grant Plaintiff the relief requested in Plaintiff's Complaint (Ejection of Defendant from the Lynchburg, South Carolina property).

6. The Special Referee erred in finding and ruling that Defendants held an equitable interest in the subject property.

7. The Special Referee misapplied and overlooked applicable Equity Principles and Equitable defenses in finding and ruling that Defendants held an equitable interest in the subject property.

8. The Special Referee erred in finding and ruling that the evidence presented at Trial was "overwhelmingly in favor" that the purchase of the subject property was "part of a course of action linked to a promise to Sam that the property would be conveyed back to him if he were able to repay to Kim the amount owed within a reasonable time."

9. The Special Referee erred in finding and ruling that, "...at the time the parties were contemplating the transaction and when the purchase was made by Kim, the only loan having been made was the loan for Five Thousand (\$5,000.00) Dollars so that the repurchase price was \$355,001.00)."

10. The Court erred in finding "...that Kim and Sam understood that Sam would be given a reasonable time to get on his feet before payments would begin, and that this time was defined at six months."

11. The Special Referee erred in finding that payments for purchase of the property were to begin on or before May 17, 2017."

12. The Special Referee erred in finding and ruling that, "Sam possesses an equitable promise from his brother under the doctrine of equitable estoppel."

13. The Special Referee erred in finding and ruling as a matter of law that Suresh "Sam" Patel owns an equitable interest in the subject real estate."

14. The Special Referee's Order misapplies and misconstrues South Carolina case law and ignores prior legal precedent regarding the doctrines of equity and promissory estoppel.

14. The Special Referee's Order errs by creating an alleged agreement/reliance that, if true would constitute a fraud on the United States Bankruptcy Court.

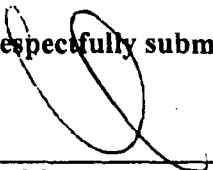
15. The Special Referee erred in grounding his findings as to a "course of conduct" as opposed to evidence of a clear and convincing promise.

16. The Special Referee erred in the calculation of relief and damages awarded to the Plaintiffs.

This motion shall be based on the attached Order, a Memorandum of Law to be filed with the Court, and such other and further relief as this Court deems proper.

(Signature on next page)

Respectfully submitted,



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Attorneys for Plaintiff

West Columbia, South Carolina
May 1, 2014

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2013CP3100194

A&P Enterprises vs. SP Grocery of Lynchburg, llc

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), 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; ☐ Statement of Judgment by the Court:

Dated at Bishopville, South Carolina, this 21st day of April, 2014.

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 21st day of April, 2014, and a copy mailed first class this 21st day of April, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Jeffrey L. Payne PO Box 5478 Florence, SC 29502

ATTORNEY(S) FOR THE PLAINTIFF(S)

William W. Wheeler III PO Box 106 Bishopville, SC 29010

ATTORNEY(S) FOR THE DEFENDANT(S)

James I Davis - Clerk of Court



STATE OF SOUTH CAROLINA)

COUNTY OF LEE)

A&P Enterprises, LLC,)

Plaintiff)

Versus)

SP Grocery of Lynchburg, LLC.)

Payal Suresh Patel and)

Suresh "Sam" Patel)

Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2013-CP-31-194

ORDER



"Good fences make good neighbors." - from Robert Frost's "Mending Wall."

"Good contracts preserve family and business relationships." - Anonymous.

Background and Procedural History

The above-captioned case was referred to me as Special Referee by consent of the parties and Order of the Honorable James I. Davis on file herein. This matter came to trial before me on February 18, 2014 and both parties presented their respective testimony and documentary evidence.

This action was commenced by the filing by the plaintiff of an action for ejectment in the Lee County Magistrate's Court pursuant to South Carolina Code § 273720. The plaintiff seeks the ejectment of the defendant from property owned by the plaintiff situate in Lee County, South Carolina. The defendant filed a timely return to the Rule to Show Cause in which he set up his ownership or equitable interest in the property as a defense to the ejectment. The parties consented to transfer their respective claims to the Court of Common Pleas. The plaintiff subsequently filed an Amended Complaint to which the defendant filed a proper Answer and Counterclaim. The plaintiff made a timely reply.

A&P Enterprises, LLC is a South Carolina LLC whose sole member is Kamlesh K. Patel, known as "Kim" Patel. SP Grocery of Lynchburg, LLC is a South Carolina limited liability company whose sole member is Payal Suresh Patel. Payal Suresh Patel is the daughter of Suresh Patel, also known as "Sam" Patel. Sam Patel and Kim Patel are brothers.

At the outset of the trial in this matter, plaintiff stipulated to the dismissal of any claims against Payal Suresh Patel, individually. This stipulation was consented to and all claims against Payal Suresh Patel, individually, are hereby dismissed.

The principal parties in interest in this matter are two brothers, Sam and Kim Patel. Though they are associated with respective LLC's, as described above, this Order shall refer to the parties simply as Sam and Kim hereafter.

Sam Patel moved to the United States from India in approximately 1979. Sam's parents, his brother and sisters followed. The entire family had moved in with Sam and his wife in Chicago by the early 1980's. In approximately 1989, Sam bought a store located at Willow Grove Road in Lynchburg. Sam, his wife and children, along with Sam's parents and brother Kim moved from Chicago to South Carolina.

The entire extended family lived on the premises of the store in Lynchburg. Sam, along with the rest of his extended family, worked in the Lynchburg store. The business grew, and eventually a store in Sumter was acquired. There is some dispute as to the circumstances, but by approximately 1992, Kim took over the Sumter store as his own. From this point, Sam and Kim operated their own respective businesses. Both of brothers were apparently successful and came to have other stores and investments.

In 2010, the Defendant Suresh "Sam" Patel owned three parcels of improved real estate in Lynchburg, South Carolina (the "Property"). On two of these parcels, Sam Patel operated a liquor store and a convenience store called "Tommy's Grill." Sam's other businesses included construction and development. At this time, Sam Patel and his companies were experiencing serious financial difficulties which ultimately forced him to file a bankruptcy petition with the United States Bankruptcy Court, District of South Carolina in 2011. Kim loaned him \$5,000 in January 2011 to help pay for the bankruptcy filing.

The Lynchburg store, along with other properties that Sam owned, went into foreclosure. Prior to the foreclosure sale, the brothers talked, and, although they now disagree over the nature of the conversation, they do agree that the result was that Kim would bid on the property at the foreclosure sale. Kim was the successful bidder at the foreclosure sale held on May 9, 2011. The deed transferring the property was filed with the Lee County Clerk of Court on October 13, 2011 showing that A&P Enterprises, LLC, (Kim), had bought the property including the Lynchburg store. The purchase price for the property was \$350,001.00.

Due to Sam Patel's financial problems and pending bankruptcy case, the ownership of the convenience store that operated on the property was placed in the name of SP Grocery, LLC ("SP Grocery") during the summer of 2011. Sam Patel's daughter, Payal Patel, owned 100 percent of SP Grocery. SP Grocery obtained all operating, lottery, and alcohol licenses for the convenience store and liquor store.

Sam continued to operate the Willow Grove Road store, known as Tommy's Grill, after Kim's purchase of the property.

No rent has ever been paid to Kim by Sam. In August 2011, Kim, at the request of the Sam, purchased a truck load of fuel for Sam for \$17,415. Sam agreed to repay Kim for the cost of this fuel. In early 2013, the Kim purchased another tank of fuel for the Sam for \$20,000. Sam has repaid \$3,000 of this sum with \$17,000 still owed. In addition, in 2012 and 2013, Kim was forced to pay the property's real property taxes of \$3,785.47 for each year, for a total of \$7,570.

Kim's position is that the property was purchased solely as an investment and that he expected Sam to pay rent at some point as Sam had informed Kim while asking him to purchase the property that it would be a good investment since he would pay his brother a monthly rent along with paying all maintenance costs, insurance and real estate taxes for the property. Kim says that he relied on these representations, ultimately agreed to purchase the property, and made a high bid of \$350,001 for the property at the foreclosure sale. He says that he expected to make a reasonable profit of about 10% on this business deal. He denies that he bought the property just to help his brother. He says, in fact, that since 1992 he and Sam and their families had a poor relationship and that the only time he heard from Sam was if Sam needed money. Kim testified that he was, in essence, thrown into the Sumter store by Sam in 1991-1992 and that the relationship between the families was acrimonious. While he intended to give his brother Sam some time to "get on his feet", he anticipated he would receive rent of some \$5000.00 per month from Sam after a period of six months or so.

Kim further says that, beginning in 2012, he began contacting Sam in an effort to get him to pay the rent as was agreed. Sam, despite these requests, failed to pay any rent to the Plaintiff. In 2013, Kim Patel continued to request that the Defendants pay rent for the use of the Property and that they pay the real property taxes. Kim testified that the first time an actual lease was proposed to Sam was in April of 2013, in the form of a letter sent to Sam by counsel for Kim. No such payments were forthcoming from the Defendants.

Kim seeks Judgment against Sam evicting him from the property, awarding judgment for past due rental and property taxes he feels Sam should have paid under breach of contract, alternatively, for the same financial damages under Quantum Meruit, and for judgment on a final cause of action for the loan he made to Sam for the fuel purchase in August of 2011.

Sam gives a very different picture. He and his witnesses describe a long-standing history of working together. In the world they live in, as Sam describes it, he would have reasonably expected Kim would be willing to help them out as a family member. Sam contends that Kim purchased the store in order to convey it back to Sam, not to rent it to him. Sam testified that Kim offered to buy back the Lynchburg property for him and that Kim initially wanted to pay for the property and title it in Sam's name. Sam testified that he insisted on paying Kim back for what Kim paid for the property and that he did not

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want Kim to put the property into his name until he had repaid Kim. Sam acknowledged that the ultimate purchase of the property was not as a gift, but rather, Sam intended to pay Kim back within five years. Sam testified that he did not object to making some monthly payments toward the amount Kim paid, but that he believed it was fair to credit this toward the purchase price. As evidence of improvements on the property and as evidence of reliance upon Kim's promise that the property would go back to Sam, Sam testified as to significant expenditures on the property. The testimony and accompanying exhibit reflects expenditures, after the purchase of the property by Kim, of over \$68,000.00. The expenditures were for gas pumps and installation, HVAC repairs and general repairs to the property.

Two other witnesses testified for the Defendant, Payal Patel and Terrence Wilson. Their testimony is important in several respects. Despite the fact that Payal Patel is Sam's daughter and arguably has some interest in her father's position in this litigation, I do find that her testimony was very credible as to her description of family relationships. Her description contradicted her uncle Kim's testimony significantly. Where Kim described a family that was fractured after 1992, Payal described family birthday parties, weddings and other events that all attended enjoyably. These events were all after the 1992 timeframe.

Terrence Wilson testified that he had been friends with both Sam and Kim for many years both personally and in a business capacity. Indeed, he testified that he owed fairly substantial sums of money to both Kim and Sam. Terrence testified that he had spoken with both Sam and Kim and was very aware that the arrangement was to be that the store would be Sam's when Sam could pay Kim back. Terrence testified that there was never any discussion of rent until the Kim and Sam's respective wives had an argument over a separate matter in early 2013.

Sam contends that he has an equitable ownership interest in the property in the form of a right to purchase it pursuant to the understanding as set forth above. He contends that Kim should be equitably estopped from proceeding in violation of that understanding. He points to his reliance upon Kim's representations that Sam would get the title to the property back which led him to expend over \$68,000 in repairs and upkeep of the property which would have normally been a landlord's expense.

There is no document in which the parties memorialized the terms of their understanding.

Applicable Law

The elements of promissory estoppel require that a claimant prove: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by a party to whom the promise is made; (3) the reliance is expected and foreseeable by a party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.

Promissory estoppel is a distinct and separate legal theory from contract. Where a contract requires a meeting of the minds and consideration, promissory estoppel looks at a promise, its subsequent effect on the promisee, and in certain cases bars the promisor from making an inconsistent disposition of the property. *Satcher, id.* The applicability of the doctrine depends on whether the refusal to apply it "would be virtually to sanction the perpetration of a fraud or would result in other injustice." *Citizens Bank v. Gregory's Warehouse, Inc.*, 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct. App. 1988). (Emphasis supplied.)

To prevail under the theory of promissory estoppel, the moving party must prove each element by clear, cogent, and convincing evidence. Clear and convincing evidence is that degree of proof that will produce in a fact finder a firm belief as to the allegations sought to be established. Such measure of proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal *Satcher v. Satcher*, 351 S.C. 477; 570 S.E.2d 535 (Ct. App. 2002); *Knight v. Stroud*, 214 S.C. 437, 53 S.E.2d 72 (1949).

Findings

I find that there was no "meeting of the minds" sufficient to establish a cause of action under contract on behalf of either party regarding the ownership of the property. Both parties have argued their position strongly in equity.

As to the parole gift, the parties have agreed that that did not happen. Even Sam, who said that Kim offered the gift, testified that he declined it and planned to repay Kim the money he invested.

The next issue to be resolved is whether Sam has an equitable interest in the real property in question pursuant to promissory estoppel? If so, what are the terms of Sam's equitable interest?

The context within which actions take place helps us to determine the credibility of one side as opposed to the other. Kim describes a poor family relationship and says that his involvement in this transaction was purely business and for profit. Sam describes a supportive family relationship and says that the transaction repurchasing the property was an example of one family member being willing to help another. The testimony of Payal Patel and of Terrence Wilson support Sam's position. The purchases of fuel by Kim for Sam in August 2011 and again in early 2013 are further indications of credibility for Sam. Further, I find that the improvements made by Sam were in the main of a nature that suggests that the person making them would not have undertaken them without some belief that the property was to be theirs. Finally, the first time a lease was proposed to Sam was in a letter from Kim's attorney of April, 2013.

Based upon my viewing of the witnesses, hearing the testimony, and reviewing the exhibits submitted in that context, I find that even under the burden of proof set forth in the *Satcher* decision, the credible evidence is overwhelmingly in favor of the position that Kim's purchase of this property was part of a course of action linked to a promise to Sam that the property would be conveyed back to him if he were able to repay Kim the amount owed within a reasonable time. Sam testified that this amount owed was comprised of the full amount of the purchase price to Kim of \$350,001.00 as well as additional funds that Kim had loaned Sam. I find that at the time the parties were contemplating the transaction and when the purchase was made by Kim, the only loan having been made was the loan for Five thousand (\$5,000.00) Dollars, so that the repurchase price was \$355,001.00.

I further find that Kim and Sam understood that Sam would be given a reasonable time to get on his feet before payments would begin, and that this time was defined at six months. I find that the payments should have begun no later than May 13, 2012, at the end of the seventh month after the deed into Kim was recorded.

I find an implied promise of up to five years for the payments to be made. I find that to exercise his equitable right to purchase this property from Kim, Sam must finish repaying Kim in full on or before May 13, 2017.

Kim stated that he should receive monthly payments, although by the time this lawsuit commenced he felt that such payments were rent instead of payments on a purchase price. Sam had no objections to monthly payments, he just wanted them to be credited to the purchase price. I conclude that the parties did contemplate monthly payments. Based on the entirety of the credible evidence before me, I find that, beginning with May 13, 2014, Sam must pay Kim no less than \$3,750.00 per month, a figure in line with the demand Kim made on Sam. *

In the context of the brothers' dealings with each other, it was reasonable that Sam would rely upon Kim's promise and that reliance was clearly foreseeable. Sam relied to his financial detriment. A finding to the contrary, that Sam's only interest in the premises was as a tenant and that he could simply be evicted, would result in injustice.

I find that Sam possesses an enforceable promise from his brother under the doctrine of promissory estoppel. The summary of the terms is \$355,001.00, to be paid in full no later than May 13, 2017, payments of at least \$3,750.00 per month for the duration, beginning May 13, 2014 and payable on or before the eighth day of every month thereafter until paid in full or until May 13, 2017, whichever comes first, at which time Suresh "Sam" Patel shall be entitled to the title to the property if he has paid in full. Should Sam not have paid in full for the property by May 13, 2017, he will forfeit his rights under this equitable interest and his status and that of any business he may be operating on this property will convert into that of a tenant. The real property taxes for each year are the responsibility of Sam.

This leaves the breach of contract issues of the two gasoline purchases and the taxes to be determined.

On the issue of the fuel purchases, throughout these proceedings before me, Sam acknowledged the debts arising from these two purchases. The parties through their actions have agreed that both of these should be part of any judgment. In view of my finding that these fuel purchases were not a part of the discussion between the parties when the understanding was reached concerning the purchase of the property, it is appropriate for this Order to include both now in my finding regarding the separate cause of action for breach of contract. On the first sum, Seventeen thousand four hundred and fifteen and no/100 (\$17,415) Dollars, Sam has made no effort to make payments to Kim. I am aware that Kim had indicated he would give Sam "six months or so" to get back on his feet before looking for payments. Plaintiff indicates to the Court a date of May 13, 2012 as the date when the payments should have begun. I find that date to be reasonable. He asks in his complaint for prejudgment interest. The debt being one of a liquidated amount, Kim should be and is allowed prejudgment interest beginning May 13, 2012, which is the earliest date that Sam was expected to pay on this debt and did not.

Regarding the admitted debt from 2013 in the amount of \$17,000, the same factors would apply, except that I do not find in the record the date of the transaction. My recollection of the testimony at trial on this particular loan was that the loan was made in early 2013. Allowing for the same six-month period would mean that payments should have begun no later than January 1, 2014. I conclude that Kim should have judgment against Sam for this amount, plus prejudgment interest to be computed from the date of January 1, 2014.

Regarding the real estate property taxes paid by Kim, I find that Sam's claim to equitable ownership of the property means that Sam also owns the property taxes for that property. Since the court does not have evidence of the date of these payments, I cannot issue an order as to prejudgment interest. However, I do grant Kim judgment against Sam for the amount of \$3785.45 for each of those two years, for a total of \$7,570.90.

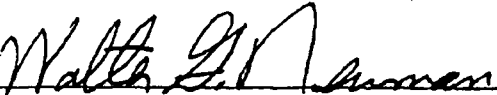
Now, referring to the parties as their names should appear in the judgment rolls, I grant judgment as follows:

IT IS ORDERED, that Suresh "Sam" Patel owns an equitable interest in the subject real estate, that he cannot be evicted at this time, and that he has the right to purchase the property from A&P Enterprises, LLC according to the terms set forth above, and that owes the annual real property taxes as an incident of ownership of the equitable interest in this property. It is further

ORDERED, that A&P Enterprises, LLC is granted judgment against Suresh "Sam" Patel in the amount of \$17,415, plus prejudgment interest on this sum from May 1, 2012, plus judgment for sum of \$17,000, plus prejudgment interest on this sum from

the date of January 1, 2014; plus the sum of \$7570.90, without prejudgment interest, for a total monetary judgment of \$41,985.90, plus prejudgment interest to be computed as indicated.

AND IT IS SO ORDERED.


Walter G. Newman, Special Referee
for Lee County

Sumter, South Carolina

 April 17, 2014

* These payments are the minimum to be paid each month. Clearly, Sam will be required to make payments far beyond this minimum per month in order to pay the debt in full in the time allowed.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas

Walter Newman, Special Referee

Case No. 2013-CP-31-00194

A&P Enterprises, LLC,..... Appellant,

v.

SP Grocery of Lynchburg, LLC and Suresh "Sam" Patel Respondents.

NOTICE OF APPEAL

A&P Enterprises, LLC, hereby appeals the following Orders of the Honorable
Walter Newman, Special Referee:

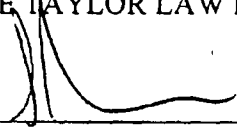
(1) The Order Denying Plaintiff's Rule 59(e) and 60 Motions dated February
18, 2015 and filed March 4, 2015 (attached as Exhibit A); and

(2) The Court's original Order dated April 17, 2014 and filed April 21, 2014
(attached as
Exhibit B).

Appellant received written notification of Special Referee Walter Newman's
Order denying its Rule 59(e) and 60 Motions on March 9, 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 APPELLANT
A&P Enterprises, LLC

West Columbia, South Carolina

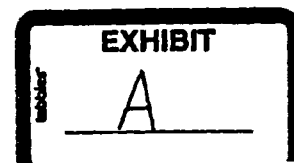
March 10, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF LEE) COURT OF COMMON PLEAS
A&P Enterprises, LLC,) THIRD JUDICIAL CIRCUIT
Plaintiff) CASE NUMBER: 2013-CP-31-194
Versus)
SP Grocery of Lynchburg, LLC)
And Suresh "Sam" Patel)
Defendants.)

ORDER DENYING PLAINTIFF'S
RULE 59(e) AND 60 MOTIONS

This Order is in response to the Plaintiff's motion, pursuant to SCRCP 59(e) and 60, requesting this Court alter, amend or reconsider the Order filed April 21, 2014. The plaintiff's motion was timely filed on May 1, 2014 and properly served on this Court and Defendants. A hearing on Plaintiff's motion was held on October 22, 2014. Present and appearing at this hearing were all of the parties as well as their respective counsel of record. Following the hearing, both parties requested and were granted the opportunity to submit memoranda of law in support of their respective positions. Based upon the arguments of the parties counsel, review of the record and consideration of the memorandums of law submitted by the parties, I make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW



ROA000056

1. The Plaintiff's arguments in support of its motion, summarized from its memorandum of law, are as follows:
 - a. The Defendant lacks standing to assert a claim for promissory estoppel because any interest of Defendant in the property would be for the benefit of a Bankruptcy Estate.
 - b. The Defendant is barred from seeking the equitable remedy of promissory estoppel because of the doctrine of unclean hands.
 - c. The Defendant's claim for promissory estoppel fails as a matter of law because 1) Defendant did not prove existence of a contract unambiguous in its terms, and 2) the Defendant did not prove reasonable reliance.
2. I find that the first and second arguments made by Plaintiff are both linked to the filing of bankruptcy by Sam Patel. The first position is that Defendant could not have any interest, equitable or otherwise, if such interest is an asset of a bankruptcy estate. The second position is that Sam Patel's agreement with his brother to buy back the store constitutes an agreement to circumvent his creditors and therefore results in unclean hands.

I do not find that there is evidentiary support for these positions. The evidence of record is testimony by Kim Patel that he loaned Sam Patel \$5000.00 to pay for a bankruptcy filing. No further evidence as to the nature of the bankruptcy proceeding or the outcome are in evidence. I do find that, as to the bankruptcy filing, Kim Patel was certainly aware of the event. I do not find that either of the first two arguments, even if there was evidence to support them, could be made for the benefit of Kim Patel. I do not find that these arguments of Plaintiff give this Court any reason to alter the previous Order.

3. The Plaintiff asserts that the Defendant's claim for promissory estoppel must fail as a matter of law because the Plaintiff contends: 1) Defendant did not prove existence of a contract unambiguous in its terms, and 2) the Defendant did not prove reasonable reliance.
4. The elements of promissory estoppel, as set forth in the Order, are: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by a party to whom the promise is made; (3) the reliance is expected and foreseeable by a party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.

5. I am convinced by the overwhelming weight of the credible evidence, and find by clear and convincing evidence, that Kim unambiguously promised Sam that he would convey the property to Sam and that Sam relied on this promise to his detriment. I find the evidence established that Kim Patel offered to buy back the Lynchburg property for his brother Sam and that Kim initially wanted to pay for the property and title it in Sam's name. Sam insisted on paying Kim back for what Kim paid for the property and that he did not want Kim to put the property into his name until he had done so. Sam acknowledged that the purchase of the property was not intended as a gift, but rather, Sam would pay Kim back within five years. I find that there was an unambiguous promise that the property was to be Sam's upon payment to Kim of the amount Kim paid for the property.

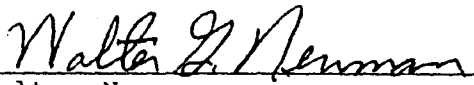
6. In reaching these conclusions, I specifically address and incorporate this Court's previous findings as to credibility of witnesses. This Court had the opportunity to observe the witnesses, both parties and non-parties, their demeanor, and the overall context with which the events that were the subject of their testimony unfolded. Kim Patel testified that he purchased this property solely as an investment to rent it back to his brother.

I do not find that Kim Patel's testimony was credible. I do find that the testimony of Sam Patel was credible and was supported by evidence of the other witnesses. Based on this credible evidence, I find and conclude that there was an unambiguous promise that Kim would convey the property back to Sam.

7. I find that, based upon the unambiguous promise that Kim would convey this property back to Sam, Sam did act in reasonable reliance on the promise. Further, I find that this reasonable reliance was to Sam's detriment. I find that the evidence established that Sam made improvements of a nature and extent that would have been made only if Sam believed the property was going to be his.
8. I find that, to allow Kim Patel to back out of his unambiguous promise would be to countenance the perpetration of an injustice, whereas enforcing the agreement between the parties gives both parties the benefit they each contemplated at the time the promise was made. Sam Patel will end up getting the property back, assuming he makes the payment due Kim, and Kim will end up with the economic benefit anticipated.
9. I find and conclude that the elements necessary to sustain recovery in promissory estoppel are proved by credible evidence and evidence that this Court finds

clear and convincing. Based upon all of the foregoing,
the Plaintiff's Motions pursuant to Rules 59(e) and 60 of
the South Carolina Rules of Civil Procedure are
respectfully denied.

AND IT IS SO ORDERED.


Walter Newman
SPECIAL REFEREE- Lee County

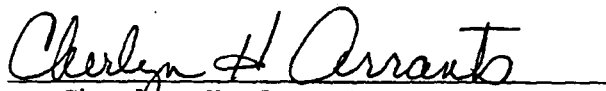
Sumter, South Carolina

Feb. 18, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEE	)	THIRD JUDICIAL CIRCUIT
	)	CASE NUMBER 2013-CP-31-194
A&P Enterprises, LLC,	)	
	)	
Plaintiff	)	
	)	
Versus	)	CERTIFICATE OF MAILING
	)	
SP Grocery of Lynchburg, LLC	)	
And Suresh "Sam" Patel	)	
	)	
Defendants.	)	
	)	

The undersigned hereby certifies that she is a secretary with the law firm of Jennings & Jennings, P. A.; that a copy of the **ORDER DENYING PLAINTIFF'S RULE 59(E) AND 60 MOTIONS** was served in the foregoing action by depositing the same in the United States mail with sufficient postage affixed thereto and return address clearly visible on the 4th day of March, 2014, addressed to the following:

John C. Bradley, Jr.
 Moore Taylor Law Firm, PA
 PO Box 5709
 West Columbia, SC 29171


 Cheryl H. Arrants

STATE OF SOUTH CAROLINA)

COUNTY OF LEE)

A&P Enterprises, LLC,)

Plaintiff)

Versus)

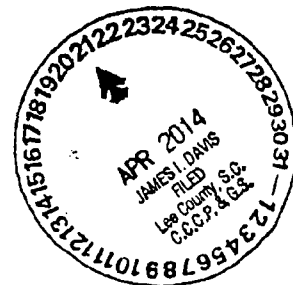
SP Grocery of Lynchburg, LLC.)

Payal Suresh Patel and)
Suresh "Sam" Patel)

Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2013-CP-31-194

ORDER



"Good fences make good neighbors." - from Robert Frost's "Mending Wall."

"Good contracts preserve family and business relationships." - Anonymous.

Background and Procedural History

The above-captioned case was referred to me as Special Referee by consent of the parties and Order of the Honorable James I. Davis on file herein. This matter came to trial before me on February 18, 2014 and both parties presented their respective testimony and documentary evidence.

This action was commenced by the filing by the plaintiff of an action for ejectment in the Lee County Magistrate's Court pursuant to South Carolina Code § 273720. The plaintiff seeks the ejectment of the defendant from property owned by the plaintiff situate in Lee County, South Carolina. The defendant filed a timely return to the Rule to Show Cause in which he set up his ownership or equitable interest in the property as a defense to the ejectment. The parties consented to transfer their respective claims to the Court of Common Pleas. The plaintiff subsequently filed an Amended Complaint to which the defendant filed a proper Answer and Counterclaim. The plaintiff made a timely reply.

A&P Enterprises, LLC is a South Carolina LLC whose sole member is Kamlesh K. Patel, known as "Kim" Patel. SP Grocery of Lynchburg, LLC is a South Carolina limited liability company whose sole member is Payal Suresh Patel. Payal Suresh Patel is the daughter of Suresh Patel, also known as "Sam" Patel. Sam Patel and Kim Patel are brothers.



At the outset of the trial in this matter, plaintiff stipulated to the dismissal of any claims against Payal Suresh Patel, individually. This stipulation was consented to and all claims against Payal Suresh Patel, individually, are hereby dismissed.

The principal parties in interest in this matter are two brothers, Sam and Kim Patel. Though they are associated with respective LLC's, as described above, this Order shall refer to the parties simply as Sam and Kim hereafter.

Sam Patel moved to the United States from India in approximately 1979. Sam's parents, his brother and sisters followed. The entire family had moved in with Sam and his wife in Chicago by the early 1980's. In approximately 1989, Sam bought a store located at Willow Grove Road in Lynchburg. Sam, his wife and children, along with Sam's parents and brother Kim moved from Chicago to South Carolina.

The entire extended family lived on the premises of the store in Lynchburg. Sam, along with the rest of his extended family, worked in the Lynchburg store. The business grew, and eventually a store in Sumter was acquired. There is some dispute as to the circumstances, but by approximately 1992, Kim took over the Sumter store as his own. From this point, Sam and Kim operated their own respective businesses. Both of brothers were apparently successful and came to have other stores and investments.

In 2010, the Defendant Suresh "Sam" Patel owned three parcels of improved real estate in Lynchburg, South Carolina (the "Property"). On two of these parcels, Sam Patel operated a liquor store and a convenience store called "Tommy's Grill." Sam's other businesses included construction and development. At this time, Sam Patel and his companies were experiencing serious financial difficulties which ultimately forced him to file a bankruptcy petition with the United States Bankruptcy Court, District of South Carolina in 2011. Kim loaned him \$5,000 in January 2011 to help pay for the bankruptcy filing.

The Lynchburg store, along with other properties that Sam owned, went into foreclosure. Prior to the foreclosure sale, the brothers talked, and, although they now disagree over the nature of the conversation, they do agree that the result was that Kim would bid on the property at the foreclosure sale. Kim was the successful bidder at the foreclosure sale held on May 9, 2011. The deed transferring the property was filed with the Lee County Clerk of Court on October 13, 2011 showing that A&P Enterprises, LLC, (Kim), had bought the property including the Lynchburg store. The purchase price for the property was \$350,001.00.

Due to Sam Patel's financial problems and pending bankruptcy case, the ownership of the convenience store that operated on the property was placed in the name of SP Grocery, LLC ("SP Grocery") during the summer of 2011. Sam Patel's daughter, Payal Patel, owned 100 percent of SP Grocery. SP Grocery obtained all operating, lottery, and alcohol licenses for the convenience store and liquor store.

Sam continued to operate the Willow Grove Road store, known as Tommy's Grill, after Kim's purchase of the property.

No rent has ever been paid to Kim by Sam. In August 2011, Kim, at the request of the Sam, purchased a truck load of fuel for Sam for \$17,415. Sam agreed to repay Kim for the cost of this fuel. In early 2013, the Kim purchased another tank of fuel for the Sam for \$20,000. Sam has repaid \$3,000 of this sum with \$17,000 still owed. In addition, in 2012 and 2013, Kim was forced to pay the property's real property taxes of \$3,785.47 for each year, for a total of \$7,570.

Kim's position is that the property was purchased solely as an investment and that he expected Sam to pay rent at some point as Sam had informed Kim while asking him to purchase the property that it would be a good investment since he would pay his brother a monthly rent along with paying all maintenance costs, insurance and real estate taxes for the property. Kim says that he relied on these representations, ultimately agreed to purchase the property, and made a high bid of \$350,001 for the property at the foreclosure sale. He says that he expected to make a reasonable profit of about 10% on this business deal. He denies that he bought the property just to help his brother. He says, in fact, that since 1992 he and Sam and their families had a poor relationship and that the only time he heard from Sam was if Sam needed money. Kim testified that he was, in essence, thrown into the Sumter store by Sam in 1991-1992 and that the relationship between the families was acrimonious. While he intended to give his brother Sam some time to "get on his feet", he anticipated he would receive rent of some \$5000.00 per month from Sam after a period of six months or so.

Kim further says that, beginning in 2012, he began contacting Sam in an effort to get him to pay the rent as was agreed. Sam, despite these requests, failed to pay any rent to the Plaintiff. In 2013, Kim Patel continued to request that the Defendants pay rent for the use of the Property and that they pay the real property taxes. Kim testified that the first time an actual lease was proposed to Sam was in April of 2013, in the form of a letter sent to Sam by counsel for Kim. No such payments were forthcoming from the Defendants.

Kim seeks Judgment against Sam evicting him from the property, awarding judgment for past due rental and property taxes he feels Sam should have paid under breach of contract, alternatively, for the same financial damages under Quantum Meruit, and for judgment on a final cause of action for the loan he made to Sam for the fuel purchase in August of 2011.

Sam gives a very different picture. He and his witnesses describe a long-standing history of working together. In the world they live in, as Sam describes it, he would have reasonably expected Kim would be willing to help them out as a family member. Sam contends that Kim purchased the store in order to convey it back to Sam, not to rent it to him. Sam testified that Kim offered to buy back the Lynchburg property for him and that Kim initially wanted to pay for the property and title it in Sam's name. Sam testified that he insisted on paying Kim back for what Kim paid for the property and that he did not

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want Kim to put the property into his name until he had repaid Kim. Sam acknowledged that the ultimate purchase of the property was not as a gift, but rather, Sam intended to pay Kim back within five years. Sam testified that he did not object to making some monthly payments toward the amount Kim paid, but that he believed it was fair to credit this toward the purchase price. As evidence of improvements on the property and as evidence of reliance upon Kim's promise that the property would go back to Sam, Sam testified as to significant expenditures on the property. The testimony and accompanying exhibit reflects expenditures, after the purchase of the property by Kim, of over \$68,000.00. The expenditures were for gas pumps and installation, HVAC repairs and general repairs to the property.

Two other witnesses testified for the Defendant, Payal Patel and Terrence Wilson. Their testimony is important in several respects. Despite the fact that Payal Patel is Sam's daughter and arguably has some interest in her father's position in this litigation, I do find that her testimony was very credible as to her description of family relationships. Her description contradicted her uncle Kim's testimony significantly. Where Kim described a family that was fractured after 1992, Payal described family birthday parties, weddings and other events that all attended enjoyably. These events were all after the 1992 timeframe.

Terrence Wilson testified that he had been friends with both Sam and Kim for many years both personally and in a business capacity. Indeed, he testified that he owed fairly substantial sums of money to both Kim and Sam. Terrence testified that he had spoken with both Sam and Kim and was very aware that the arrangement was to be that the store would be Sam's when Sam could pay Kim back. Terrence testified that there was never any discussion of rent until the Kim and Sam's respective wives had an argument over a separate matter in early 2013.

Sam contends that he has an equitable ownership interest in the property in the form of a right to purchase it pursuant to the understanding as set forth above. He contends that Kim should be equitably estopped from proceeding in violation of that understanding. He points to his reliance upon Kim's representations that Sam would get the title to the property back which led him to expend over \$68,000 in repairs and upkeep of the property which would have normally been a landlord's expense.

There is no document in which the parties memorialized the terms of their understanding.

Applicable Law

The elements of promissory estoppel require that a claimant prove: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by a party to whom the promise is made; (3) the reliance is expected and foreseeable by a party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.

Promissory estoppel is a distinct and separate legal theory from contract. Where a contract requires a meeting of the minds and consideration, promissory estoppel looks at a promise, its subsequent effect on the promisee, and in certain cases bars the promisor from making an inconsistent disposition of the property. Satcher, *Id.* The applicability of the doctrine depends on whether the refusal to apply it "would be virtually to sanction the perpetration of a fraud *or would result in other injustice.*" Citizens Bank v. Gregory's Warehouse, Inc., 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct. App. 1988). (Emphasis supplied.)

To prevail under the theory of promissory estoppel, the moving party must prove each element by clear, cogent, and convincing evidence. Clear and convincing evidence is that degree of proof that will produce in a fact finder a firm belief as to the allegations sought to be established. Such measure of proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal Satcher v. Satcher, 351 S.C. 477; 570 S.E.2d 535 (Ct. App. 2002); Knight v. Stroud, 214 S.C. 437, 53 S.E.2d 72 (1949).

Findings

I find that there was no "meeting of the minds" sufficient to establish a cause of action under contract on behalf of either party regarding the ownership of the property. Both parties have argued their position strongly in equity.

