

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Case No.: 2014-001215

RECEIVED

Larry E. Koon and Allen Lee Koon by and through his attorney in fact, Larry E.
Koon, Respondents,

v.

Thomas Jackson Construction Inc, Appellant.

RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3600109

Larry E Koon

Allen Lee Koon

Thomas Jackson
Construction Inc

SCANNED

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (format order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

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


Circuit Court Judge

2167
Judge Code

5/30/14
Date

For Clerk of Court Office Use Only

This judgment was entered on June 2, 2014, and a copy mailed first class or placed in the appropriate attorney's box on June 3, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Jennifer Dowd Nichols PO Box 1000 135 Columbia Avenue
Chapin, SC 29036

Mindy Westbrook Zimmerman PO Box 1207 Newberry,
SC 29108

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jackie S. Bowers GS

Court Reporter

Jackie S Bowers - Clerk of Court

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

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

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY) EIGHTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-36-00109,

Larry E. Koon and Allen Lee Koon by)
and through his attorney in fact Larry E.)
Koon,)

Plaintiffs,)

vs.)

Thomas Jackson Construction, Inc.,)

Defendant.)

FINAL ORDER
(Non-Jury Trial)

JACKIE S. BOWERS
CLERK OF COURT

FILED
NEWBERRY COUNTY
2014 JUN 2 AM 10 47

This matter came before me on a Motion for Summary Judgment filed by the Plaintiffs and a Motion to Dismiss filed by the Defendant. Based on the following I grant the Plaintiffs' Motion for Summary Judgment and deny the Defendant's Motion to Dismiss.

BACKGROUND

This is an independent action to relieve the Plaintiffs from a judgment pursuant to South Carolina Rules of Civil Procedure Rule 60 (b) and to obtain an order requiring the Clerk of Court to satisfy the judgment of record.

The Defendant was served on March 1, 2014. All affidavits of service were filed with the Newberry County Clerk of Court. The Defendant filed an Answer, Defenses, and Counterclaim and a Motion to Dismiss on March 12, 2014. The Plaintiffs filed a Motion for Summary Judgment with supporting affidavits on March 27, 2014. No opposing affidavits were filed by the Defendant. On April 7, 2014, the Defendant submitted a Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment. On April 8, 2014, the Plaintiffs submitted a Reply to the Defendant's Counterclaim, a Brief in Opposition to Motion to Dismiss and in Support of

Motion for Summary Judgment and a Reply to Defendant's Memorandum in Opposition to Motion for Summary Judgment.

A hearing was held in this matter before me on April 9, 2014. Present at the hearing were Robert W. Dibble, Jr., Attorney for the Plaintiffs and Mindy W. Zimmerman, Attorney for the Defendant. At the hearing, the Plaintiffs submitted, without objection, an uncertified copy of the court file in Civil Action No. 2006-CP-36-395. The attorney for each party, as well as the Court, referred to the contents of that file during the hearing.

FINDINGS OF FACT

In 2006, in Civil Action No. 2006-CP-36-395, Thomas Jackson Construction, Inc. brought suit against Lake Murray Tree, Inc. to collect money on an open account resulting from the failure of Lake Murray Tree, Inc. to pay for work performed by Thomas Jackson Construction, Inc. Allen Lee Koon was the sole shareholder, as the below Special Referee so found, of and registered agent for Lake Murray Tree, Inc. However, Allen Lee Koon was not named as a defendant in that action, and no Summons or Rule to Show Cause was ever served upon him or upon his attorney in that action. Furthermore, neither he nor his attorney ever accepted service of a Summons or Rule to Show Cause naming Allen Lee Koon as a party to that action. The complaint, which was never amended, did not contain a cause of action seeking to pierce the corporate veil.

By consent, the matter was referred to the Honorable James S. Verner as Special Referee for Newberry County on June 16, 2007. Following a hearing, an Order was entered in that action on July 31, 2007 granting a judgment in the amount of Twenty Five Thousand Fifty-Six and 00/100 Dollars (\$25,056.00) in favor of Thomas Jackson Construction, Inc. against Lake Murray Tree, Inc. That Judgment was entered of record on August 6, 2007. On March 27, 2008, an

Handwritten signature and initials, possibly "J. Verner" and "DS", in black ink.

execution against property was issued by the Clerk of Court in connection with that judgment. The execution was returned *nulla bona* on June 28, 2008. On August 18, 2008, Thomas Jackson Construction, Inc. served a subpoena on Lake Murray Tree, Inc. (not Allen Lee Koon, individually) requesting the production of documents.

On October 26, 2009, the Honorable James S. Verner, as Special Referee for Newberry County issued an Order Relieving Counsel for Lake Murray Tree, Inc. No new counsel appeared for Lake Murray Tree, Inc. On November 4, 2009, Thomas Jackson Construction, Inc. filed a Motion for Contempt Order and Sanctions. The motion was directed only to Lake Murray Tree, Inc. A hearing on that motion was held on November 10, 2009. Allen Lee Koon appeared at that hearing as the sole shareholder of Lake Murray Tree, Inc., not individually, and without counsel. On January 12, 2010, an Order was entered granting the Motion for contempt and sanctions. As a sanction under Rule 37(b)(2), that Order entered judgment against Allen Lee Koon personally in the amount of Thirty-Two Thousand Eight Hundred Fifty-Eight and 80/100 Dollars (\$32,858.80) based only on the fact that he was the sole shareholder of Lake Murray Tree, Inc. The judgment against Allen Lee Koon was entered on February 1, 2010 in Judgment Roll 2010TR36173 in the Office of the Clerk of Court for Newberry County, South Carolina. The file in Civil Action No. 2006-CP-36-395 does not contain proof of service on Allen Lee Koon of the Referee's Order granting judgment against him personally. On February 25, 2010, Lake Murray Tree, Inc. sought relief from the judgment against it. The motion was signed by Allen Lee Koon as the registered agent for Lake Murray Tree, Inc. Arguably, this Motion was on behalf of Koon personally as well. This Motion is not clear enough to make a definitive ruling. There is no order in the record disposing of that motion.

On November 26, 2012, Allen Lee Koon executed a Power of Attorney in favor of his father, Larry Eugene Koon. That Power of Attorney was recorded in the office of the Clerk of Court for Newberry County in Book 1659 at page 273 and remains valid today.

Larry Eugene Koon alleges he first became aware of the Judgment held by Thomas Jackson Construction, Inc. against Allen Lee Koon on August 23, 2013, two (2) days prior to the scheduled closing of some property. Allen Lee Koon alleges he did not learn of the judgment against him until August or September 2013.

CONCLUSIONS OF LAW

I address the issues in the Defendant's Motion to Dismiss and the Plaintiffs' Motion for Summary Judgment in turn.

Rule 37 does not allow the entry of judgment against a non-party as a sanction

Rule 37 is exclusively directed to remedies and sanctions for failure to make or cooperate in discovery. Under the provisions of Rule 37(b)(2), the Court is limited to sanctions against a party to the action who, if an individual, fails to make or cooperate in discovery or fails to obey a court order or which, if an entity, through an officer, director or managing agent fails to make or cooperate in discovery or fails to obey a court order. Rule 37(b)(2) authorizes the Court to issue various sanctions against a party to the action, but it does not authorize the Court to sanction a person, by way of judgment, who is not a party to the action even though he or she is an officer, director or managing agent of an entity which is a party to the action.

Rule 37(b)(2) authorizes the Court in which the action is pending to make such orders as are just in regard to the failure to make or cooperate in discovery or to obey a court order. However, the Court may do so only when the Court has obtained personal jurisdiction over the

person who does so. In order to reach the assets of a shareholder of a defendant corporation, the Plaintiff must assert a cause of action seeking to pierce the corporate veil. Drury Development Corp. v. Foundation Ins. Co., 380 S.C. 97, 668 S.E. 2d 798 (2008). No such cause of action was ever asserted in Civil Action No. 2006-CP-36-395.

When a judgment is entered against a defendant who was never within the Court's jurisdiction, the judgment is void. A void judgment is one that, from its inception, is a complete nullity and without legal affect. Thomas & Howard Co. V. T.W. Graham & Co., 318 S.C. 256, 457 S.E.2d 340 (1999). "The definition only encompasses judgments from courts which failed to provide due process or judgments from courts which lacked subject matter or personal jurisdiction." Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002).

Since the complaint in the 2006 case did not contain a cause of action to pierce the corporate veil, the complaint would have had to be amended and Allen Lee Koon, individually, would have had to be made a party to that action. Because neither of those things occurred, there is no basis for the entry of a judgment as a sanction or otherwise against Allen Lee Koon, individually, as the sole shareholder of Lake Murray Tree, Inc. in Civil Action No. 2006-CP-36-395. Allen Lee Koon's involvement in the 2006 case was not on behalf of himself individually but on behalf of Lake Murray Tree, Inc.

For the foregoing reasons, the Motion to Dismiss cannot be based on a violation of Rule 37 in general or upon Rule 37(b)(2) specifically because (1) no such violation exists, (2) the judgment against Allen Lee Koon was improperly entered because he was not a party to the action and was not subject to the personal jurisdiction of the Court, (3) Rule 37(b)(2) does not allow sanctions, by way of judgment, against one who is not a party to the action and (4) an

action to pierce the corporate veil was not initiated by Thomas Jackson Construction, Inc. in order to reach the assets of Allen Lee Koon. The Special Referee abused his discretion in awarding the previously entered judgment against the corporation later against Koon personally.

Proper method to seek relief from Judgment

Rule 72

The second issue is whether or not this action was filed in violation of Rule 72, SCRCP. Rule 72 reads as follows: "Appeal may be taken, as permitted by law, from any final judgment or appealable order." Rule 72 by its terms addresses only the right of appeal from a final judgment or appealable order.

To the extent the Motion to Dismiss is based on the failure of Allen Lee Koon to appeal from the entry of judgment against him personally in Civil Action No. 2006-CP-36-395, the Motion to Dismiss must still fail. First, Allen Lee Koon was not a party to that action and had no right to appeal from the Order entering Judgment against him. Even if he knew of the judgment against him, he had the absolute right to treat the judgment a nullity since he was never made a party to that action, and Rule 37(b)(2) did not authorize the entry of judgment against him as a sanction. Second, if he had a right to appeal, his failure to do so simply resulted in the judgment against him becoming final which brings it squarely within the scope of Rule 60(b) SCRCP, upon which this action is based.

Nothing in Rule 72 prohibits the Plaintiffs from bringing an action to set aside the judgment against Allen Lee Koon individually. Therefore, the institution of this action by the Plaintiffs does not violate Rule 72.

A handwritten signature in black ink, appearing to be 'H. Lee' or similar, with a stylized flourish below it.

Rule 60

The next issue is whether or not Rule 60 provides a method to seek relief from a void judgment. Rule 60(b) SCRPC, explicitly authorizes the institution of this action. "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment..." Rule 60(b), SCRPC. Therefore, this action was not filed in violation of Rule 60.

To the extent that the Motion to Dismiss is intended to assert that this action was not timely filed under the provisions of Rule 60(b), the Motion to Dismiss must still fail. The Affidavit of Larry Eugene Koon alleges that he, personally, and as attorney-in-fact for Allen Lee Koon, was unaware of the judgment against Allen Lee Koon individually until August 23, 2013. The Affidavit of Allen Lee Koon alleges that he was unaware of the judgment against him until August or September 2013. This action was commenced in February 25, 2014, within six (6) months after the Plaintiffs became aware of the judgment. While there is authority in South Carolina that a void judgment may be attacked at any time, other cases have applied the reasonable time provisions set out in Rule 60(b) to motions and independent actions to set aside judgments. Therefore, even if the filing of the judgment against Allen Lee Koon provided constructive notice, the reasonable time provision of Rule 60(b) controls.

The case of Sijon v. Green, 289 S.C. 126, 345 S.E.2d 246 (1986) is directly on point. Green had judgments entered against him at a hearing on August 7, 1979 totaling One Thousand One Hundred Seventy-Five and 00/100 Dollars (\$1,175.00). Green brought an action to set aside the judgments alleging that he had no notice of the August 7, 1979 hearing and that he was unaware of the judgments until 1984, some five (5) years later. The Trial Court set aside the judgments, and Sijon appealed.

The Supreme Court noted in footnote 2 of that case that "Rule 60(b)(4) S.C.R. Civ. P. requires that motions to set aside a judgment on the ground it is void must be brought within a reasonable time." Sijon, 289 S.C. at 128, 345 S.E.2d at 248. The Court did not dismiss the case on the ground that it was not brought within a reasonable time. Therefore, implicitly, the Court found that the case was brought within a reasonable amount of time after Mr. Green learned of the judgments in 1984 that had been entered against him in 1979. This current action was also brought within a reasonable time under Rule 60 S.C.R.C.P.

S.C. Code Ann. § 15-3-530

The final ground for the Motion to Dismiss is that the action is barred by the Statute of Limitations set out in S.C. Code Ann. §15-3-530. That code section does not apply to an action to set aside a judgment under Rule 60(b)(2). The causes of action to which it pertains are specifically set out, and an action under Rule 60(b) to set aside a judgment on the ground that the judgment is void is not among those enumerated. Beyond that, however, there are other reasons why the statute does not apply to this action. First, the section does not apply to actions in equity such as this case. Parrott v. Dickson, 151 S.C. 114, 148 S.E. 704 (1929), Fanning v. Bogacki, 111 S.C. 376, 98 S.E. 137 (1919), DuPont v. DuBos, 52 S.C. 244, 29 S.E. 665 (1898), McKinnon v. Summers, 224 S.C. 331, 79 S.E.2d 146 (1953). Second, the limitation period began to run when the circumstances would put a person of common knowledge and experience on notice that some claim against another party might exist. Turner v. Milliman, 381 S.C. 101, 671 S.E.2d 636 (Ct. App. 2009). Since neither Allen Lee Koon nor Larry Eugene Koon claim they knew of the judgment against Allen Lee Koon until August of 2013, this action was brought well within the three (3) year limitation.

Therefore, Section 15-3-350 does not apply to this action, and if it does, under the circumstances and the provisions of the discovery rule, this action was timely filed.

For the foregoing reasons, the Defendant's Motion to Dismiss is denied because (1) Rule 37(b)(2) does not allow for a previously entered judgment against a corporation to be awarded against an individual of the corporation as a sanction, against an individual who is not a party to the action, to do so is an abuse of discretion; (2) Rule 72 does not prohibit this action, (3) this action is explicitly authorized by Rule (60)(b), (4) this action was brought within a reasonable amount of time after the Plaintiffs learned of the judgment against Allen Lee Koon personally, and (5) Section 15-3-530 does not apply.

Motion for Summary Judgment

When determining whether to grant summary judgment, a court must examine both the facts and the law; because a court must conduct the examination of law and facts, such an examination constitutes a trial. Brandt v. Gooding, 368 S.C. 618, 630 S.E.2d 259 (2006). Summary judgment may be granted only when, construing all ambiguities and inferences most strongly against moving party, pleadings and admissions on file show that there is no genuine issue of fact and that moving party is entitled to judgment as matter of law. Hatchell v. Jackson, 290 S.C. 256, 349 S.E.2d 407 (Ct. App. 1986).

The Plaintiffs have filed a Motion for Summary Judgment based on the fact that Allen Lee Koon was never made a party defendant to Civil Action No. 2006-CP-36-395 and, therefore, the judgment entered against him in that action is void for lack of personal jurisdiction.

As the Court of Appeals said in Ware v. Ware, 324 S.C. 639 478 S.E.2d 868 (Ct. App. 2013):

A void judgment is one that, from its inception, is a complete nullity and without legal affect. Thomas & Howard Co. v. T.W.

Graham & Co., 318 S.C. 256, 457 S.E.2d 340 (1999). 'The definition only encompasses judgments from courts which failed to provide due process or judgments from courts which lacked subject matter or personal jurisdiction.' Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002)....

The Plaintiffs' Motion for Summary Judgment is supported by affidavits from Allen Lee Koon, Larry Eugene Koon and Samuel M. Price, Jr., Esq., who served as the attorney for Lake Murray Tree, Inc. for a period of time during the initial action. The Affidavit of Allen Lee Koon states unequivocally (1) that he was not named as an individual party defendant in Civil Action No. 2006-CP-36-395, (2) that he was never served with a Summons or Rule to Show Cause naming him as an individual party defendant in that action and (3) that he never accepted service on either a Summons or Rule to Show Cause naming him as an individual party defendant in that action. Samuel M. Price, Jr., Esq. submitted an Affidavit in support of the Motion for Summary Judgment. He stated (1) that he represented Lake Murray Tree, Inc. in Civil Action No. 2006-CP-36-395, (2) during the time he represented Lake Murray Tree, Inc. he never accepted service on a Summons or Rule to Show Cause naming Allen Lee Koon individually as a party to that action in any capacity and (3) the only Defendant in that action while he represented Lake Murray Tree, Inc. was Lake Murray Tree, Inc. There is no evidence in the record to contradict either of those affidavits.

In the absence of personal jurisdiction an order affecting the rights of a party cannot be effective without proper notice to the party whose rights are to be affected. In the case of S.C. Dept. Rev. v. McClure, 350 S.C. 404, 566 S.E.2d 198 (Ct. App. 2002), the Court held that an Order issued by the Master-in-Equity was not binding upon the Department of Revenue because the Master lacked personal jurisdiction over the Department. The Court held as follows:

#10
DMM

On appeal, SCDOR argues the master's rule to show cause did not contain the essential elements of a summons and, therefore, the master did not have personal jurisdiction over it. We agree.

"[A] judgment is void ... if a court acts without [personal] jurisdiction." Thomas & Howard Co. v. T.W. Graham & Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995); see also Coogler v. Cal. Ins. Co. of San Francisco, Cal., 192 S.C. 54, 58-59, 5 S.E.2d 459, 461 (1939) ("[N]o order or judgment affecting the rights of a party ... should be made or rendered without [proper] notice to the party whose rights are to be thus affected..."). A court ordinarily obtains personal jurisdiction by the service of a summons. See State v. Sanders, 118 S.C. 498, 502, 110 S.E. 808, 810 (1920) ("The purpose of the summons is to acquire jurisdiction of the person of the defendant"); cf. Rule 3(a) SCRCP ("A civil action is commenced by filing and service of a summons and complaint."). However, our supreme court has "previously excused the use of the Rule to Show Cause [in place of a summons] to obtain [350 S.C. 408] jurisdiction when it contained the essential elements of a valid summons." Citizens & Southern Nat'l Bank of S.C. v. First Palmetto State Bank & Trust Co., 279 S.C. 252, 254, 305 S.E.2d 80, 80 (1983).

"[O]ne of the most important elements of a Summons is the time it allots for the defendant to appear." Id. at 254, 305 S.E.2d at 80-81. In Citizens & Southern, the rule to show cause provided it was returnable in twelve days, "rather than the twenty days then required of a Summons." Id. at 254, 305 S.E.2d at 81. Therefore, the court held the rule to show cause did not contain the essential elements of a summons. Thus, the circuit court did not properly have personal jurisdiction over the defendant. Id.

A defendant must be given thirty days in which to answer a summons. Rule 12(a), SCRCP. In the present case, SCDOR was served with a copy of the rule to show cause on April 4, 2001, and ordered to appear on April 25, 2001. SCDOR had only twenty-one days in which to respond, not thirty as required by Rule 12(a), SCRCP. According to our supreme court's holding in Citizens & Southern, the master's rule to show cause lacked an essential element of a summons.

Therefore, the master lacked personal jurisdiction over SCDOR, and the order binding it to the master's initial Judgment of Foreclosure and Sale is void and must be vacated. See Thomas & Howard Co., 318 S.C. at 291, 457 S.E.2d at 343; Coogler, 192 S.C. at 58-59, 5 S.E.2d at 461.

For the foregoing reasons, we find the master did not have personal jurisdiction over SCDOR and, therefore, his order extinguishing its lien is VACATED.

In the case of Thornton v. Alford, 274 S.C. 1, 760 S.E.2d 179 (1979) Justice Ness, writing for the Court held:

Finally, no summons or rule to show cause accompanied the order. As a result, the Court lacked jurisdiction over the appellant. Lee v. Storfer, et al., 159 SC 70, 247 S.E. 177 (1930); Section 15-9-10, Code of Laws of South Carolina (1976). See also, Ex. Parte Jones, 160 S.C. 63 158 S.E.2d 134 (1931); Jordan v. Wilson, 69 S.C. 256, 48 S.E. 224 (1904); 61 Am. Jur. Section 349, p. 750. Disobedience of an order without jurisdiction is not contempt. State ex rel McLoud v. Holcomb, 245 S.C. 63, 138 S.E.2d 707 (1964). Long v. McMillian, 226 S.C. 598, 86 S.E.2d 477 (1955). The order appealed from must therefore, be reversed and the issuing Court admonished for its failure to observe the barest rudiments of substantive or procedural law.