As to the parole gift, the parties have agreed that that did not happen. Even Sam, who said that Kim offered the gift, testified that he declined it and planned to repay Kim the money he invested.

The next issue to be resolved is whether Sam has an equitable interest in the real property in question pursuant to promissory estoppel? If so, what are the terms of Sam's equitable interest?

The context within which actions take place helps us to determine the credibility of one side as opposed to the other. Kim describes a poor family relationship and says that his involvement in this transaction was purely business and for profit. Sam describes a supportive family relationship and says that the transaction repurchasing the property was an example of one family member being willing to help another. The testimony of Payal Patel and of Terrence Wilson support Sam's position. The purchases of fuel by Kim for Sam in August 2011 and again in early 2013 are further indications of credibility for Sam. Further, I find that the improvements made by Sam were in the main of a nature that suggests that the person making them would not have undertaken them without some belief that the property was to be theirs. Finally, the first time a lease was proposed to Sam was in a letter from Kim's attorney of April, 2013.

Based upon my viewing of the witnesses, hearing the testimony, and reviewing the exhibits submitted in that context, I find that even under the burden of proof set forth in the *Satcher* decision, the credible evidence is overwhelmingly in favor of the position that Kim's purchase of this property was part of a course of action linked to a promise to Sam that the property would be conveyed back to him if he were able to repay Kim the amount owed within a reasonable time. Sam testified that this amount owed was comprised of the full amount of the purchase price to Kim of \$350,001.00 as well as additional funds that Kim had loaned Sam. I find that at the time the parties were contemplating the transaction and when the purchase was made by Kim, the only loan having been made was the loan for Five thousand (\$5,000.00) Dollars, so that the repurchase price was \$355,001.00.

I further find that Kim and Sam understood that Sam would be given a reasonable time to get on his feet before payments would begin, and that this time was defined at six months. I find that the payments should have begun no later than May 13, 2012, at the end of the seventh month after the deed into Kim was recorded.

I find an implied promise of up to five years for the payments to be made. I find that to exercise his equitable right to purchase this property from Kim, Sam must finish repaying Kim in full on or before May 13, 2017.

Kim stated that he should receive monthly payments, although by the time this lawsuit commenced he felt that such payments were rent instead of payments on a purchase price. Sam had no objections to monthly payments, he just wanted them to be credited to the purchase price. I conclude that the parties did contemplate monthly payments. Based on the entirety of the credible evidence before me, I find that, beginning with May 13, 2014, Sam must pay Kim no less than \$3,750.00 per month, a figure in line with the demand Kim made on Sam. *

In the context of the brothers' dealings with each other, it was reasonable that Sam would rely upon Kim's promise and that reliance was clearly foreseeable. Sam relied to his financial detriment. A finding to the contrary, that Sam's only interest in the premises was as a tenant and that he could simply be evicted, would result in injustice.

I find that Sam possesses an enforceable promise from his brother under the doctrine of promissory estoppel. The summary of the terms is \$355,001.00, to be paid in full no later than May 13, 2017, payments of at least \$3,750.00 per month for the duration, beginning May 13, 2014 and payable on or before the eighth day of every month thereafter until paid in full or until May 13, 2017, whichever comes first, at which time Suresh "Sam" Patel shall be entitled to the title to the property if he has paid in full. Should Sam not have paid in full for the property by May 13, 2017, he will forfeit his rights under this equitable interest and his status and that of any business he may be operating on this property will convert into that of a tenant. The real property taxes for each year are the responsibility of Sam.

This leaves the breach of contract issues of the two gasoline purchases and the taxes to be determined.

On the issue of the fuel purchases, throughout these proceedings before me, Sam acknowledged the debts arising from these two purchases. The parties through their actions have agreed that both of these should be part of any judgment. In view of my finding that these fuel purchases were not a part of the discussion between the parties when the understanding was reached concerning the purchase of the property, it is appropriate for this Order to include both now in my finding regarding the separate cause of action for breach of contract. On the first sum, Seventeen thousand four hundred and fifteen and no/100 (\$17,415) Dollars, Sam has made no effort to make payments to Kim. I am aware that Kim had indicated he would give Sam "six months or so" to get back on his feet before looking for payments. Plaintiff indicates to the Court a date of May 13, 2012 as the date when the payments should have begun. I find that date to be reasonable. He asks in his complaint for prejudgment interest. The debt being one of a liquidated amount, Kim should be and is allowed prejudgment interest beginning May 13, 2012, which is the earliest date that Sam was expected to pay on this debt and did not.

Regarding the admitted debt from 2013 in the amount of \$17,000, the same factors would apply, except that I do not find in the record the date of the transaction. My recollection of the testimony at trial on this particular loan was that the loan was made in early 2013. Allowing for the same six-month period would mean that payments should have begun no later than January 1, 2014. I conclude that Kim should have judgment against Sam for this amount, plus prejudgment interest to be computed from the date of January 1, 2014.

Regarding the real estate property taxes paid by Kim, I find that Sam's claim to equitable ownership of the property means that Sam also owns the property taxes for that property. Since the court does not have evidence of the date of these payments, I cannot issue an order as to prejudgment interest. However, I do grant Kim judgment against Sam for the amount of \$3785.45 for each of those two years, for a total of \$7,570.90.

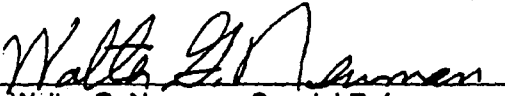
Now, referring to the parties as their names should appear in the judgment rolls, I grant judgment as follows:

IT IS ORDERED, that Suresh "Sam" Patel owns an equitable interest in the subject real estate, that he cannot be evicted at this time, and that he has the right to purchase the property from A&P Enterprises, LLC according to the terms set forth above, and that owes the annual real property taxes as an incident of ownership of the equitable interest in this property. It is further

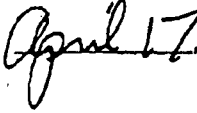
ORDERED, that A&P Enterprises, LLC is granted judgment against Suresh "Sam" Patel in the amount of \$17,415, plus prejudgment interest on this sum from May 1, 2012, plus judgment for sum of \$17,000, plus prejudgment interest on this sum from

the date of January 1, 2014; plus the sum of \$7570.90, without prejudgment interest, for a total monetary judgment of \$41,985.90, plus prejudgment interest to be computed as indicated.

AND IT IS SO ORDERED.


Walter G. Newman, Special Referee
for Lee County

Sumter, South Carolina

 April 17, 2014

* These payments are the minimum to be paid each month. Clearly, Sam will be required to make payments far beyond this minimum per month in order to pay the debt in full in the time allowed.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE)

A&P Enterprises, LLC,)
)
Plaintiff,)
)
vs.)
)
SP Grocery of Lynchburg, LLC., Payel)
Suresh Patel and Suresh "Sam" Patel)
Defendants)
_____)

COURT OF COMMON PLEAS
CASE NO. 2013-CP-31-194

MEMORANDUM OF LAW

I. INTRODUCTION

Plaintiff A&P Enterprises, LLC, brought this action against Defendants S&P Grocery of Lynchburg, LLC, Payel Suresh Patel and Suresch "Sam" Patel, seeking an ejection of Defendants from property Plaintiff owns in Lee County, South Carolina, along with monetary damages. Defendants answered and asserted a counterclaim, seeking to enforce an alleged parcel contract between the parties for the property in issue to be conveyed to them. The Plaintiff denied the existence of any such contract.

The matter was referred to the Honorable Walter Newman, Special Referee for Lee County. A hearing was held on February 18, 2014. A copy of the transcript of that hearing has previously been provided to the Court. On April 17, 2014, Judge Newman issued his Order finding and ruling that, "Sam Patel owns an equitable interest in the subject real estate, that he cannot be evicted at this time, and that he has the right to purchase the property from A&P Enterprises, LLC according to the terms set forth above, and that he owes the annual real property taxes as incident of ownership of the equitable interest in this property." Judge Newman's Order also granted the Plaintiff Summary Judgment as to certain amounts due and owing to the Plaintiff from Defendants.

Plaintiff moved for Reconsideration and arguments were heard before Judge Newman on October 22, 2014. A copy of the transcript of that hearing is attached hereto and incorporated herein as Exhibit "A." Defendants incorporate the arguments of counsel made during that hearing. At the request of the Court, the Plaintiff submits the following Memorandum of Law in further support of his argument that his motion for reconsideration should be granted.

II. MEMORANDUM OF LAW

A. DEFENDANTS LACKS STANDING TO ASSERT A CLAIM FOR PROMISSORY ESTOPPEL

The Defendant Sam Patel takes the position that he and Kim Patel entered into an agreement that Defendants would buy the property at issue in this case out of Bankruptcy and Foreclosure and sell it back to the Defendants. Based upon the testimony of the Defendant Sam Patel, and the evidence presented at the merits hearing, the Special Referee found that:

In 2010 Defendant Suresh "Sam" Patel owned three parcels of improved real estate in Lynchburg, South Carolina ("the property"). On two of these parcels, Sam Patel operated a liquor store and a convenience store called "Tommy's Grill."

The Special Referee further found:

At this time, Sam Patel and his companies were experiencing serious financial difficulties which ultimately forced him to file a bankruptcy petition with the United States Bankruptcy Court, District of South Carolina in 2011. Kim loaned him \$5,000.00 to help pay for the bankruptcy filing.

The Lynchburg Store, along with other properties that Sam owned went into foreclosure. Prior to the foreclosure sale, the brothers talked, and although they now disagree over the nature of the conversation, they do agree the result was that Kim would bid on the property at the foreclosure sale. Kim was the successful bidder at the foreclosure sale which was held on May 9, 2011. The deed transferring the property was filed with the Lee County Clerk of Court on October 13, 2011 showing that A&P Enterprises, LLC (Kim) had bought the property, including the Lynchburg Store....

The Court's order further found that:

Due to Sam Patel's financial problems and pending bankruptcy, the ownership of the Convenience store that operated on the property was placed in the name of SP Grocery,

LLC ("SP Grocery") during the summer of 2011. Sam Patel's daughter, Payal Patel, owned 100 percent of SP Grocery...

If the Defendants' position is correct, (which Plaintiff strenuously denies), any equitable interest that was created in the real property at issue in this case would have been an asset of the Bankruptcy Estate and would have existed for the benefit of Defendant Sam Patel's creditors, and not to the Defendants personally. Therefore the Defendants have no standing to assert any claims of promissory estoppel against the Plaintiff in this case.

B. DEFENDANTS' CLAIMS FOR PROMISSORY ESTOPPEL ARE BARRED BY THE EQUITABLE DOCTRINE OF UNCLEAN HANDS

Further the Defendants' counterclaims for Promissory Estoppel fails due to the doctrine of Unclean Hands. One of the most commonly referred to equitable principles or maxims is that of "unclean hands." 12 S.C. Jur. Equity, Section 7. The doctrine of unclean hands "closes the door" to a party "tainted with inequiteness or bad faith relative to the matter in which he seeks relief." *Straight v. Gross*, 383 S.C. 180, 678 S.E.2d. 443 (S.C. Ct. App. 2009); *Wachovia Bank, N.A. v. Coffey*, 389 S.C.68, 698 S.E.2d. 244 (S.C. Ct. App. 2010). *Ingram v. Kasey's Associates*, 328 S.C.399, 493 S.E.2d. 856 (S.C. Ct. App. 1997).

As set forth above, the alleged purchase arrangement testified to by the Defendant Sam Patel (again denied by the Plaintiff) in effect creates an agreement to circumvent the workings of the United Bankruptcy Court. The Defendants' version of the facts (again, disputed by Plaintiff) is tantamount to a fraud created to protect or recover assets that were or should have been included in the Defendant Sam Patel's bankruptcy estate. It should not be enforced by this Court.

C. DEFENDANTS' CLAIMS FOR EQUITABLE ESTOPPEL FAIL AS A MATTER OF LAW

The Defendants' Counterclaim for Promissory Estoppel fails as a matter of law. Our Courts recognize an equitable remedy in Promissory Estoppel if the claimant can prove the

following:

1. The presence of a contract unambiguous in its terms;
2. reasonable reliance on the promise by the party to whom the promise is made;
3. the reliance is expected, and;
4. the party to whom the promise is made sustains injury in reliance on the promise.

Satcher v. Satcher, 351 S.C.477, 570 S.E.2d. 535 (S.C. Ct. App. 2002); *Rushing v. McKinney*, 370 S.C. 280, 633 S.E.2d. 917 (S.C. Ct. App. 2006); *Woods v. State*, 314 S.C.501, 431 S.E.2d. 260 (S.C. Ct. App. 1993); *Citizens Bank v. Gregory's Warehouse*, 297 S.C.151, 375 S.E.2d. 316 (1988). For the reasons set forth below, Defendants have failed to prove these elements and their case for Promissory Estoppel fails as a matter of law.

1. Defendants Failed to Prove the Existence of a Contract Unambiguous in Its Terms

The South Carolina Court has held that while Promissory Estoppel is a "flexible doctrine that aims to achieve equitable results, it, like all creatures of equity has limitations." *Craft v. South Carolina Commission for the Blind*, 385 S.C.560, 685 S.E.2d. 625 (S.C. Ct. App. 2009); *Rushing v. McKinney*, 370 S.C. 280, 633 S.E.2d. 917 (S.C. Ct. App. 2006). The promise to be enforced must be unambiguous with clearly articulated, definite terms. See, *Craft v. South Carolina Commission for the Blind*, 385 S.C.560, 685 S.E.2d. 625 (S.C. Ct. App. 2009); *Barnes v. Johnson*, 402 S.C.458, 742 S.E.2d. 6 (S.C. Ct. App. 2012); *Rushing v. McKinney*, 370 S.C.280, 633 S.E.2d. 917 (S.C. Ct. App. 2006). The South Carolina Court has held that "because one may properly invoke promissory estoppel absent elements typically required for a contract...the doctrine still requires, *by clear and convincing evidence* a 'promise unambiguous in its terms.'" *Barnes v. Johnson*, 402 S.C.458, 742 S.E.2d. 6 (S.C. Ct. App. 2012) (Emphasis Added). Alleged agreements with "unclear terms," "lacking details" or "without clearly

articulated terms" have all been found insufficient by the South Carolina Court for purposes of invoking promissory estoppel. *Barnes v. Johnson*, 402 S.C.458, 742 S.E.2d. 6 (S.C. Ct. App. 2012); *Rushing v. McKinney*, 370 S.C.280, 633 S.E.2d. 917 (S.C. Ct. App. 2006); *Satcher v. Satcher*, 351 S.C.477, 570 S.E.2d. 535 (S.C. Ct. App. 2002). The Court has held that even where an actual promise is proven to exist, an unclear, non specific promise is ambiguous and will not support a promissory estoppel claim. *Satcher v. Satcher*, 351 S.C.477, 570 S.E.2d. 535 (S.C. Ct. App. 2002).

The Defendants have failed to meet their burden to establish an unambiguous promise with clearly articulated terms as required by South Carolina Law. Defendants' claim for Promissory Estoppel fails as a matter of law. The only evidence of any agreement is the testimony presented by the Defendants (denied by Plaintiff) that the Plaintiff agreed to sell back the property to the Defendants once the Defendant got back on his feet and recovered financially. Other than this alleged promise, the Defendants presented absolutely no terms of any alleged agreement or contract of sale of the property. In fact the Court specifically found as a matter of law that the parties did not reach a meeting of the minds as to any terms of the alleged agreement. Looking at the evidence in a light most favorable to Defendants, Defendants has failed to establish anything other than a "vague promise" on the part of Plaintiff to sell him the property at an undefined price at an undefined time. This evidence is not sufficient to establish a claim against Plaintiff for Promissory Estoppel.

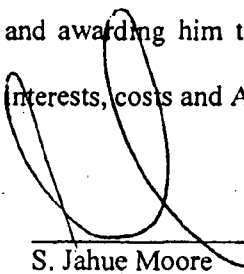
2. Defendants Failed to Prove Reliance Element

Further, the Defendants' Promissory Estoppel argument fails on the grounds that they have failed to prove the reasonable reliance factor. The South Carolina Court has held that alleged reliance on an ambiguous promise is not reasonable. *Rushing v. McKinney*, 370 S.C.280,

633 S.E.2d. 917 (S.C. Ct. App. 2006). As set forth above, the alleged promise here was ambiguous on its face. Therefore the Defendants failed to meet the reliance element and their Promissory estoppel claim fails as a matter of law.

III. CONCLUSION

As set forth above, the Defendants failed to establish a valid claim for Promissory Estoppel under the factors and tests set forth under South Carolina Law. Therefore their promissory estoppel argument fails and Plaintiff is entitled to an Order granting his Motion for Reconsideration and evicting Defendants from the property located at 40 East Willow Grove Road (Highway 76), Lynchburg, South Carolina. Further, Plaintiff is entitled to an Order granting his Motion for Reconsideration and awarding him the amount of monetary damages sought in his complaint, plus prejudgment interests, costs and Attorneys fees.



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West Columbia, South Carolina

November 20, 2014

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF LEE	)	THIRD JUDICIAL CIRCUIT
	)	CASE NUMBER:2013-CP-31-194
A&P Enterprises, LLC,	)	
	)	
Plaintiff	)	
	)	
Versus	)	
	)	DEFENDANT' S
	)	MEMORANDUM OF LAW
	)	
	)	
SP Grocery of Lynchburg, LLC	)	
Payel Suresh Patel and	)	
Suresh "Sam" Patel	)	
	)	
Defendants.	)	
	)	

INTRODUCTION

This action was commenced by the filing by the plaintiff with an affidavit for the ejectment in the Lee County Magistrate's Court pursuant to South Carolina Code § 27-37-20. The defendant filed a timely return to the Rule to Show Cause in which an equitable interest in the property was asserted as a defense to the ejectment. The parties consented to transfer their respective claims to the Court of Common Pleas and the matter was referred to the Honorable Walter Newman, as special referee for Lee County.

A hearing was held on February 18, 2014 and Judge Newman issued his Order on April 17, 2014, filed April 21, 2014. The

plaintiff filed a timely motion for reconsideration and/or motion for relief from judgment on May 1, 2014. This motion and arguments in support thereof were heard on October 22, 2014 and defendant submits the following in support of its arguments in opposition to plaintiff's motion for reconsideration.

1. PLAINTIFF'S CLAIMS AS TO LACK OF STANDING AND UNCLEAN HANDS ARE UNSUPPORTED BY EVIDENCE.

Plaintiff contends that any judgment in favor of Defendant based on promissory estoppel is precluded by Sam Patel's bankruptcy. However, neither of Plaintiff's arguments have any evidentiary support whatsoever. The only evidence of record is the testimony from Kim Patel that he loaned his brother \$5000.00 to pay for a bankruptcy filing. No testimony or evidence establishes the date, the nature of the proceedings, disposition or any other facts alleged in support of plaintiff's motion. For this reason, Plaintiff's arguments are not a valid basis for reconsideration or alteration of this Court's Order.

2. The Court's Order as it relates to equitable estoppel is correct.

The Court was correctly set forth the burden of proof and elements of promissory estoppel. The Order states that the burden of proof as to promissory estoppel requires the moving party to prove each element by clear and convincing evidence.

Likewise, the elements of promissory estoppel are set forth in the Order as: (1) the presence of a promise unambiguous

in its terms; (2) reasonable reliance upon the promise by a party to whom the promise is made; (3) the reliance is expected and foreseeable by a party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.

The remedy of promissory estoppel is an equitable remedy that can be applied without a contract. Barnes v. Johnson, 402 S.C. 458, 742 S.E. 2d 6 (Ct. App. 2013). Likewise, promissory estoppel does not require a "meeting of the minds" and it has been held that "even absent a meeting of the minds and exchanged consideration, sufficient proof for enforcement still exists if there is an unambiguous promise, reasonable reliance, foreseeability and related injury." Satcher v. Satcher, 351 S.C. 477, 570 S.E.2d 535 (Ct. App. 2002).

The plaintiff's argument that the Court erred or that the ultimate conclusion fails because of the finding that the parties did not reach a meeting of the minds is a red herring. The focus of the analysis, as correctly applied by this Court, is whether there was an unambiguous promise. The plaintiff's reasoning for asserting ambiguity exists in the promise is, essentially, that Kim Patel's testimony conflicted with Sam Patel's testimony, and that since there was no "meeting of the minds" there can be no unambiguous promise.

This ignores the credibility findings made by the Court, clearly in position to make such findings. The Court went into detail as to the reasoning in the finding that Kim Patel's testimony was not credible, stating ultimately, that "Given the collective testimony, I firmly believe that Kim did not purchase this property solely as an investment to rent it back to his brother. I do not find Kim's testimony credible. Given the relationship of the parties, I believe Sam's testimony that the property was to be conveyed back to him if he was able to repay Kim the amount owed within a reasonable period of time."

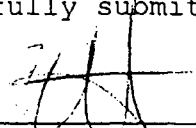
There is no ambiguity as to the price term. Sam testified that he insisted on paying Kim back for what Kim paid for the property. Sam acknowledged that the purchase of the property was not intended as a gift, and was to pay Kim back within five years. The time period is defined as well.

Plaintiff's argument as to reliance is that, since the promise is ambiguous, the reliance cannot be reasonable. Having addressed the issue of the unambiguous promise, it is respectfully submitted this addresses the reliance element as well.

III. CONCLUSION

For all of the above reasons, Defendant respectfully requests that the Plaintiff's Motion for Reconsideration be denied.

Respectfully submitted,



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Phone: 803-484-5454
ATTORNEYS FOR DEFENDANT

Bishopville, SC
December 18, 2014

State of South Carolina
In the Common Pleas Court
County of Lee

 **COPY**

A&P Enterprises, L.L.C.
Plaintiff,

V. 2013-CP-31-194.

S.P. Grocery of Lynchburg, L.L.C.,
Suresh Patel and Suresh "Sam" Patel,
Defendants.

- - -
Special Referee Hearing
Held in the Above-styled Cause
- - -

Tuesday, February 18, 2014
Sumter, South Carolina
9:39 p.m. - 12:12 p.m.

Before: The Honorable Walter Newman, Esq.
Special Referee

Q & A Court Reporting Services
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For the Defendants:
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By: William W. Wheeler, III, Esq.

I N D E X

Witness: Kim Patel

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Witness: Terence R. Wilson

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Witness: Payal Suresh Patel

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E X H I B I T S

Plaintiff's:

Pg/ltn	Ex.	Description
16/22	1	Deed
28/4	2	Copy of Check
30/10	3	Copy of Check

Defendants':

Pg/ltn	Ex.	Description
45/3	1	Correspondence and Lease
76/21	2	Expenses

** uh-huh = affirmative
huh-uh = negative

1 Whereupon,

2 THE COURT: -- versus S.P. Grocery of
3 Lynchburg, et al. And gentlemen, would you
4 like -- you -- would you like to make a pre--- an
5 opening statement, briefly, or -- to help us set
6 the stage? Or -- y'all know the case better than
7 I do, so what -- what would you like to do?

8 MR. PAYNE: It doesn't matter to me,
9 Judge.

10 MR. WHEELER: I -- excuse me. I'll be
11 glad to address it from our perspective, and if
12 Mr. Payne wants to respond, that's fine. But --
13 because it's a little bit unique. Of course, this
14 was commenced by the plaintiff as an eviction or
15 ejectment action in Magistrate's Court. We
16 counterclaimed alleging title or contract for
17 title in equity in essence. Our positions would
18 be that we -- not so much that we own the land,
19 but that we have a parol contract to convey the
20 land to us. And that we can establish that by the
21 elements of promissory estoppel. And -- and, Your
22 Honor, I thought -- and I'm sorry I didn't -- I
23 ran out of time to get one prepared before this
24 morning, but if we could submit any post trial
25 briefs within maybe five or ten days after today,

1 there are a few cases we'd probably like to -- to
2 bring up. I know it's a little bit of a peculiar
3 issue. It doesn't come up all the time
4 --

5 THE COURT: I don't have these all the
6 time, no.

7 MR. WHEELER: The last time we had one
8 was about 13 years ago, and -- and kind of had the
9 issue come up. But the case -- the -- the biggest
10 case that we would refer to -- and I think it's
11 very similar to it -- is Satcher versus Satcher.
12 And it's a -- fairly recent in the grand scheme of
13 things. 2002 Court of Appeals opinion that talks
14 about land being conveyed even though there's no
15 contract to convey -- .

16 THE COURT: Uh-huh.

17 MR. WHEELER: -- no written instrument
18 and what the elements of that are. And what we
19 believe those are, are a promise, acts and
20 reliance on that promise, and we believe that's
21 why -- and just to tell the -- the story, and, I
22 think, to set what the differences are. My
23 client, Mr. Sam Patel, owned and operated a
24 convenience store in Lynchburg, South Carolina,
25 for -- since about 1989 I think it was. Around

1 that, 1989. Mr. Kim Patel is his brother. Sam
2 ran into financial problems in the 2000s. I guess
3 sometime after 2007, 2008, went bankrupt. The
4 property was foreclosed on.

5 His brother bought back the two stores.
6 There are two stores. Really only one of them is
7 operated, but there are two stores in Lynchburg.
8 Mr. Kim Patel bought those back at the foreclosure
9 sale. We allege that the promise was, I'm buying
10 these back for you. Pay me when you can. Sam has
11 continued to operate the store since Kim purchased
12 it at foreclosure. As far as I know, the store
13 has never shut down operations. Mr. Kim Patel
14 says that he just bought it back as an investment,
15 I suppose, and that his brother was supposed to
16 pay him rent. So I -- I think that kind of frames
17 the issue for the court. I hope.

18 THE COURT: Well all right. It --
19 well, it -- it may. I don't know. I hadn't heard
20 from the other side yet.

21 MR. WHEELER: Sure, absolutely --

22 THE COURT: Sometimes though when --
23 when you --

24 MR. WHEELER: -- sure.

25 THE COURT: -- flip the pancake over,

1 it gets more complicated.

2 MR. WHEELER: Yes, sir.

3 THE COURT: So what -- what's --
4 what -- what's y'all's position --

5 MR. PAYNE: It --

6 THE COURT: -- Mr. Payne?

7 MR. PAYNE: -- it's not too
8 complicated. Sam Patel had been in bankruptcy.
9 Got dismi--- he was just having financial
10 problems.

11 THE COURT: Uh-huh.

12 MR. PAYNE: And this property, along
13 with numerous other properties that he had, was in
14 foreclosure. My client bought it over in
15 Bishopville. And basically said, you know, we'll
16 allow you to get on your feet for a little bit --
17 six months is -- will be what the testimony is.
18 And then after that, you start paying rent. Sam
19 thought it'd be -- he'd just as soon pay his
20 brother rent, then somebody else rent on the
21 property. And so he bought it in October of 2011.
22 Hasn't received one nickel in rent. And my
23 client's had to pay the taxes on it the last two
24 years. And we got him -- we want him out. And
25 we'd like to get the -- the back due rent that's

1 owed on it.

2 THE COURT: Okay.

3 MR. PAYNE: There's been no gift in
4 this situation, and Mr. Patel says there's no
5 gift, Mr. Sam Patel. He said, I just was going to
6 pay him back. And when you going to pay it back?
7 Well I don't know. Whenever I can. And so
8 we're -- we're left with our generosity at the get
9 go. You know, no good deeds goes unpunished. And
10 so that's all we're asking here today is that --
11 get -- get our store back, get our property back,
12 and pay us back the rent which is 30 some odd
13 months' worth of rent at 3750 a month is what was
14 al--- he -- he bought it as an investment, and
15 that's a little over a ten percent return on his
16 investment is what he was looking at getting for
17 those months.

18 And the taxes -- and there's also two
19 other loans that are at issue. And
20 Mr. Sam Patel, to his credit, admits that he owes
21 him some money for a tank of gas that he bought
22 which was 17,000 dollars. And he also bought him
23 another tank of gas that the balance due on that
24 is about 17,000 dollars. That, on top of the
25 taxes and the rent and everything, you know, we're

1 up to 100 and -- almost 200,000 dollars. Now the
2 entity is operated by a -- a -- a company called
3 S.P. Grocery, L.L.C. And while Ms. Payal Patel,
4 Dr. Patel, is the sole member, she hasn't had any
5 involvement with it. She's never discussed it
6 with my client. In fact, we'll -- we'll dismiss
7 any claim for damages as to her for rent or
8 anything. Her entity would still owe the rent
9 since it's been operating the store during this
10 time with her -- her dad calling the shots -- all
11 the day-to-day --

12 THE COURT: Now Ms. Payal --

13 MR. PAYNE: -- of it's --

14 THE COURT: -- Do--- and you said

15 Doctor --

16 MR. PAYNE: I said, Dr. Patel, yeah.

17 THE COURT: -- Patel. Is that --

18 what -- she's the --

19 MR. PAYNE: She's --

20 THE COURT: -- how is she --

21 MR. PAYNE: -- the sole member of

22 S.P. Grocery, L.L.C.

23 THE COURT: And you said her dad is...

24 MR. PAYNE: Is Sam Patel.

25 THE COURT: Sam, okay.

1 MR. PAYNE: Okay. And she created an
2 entity right about the time --

3 THE COURT: Uh-huh.

4 MR. PAYNE: -- we bought the property
5 back. And that entity has the business license,
6 the liquor license, the lottery license,
7 everything's flowing under that name. Or her
8 dad's still in there operating it, but he's now
9 operating it under that entity.

10 THE COURT: You proposing to dismiss
11 Dr. Patel individually?

12 MR. PAYNE: Right. I think the way
13 that it was pled was that it was, you know, trying
14 to hold her liable for some rent. She's never
15 discussed any of this with my client. And --
16 she's -- does not need to be a direct party far as
17 the -- any kind of like rent that's owed.

18 THE COURT: All right. But --

19 MR. PAYNE: And we couldn't really
20 figure out -- we didn't know what the -- they were
21 going to say who was -- who is it that's in the
22 store. Is it Sam --

23 THE COURT: Being that you have to --

24 MR. PAYNE: -- is it the entity -- is
25 it her and then once we dug into it --

1 THE COURT: You have to pull everybody
2 in and sort of them out and then --

3 MR. PAYNE: But in --

4 THE COURT: -- pull --

5 MR. PAYNE: -- fairness --

6 THE COURT: Yeah.

7 MR. WHEELER: I certainly I have no
8 objection to that. Thank you.

9 THE COURT: Yeah. Now do -- do -- do
10 you represent Dr. Patel?

11 MR. WHEELER: I have -- I've -- I've
12 answered --

13 THE COURT: All right.

14 MR. WHEELER: -- on behalf of all of
15 them.

16 THE COURT: Okay -- okay. Very good.
17 So -- so you -- you -- you would certainly agree
18 for her to be dismissed individually?

19 MR. WHEELER: Yes, sir. And thank you.

20 THE COURT: But -- but -- what about
21 S and P Groceries -- Grocery of Lynchburg, L.L.C.?
22 Now that stays --

23 MR. PAYNE: That's -- that's --

24 THE COURT: -- in it still --

25 MR. PAYNE: -- the --

1 THE COURT: The party --

2 MR. PAYNE: What --

3 THE COURT: The entity is the party.

4 MR. PAYNE: That's right.

5 THE COURT: All right. And -- and

6 Mr. Patel -- Mr. Sam Patel --

7 MR. WHEELER: Right.

8 THE COURT: -- is still a party.

9 MR. WHEELER: Uh-huh.

10 THE COURT: All right. Well let's see.

11 This started out as a -- as a -- as an eviction

12 matter and it certainly has exceed the

13 jurisdictional level of the Magistrate's Court

14 now. It would appear to me, gentlemen, y'all tell

15 me if I'm -- or incorrect, but I think that

16 A&P Enterprises, L.L.C., would have the burden of

17 going -- going forward. Have y'all discussed this

18 procedurally otherwise or...

19 MR. WHEELER: That was just kind of our

20 assumption.

21 THE COURT: Yeah.

22 MR. WHEELER: I think that's...

23 MR. PAYNE: That's right.

24 THE COURT: Okay. Mr. Payne, proceed

25 please.

1 MR. PAYNE: Thank you, Your Honor. We
2 will call Mr. Kim Patel as our first witness here
3 today.

4 Thereupon,

5 Kim Patel,
6 having been first duly sworn by the court,
7 testified as follows:

8 D I R E C T E X A M I N A T I O N

9 BY MR. PAYNE:

10 Q Mr. Patel, would you spell out your --
11 your full name for the court reporter here.

12 A Kamlesh Patel -- K-A-M-L-E-S-H.

13 Q Okay. And people call you Kim?

14 A Yeah, Kim.

15 Q All right. And are you married?

16 A Yeah.

17 Q And what is your wife's name?

18 A Sangita -- S-A-N-G-I-T-A.

19 Q All right. How long have you been
20 married?

21 A We've been together 1988.

22 Q Okay. And do you have children?

23 A Yeah, two children.

24 Q And boys?

25 A Boys.

1 Q Okay.

2 A Two boys.

3 Q Okay. And Jay?

4 A Jay and Rog.

5 Q And Rog. And Jay went to Clemson?

6 A Yeah.

7 Q Graduated from Clemson?

8 A Yeah, he graduate from Clemson.

9 Q All right. What about Rog, where --

10 A Rog, he is in Columbia, U.S.C.

11 Q Okay. What year is he in school?

12 A That's the second year.

13 Q Okay. Now what kind of work do you do?

14 A I am -- I am doing cashiering handling
15 three stores. And I handling like apartments and
16 everything.

17 Q And when you say stores, convenience
18 stores?

19 A Convenient store.

20 Q And how many convenience stores --

21 A Two convenient store and one liquor
22 store.

23 Q Okay. Now -- but you also own the
24 property over in Lynchburg as well?

25 A Yes.

1 Q Okay. But the -- the ones that you're
2 talking about that you operate are located here in
3 Sumter?

4 A Sumter, 428 Boulevard Road.

5 Q Okay. And you own those --

6 A Yeah.

7 Q -- land and the building that those
8 stores are on?

9 A Yeah, me and my wife. Well one store
10 is her corporation own. And one my name.

11 Q Okay. And do you work at the stores
12 full time?

13 A Full time.

14 Q Okay. How about your wife?

15 A She work full time.

16 Q Okay. How old a fellow are you?

17 A I am 50 and my wife 45.

18 Q Okay. How long have you lived here in
19 the U.S.?

20 A Since 1986.

21 Q Okay. Now in 2011 your brother, Sam
22 Patel, was having some financial trouble. Is that
23 right?

24 A Yes.

25 Q Okay. And Sam, at that point, had

1 asked you about buying his store at the -- that
2 was in foreclosure. Is that -- is that right?

3 A Yes.

4 Q All right. What -- well, let me back
5 up. Did you ultimately purchase this store and
6 the property over in Lynchburg where your brother
7 had been operating a convenient store?

8 A We bought from -- we went to the
9 court -- Lynch--- Bishopville, and we bid that we
10 give them 351,000 check and we bought that one.

11 Q So you bought it at the foreclosure --

12 A Yeah.

13 Q -- sale?

14 A Yeah.

15 Q At -- in Bishopville, right?

16 A Bishopville.

17 Q Okay. Now -- and this is a copy of the
18 deed that you received to the property? Is that a
19 copy of it?

20 A (No verbal response.)

21 MR. PAYNE: You can mark that please.

22 (Plaintiff's Exhibit Number 1
23 marked for identification.)

24 THE WITNESS: Yeah.

25 BY MR. PAYNE:

1 Q And it's got several parcels listed
2 there. As I think you might have heard
3 Mr. Wheeler say in opening, there's -- there's
4 actually two buildings.

5 A Yes.

6 Q All right. But only one is
7 operational?

8 A Okay. They have total of three
9 building --

10 Q Three buildings.

11 A Yeah, and that's the three building was
12 going on that foreclosure. And we bought three
13 building.

14 Q Three building and --

15 A That's the other one store and the --
16 they have liquor store.

17 Q Okay. And Tommy's Grocery was being
18 operated in one of those buildings?

19 A Yeah.

20 Q Is that right? And --

21 A That's the S.P. Grocery they call.

22 Q Okay. And they had a liquor store
23 building.

24 A Yeah. Yes.

25 Q And then across the street was --

1 A Yeah, one more store.

2 Q -- a B.P. --

3 A B.P.

4 Q -- station, but it's --

5 A They used to be B.P., but it is closed.

6 Q It's closed.

7 MR. PAYNE: Your Honor, we would just
8 introduce the deed as Exhibit 1.

9 THE COURT: Any objections?

10 MR. WHEELER: Without objection.

11 MR. PAYNE: All right.

12 THE COURT: All right. That's admitted
13 as Plaintiff's Exhibit 1.

14 BY MR. PAYNE:

15 Q And you bought this property. It looks
16 like the deed was filed in October of 2011?

17 A Yes, sir.

18 Q Is that right? Tell me why you bought
19 the property that's referenced on Exhibit 1?

20 A Okay. I want to -- I have to help him
21 out. He call me. You -- he going bankruptcy, and
22 he needed help to run that store. And he told me
23 he -- you can invest, and I going to get rent from
24 there. And that's why I bought that one.

25 Q Okay. And did -- how much did you and

1 your brother, Sam, discuss as to the amount of the
2 rent.

3 A Okay. We -- and we talk about -- I say
4 you going to pay me that after six month. You
5 going on, -- when you help -- finance our situation
6 going good, then you can start to pay me about
7 after six, seven months. And he was agree. And
8 he have to maintenance everything. Anything
9 wrong, pay tax and he was agree with me. And he
10 say he going to pay me that. He never going to
11 buy it back. He have no capacity to buy back. I
12 say, you can start rent after six, seven months
13 when you go in your feet.

14 Q Okay.

15 A That's what we have discussion first.

16 Q So just to make sure I'm clear. So
17 you -- you were going to let him get on his feet?

18 A That's what I told him I start rent
19 after six, seven months.

20 Q Okay. And how much did you think
21 that -- that you were going to get in rent from
22 your brother?

23 A See, that we didn't really discuss.
24 But on market, all other place they start like a
25 four to 5,000 dollar rent. And I -- I asked him

1 to -- we have to start rent.

2 Q And how much?

3 A We talk about 5,000 first. And then he
4 said, no, you have to give me break. And I tried
5 to give him break, but then he said make lease.
6 He was agree with me, and I make lease and two
7 time -- first time I make his lease, and then I
8 put Payal name to lease. Nobody want to agree
9 with. And then he -- I say, you don't want to --
10 we got lease and we have to -- you're not going to
11 sign till we give them time. And they didn't sign
12 that lease. This -- and we put -- you're not
13 going to sign, you're going out. That's what we
14 put it on lease.

15 Q Did -- did -- so you proposed some
16 leases to your -- to Sam to sign?

17 A Yeah.

18 Q All right. And he refused to sign
19 them?

20 A Yeah.

21 Q Now when you first bought the property,
22 what was Sam obligated to pay?

23 A Can you repeat that again?

24 Q Yeah, what was -- who was going to pay
25 the taxes?

1 A He was agree to pay tax -- property
2 tax, anything maintenance, anything wrong, they
3 have to fix it.

4 Q How about if --

5 A He was agree with me.

6 Q -- how about insurance? Who --

7 A Insurance, everything he have to pay.

8 Q So the insurance on the building he was
9 supposed to --

10 A Building and inside, whatever on
11 properties he have to pay for the insurance.

12 Q Okay. And how much did you pay for the
13 building -- or the land?

14 A Three -- three buildings 351,001
15 dollar.

16 Q Okay. Now when you bought the building
17 and the land that's shown on Exhibit 1, was there
18 a business that was operating in those --

19 A Yes.

20 Q -- in the store?

21 A Yes.

22 Q And who was operating that business?

23 A Sam Patel.

24 Q Okay. Now at some point, did it become
25 S.P. Grocery, L.L.C., operating the store?

1 A After that, he -- he went to
2 bankruptcy, and he ask me -- he want to put it her
3 daughter name. And they're to make corporation.
4 I say, okay, no problem.

5 Q Okay. Did you ever have any
6 discussions with Payal?

7 A No.

8 Q With anything to do with the --

9 A No.

10 Q -- store? Okay. Always spoke to Sam?

11 A Yeah.

12 Q Did you ever collect any rent from Sam
13 or any other business for the use of the store?

14 A No.

15 Q All right. Did you ask Sam to pay you
16 rent?

17 A Yes.

18 Q How many times?

19 A Too many times and then we start to
20 make lease and everything and he not agree. He
21 told me to make lease. We going to sign on lease.

22 Q And he refused to sign it?

23 A He refused to it.

24 Q Okay. Now did he ever tell you why he
25 wasn't going to pay you rent?

1 A He said he can't afford that much rent.

2 Q Okay. Did he give you any excuse for
3 not paying?

4 A He -- he telling me he's not doing
5 business.

6 Q Okay. Now when you first bought the
7 store, you had told Sam you were going to let
8 him -- not going to charge him rent for six --

9 A Six, seven months.

10 Q Six or seven months, all right.

11 A I say you -- when you're going in your
12 feet, then we going to start after that you can
13 make some money.

14 Q Now -- let's see here. So that would
15 be October -- let's -- November, December,
16 January, February, March, April, May. So you were
17 thinking that rent was going start in May.

18 A And he say give me to one more month.
19 The next month I going to start. Other month, he
20 takes times.

21 Q Yeah. So that would be May, 2012,
22 roughly, you were thinking the rent was going to
23 start?

24 A Yeah.

25 Q All right. How much were you thinking

1 you were going to get?

2 A I thought to get it about 5,000 dollar.
3 But we going -- he said go down. Then we tried to
4 make lease 3,750 dollar.

5 Q And that's what you were asking him to
6 pay you?

7 A Yes.

8 Q All right. Now were you forced to pay
9 the taxes on the store for the taxes for 2012?

10 A Okay. I got notice from Bishopville
11 Tax Office, and then I see -- and I call him. He
12 say he going to pay later on and pay later on, but
13 he didn't pay. And I had to go over there and I
14 paid myself. Starts since that and I said, what's
15 going on? You're not paying tax. Where is your
16 money going? I been in store lots since 1989. I
17 know how store going to make money.

18 Q Do you remember how much you had to pay
19 in 2012?

20 A I not remember, but I paid that tax.

21 MR. PAYNE: The court was closed
22 yesterday, Your Honor, but we had a couple of
23 these tax bills. I don't know if it's in dispute
24 or not that he paid the taxes. Is that -- that --

25 MR. WHEELER: For?

1 MR. PAYNE: For '12 and '13.

2 MR. WHEELER: Yeah, he did.

3 MR. SAM PATEL: I think he had to pay
4 for a year, and then I was going to pay, you know.

5 MR. WHEELER: Okay. All right.

6 He did pay, okay. It's not in dispute.

7 THE COURT: All right. So where --

8 MR. PAYNE: Thank you.

9 THE COURT: -- were the taxes --

10 MR. WHEELER: That --

11 THE COURT: -- or for '12 and --

12 MR. WHEELER: It's paid.

13 THE COURT: -- '13. We --

14 MR. PAYNE: And --

15 THE COURT: -- we -- that's a matter --

16 MR. PAYNE: Yes, like --

17 THE COURT: -- of public record.

18 MR. PAYNE: Okay.

19 THE COURT: All right.

20 MR. PAYNE: It's like 3700 dollars.

21 THE COURT: All right.

22 MR. PAYNE: I can speed this up.

23 BY MR. PAYNE:

24 Q Did Sam also ask you to buy some gas
25 for his store?

1 A Yes.

2 Q Okay. And how many times did you have
3 to buy him gas?

4 A He came about two, three time. One
5 time he have gas to that Turner Oil Company, and
6 he say he changed too-- He change bank.
7 That's why you can give your check. And he say he
8 going to give money back later on, but he didn't
9 give that, first time. Second time, he had no
10 gas. Other company was not giving him gas, and he
11 call me, he needed gas. And I call my company
12 Southern Gas and Company, and I explain him,
13 that's to my responsibility and give him gas. And
14 he going to pay back this time.

15 Q And it's -- what -- how much was the
16 second tank of gas?

17 A Second time was about 22, 23,000.

18 Q Okay.

19 A But he was not paying. That guy call
20 me. I call Sam. And Sam say he going to write
21 check tomorrow -- today. And that take about
22 three, four week. And that guy called me and he
23 going to charge me gas, and you have to -- I have
24 to pay that gas. If you not going to pay his
25 bill, they going to stop to give gas.

1 Q Okay. So the first tank of gas was to
2 Turner Oil Company. Is --

3 A Yea.

4 Q -- that right?

5 A Yeah.

6 Q All right. And I'm showing you a check
7 here for 17,415 dollars.

8 A Yeah.

9 Q Is that the check that you used to
10 pay --

11 A Yeah.

12 Q -- Turner Oil Company?

13 A Yeah.

14 Q All right. Now that was in August
15 of --

16 A Yeah.

17 Q -- 2011?

18 A Yeah.

19 Q And that was used at Sam's store?

20 A Yeah.

21 Q Okay. And Sam agreed to pay it back to
22 you?

23 A Yeah.

24 Q Did he ever pay --

25 A No.

1 Q -- it back? All right.

2 MR. PAYNE: Your Honor, we would move
3 to mark that one if we could.

4 (Plaintiff's Exhibit Number 2
5 marked for identification.)

6 BY MR. PAYNE:

7 Q And just so we're clear. Exhibit 2 is
8 the check that you used to pay Turner Oil Company
9 for the gas used at Sam Patel's store?

10 A Yeah, that the sales --

11 Q Okay.

12 A -- for this one.

13 Q Now the second tank load that you --
14 you bought him, how much was it?

15 A That was -- I call company to give him
16 that gas on my responsibility about 22, 23,000.
17 He got invoice and everything. And then he was
18 not paying, and then he call me, and I start to
19 pay him every -- when I get load, every time 1,000
20 dollars --

21 Q Okay.

22 A -- he pay some money, but 17,000 I am
23 paying on that right now.

24 Q Okay. So Sam paid it down a little
25 bit.

1 A Yeah.

2 Q He had made some payments on it?

3 A Yeah.

4 Q All right. And it -- and it -- but
5 you've had to pay --

6 A Yeah.

7 Q -- how much on it?

8 A Seventeen thousand.

9 Q Okay. And what's the name of your
10 company that you got gas --

11 A That's Southern Gas and Oil.

12 Q How do you spell that?

13 A S-O-U-T-H-E-N, Southern Gas and Fuel.

14 Q Okay. When Sam was about to file
15 bankruptcy, did you loan him money to -- to file
16 bankruptcy?

17 A I give him 5,000 dollar check to him.
18 He say he got no lawyer money, and my wife write
19 check 5,000 dollars to give him.

20 Q And is that a copy of the check for
21 the --

22 A Yeah.

23 Q -- bankruptcy -- for 5,000?

24 A Yeah.

25 Q Now I noticed you wrote loan there. Is

1 that right?

2 A Yeah.

3 Q Did --

4 A Yeah, he say he going to pay me back.

5 Q Okay. Never paid you that one --

6 A No.

7 Q -- back? All right.

8 MR. PAYNE: Your Honor, we would move
9 to mark that check as Exhibit 3.

10 (Plaintiff's Exhibit Number 3
11 marked for identification.)

12 THE COURT: All right. Let me be
13 hypertechanical. Exhibit 2, you offered that into
14 evidence. I didn't ask --

15 MR. PAYNE: We did, yes.

16 THE COURT: -- Mr. Wheeler if he had --
17 do you have any objections?

18 MR. WHEELER: Let me -- I don't think
19 I've seen it before. Let me just take a quick
20 look at it.

21 MR. PAYNE: I'm sorry. I thought we
22 had in the deposition.

23 MR. WHEELER: You -- I -- you asked him
24 about it. I just don't think -- does that
25 sound --

1 MR. SAM PATEL: Uh-huh. Yeah, that's
2 right. That's right.

3 MR. WHEELER: No objection.

4 THE COURT: All right. No objection,
5 okay. Exhibit 2 is in without objection.

6 MR. PAYNE: And this is ---

7 THE COURT: How about Exhibit --
8 identified Exhibit 3. You have any objection to
9 that, Mr. Wheeler?

10 MR. WHEELER: Is this 3, that 5,000
11 dollar check?

12 MR. SAM PATEL: Yeah, that's in 2011
13 that's right.

14 MR. WHEELER: 2011, that's okay?

15 MR. SAM PATEL: Uh-huh. Yeah.

16 MR. WHEELER: No, objection.

17 THE COURT: No objection, great. All
18 right. Both of those are admitted.

19 BY MR. PAYNE:

20 Q Now, Mr. Patel, did you at some point
21 have me write a letter to Payal Patel as the owner
22 of her company requesting a written lease?

23 A Yes.

24 Q Okay. And to your knowledge, that
25 lease was sent over to Sam and to his daughter?

1 A Yes.

2 Q All right. And did you and Sam ever
3 discuss that lease -- that proposed lease?

4 A After we have discussion, and he didn't
5 call me back, I sent them that one first one
6 him -- his name. He didn't sign. After that he
7 not calling me. And then I decide to protect
8 myself and my rent going to start and that's her
9 name. And that's why we -- I tried to call her.
10 She never answer my -- I call my mom to tell her
11 to call me, but she never call me back. And then
12 we decide to send that lease to her.

13 Q Okay. And what was one of the leases
14 that was not --

15 A Yeah.

16 Q -- signed. Now did you ever agree that
17 you would sell the store to Sam Patel or --

18 A No.

19 Q -- anybody --

20 A Never.

21 Q -- else?

22 A Never.

23 Q Okay. And that discussion never
24 happened?

25 A Never happen. He was agree with me he

1 going to pay me rent. He have no capacity to buy
2 that back, that's this store. And I have bad
3 experience. I have two store in Georgia. I lose
4 money -- 125,000 dollar. That's why I -- he told
5 me he going to run. I say I don't want -- need
6 partners. See, I need only rent, that's it.

7 Q Okay. And no -- did he ever show up
8 with any money and say, I've got the money, and I
9 can buy the store from you?

10 A No.

11 Q I've got -- I've got a loan that I can
12 buy the --

13 A No.

14 Q -- the store now. Has he ever told you
15 that?

16 A No, he talk -- he going to apply to
17 bank, and I say you can apply. He say they going
18 to loan him this property. I can thinking about
19 that.

20 Q Okay. And you're asking the court to
21 evict -- evict him from your property. Is that
22 right?

23 A Yeah.

24 Q And to award some damages from the
25 operating company as well as Mr. Patel for the

1 rent?

2 A Yes.

3 Q And the taxes?

4 A Yes.

5 Q And those loans that we've talked
6 about?

7 A Yes.

8 Q Okay. Is there anything else you want
9 the court to do for you?

10 A We have to -- need our store back, and
11 that -- that's it. And if that's the money what I
12 spent for taxes, he was agree I didn't make no
13 penny from that store. Why I going to invest
14 money, and we working hard morning to night, still
15 we working last 20 years morning to evening.
16 That's 350,000 we spent money for to get some
17 money..

18 Q What type of business -- how much
19 business were y'all doing at that store in
20 Lynchburg when you worked there?

21 A I was doing -- that time we was doing
22 about 70 to 80,000 dollar business in sale.

23 Q And that was -- when did you work in
24 the store in Lynchburg?

25 A 1989.

1 Q Okay. Did it have a liquor store out
2 there?

3 A That time was not was a liquor store
4 then.

5 Q Okay.

6 MR. PAYNE: That's all I have, judge.

7 THE COURT: All right. Cross?

8 MR. WHEELER: Thank you. If it may
9 please the court.

10 THE COURT: Yes, sir.

11 C R O S S E X A M I N A T I O N

12 BY MR. WHEELER:

13 Q Mr. Patel, you are Sam's younger
14 brother. Is that correct?

15 A Yes.

16 Q How much older is he than you?

17 A He is 60. I'm 50.

18 Q Okay. And he came to the United -- he
19 was the first in your family to come to the
20 United States. Is that correct?

21 A Yes, sir.

22 Q He came in, I believe, '79?

23 A Something like that, yeah.

24 Q And you came I think in --

25 A Eighty-six.

1 Q Eighty-six? He came first, and he was
2 married.

3 A Yes, sir.

4 Q And -- and they lived in Chicago. Is
5 that correct?

6 A Yes, sir.

7 Q Did you and your mother and father and
8 two sisters, I believe, all come over at the same
9 time?

10 A No, my father and mother came here. He
11 applied for them, and then my father and mother
12 apply for me and my sisters. Then we come in
13 after three four years -- 1986.

14 Q I'm sorry. So your mom -- mother and
15 father came -- Sam came, then your mother and
16 father came and --

17 A Yeah.

18 Q -- then you and your sisters came?

19 A Yeah.

20 Q Did you all -- all stay together in
21 Chicago, initially?

22 A Yes, sir.

23 Q All right. Did you and your fam---
24 well, you were single at that time, but did -- did
25 Sam's family and you move from Chicago to

1 Lynchburg --

2 A Yeah.

3 Q -- in the -- around '89?

4 A Yes, sir.

5 Q Okay. Was he the one that had saved up
6 the money to buy that first store?

7 A Yes, sir.

8 Q Okay. Did y'all continue to -- did
9 your family as you got married and had children,
10 did y'all live on that same property there in
11 Lynchburg with Sam and his family?

12 A My wife was -- we married in 1988, and
13 my wife came here when we moved here. And then
14 she come in here in 1989, my wife. I had no
15 children at that time.

16 Q Did you have -- well -- and -- and
17 that's not that important. Did y'all live -- when
18 y'all came here, did y'all all live in Lynchburg
19 on the --

20 A Yes, sir.

21 Q -- store premises? Were y'all a close
22 family at that time?

23 A Yes, sir.

24 Q Okay. And I believe your father passed
25 away in 2004. Is that correct?

1 A Yes, sir.

2 Q Okay. Did Sam insure that you got a
3 portion of his life insurance proceeds?

4 A Yes, sir.

5 Q And was that approximately 200,000?

6 A No.

7 Q How much was it?

8 A 100,000.

9 Q 100,000, okay. But -- and that was in
10 2000--- or around 2004?

11 A Yes, sir.

12 Q Does your mother live with Sam now?

13 A Yes, sir.

14 Q A&P Enterprises, L.L.C., is that a
15 entity that you set up around 2011?

16 A Yes, sir.

17 Q At -- at the time you were
18 contemplating buying this?

19 A No, after that.

20 Q Or --

21 A We bought it -- we bought that store
22 for him, and after we bought that -- well, seven,
23 eight months la--- later we bought that property.
24 That's on bankruptcy, and I bought from bank.

25 Q I'm sorry, let me rephrase my question.

1 MR. WHEELER: Mr. Payne, could I see
2 that Exhibit 1 the deed?

3 BY MR. WHEELER:

4 Q You purchased -- and this is the deed
5 for the Lynchburg --

6 A Yes, sir.

7 Q -- property.

8 A Yeah.

9 Q That deed goes into A&P Enterprises,
10 L.L.C.?

11 A Yes, sir.

12 Q You had set A&P Enterprises, L.L.C., up
13 before this deed?

14 A Yeah.

15 Q And all I'm trying to ask you is, was
16 that the purpose that A&P Enterprises, L.L.C., was
17 developed?

18 A That's for my -- you know, it's my
19 company.

20 Q Okay. Did it own anything before this
21 store?

22 A We pu--- purchase that property under
23 that name. Because of -- I have to keep separate.
24 I can buy my -- my personal name. But I talk to
25 my accountant, and we have to keep separate.

1 That's why we make new corporation.

2 Q And -- and I understand. And when I --
3 I -- when I took your deposition a couple of weeks
4 ago, I think you indicated the only thing -- the
5 properties in A&P Enterprises, L.L.C., included
6 the Lynchburg properties and 16 condominiums in
7 Florence County.

8 A That's still after that we bought that
9 later on. And we put that property on -- in
10 A&P Enterprises.

11 Q Okay. And those con---

12 A Not that same time.

13 Q I understand not at the same time,
14 but --

15 A Yeah.

16 Q -- as we sit here today, the only thing
17 that A&P Enterprises, L.L.C., owns are these
18 properties in Lynchburg --

19 A These property and 16 apartments.

20 Q And 16 apartments?

21 A Yeah.

22 Q Those 16 apartments used to belong to
23 Sam, did they not?

24 A Yeah, it was on sale and he bankruptcy,
25 and I talk one time -- one day to him. What

1 happened your apartment. It's bankruptcy. Is it
2 a sale -- bank sold already or no. And I talk to
3 him and he said, no. I said, I like -- I can buy
4 that apartment. And he called that agent and
5 agent talk to bank and they ask me about 800,000
6 for that apartment. Then I talk to him, it's too
7 much. And I told him it's too much. And then
8 agent told me it going 700,000. Okay. I say I
9 can buy that. And I invest my money in there.

10 Q Okay. And -- and my question was, are
11 the sole -- are the only properties owned by A&P
12 properties that used to belong to Sam?

13 A That was not from bank. That's not for
14 his name. I bought from bank. That was
15 bankruptcy on that, and I bought from -- it's not
16 on his name, and I bought from him.

17 Q Mr. Patel, I'm not trying to be
18 difficult. Did they used to belong to Sam?

19 A Yeah.

20 Q Okay. And everything in A&P used to
21 belong to Sam?

22 A Yes, sir.

23 Q Okay. You've -- you've testified
24 clearly this morning that you never had any intent
25 to sell those properties back to Sam.

1 A No.

2 Q Despite that, did you ever tell anyone
3 you bought these properties back so Sam could get
4 them back?

5 A No.

6 Q Okay. You never told anyone in your
7 family --

8 A No.

9 Q -- that you bought them back for Sam?

10 A No. No.

11 Q Or anyone else? Did you ever tell
12 anyone or have any conversation with anyone to the
13 effect that Sam was going to be buying them -- was
14 going to buy them back from you when he could?

15 A No.

16 Q Okay.

17 A He telling people his daughter bought
18 store from him. When I know -- everybody knows I
19 bought that store for him. When they know -- when
20 we have that discussion, and he didn't sign lease,
21 then all Sumter people and all of Florence people
22 they say he and his wife telling people his
23 daughter bought that store for -- I say, you want
24 to see paper for this. I can show everybody.
25 That's what he was hiding like that.

1 Q Okay. And you mentioned the lease
2 agreement. Was the first lease agreement that was
3 ever presented from you to Sam or -- or Payal, was
4 it the one that Mr. Payne prepared?

5 A Yeah, Payne -- Payne prepared --

6 Q Okay.

7 A -- both the leases to him and his
8 daughter. And he's not answering. He not sign
9 that lease. I have to put clause on that, if
10 you're not going to sign this lease, you have to
11 go out.

12 Q I understand. And I'm going to show
13 you a copy of this. Does that appear to be an
14 accurate copy of the letter that -- and I think
15 there's an attached proposed lease -- does that
16 appear to be an accurate copy of the
17 correspondence that was sent on your behalf?

18 A Yeah, I hire Mr. Payne, and I tell him
19 I am not lawyer. What's on that? I'm buying
20 this. This is not real good. He did that. Do
21 you have any questions, he can answer. I can't
22 answer for that. I told him to explain him do
23 this and do that. That's what he can do.

24 Q That -- I understand, but is -- does
25 this appear to be the first correspondence --

1 A Yeah.

2 Q -- that was sent? And that --

3 A Yeah.

4 Q -- was that July of 2013?

5 A Yes.

6 Q Was anything prepared or sent prior to
7 that time?

8 A Can you repeat that again?

9 Q Was anything sent or prepared, as far
10 as a lease agreement, prior to July 10th --

11 A No.

12 Q -- 2013?

13 A We talking verbal, but not on
14 handwriting or anything.

15 Q Okay.

16 A And that's what I decided, and he told
17 me to make -- prepare lease. And we call
18 Mr. Payne and he prepare -- I told him we are to
19 do that and that.

20 Q I understand.

21 MR. WHEELER: I want to just submit
22 that as --

23 MR. PAYNE: Yeah, that's fine.

24 MR. WHEELER: -- Defendant's 1.

25 MR. PAYNE: No objection.

1 THE COURT: You -- no, objection. All
2 right.

3 (Defendant's Exhibit Number 1
4 marked for identification.)

5 BY MR. WHEELER:

6 Q Now you said when you initially
7 purchased the store building in Lynchburg in
8 October of 2011, as I understood your testimony,
9 you -- you testified you were thinking you might
10 get 5,000 dollars a month in rent at some point,
11 six or seven months down the road?

12 A Yeah.

13 Q Okay. While you -- is it fair to say
14 while you were thinking that, you and Sam did not
15 have any discussion in October of 2011 when you
16 bought it that that's what rent would be?

17 A We didn't discuss, but it's normal --
18 that's the rent going around right now.

19 Q I understand that may be what you
20 anticipated, but you -- you and Sam did not have
21 that discussion.

22 A No, we didn't have discussion about it.
23 We going -- but we was angry with me. You buy
24 this property, and he going to pay rent, and he
25 have no capacity to buy back that store. 'See my

1 two keys, he told me his daughter is doctor. His
2 son isn't good at making money. He don't make --
3 he don't want to back buy. He told me that.

4 Q Okay. You all -- you have may have had
5 expectations or anticipations of what you believed
6 it would be in rent from -- I understand from your
7 testimony, but y'all had no agreement as to what
8 rent would be? How much --

9 A No.

10 Q -- rent would be paid?

11 A No. No.

12 Q Okay. And other than, as I understood
13 you to say, six or seven months or when he got on
14 his feet, you had no specific agreement as to when
15 rent would start?

16 A No, we said six, seven months. We
17 talked to him. And he said okay. He said he have
18 to pay tax. He have to pay this. He have no
19 capacity to pay me rent.

20 Q Okay.

21 A And we say we going to decide rent
22 after that.

23 Q Now -- and we mentioned taxes and --
24 and I'll let him testify more about that, but he
25 has been carrying the insurance on the property.

1 A Yeah.

2 Q Hasn't he? Okay. There's no issue as
3 to that.

4 A No.

5 Q Okay. Now you indicated -- we talked
6 about the background how you came here, how the,
7 you know, stores started. You eventually moved to
8 Sumter, I think, in the -- around the mid '90s?

9 A Ninety-four.

10 Q And started a store there? The
11 Boulevard Road store.

12 A We start that store in 1990.

13 Q We, you and Sam?

14 A Yes.

15 Q Okay. And who acquired the initial
16 inventory and started that store?

17 A They have no --

18 Q Who -- who did that?

19 A -- inventory. We got 5,000 dollars --
20 he invest on that, and we start, and we start that
21 store. That money he keeping -- bank keeping and
22 everything, he and his wife, they keep it,
23 everything. I just make business. I take it to
24 Lynchburg. They deposit money in account. What
25 they doing, we don't know. That's the -- and when

1 that we -- my wife have to go India, and we stuck
2 whenever my wife who need air ticket. I have no
3 bank account that time. And all money they was
4 handling. And his wife told my mother this
5 store -- Lynchburg store was his and Sumter store
6 my. It was not doing no business that time. And
7 they was keeping all account. We just work in
8 store, taking everything. They was doing banking
9 and everything. Where that money goes, we don't
10 know.

11 Q Exactly. And --

12 A That happen two years.

13 Q Uh-huh. And you -- you had some com---
14 complaint about that, I think, when I took your
15 deposition. You said you were never paid
16 anything --

17 A No.

18 Q -- when you worked the store?

19 A No.

20 Q And that --

21 A See, I give you example. My friend
22 bought that ticket from Chicago. And he said,
23 don't worry that money. And he paid and my wife
24 went to India.

25 Q Okay. And --

1 MR. WHEELER: I beg the court's
2 indulgence for a moment.

3 THE COURT: Yes, sir.

4 BY MR. WHEELER:

5 Q And -- and tell me if I miss -- and I
6 can't find the exact line in the deposition, but I
7 think you told me that you never received any pay
8 when you --

9 A No.

10 Q -- worked the store in Lynchburg.

11 A No.

12 Q And the -- the essence of your
13 testimony is that --

14 A Not in Lynchburg, not in Sumter.

15 Q Is that you were thrown into the Sumter
16 store, and y'all haven't had any -- and -- and,
17 essentially, the family's had no relationship
18 after that time is what you testified to?

19 A Yeah.

20 Q Let me see if I can find that exact
21 line. I asked you, have you -- have your families
22 to continued to --

23 MR. WHEELER: And this is, I'm sorry,
24 page 47, line 18, if I can just do this kind of
25 informally.

1 THE COURT: Sure.

2 BY MR. WHEELER:

3 Q Have your families continued to be
4 close since 1991 or 1992? And you -- what -- your
5 answer was no. Is that correct?

6 A Yeah.

7 Q Okay. And you said that the only time
8 y'all saw each after 1991 or '92 is when Sam
9 needed money.

10 A Yeah, when he needed, he called. He
11 need this money when this -- when he had
12 construction and he -- said my company going on
13 bankruptcy. He need a 100,000 and when I give
14 that -- but each year I don't know I help that to
15 construction company to get up. When I start to
16 tell him to give money, then the relationship
17 broke again. He calling, but his wife never have
18 relationship. Because of that we call, give my
19 money back for. And then relationship broke
20 again. Why you ask me money, his wife told.

21 Q That was money for some -- some
22 construction company you said?

23 A Yeah.

24 Q Okay. All right. Now the 5,000
25 dollars a month rent that you talk about, when I

1 asked -- I asked you --

2 A Because of wife try --

3 Q -- let me finish my question --

4 A Okay.

5 Q -- if you don't mind. In your
6 deposition, I asked you -- I -- you'd checked
7 around on any store properties or any rental
8 properties to arrive at a figure. Do you recall
9 that?

10 A What are --

11 Q Hold on just a second. With me on
12 page 45, line 16, and the Q means I asked you a
13 question. Okay. Have you checked around to see
14 what the lease prices are on any other convenience
15 stores?

16 A No.

17 Q And what was your answer there?

18 A No.

19 Q Okay. And I believe I also asked you
20 about any lease. About had you ever leased any
21 stores or paid any --

22 A No.

23 Q -- leases and the answer was no.

24 A I paid in Georgia. I lose that -- I
25 had one store rented, it was on lease. It was in

1 19--- which year I don't remember, but I put money
2 over there. And that's why I don't want to buy
3 stores.

4 Q Okay. You were -- you were the
5 landlord, or you were the tenant in Georgia? I --
6 I don't --

7 A Tenant.

8 Q Okay. And -- and you -- that you --
9 the lease was terminated by the landlord?

10 A No, they not terminate. We have to
11 close down. Why that whole was running, he took
12 the lottery money. He took all business money.
13 He didn't pay tax, anything. And I am here to go
14 over there about eight hour, that far. And I
15 can't reach over there. That's why we -- I closed
16 down that store.

17 Q Okay. And -- and that has nothing to
18 do with you or anything?

19 A No.

20 Q Okay. My -- my point being, there's no
21 other basis for 5,000 dollars a month or 4,000 or
22 3,000 as far as what rent for a store in Lynchburg
23 should be, is there?

24 A That's the -- depend on business, how
25 much business they're doing. When I was over

1 there, they was doing real good. I sells 70 to
2 80,000 dollar.

3 Q And that was in 1989?

4 A 1989.

5 Q Okay.

6 A And I can take it back, and I can run
7 myself now. That's it. And I going to collect my
8 money from that. I know how to run. That's near
9 me.

10 Q Okay. Let me ask you this. You said
11 Sam had never offered to pay any rent or make any
12 payments. That's not -- that's not exactly
13 correct, is it?

14 A Yes, that's the correct. He -- he said
15 he going to start this month, the next month, and
16 this month. Then I told him to start rent. He --
17 I said, 5,000 dollar, and then he said, no, you
18 get down and we discuss him, and he's not agreeing
19 to no kind of agreement.

20 Q Well let me rephrase the question and
21 ask it this way. In that lease agreement that was
22 sent in July of '13, there's no option to buy back
23 the property in there --

24 A No.

25 Q -- is it?

1 A No.

2 Q Okay.

3 A I don't want to sell. I invest money.

4 Q It --

5 A I don't --

6 Q Has Sam, at least I know through me,
7 offered to make payments on multiple occasions if
8 y'all would recognize an option?

9 A No.

10 Q If you would recognize the option?

11 A No.

12 Q No. Okay.

13 MR. WHEELER: Beg the Court's
14 indulgence for one moment?

15 THE COURT: Yes, sir.

16 MR. WHEELER: Thank you. That's all
17 the questions I have.

18 THE COURT: Thank you, sir. Any
19 cross --

20 MR. PAYNE: Just a --

21 THE COURT: -- re-direct.

22 MR. PAYNE: -- a few, Your Honor..

23 R E D I R E C T E X A M I N A T I O N

24 BY MR. PAYNE:

25 Q Mr. Patel, A&P Enterprises, L.L.C., is

1 your company? Is that right?

2 A Just me and my wife.

3 Q All right. How -- you're a member in
4 that company?

5 A Yes.

6 Q And what percentage do you own?

7 A Me and my wife, 50/50.

8 Q Fifty-fifty. Okay. And that is the --
9 the actual entity that owns this land --

10 A Yeah.

11 Q -- right now? Okay. Since your
12 deposition was taken, you have fou--- there's a
13 Gate Station in Florence --

14 A Yes, sir.

15 Q -- that you've -- All right. And who
16 is it owns that Gate Station?

17 A That my brother-in-law bought.

18 Q Okay. And what is your brother-in-law
19 paying in rent on his -- his store?

20 A He get -- he got it --

21 MR. WHEELER: Object to the --

22 THE WITNESS: -- he got it.

23 MR. PAYNE: Hold on.

24 THE WITNESS: He got it from --

25 MR. PAYNE: Excuse me. I'm sorry, go

1 ahead.

2 THE COURT: His objection, I've got to
3 rule on it. Now the question was, what is the
4 brother-in-law paying on the rent? And your
5 objection is?

6 MR. WHEELER: Hearsay.

7 THE COURT: Hearsay. Well I -- I -- I
8 don't know --

9 MR. WHEELER: He'd have to know --

10 THE COURT: -- if it's hearsay or not.

11 MR. WHEELER: -- from the brother
12 telling him.

13 MR. PAYNE: Well that --

14 MR. WHEELER: Uh-huh.

15 MR. PAYNE: -- that's what I'm saying.

16 I think he's going to get there, but I'm not --

17 BY MR. PAYNE:

18 Q Did -- did you talk to your brother?

19 A No, I not talking --

20 Q About the --

21 A We have dispute about who rent from
22 him. I know him very well.

23 Q All right. Do you know one of the
24 parties either --

25 A Yeah.

1 Q -- the landlord or the --

2 A No.

3 Q -- tenant?

4 A Tenant.

5 Q You know the tenant.

6 A Yeah.

7 Q Okay. And you know how much that
8 tenant is paying in rent on --

9 A Tenant pay 4,000 --

10 MR. WHEELER: Objection.

11 THE WITNESS: -- 800 -- around
12 4,800 dollar.

13 THE COURT: You -- you're objecting --
14 Mr. Wheeler raised his hand and --

15 MR. WHEELER: I -- I objected --

16 THE COURT: -- and objected politely --

17 MR. WHEELER: If he's --

18 THE COURT: -- and quietly. Let me
19 hear it --

20 MR. WHEELER: Yeah.

21 THE COURT: -- hear your objection.

22 MR. WHEELER: He would have to know
23 because somebody told him how much they're paying
24 in rent.

25 MR. PAYNE: He -- he talked to the

1 tenant, he said.

2 MR. WHEELER: Like I said, he talked to
3 him. That person's not here.

4 THE COURT: All right. It's basis
5 is -- the testimony is that he talked to somebody,
6 and they told him how much they're paying for
7 rent.

8 MR. PAYNE: Okay.

9 MR. WHEELER: And that -- that would --

10 THE COURT: And then that's been
11 offered for the truth of the facts asserted. Is
12 that right?

13 MR. PAYNE: Right.

14 THE COURT: Or you -- and the statement
15 made out of court and that -- that -- I believe
16 it's hearsay. Yeah.

17 MR. PAYNE: Okay.

18 THE COURT: Yeah -- I'll have to
19 sustain the objection.

20 MR. PAYNE: All right.

21 MR. WHEELER: Thank you.

22 BY MR. PAYNE:

23 Q / When you bought the property for
24 350,000 dollars, what kind of return were you
25 expecting on your investment?

1 A About 12 to 15 percent.

2 Q Okay. And you mentioned the -- we
3 discussed Defendant's Exhibit 1 was this lease
4 that I had sent to Ms. Patel. But prior to me
5 sending that lease, you and your brother had been
6 discussing leases.

7 A Yes.

8 Q Okay. Verbally?

9 A (No verbal response.)

10 Q Now was that face-to-face, on the
11 telephone, when were y'all talking about the
12 lease?

13 A We talking about telephone. We talking
14 about face-to-face. He come in -- when he was
15 agree, he go to store, and he talking with his
16 wife. And his wife come in and next day he come
17 in or call, he not agree. I said, why? My wife
18 don't agree this, every time. When I want to buy
19 that store, his wife call my wife, don't buy this
20 store. I am going to India. I going to work in
21 Walmart. And I look out for him. You -- you can
22 run your -- and you can come in your--- yourself,
23 you 60 year old. I look out for him. His wife --
24 and that's -- she is rude. And she talk my wife
25 real bad. And she says going to buy for him

1 store. His own wife. No other people in like
2 that.