The evidence in the record conclusively establishes that Allen Lee Koon was never made a party to Civil Action No. 2006-CP-36-395 and never personally appeared in that action in his individual capacity. After considering the affidavits, the record before the Court and arguments of counsel, and after construing all ambiguities and inferences strongly against the Plaintiffs, I find and conclude that the pleadings, the affidavits and evidence presented establish that there is no genuine issue of material fact as to whether Allen Lee Koon was subject to the personal jurisdiction of the Court in Civil Action No. 2006-CP-36-395. Therefore, I find and conclude that the judgment against Allen Lee Koon in Civil Action No. 2006-CP-36-395 is void ab initio, is a nullity and is unenforceable and had no legal effect, and therefore, the Plaintiffs are entitled to a judgment and order vacating the judgment against Allen Lee Koon personally in Civil Action No. 2006-CP-36-395 as a matter of law.

Accordingly, the Motion to Dismiss must be denied and judgment must be entered in Plaintiffs' favor. It is clear the Special Referee abused his discretion in awarding this judgment against Koon individually pursuant to Rule 37 S.C.R.C.P.

DECREE

THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED:

- A. The Court denies the Defendant Thomas Jackson Construction, Inc.'s Motion to Dismiss and Grants the Plaintiffs' Motion for Summary Judgment.
- B. The Judgment issued against Allen Lee Koon individually in Civil Action No. 2006-CP-36-395 should be and is hereby vacated because it is void, and the Clerk of Court for Newberry County is directed to satisfy of record the judgment entered against Allen Lee Koon individually in Civil Action No. 2006-CP-36-395.

AND IT IS SO ORDERED.



The Honorable Donald B. Hocker
Circuit Court of the Eighth Judicial Circuit

May 30, 2014.

#13



State of South Carolina
The Circuit Court of the Eighth Judicial Circuit

Donald B. Hocker
Judge

Laurens County Courthouse
100 Hillcrest Square, Suite Q
Post Office Box 972
Laurens, SC 29360
Phone: (864) 984-2076
Fax: (864) 984-2333
dhockerj@sccourts.org

April 25, 2014

MEMO

To: Jennifer Dowd Nichols and Robert Diddle (jennifer@harrellmartin.com)

To: Mindy Zimmerman (mindy@zimmermanandshealy.com)

Re: Koon v. Thomas Jackson 14-CP-36-109

This Memo shall not be a part of the record in this case. Its sole purpose is to give directives to counsel for Order preparation.

Jennifer, Robert, and Mindy:

Since the Motion to Dismiss and Motion for Summary Judgment are so inter-related, the following issues/questions shall apply to both:

1. Does Rule 37 allow for judgment to be entered against a non-party for discovery violations? No.
2. In order to pierce the corporate veil, is an action (cause of action) necessary? Yes. The Drury case repeatedly refers to "actions". It can not be done by way of a Rule 37 Motion.
3. Was Koon's involvement in the initial case on an individual basis or on behalf of the corporation? On behalf of the corporation.
4. Does Rule 60 allow for this independent action? Yes
5. Does recording the judgment provide for actual or constructive notice? It would allow for constructive notice but in an independent action to set aside judgment under Rule 60, constructive notice would not apply as the restriction is bringing the action "within a reasonable time" per Evans and Sijon.
6. The Relief from Judgment filed by Koon in 2010 apply to the judgment against him individually or the corporation? Corporation.

Page Two of Two

7. The court could not find in the file proof of service of the Referee's Order granting judgment against Koon individually.
8. Is a Summons required to obtain jurisdiction over a person? Yes.

Accordingly, the Court is denying the Motion to Dismiss and Granting the Motion for Summary Judgment. I would appreciate Jennifer and Robert preparing a proposed Order and allow Mindy the opportunity to review prior to submission to the Court.

The Court appreciates very much the fine and hard work from the three of you.

Donald B. Hocker
Circuit Court Judge

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY) EIGHTH JUDICIAL CIRCUIT
CASE NO.

Larry E. Koon and Allen Lee Koon by)
and through his attorney in fact Larry E.)
Koon,)

Plaintiffs,)

vs.)

Thomas Jackson Construction, Inc.,)

Defendant.)

SUMMONS
(Non-Jury Trial)

JACKIE S. BOWERS
CLERK OF COURT

2014 FEB 26 PM 2 18

FILED
NEWBERRY COUNTY

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the Complaint upon the subscribers, at their office, 135 Columbia Avenue, Post Office Box 1000, Chapin, South Carolina 29036, within thirty (30) days, after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint in the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE AND/OR MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY, YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a Guardian ad Litem to represent said minor(s) within thirty (30) days

after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

HARRELL & MARTIN, P.A.

Robert W. Dibble, Jr.
Of Counsel

By: Jennifer Dowd Nichols
L.K. Harrell, III
Jeremy C. Martin
Jennifer Dowd Nichols
135 Columbia Avenue
Post Office Box 1000
Chapin, South Carolina 29036
Telephone: (803) 345-3353
Facsimile: (803) 345-9171

Attorneys for Plaintiffs, Larry E. Koon and
Allen Lee Koon by and through his attorney
in fact Larry E. Koon

February 25, 2014
Chapin, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY) EIGHTH JUDICIAL CIRCUIT
) CASE NO.

Larry E. Koon and Allen Lee Koon by)
and through his attorney in fact Larry E.)
Koon,)

Plaintiffs,)

vs.)

Thomas Jackson Construction, Inc.,)

Defendant.)

COMPLAINT
(Non-Jury Trial)

FILED
NEWBERRY COUNTY
2019 FEB 26 PM 2 18
JACKIE S. BOWERS
CLERK OF COURT

The Plaintiffs, Larry E. Koon and Allen Lee Koon, by and through his attorney in fact Larry E. Koon, complaining of the Defendant, allege:

1. Larry E. Koon is a resident of Newberry County, South Carolina. Larry E. Koon holds a valid power of attorney granted to him by his son, Allen Lee Koon, a copy of which is attached hereto as Exhibit "A" and, by reference, incorporated herein.

2. The Defendant, Thomas Jackson Construction, Inc., is a company organized and existing under the laws of South Carolina.

3. The property which is the subject matter of this action is an undivided one-half interest in Tract "A" containing 23.194 acres and an undivided one-half interest in Tract "B" containing 0.4322 acres both of which are located in Newberry County, South Carolina. A copy of the deed of distribution describing Tract A and Tract B is attached as Exhibit "B" and, by reference, incorporated herein. This Court has jurisdiction over the parties and the subject matter of this action. Pursuant to Section 15-

7-10 of the S.C. Code of Laws (1976), venue is proper in this Court because the property is located in Newberry County.

4. A copy of the Summons and Complaint in Civil Action No. 2006-CP-36-395 is attached as Exhibit "C" and, by reference, incorporated herein. An Order was issued in that case on July 31, 2007 granting Thomas Jackson Construction, Inc. a judgment of \$25,056 against Lake Murray Tree, Inc. which was entered of record on August 6, 2007. An Execution Against Property was issued against Lake Murray Tree, Inc. by the Clerk of Court for Newberry County, South Carolina on March 27, 2008. On August 18, 2008, Thomas Jackson Construction, Inc. served Lake Murray Tree, Inc. with a subpoena requesting the production of documents.

5. On November 4, 2009, Thomas Jackson Construction, Inc. filed a Motion for Contempt Order and Sanctions. On January 12, 2010, an Order Granting Plaintiff's Motion for Contempt Order and Sanctions was issued. A copy of the Order is attached as Exhibit "D" and, by reference, incorporated herein. In addition to holding Lake Murray Tree, Inc. liable, the Order also held Allen Lee Koon personally liable for the amount of \$32,858.80, which represented the amount of the judgment against Lake Murray Tree, Inc., plus interest at the rate of 12.25% compounded annually through December 6, 2009.

6. On May 15, 2013 by deed recorded on May 20, 2013 in Deed Book 1697 at Page 138 in Newberry County, South Carolina, Allen Lee Koon individually transferred his undivided one-half (1/2) interest in Tracts "A" & "B" to Larry E. Koon. A copy of the deed is attached as Exhibit "E" and, by reference, incorporated herein.

7. The Plaintiffs now bring this action seeking a declaratory judgment holding the judgment against Allen Lee Koon individually in Civil Action No. 2006-CP-36-395 to be void.

8. No Summons or Rule to Show Cause was issued or served upon Allen Lee Koon individually in Civil Action No. 2006-CP-36-395. Therefore, the Court did not have personal jurisdiction over Allen Lee Koon, individually.

9. A court cannot award a judgment against an individual without having personal jurisdiction over him, therefore, the judgment against him personally is void.

10. Allen Lee Koon was not a party to Civil Action No. 2006-CP-36-395 within the meaning of Rule 37, SCRCP. Therefore, the judgment could not be entered against him as a sanction.

11. Under South Carolina Rules of Civil Procedure Rule 60 (b), an independent action to relieve the Plaintiffs from the personal judgment of Allen Lee Koon is permitted. Based on foregoing, the judgment against Allen Lee Koon personally should be declared void, should have no effect and should be satisfied of record by the Clerk.

WHEREFORE, Plaintiffs pray for judgment as follows:

A. That this Court grant Plaintiffs relief from the personal judgment against Allen Lee Koon, Individually and order the Clerk of Court to satisfy the judgment of record.

B. For such other and further relief as may be just and proper under Rule 54
(c) of the South Carolina Rules of Civil Procedure.

HARRELL & MARTIN, P.A.

Robert W. Dibble, Jr.
Of Counsel

By: Jennifer Dowd Nichols

L.K. Harrell, III
Jeremy C. Martin
Jennifer Dowd Nichols
135 Columbia Avenue
Post Office Box 1000
Chapin, South Carolina 29036
Telephone: (803) 345-3353
Facsimile: (803) 345-9171

Attorneys for Plaintiffs, Larry E. Koon and
Allen Lee Koon by and through his attorney
in fact Larry E. Koon

February 25, 2014
Chapin, South Carolina

201200014523
Filed for Record in
NEWBERRY COUNTY, SC
JACKIE S. BOWERS, CLERK OF COURT
11-26-2012 At 03:47 pm.
FWR ATTY 21.00
OK Book 1659 Page 278 - 287

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY) POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that as principal (the "Principal") I,
ALLENLEE KOON, of Newberry, South Carolina, have made, constituted, and appointed
and by these presents do make, constitute and appoint LARRY EUGENE KOON, my sole and lawful
attorney ("Attorney") for purposes hereinafter set forth.

ARTICLE I

EMPOWERMENT OF ATTORNEY

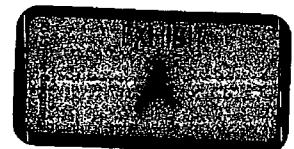
Attorney is authorized in Attorney's absolute discretion from time to time and at any
time with respect to my property, real or personal, at any time owned or held by me and without
authorization of any court and in addition to any other rights, powers or authority granted by any other
provision of this power of attorney or by statute or general rules of law (and regardless of whether I am
mentally incompetent or physically or mentally disabled or incapable of managing my property and
income), with full power of substitution, as follows:

A. Powers In General:

To do and perform all and every act, deed, matter and thing whatsoever in and about
my estate, property and affairs as fully and effectually to all intents and purposes as I might or could
do in my own proper person, if personally present, the specifically enumerated powers described below
being in aid and exemplification of the full, complete, and general power herein granted and not in
limitation or definition thereof;

B. Powers Relating to Management of Assets:

FILED
NEWBERRY COUNTY
JACKIE S. BOWERS
CLERK OF COURT
FEB 26 PM 2 19



1. To buy, receive, lease or lessor, accept or otherwise acquire; to sell, convey, mortgage, grant options upon, hypothecate, pledge, transfer, exchange, quit-claim, or otherwise encumber or dispose of; or to contract or agree for the acquisition, disposal, or encumbrance of any property whatsoever or any custody, possession, interest or right therein, for cash or credit and upon such terms, considerations and conditions as Attorney shall think proper, and no person dealing with Attorney shall be bound to see to the application of any monies paid;

2. To take, hold, possess, invest or otherwise manage any or all of my property or any interest therein; to eject, remove or relieve tenants or other persons from and recover possession of, such property by all lawful means; and to maintain, protect, preserve, insure, remove, store, transport, repair, build on, raze, rebuild, alter, modify, or improve the same or any part thereof, or to lease any property, real or personal for me or my benefit, as lessee, with or without option to renew; to collect, receive and receipt for rents, issues and profits of my property;

3. To make, endorse, accept, receive, sign, seal, execute, acknowledge, and deliver deeds, assignments, agreements, certificates, endorsements, hypothecations, checks, notes, mortgages, vouchers, receipts, consents, waivers, releases, undertakings, satisfactions, acknowledgements and such other documents or instruments in writing or whatever kind and nature as may be necessary, convenient, or proper in the premises;

4. To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration;

5. To invest and reinvest all or any part of my property in any property and undivided interest in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks

or corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and closed fund types, and participation in common, collective or pooled trust funds or annuity contracts without being limited by any statute or rule of law concerning investments by fiduciaries;

6. To continue and operate any business owned by me and to do any and all things deemed needful or appropriate by Attorney, including the power to incorporate the business and to put additional capital into the business, for such time as Attorney shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for Attorney's own negligence; and to close out, liquidate, or sell the business at such time and upon such terms as Attorney shall deem best;

7. To transfer all of my stock or securities to my Attorney, as agent (with the beneficial ownership thereof remaining in me) if necessary or convenient in order to exercise the powers with respect to such stock or securities granted herein;

8. To sell or exercise stock subscription or conversion rights;

9. To refrain from voting or to vote shares of stock owned by me at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers, and privileges of an owner in respect to any securities constituting my property;

10. To participate in any plan of reorganization or consolidation or merger involving any company or companies with respect to stock or other securities which I own and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses

of such committee and any assessments levied under any such plan, to accept and retain new securities received by Attorney pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as Attorney may deem advisable in connection therewith;

11. To institute, prosecute, defend, abandon, compromise, arbitrate, and dispose of legal, equitable, or administrative hearings, actions, suits, attachments, arrests, distresses or other proceedings, or otherwise engage in litigation involving me, my property or any interest of mine;

12. To deal with Attorney in Attorney's individual, or any fiduciary, capacity, in buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions;

13. To insure my property against damage or loss and Attorney against liability with respect to third persons;

14. To buy, sell, dispose of, or in any way encumber any and all property I own or have an interest in, or may own or have any interest in;

15. This instrument is to be construed and interpreted as a general power of attorney. The enumeration of specific items, rights, acts or powers herein is not intended to, nor does it, limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers herein granted to said attorney-in-fact.

C. Powers Relating to Health Care:

1. To make any and all decisions concerning any and all procedures to diagnose or treat a human diseases, ailment, defect, abnormality, or complaint, whether of physical or mental origin. It also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of

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injuries, disabilities, and/or sicknesses; and the decisions of the placement in or removal from a facility that provides these forms of care.

2. To make all decisions concerning any types of surgery to be performed or not to be performed on me.

3. All health care providers and health care professionals and physicians are directed to follow the instructions of my power of attorney as set out herein.

4. The above in no way limits my attorney in fact's powers to make decisions concerning my health care. It is my intention to give my attorney in fact all of my rights and powers and decision making authority concerning my health care.

ARTICLE II

TERMINATION, AMENDMENT, RESIGNATION AND REMOVAL

A. Power Not Affected by Principal's Incapacity:

This power of attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his own estate. It is my intent that the authority conferred herein shall be exercisable notwithstanding my physical disability or mental incompetence.

B. Termination and Amendment:

This power of attorney shall remain in full force and effect until the earlier of the following events: (i) Attorney has resigned as provide herein; (ii) I have revoked this power of attorney by written instrument recorded in the public records of the county aforesaid, or (iii) a

committee shall have been appointed for me by a court of competent jurisdiction. This power of attorney may be amended by me at any time and from time to time but such amendment shall not be effective as to third persons dealing with Attorney without notice of such amendment unless such amendment shall have been recorded in the public records of the county aforesaid.

C. Resignation:

In the event that Attorney shall become unable or unwilling to serve or continue to serve, then Attorney may resign by delivering to me in writing a copy of his resignation and recording the original in the public records of the county aforesaid. Upon such resignation and recording, Attorney shall thereupon be divested of all authority under this power of attorney.

D. Removal:

Any person named herein as Attorney may be removed by written instrument executed by me and recorded in the public records of the county aforesaid.

ARTICLE III

INCIDENTAL POWERS AND BINDING EFFECT

In connection with the exercise of the powers herein described, Attorney is fully authorized and empowered to perform any other acts or things necessary, appropriate, or incidental thereto, with the same validity and effect as if I were personally present, competent, and personally exercised the powers myself. All acts lawfully done by Attorney hereunder during any period of my

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disability or mental incompetence shall have the same effect and inure to the benefit of and bind me, and my heirs, devisees, legatees and personal representatives as if I were mentally competent and not disabled. The powers herein conferred may be exercised by Attorney alone and the signature or act of Attorney on my behalf may be accepted by third persons as fully authorized by me and with the same force and effect as if done under my hand and seal and as if I were present in person, acting on my own behalf and competent. No person who may act in reliance upon the representations of Attorney for the scope of authority granted to Attorney shall incur any liability to me or to my estate as a result of permitting Attorney to exercise any power, nor shall any person dealing with Attorney be responsible to determine or insure the proper application of funds or property.

ARTICLE IV

MISCELLANEOUS

A. Exculpation:

Attorney, Attorney's heirs, successors and assigns are hereby released and forever discharged from any and all liability upon any claim or demand of any nature whatsoever by me, my heirs or assigns, the beneficiaries under my will or under any trust which I have created or shall hereafter create or any person whomsoever on account of any failure to act of Attorney pursuant to this Power of Attorney.

B. Definitions:

Whenever the word "Attorney" or "Principal" or any modifying or substituted pronoun therefor is used in this power of attorney, such words and respective pronouns shall be held and taken

to include both the singular and the plural, the masculine, feminine and neuter gender thereof.

C. Severability:

If any part of any provision of this power of attorney shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Power of Attorney.

D. Compensation:

Attorney shall be entitled to reimbursement for all reasonable costs and expenses actually incurred and paid by Attorney on my behalf pursuant to any provision of this Power of Attorney, but Attorney shall not be entitled to compensation for services rendered hereunder.

E. Restrictions:

Notwithstanding any provision herein to the contrary, Attorney shall not satisfy the legal obligations of Attorney out of any property subject to this Power of Attorney, nor may Attorney exercise this power in favor of Attorney, Attorney's estate, Attorney's creditors or the creditors of Attorney's estate.

F. Reservations:

Notwithstanding any provision hereto to the contrary, Attorney shall have no power of authority whatever with respect to (a) any policy of insurance owned by me on the life of Attorney, and

(b) any trust created by Attorney as to which I am a trustee.

IN WITNESS WHEREOF, as Principal, I have executed this Power of Attorney as of this 26 day of November, 2012, in multiple counterpart originals and I have directed that photographic copies of this power be made which shall have the same force and effect as an original.

Allen Lee Koon (L.S.)
Allen Lee Koon

I, Allen Lee Koon, the Principal, sign my name to this instrument this 26 day of November, 2012, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Power of Attorney, and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Allen Lee Koon (L.S.)
Allen Lee Koon

We, Elizabeth Koon and MARY Jane Harter, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Principal signs and executes this instrument as her Power of Attorney, and that she signs it willingly, and that each of us, in the presence and hearing of the Principal, hereby sign this Power of Attorney as witness to the Principal's signing, and that to the best of our knowledge the Principal is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Elizabeth Koon
Mary Jane Harter

MAH. SK
AK

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

Instrument	Book	Page
201200014523 OK	1659	287

SUBSCRIBED, sworn to, and acknowledged before me by Allen Lee Koon, Principal,
and subscribed and sworn to before me by Elizabeth Koon and
Alay Jane Harter, witnesses, this 2d day of November,
2012.

SWORN to and Subscribed

before me this 26 day

of November, 2012.

Walter Lee Hunter (L.S.)
Notary Public for South Carolina
My Commission expires: 11/24/13

mat 

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE PROBATE COURT

IN THE MATTER OF CINDY HUCKABEE KOON

CASE NUMBER 2013ES3600003

201300017281
Filed for Record in
NEWBERRY COUNTY, SC
JACKIE S. BOWERS, CLERK OF COURT
03-20-2013 At 01:43 PM.
DEED 015TRI 10.00
OR Book 1697 Page 141 - 143

DEED OF DISTRIBUTION

WHEREAS, the decedent died on the 23rd November, 2012; and,

WHEREAS, the estate of the decedent is being administered in the Probate Court for
Newberry County, South Carolina in File #2013ES3600003; and,

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified
fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Co-
Personal Representatives have granted, bargained, sold and released, and by these Presents does
grant, bargain, sell and release to:

Name: Larry E. Koon
Address: P. O. Box 141
Little Mountain, SC 29075

the following described property:

An undivided one-half (1/2) interest in and to all that certain piece, parcel or lot of
land, situate, lying and being in the County of Newberry, State of South Carolina,
and being more accurately depicted as Tract "A" containing approximately 23.194
acres, more or less, and Tract "B" containing approximately 0.4322 acres, more or
less, on a plat prepared for Allen L. Koon and Cindy M. Koon by Hugh F.
Longshore, III, P.L.S. dated February 19, 2004, and recorded in the office of the
Clerk of Court for Newberry County in Plat Book C86 at page 7 on February 25,

Page 1 of 3

ALK

JACKIE S. BOWERS
CLERK OF COURT

2014 FEB 26 PM 2 19

NEWBERRY COUNTY

FILED

2004.