3 Q Right.

4 MR. PAYNE: All right. That's all I
5 have.

6 MR. WHEELER: Nothing further, Your
7 Honor.

8 THE COURT: All right. Thank you, sir.

9 THE WITNESS: You're welcome.

10 THE COURT: All right. And the next
11 witness.

12 MR. PAYNE: That's it, Your Honor.

13 THE COURT: That's the Plaintiff's
14 case?

15 MR. PAYNE: We'll -- we'll rest.

16 THE COURT: All right. If there are
17 any motions, you can make them. If not, we'll go
18 forward. I -- I'm not trying to get you to make
19 motions, but --

20 MR. WHEELER: If -- if I just --

21 THE COURT: -- you may.

22 MR. WHEELER: -- re--- reserve any. If
23 you see fit to take any pretrial briefs or --
24 excuse me --

25 THE COURT: Post trial.

1 MR. WHEELER: -- too late for that.
2 Post-trial brief, we could just address it.

3 THE COURT: Okay. That's fine.

4 MR. WHEELER: And I don't think I have
5 anything by way of motion now.

6 THE COURT: All right. Counselor, your
7 case.

8 MR. WHEELER: Thank you. And may it
9 please the Court. I call Mr. Sam Patel.
10 Thereupon,

11 Sam Patel,
12 having been first duly sworn by the court,
13 testified as follows:

14 D I R E C T E X A M I N A T I O N

15 BY MR. WHEELER:

16 Q Sam, if you would, give your full name
17 for the record and spell it please.

18 A Sureshk Patel, S-U-R-E-S-H-K, Patel,
19 P-A-T-E-L.

20 Q And where do you live?

21 A I live in Florence.

22 Q How long have you lived in Florence,
23 South Carolina?

24 A Since 1991 or '92.

25 Q And, Sam, how old are you?

1 A I'll be 59.

2 Q Okay. So you're 59?

3 A Uh-huh. Yeah.

4 Q Right. When did you come to the
5 United States?

6 A Well we -- I came in 1979.

7 Q All right. And did you come alone or
8 were you married or...

9 A No, I don't -- I got married with
10 Cindy, and by immigration law, I get right to come
11 to this country.

12 Q So did y'all -- did you and your wife,
13 Cindy --

14 A Right.

15 Q -- come at the same time?

16 A Yeah, she was here before.

17 Q She was already here, okay.

18 A Right.

19 Q And y'all have been married since --
20 when did you and Cindy get married?

21 A Well 1978.

22 Q Okay. And where did y'all live when
23 you were first here in the late '70s, where did
24 you live?

25 A In Chicago.

1 Q And where did you work in Chicago?

2 A Well I worked for one of the electronic
3 companies.

4 Q And was that in a factory or that kind
5 of a thing?

6 A No, it -- it was a distribution
7 warehouse. Distribution warehouse, electronic
8 parts.

9 Q And did Cindy work outside the home?

10 A Yeah, she works, too.

11 Q Okay. And how long was it before some
12 of your family was able to come over?

13 A Probably first my parents and mom came.
14 And then I applied for my brothers and sisters to
15 come down, you know, through him, you know.

16 Q Through your dad?

17 A Right.

18 Q Okay. How many years did your -- do
19 you remember what year your mom and dad came?

20 A Probably -- I think it maybe in '82 or
21 '83, something like that.

22 Q Okay. And then sometime after that,
23 Kim and your two sisters came?

24 A Uh-huh. Right.

25 Q And do you recall what year that was?

1 A Probably in 1986 or so.

2 Q Okay. And did y'all all live in the
3 same home in --

4 A Yes.

5 Q -- Chicago?

6 A Uh-huh.

7 Q Is that the same home that you and
8 Cindy had had --

9 A Right.

10 Q -- before?

11 A Uh-huh.

12 Q Did everyone work?

13 A Yeah, everyone was working in
14 different --

15 Q Okay.

16 A -- places.

17 Q What was the goal at that time?

18 A Well our goal was to -- my intention
19 was to see that the family betters one or the
20 other way. Let's have a better life. In India,
21 basically, we had nothing, period. Nothing. And
22 it was lucky for me to get married, come back. So
23 I thought I would settle my brothers and sisters
24 also. They were -- this was my intention. So our
25 goal was it, basically, call on my brother and

1 sister and establish them and let them have better
2 future. That was my goal.

3 So I probably work in a company for ten
4 years. I said, let me -- let's find a store. So we
5 talk with some friends, and some friends were here
6 in Florence, and they said that there's a store in
7 Lynchburg. Why don't you come down and see, you
8 know. So probably that -- we came down. I sold my
9 house. Then whatever money I had, I put in that
10 store, and we just started from Lynchburg like that.
11 That was the intention.

12 Q Okay. And do you -- do you remember
13 what the cash investment you made in that store in
14 Lynchburg was, initially?

15 A Initially about -- approximately about
16 80,000. I had a house, and I sold my house all
17 like to move out.

18 Q Okay.

19 A I drop the price. It was like -- we
20 had put in the market for 120,000. First offer
21 came and we -- they wanted cheaper and I dropped
22 it.

23 Q Okay.

24 A So I just took 110, took the money and
25 came in South Carolina.

1 Q And was that the store at Willow Grove
2 Road that you --

3 A Right.

4 Q -- operate today?

5 A That -- that was the starting stuff.

6 Q Okay. And did your -- did the whole
7 family move --

8 A Yes.

9 Q -- to there? Did you all live on that
10 premises?

11 A Yeah, we had a trailer on the premises
12 at one time. And we lived in the --

13 Q There was an apartment --

14 A -- on there on the right.

15 Q -- upstairs --

16 A And in --

17 Q -- as well?

18 A -- 1989, we moved there and Hugo came.

19 And it shook everything in. But still we
20 survived, you know, that's the way it is.

21 Q Did y'all continue to live there?

22 A Yeah, we lived, you know.

23 Q Okay. Now y'all did well over the
24 years? I -- I assume things got better and -- and
25 then we're going to talk about in a second things

1 got worse.

2 A Uh-huh.

3 Q But did you acquire other stores?

4 A Yes, I did.

5 Q All right.

6 A Okay. First one, our intention was to
7 start in Sumter. So I made arrangements with
8 Mr. Bubba, you know, to get the store. I was the
9 one who was doing the deals in all this stuff.

10 Q And Mister -- I'm sorry, if you could
11 repeat that name.

12 A His name is -- his name Bubbas Ward in
13 Sumter.

14 Q Bubba Ward.

15 A Right.

16 Q Okay.

17 A Yeah, and I talk with him, and we came
18 into an agreement, you know, to take over this
19 store, and he was interested in poker machines and
20 all this stuff, you know. And I started all of
21 this stuff. I mean the liquor store at Boulevard
22 and all that stuff, you know. And that's what I
23 did. And we just went from that stuff.

24 Q Now -- and -- and you've heard your
25 brother's testimony as to that situation this

1 morning. Did -- I -- I -- I know your is somewhat
2 different. Describe, in your view, how the
3 transition to Kim with the Sumter store went.

4 A Okay. So the Sumter store, you know,
5 we went together and -- well he and his wife will
6 run the store and since they were still living in
7 Lynchburg -- you see -- you see what -- in -- in
8 whatever it is. And I don't have the accounting
9 whatever it is -- whatever he saying that I did
10 to -- I took the money, you know, absolutely not.
11 I'm ready to swear on my oath -- on my life, I've
12 never done that. I don't intend to do that. If
13 he thinks that by harassing me and getting it
14 away, that's his choice. I'm not going to stop
15 the litigation.

16 Q Well, I mean, after -- let me ask you
17 this way. After Kim started operating the Sumter
18 store --

19 A Right.

20 Q -- did he live with you in Florence for
21 a short period of time --

22 A No, in Lynchburg.

23 Q -- or that -- in Lynchburg.

24 A Right. And what happened, by the
25 liquor store being, I had built an apartment

1 upstairs. Added the rooms and everything, and we
2 were all living together, and they were going from
3 Lynchburg to Sumter and coming back at night. But
4 on one instant, there was a fire. How it
5 happened, we don't know. His kids, they're
6 upstairs, too. And I am the one who went in that
7 fire to save the children. It's not like our
8 relationship broke. But the naming of his
9 children was also done by me. I named his
10 children.

11 Q So you all were close?

12 A Yea, very, very close.

13 Q And did -- and have you continued to be
14 close?

15 A I am close all the time. And whichever
16 way it is, you know, about I don't know four weeks
17 ago I heard that he had a stroke. Still I went to
18 see him. But because of his attitude, I just to
19 come back here with tears in my eyes. I couldn't
20 help it.

21 Q Did you als--- did you get into the
22 construction business in the 2000s at some point?

23 A Yeah.

24 Q Okay. And did that go well?

25 A No, everything -- it's -- the whole

1 market collapsed. Everyone went down, you know,
2 and all the construction people, the properties,
3 nothing could be sold. And I was in that stuff.
4 And in Florence, I had a project --- and
5 that's a condominium project. Our second one was
6 South Haven. Nine buildings, 18 each property
7 and I did estate and we built about 40,
8 45 houses and all that stuff. So what happened,
9 when I was going down, I put all my money to try
10 to survive, but I couldn't. So the option was
11 let -- let my brother get the benefit. So I made
12 the deals, everything. I also created A&P,
13 L.L.C., not the accountant. I created it for him.
14 And on the day he said that, brother, you
15 have done so much stuff for me that me and my wife
16 wants to have this property into your name. But
17 because of my honesty, I said I can't do that. He
18 wanted to put the name under my name or my
19 daughter's name. I said, I cannot take someone's
20 hard earned money. When I get the money, I'll pay
21 it to you. That will be it. But keep the property
22 under your name. That's the way I did it. And if
23 he says, no, we didn't have talk, I can't help it.
24 Because in our faith when we have trust, it's not
25 promising note or signing. It's word of faith. If

1 there are two party, one gives faith and another
2 don't, there's nothing I can do. This is the story.

3 Q Did -- did he promise you that the
4 store would be yours?

5 A Yes, that's what he did.

6 Q And did he --

7 A And he was --

8 Q -- initially --

9 A -- giving me the store, but I said, no,
10 I can't do that. Because my conscious won't allow
11 me to do that. I said keep it under your name.
12 Once I get the money, I'll pay it back to you.

13 Q Did you have any -- did you all have
14 any discussions as to how long you thought it
15 would take you to get -- on your feet --

16 A At --

17 Q -- so you could pay him back?

18 A -- at the most three or four years.
19 That was my intention.

20 Q Okay.

21 A Three to four years. But something
22 what already is in his mind, I can't take it out.
23 Whatever they got in their mind. I'm sorry. I
24 can't help to that situation. If a person changes
25 his mind, there's nothing I can do, you know?

1 Q And let me ask you, the first lease
2 agreement that you got --

3 A Uh-huh.

4 Q -- in the mail, I think it's
5 Defendant's 1 --

6 A Okay.

7 Q It was in July of 2013.

8 A Right.

9 Q Did -- was there an ar--- did your --
10 did your and Kim's wives have some kind of
11 argument in the early part of 2013?

12 A Yes.

13 Q And what it's about I don't think
14 matters, but is that when things changed?

15 A Yes.

16 Q Okay. Is that when the demand for rent
17 was made?

18 A Uh-huh.

19 Q Had you ever contemplated paying
20 5,000 dollars a month --

21 A No, I did not.

22 Q -- to the best of your knowledge?

23 A No.

24 Q Would you be willing to make
25 payments --

1 A No.

2 Q -- to Kim of some amount?

3 A No, to the best of my ability, what I
4 can afford. Right now, I'm just coming out --
5 because everyone makes mistakes in life. My
6 mistake was I trusted a guy named Demka, and
7 I thought he'll come through and he did not.
8 That's the reason I'm right now in bad shape. But
9 if I had the money today, I would have surely give
10 it to him. If he don't want to give me a
11 property, that's fine. I'm not going to keep on
12 arguing. But try to keep your word. Be honest,
13 be fair and lord watches everyone, you know.
14 Just don't try to make up the stories. And
15 humiliate other people. Harass -- my daughter,
16 she's a doctor. Okay. You wanted to do a lease,
17 I agree. I said, okay. Let's make an agreement.
18 I'll sign it.

19 But you don't want to keep your word.
20 You don't want to even keep the option for me to
21 purchase it back -- 350,000 plus whatever I owe him.
22 He don't want to do that, too. Plus he wants -- he
23 is making a lease that she is liable for all repairs
24 and maintenance and everything. If he come to the
25 store, this is not right, fix it tonight. If not,

1 she has to face the consequences. Is this right?
2 Why are you getting your children -- your, you know,
3 involved in this stuff. Please don't get into this
4 stuff. You know, that's -- that was my saying.

5 Q And my question, have you offered to
6 make payments as long as they would be credited
7 against that purchase price?

8 A Yeah, I will.

9 Q Do you acknowledge that you owe him
10 350,000 and --

11 A Right.

12 Q -- one dollar.

13 A Plus the gas bills, I do.

14 Q Okay. Would you agree to make some
15 payments? And if you can't come up with the
16 350,000 dollars plus the gas within four years,
17 you would leave?

18 A Yeah.

19 Q Okay. Is that -- is it the fact that
20 there's no option in that lease agreement to allow
21 you to repurchase the property --

22 A Right.

23 Q -- the reason you haven't signed it?
24 Have you offered to execute other leases if they
25 would include an option for you to buy the

1 property back?

2 A No, they have made up their mind. They
3 don't want to include it.

4 Q Okay. So you have --

5 A So --

6 Q Let me ask it again. Have you offered
7 to make payments if they would put that option
8 back in there?

9 A Yes, we'll see.

10 Q Okay.

11 A And we'll just go forward and they deny
12 it.

13 Q Okay. Did you ever stop operating the
14 store in Lynchburg? I mean, it's --

15 A No.

16 Q -- continuously in operation.

17 A Since 1989.

18 Q Okay. Now since the time that Kim
19 purchased it, was that a promise to you that you'd
20 be able to buy the store back?

21 A Yeah.

22 Q Did Kim make you a promise?

23 A Yeah, I was just supposed to pay him.

24 In our customs, as a brother to brother, help each
25 other. They don't charge for money. Because when

1 I was supposed to call my parents, this thing
2 wouldn't have even arised if I had a bad
3 intention. That I would have never even called my
4 parents. I would have been happy. I didn't do
5 that, but I was looking out for the family. That
6 was my purpose, nothing more.

7 Q Have you made significant expenditures
8 on the Lynchburg property since October of 2011?

9 A Yes, the pumps and everything, you
10 know, I had --

11 Q I'm going --

12 A -- to do that. You know, I have to
13 keep it because I was in the feeling that once I'm
14 going to pay it -- the money, the brother is going
15 to release it. I was in that impression. But
16 when I started getting this papers, you don't get
17 option. Your daughter got to be this. She will
18 be liable. It's wrong.

19 MR. WHEELER: I'm going to mark --
20 let's mark these, collectively, as Defendant's 2.

21 (Defendant's Exhibit Number 2
22 marked for identification.)

23 MR. WHEELER: Jeff, here's --

24 MR. PAYNE: Oh.

25 MR. WHEELER: -- that's just an extra

1 copy.

2 BY MR. WHEELER:

3 Q Sam, I'm going to show you what have
4 collectively been marked as Defendant's Exhibit
5 Number 2.

6 THE COURT: Are these in evidence or do
7 you --

8 MR. PAYNE: Without objection.

9 THE COURT: -- agree? Okay.

10 MR. WHEELER: Thank you.

11 THE COURT: Okay.

12 MR. WHEELER: Thank you.

13 THE COURT: Go ahead please.

14 BY MR. WHEELER:

15 Q And I'm just going to ask you some
16 general questions and specific questions. Are --
17 the sheet on top is a summary that I have prepared
18 just tallying --

19 A Okay.

20 Q -- up these --

21 A Uh-huh.

22 Q -- invoices. But are these invoices
23 what you have kept from expenditures?

24 A Correct. Uh-huh.

25 Q Some expenditures --

1 A Some -- right.

2 Q -- made on the property. Now these --
3 you've kept up the property insurance.

4 A Right.

5 Q That -- this sheet does --

6 A Uh-huh.

7 Q -- not include that.

8 A Yeah.

9 Q And -- but let me ask you about this
10 before I -- it slips my mind. Tell me about the
11 property taxes. Did you not want to pay them
12 or --

13 A No, I was willing to pay it. I had two
14 more weeks. And he got the notice, so he just
15 went and paid it. I had my right. In two weeks I
16 was supposed to pay, and I was just making my
17 budget that I'll take. But if someone else goes
18 in -- because they're saying that -- because he's
19 the owner, I don't have control in my power.

20 Q Okay.

21 A I had my time.

22 Q Have you paid other taxes on that
23 property since the --

24 A I have -- yeah, I have paid at least
25 a -- I have paid some. I know that.

1 Q Okay. Now let me get back to this.
 2 These are a list of expenditures and -- and some
 3 of them are self-explanatory. But the large
 4 ones -- there are several large ones to
 5 Carolina Registers. One for 6,038 --

6 A Yeah, because they were old pumps and
 7 we had to change to better pumps. They won't to
 8 go to the minimum. Like they won't go above the
 9 pricing of three dollars when it cost so there is
 10 nothing left. I had to change those pumps.

11 Q So have you changed the gas pumps at
 12 the store --

13 A Right.

14 Q -- since --

15 A Uh-huh.

16 Q -- Kim purchased the property? Have
 17 you added or replaced the kerosene pump?

18 A Yeah. Yes.

19 Q And I -- some of the expenditures --

20 A Even kerosene --

21 Q -- for that are --

22 A -- diesel.

23 Q -- are -- and I don't want to go
 24 through every one of these invoices, but I --
 25 there's a large one on 17,945 dollars in

1 May of 2012.

2 A Yeah, about --

3 Q That would be for the --

4 A For the pumps and all this stuff, you
5 know.

6 Q Kerosene dispenser, electrical and --
7 and -- and all those things. I think most of them
8 are self-explanatory. Yeah, I see another one
9 Carolina Registers in November of '12 for 8,000
10 dollars. And another one in November of '12 for
11 7,465. There are only two -- and I'm going to get
12 you to explain these. And I when I was going
13 through these things, there are two right here.
14 One for 311 dollars --

15 A Uh-huh.

16 Q -- and the one behind it for
17 201 dollars.

18 A Those were the cooler, you know.

19 Q Okay. I couldn't read this so --

20 A Yeah, the cooler --

21 Q -- there's a question mark --

22 A Right.

23 Q -- on this exhibit.

24 A Yeah, coolers.

25 Q But that's for repairs to the cool---

1 A Uh-huh. Yeah.

2 Q You mean like soda coolers or --

3 A Yeah --

4 Q -- walk-in --

5 A Yeah.

6 Q - coolers?

7 A Uh-huh.

8 Q Okay. All right. Sam, all -- these

9 things total up to -- by my figures, if you
10 could --

11 A Uh-huh.

12 Q -- what's the amount those expenditures
13 total.

14 A 68,804.30.

15 Q Okay. Would you have made that kind of
16 investment and -- or been responsible for those
17 kinds of funds if you didn't believe you were
18 going to have the option to buy -- that you were
19 just going to be --

20 A No.

21 Q -- renting the store?

22 A No. And it's -- in all the leases,
23 it's not like that, that tenants have to fix that.
24 If you are landlord, the main responsibility about
25 the roof and other stuff goes to the landlord.

1 Tenant do not repair that stuff. That's wrong,
2 absolutely. Whatever system may be.

3 Q Okay.

4 A You know.

5 Q And I believe you've also replaced
6 the -- pretty much replaced the H.V.A.C. system --

7 A Uh-huh. Yeah.

8 Q -- at a cost of about 18,000 dollars --

9 A Uh-huh. Yeah.

10 Q -- since 2011. And I'll ask you about
11 some of these because I know that Mr. Payne
12 probably will. Some of these sums, for instance,
13 to notably Carolina Register, you haven't paid all
14 that cash --

15 A No.

16 Q --out-of-pocket?

17 A No.

18 Q Is -- is that financed?

19 A No, it's still -- let -- he's just
20 waiting and probably once I get my stuff that what
21 I'm working whichever it is. You know, once we
22 get it, we are going to pay him and he knows that.

23 Q Okay. And so -- but that's money you
24 owe?

25 A Yeah. Yeah.

1 Q And Mr. Kim Patel doesn't owe that
2 money?

3 A No. No.

4 Q And I know the -- I think this
5 18,000 dollars for the H.V.A.C. system, how -- how
6 did you work that out?

7 A Oh, the guy got about four or five men
8 said that if we provided the gas. You know, he's
9 an air conditioning guy.

10 Q So you -- you swap --

11 A Right.

12 Q -- you swapped him out in that
13 instance.

14 A Right.

15 Q Okay. And I think those are the
16 majority of those expenses. And, again, is there
17 any doubt in your mind, in your recollection, or
18 your testimony that the agreement between you and
19 your brother is that you would be able to buy the
20 store back?

21 A I had it in my mind. That's the reason
22 he did it. Because I did everything for him to
23 the maximum that I would even -- I have done more
24 for him than my son. That's the bottom line.
25 Either I protected him everywhere. Whichever way

1 I can. East, west, north, south, whatever it is I
2 have been there. And I was working on him even to
3 get a motel. And Mr. Jeff Payne was a part and
4 parcel in the situation. He was the one to make a
5 couple of phone calls for the motel. The only
6 thing, the loan didn't pass. It's not like
7 every--- he knows everything what I did. But I
8 should be punished like this. This is wrong.
9 Absolutely wrong.

10 Q Well was that af--- after
11 October of 2011?

12 A Yeah. Yeah.

13 Q Okay.

14 A We had relationship all the time. It's
15 nothing like that he never talked with me. We
16 talked every two, three days.

17 Q Okay.

18 A There is nothing wrong in that and that
19 is the truth and fact.

20 Q And what -- is the -- do you believe
21 the condos of yours he was able to acquire -- tell
22 me about.

23 A Okay. The condos --

24 Q Would that have been of some
25 benefit --

1 A I built --

2 Q -- to him.

3 A -- I built all the condos. I give you
4 precise amount. There's 17 properties, not 16 and
5 one house in Timmonsville. And I got it for
6 700,000 dollars. Not even 800,000. I made
7 them -- and my cousin, he dealt everything with
8 me. The contract, that Tony -- everything I did
9 it. And after we got it, I even got the loan for
10 him. He just has to sign the papers. It just
11 like you are becoming richer. You just have to
12 sign. I did everything in my power to make sure
13 that he makes good money. That was my intention,
14 and that's what I did. And those condos gives
15 rent every month -- 15,000 dollars per month.
16 What wrong I did. And the market price is 80 to
17 85,000 dollars, and I got it each property for
18 35,000 dollars. What wrong I did.

19 Q Have you seen any -- has that money all
20 gone to Kim?

21 A Yeah, it goes to him every month. And
22 I didn't made any kind of arrangement, hey,
23 brother, I'm doing all this stuff. Give me
24 something, no. He hasn't given me any dime on
25 that.

1 Q And --

2 A Period.

3 Q -- and you still acknowledge you owe
4 him the 350,000 dollars --

5 A Yeah --

6 Q -- and plus the fuel?

7 A -- I still owe him that. And still I
8 said that when I get it, I'll pay you back to you.
9 What else I can do?

10 MR. WHEELER: Thanks. And that's all
11 the questions I have. Answer any Mr. Payne may
12 have.

13 THE COURT: Go ahead, Mr. Payne.

14 C R O S S E X A M I N A T I O N

15 BY MR. PAYNE:

16 Q Let's see, Mr. Patel, where are these
17 properties that you're talking about located?

18 A In Florence.

19 Q That -- that you were just mentioning
20 there? Those are on Third Loop Road?

21 A Right.

22 Q And which bank had the lien on them?

23 A First Federal.

24 Q Okay. And First Federal foreclosed on
25 all those properties.

1 A Right.

2 Q And they sold them at the courthouse
3 steps, didn't they?

4 A Yeah -- but no, it -- it wasn't sold at
5 courthouse. They gave it to their agent. And I
6 had a conversation with the agent, and he was the
7 one directly in touch with me to get the property.
8 And he knew I was the owner and all the stuff.

9 Q And that's all --

10 A And I got his -- all e-mails and
11 everything. And all the pricing and everything
12 was discussed and done by me through him.

13 Q And those are -- did you have any other
14 units on Third Loop Road?

15 A No, I had the other -- no, those were
16 the -- those were the condos that I used to own
17 one time. Those were my condos.

18 Q Right.

19 A You know, but the other units, the bank
20 got disposed of it, that had nothing to do with
21 that.

22 Q Well I'm looking at your bankruptcy
23 filings here, and every property that you've got
24 here on Third Loop Road said Special Referee deed
25 recorded June 20th, 2011, September 9th, 2011 --

1 A Right. Yeah, they had put it in --

2 Q -- June 30th, 2011.

3 A Okay. Yeah, I understand.

4 Q They foreclosed and sold them, didn't
5 they, Sam?

6 A No, they gave it to the agent to sell
7 it as a bulk. It wasn't like individual person
8 got it.

9 Q After they bought it at the foreclosure
10 sale, the bank owned them when -- when --

11 A No, bank owed it --

12 Q -- when Kim bought them.

13 A -- and they gave it to my cousins.
14 He's a broker in charge, and he was trying to sell
15 it. And he -- I called him and talked about it
16 and explained the whole situation and he was
17 willing to work.

18 Q And Kim bought them from the bank. He
19 didn't buy them from you.

20 A No, I didn't say that he bought it
21 from --

22 Q Okay.

23 A -- me.

24 Q That's what -- you acting like you --

25 A You see what I'm --

1 Q -- gave him something --

2 A -- say--- oh -- oh, well, why are
3 this -- all this attorneys and brokers here.
4 They're -- they're making money. You see what I'm
5 saying. They are giving services to the people.

6 Q All right. Let's talk about the --
7 these expenditures. Y'all had a lightning storm
8 to strike your store out at Tommy's Grill, didn't
9 you? And it blew --

10 A Yeah, I -- I don't -- and still I say
11 that I can't remember when it was, you know.

12 Q All right. But it blew out your
13 wiring. It blew out your A.V.--- H.V.A.C. and it
14 messed up your pumps, didn't it?

15 A Yeah --

16 Q Okay.

17 A -- I think so.

18 Q And you -- you've made a claim on your
19 insurance policy, didn't you?

20 A Yeah, I did.

21 Q And you got paid insurance proceeds --

22 A Yeah.

23 Q -- for those. All right. And you used
24 that insurance money -- you didn't give it to the
25 owner of the building, did you?

1 A No.

2 Q Okay. You went and made some repairs
3 to that --

4 A I don't --

5 Q -- building, right?

6 A -- I got to see. We have two or three
7 claims.

8 Q Okay.

9 A I don't know which claim you are
10 talking about. You see what I am saying? I
11 cannot give you precise, and I'm wrong in the
12 date. Is it after 2011 or before? That's what I
13 am saying to you.

14 Q Did you call Kim and ask him if he
15 wanted to put in a new air condition in his
16 building?

17 A No, because it --

18 Q Oh.

19 A -- our relationship was not as a
20 landlord and a tenant. We were as a relationship
21 as a brothers.

22 Q And did you ask him --

23 A No.

24 Q -- if he'd rather have that money
25 versus fixing the --

1 A There was no talk about that issue.
2 Because the issue was here that he bought it in
3 return that I did all this stuff for him and he
4 was going to get it paid. That was it. Bottom
5 line.

6 Q Okay.

7 A There was no talk about lease or
8 anything.

9 Q And you hired expert technician and you
10 paid them with some of that insurance money?

11 A No. You are still --

12 Q No.

13 A -- you are still trying to get on the
14 insurance point. What I said, I'm not sure about
15 the dates.

16 Q Okay. All right. Well I asked you
17 that question before and --

18 A I said, yes, there were two or three
19 claims. I don't remember the sit--- which one it
20 pertains to.

21 Q Okay. And you said there was lightning
22 stuff and everything, you know, and everything was
23 burnt out --

24 A It --

25 Q -- and all --

1 A -- I understand.

2 Q -- of the pumps. And all of the --

3 A -- everyone --

4 THE COURT: Hold it -- just a second.
5 Just a second.

6 MR. PAYNE: Okay.

7 THE WITNESS: Okay.

8 THE COURT: To the witness --

9 THE WITNESS: Right.

10 THE COURT: -- and -- and to the
11 attorneys, but right now mainly to the witness,
12 let him finish his questions --

13 THE WITNESS: Okay.

14 THE COURT: -- and then answer because
15 this nice lady is trying to take everything down.

16 THE WITNESS: Okay. And that'll be
17 fine.

18 THE COURT: And she is really, really
19 good at what she does, but she's not that good.

20 MR. PAYNE: And I'm -- I'm sorry.

21 THE COURT: Okay.

22 MR. PAYNE: I'll let you -- let you
23 finish.

24 THE COURT: Thank you. Y'all -- y'all
25 go ahead.

1 BY MR. PAYNE:

2 Q All right. And I asked you a question
3 about the lightning, and I'm going to read you --
4 I can let you read --

5 A No, you can just read it.

6 Q Yeah, that's --

7 A That's fine.

8 Q Okay. And it says there was lightning
9 stuff and everything, you know, and everything was
10 burnt out and all pumps and all the stuff. So we
11 had to get the new pumps, wiring and all this
12 stuff. Is that what you said when I asked you the
13 question about the lightning?

14 A And still -- I understand that. I may
15 have given that information, but I may be wrong.
16 I said I'll have to go check the date when it
17 happened.

18 Q Okay.

19 A And I'm still ke--- keeping that
20 persistent.

21 Q Okay.

22 A I'm changing the stuff.

23 Q You remember how much you got from the
24 insurance company?

25 A Something all about a check for about

1 30 to 32,000 dollars.

2 Q Okay. Okay. When you got that check,
3 you never af--- offered to give it to Kim?

4 A I'm still trying to tell you, you're
5 bringing me same point back, I don't know the
6 exact date. Was it be--- after bankruptcy or
7 before bankruptcy. I really don't know. Before,
8 that's what I am saying, you know. So how can I
9 answer when I am not sure about the issue.

10 Q All right. Well I don't care about the
11 date.

12 A Right.

13 Q When you got that check, you never
14 offered to give it --

15 A No.

16 Q -- to Kim, did you?

17 A At that time he may not -- he --
18 probably it's possibly that he was not even the
19 owner. The property belonged to me. That's what
20 I'm trying to convey you.

21 Q So it burnt out. You had another
22 lightning storm that burned out all --

23 A Yeah, that that --

24 Q -- all the wiring?

25 A Yeah, but when it -- not all the

1 wiring. What I'm saying, sometimes the pumps and
2 all the stuff goes off. We had three or four
3 times lightning in that Lynchburg at our store.

4 Q Okay. Far as the taxes, you did pay
5 the taxes for 2011?

6 A Uh-huh.

7 Q Is that what you think?

8 A Yeah, I think I have paid. I have a
9 check. I don't know --

10 Q Okay.

11 A -- which one is that -- what it is.

12 Q And then --

13 A Right.

14 Q -- you had some time to pay --

15 A Right.

16 Q -- the taxes last year.

17 A Uh-huh.

18 Q Is that what you're saying?

19 A Right.

20 Q But Kim went ahead and --

21 A Uh-huh.

22 Q -- paid them?

23 A And I was going to pay it. I had made
24 my budget. I had a time on that left.

25 Q Did you ever send him a check to repay

1 him for the taxes? Why didn't you just mail him a
2 check?

3 A No, I didn't -- I didn't tell him, you
4 know, and this of our relationship was going in
5 soured from this -- from June of 2013 or so.

6 Q All right. But after you found out he
7 had paid the taxes on that building, you never
8 sent him a check, did you, to repay for those
9 taxes?

10 A I was just trying to come out from my
11 financial situation. That's the whole story.

12 Q But you were act---

13 A And he still going to get his money
14 whenever I get it.

15 Q But -- but you said you were going to
16 pay the taxes. You had two more weeks to pay
17 them, right?

18 A Yeah.

19 Q Okay.

20 A I --

21 Q Well why didn't you just take that
22 money and give it back to Kim since he paid the
23 taxes?

24 A Well I just thought that he had -- he's
25 not in a bind like me. I'm fighting here every

1 way to pay my bills, so I didn't do that and he
2 didn't ask me to send the check.

3 Q Okay.

4 A He did not ask me. Let me -- let's be
5 clear on that situation, you know? He did not ask
6 me to send the money for the taxes.

7 Q But it is clear that he's asking you to
8 pay rent and you never sent him a check for
9 rent --

10 A No.

11 Q -- did you?

12 A Now you're bringing to the point to the
13 rent. I'm bringing you to the point all this
14 thing started. There is no relationship of
15 landlord and tenant. The relationship is of two
16 brothers. What we had the agreement, I am going
17 on by that agreement. So your question of rent is
18 out of question.

19 Q All right. Well then you told me at
20 your deposition that Kim started asking you to pay
21 rent, didn't he?

22 A Yeah, he did. I said, okay, let me see
23 what I can do. That's what I to--- told him.

24 Q Okay.

25 A You see what I'm saying, you know?

1 Q Right.

2 A But --

3 Q And --

4 A -- the thing is that when you made our
5 this lease and you send me the lease I got, I
6 called you back. I said, Mr. Jeff, why did it not
7 be put in offer that I can purchase back the
8 property. You said in your own words, this is
9 not -- non-negotiable. That's it. That's what
10 you told me. Because that's the way you were
11 instructed by the client to tell. So when you are
12 telling me that you can buy it -- why you can't
13 put one line, no. You can have this property.
14 You have an option to purchase this property
15 within five years if you want it.

16 Well why you can't do that? What's the
17 reason that -- no, we are going to give you just
18 lease as a tenant, nothing more. Either you stay or
19 get out. That's what the bottom line is there.
20 Whatever you made expense or anything to the
21 property, that's your own risk not mine. Which kind
22 of where this thing is going to.

23 Q All right. Let me -- I was asking you
24 about the rent.

25 A Uh-huh.

1 Q And you -- you told me that Kim -- yes,
2 Kim came to you last year in May -- April or May
3 and started asking you for rent. Isn't that true?

4 A Yeah, I understand. He was --

5 Q All right. Let's --

6 A -- asking --

7 Q -- just -- okay.

8 A Okay. Go ahead.

9 Q All right.

10 A Yes, he did.

11 Q Okay. Now -- and you've never sent him
12 one check to pay rent, did you?

13 A But --

14 Q Any money.

15 A Can I answer why?

16 Q But yes or no, then you answer. You
17 never sent him --

18 A No --

19 Q -- any money?

20 A -- I didn't send any money.

21 Q Okay. Although he was asking you, you
22 never sent him any money. Now you may com---
23 finish your answer.

24 A Okay. The only thing was that even
25 when we had talked that this property, I will have

1 an option to purchase it, what about the money
2 that I spent keep it running and all that stuff,
3 that don't count. You want the rent, but you
4 don't want to put the option nowhere that you have
5 right -- you just want to do it, it's my way or
6 it's highway. That's the way it goes.

7 Q And that's the problem --

8 A Right.

9 Q -- when you don't own the property,
10 isn't it? Who do -- who makes that decision? Do
11 you get to make it? Do you get to make all the
12 decisions --

13 A No.

14 Q -- when you don't own it?

15 A No.

16 Q No.

17 A I trusted. That's -- because of my
18 trust, I'm getting beaten up today. Whichever way
19 it is. I trusted. It was a trust, and he didn't
20 keep his trust, and that's what it is. Bottom
21 line.

22 Q He's been supporting you --

23 A Not this way --

24 Q -- since 2011.

25 A -- I had --

1 Q You wouldn't --

2 A -- I didn't --

3 Q -- have a store without --

4 A Let me please --

5 Q -- him

6 A -- finish it up. I had our other
7 brother-in-law. He was the one going to pay for
8 the store, too. But they said, no, brother, I'm
9 here. Don't do that. If you want his name and
10 phone number, I can give you and you can call him
11 if you want to.

12 Q I -- I -- I don't need it.

13 A Okay.

14 Q All right. Now did you discuss
15 purchasing this store with Kim prior to him buying
16 it?

17 A Yes.

18 Q You asked him to purchase it?

19 A Yes.

20 Q Okay. And he agreed to let you
21 continue --

22 A Yes.

23 Q -- to operate there. And you never
24 expected him to give you that property, did you?

25 A No, he did. He was giving me the

1 property at that time. He told me -- I swear by
2 my soul and by my lord, he did -- he said he can
3 put down the property into your name or Payal's
4 name. But I said, no, I cannot do that. Because
5 you paid for it, and I -- I should pay for you.
6 But when the right time comes, I am going to pay
7 it back to you. That's the reason I did not do
8 that.

9 Q Okay. But at the -- you didn't -- he
10 was not going to give it to you?

11 A I am telling you he was. You're asking
12 me four times, and I am telling you, yes, he was.

13 Q Oh, okay. But you refused and you told
14 him -- this is your testimony --

15 A It -- it -- I didn't refuse it. I just
16 wanted to keep the morality.

17 Q All right. Well let me -- let me refer
18 to your deposition here. And I can show it to you
19 and you --

20 A No, I don't --

21 Q -- or I just didn't make --

22 A -- I don't want to see.

23 Q -- a copy. I'm sorry.

24 A That's fine.

25 Q It said -- my question to you was, the

1 conversation where you said that Kim was going to
2 give you the store is, did he? And your answer
3 was, no. The conversation was that he was going
4 to help me out. That's the way it was. I didn't
5 say that he was going to give me the store.

6 A Okay.

7 Q The conversation was that I did -- I
8 did lots for him. He knows that. He'll accept
9 that, but -- and he wanted to do something good
10 for me, I said. I'm going to help you, but they
11 changed their mind. Is that right?

12 A Yeah, that's right.

13 Q Okay.

14 A Now what was your question before that?

15 Q You -- you said the conversation was
16 never that he was going to give it to you. And
17 that's why I asked you that question --

18 A No --

19 Q -- and you said --

20 A -- no -- okay.

21 Q -- I didn't say he was going to give
22 me --

23 A Right. You said --

24 Q -- this store.

25 A -- you say that I refused. But I

1 wanted to answer why I refused.

2 Q Let me --

3 A Okay.

4 THE COURT: Excuse me -- excuse me.

5 Did you give your answer?

6 THE WITNESS: Huh?

7 THE COURT: Did -- did you -- are
8 you -- did you get to complete your answer?

9 THE WITNESS: No, he said -- Mr. Payne
10 was telling me why I refused, you know --

11 THE COURT: Uh-huh.

12 THE WITNESS: -- to take the property.

13 THE COURT: And you -- you said --

14 THE WITNESS: I didn't refuse.

15 THE COURT: -- you would like to
16 explain. --

17 THE WITNESS: Right. That's what I was
18 trying to tell you.

19 THE COURT: Well please explain.

20 THE WITNESS: The issue was that I
21 wanted to keep my own moral ethics. I didn't want
22 to take over someone's stuff. There's a reason I
23 said, don't put it in my or my daughter's name.
24 Once I get the money, we'll pay you. At that time
25 you can transfer the property. That was my reason

1 to refuse.

2 THE COURT: So you turned down --

3 THE WITNESS: Right.

4 THE COURT: -- the proposal --

5 THE WITNESS: Yes, right.

6 THE COURT: -- and you -- you -- you --
7 because you preferred to pay him for it.

8 THE WITNESS: Right. That was my
9 intention.

10 THE COURT: All right.

11 BY MR. PAYNE:

12 Q And it never got deeded to you, did it?

13 Or your --

14 A No --

15 Q -- your daughter?

16 A -- it -- I -- that --

17 Q Okay. And you --

18 A -- once I said no, you know --

19 Q All right.

20 A -- that's the way it is.

21 Q And you insisted on repaying him for
22 it. Is that correct?

23 A Right.

24 Q All right. And you were going to repay
25 him not only what he paid for the building -- the

1 350,000.

2 A Right.

3 Q Is that right? You were going also pay
4 him monies that you owed him where --

5 A Yes.,

6 Q -- he had loaned to your construction
7 company.

8 A Yes.

9 Q All right. And how much was that?

10 A Probably it -- once -- you give us the
11 bill. We'll see what is right, and we just go
12 forward from there.

13 Q But --

14 A What I owe -- I -- I'm not --

15 Q What do --

16 A -- I'm going deny it.

17 Q -- you think you think you owe him --

18 A No, I --

19 Q -- for the construction?

20 A -- I -- I --

21 Q It's over a 100,000 dollars?

22 A No.

23 Q Not that much?

24 A No. No.

25 Q Okay. How much do you think it is?

1 A It was 70,000 dollars.

2 Q Okay.

3 A I remember that was my balance left. I
4 was paying him every month, but --

5 Q But --

6 A -- the market dropped.

7 Q All right. But to get the property
8 back, you were going to pay him the 350?

9 A Uh-huh.

10 Q You were going to pay him the
11 construction loan which was --

12 A Right.

13 Q -- 70.

14 A Right.

15 Q You were going to pay him --

16 A For the gas bills.

17 Q -- for those two -- two --

18 A Right.

19 Q -- gas bills.

20 A Right.

21 Q That's 35,000 --

22 A Uh-huh.

23 Q -- dollars, 17 each. Is that right?

24 A Right.

25 Q Okay. Were you going to pay him back

1 the 5,000 for the loan for the -- to help you file
2 bankruptcy?

3 A Yeah, yeah, you --

4 Q Okay.

5 A -- got to do that. I -- that's right.

6 Q All right. So we're up to 400 and --
7 over 450,000 dollars.

8 A Okay. That'll be fine.

9 Q Is what you were going to pay him to
10 buy --

11 A Uh-huh.

12 Q -- the store back.

13 A Right.

14 Q Okay. And you don't have 450,000
15 dollars right now, do you, Sam?

16 A No, it's coming within short time.

17 Q A short time. Where is it coming from?

18 A I don't want to disclose --

19 Q Okay.

20 A -- where it's coming from.

21 Q You haven't been to a bank to go borrow
22 it.

23 A No.

24 Q Did you?

25 A No.

1 Q Your daughter hasn't been to a bank --

2 A No.

3 Q -- to go borrow it? And nobody has
4 been to a bank on your behalf to go borrow --

5 A No --

6 Q -- money.

7 A -- when the right time comes, I'm going
8 to do it. That's what --

9 Q But you don't have it. You got to get
10 it from somewhere else.

11 A Right.

12 Q Is that right?

13 A We're going to get it. We're going to
14 get it.

15 Q And Payal doesn't have it to -- to buy
16 this building back at this time, does she?

17 A Well if he so much worried about that
18 he's not going to -- make out a mortgage payment
19 and tell the Court that I got to pay every month,
20 I'll do that. What else I can ask you for?

21 Q When Kim was asking you to start paying
22 rent back in, as you testified, April or May of
23 last year, was he asking you to pay --

24 A Uh-huh.

25 Q -- 3750 a month for the rent?

1 A Right. But that thing did not go well.
2 And I don't want my daughter to be involved in
3 this stuff. Let's be a man to man. Don't involve
4 your kids in this business stuff that they have
5 nothing to do with it. This is my issue. He
6 persist on that issue. I'm -- I just cannot do
7 that. That -- that's my principle.

8 Q The sales at your store out there in
9 Lynchburg, it looks like you're averaging about a
10 100,000 dollars a month? Would that be a fair
11 average?

12 A Probably. Yeah --

13 Q Okay. I see --

14 A -- that should be right.

15 Q -- some months --

16 A Uh-huh.

17 Q -- are a 109 --

18 A Yeah.

19 Q -- a month. Some are a 104.

20 A Uh-huh.

21 Q Some a 102.

22 A Uh-huh.

23 Q There's a 90,000.

24 A Right.

25 Q Okay. And that's just from the store

1 part. You've also got a liquor store there.

2 A Uh-huh.

3 Q And the liquor store averages 7 or
4 8,000 a month.

5 A Yeah, about something like that.

6 Q Okay. And from this business that
7 generates over a million dollars a year in
8 sales --

9 A Uh-huh.

10 Q -- you pay your house payment out of
11 it. Is that right?

12 A Yeah. So what's your bottom line
13 question so I can answer it.

14 Q Well that's --

15 A No, I understand I'm listening to what
16 you are saying.

17 Q Okay. But you --

18 A You -- you don't have to go into each
19 classification of the bills. Just tell me what
20 you are looking for so I can answer there.

21 Q Well I'm going to get into what all
22 you're doing with the money. You're paying
23 your --

24 A Okay.

25 Q -- house bill.

1 A Right.

2 Q Your house payment, which is --

3 A Uh-huh.

4 Q -- 1700 dollars a month.

5 A Uh-huh.

6 Q Is that right? You're paying --

7 THE COURT REPORTER: It That a yes?

8 BY MR. PAYNE::

9 Q You're pa--- say --

10 A Yes.

11 Q I'm sorry, say yes.

12 A Yes.

13 Q You're paying back the Internal Revenue
14 Service for taxes that you owe them.

15 A Right.

16 Q Is that correct?

17 A Right.

18 Q You and your wife get paid out of the
19 business? Is that right?

20 A No, I don't get paid. All our bills
21 are paid from the store.

22 Q Okay.

23 A For the --

24 Q You're getting paid 4 or 5,000 dollars
25 a month in addition to --

1 A And the bills and all the stuff.
2 That's what I am saying.

3 Q In addition --

4 A Right.

5 Q -- to getting your bills paid?

6 A No, not in addition to the bills paid.

7 Q Okay.

8 A Let's put it that way. I'm still
9 telling you this is my position. Right now, 20
10 years ago, as Kim says, that there was business.
11 Yes, there was a business. But right now after
12 that, we got here Family Dollar, we got
13 Dollar General, we got Sam's Club, we got this
14 Walmart people. Everywhere the competition is
15 so -- and this lottery stuff which shows sales
16 what we make off that. Seven cents a -- on a
17 dollar. On gas, what we make, seven cents a
18 gallon.

19 Q And --

20 A You know, so all that stuff -- all
21 those times there are many stores closing right
22 now instead of flourishing the convenience
23 business. But the Indian people -- for Asian
24 community got a mentality, let's work hard and
25 even if you don't get -- but as long as we can

1 survive -- they keep on putting hours after hours
 2 from morning to night. I'm not one of that guy.
 3 I have to pay my employees, and I got five
 4 employees, two on each shift, that cost. Nothing
 5 is free. The money goes to the employment and all
 6 this stuff.

7 Q Now in -- in addition to the -- your
 8 sales tax returns, does that include your gas
 9 sales?

10 A It should, yes.

11 Q This includes gas --

12 A Yes, yes --

13 Q -- also?

14 A -- it does.

15 Q Okay. Now -- and the I.R.S. you're
 16 paying them --

17 A Yeah.

18 Q -- something and if --

19 A Yes.

20 Q -- when you filed bankruptcy you owed
 21 the I.R.S. 270,000 dollars?

22 A Right.

23 Q Is that right.

24 A We did O.F.C. offer and compromise
 25 and it came down.

1 Q And they -- and you're paying them --

2 A Because they charge me for all the
3 bills that I billed.

4 Q Did you ever rent any of your other
5 stores that you operated previously?

6 A I don't have any stores.

7 Q I'm talking about previously. You have
8 one in Florence, I think, according to your --

9 A Which one? I don't have any stores.

10 Q No, but you used to have a store.

11 A Yeah, that was Easy Mart.

12 Q Easy --

13 A Long time ago.

14 Q How much --

15 A It sold about four years ago.

16 Q How much was your rent for Easy Mart?

17 A Probably I think about 3500 or 3200.

18 That's what I think. I'm not -- you know.

19 Q Okay. And what was your -- did you own
20 another store over in Florence? Did you have one
21 somewhere else?

22 A No.

23 Q That was it, just -- you had Lynchburg
24 and then --

25 A And the Strickland --

1 Q -- you --

2 A -- in Timmons ville.

3 Q Timmons ville.

4 A Uh-huh.

5 Q Okay. How much was your rent for that
6 one?

7 A No, we -- we never rented the property.

8 Q You -- you own that one?

9 A I don't own it anymore.

10 Q I -- when you did operate
11 Strickland's --

12 A Uh-huh.

13 Q -- did you own that land?

14 A Well 2,000 was the rent.

15 Q Two thousand.

16 A Right.

17 Q Okay.

18 A My brother-in-law was handling it.

19 Q What kind of sales were you doing a
20 month at your store -- your Easy Mart store when
21 you were paying the rent for that store?

22 A I don't remember the -- all those
23 figures in my head right now, you know. You're
24 expecting too much. Like I am a computer.

25 Q You're a smart guy, Sam. I know you

1 can -- you can remember it. What about
2 Strickland's? How much -- what were you -- kind
3 of business were you doing there where you were
4 paying 2,000 a month for rent?

5 A Barely breaking even.

6 Q How much -- what were your gross sales?

7 A About 40 to 50,000 with gas, lottery
8 and all that stuff. It wasn't doing nothing.

9 Q That -- that was a month -- per month?

10 A Yes.

11 Q Okay.

12 MR. PAYNE: I beg the Court's
13 indulgence here for --

14 THE COURT: Take your time.

15 MR. PAYNE: --one second here.

16 THE COURT: Take your time.

17 MR. PAYNE: That's all I have, Judge.

18 THE COURT: All right. Let's see,
19 re-direct?

20 MR. WHEELER: No, sir.

21 THE COURT: All right. Then the next
22 witness. Do y'all want to take a break or
23 y'all -- y'all?

24 MR. PAYNE: How is the court reporter
25 doing?

1 THE COURT: You want to take a break?

2 THE COURT REPORTER: We can.

3 THE COURT: Let's take a break. We're
4 going to take a ten-minute break, which may mean
5 12. We'll -- we'll --

6 (Whereupon, a break was taken
7 from the proceedings.)

8 THE COURT: Mr. Wheeler, I think you
9 were going to continue your case.

10 MR. WHEELER: Yes, sir.

11 THE COURT: Next witness.

12 MR. WHEELER: A couple more. It's real
13 short.

14 THE COURT: Yes.

15 MR. WHEELER: As to character.

16 THE COURT: All right. Yeah, let me --
17 let just swear you in, sir, if I may.
18 Thereupon,

19 Terence R. Wilson,
20 having been first duly sworn by the court,
21 testified as follows:

22 D I R E C T E X A M I N A T I O N

23 MR. WHEELER: Thank you, Your Honor.

24 May it please the court.

25 BY MR. WHEELER:

1 Q If you would, give your full name for
2 the record, please.

3 A Yes, my name is Terence R. Wilson.
4 That's T-E-R-E-N-C-E, Reginald, R-G---
5 R-E-G-I-N-A-L-D, Wilson, W-I-S--- W-I-L-S-O-N.

6 Q And do you -- where do you live?

7 A 2135 Avenue A Maysville,
8 South Carolina.

9 Q All right. Have you lived in
10 Maysville --

11 A All my life.

12 Q All right. And do you know Sam and Kim
13 Patel?

14 A Yes, sir.

15 Q How long have you known them?

16 A Sam since '80 -- like '80, '81 when
17 they had the store in Maysville. That's when me
18 and him started knowing each other. Kim and he
19 was younger then. He was the -- like a little bit
20 young--- older than me. And I didn't know Kim
21 then.

22 Q Uh-huh.

23 A But I knew Sam.

24 Q Have you gotten to know both of them
25 over the years?

1 A Yes, sir.

2 Q Okay. Do you talk with both of them --

3 A Uh-huh.

4 Q -- with any frequency?

5 A Yes, sir.

6 Q Okay. Now --

7 A Normally every day. Going back in two
8 or three years ago, now, we used to see each other
9 three or three times or four time a week -- all of
10 us. And since what happened -- has -- what -- the
11 things that occurred the last year or two, you
12 know, I gets to see Kim -- and he come by to see
13 me at the store, or I go to see him at the store.

14 Q Okay.

15 A And either when something happened in
16 the family or one of his kids get sick. You know,
17 I'm kind of like -- I'm kind of like Sam's little
18 brother, his little hand that kind of keeps him
19 because he get hyper and what not. And I do
20 the -- on with him 20 per--- 30 percent of the
21 time in the day time.

22 Q Okay. And what's your occupation or
23 business? I mean, what do you do?

24 A Well right now we had a transportation
25 company called R.S. Investments of Fraud. We got

1 a government contract. We hauled
2 and stuff like that. And then -- but beforehand
3 and I had a business in Florence -- a business in
4 Florence called Club Hypnotic on
5 1113 Chase Street.

6 Q Okay. And it was a night club?

7 A Yeah.

8 Q All Right.

9 A Entertainment Center.

10 Q Have you helped Sam or Kim at the store
11 over the years or...

12 A Yeah. Yeah, both of them.

13 Q Okay. Do you talk with them -- how
14 frequently do you talk with Kim now?

15 A Once a week, maybe, sometime. We don't
16 get to see each other probably every two weeks if
17 I'm going to be -- I'll run by there. You know,
18 by the -- see him by the store in Lynchburg about
19 four or five months ago. Maybe about four or
20 five -- maybe six months ago when this thing
21 started -- initially started happening back in
22 October somewhere around in that area.

23 Q Okay. Do you consider yourself friends
24 with both of them?

25 A Brothers.

1 Q Okay.

2 A Brothers. They -- they do for me, you
3 know, more than my own brothers do for me.

4 Q Okay.

5 A Yeah.

6 Q What do you know about the situation
7 with -- or what, if anything, do you know about
8 Kim buying the store back when Sam lost it?

9 A Initially it probably wouldn't have
10 happened like that. But I talked Sam into doing
11 what he did far as his foreclosure and all that
12 stuff. I saw what was he going through. As a
13 brother, I tell him, look here, man, it ain't
14 nothing racial. White and black, people do it
15 every day. I say, y'all got a take that Indian
16 pride stuff away. You can't keep taking from one
17 to do the other one. You can't sleep, you can't
18 eat, you getting worser. So I'm the one what kind
19 of talk him into letting all this stuff go in
20 foreclosure. I said, man, just quite paying the
21 people. You do -- you -- you pay them a little
22 bit of money. It -- it ain't -- it ain't helping
23 the situation. Just quit paying them off. You
24 can't pay them. Stop. I'm the one who initially
25 told him -- me and him to stop doing that.

1 Q Is that when everything was going
2 downhill?

3 A I mean he was in the construction
4 business with some guys who was some thieves to
5 start with. And I went and looked -- they
6 thieves, man. In the construction business, they
7 building these 3, 400,000 dollar houses, you
8 can't -- and when you don't know. Sam know how to
9 hold -- don't even know how to hold a hammer. How
10 in the world you be in the business you don't know
11 what you're doing, you know. So I tell him, you
12 going wrong right there. It ain't going to come
13 back up right now. Leave it alone. So that's
14 when he started just letting it go down to
15 survive.

16 Q And, specifically, did you ever have
17 any conversations when the Lynchburg stores were
18 sold in foreclosure with Kim or Sam -- and/or Sam?

19 A Well it was kind of like during that
20 time it was more than him and them two talking,
21 you know. Them two talking in the conversation
22 of, you know, and his brother, Kim, going to help
23 him out far as the store wise so he can keep on
24 surviving. You know, far as the -- far as the
25 rent part of the thing, that didn't come up until .

1 around February, March -- that -- it didn't
2 started then. Yeah, it started around February or
3 March when -- it -- the -- the rent part of the
4 thing didn't started between Kim and Sam -- the
5 rent part of the thing started between Sangita and
6 Cindy when they had a conversation on the phone.
7 Had a little discussion about who this and who
8 that and that's when the thing started getting out
9 of whack.

10 Q Now who -- I don't know if this come
11 up. Who were those two individuals you just
12 mentioned?

13 A Kim's wife and Sam's wife.

14 Q Did they have an argument?

15 A Yeah.

16 Q Okay.

17 A They had a pretty big blowout, and
18 that's what -- that's what brought all this --
19 it's -- it's really some things Sam did and Kim
20 covered for him and Kim wife found out. It kind
21 of went -- you know, he wasn't supposed to do it,
22 and Sam -- Sam promised he wouldn't do this again.
23 But, you know, you just -- people sometime makes
24 mistake in trying hard. That wasn't his -- he
25 didn't have no bad intentions. He had good

1 intentions for all of them. Except the thing just
2 didn't work out. And when the things -- the
3 conversation came between the two wives, that's
4 what made the thing ugly.

5 Q Okay. Is that when rent began being
6 mentioned?

7 A Yeah.

8 Q Had you ever heard anything about rent
9 before that?

10 A I ain't never heard nothing about rent
11 or nothing like that until -- until that
12 conversation came up. And when I tried to talk
13 to -- I calmed Sam and Cindy down. So now I got
14 to come to Sumter and calm them two down. And I
15 tried to talk to them. And the thing went we
16 helping, we helping. And -- and they said --
17 well, Kim didn't say, Sangita said. We helping.
18 We take our money, help them, help them. And
19 Cindy throw her hand in my face. What's
20 nothing -- they just -- you know how to women is,
21 fighting. And they just had it with one another
22 and that's where it went to. And that's when this
23 rent thing came up.

24 Q Now before that, had you ever known --
25 had you ever talked with Kim about Sam was going

1 to be buying the store back?

2 A Yeah.

3 Q Did you know anything about a --
4 anything about buying the store back?

5 A Yeah, Sam supposed to have been paying.
6 I owe -- I owes him money and Sam money. What I
7 had going on, when it got finished, everybody was
8 going to get paid. So nobody owed nobody.
9 Everybody move on.

10 Q Okay. So you owe both of these --

11 A Uh-huh.

12 Q It doesn't have anything to do with the
13 store at --

14 A It --

15 Q -- Lynchburg?

16 A -- had nothing to do with the store in
17 Lynchburg. Nothing to do with the store in
18 Boulevard. I owe both of them money. They like
19 brothers. They help me.

20 Q Okay.

21 A They took my hand when nobody else did.

22 Q Do you -- have you specifically had
23 discussions about some of the money that you owe
24 to Sam being used to buy back that store at
25 Lynchburg?

1 A Uh-huh. Kim knew that.

2 Q Okay. Have you had specific
3 discussions with Kim about Sam being able to use
4 that money to buy the store back at Lynchburg?

5 A Uh-huh.

6 Q Okay.

7 A Uh-huh.

8 THE COURT REPORTER: Is that a yes?

9 THE WITNESS: Yes. Yes.

10 BY MR. WHEELER:

11 Q Okay. Yeah -- yeah, please answer yes
12 or no --

13 A Yes.

14 Q -- so she can type it up. Has Sam --
15 Sam's never left the store at Lynchburg. He's
16 operated it even when he was in financial trouble,
17 he's always operated --

18 A Yes, sir.

19 Q -- the store?

20 A Yes, sir.

21 Q From day one when Kim bought it, did
22 you have any knowledge of Sam being able to buy
23 that store back?

24 A Yes.

25 Q Okay. Were tho--- was that from

1 conversations you had with Kim as well as Sam?

2 A All three of us.

3 Q Okay.

4 A And that was the -- that was the -- you
5 know, what I was thinking, that was the initial
6 plan. When everybody -- when the thing finished
7 with me, everybody get paid, everybody move on.

8 Q Okay.

9 A That was my understanding with the
10 three of us. What happened in between that, I
11 don't know.

12 Q Okay.

13 A Just like I told you, it came with
14 them -- the women on the phone fighting and
15 fussing. And that's where they went to.

16 Q And that was -- was that in last
17 year -- early 2013?

18 A Yeah. Yes, sir. Yes.

19 Q Okay. And I believe the rent came up
20 in April, May -- I think July is when that letter
21 of 2013.

22 A Yeah, it -- it was right after Cindy
23 came back that -- it started happening right after
24 Cindy came back from India. And that was like in
25 March when they was on the phone.

1 Q Okay.

2 A And they -- you know, I tried to be the
3 mediator to keep things down. Before I knowed, it
4 was out of hand.

5 Q Okay. Had whatever they -- and I don't
6 know if it's details of the argument or if anybody
7 really cares to know about -- but did it have
8 anything to do with the store in Lynchburg?
9 The -- whatever they -- they got in an argument
10 about?

11 A Not really.

12 Q Okay.

13 A It was about Kim paying a gas bill for
14 Sam.

15 Q Okay. All right.

16 A That's way -- that's way it initially
17 started. It -- it started -- it really started
18 from me and Kim telling Sam about this scam guy
19 that he was dealing with all these years. Quit
20 doing that, quit doing that. It ain't nothing but
21 a scam. You know, ain't nobody going to get no
22 money back from it. Sam kind of went and snuck
23 and did it again. Put him in a bind again. So
24 now that puts everybody in a bind. Everybody
25 fighting and for -- the business it keep on going

1 because he got employees there. You know, the
2 police department come there and they gas up
3 there -- everybody gas up there. So you know,
4 it's like the store in the neighborhood. If it
5 close down, it's hurting -- the town hurting.

6 Q And is that that Cobb, Dean Cobb, is
7 that who you're referring to --

8 A Yes.

9 Q -- Sam did --

10 A Yeah, yeah.

11 Q And I believe he's listed on the
12 bankruptcy filings as being --

13 A Yeah.

14 Q -- someone that --

15 A Yeah, he need to be listed on more on
16 that.

17 Q I don't know. I don't -- is there any
18 doubt in your mind -- did you hear Mr. Kim Patel
19 say that he intended to re-convey that store to
20 Sam when he got paid back?

21 A That was my understanding.

22 Q Okay.

23 A That was my understanding.

24 Q From Sam or from Kim?

25 A From both of them.

1 Q Okay.

2 MR. WHEELER: All right. If you will,
3 answer any questions that Mr. Payne may have for
4 you.

5 C R O S S E X A M I N A T I O N

6 BY MR. PAYNE:

7 Q And how much was he going to have to
8 pay back?

9 A It was 478,000 dollars. That was the
10 initial amount.

11 Q And how much does -- how much do you
12 owe Sam for loans?

13 A Right now? 200,000.

14 Q How much did he loan you in 2013?

15 A Last year?

16 Q Right.

17 A Sixty, 70,000 dollars.

18 Q All right. And then in 2012, how much
19 did he loan you?

20 A Around about the same thing.

21 Q And then previous year, how much did he
22 loan you?

23 A Eleven? Probably about the same thing.

24 Q Okay. And have you ever paid him back
25 any of that money?

1 A Not one penny yet.

2 Q All right. And do you have 200 and
3 some odd thousand dollars to pay him back right
4 now with?

5 A Not today.

6 Q Okay.

7 A In the near future.

8 Q Did you own Pot Belly Kitchen?

9 A Did I own it? No, huh-uh.

10 Q That wasn't yours?

11 A No, huh-uh.

12 Q Okay. You just had some equipment, I
13 think he said, stored in one of the buildings?

14 A Where I went -- a friend of mine, she
15 kind of did the thing, and I kind of handled it
16 because I knew Sam and Kim there. And I just in
17 between what we had going on, I helped them out.
18 And I really benefited the thing and she really
19 did it.

20 Q All right. But you -- were you in
21 there in helping run the Pot Belly Kitchen?

22 A Yes.

23 Q Okay. And Pot Belly Kitchen did --
24 they owed Sam some rent for using that store?

25 A Yeah -- yeah.

1 Q And they did -- and they never paid
2 them?

3 A Yeah, that was -- that's some of the
4 money that I owe Sam.

5 Q Okay. And how much did they -- how
6 much rent did they fail to pay to Sam?

7 A Probably stayed there a year and a
8 half, two years, something like that.

9 Q And how much was he charging them
10 for --

11 A A thousand dollars a month.

12 Q A thousand a month?

13 A Yeah. No, five -- I know 500 wasn't
14 it, Sam?

15 MR. WHEELER: Y'all -- you can't do
16 that.

17 THE WITNESS: Five hundred, 500.

18 BY MR. PAYNE:

19 Q Five hundred.

20 A Yeah.

21 Q And that's for the little BP Station?

22 A Yes. Yes, sir.

23 Q Okay. And they were in there a year
24 and a half or so?

25 A Yeah, they were there about a year.

1 Q And never paid Sam the rent that he --

2 A Huh-uh.

3 Q -- asked for?

4 A No.

5 Q And did you ever ask -- who's the lady
6 in there running it that you were friends with?

7 A Yeah, Pamela Boswell.

8 Q Pamela --

9 A Yeah, Boswell.

10 Q -- and y'all were -- is that your
11 girlfriend or y'all...

12 A We were friends.

13 Q All right.

14 A We were close friends.

15 Q All right. Do you stay with her kind
16 of friend or just --

17 A No. Huh-uh

18 Q Okay. Just -- did you ever ask Pamela
19 about paying that rent?

20 A Well I kind of set the agreement up
21 for -- between -- the thing was kind of between me
22 and Sam, you know.

23 Q How much do you owe Kim?

24 A Eighteen thousand.

25 Q Total?

1 A Uh-huh.

2 Q Did you call Kim recently about wanting
3 to buy this store in Lynchburg?

4 A No, I didn't call him. Me and him --
5 just like I tell you, me and him talk back and
6 forth probably once or twice a week sometime like
7 that.

8 Q But you didn't call him and -- and say
9 you wanted to buy the store?

10 A No, huh-uh. Huh-uh.

11 Q Because you didn't have any money to
12 buy it when --

13 A Ain't no need to --

14 Q Right.

15 A Ain't no need to present nothing until
16 it's -- until it's there.

17 Q Okay. And did you ask him what Sam
18 owed him at that -- during that time when y'all
19 spoke?

20 A No, not lately because I already done
21 knew -- I knew from a year and a half ago.

22 Q Okay.

23 A And did -- the -- the new bills -- the
24 new bills that -- the -- the -- that new gas bill,
25 the last one he did for him last year -- last year

1 and that was added onto it, and he was talking to
2 me about paying the court, you know, he wanted his
3 money back far as the court thing and -- and the
4 rent. I said, well, I said, Kim, I ain't kind of
5 into that. You know, I know where he was the
6 initial money and all the money Sam owe you and
7 the money I owe you, we owe you 478,000 dollars.
8 I said, you want a little interest on it, then
9 it'll have to be worked out, you know. And that
10 was the last thing. And -- and me and him talked
11 last Monday -- last Monday or Tuesday, and that
12 was the last conversation we had of it.

13 Q And no doubt in your mind that Kim was
14 asking for rent back in February. I think you
15 testified 2013 he was asking for rent.

16 A Well he started -- he --

17 Q Or was it January?

18 A No, it started -- the rent started
19 in -- the conversation I heard about the rent --
20 that I heard it started somewhere around March --
21 April -- around the first of April. Because when
22 the -- the wives are having dis--- dispute, me and
23 Sam got in his truck and came over here to meet
24 Kim at Taco Bell. A lot of the language was
25 speaked in Spanish. So, you know, I don't get the

1 Spanish. But then they'll tell me what they're
2 saying, you know. Because I just tell him, y'all
3 might be cussing me out, and I don't like that.
4 So they know how I am, you know. So you know, it
5 was -- that's when I -- that's when it -- when I
6 heard about the -- the start of the rent thing.

7 Q And even though Kim was asking for rent
8 at that point, Sam loaned you some more money
9 since that time, didn't he?

10 A Yeah. Yes, sir.

11 Q Okay.

12 MR. PAYNE: Okay. All right. That's
13 all I have.

14 MR. WHEELER: No further questions.

15 THE COURT: I have a question. What
16 was the 478 -- what -- what did you say that was,
17 the 478,000?

18 THE WITNESS: The total figure that Sam
19 owes him and -- and my money in -- with Kim we owe
20 him 478,000 dollars.

21 THE COURT: The two of y'all -- oh,
22 okay. All right. And that's --

23 THE WITNESS: The building --

24 THE COURT: I just --

25 THE WITNESS: -- for the building --

1 THE COURT: -- I just missed that.

2 THE WITNESS: This -- the building,
3 the -- the initial money that Sam got from Kim or
4 I got from Kim, we owe him 478,000 dollars --
5 exact figure.

6 THE COURT: All right. Okay.

7 MR. WHEELER: I don't have any further
8 questions.

9 THE COURT: All right.

10 THE WITNESS: All right.

11 THE COURT: Another witness?

12 MR. WHEELER: One more witness, Your
13 Honor.

14 THE COURT: All right. Y'all --

15 MR. WHEELER: Let y'all switch chairs.

16 THE COURT: Switch.

17 Thereupon,

18 Payal Suresh Patel,
19 having been first duly sworn by the court,
20 testified as follows:

21 D I R E C T E X A M I N A T I O N

22 BY MR. WHEELER:

23 Q All right. If you would give your full
24 name for the record.

25 A Payal Suresh Patel.

1 Q And you are Sam's daughter. Is that
2 correct?

3 A Correct.

4 Q Where do you live?

5 A In Florence.

6 Q And where are you employed?

7 A McLeod Health.

8 Q And what do you do?

9 A I'm a physician.

10 Q Okay. And I believe you're a -- what's
11 the --

12 A Hospitalist.

13 Q -- hospitalist. So you work in the
14 hospital all -- all the time as a physician there?

15 A Yes, sir.

16 Q All right. Do you have very much
17 knowledge about your dad's business dealings, in
18 particular this store other than helping him to --

19 A Not really. Not -- not the daily in's
20 and out's of what goes on.

21 Q Okay. Were you raised largely at that
22 store in Lynchburg, though?

23 A After we moved here for -- I was there
24 for a while.

25 Q And that's what I want to talk to you

1 about a little bit. How old were you, to the best
2 of your recollection, when y'all moved to
3 South Carolina?

4 A I was ten.

5 Q And where did your family live at that
6 time?

7 A In Lynchburg.

8 Q Did y'all live --

9 A Behind the store in a trailer.

10 Q Behind the store in a trailer.

11 A Correct.

12 Q And how long did y'all live there?

13 A For a while. We moved down here in
14 '89. My family -- we moved to Florence probably
15 in '91, '92. So for -- for that time. But we
16 lived in the trailer, and then like my dad said,
17 they -- they built -- built an apartment over the
18 liquor store which was next door. So then we kind
19 of lived there, too.

20 Q So your -- your immediate family moved
21 to the apartment over the liquor store?

22 A Correct.

23 Q And at that time, did your Uncle Kim's
24 family live in the trailer or no?

25 A I --

1 Q It's not that important. I'm just --

2 A I -- I -- I think they lived in --

3 Q -- thinking if it --

4 A -- the trailer for a little while. And
5 then I -- I know that we all lived in the
6 apartment for a while.

7 Q Okay.

8 A I don't remember exactly the dates,
9 months, years.

10 Q And is that apartment the one the your
11 dad was talking about eventually burned or --

12 A Yes.

13 Q -- there was a fire?

14 A Correct.

15 Q And I guess everybody moved out --

16 A Correct.

17 Q -- after that. Nobody's lived...

18 A No, no, no, it was not livable.

19 Q Okay. And so how old were you when
20 y'all moved to the Florence proper, I guess.

21 A I was in -- I was in sixth grade. I
22 was 11. So no -- when we bought our house in
23 Florence, I was in eighth grade -- eighth grade.

24 Q Okay.

25 A So I was 13. So that would have been

1 12 or 13, okay -- '93 maybe -- '92, '93.

2 Q And did you graduate from high school
3 at --

4 A Yes.

5 Q -- Florence? Which school?

6 A West Florence.

7 Q All right. And where did you go to
8 college and finish school?

9 A At Highpoint University and then med
10 school I went to Saint George's University.

11 Q Okay. And did you move straight back
12 to Florence?

13 A No, I did my residency in Baltimore.

14 Q Okay. And when did you move back to
15 Florence?

16 A In 2011 --

17 Q Okay.

18 A -- after residency.

19 Q Did everybody pretty -- and your
20 grandmother and grandfather lived with -- well,
21 your grandmother still lives with your parents.
22 Is that correct?

23 A Correct.

24 Q Did your grandfather live with them
25 until he passed away?

1 A Yes, he did.

2 Q Had the family all worked together in
3 the store at least for -- as -- as being a child?

4 A Yes.

5 Q And it sounds like a very traditional
6 store if everybody working their way --

7 A Correct.

8 Q -- way up to be successful. Has the
9 family been close?

10 A Some--- somewhat. Somewhat. I mean
11 we -- we did things together, some things. We --
12 we didn't spend every weekend together but...

13 Q But and -- and one reason I wanted --
14 have y'all continued to be close? When did your
15 Uncle Kim and his family move to Sumter to the
16 best of your recollection?

17 A After the fire, they lived with us in
18 Florence for a couple of weeks. And the commute
19 was too long from Florence to Sumter. So that --
20 I think that's when they moved to Sumter.