This is the identical property conveyed to Allen L. Koon and Cindy M. Koon by deed of Dennis L. Meyers and Judith H. Meyers dated March 15, 2005, and recorded in the office of the Clerk of Court for Newberry County in Record Book 1035 at page 264 on March 15, 2005.

TMS No. 409-18

Property Address: St Lukes Church Road, Prosperity, SC 29127

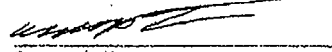
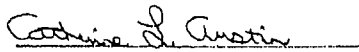
TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises/Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Larry E. Koon, his heirs and assigns forever.

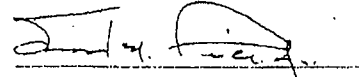
IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 16th day of May, 2013.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Estate of: CINDY HUCKABEE KOON



By: Austin Koon



STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY) PROBATE

PERSONALLY appeared before me Samuel M. Price, Jr. and made oath that he saw the within named Austin Koon sign, seal and as his act and deed, deliver the within-written Deed of Distribution, and that he with ^{Catherine L. Austin} ~~Samuel M. Price, Jr.~~ witnessed the execution thereof.

SWORN to before me this 16th day of May, 2013.

Catherine L. Austin
Notary Public for South Carolina
My Commission expires:

Samuel M. Price, Jr.

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

Case No: 06-CP- 36-395

SUMMONS

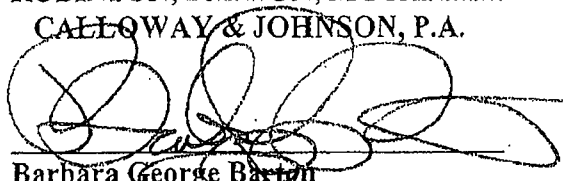
FILED
NEWBERRY COUNTY
JACKIE S. BOWERS
CLERK OF COURT
2019 FEB 26 PM 2 19

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at her office, 1715 Pickens Street, Post Office Box 12287, Columbia, South Carolina 29211-2287, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time period aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

ROBINSON, BARTON, MCCARTHY
CALLOWAY & JOHNSON, P.A.

BY:


Barbara George Barton
Daniel J. Reynolds, Jr.
Attorneys for the Plaintiff
1715 Pickens Street
Post Office Box 12287
Columbia, SC 29211-2287
(803) 256-6400

Columbia, South Carolina
September 4, 2006.

2006 SEP 21 PM 12:43

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

Case No: 06-CP-36-395

COMPLAINT

2006 SEP 21 P 12:43

The Plaintiff herein, complaining of the Defendant, alleges as follows:

1. Upon information and belief, the Defendant, Lake Murray Tree, Inc., is a corporation duly organized under the laws of the state of South Carolina with its headquarters and principal place of business in Newberry County, South Carolina.
2. Thomas Jackson Construction, Inc. (the "Plaintiff"), is a corporation duly organized under the laws of the state of South Carolina with its headquarters located in Sumter County, South Carolina.
3. The Plaintiff is primarily engaged in the business of site preparation, grinding and clearing lands for development.
4. At all times pertinent hereto, the Plaintiff's headquarters and principal place of business were located in South Carolina.
5. This is an action for recovery on an open account as a result of Defendant's failure to provide payment for services performed by the Plaintiff.
6. Jurisdiction is proper in this court pursuant to Article V, Section 7 of the South Carolina Constitution.

7. Pursuant to South Carolina Code Section 15-7-30, venue is proper in that the Defendant's headquarters and principal place of business are located within the County of Newberry, State of South Carolina.

FOR A FIRST CAUSE OF ACTION

8. Each and every allegation set forth in Paragraphs One (1) through Seven (7), not inconsistent herewith, is reasserted, re-alleged, and re-averred as fully as if restated herein verbatim.

9. Upon information and belief, some time after Hurricane Katrina struck the Gulf Coast in August, 2005, the Defendant was hired as part of the Louisiana Disaster Relief program to grind debris at the "certain project sites, which debris was being shipped in from various land clearing projects throughout the Louisiana area.

10. On or before October, 2005, the Defendant sub-contracted the Plaintiff to grind debris at the "Choctaw" project site in Louisiana for a stated rate of \$0.95 per cubic yard of debris that was ground.

11. After the Plaintiff commenced grinding at the "Choctaw" project site, the Defendant requested that the Plaintiff move to the "60 Rayburn" and "Angie" project sites, also located in Louisiana, due to a discrepancy in the quantity of debris available for grinding at the "Choctaw" project site. Defendant agreed to compensate the Plaintiff the same stated rate of \$0.95 per cubic yard of debris that was ground at these additional project sites.

12. Between October 15, 2005 and October 28, 2005, the Plaintiff ground 52,750 cubic yards of debris on the three project sites combined.

13. On January 10, 2006, the Plaintiff sent an invoice to the Defendant requesting payment in the amount of \$50,112.50 (52,750 cu.yds. of grinding X \$0.95 per cubic yard).

14. On March 27, 2006, counsel for the Plaintiff sent a letter to the Defendant demanding

payment of the \$50,112.50.

15. The Defendant has failed to pay the \$50,112.50 and such amount is overdue and outstanding.

16. Any and all funds that were collected from the Defendant have been applied to the outstanding unpaid balance on the open account.

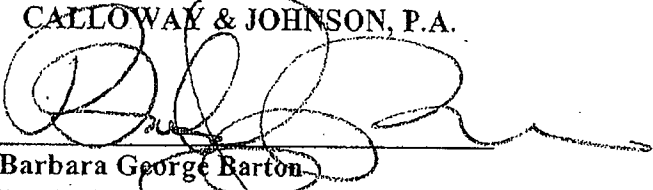
17. There is now overdue, owing and unpaid the sum of Fifty Thousand One Hundred Twelve and 50/100 Dollars (\$50,112.50) as set forth in the **Affidavit of Account** attached hereto and the invoice attached thereto as **Exhibit A**.

18. Although demand for payment has been made upon Defendant, Defendant has refused or failed to make any payments to Plaintiff.

WHEREFORE Plaintiff, Thomas Jackson Construction, Inc., demands judgment against the Defendant in the amount of \$50,112.50 and for such other relief as this Court deems appropriate.

**ROBINSON, BARTON, MCCARTHY
CALLOWAY & JOHNSON, P.A.**

BY:



Barbara George Barton
Daniel J. Reynolds, Jr.
Attorneys for the Plaintiff
1715 Pickens Street
Post Office Box 12287
Columbia, SC 29211-2287
(803) 256-6400

Columbia, South Carolina
September 4, 2006.

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,)

Plaintiff,)

vs.)

LAKE MURRAY TREE, INC.,)

Defendant)

Case No: 06-CP-36-395

AFFIDAVIT OF STATMENT
OF ACCOUNT

PERSONALLY APPEARED before me, the undersigned, who being first duly sworn, deposed and says there is currently an amount of Fifty Thousand One Hundred Twelve and 50/100 Dollars (\$50,112.50), due and owing from Lake Murray Tree Service, Inc. ("Defendant") to Thomas Jackson Construction, Inc. ("Plaintiff") for grinding services provided by Plaintiff for Defendant at the Choctaw, 60 Rayburn, and Angie project sites in Louisiana between October 15, 2005 and October 28, 2005 as shown by the invoice attached hereto as Exhibit A and incorporated herein by reference.

Thomas Jackson Construction, Inc.

By: Richard Thomas Jackson
Richard Thomas Jackson
Its: President

SWORN to and Subscribed before me
this 19th day of September, 2006.

Alice M. Miron
Notary Public for South Carolina
My Commission Expires: 11/27/06

FILED
NEWBERRY COUNTY
2006 SEP 21 P 12:43

Thomas Jackson Construction

PMB #13 1089-A Alice Dr./Sumter, SC 29150/(803) 469-9525

Customer	<i>Lake Murray Tree, Inc</i>	Phone	Date
Street		City	<i>1/10/86</i>
Job Name & Location	<i>Louisiana Disaster Relief</i>		

Choctaw -

Grinding debris: 24,000 cyd @ \$.95/cyd

22,800.00

Angie -

Grinding debris: 20,500 cyd @ \$.95/cyd

19,475.00

60 Bayburn -

Grinding debris: 8,250 cyd @ \$.95/cyd

7,837.50

Total

50,112.50

EXHIBIT A

Rental	_____
Total Materials	_____
Total Labor	_____
Tax	_____
Total Amount	_____

Signature _____

SEP 21 12 43 PM '86
COUNTY

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON)
CONSTRUCTION, INC.,)

Case No: 06-CP-36-395

Plaintiff,)

vs.)

LAKE MURRAY TREE, INC.,)

VERIFICATION

Defendant)

Thomas Jackson, being duly sworn, says that he is the President for the Plaintiff, herein and that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief; and to those matters he believes them to be true.

Thomas Jackson Construction, Inc.

By: Richard Thomas Jackson
Richard Thomas Jackson
Its: President

SWORN to and Subscribed before me
this 19th day of September, 2006.

Alice M. Minton
Notary Public for South Carolina
My Commission Expires: 11/27/06

FILED
NEWBERRY COUNTY
2006 SEP 21 P 12:43

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS
THOMAS JACKSON CONSTRUCTION INC

JUDGMENT IN A CIVIL CASE

CASE NO. 2006-CP-36-395__

LAKE MURRAY TREE INC

PLAINTIFF(S)

DEFENDANT(S)

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. (Formal order to file)
☐ Statement of Judgment by the Court:

ORDER GRANTING PLAINTIFF'S MOTION FOR CONTEMPT ORDER AND SANCTIONS

Dated at _____, South Carolina, this 12TH day of JANUARY, 2010.

James S. Verney
PRESIDING JUDGE

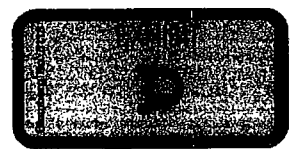
This judgment was entered on the 17TH day of FEBRUARY 2010, and a copy mailed first class this 17TH day of FEBRUARY, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

BARBARA GEORGE BARTON, ESQUIRE
PO BOX 12046
COLUMBIA, SC 29211
ATTORNEY(S) FOR PLAINTIFF

LAKE MURRAY TREE INC
6163 ST LUKES CHURCH ROAD
PROSPERITY, SC 29127
ATTORNEY(S) FOR DEFENDANT

Jackie S. Bowers

CLERK OF COURT



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON
PLEAS

COUNTY OF NEWBERRY)

THOMAS JACKSON
CONSTRUCTION, INC.,)

Case No: 2006-CP-36-395

Plaintiff,)

vs.)

LAKE MURRAY TREE, INC.,)

Defendant)

**ORDER GRANTING PLAINTIFF'S MOTION FOR CONTEMPT ORDER AND
SANCTIONS**

The relief set forth on the following page, for a total of 7 pages including this page, is hereby **ORDERED**.

2006-CP-36-395
CLERK OF COURT
2006-11-11 A 11:58
NEWBERRY COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

THOMAS JACKSON
CONSTRUCTION, INC.,

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

IN THE COURT OF COMMON
PLEAS

Case No: 2006-CP-36-395

2010 FEB 13 - 11:33
JACQUE S. FOREMAN
CLERK OF COURT

200 FEB - 1 A 11:58

FILED
CLERK OF COURT

**ORDER GRANTING PLAINTIFF'S MOTION FOR CONTEMPT ORDER AND
SANCTIONS**

THIS MATTER came before the Court on Motion for Sanctions Pursuant to SCRCP 37(b) and a Contempt Order, filed by Thomas Jackson Construction, Inc. ("Plaintiff"), on November 6, 2009.

Plaintiff filed its Complaint against Lake Murray Tree, Inc. ("Defendant") on September 21, 2006. The Defendant filed an Answer and Counterclaim on December 18, 2006, and Plaintiff responded to the Counterclaim on January 16, 2007. The Plaintiff served discovery requests in January 2007. However, the Plaintiff did not receive responses to that discovery until April 2007, after filing a motion to compel discovery in March 2007. A hearing on the merits was held on July 11, 2007, and the Court ruled in favor of the Plaintiff on July 31, 2007. Judgment in favor of the Plaintiff in the amount of \$25,056.00 was entered with the Newberry County Clerk of Court on August 6, 2007 (the "Judgment").

Because the Judgment was not paid, Plaintiff commenced supplemental

proceedings against Defendant in August 2008. As part of the commencement of the supplemental proceedings, Plaintiff served Defendant with a subpoena on August 18, 2008, requesting production of certain documents. The subpoena required Defendant to produce these documents by September 22, 2008. Defendant, once again, failed to produce the requested documents by the September 22, 2008 deadline. As a result of Defendant's failure to comply with the subpoena, the hearing on October 7, 2008 had to be delayed until November 10, 2008. On October 3, 2008, Plaintiff filed a Motion for Contempt for Defendant's failure to comply with the subpoena, and, on October 13, 2008, Plaintiff received a package of documents from Defendant, dated October 10, 2008. As a result, Plaintiff voluntarily withdrew its Motion for Contempt at the November 10, 2008 hearing.

At the hearing on November 10, 2008, at which the sole shareholder of the Defendant, Allen Koon, appeared, the Court ordered Defendant to produce additional documentation by January 31, 2009. Plaintiff sent Defendant a letter on November 14, 2008, which identified the documents the Court required Defendant to produce. In late January 2009, Plaintiff received a package of documents from Defendant, dated January 27, 2009. This package did not contain all of the documents the Court required Defendant to produce. Plaintiff sent Defendant a letter on February 25, 2009, requesting production of the documents that Defendant failed to produce by March 15, 2009. Plaintiff never received a response to this letter. On April 13, 2009, Plaintiff submitted a Motion to Compel the documents, which was filed with the Newberry County Clerk of Court on April 15, 2009. Defendant never responded to this Motion to Compel, and the hearing was set for October 21, 2009. Defendant failed to appear on October 21, 2009.

Defendant's counsel appeared and moved to be relieved as counsel. Plaintiff did not oppose this motion, and it was granted.

As a result of Defendant's failure to appear at the October 21, 2009 hearing, Plaintiff filed a Motion for Contempt Order and Sanctions on November 6, 2009. A hearing on this motion was set for December 15, 2009. Defendant once again failed to appear at the hearing on December 15, 2009. However, approximately 30 minutes before the hearing, Cindy Koon faxed an Emergency Motion for Continuance ("Emergency Motion") to the Court stating that her father passed away on December 9, 2009. Mrs. Koon's Emergency Motion did not reach the Court until after Plaintiff's counsel had already traveled from Columbia to Newberry and the hearing was in progress. In addition, the Emergency Motion does not attempt to explain the absence of Allen Koon or anyone else with the authority to represent Defendant, and it admits that no attempt was made to communicate with the Plaintiff or its attorney prior to faxing the Emergency Motion.

Part of the relief requested by the Plaintiff is entry of an order providing that the Judgment be placed against the Defendant's sole shareholder, Allen Koon, personally. The financial documents produced by the Defendant indicate that the Defendant's financial resources have been used to pay many thousands of dollars of Allen Koon's personal expenses after the Judgment was entered. At the supplemental proceedings on November 10, 2008, Plaintiff proved that many of the debits from the Defendant's bank accounts were for personal items or services, such as online poker, Harley Davidson merchandise, the mortgage on Allen Koon's personal residence, and a Carnival cruise. In addition, the Defendant transferred several pieces of equipment to Mr. Koon with no

consideration being paid, after the Judgment had been obtained and recorded. The Court ordered Allen Koon to comply with discovery and to produce the rest of Defendant's financial documents, as well as his own personal financial documents. This discovery has not been produced resulting in yet another Motion to Compel.

Rule 37(b) of the South Carolina Rules of Civil Procedure ("SCRCP") grants the Court many options in addressing a party's failure to comply with an order under subsection (a) of Rule 37. Subsection 37(b)(2)(C) allows the Court to enter "[a]n order rendering judgment by default against the disobedient party," and Subsection 37(b)(2)(D) allows the Court to enter an order for contempt in addition to any of the orders authorized by the other subsections of the Rule. Rule 37(b) also allows the Court to order the disobedient party to pay the other party's costs and attorney's fees.

Throughout this entire case, Defendant, through the actions or failures to act of its sole shareholder, Allen Koon, has repeatedly failed to comply with discovery requests and subpoenas, which has required repeated Motions to Compel. In addition to causing extreme and prejudicial delay in the resolution of this matter, the Defendant's actions have caused the Plaintiff to incur great financial expense to obtain that which should have been voluntarily provided. Defendant's repeated failure to appear at hearings, as well as its failure to timely notify the Plaintiff or Plaintiff's counsel that it would not be appearing, has caused Plaintiff's counsel to prepare for hearings and to travel unnecessarily from Columbia to Newberry. These actions by the Defendant and its sole shareholder indicate a complete disregard for legal obligations and compliance with Court orders.

It is apparent that there has been a pattern and practice of distribution of the

Defendant's assets for the benefit of Mr. Koon after the Plaintiff's judgment attached to Defendant's assets. It is further apparent that Mr. Koon has no regard for the legal obligations that he is required to meet and that his repeated actions have resulted in the Plaintiff's inability to pursue its legal remedies. The Court finds that the Judgment shall attach to Allen Koon, personally. The Judgment shall be recorded with the Newberry County Clerk of Court as being against Lake Murray Tree, Inc. and Allen Koon individually.

It appearing that the Plaintiff has shown good and sufficient cause for the issuance of sanctions pursuant to Rule 37(b) of the South Carolina Rules of Civil Procedure and a contempt order in this matter, it is hereby:

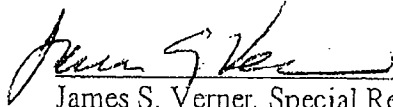
ORDERED, as follows:

1. The "Emergency Motion" is denied;
2. In addition to Plaintiff's pre-existing judgment in this case against Defendant, the Plaintiff is awarded judgment against Allen Koon, personally, in the amount of \$32,858.80, which represents the amount of the judgment against the Defendant plus interest, at the rate of 12.25% compounded annually, through December 6, 2009;
3. Defendant and Allen Koon are required to produce the following documentation, within thirty (30) days of the entry of this order, to the Plaintiff:
 - a. Allen Koon's personal bank statements and canceled checks for Personal Checking Account # 2096358
 - b. Allen Koon's personal financial statement, including but not limited to, a

list of his personal assets and personal liabilities

- c. A list of Lake Murray Tree's creditors, including contact information for these creditors, how much is owed to each creditor, the length of time the debt has been outstanding, and any interest that has accrued on that debt; and
- d. Information regarding Lake Murray Tree's accounts receivable, including contact information for each entity that owes Lake Murray Tree money, how much each debtor owes, how long each debt has been outstanding, how much interest has accrued on each debt, copies of invoices and demands for payment and responses, if any, and whether Defendant believes each debt to be collectible.

AND IT IS SO ORDERED on this the 12 ^{January 2010} of December, 2009.


James S. Verner, Special Referee

Filed for Record in
NEWBERRY COUNTY, SC
JACKIE S. BOWERS, CLERK OF COURT
05-20-2013 At 01:43 pm.
DEED 10.00
STATE .00
COUNTY .00
OR Book 1697 Page 138 - 140

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

DEED TO REAL ESTATE

Instrument 201300917280 OR Book Page 1697 138

TITLE NOT EXAMINED.

KNOW ALL MEN BY THESE PRESENTS, THAT I, Allen L. Koon, in the State aforesaid, for and in consideration of the sum of Five and no/100 (\$5.00) dollars and satisfaction of Mortgage Agreement recorded in Record Book 1402 at page 186 to me in hand paid at and before the sealing of these presents by Larry E. Koon in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and release, and by these Presents do grant, bargain, sell, and release unto the said Larry E. Koon, his heirs and assigns forever:

All my right, title and interest, the same being an undivided one-half (1/2) interest in and to, all that certain piece, parcel or lot of land, situate, lying and being in the County of Newberry, State of South Carolina, and being more accurately depicted as Tract "A" containing approximately 23.194 acres, more or less, and Tract "B" containing approximately 0.4322 acres, more or less, on a plat prepared for Allen L. Koon and Cindy M. Koon by Hugh F. Longshore, III, PLS dated February 19, 2004, and recorded in the office of the Clerk of Court for Newberry County in Plat Book C86 at page 7 on February 25, 2004.