21 Q Okay. Did you continue to see them
22 after they moved to Sumter?

23 A We did.

24 Q Did they come over to your home?

25 A They did.

1 Q The whole family?

2 A Yes.

3 Q And did you go to their home?

4 A Yes, we did.

5 Q Your whole family?

6 A Correct.

7 Q Did you -- his children are younger
8 than you. Is that right?

9 A Yes.

10 Q How old are Rog and Jay?

11 A Jay just finished college. So he's
12 probably 21, 22. Rog is probably 19 -- maybe 18,
13 19. I'm not sure exactly --

14 Q Okay.

15 A -- how old he is.

16 Q Did -- do you remember driving them
17 around as a teenager?

18 A Yes, they us--- used to come spend
19 weekends at our -- my parents' home and we used
20 to -- I -- I was in high school. They were
21 younger so -- and we would go and get ice cream
22 and we would do things like that. Take them out
23 their aunt's house who lived in Florence.

24 Q Okay. And do you talk to them now?

25 A Not recently, but the last time I spoke

1 to Jay was probably before -- when I was -- before
2 my second child was born. I -- I had texted him
3 to let him know that we were having another baby,
4 and he was excited for me. And -- but I think
5 that might have been probably the last time.

6 Q I think you told me he bought gifts.

7 A For my first child.

8 Q Your first one.

9 A So when I first moved to South Carolina
10 in 2011, he'd never met Mya -- that's my first
11 daughter -- and so he was excited to meet her. So
12 he came to my parents' house and -- from Clemson
13 to come see her.

14 Q Okay.

15 A That was in 2011, November.

16 Q And did -- have they -- have -- have
17 your cousins talked to you about career courses
18 and things like that about school?

19 A My cousin, Jay, called me when I was in
20 residency. This is when we lived in Maryland --
21 about college, and what he was going to major in,
22 and what his parents wanted him to do, and what he
23 wanted to do, and just for kind of advice and
24 guidance. And so I talked to him then about that.

25 Q Okay. And when did you get married?

1 A 2006.

2 Q Okay. And where did you get married?

3 A In Florence.

4 Q Okay. And did your uncle, aunt and
5 cousins come to --

6 A Yes --

7 Q -- the wedding?

8 A -- they were all at my wedding.

9 Q And did y'all -- parties or anything
10 like that prior --

11 A Prior to the wedding --

12 Q -- to the wedding?

13 A -- yes, they came. My aunt helped come
14 prepare. You know, Indian weddings are -- they're
15 a little different, and they take up a lot of
16 time. And they're a couple of da--- I mean, it's
17 not a da--- an hour long event. I mean, it goes
18 on for days, and they were there for everything.
19 And even prior to that to help with the
20 preparations.

21 Q So you've -- I mean, fair to say you've
22 seen and talked to your uncle, your aunt, your
23 cousins as much as any family over the last maybe
24 10, 15 years just generally?

25 A Maybe. I -- I mean -- yeah, we --

1 we've talked.

2 Q And now, I think you mentioned at the
3 outset that you and he have never talked about any
4 of these business --

5 A Never.

6 Q -- dealings at all.

7 A No. No.

8 Q Okay. Is your sole involvement as the
9 member -- sole member of S and P Grocery -- you
10 did that so your dad could keep --

11 A Correct, just to kind --

12 Q -- going?

13 A -- of help him --

14 Q Okay.

15 A -- out.

16 Q And did you know much of any about the
17 situation with this building and -- and buying the
18 store back or anything until the issue about
19 requesting rent came up sometime last year? Did
20 you know anything about it before then?

21 A Not too much. I mean I knew when my
22 dad had asked to -- you know, to help him in the
23 way that I did -- that my uncle had bought the
24 store, and he was going to run the store for now
25 and until he was able to buy it back. And in the

1 meantime, if I wouldn't mind helping with the
2 license and that sort of thing.

3 Q Okay.

4 A And then when the rent thing came up,
5 obviously, he told me about that.

6 Q Okay. But that didn't -- when was the
7 first time you remember hearing anything about
8 that?

9 A The rent thing?

10 Q Yeah.

11 A Probably around Feb--- March --
12 February. I don't know --

13 Q Of --

14 A -- around that time.

15 Q -- last year?

16 A Correct.

17 Q Okay. And I know you never talked with
18 your uncle about it, but from day one, was your --
19 did you believe your dad thought he was going to
20 be able to buy it back?

21 A Yes.

22 Q Okay.

23 A Yes.

24 Q And he intended to pay your uncle back
25 what he had spent --

1 A Correct.

2 Q -- for it? Okay. It -- would you
3 agree with this -- and -- and I was talking about
4 how much y'all did together as a family and to
5 being around the family. Would you agree with the
6 assessment -- and I think your uncle testified
7 that the only thing he heard from your father
8 since 1992 or '93 was if he needed money?

9 A No, because he was at my wedding, at my
10 brother's wedding. I went to his home when my
11 cousin's, from my mom's side, came to visit from
12 Ohio. I took them over to her -- his house -- his
13 wife -- my aunt made lunch, went to Jay's birthday
14 parties at his home. So I -- I -- I don't --

15 Q The family was not estranged
16 since 1992?

17 A No, not estranged. I -- I -- I
18 wouldn't venture to say we were the closest of
19 families, but we were not estranged. We -- we did
20 things together.

21 Q Okay.

22 MR. WHEELER: I beg the Court's
23 indulgence one moment.

24 BY MR. WHEELER:

25 Q If your dad have a definite and certain

1 opportunity to be able to buy back his store
2 within a time frame, would you help him if you
3 were able?

4 A Absolutely.

5 Q And do you believe that's been his
6 intent if he can buy his -- if he can buy that
7 store back and pay your uncle back --

8 A Yes.

9 Q -- within a reasonable amount of time?

10 A Yes.

11 Q Do you believe he would have made the
12 expenditures that he's made on that store if he
13 didn't think he was going to be able to buy it
14 back?

15 A No, they -- they don't have the money
16 to just -- no, I don't -- I don't think so.

17 Q Okay. And have you had to -- to help
18 him along the way as much as you could in the last
19 year or two?

20 A Yes, I have and I'll -- I'll continue
21 to do so.

22 Q Okay. All right.

23 MR. WHEELER: Thank you. That's all
24 the questions I have. Answer any Mr. Payne may
25 have.

1 THE COURT: Mr. Payne.

2 C R O S S E X A M I N A T I O N

3 BY MR. PAYNE:

4 Q Let's see. Dr. Patel, I'm Jeff Payne.
5 I got a few questions here for you.

6 A You call me Payal.

7 Q Payal. The -- it -- the business, you
8 don't have any involvement with the day-to-day
9 business that's being conducted at the store in
10 Lynchburg --

11 A No, sir.

12 Q -- do you? And you're not aware of
13 even what the sales are --

14 A No, sir.

15 Q -- or the profits?

16 A No, sir.

17 Q Okay. But you do think they are making
18 some profits?

19 A I -- I would assume so.

20 Q All right. Have you -- they're on your
21 tax return, I would think.

22 A Yeah.

23 Q Are they giving you some cash to pay
24 the taxes that you'll incur?

25 A No, I mean.

1 Q And your -- your dad just handles that
2 for you?

3 A Correct.

4 Q Does he -- does he handle your tax
5 return --

6 A Yes.

7 Q -- preparation, too?

8 A Yes.

9 Q I think you testified when I took your
10 deposition that -- that you didn't have 350
11 thou--- I don't even think you knew what the
12 purchase price -- you didn't know what the
13 purchase price of the store was, did you?

14 A Not exactly, I mean...

15 Q Okay. And you didn't have 350,000
16 dollars to buy the store back.

17 A No, not in --

18 Q And --

19 A -- my pocket.

20 Q And your dad didn't have it --

21 A Correct.

22 Q -- to buy it back. And you assumed
23 that your uncle was going to owner finance it. He
24 was going to --

25 A Correct.

1 Q -- allow him to make payments to buy it
2 back. Is that right?

3 A Something like that.

4 Q Okay. Now at some point, your dad told
5 you that Kim was asking that he pay some rent. Is
6 that right?

7 A Yes.

8 Q And Kim was asking that he pay 5,000
9 dollars a month --

10 A Correct.

11 Q -- for the rent. And your dad thought
12 that was too high.

13 A Yes.

14 Q And did you discuss with your dad that
15 he should -- or that y'all should start paying
16 some rent for the store?

17 A I did not think he should pay rent
18 because we never -- that was never the intention
19 was to pay rent.

20 Q Okay.

21 A If he was asking for 5,000 or 3750 or
22 whatever the number was towards buying the store,
23 then we could work on coming up with that type of
24 money, and I'd be more than willing to help him do
25 that if he couldn't do it on his own. But paying

1 rent was not -- that was not an option. We're not
2 working this hard to pay rent. We, meaning my
3 parents.

4 Q Okay. And you -- are you aware of them
5 paying Kim anything since he's bought this store?

6 A I -- no, not that I know of.

7 Q And don't you think that's pretty nice?

8 A He didn't have to do it. I think that
9 it was very kind of that he do it -- that he
10 helped -- that he bought the store back for my
11 dad. I was -- we were all grateful for that, but
12 he shouldn't have done it if that's not what he
13 wanted to do.

14 Q Right. And how long was it before your
15 dad was going to pay him back what he owed him and
16 buy the store back?

17 A Whenever he could. I don't know -- I
18 don't -- I don't know the number of years
19 whether --

20 Q Okay.

21 A -- he's saying three, four, five, ten,
22 twenty, I don't know.

23 Q He never talked to you about that?

24 A No.

25 Q Okay.

1 MR. PAYNE: That's all I have.

2 THE COURT: Re-direct?

3 MR. WHEELER: No, sir.

4 THE COURT: Okay. May I ask a
5 question?

6 THE WITNESS: Yes, sir.

7 THE COURT: Where did you go to
8 elementary school?

9 THE WITNESS: Delmae in Florence.

10 THE COURT: Where is it?

11 THE WITNESS: Delmae.

12 THE COURT: Delmae, I'm not familiar
13 with that. And middle school?

14 THE WITNESS: Moore Middle School.

15 THE COURT: What in -- oh, West
16 Florence?

17 THE WITNESS: Yes, sir.

18 THE COURT: Seems like a great -- a
19 great story -- a great success story, hard work to
20 make your way, succeed, get education, family
21 pulling together. I just think it's very nice.

22 THE WITNESS: I think so, too.

23 THE COURT: I think y'all -- y'all have
24 done well. Thank you very much.

25 MR. WHEELER: Thank you.

1 THE COURT: Anything else.

2 MR. WHEELER: And that's the
3 Defendant's case, Your Honor.

4 THE COURT: Anything in reply?

5 MR. PAYNE: No, sir.

6 THE COURT: In closing statements or
7 you just want me to wait on briefs?

8 MR. PAYNE: Yeah, I just re--- reserve
9 for the --

10 MR. WHEELER: How -- how --

11 THE COURT: What do y'all --

12 MR. WHEELER: I'll do it fast as you
13 need us to.

14 THE COURT: What -- I -- I'm
15 not pushing you, but -- but if I wait too long,
16 then I'll -- you know, I'm getting old. I might
17 forget things.

18 MR. PAYNE: Two weeks?

19 MR. WHEELER: Certainly. Two weeks?

20 MR. PAYNE: Not this -- next Friday?

21 MR. WHEELER: That'd be fine.

22 MR. PAYNE: Not this Friday, but the
23 next.

24 THE COURT: Yeah. Yeah, and if I'm not
25 out of line, please -- well, I guess I'm sitting

1 here so I get to say this, so I am out of line.
2 We can -- we've got law and we going to -- we're
3 going to work and we're going end this dispute in
4 the eyes of the law. But what I see that won't be
5 ended or mended is the family relationship. And
6 if that can be done, that would have to be done
7 voluntarily between the parties. I don't know if
8 that can be done. But -- but y'all have -- y'all
9 have pulled together and done some great things
10 for your family here. And -- and it's -- it's --
11 I just think it's a great story with a lot a truth
12 and impact in it. So if that can be worked out,
13 fine. I'm going to proceed as though that's not
14 going to happen. And I'm going -- when I hear
15 from these lawyers, I'm going to issue a ruling
16 and unless you appeal it and get me reversed,
17 that'll end the -- the civil dispute, but it won't
18 mend the family fabric. And so I encourage you to
19 consider that. If there's something you can do
20 before I issue my order or any time, let me
21 encourage you on a personal level to do that.
22 With -- with that, meddling comment, I'll -- I'll
23 call it -- today's hearing to a close. And thank
24 you all for your kind participation. Thank you
25 very much.

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MR. PAYNE: Thank you very much, Your
Honor

THE COURT: Yes, sir.
(Whereupon, at 12:12 p.m. the
foregoing hearing was concluded.)

1 CERTIFICATE OF REPORTER

2 State of South Carolina

3 County of Florence

4
5 I, Erica Norwood, court reporter and
6 notary public for the State of South Carolina, do
7 hereby certify that I reported the foregoing
8 proceedings at the above-stated time on the
9 above-referenced date.

10 I further certify that I am neither
11 attorney nor counsel for, nor related to or
12 employed by any of the parties connected to the
13 action, nor am I financially interested in the
14 action.

15 Witness my hand at Florence, South
16 Carolina, this the 6th day of May, 2014.

17
18
19 _____
20 Erica Norwood,
21 MY COMMISSION EXPIRES:
22 March 2, 2022
23
24
25

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF LEE) C/A No. 2013-CP-31-194

A&P Enterprises, LLC,)

Plaintiff,)

v.)

SP Grocery of Lynchburg, LLC,)
Payel Suresh Patel and Suresh)
"Sam" Patel,)

Defendants.)
-----)

COPY

MOTION TO RECONSIDER

Wednesday, October 22, 2014
10:26 a.m. - 11:27 a.m.

The hearing before the Honorable Walter G. Newman, Special Referee for Lee County, was taken at 27 West Calhoun Street, Sumter, South Carolina on the 22nd day of October, 2014 before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:**S. Jahue Moore, Esquire**

MOORE TAYLOR LAW FIRM

1700 Sunset Blvd.

West Columbia, South Carolina 29169

Attorney for the Plaintiff

William W. Wheeler, III, Esquire

JENNINGS & JENNINGS, P.A.

Post Office Box 106

Bishopville, South Carolina 29010

Attorney for the Defendants

Also Present:

Kamlesh Patel, for the Plaintiff

Sangita Patel, for the Plaintiff

Suresh "Sam" Patel, Defendant

Chandrika Patel, Wife of the Defendant, Suresh Patel

INDEX

Certificate 46

EXHIBITS

(There were no exhibits marked during this hearing.)

1 **THE COURT:** Good morning everybody. We're here this
2 morning for a motion to reconsider. Court
3 reporter, I'll ask that you have your data that
4 you need to ---

5 **COURT REPORTER:** I have everything I need.

6 **THE COURT:** You've got everything? All right, thank
7 you, sir.

8 **COURT REPORTER:** You're welcome, sir.

9 **THE COURT:** All right. How is everybody this
10 morning? Mr. Moore, you made the motion. Do
11 you have a copy of your motion with you?

12 **MR. MOORE:** Oh, do I have a copy of my motion with
13 me? I think I do.

14 **THE COURT:** I'd love to get a copy. Do you have an
15 extra copy or can I just run a copy off?

16 **MR. MOORE:** We can run a copy. I thought I had
17 brought it in with me when I came.

18 **THE COURT:** Can you ---

19 **MR. MOORE:** Wait a minute. I think I have it right
20 here.

21 **THE COURT:** I have been very careful keeping up with
22 everything. The only thing I misplaced was the
23 motion we're here on this morning.

24 **MR. MOORE:** I have it right here. There we are.

25 **THE COURT:** Thank you.

1 MR. MOORE: And you can just make a copy before we
2 leave.

3 THE COURT: Okay. That will fine.

4 MR. MOORE: Because I've -- I've got what I planned
5 to say already written down somewhere else ---

6 THE COURT: All right.

7 MR. MOORE: --- so I think we're good.

8 THE COURT: All right, sir. As the moving party,
9 please proceed.

10 MR. MOORE: We very much appreciate your scheduling
11 this for us this morning. As the Court will
12 know, I did not actually try this case.

13 THE COURT: Yes.

14 MR. MOORE: But I have reviewed the record in detail
15 and done a significant amount of work trying to
16 get ready for this morning. To begin with, if
17 we might start off by simply placing on the
18 record that we're going to make some specific
19 comments in regard to the order, but we also
20 would like to stand on the arguments previously
21 made below. So, we're simply asking for
22 reconsideration. But there are some matters
23 we'd like to point out to the Court which we
24 think the Court may have overlooked in addition
25 to what has previously been argued.

1 THE COURT: All right. So you don't waive anything
2 that you've previously presented or which has
3 been presented for your client.

4 MR. MOORE: Correct.

5 THE COURT: Yes, sir.

6 MR. MOORE: The record reflects that Mr. Sam Patel,
7 prior -- previously owned the property which is
8 the subject of the case today. And the record
9 reflects that Mr. Sam Patel went into
10 bankruptcy. And through the bankruptcy
11 proceeding there was a foreclosure which
12 resulted in my client buying the property out
13 of foreclosure. So Mr. Sam Patel and S&P (sic)
14 Grocery of Lynchburg and Mrs. Patel basically
15 lost the property in a bankruptcy and
16 foreclosure. And it's their position that --
17 or it's the position of Sam Patel and his wife
18 that through the foreclosure there was an
19 agreement made that his brother would buy the
20 property for him and would buy it out of
21 foreclosure and when he got on his feet he
22 could buy it back. That's basically what the
23 argument is. That's the position that Sam
24 Patel took throughout the entire litigation, is
25 there was an agreement through the bankruptcy

1 and foreclosure that he could buy the property
2 back. And the Court basically found that while
3 there was no specific terms of an agreement,
4 that there was promissory estoppel and that the
5 Court was going to basically enforce an
6 agreement that he sell it back to his brother.
7 Well, one of the problems we have here is if
8 Mr. Sam Patel, if his position is correct, (A),
9 his equitable interest would not belong to him.
10 His equitable interest, which would have been
11 created by virtue of that promise, would have
12 belonged to the estate, the bankrupt estate.
13 Any equitable interest he may have claimed by
14 virtue of some contract he claims to have had
15 either prior to, during or after the
16 foreclosure would basically belong to his
17 creditors, not to him. The record is
18 uncontroverted from the very first statement of
19 counsel for Mr. Patel indicating that this was
20 all a result of a bankruptcy. Well, if that is
21 in fact the case as the record tends to
22 indicate, if Mr. Patel had an equitable
23 interest, the equitable interest would have
24 belonged to his creditors and not to him. Upon
25 the filing of his bankruptcy, that equitable

1 interest would have enured to the benefit of
2 the estate. The real problem that we have here
3 is that that equitable interest should have
4 been disclosed, if claimed, on the bankruptcy
5 filings. And if it was not disclosed on the
6 bankruptcy filings, and if it was an asset or
7 a disguised way to basically purchase the
8 property back through the use of his brother,
9 in effect what we have here is a conspiracy of
10 some sort to protect -- not of some sort,
11 basically a fraud upon his creditors. What you
12 basically have here is a non-disclosure of the
13 claimed equitable interest on the bankruptcy
14 forms. You have a claimed equitable interest
15 which apparently was either created during or
16 before the bankruptcy which is alleged to have
17 created an equitable interest in him which he
18 should have disclosed to his creditors, didn't
19 disclose. And apparently now he seeks to take
20 advantage of not only the bankruptcy but by
21 virtue of some sort of an equitable interest
22 which he didn't disclose and was not subject to
23 being used to pay his creditors. In effect you
24 have the classic fraudulent scheme where you
25 allow something to be taken by a family member

1 in hopes of defeating the rights of your
2 creditors to the equity in the property. If
3 that is the case, as it appears from the record
4 to have been, you have what would be a
5 fraudulent activity on the part of Mr. Sam
6 Patel which would obviously create the
7 inability to rely on an estoppel argument
8 because estoppel lies in equity. And there's
9 the old maxim that he who seeks equity must
10 first do equity, and that a party who comes to
11 equity for relief must do so with clean hands.
12 And if in fact what he says is true, as a
13 matter of law he is not coming with clean
14 hands. And as a matter of fact, the -- there
15 are two points to be made. (A), the interest
16 didn't belong to him. If there was an
17 equitable interest, it belonged to the bankrupt
18 estate, which apparently has never been dealt
19 with in the bankruptcy court because it
20 apparently wasn't disclosed to the bankruptcy
21 court. There's no indication that the
22 bankruptcy court ever released its claim, any
23 equitable claim, nor even knew of the equitable
24 claim. And second of all, by virtue of the
25 fact that the claim is not his, he can't assert

1 it. But even if he can assert it or did assert
2 it, it would be obvious that this appears to be
3 a way to get around the obligations to his
4 debtors and therefore he is coming with unclean
5 hands, cannot seek the relief of equity.
6 That's one basic problem I think that hasn't
7 been fleshed out in this case and it needs to
8 be considered. And I believe it basically
9 defeats the claim of the Patels to relief by
10 virtue of what was proper as their position
11 that, (A), they had an equitable claim to
12 promissory estoppel and, (B), they had some
13 sort of an equitable interest in the property.
14 The next problem I think is that -- that the
15 order clearly provides that there is not a
16 defined contract. There was -- I think the
17 order which His Honor has issued indicated
18 there was no clear meeting of the minds
19 sufficient to establish a cause of action for
20 either party regarding the ownership. Well,
21 the problem we wind up with is when we get into
22 the law of promissory estoppel, if we take a
23 look at the case law which is very solid on
24 this and we've got several cases we can cite,
25 but there must be, for there to be promissory

1 estoppel, there must be a promise which is
2 unambiguous in its terms. Now, when we have a
3 finding by the Court that there was no meeting
4 of the minds and there was an insufficiency in
5 regard to the actual terms of what was agreed
6 to, we wind up with one of the elements of
7 promissory estoppel simply not existing.
8 Again, the promise must be unambiguous in terms
9 of as set forth in -- and I'll go over some of
10 the cases we have found. But our Court -- the
11 Court in this case has found, they've made a
12 ruling, that there was no sufficiency in regard
13 to terms and that there was no meeting of the
14 minds sufficient to establish an agreement
15 between the parties. If in fact that is what
16 the Court has found -- if what the Court has
17 found is true, then one of the primary elements
18 of promissory estoppel simply would not exist
19 in the case. Additionally, if we wind up in a
20 promissory estoppel type of situation, which is
21 the basis for the ruling in this case, there
22 must be reasonable and detrimental reliance
23 upon the promise. Now, what is incredibly hard
24 to understand, how one can detrimentally rely
25 on an oral promise to sell when the actual

1 terms and specifications of the contract and
2 agreement are not met. Certainly Mr. Sam Patel
3 made no reliance on any promise, he was in
4 foreclosure. He was about to lose the property
5 anyway. So there's no way that he can argue
6 any detrimental reliance in regard to the
7 foreclosure. He was in bankruptcy and had the
8 total inability to buy. Somebody was going to
9 buy it. His brother did. Where is the
10 detrimental reliance on any promise? Now, the
11 Court basically found that, well, he made some
12 improvements to the property which would be
13 inconsistent with an understanding that he
14 wouldn't be buying it back, and that may be
15 true. There's a term in the law known as
16 betterment. That if in fact he is engaged in
17 acts of betterment under a quasi-contract
18 quantum meruit type theory, then he would be
19 entitled to the remedy of the value of the
20 betterment. But in a promissory estoppel
21 situation where you have no clear and
22 unambiguous agreement, the remedy in equity is
23 not for the Court to simply rewrite and
24 refashion a contract and insert terms for
25 parties which they never agreed upon. The

1 actual remedy would be simply for there to be
2 a showing as to the value of any betterment and
3 the party relying on promissory estoppel would
4 simply be entitled an award of money equal to
5 the value of the betterment or an award of
6 compensation equivalent to what the detrimental
7 reliance was. Promissory estoppel basically
8 says that, okay, you have a contract, but there
9 is a legal impediment such as statute of
10 frauds. And because you have detrimentally
11 relied on the promise, we will remove the legal
12 impediment, such as the statute of frauds in
13 this case, and allow the contract to go
14 forward. That's what promissory estoppel is.
15 We have a contract but there's a legal
16 impediment to it. You have detrimentally
17 relied or partially performed as detrimental
18 reliance, therefore we're going to remove the
19 legal impediment in equity and allow the
20 contract to go down. The problem is, once the
21 Court basically has done what this Court has
22 done, which is to find there were no meeting of
23 the minds and to find that there were ambiguous
24 terms, there is no legal impediment to remove
25 because the first element says the promise has

1 got to be unambiguous and in effect there must
2 be an unambiguous agreement. There is none.
3 Our courts have said over and over and over
4 again that we will not rewrite the terms of a
5 contract for a party who has not seen fit to
6 protect himself. What's happened here is the
7 parties entered into a loose arrangement
8 wherein one party bought the property and the
9 other was hoping to basically make arrangements
10 to buy it back. They were not able to reach
11 terms. They were not able to reach an
12 agreement. They were not able to reach an
13 accord in regard to rent. They weren't able to
14 reach an accord in regard to anything and they
15 never did have a meeting of the minds as to
16 when, where, how much, what terms, what profit
17 or anything of that nature would take place.
18 Even if they had placed this loose agreement in
19 writing, it would have been so unclear and so
20 unambiguous (sic) as to not to rise to the
21 level of the contract. Because as the Court
22 well knows, the contract must have its terms,
23 it must have specified terms, and the Court
24 will not rewrite a contract for the parties.
25 And as you found in your order, properly so,

1 the terms of the agreement were ambiguous, they
2 were not specific enough to rise to the level
3 of a contract. If that is the case, there
4 promissory estoppel case goes away. They might
5 try to claim something else, but that's not the
6 basis of the order. And I guess you could make
7 some sort of claimed -- you could make as one
8 of the cases did, you could try to make some
9 kind of equitable estoppel argument or
10 equitable trust or something of that nature.
11 The problem is that the requirements to
12 establish any of those are about the same as
13 the esta- -- those necessary to establish
14 promissory estoppel. So we have a situation
15 where the Court's reliance upon promissory
16 estoppel to basically enforce an oral contract
17 which never existed is simply an error of law.
18 We also have on the other side the remedy that
19 would have been available is not to rewrite a
20 contract which was non-existent to begin with,
21 but would simply be for the Court if the
22 evidence was there, which is wasn't, to
23 establish the amount of any betterment and to
24 give the other side credit for any betterment.
25 Of course, that would be offset against the

1 value of the fact that the man stayed there
2 rent free for many months. The concept of
3 implied promise, the Court basically made a
4 finding of implied promise. There is simply
5 zero in the record to support any such
6 agreement. And as a matter of fact, the Court
7 basically indicated in its ruling that there
8 was nothing in the evidence sufficient to
9 support a promise, implied or otherwise. But
10 even if it was, the theory of promissory
11 estoppel wouldn't apply -- apply. It would
12 basically be something in the nature of a
13 quantum meruit where you would simply be doing
14 some sort of compensation in order to account
15 for any betterment or anything of that nature.
16 The Court again solely relied upon promissory
17 estoppel which was not -- simply was not
18 available. If I might just go over a couple of
19 the -- and I don't want to beat a dead horse,
20 but again, the cases are legion to say that to
21 establish a claim for promissory estoppel under
22 South Carolina law, plaintiff must demonstrate
23 the party made a promise unambiguous in terms.
24 Number two, the party to whom the promise is
25 made reasonably relied on the promise. Number

1 three, the reliance was expected and
2 foreseeable by the party who made the promise.
3 And the party to whom the promise is made
4 sustained injury in reliance on the promise.
5 Again, the injury here, if any, is not a
6 promissory estoppel, enforce a non-existent
7 contract. It might be a betterment claim, but
8 that would be the most they would be able to
9 prove. That case would be *Anthony v. Atlantic*
10 *Group, Inc.*, which is 909 F.Supp.2d 455. Our
11 courts have also said that even though the
12 doctrine of promissory estoppel may be used to
13 avoid the statute of frauds, it may not be used
14 to create a legally enforceable promise when it
15 would not otherwise be bonding (sic) under
16 ordinary contract principles. And that's a
17 very important case, that's *Trident*
18 *Construction v. Austin Company*. Again, very
19 clearly sets forth that promissory estoppel
20 does not apply where ordinary contract
21 principles would say there was no contract.
22 Additionally, promissory estoppel is used,
23 according to our case law, primary to alleviate
24 places where, in effect, a fraud would have
25 taken place. And because of that, our courts

1 have held that the burden of proof is not
2 preponderance of the evidence but it is clear
3 and convincing evidence. In order for a person
4 to enforce a contract based upon promissory
5 estoppel, that person must prove, (A), he is
6 innocent of any wrongdoing, which we don't have
7 here; (B), that he reasonably relied; but, (C),
8 that he had a contract which was clear and
9 unambiguous. Since there was nothing clear --
10 since the Court has already ruled there was no
11 meeting of the minds, and I believe those words
12 were actually used in the Court's order, if
13 there was no meeting of the minds, then under
14 the Trident Construction case there was no
15 contract to be promissorily enforced. Under
16 the Barnes v. Johnson case, which is 742
17 S.E.2d, page six, our court has held that under
18 promissory estoppel the promise to be enforced
19 must be unambiguous with clearly articulate
20 definite terms, while the sustained injury must
21 result from an inconsistent disposition by the
22 promissor. The Craft v. South Carolina
23 Commission for the Blind case, 685 S.E.2nd
24 2009, our court held the applicability of the
25 doctrine of a promissory estoppel depends on

1 whether the refusal to apply it would virtually
2 sanction the perpetration of fraud or would
3 result in other injustice. What you have here
4 is a brother came in and bought a piece of
5 property out of bankruptcy through the
6 foreclosure processes with some loose
7 understanding that we will try to help you get
8 it back and you can stay here for a while. It
9 is incredibly hard to understand the
10 detrimental reliance or the fraud that would
11 have been perpetrated. My client's either a
12 family member trying to help make things
13 better, you know, hoping to work something out
14 in the future, or he's a stranger. Either way,
15 there simply is not a sufficient evidentiary
16 basis to establish a clear and unambiguous
17 meeting of the minds, a lack of fraud upon the
18 creditors, an ownership interest of any
19 equitable interest or contractual interest.
20 Again, whether he had an equitable interest in
21 the property or a contractual interest with his
22 brother, either way, either of those would have
23 been a asset of the bankrupt estate, they would
24 not belong to Mr. Patel, and not to disclose
25 them to the bankruptcy court is probably

1 bankruptcy fraud, which would be an inequitable
2 situation. I had previously cited -- well, I
3 hadn't -- the Satcher case. The Satcher case
4 is a 2002 case which is 2002 -- well, it's 570
5 S.E.2d 535. That case clearly provides that
6 clear and convincing evidence is that degree of
7 proof which is more than a preponderance of the
8 evidence and the -- this case talks about how
9 without question the burden of proof, that each
10 element must be proven by clear, cogent and
11 convincing evidence. That case as well talks
12 about how the promise has got to be
13 unambiguous, it has got to be clear in its
14 terms, it has to be such that it would rise to
15 the level of a contract, and that there must be
16 some proof that not to enforce what would
17 otherwise be an enforceable contract would in
18 effect result in some form of clear injustice.
19 Again, promissory estoppel being in equity, the
20 plaintiff must -- or the claimant must come
21 with clean hands, which of course he doesn't
22 here. It would have been his responsibility if
23 he did have such an equitable interest to have
24 placed it in writing and to have found clear,
25 cogent and convincing terms which would

1 basically be enforceable. I know I'm talking
2 fast, but I'm trying to get into the record
3 those things that I sort of need to have in
4 there. But I think these points basically mean
5 we're right and they're wrong. There's another
6 case I'd like the Court to look at, if you
7 would, which is we think a pretty important
8 case here. It is the *Rushing* case, which is
9 633 S.E.2d 917, where the court ruled that
10 *Rushing* had failed to show the existence of an
11 unambiguous promise. As discussed above,
12 *Rushing* could not clearly articulate the terms
13 of the alleged oral contract, including whether
14 the money would be treated as a loan or capital
15 contribution, how much money would ultimately
16 be forward, or how respondents would settle up.
17 It's the exact same thing you've got here. And
18 in that case they relied on *Woods v. The State*
19 and basically ruled because there was no clear
20 and unambiguous terms, there simply was no
21 contract to be removed from the technical
22 requirements of any contract. What's happening
23 here is they're attempting to enforce an oral
24 contract using promissory estoppel. That's
25 what's going on. Yet the -- even if what they

1 say was the oral contract is true, the oral
2 contract would be insufficient as a matter of
3 law even if it had been in writing because it
4 doesn't have sufficient terms. And again what
5 they've asked the court to do is to basically
6 rewrite terms and to insert terms that no one
7 ever agreed to. And again, the level of proof
8 being clear, cogent and convincing evidence,
9 it's just not there under this record that I
10 can see. I'm about to -- I hope ---

11 **THE COURT:** You take your time.

12 **MR. MOORE:** All right.

13 **THE COURT:** This is an important case to all of
14 these folks.

15 **MR. MOORE:** It is.

16 **THE COURT:** You can take the time you need and we're
17 fine as far as I'm concerned.

18 **MR. MOORE:** I do thank you very, very much.

19 **THE COURT:** Yes, sir.

20 **MR. MOORE:** There's a really great history of the
21 law of promissory estoppel in South Carolina
22 outlined in the Barnes case, which is 742
23 S.E.2d, page six. It's a 2013 case. And in
24 that case, Judge Geathers goes through and sets
25 forth the theory of promissory estoppel, what

1 it is, how it differs from unjust enrichment
2 and quantum meruit. And he basically sets
3 forth, he says that the court has recognized
4 that although promissory estoppel is a flexible
5 doctrine that aims to achieve equitable
6 results, it, like all creatures of equity, has
7 limitations. And he says, to this end and
8 particularly because promissory estoppel
9 applies without a contract, the promise to be
10 enforced must be unambiguous with clearly
11 articulated definite terms while the sustained
12 injury must result from an inconsistent
13 disposition by the promisor. Therefore, the
14 presence of either -- either an ambiguous
15 promise or an injury not arising out of the
16 inconsistent disposition precludes promissory
17 estoppel's application, which is exactly what
18 we have here. It says where a promise is
19 unclear or the alleged harms are unconnected,
20 promissory estoppel does not apply. It says
21 either finding precludes an injury. And in
22 that case they basically found that the promise
23 they had was simply ambiguous in regard to its
24 terms. In other words, there were no specific
25 terms and they basically said that was not

1 sufficient to bring an oral contract out of the
2 applicability of the statute of frauds. Again,
3 promissory estoppel is a way to remove a legal
4 impediment to the enforcement of a contract.
5 You must be able to have definite terms which
6 the court is being asked to agree to. And I
7 would respectfully submit in this record that
8 it does appear that you had an effort on the
9 part of Mr. Patel to basically contravene the
10 rights of his creditors and that his
11 arrangement with his brother was no more than
12 a loose understanding that at some time in the
13 future I might let you buy this thing back. I
14 think I've pretty much made the points in
15 addition to everything argued below. And I
16 don't want to reargue what's been argued below.
17 Those things are already preserved. But I do
18 think that the points that we're making here
19 today are the types of points that should be
20 made in a 59(e). And to summarize them, I
21 think I can summarize them, is that, (A), you
22 have an unclean hands argument; (B), if there
23 is a contract or if there is an equitable
24 interest, it doesn't belong to Mr. Patel, it
25 belongs to his creditors and the bankruptcy

1 estate; (C), in order to enforce an oral
2 contract, it has to be such that if it had been
3 in writing it would be enforceable. The court
4 will not rewrite a contract for the parties.
5 There simply is nothing to indicate a meeting
6 of the minds as this Court has already found.
7 Without a meeting of the minds, there is no
8 promise to enforce. And the other arguments
9 which basically would have conceivably been
10 made would all have the same types of
11 requirements. And my last position would be
12 the remedy which the Court enforced, which was
13 to basically construct a new contract for them
14 and to insert terms, would not be an
15 appropriate remedy under equity. The only
16 remedy that would have been available would
17 have been to have compensated for any damages
18 as a result of any reasonable reliance upon a
19 breach of contract. And I said that fast.
20 That's our position.

21 **THE COURT:** Thank you, Mr. Moore. You said that
22 well. Mr. Wheeler.