This is the identical property conveyed to Allen L. Koon and Cindy M. Koon by deed of Dennis L. Meyers and Judith H. Meyers dated March 15, 2005, and recorded in the office of the Clerk of Court for Newberry County in Record Book 1035 at page 264 on March 15, 2005.

TMS No. 409-18

Page 1 of 3

Alle

FILED
NEWBERRY COUNTY
JACKIE S. BOWERS
CLERK OF COURT
JUN 10 2013 PM 2 20

Instrument 201300017280 OR 1697 139

Property Address: St Lukes Church Road, Prosperity, SC 29127

GRANTEE'S ADDRESS: P. O. Box 141
Little Mountain, SC 29075

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Larry E. Koon, his Heirs and Assigns forever.

AND I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said Larry E. Koon, his Heirs and Assigns, against me and my Heirs, and against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

WITNESS my Hand and Seal this 15th day of May in the year of our Lord two thousand thirteen and in the two hundred and thirty-seventh year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature] [Signature]
Ramona J. Shively

PROBATE

15th

WITNESS

Alky

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
Larry E. Koon and Allen Lee)
Koon by and through his attorney,)
in fact, Larry E. Koon,)
Plaintiffs)
)
vs.)
)
Thomas Jackson Construction,)
Inc.,)
Defendant.)

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

2014-CP-36-00109

ANSWER, DEFENSES, AND
COUNTERCLAIM

SCANNED

JACKIE S. BOWERS
CLERK OF COURT

2014 MAR 12 PM 12 09

FILED
NEWBERRY COUNTY

Now comes the Defendant, Thomas Jackson Construction, and Answers the Complaint of the Plaintiffs and Counterclaims against the Plaintiffs, and would respectfully show:

For a First Defense and By Way of General Answer

1. That Defendant, answering paragraph one (1) of the Complaint, is without sufficient knowledge or information to admit or deny allegations contained therein.
2. That Defendant, answering paragraphs two (2), three (3), four (4), and five (5), of the Complaint, admits the allegations contained therein.
3. That Defendant, answering paragraph six (6) of the Complaint, is without sufficient knowledge or information to admit or deny allegations contained therein.
4. That Defendant, answering paragraph seven (7) of the Complaint, does not believe that the allegations contained therein require an answer.
5. That Defendant, answering paragraphs eight (8), nine (9), ten (10), and eleven (11), denies the allegations contained therein.

As A Second Defense

(South Carolina Rules of Civil Procedure Rule 37 bars this Action)

6. That Defendant reiterates and incorporates the applicable allegations of the preceding paragraphs set forth hereinabove as fully as if repeated verbatim as a portion of this Defense or allegation.
7. That SCRCR Rule 37(b)(2) plainly states that:

"If a party or an officer, director, or managing agent of a party or a person designated under Rule (30)(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regarding to the failure as are just..."

8. That Plaintiff, Allen E. Koon, was the sole shareholder and registered agent for Lake Murray Tree, Inc.

9. That the Order Granting Plaintiff's Motion for Contempt Order and Sanctions (hereinafter "Order,") dated January 12, 2010 (referenced in paragraph five (5) of Plaintiffs' Complaint) specifically outlined Plaintiff Allen E. Koon's numerous failures to comply with the Court's judgment, including the use of Lake Murray Tree, Inc. business funds for personal use for items or services, such as online poker, Harley Davidson merchandise, the mortgage on Allen Koon's personal residence, and a Carnival cruise; that Lake Murray Tree, Inc. transferred equipment to Plaintiff Allen E. Koon without consideration being paid; and that Plaintiff Allen E. Koon repeatedly failed to appear or comply with discovery requests.

10. That the Order specifically detailed how Rule 37(b) granted the Court authority to hold Plaintiff Allen E. Koon personally liable on the judgment due to his "complete disregard for legal obligations and compliance with Court orders," as the sole shareholder for Lake Murray Tree, Inc..

11. That the Defendant is informed and believes Rule 37(b) allows the Court to enter judgment against the Plaintiff, Allen E. Koon, personally, because Koon is considered an officer, director, or managing agent of a party designated under Rule (30)(b)(6) or Rule 31(a).

12. That the Defendant is informed and believes that Rule 37(b)(2)(B) prohibits "the disobedient party to support or oppose designated claims or defense..."; therefore, the Plaintiff does not have the ability to bring this action.

For A Third Defense

(South Carolina Rules of Civil Procedure Rule 60 is Inapplicable to this Action)

13. That Defendant reiterates and incorporates the applicable allegations of the preceding paragraphs set forth hereinabove as fully as if repeated verbatim as a portion of this Defense or allegation.

14. That the Plaintiff alleges that SCRPC 60(b) allows for an independent action to relieve the Plaintiffs from the personal judgment.

15. That the Defendant is informed and believes the SCRPC 60(b) allows for relief from judgment based upon mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, void judgment, or a satisfied judgment.

16. That the Defendant is informed and believes there is no evidence in which SCRCF 60(b) is applicable in this action.

17. That the Defendant is informed and believes, in the event that SCRCF 60(b) was applicable, the proper avenue would have been to file a motion within a reasonable time, usually not more than one year after the judgment was entered.

18. That the Defendant is informed and believes that SCRCF 60(b) does not permit the Plaintiffs to bring this action.

For A Fourth Defense

(Statute of Limitations)

19. That Defendant reiterates and incorporates the applicable allegations of the preceding paragraphs set forth hereinabove as fully as if repeated verbatim as a portion of this Defense or allegation.

20. That the Order of the Court was filed over four years ago, on January 12, 2010.

21. That the Defendant is informed and believes that this action is barred by the Statute of Limitations, pursuant to S.C. Code Ann. §15-3-530.

For A Fifth Defense

(South Carolina Rule of Civil Procedure Rule 72 Requires the Plaintiffs to File an Appeal)

22. That Defendant reiterates and incorporates the applicable allegations of the preceding paragraphs set forth hereinabove as fully as if repeated verbatim as a portion of this Defense or allegation.

23. That the Defendant is informed and believes that the SCRCF 72 requires the Plaintiffs to file a timely appeal from any final judgment.

24. That the Defendant is informed and believes that the filing of this lawsuit is improper procedure pursuant to SCRCF 72.

By Way of Counterclaim

25. That Defendant reiterates and incorporates the applicable allegations of the preceding paragraphs set forth hereinabove as fully as if repeated verbatim as a portion of this Defense or allegation.

26. That the Defendant is informed and believes that he is entitled to an order of this court dismissing this action.

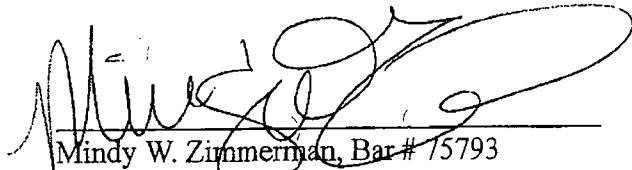
27. That the Defendant is informed and believes that he is entitled to an award of attorney's fees and any other costs associated with defending this improper action.

28. That the Defendant is informed and believes that the judgment issued in the Order should be enforced by this Court.

29. That the Defendant is informed and believes that he is entitled to interest from the date of the Order as the Plaintiffs have refused to satisfy the judgment.

30. That the Defendant prays that this Court shall force the sale of the property at issue by auction to satisfy the judgment.

WHEREFORE, Defendant prays that this Court inquire herein and issue its Order, granting the relief requested and for such other and further relief as this Court may deem just and proper.



Mindy W. Zimmerman, Bar # 75793
1207 Friend Street
Post Office Box 1207
Newberry, South Carolina 29108
(803) 321-0000

Attorney for Defendant

Newberry, South Carolina
March 10, 2014

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY)	EIGHTH JUDICIAL CIRCUIT
Larry E. Koon and Allen Lee)	
Koon by and through his attorney,)	
in fact, Larry E. Koon,)	2014-CP-36-00109
Plaintiffs)	
vs.)	DEFENDANT'S MOTION TO DISMISS
Thomas Jackson Construction,)	
Inc.,)	
Defendant.)	

TO: LARRY E. KOON AND ALLEN LEE KOON BY AND THROUGH HIS ATTORNEY IN FACT, LARRY E. KOON, BY AND THROUGH THEIR ATTORNEY OF RECORD, JENNIFER DOWD NICHOLS:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as Attorney for the Defendant, will move before the Presiding Judge of the Newberry Court of Common Pleas, for an Order Dismissing Plaintiff's Summons and Complaint in the above-captioned matter. This Motion shall be heard 10 days after the filing hereof or as soon thereafter as the matter may be heard.

This motion is made on the grounds that this action was filed in violation of the South Carolina Rules of Civil Procedure Rule 37, Rule 60, and Rule 72. This action is also barred by the Statute of Limitations pursuant to S.C. Code Ann. §15-3-530.

The Defendant respectfully requests this Honorable Court to dismiss the Complaint because the Plaintiff has improperly filed this action and grant Defendant's costs for the necessity of filing this motion.

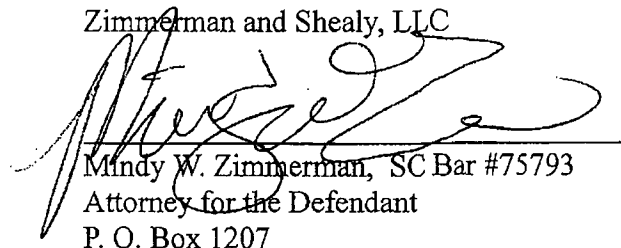
[SIGNATURE ON THE FOLLOWING PAGE]

JACKIE S. BOWERS
CLERK OF COURT

2014 MAR 12 PM 12 08

NEWBERRY COUNTY
FILED

Zimmerman and Shealy, LLC

A large, stylized handwritten signature in black ink, likely belonging to Mindy W. Zimmerman, is written over a horizontal line.

Mindy W. Zimmerman, SC Bar #75793

Attorney for the Defendant

P. O. Box 1207

Newberry, South Carolina 29108

Telephone (803) 321-0000

Facsimile (803) 321-0407

March 10, 2014

Newberry, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
) CASE NO. 2014-CP-36-00109

Larry E. Koon and Allen Lee Koon by
and through his attorney in fact Larry E.
Koon,

Plaintiffs,

vs.

Thomas Jackson Construction, Inc.,

Defendant.

MOTION FOR
SUMMARY JUDGMENT
(Non-Jury)

FILED
NEWBERRY COUNTY
2014 MAR 27 PM 4 30
JACKIE ROBERTS
CLERK OF COURT

TO: Mindy W. Zimmerman, attorney for the Defendant

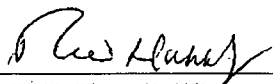
YOU WILL PLEASE TAKE NOTICE that the Plaintiffs will move before the Presiding Judge of the Court of Common Pleas for Newberry County, South Carolina at a time and place to be fixed by the Court for an Order pursuant to Rule 56, SCRCP, granting summary judgment in favor of the Plaintiffs against the Defendant. The grounds for the Motion are (1) the Court in Civil Action No. 2006-CP-36-395 did not have personal jurisdiction over Allen Lee Koon because (a) no summons or rule to show cause naming Allen Lee Koon individually as a party to that action was ever served upon Allen Lee Koon, (b) no service of a summons or rule to show cause naming Allen Lee Koon individually as a party to that action was ever accepted by either Allen Lee Koon or his attorney, Samuel M. Price, Jr., and (c) Allen Lee Koon never appeared personally in that action. Therefore, the Judgment entered in Civil Action No. 2006-CP-36-395 against

Allen Lee Koon personally is void, is a nullity and is unenforceable and should be stricken from the record.

This Motion is supported by the Affidavit of Allen Lee Koon, the Affidavit of Larry Eugene Koon and the Affidavit of Samuel M. Price, Jr. A copy of each of those Affidavits is attached hereto as **Exhibits "A", "B" and "C"** respectively. The original of each of those Affidavits has been filed with the Clerk of Court separately.

HARRELL & MARTIN, P.A.

Robert W. Dibble, Jr.
Of Counsel

By: 
L.K. Harrell, III
Jeremy C. Martin
Jennifer Dowd Nichols
135 Columbia Avenue
Post Office Box 1000
Chapin, South Carolina 29036
Telephone: (803) 345-3353
Facsimile: (803) 345-9171

Attorneys for Plaintiffs, Larry E. Koon and
Allen Lee Koon by and through his attorney
in fact Larry E. Koon

March 27, 2014
Chapin, South Carolina

FILED
ERRY COUNTY
A 27 PM 4 30
KIE S. BOWERS
JF COURT
LER



EXIT
EXIT MIDLANDS REALTY
CONTRACT OF SALE
RESIDENTIAL
Revised June, 2011



FILED
NEWBERRY COUNTY
JACKIE S. BOWERS
CLERK OF COURT
AUG 13 PM 7 30

THE BUYER SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE

1. **PARTIES:** This Contract of Sale is entered into on July 23, 2013
Buyer(s) Charles Linton (hereinafter called "Buyer"), and
Seller(s) Allen Koon and the Estate of Cindy Koon (hereinafter called "Seller")
Seller represents that this Offer is () is not () subject to approval by a Third Party (i.e. a bank, corporation or relocation company).

2. **PROPERTY:** Seller agrees to sell and Buyer agrees to buy the following real property with improvements and fixtures thereon:

Lot _____ Block _____ Phase _____ Subdivision _____
Address 61163 St. Lukes Church Rd Unit# _____ City Prosperity Zip 29127
TMS# 409-611 County of Newberry State of South Carolina.

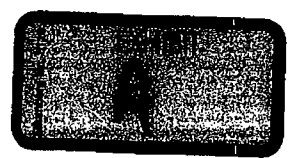
3. **PRICE:** The purchase price is \$ 240,000 \$ 268,700 CG 7-24-13

4. **EARNEST MONEY:** AK by LK 7/25/13
A. \$ 500.00 Earnest money is paid by: Check (☒) Cash () Other ()
B. \$ N/A Additional earnest money to be delivered on or before _____
C. Earnest money to be held in trust by Exit Midlands Realty (Escrow Agent).

D. Escrow Agent does not guarantee payment of funds accepted as earnest money. All earnest money received will be deposited as required by South Carolina law and the South Carolina Real Estate Commission's rules and regulations. If earnest money is returned because it is a fraudulent instrument or due to insufficient funds, the Agent holding earnest money will immediately notify the other Agent and Contract may be voided at the Seller's option. Buyer agrees to and understands that earnest money may be deposited in an interest-bearing escrow account and that he has the right to ownership of any interest accrued. Buyer, through this written agreement, relinquishes ownership of the accrued interest to Escrow Agent as consideration for the expenses incurred in maintaining the account. Earnest money deposited in an escrow account will not be released to either Party until confirmation is received that funds have cleared the bank. If a dispute arises between Buyer and Seller concerning entitlement to and disposition of an earnest money deposit, the deposit will be retained in Escrow Agent's escrow account until Escrow Agent has obtained a written release signed by Buyer and Seller consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. See S.C. Code, Section 40-57-135 (1976). If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.

BUYER AK 7-23-13 SELLER AK/LK 7/25/13
Initials Date Initials Date

ALK



5. TRANSACTION COSTS: Buyer's Transaction Costs include all closing costs generated by the type of financing selected, pre-paid recurring items, mortgage insurance and discount points. Seller's Transaction Costs include preparation of deed, any recording charge based on value of the Property (deed stamps), all costs necessary to deliver a marketable title (including recording of satisfaction), property taxes pro-rated to the day of closing and the real estate brokerage fee.

Buyer's and Seller's Transaction Costs will be paid as follows: (Select Initial and date only one of the options below)

A. BUYER () SELLER () Buyer will provide or pay for all Buyer's Transaction Costs and Seller will provide or pay for all Seller's Transaction Costs as well as pay for Buyer's non-allowable costs if the financing type selected in Paragraph 6(A) is either VA or FHA.

OR

B. BUYER () 7-23-13 SELLER () 7/25/13 Seller will pay Buyer's Transaction Costs not to exceed \$ 6,000.00 which includes non-allowable costs first (for VA or FHA financing) and then allowable costs. Buyer is responsible for any Buyer's Transaction Costs exceeding this amount. If the amount Seller has agreed to pay toward Buyer's Transaction Costs exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all Seller's Transaction Costs.

6. FINANCING: Buyer's obligation under this Contract is () is not () contingent on Buyer obtaining financing. Buyer and Seller acknowledge that all financing contingencies herein automatically expire five (5) Business Days prior to the closing date set forth in Paragraph 7 and this Contract will become non-contingent on financing unless otherwise agreed to in writing. If Buyer subsequently fails to close because of the inability to obtain financing, the Buyer will be in default of this Contract and earnest money will be released to Seller. See Paragraph 4(D).

BUYER () 7-23-13 SELLER () 7/25/13

A. FINANCING TYPE. Financing type will be Conventional (), FHA (), VA (), Seller ().
Cash (no financing required) (). Other _____

Buyer or Buyer's Agent will immediately notify Seller or Seller's Agent if Buyer changes financing type. If the change in financing type modifies the terms of this Contract, then Seller will have the option of agreeing with the change or voiding this Contract. If Seller elects to void the Contract, earnest money will be released to the Buyer. See Paragraph 4(D).

Note: If Buyer utilizes FHA or VA financing, an FHA/VA Addendum signed by Buyer and Seller must accompany this Contract. Utilizing FHA or VA financing will require Seller to pay for certain loan-related closing costs termed "non-allowable costs". VA financing will additionally require Seller to pay for the cost of conducting the VA required termite (CL-100) inspection.

B. APPLICATION FOR FINANCING. If Lender financing is being used, Buyer will have five (5) Business Days from the date of Contract acceptance to apply for financing from Lender of their choice. Application will include advancement of any funds required by Lender and providing Lender's identity to Seller or Seller's Brokers. Buyer will also furnish Lender all documentation required for the processing of this loan in a diligent and timely manner.

1. Should Buyer fail to apply for the loan within five (5) Business Days, Buyer will be in default of this Contract and Seller will have the option of voiding this Contract with earnest money being released to Seller. Should the loan be denied while subject to a financing contingency, Contract will be voided and earnest money will be released to Buyer. See Paragraph 4(D).

2. If loan is rejected by initial lender or subsequent lenders, Buyer or Buyer's Agent must give written notice of each occurrence to the Seller or Seller's Agent immediately, and Seller will then have the option of continuing with or voiding the Contract. If Seller elects to void the Contract, the earnest money will be released to Buyer, provided it is not within (5) business days prior to closing. See Paragraph 4(D).

3. If Buyer elects to make any material change to their financial condition after Contract acceptance that negatively affects their ability to close the transaction, Buyer will be in default and earnest money will be released to Seller. See Paragraph 4(D).

4. Buyer gives permission to Lender to disclose any allowable pertinent information concerning Buyer's loan to any attorney representing Buyer or Seller and to the Buyer's and Seller's Brokers.

BUYER () 7-23-13 SELLER () 7/25/13
Initials Date Initials Date

C. SELLER FINANCING. If Seller financing is included in the financing of this Property, Buyer's and Seller's Brokers make no representations as to the creditworthiness of Buyer and suggest that Seller determine whether Buyer's credit is satisfactory. The terms of Seller financing should be noted in Paragraph 18 of this Contract or in a separate Addendum to this Contract.

D. CASH TRANSACTION. In a cash transaction, Buyer agrees to provide Seller or Seller's Broker, within five (5) Business Days of acceptance of this Contract, written verification of availability of funds from the source(s) of those funds. If Buyer fails to comply with the above requirement, then Seller will have the option of voiding this Contract and earnest money will be released to Seller. See Paragraph 4(D).

E. APPRAISAL CONTINGENCY. This Contract is ☒ is not () contingent on lot or parcel with building and improvements thereon, if any, appraising according to Lender's appraisal, or other appraisal as agreed by Buyer and Seller for non-Lender financed transactions, for the selling price or more. If contingent, and lot or parcel with building and improvements thereon appraises for less than the selling price, the Buyer will have one business day after notification of the results of the appraisal to proceed with the consummation of this sale without regard to the appraised value or attempt to renegotiate this Contract. If after the one business day period, the Parties are unable to reach agreement on a renegotiated Contract then either party can terminate this Contract by providing written notification to the other. Upon termination, earnest money will be released to Buyer. See Paragraph 4 (D).

F. SELLER'S MORTGAGE PAYOFF. Seller gives permission to Closing Attorney to obtain Seller's mortgage payoff information. SELLER AKby/K 7/25/13

7. CONVEYANCE DATE OF CLOSING/POSSESSION: Conveyance will be made subject to all easements and covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a general warranty deed, if applicable, free of encumbrances, except as herein stated. The deed will be prepared in the name(s) of Charles Lee Linton or as otherwise stipulated by Buyer, and delivered to stipulated place of closing. The deed will be held in trust by the Closing Attorney until sales proceeds have been disbursed to Seller, at which time the Closing Attorney shall be authorized to record the deed. This transaction will be closed on or before August 25th 2013 unless extended pursuant to Paragraph 7(B) or by mutual agreement.