23 **MR. WHEELER:** Thank you. May it please the Court,
24 and I appreciate you giving us the time today.
25 Before I address a couple of these things, if

1 I could just ask the Court's indulgence since
2 these are new arguments from my perspective,
3 first time we've -- other than in the body of
4 the motion but it's kind of hard to decipher
5 the particulars of it from that. If I could
6 submit a brief within ten days, I'd like to
7 have the opportunity to do that.

8 **THE COURT:** Well, I'd be willing to accord both
9 parties the opportunity to do that if you want
10 to submit one. If you -- or do you feel like
11 it would be appropriate if you submitted it and
12 submitted a copy to Mr. Moore, give him an
13 opportunity to respond.

14 **MR. WHEELER:** Absolutely.

15 **THE COURT:** And I will set a guideline for time, but
16 it won't be strictly enforced. I'm not going
17 to hold anybody to -- even if say 10 days, if
18 you're 11 I'm not going to hold it against you.
19 If you're 20 I might hold that against you.
20 But Mr. Moore would need adequate time to
21 respond, too. What type of framework would
22 y'all think would be appropriate for that.

23 **MR. WHEELER:** Ten days would be fine with me. Is
24 ten enough for you to reply?

25 **MR. MOORE:** I've got a murder case to try the first

1 part of November, but I could probably get it
2 written. If I could have like 20 days, I'd
3 appreciate it.

4 **THE COURT:** Yeah. Is that all right with you?

5 **MR. WHEELER:** That would be fine.

6 **THE COURT:** And if he says anything really ugly
7 about you, you can -- I'll give you maybe five
8 days to respond to that.

9 **MR. WHEELER:** Okay.

10 **THE COURT:** And the general format for how we deal
11 with these things, so if anybody gets surprised
12 by something, they can write me and I'll be
13 very inclined to give people a chance to
14 respond to anything that hits them by surprise.

15 **MR. WHEELER:** And that would be the only things in
16 particular that -- not surprise necessarily,
17 but just some things that are new to us today
18 that I'll need to go back and read up on a
19 little bit. But I think I can respond largely
20 on the record to the things that have been
21 raised.

22 **THE COURT:** That would be very good. Go right
23 ahead, please.

24 **MR. WHEELER:** And as Mr. Moore just summarized the
25 four points, and I'm gonna go in kind of

1 reverse order, and I think those -- the last
2 two points he made were that the remedy of
3 constructing a contract would not be proper and
4 that there was ambiguity in the contract. Our
5 position is that the Court was right in its
6 findings as to those matters because the Court
7 did not, I don't believe and in reading the
8 order, construct a contract. As I understand
9 it, and I think they're keying on this phrase
10 on page five, it's the first paragraph of the
11 Court's finding in the order: I find there was
12 no meeting of the minds sufficient to establish
13 a cause of action under contract on behalf of
14 either party. While that's what the Court
15 states there, it goes on on page six of eight.
16 I think it would be more accurately to say that
17 the testimony didn't reflect that because Mr.
18 Kim (sic) Patel, as the Court recalls when it
19 had an opportunity to hear the testimony, there
20 was a wide disparity on what the two parties',
21 the two major parties, testimony was. Mr. Kim
22 (sic) Patel didn't acknowledge any of these
23 discussions, any likelihood that he was ever
24 going to provide the property back to his
25 brother. I mean it's not like it was a matter

1 of gray area. It was black and white. He said
2 one thing and Sam said something totally
3 different. What the Court then had to do was
4 make a credibility finding and in essence
5 determine who was telling the truth and whose
6 story was more likely. Based on the witnesses
7 and testimony about a variety of things, I
8 submit that the Court determined that Sam's
9 version of the events was accurate and that his
10 version of what the contract was, was not
11 ambiguous. He testified precisely as to what
12 the understanding was, and that's that Kim
13 (sic) would buy back the store, he would pay
14 him back what he had purchased for it, plus
15 some other money that he owed him for I believe
16 a -- it was about \$5,000 for something else.
17 But that's how the total purchase price was
18 arrived at. That finding was not something
19 that the Court structured to create a contract,
20 that's the contract that was testified to. So
21 I think to characterize the Court's conclusions
22 and remedy as something that the Court created
23 is not correct. It's actually what the Court
24 found that the testimony was as to what the
25 contract would be between the parties; that he

1 was going to have time to pay this money back.
2 What means that there's no -- the meeting of
3 minds language I suspect was in hindsight. By
4 the time of the trial there was no meeting of
5 the minds because Kim Patel said something a
6 hundred percent different than what Sam did.
7 But, you know, his testimony was difficult to
8 accept I think, and this was the Court's
9 finding, on a couple of different areas. I
10 mean down to the relationship between the
11 families. You know, he testified that they had
12 nothing to do with one another in any scenario
13 whatsoever. It didn't appear the case when you
14 looked at the testimony of other witnesses,
15 including Sam's daughter who I submit was found
16 to be a very credible witness as to other
17 things. And also there was another witness who
18 knew both brothers well who testified that he
19 was aware of parties' agreement. So, I do
20 think that there is more than sufficient
21 evidence to support the Court's conclusion that
22 there is an enforceable contract here and the
23 only impediment was that it was not in writing,
24 but it was there and it was testified to. I do
25 not believe that these terms are terms that the

1 Court conjured in order to create the remedy.
2 They're what the testimony established the
3 agreement was and what the contract was. So
4 that -- I believe that point -- or that point
5 addresses arguments three and four of the
6 plaintiff because there was this contract, it
7 was -- it was a proper remedy to enforce the
8 contract and that there is an unambiguous
9 promise. There's no argument that the Court's
10 finding or description of the applicable law
11 that I believe comes from the -- largely from
12 the Satcher case, I think it's identical.

13 **MR. MOORE:** Can I hold my motion just one second?

14 **THE COURT:** Sure. If it's okay with you? Sure.
15 Sure.

16 **MR. MOORE:** I'll give it back.

17 **THE COURT:** Sure. I figured out where the original
18 is, it's in the clerk's office in Bishopville.
19 That's why I don't have it.

20 **MR. WHEELER:** I should have brought it for you.

21 **THE COURT:** That's all right.

22 **MR. WHEELER:** But I do believe that there is an
23 unambiguous promise because you have an exact
24 amount that was testified to, it was
25 corroborated by, if the Court will recall --

1 and I have not had the benefit of reviewing the
2 transcript, so I'm going from memory. But I
3 believe Terrence, the witness that indicated he
4 knew both brothers, testified that he knew what
5 the understanding was to be as well and what
6 their agreement was; and there was not
7 ambiguity in it. So -- and that's what the
8 Court adopted. So I believe that covers both
9 of those two points. The -- and the first two
10 points, I would submit, could be kind of
11 grouped together for purposes of argument, and
12 that is the unclean hands position and the
13 argument that the equitable interest belongs to
14 any creditors in bankruptcy. They both turn on
15 the bankruptcy issue I think for all intents
16 and purposes. And this is the one I would like
17 to go back, and I'll need to review the
18 transcript on, because that didn't come up.
19 The testimony, as I recall it, there had been
20 a bankruptcy. Now whether it preceded in time
21 or was after the events of this deed, I'm not
22 sure until I go back and look, and I wouldn't
23 want to say. But this particular transaction
24 arose out of a foreclosure, the Citizen's Bank
25 foreclosed on this property and it was a

1 foreclosure sale. I don't believe that was
2 part of the bankruptcy, I believe that was a
3 separate proceeding either after the bankruptcy
4 had ended or prior to a bankruptcy beginning,
5 to the best of my knowledge and I intend to
6 check that out. But at any rate there was
7 nothing certainly if it preceded it, the
8 bankruptcy was over. And I just looked back at
9 some notes and I think that may have been the
10 case, but again I can't say for sure until I go
11 back and check on that. But I believe the
12 bankruptcy had likely ended and this was a --
13 my limited knowledge in bankruptcy would be
14 that the secured creditors would have been,
15 could have been excluded from the bankruptcy
16 and pursued a payment plan and they had secured
17 collateral with this property; and that
18 sometime after that this foreclosure came. So
19 the bankruptcy would have been ended, there
20 would have been no equitable interest to
21 disclose at that point, if that makes sense,
22 because the bankruptcy -- if the bankruptcy
23 preceded it. If it was after that, our
24 position would be how could that affect the --
25 if it were done later, how could those unclear

1 hands have affected the obligations or contract
2 between Kim and Sam. If it was an interest
3 that should have been disclosed on a subsequent
4 bankruptcy petition two years down the road,
5 how, if you look at the time that the agreement
6 was made when he bought the property, when Kim
7 bought the property and that's when the
8 contract was formed, how could something done
9 a year or two, whatever, down the road enter
10 into that transaction. I submit that it
11 couldn't. Even if it could, the testimony, I
12 think the clear weight of it, was that
13 according to the other witnesses and Sam, which
14 the Court found more credible, Kim knew exactly
15 what was going on. So how could he use what he
16 knew as a defense to his refusal to honor the
17 contract down the road. His hands would be in
18 the same position as Sam's. The testimony was
19 he knew exactly what he was doing, not
20 admitting that it was wrong because I'm not
21 sure that the timing makes it wrong. But even
22 if it was, Kim knew what was going on just as
23 much as Sam did. So for him to come back and
24 try and use that, puts him in no better
25 position as far as equity is concerned. He's

1 not innocent, if that were the case, because
2 the clear weight of the testimony shows that he
3 knew exactly what he was doing for her brother.
4 All that is contrasted against Kim's testimony
5 that, as Mr. Moore mentioned, either he's a
6 brother trying to help out his brother or he's
7 a complete stranger. His testimony at trial
8 was that in effect he was a complete stranger,
9 he was doing this purely as an investment and
10 he expected some relatively high return as I
11 recall, ten percent return on his investment
12 for rent and some terms that just were hard to
13 imagine and hard to find -- would have been
14 hard to find credible when you looked at the
15 other evidence. I mean why would you extract
16 that kind of premium from your brother. And it
17 didn't -- it didn't compare with the other
18 testimony. So I submit that that's what made
19 Kim's testimony so hard to adopt. But those
20 would be our positions in a nutshell on that.
21 And again, I'd appreciate the opportunity to,
22 especially on that bankruptcy issue, look into
23 that a little bit further. Thank you.

24 **THE COURT:** You both -- you didn't -- both of you
25 mentioned the record from the previous hearing.

1 Was there a court reporter at the previous
2 hearing?

3 MR. MOORE: Yes. I've got a copy of the record.

4 THE COURT: You do? Okay.

5 MR. MOORE: I can leave that with you, too.

6 THE COURT: Well, that might be helpful.

7 MR. WHEELER: If I could -- I didn't know anybody
8 got one.

9 MR. MOORE: I'll leave a copy with you, too. All I
10 have is the condensed one, just the short one,
11 so you've got to put your glasses on to read
12 it.

13 THE COURT: That would be helpful. I didn't recall
14 if there was or not. Let me ask y'all both a
15 question. You mention ambiguities in -- and in
16 the order I certainly say there's no meeting of
17 the minds sufficient to form a contract. If
18 there was a meeting of the minds sufficient to
19 form a contract, we wouldn't get to promissory
20 estoppel, would we? Unless, like you say, Mr.
21 Moore, there might be some other impediment.

22 MR. MOORE: Therein is where I think the Court has a
23 problem.

24 THE COURT: Right.

25 MR. MOORE: I think the only way you get to

1 promissory estoppel is if there has been a
2 meeting of the minds which is clear and
3 unambiguous but there is a some form of a legal
4 impediment to its enforcement.

5 **THE COURT:** Sure.

6 **MR. MOORE:** So there has to be, like the case law
7 says, the case law -- what happens is this with
8 promissory estoppel. There are other kinds of
9 estoppel, but promissory estoppel basically has
10 to do with the enforcement of a promise which
11 is otherwise non-enforceable. In other words,
12 if you and I have a contract that I'm going to
13 sell you my house and I'm going to sell it to
14 you on or before October 31st and the price is
15 going to be a million dollars and we're going
16 to use this lawyer to close it and these are
17 going to be the closing costs. We agree
18 orally.

19 **THE COURT:** Then we have a contract.

20 **MR. MOORE:** We have an oral contract.

21 **THE COURT:** Well, it's an oral contract.

22 **MR. MOORE:** We have an oral contract.

23 **THE COURT:** To sell real estate.

24 **MR. MOORE:** Right. Which is non-enforceable.

25 **THE COURT:** Yeah.

1 **MR. MOORE:** It's non-enforceable because there is a
2 legal impediment to it. Now, promissory
3 estoppel says that in certain situations equity
4 will remove the legal bar. So let's assume
5 that we've got that contract that everyone
6 acknowledges is a clear and existent contract
7 but it's simply non-enforceable. And you go
8 out and spend another million dollars on
9 bettering the property and get ready to move
10 in, sell your house, and you're now in my front
11 yard with the moving van. Equity will say that
12 under those circumstances when there's been
13 reasonable and detrimental reliance upon an
14 otherwise non-enforceable contract, we will
15 remove the legal bar to the enforcement of that
16 contract.

17 **THE COURT:** Okay. I think you just said something
18 that has me concerned. You said when there's
19 an otherwise non-enforceable contract.

20 **MR. MOORE:** Right.

21 **THE COURT:** Whereas I think the way -- another
22 version of that -- not of that, but another
23 version would be to say it is a non-enforceable
24 -- there's a promise, an unambiguous promise,
25 but not arising to the level of a contract.

1 You don't have all the elements of a contract.

2 **MR. MOORE:** That's where the -- that's where I think
3 the Court made an error.

4 **THE COURT:** Okay.

5 **MR. MOORE:** And that's where I think the Court is
6 misunderstanding promissory estoppel.

7 **THE COURT:** That's what -- and I'm concerned about
8 that point. If you're right about that, I
9 believe you both might want to address that.
10 And Mr. Moore, you've told me several cases
11 that you -- that I'm certainly going to look at
12 all of them. But I'm concerned about that
13 point. In other words, can there be a promise
14 made and for one reason or another there aren't
15 sufficient elements to make a contract, and you
16 can enforce the promise because one party's
17 detriment relied upon the promise. Or does it
18 have to rise to the level of a contract to
19 begin with and then -- and if Jake's saying but
20 for some reason there's an impediment to
21 enforcing the contract and so promissory
22 estoppel allows you to enforce what would
23 otherwise be an unenforceable contract.

24 **MR. MOORE:** Here's the case.

25 **THE COURT:** All right.

1 MR. MOORE: The case is the Trident case that I
2 cited. It says: Although the doctrine of
3 promissory estoppel may be used to avoid the
4 statute of frauds' writing requirements in
5 South Carolina, it may not be used to create a
6 legally enforceable promise when it would not
7 otherwise be binding under ordinary contract
8 principles.

9 THE COURT: Now let me ask you. I didn't get the
10 cite on that. What cite is the Trident case?

11 MR. MOORE: That's 272 Fed.Supp.2d 566. It's a 2003
12 case.

13 THE COURT: 566.

14 MR. MOORE: Then you have the other one, that Barnes
15 case, which is a Court of Appeals decision.

16 THE COURT: That's 742 ---

17 MR. MOORE: 742 S.E.2d.

18 THE COURT: Page six.

19 MR. MOORE: --- page six.

20 THE COURT: All right. I've got that one.

21 MR. MOORE: Under promissory estoppel the promise to
22 be enforced must be unambiguous with clearly
23 articulated definite terms while the sustained
24 injury -- and that -- but basically it's got to
25 have ---

1 **THE COURT:** I see that. Let me interrupt you and
2 ask you a question about that case. It says
3 the promise to be enforced must be unambiguous.
4 To me that's not the same thing as saying the
5 contract to be enforced must be unambiguous.

6 **MR. MOORE:** Well, what's -- what's being ---

7 **THE COURT:** Because if it was, you wouldn't need a -
8 --

9 **MR. MOORE:** What's happening here is this. What
10 these folks are arguing is they had an oral
11 contract to purchase land. They're wanting the
12 Court to enforce an oral contract to purchase
13 land. They're taking the position that by
14 virtue of the fact that they had a contract to
15 purchase land, equitable conversion took place
16 and they have an equitable interest in the
17 property. The only way they could have an
18 equitable interest in the property is if
19 equitable conversion is taking place pursuant
20 to a contract. No doubt about that. The only
21 way you can have equity in property is you have
22 a lien on property pursuant to a written lien
23 agreement which is properly signed, or you have
24 a contract which gives rise to an equitable
25 interest in the property. You have an

1 equitable right to redeem. You have an
2 equitable interest, equitable conversion takes
3 place. Equitable conversion is only going to
4 take place in a real estate sales contract if
5 you have a real estate sales contract. It's
6 the only way you're going to have equitable
7 conversion. So the Court is finding there is
8 an equitable conversion which basically has
9 created the, quote, equity in the property by
10 virtue of the equitable conversion by virtue of
11 a contract, an agreement.

12 **THE COURT:** And you're saying if there's no meeting
13 of the minds sufficient to form a contract
14 initially there can be no equitable conversion.

15 **MR. MOORE:** That's exactly right. That there's no
16 equitable conversion, there can't be any equity
17 in the property such as an equitable interest
18 in the property.

19 **THE COURT:** That's a -- it's a strong point. So you
20 might want to address that.

21 **MR. WHEELER:** Well, and I agree with the law as he
22 stated.

23 **THE COURT:** Yeah.

24 **MR. WHEELER:** The only thing that -- and I'll
25 address it in the brief, but in the order on

1 page six and thereafter you do find the
2 elements of an enforceable contract.

3 **THE COURT:** I found it was an enforceable promise.

4 **MR. WHEELER:** Enforceable promise.

5 **THE COURT:** There's a promise that he relied upon.
6 I found that Mr. Moore's client, Jake's client,
7 made a promise that Will's client relied upon
8 to his detriment and that made it in essence an
9 enforceable promise. But as far as a formal
10 preliminary contract, I found there was no
11 meeting of the minds sufficient otherwise to
12 form a contract. In essence, the promissory
13 estoppel -- promissory -- the reliance by your
14 client made up the lack of consideration that
15 would have been necessary to form a contract.
16 And so if there comes to be a contract, it's
17 through promissory -- I mean through
18 detrimental reliance, not through any
19 independent consideration by your client. And
20 so then that's my best off-the-cuff here
21 recollection of Randy Bell's Contract's Course,
22 which was a -- which I was hanging on by my
23 fingernails through much of what he told us.
24 He was sort of a pretty smart guy.

25 **MR. WHEELER:** Very, very.

1 MR. MOORE: He thought so.

2 THE COURT: He thought so and he was. He -- I think
3 he was smart. But, yeah, that one point really
4 has me troubled about my order and so I mean
5 I'm not saying I'm going to reverse myself or
6 not about it, but I'm certainly going to look
7 at that real hard. It's a strong point that
8 Jake has brought out.

9 MR. WHEELER: And my only -- I mean if you -- if
10 that one paragraph -- or actually that one, in
11 quotation marks, meeting of the minds is not
12 there, the other findings on page six as to the
13 particulars I would submit are ---

14 THE COURT: You're saying I may have made a mistake
15 in my own order and contradicted myself because
16 I made factual findings which would be the
17 equivalent of a contract. Is that what you're
18 saying?

19 MR. WHEELER: No. That the factual findings -- in
20 other words, this first finding where it just
21 uses the terms meeting of the minds ---

22 THE COURT: Yeah. All right.

23 MR. WHEELER: --- may or may not be necessary as far
24 as whether there's a contract.

25 THE COURT: Yeah.

1 MR. WHEELER: But what you find as to the agreement
2 on the next page is a contract. I mean it is
3 the terms ---

4 THE COURT: Yeah.

5 MR. WHEELER: --- of what would be an agreement in
6 contract.

7 THE COURT: And so the difference would be did they
8 have all the terms in place when they first met
9 to discuss this issue and so they had an oral
10 contract for real estate -- a real estate
11 transfer.

12 MR. WHEELER: And I believe they did.

13 THE COURT: And if they -- you believe they did at
14 the time when they first met and talked and the
15 plaintiff said well I'll buy it (sic) in.

16 MR. WHEELER: I believe that's what his -- now,
17 there was a contradiction in testimony by the
18 time we got to trial about that of course.

19 THE COURT: Yeah.

20 MR. WHEELER: But it was there ---

21 THE COURT: Well, that's why it will help me if
22 y'all brief this thing.

23 MR. WHEELER: That sounds ---

24 THE COURT: I want to do the right thing by the
25 parties. I want to do the right thing by the

1 law. And you will help me tremendously if you
2 can address these issues and ...

3 **MR. MOORE:** We will do that.

4 **THE COURT:** And I appreciate that. Anything else,
5 gentlemen?

6 **MR. MOORE:** If I can leave all of this with you, if
7 somebody can copy it, we'll -- we'll let the
8 court reporter go. And thank you.

9 **THE COURT:** Well, thank you very much. I appreciate
10 y'all. Y'all prepared your case well. You
11 both represent strong standards of our Bar and
12 our profession and I thank you both for your
13 service to the Court and to your clients.

14 **MR. MOORE:** We thank you.

15 **MR. WHEELER:** Thank you.

16 (There being nothing further, the hearing concluded
17 at 11:27 a.m.)
18
19
20
21
22
23
24
25

CERTIFICATE

This is to certify that the within hearing consisting of forty-five (45) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on November 5, 2014.



M. Sean Cary
Court Reporter

Notary Public for South Carolina
My Commission Expires: January 29, 2023



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

ROA000286

This document prepared by:

Jake S. Barker

Please return document to:

Ellis, Lawhorne & Sims, P.A.

Post Office Box 2285

Columbia, South Carolina 29202

201100003543
Filed for Record in
LEE COUNTY, SC
JAMES I. DAVIS, CLERK OF COURT
10-13-2011 At 03:30 PM.
DEED 11.00
STATE TAX 911.30
COUNTY TAX 385.55
Book 280 Page 201 - 205

STATE OF SOUTH CAROLINA) SPECIAL REFEREE'S TITLE
COUNTY OF LEE) IN THE COURT OF COMMON PLEAS
2010-CP-31-30

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, MARTIN S. DRIGGERS, SR., SPECIAL REFEREE IN AND FOR THE COUNTY AFORESAID, SEND GREETING:

WHEREAS, Williamsburg First National Bank n/k/a First Citizens Bank and Trust Company, Inc., on or about February 16, 2010, exhibited its Complaint in the Court of Common Pleas for the County aforesaid, against **OWNER OF RECORD Suresh Patel**, demanding judgment in relation to the real property hereinafter mentioned and described; and the cause being at issue, came to be heard on April 12, 2011 and such proceedings were had therein as resulted in a judgment and foreclosure sale dated April 12, 2011 of said court, whereby it was adjudged and decreed that the said real property hereinafter mentioned and described be sold by Martin S. Driggers, Sr., Special Referee in and for the County aforesaid on the terms and for the purposes mentioned in the said Complaint as by reference thereto on file in said Court, will appear; and the said Special Referee, after having duly advertised the said real property for sale by public outcry on May 9, 2011, did then openly and publicly, and according to the custom of auctions, sell and dispose of the same unto A&P Enterprises, LLC, for the sum of Three Hundred Fifty Thousand One and 00/100 (\$350,001.00) Dollars, being at that price the highest bidder therefor,

NOW, THEREFORE, Know all men by these Presents, that I, Martin S. Driggers, Sr., Special Referee in and for the County of Lee aforesaid, in consideration of the sum of Three Hundred Fifty Thousand One and 00/100 (\$350,001.00) Dollars, to me paid by the said A&P Enterprises, LLC, the receipt whereof is hereby acknowledged, **HAVE GRANTED**, bargained, sold and released, and by these presents, **DO GRANT**, bargain, sell and release unto the said A&P Enterprises, LLC, its successors and assigns forever, the following described real property, to-wit:

***PARCEL ONE:** ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the Lynchburg Township, County of Lee, State of South Carolina and being more particularly shown on that certain plat*

**PLAINTIFF'S
EXHIBIT**

ROA000287

prepared for Suresh K. Patel by John L. Johnson, Surveyor, dated April 22, 1994, and recorded October 24, 1994 in the office of the Clerk of Court for Lee County in Plat Book B-1 at Page 162 and having such metes, courses and distances as are delineated and shown on said plat, reference to which is hereby made pursuant to authority contained in 30-5-250 of the Code of Laws of South Carolina, 1976, as amended.

This being the same property conveyed to Suresh Patel by Deed of Thomas B. Langston executed August 3, 1989 and recorded on August 4, 1989 in Deed Book K-4 at Page 99 and by Deed of Thomas B. Langston executed July 9, 1990 and recorded on July 11, 1990 in Deed Book U-4 at Page 108 in the office of the Clerk of Court for Lee County.

Tax Map Nos. 068-04-00-054 and 068-04-00-053

LESS HOWEVER: *ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the Lynchburg Township, County of Lee, State of South Carolina and being more particularly shown and delineated as Tract A as shown on that certain plat prepared for Suresh K. Patel and Lynchburg Methodist Church by Huel C. Bailey, dated January 9, 2006 and recorded in the office of the Clerk of Court for Lee County in Plat Book K-1 at Page 162 and having such metes, courses and distances as delineated and shown on said plat, reference to which is hereby made pursuant to authority contained in 30-5-250 of the Code of Laws of South Carolina, 1976, as amended. Tract A was deeded out from Suresh Patel to the Trustees of Lynchburg Methodist Church by Deed dated August 17, 2006 and recorded on August 21, 2006 in Book D0212 at Page 64 in the Lee County Clerk of Court's Office.*

PARCEL TWO: *ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the Lynchburg Township, County of Lee, State of South Carolina and being more particularly shown and delineated as Tract B as shown on that certain plat prepared for Suresh K. Patel and Lynchburg Methodist Church by Huel C. Bailey, dated January 9, 2006 and recorded in the office of the Clerk of Court for Lee County in Plat Book K-1 at Page 162 and having such metes, courses and distances as are delineated and shown on said plat, reference to which is hereby made pursuant to authority contained in 30-5-250 of the code of Laws of South Carolina, 1976, as amended.*

THIS being the same property conveyed to Suresh Patel by deed of Trustees of Lynchburg Methodist Church dated June 7, 2006 and recorded August 21, 2006 in Deed Book D-0212 at Page 59 in the Office of the Clerk of Court for Lee County.

TMS Nos. (p) 068-04-00-053; (p) 068-04-00-054; and (p) 068-04-00-055

Property Address: 20 E. Willow Grove Road, Lynchburg, SC 29080

PARCEL THREE: *ALL that certain piece, parcel or lot of land containing 0.274 acres, a little more or less, together with the buildings and other improvements situate thereon, lying and being in the Town of Lynchburg, County of Lee, State of South Carolina, and being designated as Tract B on that certain plat of Lind, Hicks and Associates, Surveyors, dated October 1986 and revised June 6, 1988, which plat is of record in the office of the Clerk of Court for Lee County, SC, in Plat Book W at Page 193, according to which plat, as amended, the said Tract B is bounded as follows: On the North by Lot B1; on the East by Griffin Street; on the South by Potts Street (US Rt. 76); and on the West by Lot A.*

THIS being the same property conveyed to Suresh Patel by Deed of Eugene H. Smith executed July 25, 2000 and recorded on July 25, 2000 in Deed Book D111 at Page 293 in the Office of the Clerk of Court for Lee County.

TMS No. 068-03-00-142

THESE conveyances are subject to all visible and/or recorded easements, restrictions, covenants, rights-of-way and zoning ordinances which affect said property.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

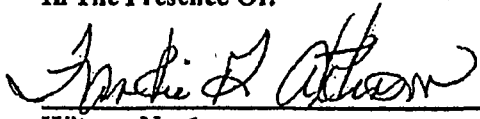
**Grantee's Address: A&P Enterprises, LLC
30 Mere Court
Sumter, SC 29150**

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining; and all the estate, right, title, claim, and interest whatsoever of the parties to the cause aforesaid, and each of them, in and to the same; and of all other persons rightfully claiming, from, under, or by these or any of them.

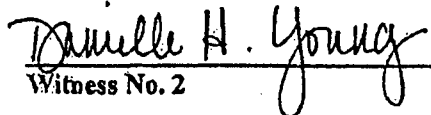
TO HAVE AND TO HOLD, all and singular, the premises before mentioned, unto the said A&P Enterprises, LLC, its successors and assigns forever.

IN WITNESS WHEREOF, I, the said Special Referee in and for the County aforesaid,
under and by virtue of the aforesaid Decree, have hereunto set my hand and seal this 8 day of
July, 2011.

Signed, Sealed, and Delivered
In The Presence Of:


Witness No. 1

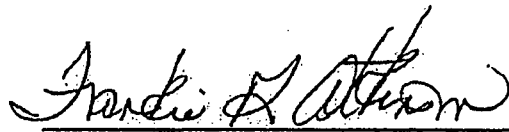

Martin S. Driggers, Sr.
Special Referee for Lee County


Witness No. 2

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

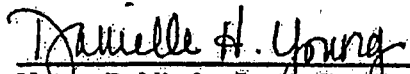
PROBATE

PERSONALLY APPEARED the above named witness and made oath that (s)he saw the
within named Martin S. Driggers, Sr., as Special Referee for Lee County, sign, seal and as his act
and deed, deliver the within Deed; and that (s)he with the other above named witnessed the
execution thereof.


Witness No. 1

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 8 DAY OF July, 2011


Notary Public for South Carolina
My Commission Expires: 12/20/2011

STATE OF SOUTH CAROLINA)

AFFIDAVIT

Instrument
201100003543

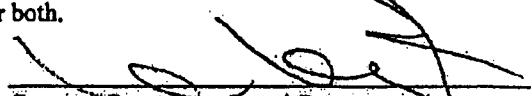
Book Page
280 204

COUNTY OF LEE)

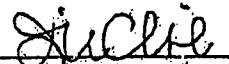
Date of Transfer of Title
(Closing Date) July 8, 2011

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred by Martin S. Driggers, Sr., Special Referee to A & P Enterprises, LLC on July 8, 2011.
3. Check one of the following: The DEED is
 - (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) _____ EXEMPT from the deed recording fee because _____
(If exempt, please skip items 4-6 and go to item 7 of this affidavit)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 350,001.00.
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ ____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ ____.
5. Check YES _____ or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES" the amount of the outstanding balance of this lien or encumbrance is \$ ____.
6. The DEED Recording Fee is computed as follows:
 - (a) 350,001.00 the amount listed in item 4 above;
 - (b) -0- the amount listed in item 5 above (no amount place zero)
 - (c) 350,001.00 Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantee
8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Grantor, Grantee, or Legal Representative
connected with the transaction

SWORN TO and subscribed before me
this 13th day of October, 2011.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: September 27, 2017

ROA000291

SK OF SUMTER INC OF A NAD P COASTAL MART 428 BOULEVARD ROAD SUMTER, SC 29153-5804		1980 ST-148/532 BRANCH 304
Date <u>1.19.11</u>		
Pay to the Order of <u>SURESH PATEL</u>	\$ <u>5000</u> ⁰⁰ / ₁₀₀	
<u>Five thousand and 00/100</u>	Dollars	☒
First Citizens First Citizens Bank & Trust Company, Inc.		
For <u>Loan</u>	<u>Suresh Patel</u>	
⑆053201487⑆19010 74144⑆ 1980		

PLAINTIFF'S
EXHIBIT

3

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

JEFFREY L. PAYNE

REPLY TO

E-Mail: JPayne@TurnerPadget.com
Writer's Direct Dial: (843) 656-4432
Direct Fax: (843) 413-5825

July 10, 2013

Ms. Payal Patel
812 Beddingfield Hall
Florence, SC 29501

Re: Lease - SP Grocery of Lynchburg LLC
TPGL File No.: 10877.101

Dear Ms. Patel:

I represent A&P Enterprises, LLC the current owner of the convenience store and surrounding parcels located on Highway 76 in Lynchburg, South Carolina where your company is currently operating a convenience store. My client has requested that I forward to you the enclosed lease for you to sign. You will note that you need to sign on behalf of SP Grocery of Lynchburg LLC and that you will personally guaranty the payment of all the obligations required pursuant to the enclosed lease. I need for you to contact me to set up a time to come by our office to sign the enclosed Lease. My direct number is (843) 656-4432. The enclosed Lease must be signed on or before Tuesday July 16, 2013.

If you refuse to sign the enclosed Lease, my client expects you and your company SP Grocery of Lynchburg, LLC to vacate the property on or before August 15, 2013. My client expects that all furniture, fixtures, racks, shelves, equipment, pumps, NDP's, and any other assets and equipment will remain in the store. If any damage occurs to the property and the equipment located therein, my client will hold you personally responsible for any such damage.

This letter is formal notice that any tenancy that you or SP Grocery of Lynchburg LLC enjoys with my client is hereby terminated. As is set forth above, my client expects for you to vacate the premises on or before August 15, 2013, if the enclosed written Lease is not signed by Tuesday July 16, 2013.

My client and its owners are disappointed that they have been forced to write this letter to you. However, you must understand that it has been over two years and that neither you nor your company has paid them any rent for the use of this property. In fact, no one has even offered to begin paying them any rent for the property.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.

Jeffrey L. Payne

JLP:vlb
Enclosure

BUSINESS • LITIGATION • SOLUTIONS

319 S. Irby Street (29501) • PO Box 5478 • Florence, SC 29502
Phone (843) 662-9008 • Fax (843) 667-0828 • turnerpadget.com

**DEFENDANT'S
EXHIBIT**

ROA000294

STATE OF SOUTH CAROLINA

COUNTY OF LEE

)
)
)

COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT ("Lease") is made and executed the day of July, 2013, (the "Effective Date"), by and between A&P Enterprises, LLC ("Landlord") and SP Grocery of Lynchburg LLC ("Tenant").

WITNESSETH:

WHEREAS, Landlord owns three parcels of real property with improvements thereon located at Hwy. 76 (currently operated as SP Grocery), and 20 E. Willow Grove Road, Lynchburg, SC, with the parcels known as Lee County TMS 068-04-00-054 and 068-04-00-053, 068-04-00-055 and 068-03-00-142 and desires to lease to Tenant said Premises as described herein (the property to be so leased referred to herein as the "Premises"); and Tenant desires to lease from Landlord the Premises upon the terms and conditions set forth herein.

IT IS THEREFORE, mutually agreed that in consideration of the rent to be paid and the covenants, conditions and agreements contained in the Lease and their due performance, Landlord and Tenant hereby agree as follows:

1. Lease Term. Landlord hereby leases the Premises to Tenant, and Tenant hereby agrees to take and hold the Premises for a term of two (2) years commencing July 1, 2013, and terminating at midnight on June 30, 2015, unless terminated sooner as set forth in this Lease.
2. Rent. Commencing on July 1, 2013 (the "Rent Commencement Date"), Tenant shall pay Landlord, in monthly installments, "Fixed Minimum Rent" of Three Thousand Seven Hundred and Fifty Dollars and 00/100 (\$3,750) Dollars per month (\$45,000 per year), without notice or demand and without deduction or offset. The first such payment shall be due on the Rent Commencement Date. Additional payments shall be due on the first day of each month thereafter during the term of this Lease. All payments shall be hand delivered to Landlord at 428 Boulevard Road, Sumter S.C. 29150 on or before the 1st day of the month. If the 1st falls on a Sunday, the rent payment must be delivered on the following Monday during the hours of 9am to 7 pm. No post-dated checks will be accepted.
3. Late Fee. In the event Landlord fails to receive from Tenant the rental payments or any other sums due hereunder by its due date, the Tenant will owe a late fee of \$375 for any such late payment.
4. Condition of Premises. Tenant has inspected and accepted the Premises in "as-is" condition, with all faults.
5. Real Property Taxes. Tenant shall pay and deliver to Landlord paid receipts for all taxes and assessments issued after the date hereof relating to the Premises at least twenty (20)

days prior to the due date of such taxes and assessments. Landlord shall notify Tenant of all information, notices and documents relating to taxes and assessments on the property within ten (10) days after Landlord receives notice of such information, notices and documents.