A. BUYER CK 7-23-13 SELLER AKby/K 7/25/13 Seller will be obligated to vacate and give possession of the Property (free of debris and in a clean condition) to Buyer: at closing ☒, 24 hours after closing (), 48 hours after closing (), or in accordance with attached agreement ().

B. If Buyer has provided written loan commitment without additional conditions, or in a cash transaction Buyer has met the terms and conditions of Paragraph 6(D), but has not closed within the stipulated time limit of this Contract, both Parties agree to extend this Contract for a period not to exceed five (5) Business Days from the original closing date.

8. RIGHT OF BUYER TO INSPECT/RE-INSPECT PROPERTY: Buyer, or Inspectors selected by Buyer at Buyer's expense, will have the right to enter Property to inspect, examine and test the Property. For the purposes of this Contract, the term "Inspector" is defined as a person or company, licensed or certified where required by law, with specific, professional expertise or knowledge in property inspections, or in an item, building product or condition contained therein for which the Inspector is inspecting, examining or testing. Seller will make the Property available for all inspections and will have all utilities operational for the inspections, any re-inspections, appraisals and final walk through. Seller agrees to allow Buyer, or Inspectors selected by Buyer, the right to re-inspect the Property at Buyer's expense to determine if agreed upon repairs and/or replacements have been made. Buyer will also be allowed to perform a walk-through prior to closing to confirm that the Property has been maintained in compliance with Paragraph 11, if applicable, and that any personal Property to be transferred or conveyed is on the premises. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages arising out of, or related to, the exercise of these rights and will repair any damages resulting from same.

9. PROPERTY SOLD SUBJECT TO DUE DILIGENCE PERIOD:

(If Property being sold "As-Is" proceed to Paragraph 10 PROPERTY SOLD "AS-IS")

A. DUE DILIGENCE PERIOD INSPECTIONS: Buyer will have a ten (10) Business Day Due Diligence Period beginning at time of final Contract acceptance, as defined in Paragraph 29(B), to conduct, at Buyer's sole expense, whatever non-destructive inspections, examinations and testing of the Property that Buyer deems appropriate and necessary. This will include, but is not limited to, conducting a risk assessment/test for lead-based paint and lead-based paint hazards, testing for environmental hazards, inspecting the heating and air (HVAC) system and inspecting for active infestations of and/or damage from termites, other wood destroying organisms, fungi and for any drainage problems (CL-100 inspection). If Buyer utilizes VA financing, Seller will be required to pay for the cost of conducting the VA-required termite (CL-100) inspection. Any re-inspections that may be required will also be at Buyer's expense. If this Contract is contingent on the sale and closing of Buyer's Property (See Paragraph 16A) then the Due Diligence Period will begin on the date Seller or Seller's Broker receives written notification that this contingency is removed.

B. DUE DILIGENCE PERIOD EXTENSION: Notwithstanding other provisions to the contrary, in the event an inspector, in a written report provided to Seller or Seller's Broker prior to the expiration of the Due Diligence Period, recommends any additional study, inspection or evaluation of any product, item or condition in the Property, or the results of any tests conducted cannot be completed or produced prior to the expiration of the Due Diligence Period, then the Due Diligence Period may be extended by mutual agreement of Buyer and Seller through a written Addendum to this Contract. If Buyer and Seller cannot agree on an extension to the Due Diligence Period, then Buyer may proceed under the terms of Paragraph 9(C) based on available inspection reports or void this Contract and earnest money will be released to Buyer. See Paragraph 4(D).

C. INSPECTION OPTIONS: Buyer will have the following options during the Due Diligence Period:

1. Buyer can accept Property as inspected.

2. If Buyer, in his sole discretion, determines the result of any inspection, examination or test conducted to be unsatisfactory, Buyer may terminate this Contract by providing entire copies of all inspection reports and written notice of termination to Sellers or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed upon extension to this period and the earnest money will be released to Buyer. See Paragraph 4 (D). If Buyer fails to give such notice prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligations to make any repairs or replacements to the Property and Buyer being obligated to proceed with the transaction in accordance with the terms of this Contract.

3. If Buyer requests Seller make repairs and/or replacements to the Property, Buyer must submit complete copies of any inspection reports and an Inspection Repair Addendum, signed by the Buyer, identifying specific defects Buyer wants corrected, to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed extension to this period. If Buyer fails to submit complete copies of these reports and the Addendum to Seller or Seller's Broker prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property, and Buyer will be obligated to proceed with the transaction in accordance with the terms of this Contract. If reports and Addendum are submitted within the Due Diligence Period and any extension, Buyer and Seller will then have five (5) Business Days from expiration of Due Diligence Period to negotiate the defects to be corrected by Seller, at Seller's expense, and sign the Addendum. If Buyer and Seller have not reached agreement on the Addendum by the end of this negotiation period:

a. Buyer and Seller may mutually agree to extend the negotiating period through written Addendum to this Contract, or;

b. Buyer will have one business day after the end of the negotiation period, or any extension to the period, to accept Property "As-Is" in current state with no repairs or replacements made by Seller by providing written notice to Seller or Seller's Broker, or;

c. If the negotiating period is not extended and Buyer does not accept Property "As-Is" within the time frame prescribed in the above Paragraph, then either party can terminate this Contract by providing written notice of termination to the other and earnest money will be released to Buyer. See Paragraph 4 (D). Seller's failure to respond to the Inspection Repair Addendum within the five (5) Business Day period will be deemed to be a refusal to do repairs/replacements.

BUYER CKK 7-23-13 SELLER AKb/K 7/25/13
Initials Date Initials Date

D. FHA/VA APPRAISAL INSPECTIONS: If Buyer uses FHA or VA financing, the Property may be inspected by an Appraiser appointed by Lender. This inspection is not subject to time limitations or other requirements of the Due Diligence Period outlined above. If Appraiser identifies repairs to be made as a condition of loan approval and Seller elects not to make them, Buyer will have the option of paying for and completing the repairs prior to closing or voiding this Contract, with earnest money being released to Buyer. See Paragraph 4(D).

10. PROPERTY SOLD "AS-IS": (If Selected Terms of Paragraph 9 do not apply) (Select, initial and date only one of the options below)

A. BUYER (/) SELLER (/)
PROPERTY SOLD "AS-IS" WITH DUE DILIGENCE PERIOD

All Parties agree that Property is being sold "As-Is" with all defects including, but not limited to, lead-based paint, lead-based paint hazards, environmental hazards, active infestations of and/or damage from termites, other wood destroying organisms or fungi and for any drainage problems (CL-100). Buyer will have a ten (10) Business Day Due Diligence Period as stipulated in Paragraph 9(A) to have Property inspected, examined and tested to determine its condition. Seller will have no obligation to make any repairs or replacements to the Property identified as a result of inspections. Buyer may proceed under the terms of this Contract or void this Contract by providing written notice to Seller or Seller's Broker, prior to the expiration of the Due Diligence Period, with the earnest money released to Buyer. See Paragraph 4(D). Failure to provide notice of voiding this Contract prior to the expiration of the Due Diligence Period will be deemed Buyer's acceptance of the Property in "As-Is" condition with no Seller repairs or replacements.

OR

B. BUYER (/) SELLER (/)
PROPERTY SOLD "AS-IS" - NO DUE DILIGENCE PERIOD

All Parties agree that Property is being sold "As-Is", Seller will make no repairs or replacements, and Buyer elects not to have a Due Diligence Period. Buyer retains the right to inspect, examine and test the Property but waives both the right to request repairs or replacements and the right to void this Contract based on inspection results.

11. CONDITION OF PROPERTY: Except for property being sold "As-Is" per terms of Paragraph 10, after any inspections by Buyer and after repairs or replacements, if any, made as a result of any such inspections, Seller agrees to maintain the Property (including but not limited to, lawn, shrubbery, grounds and fixtures, equipment and systems that convey with the Property) and all improvements thereon in similar condition until the day of closing or the day possession is given, whichever occurs first. Seller warrants that to the best of his knowledge, information, and belief there are no conditions in the Property which would adversely affect the value when conditions are hidden by furniture, fixtures or window treatments currently in place in the Property.

12. PROPERTY CONDITION DISCLOSURE STATEMENT: (Select, initial and date only one of the options below)

A. BUYER (/) SELLER (/) Buyer and Seller agree that a Residential Property Condition Disclosure Statement, as required by S.C. Code, as amended, Section 27-50-10, et. seq., has been provided to Buyer by Seller prior to the final acceptance of this Contract. If Seller discovers, after his delivery of the Disclosure Statement to Buyer, any material inaccuracy in the Disclosure Statement or the Disclosure Statement is rendered inaccurate, misleading, incomplete or false in a material way by the occurrence of some event or circumstance, Seller will promptly make reasonable repairs needed to eliminate the deficiency and repair the damage caused by the occurrence or correct the inaccuracy by delivering a corrected disclosure statement to Buyer before closing. Buyer understands and agrees that Seller's Property Condition Disclosure Statement is not intended to replace inspections of the Property.

OR

B. BUYER (/) SELLER (/) Buyer and Seller agree that Seller will not complete nor provide a Residential Property Condition Disclosure Statement in accordance with S.C. Code, as amended, Section 27-50-30, Paragraphs (1-13).

BUYER (/) SELLER (/)
Initials Date Initials Date

13. **LEAD-BASED PAINT:** Buyer is advised that if this Property was built prior to 1978, it may contain lead-based paint and that a "Disclosure of Information and Acknowledgement Lead-Based and/or Lead-Based Paint Hazards" form is hereby made an Addendum to this Contract and will be signed by both Buyer and Seller and their Agents.

14. **HOME WARRANTY COVERAGE:** Buyer and Seller agree that a home warranty providing at least twelve (12) months of coverage for the Buyer will () will not (✓) be provided at closing. If applicable, the warranty premium will be paid by Buyer () Seller () in the amount of \$ _____, provided by _____ (home warranty company) and written by the Buyer's Agent () Seller's Agent (). If the price of the warranty exceeds the dollar amount entered in this paragraph, Buyer shall be responsible for the difference at closing.

15. **PROPERTY DOCUMENTATION:** (Initial and date after reviewing information in Paragraphs 15 A-D)

BUYER (CKX) 7-23-13 SELLER (AKbyk) 7/25/13
Buyer's and Seller's Brokers strongly recommend Buyer review existing Property documentation to include the most current plat, Covenants and Restrictions, and Seller's Property Condition Disclosure Statement before entering into this Contract. The Buyer's and Seller's Brokers also recommend that prior to closing on this Contract, Buyer have a survey of the subject Property made to verify land size/boundary dimensions, measure existing structures to verify square footage, have an examination as to the title to the Property, obtain owner's title insurance and the Buyer obtain appropriate hazard, flood, earthquake and wind/hail damage insurance coverage effective at the time of closing.

A. Seller represents that the Property is:

Connected to - public/community sewer system () septic tank (✓)
Connected to - public/community water system () well system (✓) Other _____

B. Seller represents that to the best of Seller's knowledge, the Property is () is not () partly or entirely located within a designated Special Flood Hazard Area (flood zone). If Seller's response indicates that it is in a flood zone, Buyer understands that it may be necessary to purchase flood insurance in order to obtain a loan. If Seller's response indicates that the Property is not in a flood zone and, subsequent to Contract acceptance, it is determined that permanent improvements to the Property are within a flood zone causing Lender to require Buyer to purchase flood insurance as a condition of loan approval, then Buyer can terminate this Contract. Buyer will have three (3) Business Days after receipt of Notice from Lender to provide written Notice to Seller of the decision to terminate. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D). Buyer's failure to provide written Notice to Seller within the three (3) Business Day period will be deemed Buyer's agreement to purchase flood insurance to close the transaction.

C. Seller represents that the Property is () is not () subject to a special assessment of any governing body, including, but not limited to, a homeowner's association/regime or otherwise. The special assessment fee is \$ _____

D. Seller represents that the Property is () is not () subject to a mandatory association fee (i.e., homeowner's association/regime or otherwise). If the Property is subject to a mandatory association fee, the fee is \$ _____ per _____ and is payable to _____

16. **ADDITIONAL CONTINGENCIES:** (Initial and date either Paragraph A or B if applicable and Paragraph C if other contingencies apply)

A. **SALE AND CLOSING CONTINGENCY**

BUYER (CKX) SELLER (AKbyk)
This Contract is contingent on the sale and closing of the Buyer's Property not later than the closing date agreed to in Paragraph 7 of this Contract. Property is located at the following address: _____
Buyer's failure to disclose the existence of this contingency will constitute a default of this Contract and earnest money will be released to Seller. See Paragraph 4(D).

BUYER (CKX) 7-23-13 SELLER (AKbyk) 7/25/13
Initials Date Initials Date

1. Buyer represents that the Buyer's Property identified in Paragraph 16(A) above is () is not () currently listed with a real estate company.

2. As long as this contingency remains in effect, Seller may continue to market Seller's Property and can accept a subsequent offer to purchase under the following terms:

a. Any subsequent offer that does not contain a sale and closing contingency may be accepted as a Primary Contract, with this contingent Contract becoming a Back-up Contract upon agreement of Buyer and Seller. If agreement cannot be reached, this contingent Contract will become null and void with earnest money released to Buyer. See Paragraph 4(D).

b. Any subsequent offer that does contain a sale and closing contingency may only be accepted as a Back-Up Contract.

3. If Buyer does not remove this contingency by the closing date in Paragraph 7, this Contract will become null and void unless both Parties agree to extend the closing date. If Contract is voided, earnest money will be released to Buyer. See Paragraph 4(D).

4. Once Buyer accepts a Contract of Sale on their Property with all contingencies removed or waived (other than financing), with any Due Diligence Period and/or repair negotiations completed, and with a closing occurring prior to the date and time scheduled for this closing, Buyer will provide written notice of this acceptance to Seller. This Contract will then become contingent on completion of the closing of the sale of Buyer's Property. See Paragraph 16(B) below.

B. CLOSING CONTINGENCY

BUYER () SELLER () This Contract is contingent on completion of the closing of the sale of Buyer's Property. The Contract the Buyer has accepted on his Property must have all contingencies other than financing, removed or waived with any due diligence period and/or repair negotiations completed, on or before _____ Property is located at _____

1. Buyer to provide documentation of sale of Buyer's Property upon request.

2. Seller may continue to market Seller's Property for sale; however, any offer received will be negotiated as a Back-up Contract.

C. OTHER CONTINGENCIES

BUYER () SELLER () This Contract is contingent on:

17. **FIXTURES AND PERSONAL PROPERTY:** This sale includes all fixtures, equipment and improvements of any kind which now exist and are attached to or planted on the premises such as, but not limited to: shrubbery, trees, fences, shutters, blinds, lamp posts, mail boxes, storage sheds, lawn irrigation system and all related equipment, pool and spa equipment, window and door screens, storm windows and doors, garage door openers and remotes, satellite dishes, Seller-owned security systems, smoke detectors, gas logs, central vacuum system, landscape lighting, curtain/drapery rods, ceiling fans and remotes, attached mirrors, light bulbs, switch plates, heating and air system registers and built-ins, such as equipment, appliances, cabinets, furniture and shelves, unless otherwise agreed herein. Items of personal property other than those above may be sold separately by BHI of Sale.

BUYER (CGL) _____
Initials

7-23-13
Date

SELLER (AKG/LK) _____
Initials

7/25/13
Date

18. OTHER TERMS: If conflicting with pre-printed portions of this Contract, the following terms will control:

Seller to provide clear CL100,
Heat + Air Inspection Letter, Well Inspection
Letter + Septic Inspection Letter at Seller
expense not to exceed \$700.00

AKbyLK

7/25/13

Cd.A.

19. ADJUSTMENTS: Real estate taxes, homeowner association/region fees, and rents when applicable, will be adjusted as of the date of closing. Tax proration pursuant to this Contract are to be based on the tax information available and deemed reliable by the Closing Attorney on the date of closing and to be prorated on that basis. Buyer will be responsible for applying for any applicable tax exemptions. Buyer is also responsible for any tax increases due to change in ownership. Unless otherwise agreed, Seller will pay all regular and special homeowner's association assessments and all governmental assessments levied prior to closing and Buyer will pay for those assessments levied after closing.

20. FIRE OR CASUALTY: In case the Property herein is damaged wholly or partially by fire or other casualty prior to delivery of deed, Buyer will have the right for ten (10) Business Days after notice of such damage to terminate this Contract. Upon such termination, earnest money will be released to Buyer and neither party will have any further rights hereunder. See Paragraph 4(D). If Buyer elects not to terminate this Contract or fails to provide timely Notice of Termination, the Parties will proceed according to its terms.

21. DEFAULT: If Buyer or Seller fails to perform any of the terms of this Contract, the other may elect to seek any remedy provided by law including, but not limited to, attorney fees and actual costs incurred or terminate this Contract with written notice. Actual costs incurred will include all costs and expenses incurred or obligated for by Buyer, Seller or Brokers in an effort to consummate this sale. Such costs will include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, attorney's fees and real estate brokerage fee for this sale. If Contract is terminated, both Parties will execute a written release of the other from this Contract and both will hold Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or a court of competent jurisdiction dictates legal disposition. If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.

22. MEDIATION: Any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relation to this Contract, shall be submitted to mediation in accordance with the rules and procedures of the dispute resolution system of the National Association of Realtors. Disputes will include representations made by Buyer, Seller or any real estate Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract pertains, including, without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreements signed by the Parties pursuant to the mediation conference will be binding. S.C. Code, Ann. Section 15-48-10 et. seq. shall not apply to this Contract.

BUYER

AK
Initials

7-23-13
Date

SELLER

AKbyLK
Initials

7/25/13
Date

23. **ENTIRE BINDING CONTRACT:** The Parties agree that this written Contract expresses the entire agreement between the Parties, that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract will be binding on both Parties, their principals, heirs, personal representatives, successors and assigns as state law permits.

24. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of S.C. Code, Section 12-8-580 (as amended) regarding tax withholding requirements of Sellers who are not residents of South Carolina as defined in said statute.

25. **EXPIRATION OF OFFER:** This offer from Buyer will be withdrawn at 5 o'clock P.M. (Eastern Time) on 7/25/2013 unless accepted or countered by Seller in written form prior to such time.

26. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to all provisions of this Contract that stipulate a specific period of time for performance. Failure of Buyer or Seller to complete any provision of this Contract within the stipulated period of time for completion of the provision will constitute, where applicable, a default of this Contract.

27. **NOTICE AND DELIVERY:** Notice means a unilateral communication, including offers, counteroffers and associated Addenda from one Party to this Contract to the other. Notices to a Broker or affiliated Agent representing a Party to this Contract will be deemed to be Notice to that Party. All Notices required under this Contract will be in writing and will be effective as of Delivery. Delivery methods may include hand-carried, sent by professional courier service, by United States mail, or by facsimile (fax) or e-mail transmission. A faxed or e-mailed signature of a Party to this Contract will constitute an original signature binding upon that Party. The Parties agree that Delivery will be deemed to have occurred either on the day and at the time Notice is delivered by hand, by a professional courier service, or by United States mail (return receipt requested) or on the day and at the time Notice is sent by facsimile or e-mail transmission provided written confirmation of receipt is received by deliverer. No Party to this Contract will refuse Delivery in order to delay or extend any deadline established in the Contract.

28. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after closing, it will survive the closing and remain binding upon and for the Parties hereto until fully observed, kept or performed.

29. **DEFINITIONS:**

A. A single Business Day is defined as a twenty-four (24) hour period beginning at 8AM of any week day (Monday through Friday). A Business Day may not begin or end on a Saturday, Sunday or Federal legal holiday. For the purposes of this Contract, the first Business Day will begin at 8AM of the Business Day following final Contract acceptance. All deadlines/timelines set forth in the Contract will begin at 8AM of the first Business Day following the date of final Contract acceptance unless otherwise agreed to by Buyer and Seller.

B. Successful negotiation of this offer will have been completed when one of the Party's to the negotiation places the final, required signatures and/or initials on this offer. Contract acceptance will occur at the date and time when this Party subsequently delivers a copy of this executed document to the other Party. The Party receiving the executed document will be responsible for filling in the final Contract acceptance date and time on the last page of this Contract. If a Party is unrepresented, they will assume responsibility for filling in the required information.

C. In this Contract, closing is defined as the date and time that the Closing Attorney disburses funds.

D. The term Broker is also deemed to include affiliated Agent(s) of the Buyer's and Seller's Brokers.

30. **HUD-1 SETTLEMENT STATEMENT RELEASE:** Seller and Buyer authorize the Closing Attorney to furnish to Buyer's and Seller's Brokers copies of the HUD-1 Settlement Statement for the transaction.

31. **MEGAN'S LAW:** Buyer and Seller agree that the Buyer's and Seller's Brokers and all affiliated Agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry and that no course of action may be brought against the Buyer's and Seller's Agents and all affiliated Agents for failure to obtain or disclose such information. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information which may be obtained from appropriate law enforcement officials.

BUYER

AKL
Initials

7-23-13
Date

SELLER

AKL
Initials

7/25/13
Date

32. NON-RELIANCE CLAUSE: Both Buyer and Seller execute this Contract freely and voluntarily without reliance upon any statements, representations, promises or agreements by the Buyer's and Seller's Brokers except as set forth in this Contract. Buyer and Seller acknowledge that the Buyer's and Seller's Brokers are being retained solely as Real Estate Agents and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, mold or air quality expert, home inspector or other professional service provider. Buyer and Seller are legally competent to enter into this Contract and to fully accept responsibility for it. This is a legally binding Contract. Buyer and Seller should seek legal advice prior to entering into this Contract if, after having read it, its contents and provisions are not understood. Both Buyer and Seller acknowledge receipt of a copy of this Contract and acknowledge receiving, reading and understanding South Carolina Real Estate Commission's Agency Disclosure Brochure.

33. DISCLAIMER: Buyer and Seller acknowledge that Buyer's and Seller's Brokers give no warranty of any kind, expressed or implied, as to: (1) physical condition of the Property or as to condition of or existence of improvements, services or systems including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems or to structure; (2) condition of the Property, any matters which would be reflected by a current survey of the Property or the accuracy of the square footage heated or unheated; (3) title to the Property including the existence or absence of easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like; (4) fitness for a particular purpose of the Property or improvements; (5) Property being purchased being in compliance with necessary zoning ordinances and restrictions; (6) projected income, value, or other possible benefits to Buyer.

Charles L. Linton (L.S.) CHARLES L. LINTON 7-23-13
Buyer's Signature Buyer's Printed or Typed Name Date

Allen Koon by Larry Koon Attorney in Fact (L.S.) Allen Koon by Larry Koon Attorney in Fact 7/25/13
Buyer's Signature Buyer's Printed or Typed Name Date
Seller's Signature Seller's Printed or Typed Name Date

Austin Koon as P.R. (L.S.) Austin Koon as P.R. 7/25/13
Seller's Signature Seller's Printed or Typed Name Date
Personal Representative for the Estate of Cindy Koon

Gready Frazier/EXH Midland 863-924-5765
Buyer's Agent/Company acknowledges Buyer is a Client () Customer () Agent's Telephone Number

Todd Beckstrom/ ERA Wilder Realty, Inc. 803.348.0148
Seller's Agent/Company acknowledges Seller is a Client (X) Customer () Agent's Telephone Number

This section is not to be completed until the conditions of paragraph 29B are fulfilled
CONTRACT ACCEPTED BY BOTH PARTIES AT 1:52 O'CLOCK P M (ET) ON 26 July 2013 DATE
ACCEPTANCE ENTERED BY Todd Beckstrom (AGENT)

NOTE: Once the above Contract acceptance date and time are filled in a copy of this Contract should be promptly forwarded to the other Party.

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ADDENDUM/AMENDMENT TO

☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☐ COUNTEROFFER] OR

☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____

COVERING THE ☐ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as:

Address 6163 SAINT LUKES CHURCH ROAD Unit # _____

City PROSPERITY State of South Carolina

Other _____ TMS 409-6/1

The undersigned Parties hereby agree as follows: TO EXTEND THE CLOSING DATE TO OCTOBER 18, 2013.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at _____ ☐ AM ☐ PM on _____ N/A _____ unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: CHARLES LINTON Date: _____ Time: _____

WITNESS: _____ Date: _____ Time: _____

BUYER: _____ Date: _____ Time: _____

WITNESS: _____ Date: _____ Time: _____

SELLER: Allen Koon P.A. Date: 8/29/13 Time: _____

WITNESS: [Signature] Date: 8/29/13 Time: _____

SELLER: [Signature] P.R. Date: 8/30/13 Time: _____

WITNESS: _____ Date: _____ Time: _____

REALTOR® is the registered collective membership mark which may be used only by those real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its strict professional Code of Ethics. The South Carolina Association of REALTORS® (SCR) owns copyright to the content of this form and expressly prohibits the display, distribution, duplication, transmission, alteration, or reproduction of any part of SCR copyright content as well as the use of the name "South Carolina Association of REALTORS®" in connection with any written or electronic format without the prior written consent of SCR.

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[] BUYER [] BUYER [] SELLER [] SELLER HAVE READ THIS PAGE

201300019868
Filed for Record in
NEWBERRY COUNTY, SC
JACKIE S. BOWERS, CLERK OF COURT
11-08-2013 At 03:18 PM.
DEED 10.00
STATE 699.40
COUNTY 295.90
OR Book 1730 Page 74 - 76

Deed Prepared By:
Harrell & Martin, P.A.
Post Office Box 1000
Chapin, SC 29036

Space above this line for recording information

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

DEED TO REAL ESTATE
Title Search Not Performed

FILED
NEWBERRY COUNTY
2014 MAR 27 PM 4 31
JACKIE S. BOWERS
CLERK OF COURT

KNOW ALL MEN BY THESE PRESENTS, that ALLEN L. KOON, individually and as **AUSTIN KOON, AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF CINDY M. KOON**, Newberry County Probate Case Number 2013-ES-36-00003 (hereinafter referred to as "Grantor"), for and in consideration of the sum of **TWO HUNDRED SIXTY-EIGHT THOUSAND SEVEN HUNDRED AND 00/100 (\$268,700.00) DOLLARS** to it in hand paid at and before the sealing of these presents, by **CHARLES L. LINTON**, (hereinafter referred to as "Grantee") in the State and County aforesaid, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, *subject to the rights, easements and restrictions hereinafter set out or reserved in the deed*, unto the Grantee, his Heirs, Successors and Assigns:

All that certain piece, parcel or lot of land, with any improvements thereon, situate, lying and being in the County of Newberry, State of South Carolina, containing approximately 4.39 gross acres, minus a 0.25 acres road right-of-way, leaving 4.18 net acres, more or less, as shown on a plat prepared by Mark E. Mills, RLS, #10779 for Dennis L. Meyers and Judith H. Meyers dated June 14, 1993 and recorded June 25, 1993 in Newberry County Plat Slide 293 at plat 4.

Derivation: This being the same property conveyed to Allen L. Koon and Cindy M. Koon by deed of that Federal National Mortgage Association, 13455 Noel Road, Suite 950, Dallas, Texas 75240-6003 dated December 27, 2002 and recorded in the Office of the Clerk of Court for Newberry County in Book 602 at page 210.

AND ALSO:

All that certain piece, parcel, or lot of land, situate, lying and being in the County of Newberry, State of South Carolina, containing approximately 1.65 acres, more or less, and being more accurately depicted on a plat prepared for Allen L. Koon and Cindy M. Koon by Hugh F. Longshore, III, PLS, dated March 4, 2004 and recorded in the Office of the Clerk of Court for Newberry County in Plat Book C88 at page 10 on April 1, 2004.

Derivation: This being the same property conveyed to Allen L. Koon and Cindy M. Koon by deed of Dennis L. Meyers and Judith H. Meyers dated March 31, 2004 and recorded in the Office of the Clerk of Court for Newberry County on April 1, 2004 in Book 944 at page 253.

TMS # 409-6/1



LK
[Handwritten signature]

Grantee's Address:

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

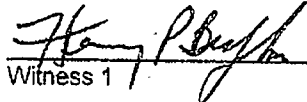
TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in any way incident or appertaining.

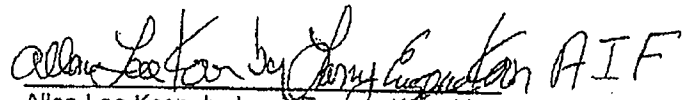
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever.

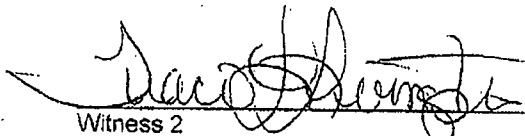
And the Grantors do hereby bind themselves and their successors and assigns, to warrant and forever defend all and singular the premises unto the Grantee his Heirs, Successors and Assigns against themselves and their successors and assigns and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

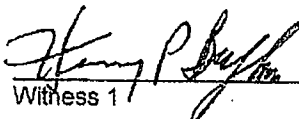
Any references in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

WITNESS the Grantor's hand and seal this ____ day of November, 2013, in the two hundred thirty-seventh year of the Sovereignty and Independence of the United States of America.

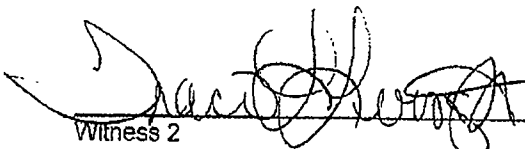

Witness 1

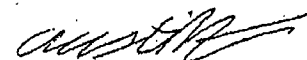

Allen Lee Koon, by Larry Eugene Koon his Attorney-in-Fact


Witness 2


Witness 1

THE ESTATE OF CINDY M. KOON


Witness 2

 PR
BY: Austin Koon
ITS: Personal Representative

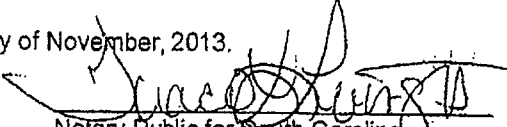
STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

ACKNOWLEDGMENT

I, Traci Livingston a notary public for the State of South Carolina, do hereby certify that Henry Y. Butler appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 7th day of November, 2013.


Notary Public for South Carolina

My commission expires: 8/31/2015

Submitted for recording by:

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

Larry E. Koon and Allen Lee)
Koon by and through his attorney,)
in fact, Larry E. Koon,)
Plaintiffs)

vs.)

Thomas Jackson Construction,)
Inc.,)
Defendant.)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

2014-CP-36-00109

2014 APR 8 PM 12 24

JACKIE S. BOWERS
CLERK OF COURT

DEFENDANT'S MEMORANDUM IN OPPOSITION
TO PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT

SCANNED

TO: LARRY E. KOON AND ALLEN LEE KOON BY AND THROUGH HIS ATTORNEY IN FACT,
LARRY E. KOON, BY AND THROUGH THEIR ATTORNEY OF RECORD, JENNIFER DOWD
NICHOLS:

Defendant, Thomas Jackson Construction, Inc., respectfully submits the following
Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment. The Defendant seeks an
order denying judgment in favor of the Plaintiffs.

BACKGROUND

The nature of this current civil action stems from a previous civil action, 2006-CP-36-395, in
which the [now] Defendant, Thomas Jackson Construction Inc., sought a judgment in his favor against
Lake Murray Tree, Inc. on an unpaid open account. Lake Murray Tree, Inc. hired Thomas Jackson
Construction, Inc. as a sub-contractor for work jobs relating to Hurricane Katrina and the Louisiana
Disaster Relief programs. Plaintiff Allen Lee Koon was the sole shareholder of Lake Murray Tree,
Inc.. Thomas Jackson Construction, Inc. was never paid for its work in Louisiana, resulting in the
original action.

A judgment was entered in favor of Thomas Jackson Construction, Inc. in the amount of
\$25,056.00 with the Newberry Clerk of Court on August 6, 2007. In August 2008, the judgment was
still unpaid, and Thomas Jackson Construction, Inc. filed supplemental proceedings against Lake

Murray Tree, Inc.. During the course of these proceedings, Lake Murray Inc., through the actions or failures to act its sole shareholder, Allen Lee Koon, failed numerous times to comply with subpoenas and produce requested documents requiring numerous Motions to Compel. Furthermore, the documents that were produced by Lake Murray, Inc. showed evidence that Allen Lee Koon was funneling money and assets to fund his personal expenses for items such as online poker, Harley Davidson merchandise, the mortgage to his residence, and a Carnival cruise. At the conclusion of the proceedings, the Court granted Thomas Jackson Construction, Inc.'s Motion for Contempt Order and Sanctions. The Court took special notice to outline the fact that Lake Murray Inc., through its sole shareholder, Allen Lee Koon was to be held personally liable, through Rule 37 of the South Carolina Rules of Civil Procedure, as a result of his "complete disregard for legal obligations and compliance with court orders." Therefore, the Court ordered that Thomas Jackson Construction, Inc. be awarded judgment against Allen Koon, personally, in the amount of \$32, 858.80, which represented the amount of the judgment against his business, Lake Murray, Inc., plus interest, at the rate of 12.25% compounded annually, through December 6, 2009.

STANDARD OF REVIEW

Summary judgment is "appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Wilson v. Moseley*, 327 S.C. 144, 146, 488 S.E.2d 862, 863 (1997). In ruling on a motion for summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Id.*

ARGUMENT

The Plaintiffs have filed this Motion for Summary Judgment on the grounds that this Court did not have personal jurisdiction over Allen Lee Koon in 2006-CP-36-385 because no summons or Rule to Show Cause naming Allen Lee Koon individually as a party to that action was ever served upon Allen

Lee Koon or accepted by him or his attorney and that Allen Lee Koon never appeared personally in that action.

I. The Court should deny Plaintiffs' Motion for Summary Judgment based upon Plaintiffs allegation of lack of personal jurisdiction because the Trial Court had authority to sanction Allen Lee Koon, personally, pursuant to SCRCP 37(b).

The Plaintiffs' argument that they are in entitled to an order granting Summary Judgment based upon lack of personal jurisdiction is without merit. Rule 37(b)(2) plainly states that:

“If a party or an officer, director, or managing agent of a party or a person designated under Rule (30)(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regarding to the failure as are just...”

The Order Granting Plaintiff's Motion for Contempt Order and Sanctions dated January 12, 2010 (referenced in paragraph five (5) of Plaintiffs' Complaint) specifically outlined Plaintiff Allen Lee Koon's numerous failures to comply with the Court's judgment, including the use of Lake Murray Tree, Inc. business funds for personal use for items or services, such as online poker, Harley Davidson merchandise, the mortgage on Allen Koon's personal residence, and a Carnival cruise; that Lake Murray Tree, Inc. transferred equipment to Plaintiff Allen Lee Koon without consideration being paid; and that Plaintiff Allen Lee Koon repeatedly failed to appear or comply with discovery requests. The Order also specifically detailed how Rule 37(b) granted the Court authority to hold Plaintiff Allen Lee Koon personally liable on the judgment due to his “complete disregard for legal obligations and compliance with Court orders,” as the sole shareholder for Lake Murray Tree, Inc..

Rule 37(b) allows the Court to enter judgment against the Plaintiff, Allen E. Koon, personally, because Koon is considered an officer, director, or managing agent of a party designated under Rule (30)(b)(6) or Rule 31(a). Rule 37(b)(2)(B) prohibits “the disobedient party to support or oppose designated claims or defense...”; therefore, the Plaintiff does not have the ability to bring this action, let

alone this Motion for Summary Judgment. Furthermore, Rule 37(b)(2)(C) allows the trial court to have discretion to impose a sanction it deems just when a party fails to comply with a discovery order, as was done by Allen Lee Koon in 2006-CP-36-395. *McNair v. Fairfield County*, 379 S.C. 462 466, 665 S.E.2d 830, 832 (2008). Absent an abuse of discretion, the trial court's imposition of such sanctions will not be reversed on appeal¹. *Id.*

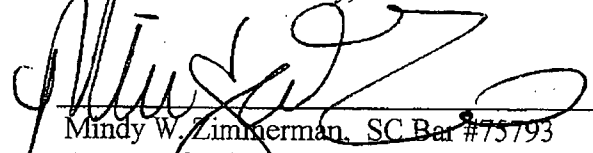
II. The Court should deny Plaintiffs' Motion for Summary Judgment based upon Plaintiffs allegation of that Allen Lee Koon never appeared personally in the previous action because the record reflects otherwise.

The Plaintiffs' argument that they are entitled to an order granting Summary Judgment based upon the allegation that Allen Lee Koon never appeared personally in the previous action is also without merit. The record reflected in the Order Granting Plaintiff's Motion For Contempt Order and Sanctions indicates that Allen Lee Koon personally appeared as the sole shareholder of Lake Murray Tree, Inc. at a hearing held on November 10, 2008. Furthermore, on December 15, 2009, Allen Lee Koon's wife faxed the court an Emergency Motion for Continuance on his behalf.

CONCLUSION

The Plaintiff's Motion for Summary Judgment should be denied.

Zimmerman and Shealy, LLC



Mindy W. Zimmerman, SC Bar #75793

Attorney for the Defendant

P. O. Box 1207

Newberry, South Carolina 29108

Telephone (803) 321-0000

Facsimile (803) 321-0407

April 7, 2014
Newberry, South Carolina

¹ The Defendant, Thomas Jackson Construction, Inc., has argued in its Counterclaim that the Plaintiffs' failed to properly file an appeal in 2006-CP-36-395.

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
) CASE NO. 2014-CP-36-00109

Larry E. Koon and Allen Lee Koon by
and through his attorney in fact Larry E.
Koon,

Plaintiffs,

vs.

Thomas Jackson Construction, Inc.,

Defendant.

FILED
- NEWBERRY COUNTY
2014 APR 10 AM 10 13
JACKIE S. BOWERS
CLERK OF COURT
REPLY TO
COUNTERCLAIM

The Plaintiffs replying to the Counterclaim of the Defendant allege:

1. The allegations contained in paragraphs 25, 26, 27, 28, 29 and 30 of the Counterclaim are denied.

WHEREFORE, the Plaintiffs pray that the Counterclaim of the Defendant be dismissed with costs, and Summary Judgment entered in favor of the Plaintiffs.

HARRELL & MARTIN, P.A.

Robert W. Dibble, Jr.
Of Counsel

By:

Jennifer Dowd Nichols
K. Harrell, III

Jeremy C. Martin
Jennifer Dowd Nichols
135 Columbia Avenue
Post Office Box 1000
Chapin, South Carolina 29036
Telephone: (803) 345-3353
Facsimile: (803) 345-9171

Attorneys for Plaintiffs, Larry E. Koon and
Allen Lee Koon by and through his attorney
in fact Larry E. Koon

April 8, 2014
Chapin, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
) CASE NO. 2014-CP-36-00109

Larry E. Koon and Allen Lee Koon by
and through his attorney in fact Larry E.
Koon,

Plaintiffs,

vs.

Thomas Jackson Construction, Inc.,

Defendant.

**BRIEF IN OPPOSITION
TO MOTION TO DISMISS AND
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

This brief opposes the Motion to Dismiss filed by the Defendant on March 12, 2014 and served by mail upon the Plaintiffs by letter dated March 14, 2014. The Motion to Dismiss is made on the grounds that (1) this action was filed in violation of Rules 37, 60 and 72, SCRCP, and (2) that the action is barred by the Statute of Limitations set out in S.C. Code Ann. §15-3-530. For the reasons set out below, the Motion to Dismiss should be denied.

This brief also supports the Plaintiffs' Motion for Summary Judgment which was filed on March 28, 2014 and served by hand on March 28, 2014 and filed on March 28, 2014. The Motion for Summary Judgment is based on the fact that the judgment against Allen Lee Koon is void and a nullity because Allen Lee Koon was not subject to the jurisdiction of the Court in Civil Action No. 2006-CP-36-395. For the reasons set out below, the Motion for Summary Judgment should be granted.

Historical Background

In 2006, in Civil Action No. 2006-CP-36-395, Thomas Jackson Construction, Inc. brought suit against Lake Murray Tree, Inc. to collect money on an open account resulting from the failure of Lake Murray Tree, Inc. to pay for work performed by the Plaintiff. Allen Lee Koon was the sole shareholder of and registered agent for Lake Murray Tree, Inc. However, Allen Lee Koon was not named as a defendant in that action, and no Summons or Rule to Show Cause was ever served upon him or upon his attorney in that action. Furthermore, neither he nor his attorney ever accepted service on a Summons or Rule to Show Cause naming Allen Lee Koon as a party to that action. The Complaint, which was never amended, did not contain a cause of action seeking to pierce the corporate veil.

By consent, the matter was referred to James S. Verner as Special Referee for Newberry County on June 16, 2007. Following a hearing, an Order was entered in that action on July 31, 2007 granting a Judgment in the amount of Twenty Five Thousand Fifty-Six and 00/100 Dollars (\$25,056.00) in favor of Thomas Jackson Construction, Inc. against Lake Murray Tree, Inc. That Judgment was entered of record on August 6, 2007. On March 27, 2008, an execution against property was issued by the Clerk of Court in connection with that Judgment. The execution was returned *nulla bona* on June 28, 2008. On August 18, 2008, Thomas Jackson Construction, Inc. served a subpoena on Lake Murray Tree, Inc. (not Allen Lee Koon, individually) requesting the production of documents. On November 4, 2009, Thomas Jackson Construction, Inc. filed a Motion for Contempt Order and Sanctions. On January 12, 2010, an Order was entered granting the

Motion of Thomas Jackson Construction, Inc. for contempt and sanctions. As a sanction under Rule 37(b)(2), that Order also entered judgment against Allen Lee Koon personally in the amount of Thirty-Two Thousand Eight Hundred Fifty-Eight and 80/100 Dollars (\$32,858.80) based solely on the fact that he was the sole shareholder of Lake Murray Tree, Inc. The judgment against Allen Lee Koon was entered on February 1, 2010 in Judgment Roll 2010TR36173 in the Office of the Clerk of Court for Newberry County, South Carolina.