6. Utilities and Operating Expenses. Tenant shall pay all utility and operating expenses related to the Premises, including without limitation water rents, sewer charges, gas and electric bills, garbage and debris removal fees, janitorial services and pest control services. Tenant shall cause all such utility services to be placed in his name.
7. Use of Premises. Tenant may use the Premises for any purpose lawful under the applicable zoning ordinances. Tenant shall not use or permit the Premises or any part of the Premises to be used for any disorderly or unlawful purpose or any other purpose that constitutes a nuisance or otherwise materially adversely affects the appearance or value of the Premises, or for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any hazardous or toxic chemical, material, substance or waste. Tenant shall comply with all governmental laws, ordinances or regulations applicable to Tenant's use and occupancy of the Premises.
8. Parking. N/A
9. Assignment and Subletting. Tenant may not assign all or any portion of its interest in this Lease, or sublet all or any portion of the Premises, or grant occupancy rights therein, or change the control of Tenant during the term of the Lease. Should, Landlord agree to an assignment or subletting of the Premises (which it is under no obligation to do), any such assignment or subletting shall not relieve Tenant of any obligations under this Lease unless Landlord so agrees in writing. Any assignee approved by Landlord shall assume all the obligations and liabilities imposed upon Tenant hereunder.
10. Alterations and Maintenance of Premises. Tenant shall be responsible for all maintenance, repairs and replacements of any nature to the Premises during the term of the Lease, including without limitation, to the roof, the exterior façade of the Buildings and the structural portions of the Premises, all pipes and other utility lines serving the Premises; the heating, ventilating and air conditioning and electrical systems serving the Premises and compliance with applicable governmental regulations and insurance industry standards relating to the foregoing. Tenant shall provide to Landlord for its review and approval, plans and specifications for any repairs and replacements and the names and qualifications of the contractors prior to commencing work on the Premises, except in an emergency situation in which action is required prior to notification in order to avoid imminent damage to persons or waste to the Premises. Failure of Landlord to respond within ten (10) days of receipt of such information shall constitute approval of same. Tenant hereby agrees to keep the Premises free and clear of all mechanic's liens in connection with such work, and to indemnify and hold Landlord harmless from and against any actual or alleged loss, claim or damage of any nature in connection with labor performed on or materials furnished to the Premises, including without limitation

reasonable attorneys' fees and costs of any action in connection therewith. Landlord shall not unreasonably withhold or delay its consent to such repairs of the Premises by Tenant.

11. Access by Landlord. Tenant shall allow Landlord or its agents to have access to the Premises during normal business hours for any reason.
12. Subordination. This Agreement is subject and subordinate to the lien of any mortgage or other similar encumbrances now or at any time hereafter placed upon the Premises by or through Landlord or any successive owner of the Premises and to all modifications, renewals and extensions thereof.
13. Insurance. During the term of this Lease, Tenant will obtain and maintain, at its expense (a) commercial general liability insurance with respect to the Premises, and the business operated by Tenant and any subtenants, concessionaires and licensees of Tenant on the Premises in which the limits of public liability shall be not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. The policy may be in the form of a general coverage or floater policy covering the Premises and other premises; and (b) all-risk property and casualty insurance, written at replacement cost value and with replacement cost coverage, covering all the Tenant's personal property in the Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture and any other property removable by Lessee under the provisions of this Lease) and all leasehold improvements installed in the Premises by Tenant; and (c) if required by law, Workers' Compensation in form and such amounts as may be required by law. If Tenant shall fail to perform its obligations to maintain the required insurance, Landlord may, at its sole option, perform the same and the cost thereof shall be deemed additional rent and shall be payable immediately upon Landlord's written demand.

During the term of this Lease, Tenant will also carry and maintain in the sole name of and for the benefit of Landlord, at Tenant's expense one or more an casualty insurance policies providing coverage for fire, wind, earthquake, property damage and extended coverage for all risks with respect to the Premises, with coverage of all risks being in an amount equal to the full replacement value of the improvements located on the Premises, with such insurers and in such form and with such coverages and deductibles as are reasonably acceptable to Landlord, and with no co-insurance clauses. Landlord shall be named as sole insured and loss-payee of the fire and extended coverage insurance policies. Tenant shall be responsible for providing a copy to Landlord of such insurance policies upon their issuance.

All insurance policies required pursuant to this Lease shall be obtained from companies reasonably acceptable to the Landlord; shall name Landlord and any person, firms or corporations designated by Landlord, as additional insureds under all liability policies, and shall contain a clause that the insurer will not cancel or change the insurance without first giving Landlord thirty (30) days prior written notice. A certificate evidencing the issuance of the policy or policies, together with evidence of the payment of premiums, shall be delivered to Landlord before the commencement of the term of this Lease, or

before any use, occupancy, or possession of the Premises, whichever is sooner, and at least ten (10) days prior to the expiration of any policy required under this Lease.

14. Mutual Waiver of Subrogation. Landlord and Tenant hereby release each other from any and all liability to the other or any one claiming through or under it by way of subrogation or otherwise, for any loss or damage to property covered by the fire or extended coverage insurance policies carried by Landlord and Tenant, respectively (or required to be carried hereunder), even if such damage shall have been caused by the fault or negligence of the other party or anyone claiming through or under it, and each party shall cause such policies of insurance to provide for the waiver by such insurer of subrogation rights against the other party.
15. Indemnification. Tenant will indemnify Landlord and save it harmless from and against any and all claims, actions, damages, liability, suits and expense in connection with the loss of life, personal injury and damage to property arising from or out of any occurrence in, upon, or at the Premises, or the occupancy or use by Tenant of the Premises or any part hereof, which are occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, lessees, or concessionaires or the sale of merchandise by Tenant in, on or from the Premises, or the conduct by Tenant of its business therein, thereon and therefrom. In case Landlord shall, be made a party to any litigation commenced by or against Tenant with respect to any of the foregoing matters, then Tenant shall protect and hold Landlord harmless and shall pay expenses and reasonable attorneys' fees incurred or paid by Landlord in defending any such action and in the enforcing of the above covenant and agreement.
16. Furniture and Fixtures. It is agreed that all furniture and fixtures located on the Premises are the property of the Landlord and they shall not be removed by the Tenant at any time.
17. Tenant Default/Remedies. The following shall constitute events of default: (a) Tenant shall fail to pay any installment of fixed rent when due or Tenant shall fail to pay any Additional Rent due Landlord under this Lease when due; or (b) Tenant shall fail to perform or observe any other material agreement or condition on its part (other than payment of rent or other sums due under the agreement, and Tenant shall fail to commence to cure such default within thirty (30) days after receipt of notice of said default from Landlord or having commenced to cure such default, Tenant shall fail to diligently pursue the curing of the default thereafter.

Upon the occurrence of an event of default, Landlord may declare the term ended and enter into the Premises by due process of law, and expel Tenant and repossess and enjoy the Premises as though this lease had by its term expired. Should the lease term at any time be ended by Landlord under the terms and conditions of this Paragraph, Tenant shall peaceably surrender the Premises to Landlord.

No termination of this lease shall relieve Tenant from the obligation to pay rent and other charges due under this lease for the remainder of the then current Lease term as though this Lease had not been terminated.

If Tenant fails to perform any of the affirmative covenants herein contained, other than the payment of rent above referred to and (i) if Tenant has not performed such covenant within thirty (30) days after written notice of nonperformance shall have been received by Tenant, or (ii) if such covenant cannot be performed within such thirty (30) day period, if Tenant has not taken such steps within such period as would, if diligently pursued by Tenant, result in the performance of such covenant within a reasonable time after such period, then Landlord may, at its option, after notice to Tenant, perform such covenant, as Tenant's agent, and the reasonable cost and expenses entailed shall be reimbursed by Tenant to Landlord within thirty (30) days of receipt by Tenant from Landlord of proof of performance of such covenant and a detailed invoice of the reasonable costs and expenses thereby incurred by Landlord. Landlord reserves all of its rights under law and equity in the event of any default by Tenant hereunder.

18. Landlord Default/Remedies. If Landlord fails to perform any covenant or agreement in this Lease contained on the part of Landlord to be performed, and (i) if Landlord has not performed such covenant within thirty (30) days after written notice of nonperformance shall have been received by it, or (ii) if such covenant cannot be performed within such thirty (30) day period, if Landlord has not taken such steps within such period as would, if diligently pursued by it, result in the performance of such covenant within a reasonable time after such period, then Tenant may, at its option, after written notice to Landlord, perform such covenant, and the reasonable cost and expenses entailed shall be reimbursed by Landlord to Tenant within thirty (30) days of receipt by Landlord from Tenant of proof of performance of such covenant and a detailed invoice of the reasonable costs and expenses thereby incurred by Tenant. Tenant reserves all of its rights under law and equity in the event of any default by Landlord hereunder.
19. Condemnation and Eminent Domain; Damage and Destruction. If the whole or any substantial part of the Premises should be taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, Tenant shall not be entitled to any portion of any award for the unexpired term of the Lease, but shall be entitled to separately seek compensation from the governmental entity instituting such eminent domain proceedings, for the value of the costs of relocating, including damages arising out of the interruption of its business. If the whole of the Premises is taken, or if less than the whole is taken and Tenant reasonably determines and so notifies Landlord that the portion taken materially adversely affects Tenant's use of the Premises, this Lease shall be terminated on the effective date of the taking.

If the Building shall be destroyed or so damaged that substantial alteration or reconstruction of the Building shall be required, in the reasonable opinion of Landlord, Landlord may, within thirty (30) days after such casualty, give written notice to tenant of Landlord's election to cancel and terminate this Lease. Effective the thirtieth (30th) day after such notice, the Lease shall terminate.

20. Holding Over. Any failure by Tenant to surrender the Premises upon the expiration of the term of this Lease shall result in the creation of a month-to-month tenancy at a monthly rental equal to one hundred twenty percent (120%) of the monthly rental for the last month of the term of this Lease. Such holding over shall not result in a renewal or extension of this Lease and the month-to-month tenancy may be terminated at any time by either party upon thirty days prior written notice. All other terms and conditions of this Lease shall remain in full force and effect during such month-to-month tenancy.
21. Notices. Any written notice required or allowed by this Lease to be given to either the Landlord or the Tenant shall be deemed given upon receipt by certified or registered mail, postage prepaid, or by a nationally recognized overnight courier service, properly addressed to the parties as follows:
- Landlord: A&P Enterprises, LLC
attn: Sangita Patel
428 Boulevard Road
Sumter, SC 29150
- Tenant: SP Grocery of Lynchburg LLC
Attn: Payal Patel
812 Beddingfield Hall
Florence, SC 29501
22. Effective Law. This Lease shall be construed and enforced in accordance with the laws of the State of South Carolina.
23. Modification. No agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Lease in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.
24. Attorney's Fees. The Landlord shall be entitled to collect its costs and attorney's fees that it incurs in enforcing this agreement or collecting any sums due thereunder.

IN WITNESS WHEREOF, Landlord and Tenant have set their hands and seals hereto this Commercial Lease Agreement, as of the day and year first above written.

LANDLORD:

By: _____

TENANT:

By: _____

PERSONAL GUARANTY OF PAYAL PATEL, MD

In consideration of the lease ("Lease") agreement dated July __, 2013 being made to Tenant, SP Grocery of Lynchburg, LLC, I, Payal Patel, agree to personally guaranty the payment of all sums due and owing by Tenant under the Lease including but not limited to all rent payments, taxes, insurance, repair costs, costs of collection and attorney's fees that may be owed by Tenant under the Lease. Presentment, demand, notice of dishonor and protest are hereby waived. This shall be considered the primary debt obligation and payable on demand without any recourse having been had against Tenant. I further agree to abide by all terms contained within Lease including the provisions for interest, attorney's fees, costs, jurisdiction and venue. This Guaranty is an unconditional guaranty of payment and not collection.

Personal Guarantor

Date:

Dr. Payal Patel
Guarantor Name

Social Security Number:

Home Address: _____
City, State, Zip Code _____

EXPENDITURES

DATE	FOR	AMOUNT
1/9/12	243357 Carolina Registers	6038.00
1/10/12	Lee & Sons HVAC	850.00
1/15/12	Lee & Sons HVAC	560.00
5/10/12	Expert Technician HVAC	18,500.00
5/15/12	243358 Carolina Registers	17,945.00
7/16/12	243359 Carolina Registers	7664.80
8/6/12	Carolina Registers	440.64
8/24/12	James Hubert- Bath Fixture	100.00
10/4/12	Kerosene tank lines	300.00
11/5/12	243361 Carolina Registers	8005.00
4/9/13	243360 Carolina Registers	7465.00
5/1/13	San-Glo 29738	150.00
5/3/13	?	311.00
5/21/13	?	201.71
2/1/13	Lowe's	119.00
1/26/13	Home Depot	11.86
11/6/12	Lowe's	50.72
10/12/12	Home Depot	27.10
10/15/12	Lowe's	64.47
	TOTAL:	\$68,804.30

DEFENDANT'S
EXHIBIT

2

ROA000302

Carolina Registers (Parts and Service)110 Swampfox Run
Sumter, SC 29163

Voice: 868-259-6837

Fax: 803-934-8544

INVOICE

Invoice Number: 243357

Invoice Date: Jan 9, 2012

Page: 1

Duplicate

Bill To:Tommy's Grill
20 East Willow RD
Lynchburg, SC 29080**Ship to:**

Customer ID	Customer PO	Payment Terms	
TommysGrill	Service	Net Due	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	On Site		1/9/12

Quantity	Item	Description	Unit Price	Amount
1.00	Ruby Sys	Ruby system	3,700.00	3,700.00
1.00	Misc	Sams Box	1,650.00	1,650.00
3.00	Labor	On site labor	65.00	195.00
1.00	Travel	Travel time	65.00	65.00
		Put \$1,000 down and financed the remaining balance.		
Subtotal				5,610.00
Sales Tax				428.00
Total Invoice Amount				6,038.00
Payment/Credit Applied				6,038.00
TOTAL				0.00

Check/Credit Memo No: 000128

ROA000303

Tim Barnett (843) 617-0963

DATE Jan 10, 2012	☐ SERVICE ☐ INSTALL	☐ WILL CALL ☐ DELIVER	PHONE
NAME JP Grocery LLC			MAKE
ADDRESS Hwy 76			MODEL
Vincentberg SC 29080			SERIAL
ITEM TO BE SERVICED Refrigerator	NATURE OF SERVICE REQUEST		

DATE WANTED	DEPOSIT	RECEIVED BY:
ESTIMATES ARE FOR LABOR ONLY, MATERIAL ADDITIONAL. WE WILL NOT BE RESPONSIBLE FOR LOSS OR DAMAGE CAUSED BY FIRE, THEFT, TESTING, OR ANY OTHER CAUSES BEYOND OUR CONTROL.		
AUTHORIZED BY:		Repair Order ORIGINAL

ROA000304

Leit Sons HVAE

Tim Garrett

(843) 1617-09 ESTIMA

☒ ESTIMATE (VALID FOR 30 DAYS)

DATE	Jun 15, 2012	☐ SERVICE	☐ WILL CALL	PHONE
NAME	JP Grocery LLC	☐ INSTALL	☐ DELIVER	MAKE
ADDRESS	11077 7th			MODEL
	Wichita, KS 67208			SERIAL
ITEMS TO BE SERVICED	Annual Service			
	NATURE OF SERVICE REQUEST			

QTY	PART #	DESCRIPTION OF PARTS OR MATERIALS	PRICE	AMOUNT
		Service all equipment		
		3 cooler cond		
		1 AC/HF unit		
		4 Drink Boxes		
		1 Ice machine		
		2 window units		
		Replace (3) ballaces		
		parts \$40 each		
		Annual Service	\$56.00	
		TOTAL MATERIALS		
		TOTAL LABOR		
		TOTAL AMOUNT		

DATE WANTED	DEPOSIT	RECEIVED BY
ESTIMATES ARE FOR LABOR ONLY, MATERIAL ADDITIONAL. WE WILL NOT BE RESPONSIBLE FOR LOSS OR DAMAGE CAUSED BY FIRE, THEFT, TESTING, OR ANY OTHER CAUSES BEYOND OUR CONTROL.		
AUTHORIZED BY:		Repair Order ORIGINAL

Dr. Adams 5034

AUTHORIZED BY:

TERMS - NET CASH
NO GOODS HOLD OVER 30 DAYS

ROA000305

03-11

HVAC SERVICE ORDER INVOICE

1233

Expert Technician
564 Aire Acres Rd
Timmonsville, SC 29161
843-992-2364 / 803-968-9549

METHOD OF PAYMENT		UNIT		UNIT		CHECK LIST	
CASH	CHECK	MAKE	MODEL	MAKE	MODEL	☒ COMPRESSOR ☒ CONDENSER COIL ☒ REFRIGERANT ☒ FAN AND MOTOR ☒ EVAPORATOR COIL ☒ CONDENSATE AREAS ☒ AIR FILTERS ☒ HEATING ASSEMBLY ☒ ELECTRICAL COMPTS. ☒ THERMOSTAT	
CREDIT CARD	AMERICAN EXPRESS	SERIAL NUMBER	SERIAL NUMBER				
EQUIPMENT		ENVIRONMENTAL CHECKLIST					
CONDENSING UNIT		QTY	TYPE/DISPOSITION				
RECEIVED							
RETURNED							
DISPOSAL							
RECLAIMED							
CHANGED OUT/REPLACED							
TOTAL \$							
QTY		MATERIALS & SERVICES	UNIT PRICE	AMOUNT			
REFRIGERANT		LBS					
FILTERS		X					
TOTAL MATERIALS							
HRS		LABOR	RATE	AMOUNT			
TOTAL LABOR							
TOTAL MATERIALS							
TOTAL LABOR							
TRAVEL CHARGE							
TAX							
TOTAL \$18,500.00							

NAME		STREET		CITY		PHONE (HOME)		PHONE (WORK)		TECHNICIAN	
SP Grocery		20 E Willow Grove Rd		Lynchburg SC		29080				Olden Badden 843 992 2364	
REPLACE AL UNIT		REWIRING STORE									
DESCRIPTION OF WORK											
Tune outdoor unit 6.5 Ton		\$6500.00									
Rewire complete store, grand bar, Gas pay, Cooler, all plug and light		\$12000.00									
1 Year warrant on all work		Olden Badden									
RECOMMENDATIONS		TERMS									
Payment Plan											
Money go toward old and new gas bill for company											

ROA000306

Carolina Registers (Parts and Service)
 110 Swampfox Run
 Sumter, SC 29153

INVOICE

Invoice Number: 243358
 Invoice Date: May 15, 2012
 Page: 1

Voice: 866-259-8837
 Fax: 803-934-8544

Duplicate

Bill To:
Tommy's Grill 20 East Willow RD Lynchburg, SC 29080

Ship to:

Customer ID	Customer PO	Payment Terms	
TommysGrill	Service	Net Due	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	On Site		5/15/12

Quantity	Item	Description	Unit Price	Amount
1.00	Misc	Kerosene Dispenser	8,000.00	8,000.00
1.00	Misc	Single product dispenser	5,000.00	5,000.00
1.00	Labor	On site labor	1,000.00	1,000.00
1.00	Misc	Electrical	5,000.00	5,000.00
1.00	Travel	Travel time	65.00	65.00
		Put \$1,000 down and financed the remaining balance.		
Subtotal				17,065.00
Sales Tax				880.00
Total Invoice Amount				17,945.00
Payment/Credit Applied				17,945.00
TOTAL				0.00

Check/Credit Memo No: 000322

ROA000307

Carolina Registers (Parts and Service)110 Swampfox Run
Sumter, SC 29153Voice: 866-259-6837
Fax: 803-934-8544**INVOICE**Invoice Number: 243359
Invoice Date: Jul 16, 2012
Page: 1
Duplicate

Bill To:
Tommy's Grill 20 East Willow RD Lynchburg, SC 29080

Ship to:

Customer ID	Customer PO	Payment Terms	
TommysGrill	Service	Net Due	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	On Site		7/16/12

Quantity	Item	Description	Unit Price	Amount
1.00	Misc	Diesel Dispenser	5,000.00	5,000.00
1.00	TM-U950	TM-U950 Ruby Printer	185.00	185.00
1.00	Travel	Travel time	65.00	65.00
1.00	Labor	On site labor	500.00	500.00
1.00	Misc	Electrical	1,500.00	1,500.00
		Put \$1,500 down and financed the remaining balance.		
Subtotal				7,250.00
Sales Tax				414.80
Total Invoice Amount				7,664.80
Payment/Credit Applied				7,664.80
TOTAL				0.00

Check/Credit Memo No: 000412

ROA000308

581-55

CAROLINA REGISTERS

110 Swampfox Run
 Sumter, SC 29153
 Phone (866) 259-6837 Fax: 803-934-8544

**SERVICE WORK ORDER
NO.**

Customer Name:	Date: 8/6/12	Phone:
State Name: <u>Tennet's Grill</u>	Fed Branch:	Phone:
Service Address:	City:	Zip Code:
Billing Address:	City:	Zip Code:
Work Requested:		

WORK PERFORMED:

MATERIALS NEEDED TO COMPLETE JOB:

Qty	Part Number	Description	Unit Price	Extended Price

MATERIALS USED:

Qty	Part Number	Description	Unit Price	Extended Price
3	11AP	MATERIALS	48.9	146.5
3		ACORN AWAY	27.2	81.6
3		1/2 PT. HONEY	58.5	175.5
	Gallons	PCW (Petroleum Contact Water)	/Gal	

LABOR (to the nearest 15 min):

Date	Technician	Arrive (AM/PM)	Depart (AM/PM)	ON SITE TIME	TRAVEL TIME	TRAVEL MILES
				HR	HR	MI
				HR	HR	MI
				HR	HR	MI

AGREEMENT

The undersigned person, having full authority as the customer, acknowledges that all work described on this work ticket was completed; all parts & materials described were utilized, and all labor & travel times are accurate. I agree to accept that all work was performed in a safe, professional manner, and that the work is completed to complete satisfaction. Carolina Registers retains 100% ownership of any parts or materials used until paid in full, and has full right to reclaim possession if not paid for services within terms. Terms are C.O.D., unless credit terms have been established with Carolina Registers. All customers with established credit terms for services shall pay in full NET 10 days from date of services.

Signature: Abigail Taylor
 Print Name: Abigail Taylor
 Date: 8/8/12

Labor _____ \$ _____
 Labor _____ \$ _____
 Travel _____ \$ _____
 Mileage _____ \$ _____
 Materials _____ \$ 428.10
 Other _____ \$ _____
 Sales Tax _____ \$ 22.05
TOTAL \$ 440.15

ROA000309

Bathroom Fixture

Fix Sink Broken by
customer 8/24/12
to James Herbert
\$ 100.00

10/4/12

Kerosene Tank lines

Repair.

\$ 300.⁰⁰/₁₀₀

X Over Time

THANK YOU

Carolina Registers (Parts and Service)110 Swampfox Run
Sumter, SC 29153

Voice: 866-259-6837

Fax: 803-934-8544

INVOICE

Invoice Number: 243361

Invoice Date: Nov 5, 2012

Page: 1

Duplicate

Bill To:
Tommy's Grill 20 East Willow RD Lynchburg, SC 29080

Ship to:

Customer ID	Customer PO	Payment Terms	
TommysGrill	Service	Net Due	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	On Site		11/5/12

Quantity	Item	Description	Unit Price	Amount
1.00	Misc	Dispenser	5,500.00	5,500.00
1.00	Travel	Travel time	65.00	65.00
1.00	Labor	On site labor	500.00	500.00
1.00	Misc	Electrical	1,500.00	1,500.00
		Put \$1,500 down and financed the remaining balance.		

Subtotal	7,565.00
Sales Tax	440.00
Total Invoice Amount	8,005.00
Payment/Credit Applied	8,005.00
TOTAL	0.00

Check/Credit Memo No: 000462

ROA000312

Carolina Registers (Parts and Service)
 110 Swampfox Run
 Sumter, SC 29153

Voice: 866-259-8837
 Fax: 803-934-8544

INVOICE

Invoice Number: 243380
 Invoice Date: Apr 9, 2013
 Page: 1
 Duplicate

Bill To:
Tommy's Grill 20 East Willow RD Lynchburg, SC 29080

Ship to:

Customer ID	Customer PO	Payment Terms	
TommysGrill	Service	Net Due	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	On Site		4/9/13

Quantity	Item	Description	Unit Price	Amount
1.00	Misc	Dispenser	5,000.00	5,000.00
1.00	Travel	Travel time	65.00	65.00
1.00	Labor	On site labor	500.00	500.00
1.00	Misc	Electrical	1,500.00	1,500.00
		Put \$1,500 down and financed the remaining balance.		
Subtotal				7,065.00
Sales Tax				400.00
Total Invoice Amount				7,465.00
Payment/Credit Applied				7,465.00
TOTAL				0.00

Check/Credit Memo No: 000512

ROA000313

SAN-GLO CAROLINA, INC.

Contract Glazing
3645 Hoffmayer Road
FLORENCE, SC 29501

(843) 669-8700 FAX (843) 676-0308

INVOICE

29738

5/1/13

TO: L & G on STORE

RECEIVED

SALESPERSON	DATE SHIPPED	SHIPPED VIA	F.O.B. POINT	TERMS
CAREY		F&F		
QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL	

MAKE REPAIRS TO DOOR

REPLACE PINION CAM

150.00

Sam P.

Paul
Cam

[Signature]

THANK YOU

111013

CUSTOMER'S ORDER NO.	DEPARTMENT	DATE 8-5-75
NAME Lynch, Liz - p 10		
ADDRESS		
CITY, STATE, ZIP		

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
1	5 pounds A 22		110 00
2	1 8540-20 Infest		
3	Tax		111 80
4	1 Sewer Call		
5	Apw F & Mch		
6	Rechar AC		90 00
	Tax		
	Sam. P.		311 00
	SP		
	GROCE		
	LYNCH		
	800-415		
	UP		
	GROCERY		
	LYNCH		
	05-06-2013		
	66		
	134		
	2261		
	2.0		

05-05-2013

55
24

52.

7:38 PM CST

KEEP THIS SLIP FOR REFERENCE

01-11

ROA000315

111031

CUSTOMER'S ORDER NO.		DEPARTMENT		DATE 8-21-23	
NAME French Bay 3rd					
ADDRESS					
CITY, STATE, ZIP					
SOLD BY		CASH	C.O.D.	CHANGE	ON ACCT.
		MDSE. RETD.		PAID OUT	
QUANTITY	DESCRIPTION	PRICE	AMOUNT		
1	Cope Land				
2	Cashier Motor		106	21	
3	Service Call		45	80	
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
RECEIVED BY: [Signature]					

A:5008
T-40320/40380

KEEP THIS SLIP FOR REFERENCE

01-11

ROA000316



**NEVER STOP
IMPROVING**

LOWE'S HOME CENTERS, INC.
2301 DAVID H. MCLEOD BLVD.
FLORENCE, SC 29501 (843) 413-9276

69.2
10
79.2

- SALE -

SALES#: S1120EA1 98154 TRANS#: 47723723 02-01-13

398954 UTILATUB CONBO WITH FAUCE 119.00

SUBTOTAL:	119.00
TAX:	9.52
INVOICE 02223 TOTAL:	128.52
CASH :	129.00
CHANGE:	0.48

STORE: 1120 TERMINAL: 02 02/01/13 08:02:58
OF ITEMS PURCHASED: 1
EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.
SEE REVERSE SIDE FOR RETURN POLICY.
STORE MANAGER: CALVIN WHITE

WE HAVE THE LOWEST PRICES, GUARANTEED!
IF YOU FIND A LOWER PRICE, WE WILL BEAT IT BY 10%.
SEE STORE FOR DETAILS.

ROA000317



More saving.
More doing.™

3031 WEST RADIO DRIVE
FLORENCE, SC 29501 (843)661-2597

8580 00004 27138 01/26/13 10:22 AM
CASHIER GLORIA - GJE4896

037155001330 RFSHOLRNDLS <A> 10.98
CLEAR READY-FIT SHALL HANDLES

SUBTOTAL	10.98
SALES TAX	0.88
TOTAL	\$11.86
CASH	12.00
CHANGE DUE	0.14



8580 04 27138 01/26/2013 3144

RETURN POLICY DEFINITIONS
POLICY ID DAYS POLICY EXPIRES ON
A 1 90 04/26/2013
THE HOME DEPOT RESERVES THE RIGHT TO
LIMIT / DENY RETURNS. PLEASE SEE THE
RETURN POLICY SIGN IN STORES FOR
DETAILS.

BUY ONLINE PICK-UP IN STORE
AVAILABLE NOW ON HOMEDEPOT.COM.
CONVENIENT, EASY AND MOST ORDERS
READY IN LESS THAN 2 HOURS!

ENTER FOR A CHANCE
TO WIN A \$5,000
HOME DEPOT GIFT
CARD!

Share Your Opinion With Us! Complete
the brief survey about your store visit
and enter for a chance to win at:

www.homedepot.com/opinion

COMPARTA SU OPINION EN
UNA BREVE
ENCUESTA PARA LA OPORT
UNIDAD DE GANAR.

User ID:
63145 54569

Password:
13076 54565

Entries must be entered by 02/25/2013.
Entrants must be 18 or older to enter.
See complete rules on website. No
purchase necessary.

ROA000318



LOWE'S HOME CENTERS, INC.
2301 DAVID H. WELDON BLVD.
FLORISSANCE, SC 29501 (843) 413-9276

- SALE -

SALES#: 011200K1 1000007 TRM004: 71239702 11-06-12

01525 DELUXE ELECTRIC CERAMIC 39.99
7050 BWP 98 PINK HALOGEN FLOD 8.99

SUBTOTAL: 48.98
TAX: 3.76
INVOICE 09020 TOTAL: 52.72
CASH: 52.00
CHANGE: 9.28

STORE: 1120 TERMINAL: 00 11/06/12 17:09:32
OF ITEMS PURCHASED: 2
EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.
SEE REVERSE SIDE FOR RETURN POLICY.
STONE NUMBER: 000000

WE HAVE THE LOWEST PRICES, GUARANTEED!
IF YOU FIND A LOWER PRICE, WE WILL BEAT IT BY 10%.
SEE STORE FOR DETAILS.

* YOUR OPINIONS COUNT! *
* REGISTER TO WIN A \$5,000 LOWE'S GIFT CARD! *
* INSTANTLY WIN A \$500 LOWE'S GIFT CARD BY VISITING LOWE'S *
* *
* REGISTER BY COMPLETING A GREAT SATISFACTION SURVEY *
* WITHIN ONE WEEK AT: www.lowes.com/survey *
* Y O U R I D O 09020 1120 311 *
* *
* NO PURCHASE NECESSARY TO ENTER OR WIN. *
* VOID WHERE PROHIBITED. MUST BE 18 OR OLDER TO ENTER. *
* OFFICIAL RULES & WINNERS AT: www.lowes.com/survey *

STORE: 1120 TERMINAL: 00 11/06/12 17:09:32

THE FOLLOWING ITEMS HAVE EXTENDED PROTECTION PLANS
AVAILABLE FOR PURCHASE. YOU HAVE 30 DAYS FROM THE DATE
OF THIS SALE TO PURCHASE A PLAN. TO MAKE A PURCHASE,
CONTACT A LOWE'S SALESPERSON.

01525 DELUXE ELECTRIC CERAMIC HEATER

ROA000319



More saving.
More doing.™

3051 WEST RADIO DRIVE
FLORENCE, SC 29501 (843)661-2597

8580 00099 97149 10/12/12 04:26 PM
CASHIER DEBORAH - DWMNF

764661102809 80# SAKRETE <A>	3.85
80LB SAKRETE CONCRETE MIX	
032886895692 CONDUIT <A>	15.50
3/4"X6' LIQUIDITE AC WHIP	
657351 2X4X8 BRICK <A>	
2X4X8 SOLID CONCRETE BRICK	
490.69	2.76
320047 4X8X16 BLOCK <A>	
4'X8"X16" CONCRETE SOLID BLOCK	
291.49	2.98
SUBTOTAL	25.09
SALES TAX	2.01
TOTAL	\$27.10
CASH	100.00
CHANGE DUE	72.90



8580 99 97149 10/12/2012 4606

RETURN POLICY DEFINITIONS
POLICY ID DAYS POLICY EXPIRES ON
A 1 90 01/10/2013
THE HOME DEPOT RESERVES THE RIGHT TO
LIMIT / DENY RETURNS. PLEASE SEE THE
RETURN POLICY SIGN IN STORES FOR
DETAILS.

BUY ONLINE PICK-UP IN STORE
AVAILABLE NOW ON HOMEDEPOT.COM.
CONVENIENT, EASY AND MOST ORDERS
READY IN LESS THAN 2 HOURS!

ENTER FOR A CHANCE
TO WIN A \$5,000
HOME DEPOT GIFT
CARD!

Share Your Opinion With Us! Complete
the brief survey about your store visit
and enter for a chance to win at:

www.homedepot.com/opinion

COMPARTA SU OPINION EN
UNA BREVE
ENCUESTA PARA LA OPORT
UNIDAD DE GANAR.

User ID:
203167 194686

Password:
12512 194587

Entries must be entered by 11/11/2012.
Entrants must be 18 or older to enter.
See complete rules on website. No
purchase necessary.

ROA000320



LOWE'S HOME CENTERS, INC.
1251 CROOK STREET
SUMMIT, NC 28150 (800) 843-2630

- SALE -

SALES#: 50618J03 53577 TRANS#: 00341214 10-15-12

70535 6" SQ BOX, 1.5" DEEP, 1/2	5.35
5 0	1.07
75637 3/8 IN CONNECTION TO B&B	3.62
70564 CEILING BOX COVER, FLAT,	2.85
3 0	0.35
55761 4" SQUARE COVER, FLAT, BL	1.89
3 0	0.63
72446 4" HOOKING, 1 DEVICE, 1/2	4.28
4 0	1.07
70565 1/2" WOOD BOX COVER, DUPLEX R	3.00
4 0	0.75
292877 8" BLK CABLE TIES 20 B&B	4.14
2 0	2.07
316595 9/16 X 3" TOL BLT 25PE 2H	7.98
47436 RED VIBRANTS 25 B&B 1D	3.38
19959 4" SQUARE BOX EXTENSION	5.80
2 0	2.80
70604 CVD 15A NEST RECEPTACLE D	1.88
3 0	0.82
69837 3/8 FLEX ALUMINUM 25'	15.74

SUBTOTAL:	59.69
TAX:	4.78
INVOICE 15577 TOTAL:	64.47
CASH:	70.00
CHANGE:	5.53

STORE: 0626 TERMINAL: 15 10/15/12 19:37:20
OF ITEMS PURCHASED: 30
EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.
SEE REVERSE SIDE FOR RETURN POLICY.
STORE MANAGER: COREY WILLIAMS

WE HAVE THE LOWEST PRICES, GUARANTEED!
IF YOU FIND A LOWER PRICE, WE WILL BEAT IT BY 10%.
SEE STORE FOR DETAILS.

YOUR OPINIONS COUNT!
REGISTER TO WIN A \$5,000 LOWE'S GIFT CARD!
REGISTER HERE FROM CASH OR TARJETA DE REGALO LOWE'S!
REGISTER BY COMPLETING A GUEST SATISFACTION SURVEY
WITHIN ONE WEEK BY: www.lowes.com/survey
YOUR ID# 15577 0026 289
NO PURCHASE NECESSARY TO ENTER OR WIN.
ODD YEARS PROHIBITED. MUST BE 18 OR OLDER TO ENTER.
OFFICIAL RULES & WINNERS AT: www.lowes.com/survey

STORE: 0626 TERMINAL: 15 10/15/12 19:37:20

ROA000321

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas

Walter Newman, Special Referee

Appellate Case No. 2015-000498

RECEIVED

AUG 10 2015

SC Court of Appeals

A&P Enterprises, LLC, ... Appellant,

v.

SP Grocery of Lynchburg, LLC and Suresh "Sam" Patel Respondents.

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 of any other material.



S. Jahue Moore, SC Bar #4063
John C. Bradley, Jr., SC Bar #7869
Moore Taylor Law Firm, PA
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West Columbia, SC 29171
(803) 796-9160
john@mttlaw.com
Attorneys for the Appellant

West Columbia, SC
August 7, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas

Walter Newman, Special Referee

Appellate Case No. 2015-000498

RECEIVED

AUG 10 2015

SC Court of Appeals

A&P Enterprises, LLC, ... Appellant,

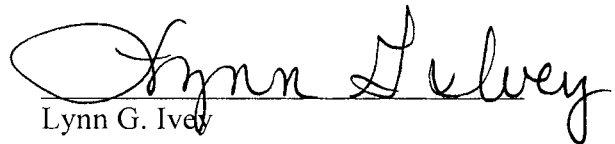
v.

SP Grocery of Lynchburg, LLC and Suresh "Sam" Patel Respondents.

PROOF OF SERVICE

I, Lynn G. Ivey, an employee of Moore Taylor Law Firm, PA, certify that I have served the Record on Appeal on counsel of record for Respondent in this action by depositing a copy of same in the United States Mail, postage prepaid, on August 10, 2015, addressed as follows:

William Wheeler, III
Jennings & Jennings, P.A.
Post Office Box 106
Bishopville, SC 29010-0106


Lynn G. Ivey