On November 24, 2012, Allen Lee Koon was arrested and charged with the murder of his wife, Cindy Koon. Allen Lee Koon remained incarcerated at the Newberry County Detention Center from the date of his arrest until he received his True Bill Indictment on February 1, 2013. Allen Lee Koon was denied bail on February 12, 2013. He was initially housed in the Newberry County Detention Center, but he was moved to the Alvin S. Glenn Detention Center in Richland County for his personal safety. He remains incarcerated there as of today, awaiting trial.

Allen Lee Koon and Cindy Koon had three (3) children. At the time of her death, the ages of the children were 18, 16, and 12. On November 26, 2012, Allen Lee Koon executed a Power of Attorney in favor of his father, Larry Eugene Koon. That Power of Attorney was recorded in the office of the Clerk of Court for Newberry County in Book 1659 at page 273 and remains valid today. Following the arrest of Allen Lee Koon, his mother, Elizabeth Ann Koon took guardianship of the minor children. The oldest child, Austin Koon, was appointed as the personal representative of his mother's estate.

Allen Lee Koon and Cindy Koon owned as tenants in common a 23.194 acre parcel which is the subject matter of this action. That land is located in Newberry

County, South Carolina: On May 15, 2013 by Deed recorded on May 20, 2013, Allen Lee Koon transferred his one-half (1/2) undivided interest in the 23.194 acre parcel to his father, Larry Eugene Koon. The Deed is recorded in Book 1697 at page 138 in the office of the Clerk of Court for Newberry County, South Carolina. On May 16, 2013 by Deed of Distribution from the Estate of Cindy Koon, Larry Eugene Koon acquired title to the other one-half (1/2) undivided interest in the 23.194 acre parcel. The Deed of Distribution is recorded in the office of the Clerk of Court for Newberry County, South Carolina in Deed Book 1697 at page 141 on May 20, 2013. No title search was done in connection with either transfer, because Allen Lee Koon told his father that the land was unencumbered.

In addition to the property referenced above, Allen Lee Koon and Cindy Koon also owned as tenants in common a parcel of land containing 4.39 gross acres with improvements thereon less 0.25 acres in a road right-of-way and a parcel of land containing 1.65 acres. Both of those parcels are located in Newberry County, South Carolina. On July 23, 2013, Larry Eugene Koon as Attorney-in-Fact for Allen Lee Koon, and Austin Koon, as the Personal Representative of the Estate of Cindy Koon, entered into a Contract to sell the 4.39 acre tract and the 1.65 acre tract to Charles Linton for the sum of Two Hundred Sixty-Eight Thousand Seven Hundred 00/100 Dollars (\$268,700.00). Mr. Linton was represented by Henry P. Bufkin, Esq. The closing date was set for August 25, 2013. Larry Eugene Koon first became aware of the Judgment held by Thomas Jackson Construction, Inc. against Allen Lee Koon on August 23, 2013, two (2) days prior to the scheduled closing.¹ The closing date was extended to October

¹ Allen Lee Koon learned about the Judgment against him from his father sometime in August or September of 2013.

18, 2013 and once again extended by verbal agreement until November 7, 2013. The sale closed on November 7, 2013, after Thomas Jackson Construction, Inc. agreed to release the 4.39 acre tract and the 1.65 acre tract from the Judgment against Allen Lee Koon in exchange for the payment of Eleven Thousand and 00/100 Dollars (\$11,000.00). Mr. Jackson was advised that at that time that Larry Eugene Koon intended to bring an action to set aside the Judgment against Allen Lee Koon individually. This action followed.

Motion to Dismiss

A. Rule 37, SCRCP.

The first ground for the Motion to Dismiss is that this action was filed in violation of Rule 37, SCRCP ("Rule 37"). Rule 37 is exclusively directed to remedies and sanctions for failure to make or cooperate in discovery. Rule 37 does not contain any provision prohibiting the Plaintiffs from instituting this action to set aside the Judgment against Allen Lee Koon. Therefore, Rule 37 is not applicable in this case, and the Motion to Dismiss may not be based on a violation of Rule 37 because no such violation exists.

To the extent the Motion to Dismiss is intended to justify the entry of a Judgment against Allen Lee Koon as a sanction under Rule 37(b)(2) the Motion must fail in that regard also. Rule 37(b)(2) reads as follows:

(2) Sanctions by Court in Which Action Is Pending.

If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

- (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
- (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;
- (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;
- (D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;
- (E) Where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply show that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Under the provisions of Rule 37(b)(2) the Court is limited to sanctions against a party to the action who, if an individual, fails to make or cooperate in discovery or fails to obey a court order or which, if an entity, through an officer, director or managing agent fails to make or cooperate in discovery or fails to obey a court order. Rule 37(b)(2) authorizes the Court to issue various sanctions against a party to the action, but it does not authorize

the Court to sanction a person who is not a party to the action even though he or she is an officer, director or managing agent of an entity which is a party to the action.

Even if Rule 37(b)(2) allows the Court to impose sanctions upon an officer, director or managing agent of an entity, such as Lake Murray Tree, Inc. (which is a party to the action), the Motion must still fail. The Special Referee in Civil Action No. 2006-CP-36-395 entered Judgment against Allen Lee Koon individually only because he was the sole shareholder of Lake Murray Tree, Inc. There is no evidence in the record in that action and no mention in the Order that Allen Lee Koon was either an officer, director or managing agent of Lake Murray Tree, Inc.

Rule 37(B)(2) authorizes the Court in which the action is pending to make such orders as are just in regard to the failure to make or cooperate in discovery or to obey a court order. There is no justification for the issuance of an order entering judgment against Allen Lee Koon individually when he was never a party to the action and where a cause of action to pierce the corporate veil was never asserted. In order to reach the assets of a shareholder of a defendant corporation, the Plaintiff must assert a cause of action seeking to pierce the corporate veil.² Since the Complaint did not contain such a cause of action, the Complaint would have had to be amended and Allen Lee Koon would have had to be made a party to that action. Neither of those things occurred. Therefore, there is no basis for the entry of Judgment against Allen Lee Koon individually as the sole shareholder of Lake Murray Tree, Inc. in Civil Action No. 2006-CP-36-395.

² See Drury Development Corp. v. Foundation Ins. Co., 380 S.C. 97, 668 S.E.2d 798 (2008) and cases cited therein.

For the foregoing reasons, the Motion to Dismiss cannot be based on a violation of Rule 37 in general or upon Rule 37(b)(2) specifically because (1) no such violation exists, and (2) the Judgment against Allen Lee Koon was improperly entered because he was not a party to the action, was not subject to the personal jurisdiction of the Court and was not an officer, director or managing agent of Lake Murray Tree, Inc.

B. Rule 72, SCRCP.

The second ground for the motion to dismiss is that this action was filed in violation of Rule 72, SCRCP. Rule 72 reads as follows: "Appeal may be taken, as permitted by law, from any final judgment or appealable order."

Nothing in Rule 72 prohibits the Plaintiffs from bringing an action to set aside the Judgment against Allen Lee Koon individually. Rule 72 by its terms addresses only the right of appeal from a final judgment or appealable order. Therefore, the institution of this action by the Plaintiffs does not violate Rule 72.

To the extent the Motion to Dismiss is based on the failure of Allen Lee Koon to appeal from the entry of Judgment against him personally in Civil Action No. 2006-CP-36-395, the Motion to Dismiss must still fail. First, Allen Lee Koon was not a party to that action and had no right to appeal from the Order entering Judgment against him. Even if he knew of the Judgment against him, he had the absolute right to treat the Judgment a nullity since he was never made a party to that action, and Rule 37(b)(2) did not authorize the entry of judgment against him. Second, if he had a right to appeal, his failure to do so simply resulted in the Judgment against him becoming final which brings it squarely within the scope of Rule 60(b) SCRCP, upon which this action is based.

For the reasons set forth above, the Motion to Dismiss cannot be based on a violation of Rule 72 because no such violation exists.

C. Rule 60, SCRPC.

The third ground on which the Motion to Dismiss is based is that this action was instituted in violation of Rule 60 SCRPC. Rule 60(b) SCRPC, explicitly authorizes the institution of this action. "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment..." Rule 60(b), SCRPC. Therefore, this action was not filed in violation of Rule 60, and the Motion to Dismiss should be denied.

To the extent that the Motion to Dismiss is intended to assert that this action was not timely filed under the provisions of Rule 60(b), the Motion to Dismiss must still fail. The Affidavit of Larry Eugene Koon establishes that he was unaware of the Judgment against Allen Lee Koon individually until August 23, 2013. The Affidavit of Allen Lee Koon establishes that he was unaware of the Judgment against him until August or September, 2013. This action was commenced in February 25, 2014, within six (6) months after the Plaintiffs became aware of the Judgment. While there is authority in South Carolina that a void judgment may be attacked at any time, other cases have applied the reasonable time provisions set out in Rule 60(b) to motions to set aside judgments and independent actions to set aside judgments.

The case of Sijon v. Green, 289 S.C. 126, 345 S.E.2d 246 (1986) is directly in point. There, at a hearing on August 7, 1979 judgments totaling One Thousand One Hundred Seventy-Five 00/100 dollars (\$1,175.00) were entered against Green. Green

brought an action to set aside the judgments alleging that he had no notice of the August 7, 1979 hearing and that he was unaware of the judgments until 1984, some five (5) years later. The Trial Court set aside the judgments, and Sijon appealed.

The Supreme Court noted in footnote 2 that "Rule 60(b) S.C.R. Civ. P. requires that motions to set aside a judgment on the ground that it is void must be brought within a reasonable time." The Court did not dismiss the case on the ground that it was not brought within a reasonable time. Therefore, implicitly, the Court found that the case was brought within a reasonable amount of time after Mr. Green learned of the judgments in 1984 that had been entered against him in 1979.

The same result should obtain here. Neither Allen Lee Koon nor Larry Eugene Koon was aware of the Judgment against Allen Lee Koon until August 23, 2013. This case was brought within six (6) months of the time they learned of the Judgment. Between August 23, 2013 (the earliest date on which either of them became aware of the Judgment) and February 25, 2014 (the date this action was commenced), Allen Lee Koon was incarcerated and had named his father as his attorney-in-fact. It would have been difficult, if not impossible, for him to bring this action in 2013. At the same time, Larry Eugene Koon was dealing with the sale of the two (2) smaller parcels of land to Mr. Linton. Therefore, there is justification for the six (6) month delay in bringing this action to set aside the Judgment against Allen Lee Koon.

For the foregoing reasons, the Motion to Dismiss should be denied because (1) this action is explicitly authorized by Rule (60)(b) and (2) this action was brought within a reasonable amount of time after the Plaintiff learned of the Judgment against Allen Lee Koon personally.

D. S.C. Code Ann. §15-3-530.

The final ground for the Motion to Dismiss is that the action is barred by the Statute of Limitations set out in S.C. Code Ann. §15-3-530. That statute reads as follows:

Within three years:

- (1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520;
- (2) as an action upon a liability created by statute other than a penalty or forfeiture;
- (3) an action for trespass upon or damage to real property;
- (4) an action for taking, detaining, or injuring any goods or chattels including an action for the specific recovery of personal property;
- (5) an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law, and those provided for in Section 15-5-545;
- (6) an action under Sections 15-51-10 to 15-51-60 for death by wrongful act, the period to begin to run upon the death of the person on account of whose death the action is brought;
- (7) any action for relief on the ground of fraud in cases which prior to the adoption of the Code of Civil Procedure in 1870 were solely cognizable by the court of chancery, the cause of action in the case not considered to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;
- (8) an action on any policy of insurance, either fire or life, whereby any person or property, resident or situate in this State, may be or may have been insured, or for or on account of any loss arising under the policy, any clause, condition, or limitation contained in the policy to the contrary notwithstanding; and
- (9) an action against directors or stockholders of a monied corporation or a banking association to recover a penalty or forfeiture imposed or to enforce a liability created by law, the cause of action in the case not considered to have accrued until the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached or the

liability was created, unless otherwise provided in the law under which the corporation is organized.

That code section does not apply to an action to set aside a judgment under Rule 60(b)(2). The causes of action to which it pertains are specifically set out, and an action under Rule 60(b) to set aside a judgment on the ground that the judgment is void is not among those enumerated. Beyond that, however, there are other reasons why the statute does not apply to this action. First, the section does not apply to actions in equity such as this case. Parrott v. Dickson, 151 S.C. 114, 148 S.E. 704 (1929), Fanning v. Bogacki, 111 S.C. 376, 98 S.E. 137 (1919), DuPont v. DuBos, 52 S.C. 244, 29 S.E. 665 (1898), McKinnon v. Summers, 224 S.C. 331, 79 S.C.2d 146 (1953). Second, the limitation period began to run when the circumstances would put a person of common knowledge and experience on notice that some claim against another party might exist. Turner v. Milliman, 381 S.C. 101, 671 S.E.2d 636 (Ct. App. 2009). Since neither Allen Lee Koon nor Larry Eugene Koon knew of the Judgment against Allen Lee Koon until August of 2013, this action was brought well within the three (3) year limitation. Third, the appropriate statute of limitation appears to be Section 15-3-350 which applies to an action founded upon a claim of title.

For the foregoing reasons, Section 15-3-530 does not apply to this action, and if it does, under the circumstance and the provisions of the discovery rule, this action was timely filed. Therefore, the Motion to Dismiss should be denied.

Motion for Summary Judgment

The Plaintiffs have filed a Motion for Summary Judgment based on the fact that Allen Lee Koon was never made a party defendant to Civil Action No. 2006-CP-36-395

and, therefore, the Judgment entered against him in that action is void for lack of personal jurisdiction.

As the Court of Appeals said in Ware v. Ware, 324 S.C. 639 478 S.E.2d 868 (Ct. App. 2013):

A void judgment is one that, from its inception, is a complete nullity and without legal affect. Thomas & Howard Co. v. T.W. Graham & Co., 318 S.C. 256, 457 S.E.2d 340 (1999). 'The definition only encompasses judgments from courts which failed to provide due process or judgments from courts which lacked subject matter or personal jurisdiction.' Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002)....

The Plaintiffs' Motion for Summary Judgment is supported by two (2) affidavits.

The Affidavit of Allen Lee Koon states unequivocally (1) that he was not named as an individual party defendant in Civil Action No. 2006-CP-36-395, (2) that he was never served with a Summons or Rule to Show Cause naming him as an individual party defendant in that action and (3) that he never accepted service on either a Summons or Rule to Show Cause naming him as an individual party defendant in that action. Samuel M. Price, Jr., Esq. submitted an Affidavit in support of the Motion for Summary Judgment. He stated (1) that he represented Lake Murray Tree, Inc. in Civil Action No. 2006-CP-36-395, (2) during the time he represented Lake Murray Tree, Inc. he never accepted service on a Summons or Rule to Show Cause naming Allen Lee Koon individually as a party to that action in any capacity and (3) the only Defendant in that action while he represented Lake Murray Tree, Inc. was Lake Murray Tree, Inc.

In the absence of personal jurisdiction an order affecting the rights of a party cannot be effective without proper notice to the party whose rights are to be affected. In the case of S.C. Dept. Rev. v. McClure, 350 S.C. 404, 566 S.E.2d 198 (Ct. App. 2002), the Court held that an Order issued by the Master-in-Equity was not binding upon the Department of Revenue because the Master lacked personal jurisdiction over the Department. The Court held as follows:

On appeal, SCDOR argues the master's rule to show cause did not contain the essential elements of a summons and, therefore, the master did not have personal jurisdiction over it. We agree.

"[A] judgment is void ... if a court acts without [personal] jurisdiction." Thomas & Howard Co. v. T.W. Graham & Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995); see also Coogler v. Cal. Ins. Co. of San Francisco, Cal., 192 S.C. 54, 58-59, 5 S.E.2d 459, 461 (1939) ("[N]o order or judgment affecting the rights of a party ... should be made or rendered without [proper] notice to the party whose rights are to be thus affected..."). A court ordinarily obtains personal jurisdiction by the service of a summons. See State v. Sanders, 118 S.C. 498, 502, 110 S.E. 808, 810 (1920) ("The purpose of the summons is to acquire jurisdiction of the person of the defendant"); cf. Rule 3(a) SCRP ("A civil action is commenced by filing and service of a summons and complaint."). However, our supreme court has "previously excused the use of the Rule to Show Cause [in place of a summons] to obtain [350 S.C. 408] jurisdiction when it contained the essential elements of a valid summons." Citizens & Southern Nat'l Bank of S.C. v. First Palmetto State Bank & Trust Co., 279 S.C. 252, 254, 305 S.E.2d 80, 80 (1983).

"[O]ne of the most important elements of a Summons is the time it allots for the defendant to appear." Id. at 254, 305 S.E.2d at 80-81. In Citizens & Southern, the rule to show cause provided it was returnable in twelve days, "rather than the twenty days then required of a Summons." Id. at 254, 305 S.E.2d at 81. Therefore, the court held the rule to show cause did not contain the essential elements of a summons. Thus, the circuit court did not properly have personal jurisdiction over the defendant. Id.

A defendant must be given thirty days in which to answer a summons. Rule 12(a), SCRPC. In the present case, SCDOR was

served with a copy of the rule to show cause on April 4, 2001, and ordered to appear on April 25, 2001. SCDOR had only twenty-one days in which to respond, not thirty as required by Rule 12(a), SCRCP. According to our supreme court's holding in Citizens & Southern, the master's rule to show cause lacked an essential element of a summons.

Therefore, the master lacked personal jurisdiction over SCDOR, and the order binding it to the master's initial Judgment of Foreclosure and Sale is void and must be vacated. See Thomas & Howard Co., 318 S.C. at 291, 457 S.E.2d at 343; Coogler, 192 S.C. at 58-59, 5 S.E.2d at 461.

For the foregoing reasons, we find the master did not have personal jurisdiction over SCDOR and, therefore, his order extinguishing its lien is **VACATED**.

In the case of Thornton v. Alford, 274 S.C. 1, 760 S.E.2d 179(1979) Justice Ness, writing for the Court held: "Finally, no summons or rule to show cause accompanied the order. As a result, the Court lacked jurisdiction over the appellant. Lee v. Surfer, et al., 159 S.C. 447, 247 S.E.2d 815 (1979); Section 15-9-10, Code of Laws of South Carolina (1976). See also, Ex. Parte Jones, 160 S.C. 63 158 S.E.2d 134 (1931); Jordan v. Wilson, 69 S.C. 256, 48 S.E. 224 (1904); 61 Am. Jur. Section 349, p. 750. Disobedience of an order without jurisdiction is not contempt. State ex rel McLoud v. Holcomb, 245 S.C. 63 138 S.E.2d 707 (1964). Long v. McMillian, 226 S.C. 598, 86 S.E.2d 477 (1955). The order appealed from must therefore, be reversed and the issuing Court admonished for its failure to observe the barest rudiments of substantive or procedural law."

The same result should obtain here. The Court in Civil Action No. 2006-CP-36-395 did not have personal jurisdiction over Allen Lee Koon. Therefore the Judgment against him is void and should be set aside and vacated, and the Motion for Summary Judgment should be granted.

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April 8, 2014
Chapin, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
) CASE NO. 2014-CP-36-00109

Larry E. Koon and Allen Lee Koon by
and through his attorney in fact Larry E.
Koon,

Plaintiffs,

vs.

Thomas Jackson Construction, Inc.,

Defendant.

**PLAINTIFFS' REPLY
TO DEFENDANT'S MEMORANDUM
IN OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT**

The Defendant has submitted a Memorandum In Opposition to the Plaintiffs' Motion for Summary Judgment. This brief is in reply to that Memorandum.

I. The Defendant opposes the Motion for Summary Judgment on the ground that Rule 37(b) allowed the Court to enter judgment against Allen Lee Koon personally because he is "considered to be an officer, director or managing agent of a party designated under Rule 30(b)(6) or Rule 31(a)."

(A.) First, there is nothing in the record in Civil Action No. 2006-CP-36-395 to show that Allen Lee Koon was ever designated under either of those rules.

(B.) Second, the Order entering judgment against Allen Lee Koon personally did so on the sole basis that he was the sole shareholder of Lake Murray Tree, Inc. There is no mention in the Order of his being an officer, director or managing agent of Lake Murray Tree, Inc. or that he had been designated as an officer, director or managing agent of Lake Murray Tree, Inc. under Rule 30(b)(6) or Rule 31(a). That Order cannot be

rewritten now to include those factual findings assuming they exist. The Order must stand as written by the Special Referee.

(C.) Third, the case of McNair v. Fairfield County, 329 S.C. 462, 665 S.E.2d 830 (Ct. App. 2008) cited by the Plaintiff is not applicable here. In that case, the Court affirmed an order striking the answer of the Defendant, Fairfield County. Fairfield County was a party to the action and had been served with the Complaint. That case is not applicable to the facts here, because Allen Lee Koon was never made a party to Civil Action No. 2006-CP-36-395.

II. The Defendant also opposes the Motion for Summary Judgment on the additional grounds that (1) Allen Lee Koon appeared at a hearing as the sole shareholder of Lake Murray Tree, Inc. and (2) that a Motion for Continuance was filed on his behalf by his wife. Neither ground is sufficient to defeat the Motion for Summary Judgment.

(A.) First, Allen Lee Koon never filed a Notice of Appearance in Civil Action No. 2006-CP-36-395, and he never signed any pleading or motion in his individual capacity. He had the absolute right to appear at a hearing in a case involving Lake Murray Tree, Inc., and such an appearance does not make him a party to the action in his individual capacity. The caption of Civil Action No. 2006-CP-36-395 was never changed after that appearance. It is worth noting that the caption of the Order granting judgment against Allen Lee Koon individually named Lake Murray Tree, Inc. as the sole Defendant.

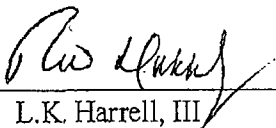
(B.) Second, the Order granting the Motion for Contempt and Sanctions contains the following language: "However, approximately thirty minutes before the hearing Cindy Koon faxed an Emergency Motion for Continuance ("Emergency

Motion") to the Court stating that her father passed away on December 9, 2000." The Order does not say that the Motion was made on behalf of Allen Lee Koon, and, since he was not a party to that action and the only Defendant was Lake Murray Tree, Inc., presumably the Motion was made on behalf of Lake Murray Tree, Inc.¹

For the reasons set forth above, the Motion for Summary Judgment should be granted.

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in fact Larry E. Koon

April ¹⁴~~15~~, 2014
Chapin, South Carolina

¹ The Emergency Motion does not appear in the Clerk's file in Civil Action No. 2006-CP-36-395.

1 THE COURT: We are on the record this afternoon in
2 the Larry Koon versus Thomas Jackson Construction, Inc.
3 case. It is a 2014 case, number 109. The matter before
4 the Court, I think we have two pending motions. One is a
5 motion to dismiss that, Ms. Zimmerman, you filed on behalf
6 of the defense. And then a motion for summary judgment
7 that you filed. And your name, sir?

8 MR. DIBBLE: My name is Robert W. Dibble, Jr.

9 THE COURT: Spell the last name for me.

10 MR. DIBBLE: D-I-B-B-L-E.

11 THE COURT: Glad to have you with us.

12 MR. DIBBLE: From the firm, Harrell, H-A-R-R-E-L-L
13 and Martin.

14 THE COURT: I think the motion and I know that kind
15 of, both motions deal with basically the same facts and
16 the same situation. But since, Ms. Zimmerman, you filed a
17 motion to dismiss first, I am going to let her go first
18 and then we can go back and forth. So, Ms. Zimmerman,
19 will be glad to hear from you.

20 MS. ZIMMERMAN: Thank you, Your Honor, if it please
21 the Court. Our argument here essentially is, this is a
22 judgment from the 2006 action that was awarded in 2010.
23 Since that time there has not been an appeal from that
24 2010 order, there has not been a motion to set aside the
25 judgment, there has been nothing in that 2006 action. My

1 argument is this, it is improper for us now to be facing a
2 new action to try to set aside that judgment. I think if
3 the relief was to be sought it should have been in the
4 2006 action be it a motion to set aside the judgment under
5 Rule 60, an appeal, a motion for reconsideration,
6 something under that old caption, not a new action. For
7 several reasons, I think that the Rules of procedure set
8 forth, very specific procedure on how you can challenge
9 that judgment and this just isn't it. On top of that, the
10 relief that was granted, if this action moves forward and
11 that judgment is set aside then the 2006 statute of
12 limitations for my client to seek relief will have run, he
13 has no relief anymore, if he can now have this judgment
14 thrown out under a 2013 action. I think we need to be
15 back under the 2006 caption if any motions are going to be
16 filed. I also think that the times you file any motions
17 under that 2006 action have run. We don't have an appeal
18 from that order, we don't have any motions under any of
19 the provisions that allow for setting aside judgments,
20 long past the time of those motions can be filed. And I
21 understand that the argument of the plaintiff in this case
22 was that Mr. Koon did not have notice of this.

23 However, in the motion that was filed for a contempt
24 order and sanctions filed by my client through his former
25 attorney under that 2006 action, in that motion it

1 specifically states, in light of these transactions
2 between the defendant and Allen Koon, the defendant's
3 refusal to comply with discovery or to provide plaintiff
4 with the proper or complete documentation, defendant's
5 corporate veil should be pierced to allow plaintiff
6 judgment to attach to Allen Koon personally.

7 That motion was served on Allen Koon personally on
8 November 3rd of 2009 well in advance of the hearing that
9 was conducted in January of 2010. In addition it is
10 alleged by Mr. Koon in his affidavit that supports the
11 plaintiff's motion here that he had no knowledge of this.
12 Well, clearly he had knowledge that they were seeking that
13 relief and in addition that judgment was entered by the
14 special referee, Jay Verner, in January of 2010. On
15 February 25th of 2010 Allen Koon personally signed and
16 filed a relief from judgment under Rule 60. And he states
17 there that the judgment against Lake Murray Tree, Inc.,
18 and against him personally should be set aside.

19 THE COURT: Was that ever ruled upon?

20 MR. DIBBLE: Not that we can find.

21 MS. ZIMMERMAN: And, again, I think that if that is
22 an issue that's an issue under the 2006 action. If there
23 was never any ruling on that and I can't find any either,
24 then it needs to be addressed back in that 2006 action,
25 not under a new case.

1 THE COURT: Now, let me go back and, of course,
2 certainly Mr. Dibble can respond to this. They are not
3 seeking to void the judgment as it applies to the
4 corporation. They are only seeking to void the judgment
5 as it pertains to Mr. Koon.

6 MS. ZIMMERMAN: Personally, yes sir.

7 THE COURT: All right. So when you stated, Ms.
8 Zimmerman, that the judgment is voided then your client
9 has no remedy left because, it would be left with a
10 judgment that originally had against the corporation prior
11 to all of the contempt and sanction matters, supplementary
12 proceedings, before all of that took place, correct?

13 MS. ZIMMERMAN: Yes, sir. And, of course, I still
14 reiterate that we would have no relief because part of the
15 reason the judgment attached to Allen Koon is Allen Koon
16 had transferred the property from the corporation to
17 himself. That was part of the special referee's basis for
18 attaching judgment to him personally because he was
19 transferring property away from the corporation into his
20 own name.

21 THE COURT: Right. Okay. Now, the next question,
22 under Rule 37 and this is Rule 37(b)(2), does that, and
23 this is evidently a area where you folks disagree. Where
24 specifically does it state that the special referee would
25 have the authority to sanction by way of putting the

1 judgment on Mr. Koon. I have looked at all the materials
2 that you folks have sent me during lunch. And I really
3 couldn't find where Rule 37 would allow for that.

4 MS. ZIMMERMAN: I believe that under 37(b)(2), it
5 states is a party or an officer, director or managing
6 agent of a party.

7 THE COURT: Okay.

8 MS. ZIMMERMAN: I think that the special referee
9 certainly could have determined that Allen Koon was at the
10 very least a managing agent, he was the registered agent
11 for service, he was the sole shareholder and he had
12 appeared on behalf of the corporation in previous court
13 hearings and argued his position. So I think at the very
14 least he could be determined to be a managing agent.

15 THE COURT: Okay. But under which subsection,
16 because it says, find such and such and then they made
17 such orders that are just and among others the following.
18 Is A, B, C, D, E, would any of those allow for judgment or
19 would you just argue that it was an order that was
20 determined by the special referee to be just? If that
21 question makes any sense.

22 MS. ZIMMERMAN: I think it does, Your Honor. I think
23 that, I think that that, the managing part, I would argue
24 that B and C both apply because I think under B, even
25 though it says disobedient party, I think you could go

1 back to the language in that paragraph where it is
2 explaining that an officer, director or managing agent of
3 a party. And then I would also point to C at the very end
4 where it says that special referee can render a judgment
5 by the disobedient party. So I think either one of those
6 could apply, when he has got a party that was directed to
7 do something and he was disobedient.

8 THE COURT: Okay. Now, lastly, I am going to give
9 you an opportunity. I am just addressing questions that
10 come up. All right. Let's go back to the motion for
11 reconsideration that Mr. Koon filed in the 2006 and I
12 think you folks pretty much acknowledged that it has never
13 been ruled on. It was filed, I don't know if it was
14 timely filed but nonetheless it was filed, no action. Why
15 could not a hearing be scheduled on that motion for
16 reconsideration and let the Court make a determination at
17 that time, make the determination whether or not he seeks,
18 you know, he deserves any relief under that motion for
19 reconsideration.

20 MS. ZIMMERMAN: I think you could, I think it needs
21 to be back in front of the special referee under that 2006
22 caption as it was filed and not under a new caption.

23 THE COURT: Would that not accomplish, maybe I am
24 missing something, would that not accomplish, I mean the
25 end result that you guys want, Mr. Dibble, as I see it is,

1 Mr. Koon wants relief from that judgment. So could not
2 some relief then under the motion for reconsideration be
3 dealt with?

4 MR. DIBBLE: Are you directing that to me?

5 THE COURT: Yes, sir.

6 MR. DIBBLE: May it please the Court. I have some
7 things for the Court to hand up. One of which is an
8 uncertified copy of the case file, the 2006 action.

9 THE COURT: Okay.

10 MR. DIBBLE: I have provided that to, Ms. Zimmerman
11 already has that and I have got a notebook containing some
12 pleadings and briefs.

13 THE COURT: Thank you.

14 MR. DIBBLE: I struggle with that question. But if
15 you look at the motion which appears under Tab 26.

16 THE COURT: Which one is that in?

17 MR. DIBBLE: That one.

18 THE COURT: This one.

19 MR. DIBBLE: In the first place, if you have it,
20 Judge. It says relief from judgment, 60(b)(4), do you see
21 that one?

22 THE COURT: Right.

23 MR. DIBBLE: First of all it is signed by Allen Koon
24 as registered agent for Lake Murray Tree, not personally.
25 And he has never, there is not a single pleading in that

1 file that is signed by Mr. Koon personally. He was
2 represented by Sam Price until November 8th. All of this
3 occurred after Mr. Price was relieved as counsel by an
4 order of the Court. Secondly, if you notice this motion
5 does not seek relief from the judgment against Mr. Koon
6 individually.

7 THE COURT: Okay, I see that now.

8 MR. DIBBLE: So, I did not think it would be timely
9 for me to go back into this action and try to resurrect
10 that motion, the judgment against Mr. Koon.

11 THE COURT: Right. And it appears that that is not
12 going to, whatever side I end up on, I don't think that is
13 really going to be of some help to us because, at least I
14 had the initial impression that it was a motion of some
15 sort that Mr. Koon filed to relieve him from judgment.

16 MR. DIBBLE: I gave some serious thought to try to
17 amend that motion and proceed. But the facts of this case
18 led me to bring the independent action under Rule 60(b)
19 which, of course, as you know provides specifically that
20 such an action can be brought. Rule 60(b) specifically
21 says this rule is not limited power of the Court to
22 entertain an independent action to relieve a party from a
23 judgment order or proceeding. The Court set aside a
24 judgment for fraud upon the Court. So I elected to bring
25 an action under Rule 60(b) to set the judgment aside for

1 several reasons. One, because the property now is owned
2 by Mr. Koon, I will call him Mr. Koon, Sr., for
3 distinguishing Allen Koon and Larry Koon. Allen Koon was
4 the person was against whom the judgment was entered in
5 the 2006 case. Mr. Koon is his father, Mr. Koon, Sr. is
6 his father. Mr. Koon, Jr., has been arrested and is in
7 jail awaiting trial. After that he transferred his
8 interest in the piece of property to his father, 23 some
9 odd acres. And his wife's estate, transfers the other
10 half to Mr. Koon, Sr. So we now, Mr. Koon, Sr. owns the
11 entire 23 acre parcel. He held a mortgage on that
12 property. And if he had had knowledge of the judgment he
13 would have simply foreclosed the mortgage and wiped the
14 judgment out. But he took the title to the property
15 without knowledge of the judgment. The affidavit, this is
16 a record uncontradicted that either Mr. Koon, Jr., nor Mr.
17 Koon, Sr., had knowledge of the judgment until August of
18 2013. And that knowledge came about when Mr. Koon, Sr.,
19 and the estate sold some property to generate money to
20 take care of the children of that marriage. And when the
21 title search was done for the first time on August 23rd,
22 2013 Mr. Koon, Sr., became aware of the judgment. And Mr.
23 Koon, Jr. was later advised of it and said he didn't know
24 anything about it. So I have got two plaintiffs in this
25 case and I thought Rule 60(b) was a proper vehicle to

1 proceed. I will also point out, Judge, in that motion to
2 which Ms. Zimmerman referred and that is the motion for
3 contempt, order for sanctions that appear in paragraph on
4 Tab 23, I believe, Judge. But if you look at the opening
5 paragraph of the motion, whatever it says at the end of
6 the motion, at the beginning it says pursuant to Rule
7 37(b) of the South Carolina Rules of Civil Procedure,
8 Thomas Jackson Construction, Inc., Plaintiff request a
9 contempt order sanctioning Lake Murray Tree, Defendant for
10 failure to comply with discovery. That motion is not
11 directed to Mr. Koon individually, on its face. But yet
12 at the very end of it, by this time he is not represented
13 by counsel. At the end of it for the first time they
14 raised the question of piercing the corporate veil. Now,
15 that is a separate cause of action.

16 THE COURT: Let me ask you folks, can you, I am
17 pretty much probably can guess what the answer would be.
18 When you pierce a corporate veil can you do that by way of
19 motion or do you have to file a, some subsequent action in
20 order to--

21 MR. DIBBLE: You can file under the South Carolina
22 law, the Sturkie case is cited in my brief. You can file
23 at the same time, an action against the corporation and an
24 action to pierce the corporate veil.

25 THE COURT: But requires an action as opposed to a

1 motion?

2 MR. DIBBLE: Yes, sir. And it is a separate cause of
3 action, it has independent elements you have to allege.
4 And I will go back to the beginning of this thing and I
5 don't think this is contested. Mr. Allen Koon was never
6 served in the summons for a rule to show cause making him
7 a party to the 2006 action. And that is basic procedural
8 law, it gives no jurisdiction, it cannot be affected by an
9 order of the Court which lacks jurisdiction. Two cases
10 cited in my brief support that. One is written by Judge
11 Ness, I can give you the other one. In this case the only
12 thing they contend, Judge, is that Mr. Koon appeared at a
13 hearing as the sole shareholder which is a representative
14 of capacity, he is not an individual capacity. And a
15 motion was made on his behalf to continue the hearing. If
16 you look at the order to which they refer, this appears at
17 25, it is on page, these pages are not numbered.

18 THE COURT: I think the special referee eluded to
19 that.

20 MR. DIBBLE: It says once the defendant,
21 approximately thirty minutes before the hearing, Cindy
22 Koon faxed an emergency motion for continuance stating
23 that her father passed away on December 9th of 2009. Now,
24 there is nothing in that statement to indicate that that
25 motion was filed on behalf of anyone except the defendant,

1 Lake Murray Tree. So to extrapolate that the motion was
2 filed on behalf of a non-party I think is beyond reach.
3 So my argument is basically this, he was never a party,
4 Mr. Koon, Jr., Allen Koon was never a party to the 2006
5 case therefore no judgment could be entered against him in
6 that case because the Court lacked personal jurisdiction.
7 The case is cited in my brief clearly say that a judgment
8 is void if it is issued by a Court which lacks personal
9 jurisdiction. That is number one.

10 Number two, Rule 37 does not, any part of Rule 37, no
11 part of Rule 37 allows a sanction against a non-party.
12 That is number two.

13 Number three, even if you now consider Mr. Koon to be
14 an agent or director of the defendant you can't go back
15 and rewrite Judge Verner's order because he based his
16 order solely on the fact that he was a sole shareholder.
17 And there is no evidence in this record of that, no
18 evidence of that case that Mr. Koon was an officer,
19 director or managing agent of Lake Murray Tree.

20 THE COURT: Because you maintain that Rule 37 does
21 not list out a shareholder along with the managing agent?

22 MR. DIBBLE: Correct. Third argument, Judge, is that
23 the complaint of the 2006 action was never amended to name
24 him as a party and to assert a claim to pierce the
25 corporate veil. If you look at the caption on the papers

1 that you have in that binder, the caption never changed.
2 Not even the caption in the order that entered judgment
3 against him. And I think that is very telling, if there
4 had been some finding by Judge Verner that he had been
5 made a party then the caption would have changed. The
6 caption didn't change.

7 Fourth, Judge, they pled the statute of limitations.
8 I have looked at this section, 15-3-530, it does not
9 address an action to set aside judgments, by its own
10 terms, that is not included under the statute. That
11 matter is controlled by Rule 60(b), which says that action
12 or the motion must be brought within a reasonable time.
13 Both affidavits would stand in the record uncontradicted
14 today, established neither Mr. Koon nor his son were aware
15 of the judgments until August of 2013. That is a
16 uncontradicted fact before you today. Mr. Koon, Jr., was
17 in jail at the time, from November forward. And Mr. Koon,
18 Sr., was engaged in selling a piece of property to
19 generate funds to care for the children of the former
20 marriage. And this action was brought within six months
21 and two days after they learned of the judgment against
22 Mr. Koon, Jr. The closest case I can find is one called
23 Sijon, S-I-J-O-N versus Green. There the person didn't
24 learn about the judgments for five years. The Master
25 vacated the judgments, the Supreme Court sent it back to

1 make sure he got notice of the hearing. But they did not
2 raise Rule 60(b) and say it was not brought in a
3 reasonable time. The fact situation is exactly the same
4 here. If Mr. Koon, Jr., had known about that judgment he
5 would have included it in that motion for relief of
6 judgment. If Mr. Koon, Sr., had known about the judgment
7 he would have foreclosed the property. So I think I am
8 well within Rule 60(b) and a reasonable time in bringing
9 this action.

10 And actually the same arguments apply, of course, to
11 our motion for summary judgment. There is no jurisdiction
12 to issue the judgment. Rule 37 doesn't allow a sanction
13 against a non-party. It allows a sanction against an
14 officer, director or managing agent. But the Court did
15 not find that to be the case and that is the law of that
16 case.

17 THE COURT: Let me ask and then I will turn it over
18 to you, Ms. Zimmerman. Was Allen Koon, were you involved
19 in it back in--

20 MS. ZIMMERMAN: No, sir.

21 THE COURT: So do we know whether or not Allen Koon
22 was present at the hearing that was held before the
23 special referee?

24 MR. DIBBLE: The order says he was not.

25 MS. ZIMMERMAN: Correct. He attended the November

1 hearing but not the January hearing.

2 THE COURT: What was the November hearing?

3 MS. ZIMMERMAN: At the November hearing, that is the
4 order that I think Mr. Dibble referenced earlier. It says
5 in the order that he was present and at that time there
6 was discussion about whether the judgment could attach to
7 him personally. He was directly ordered, Allen Koon was
8 directly ordered to comply with discovery and to produce
9 the rest of the defendant's financials. And they set a
10 subsequent hearing. So he certainly knew that there was
11 discussions about the potential for sanctioning him.

12 MR. DIBBLE: Which hearing is that, Ms. Zimmerman?

13 MS. ZIMMERMAN: That is from the November hearing.

14 THE COURT: I was only aware there was one order from
15 the special referee. So we have got two?

16 MS. ZIMMERMAN: Yes, sir.

17 THE COURT: Okay.

18 MR. DIBBLE: Well, you have got plaintiff's motion
19 for contempt. That hearing was held on October 3rd,
20 motion for contempt.

21 MS. ZIMMERMAN: This is under Tab 25. Order granting
22 plaintiff's motion for contempt and sanctions.

23 THE COURT: That is the order that is complained
24 about in this current action.

25 MR. DIBBLE: Correct.

1 THE COURT: Now, Ms. Zimmerman, did you indicate that
2 there was an October order?

3 MS. ZIMMERMAN: In that order it references a
4 November hearing.

5 THE COURT: Oh, it might not necessarily be a
6 separate order but it just indicates that there was a
7 November hearing?

8 MS. ZIMMERMAN: Correct.

9 MR. DIBBLE: Yes, sir. The exact language which I
10 think, again, is controlling. It says at the November
11 hearing at which the sole shareholder of the defendant,
12 Allen Koon, the Court ordered the defendant to produce
13 additional documents. That was January 31 of 2009. Did
14 not order Mr. Koon to produce it individually because he
15 wasn't a party.

16 THE COURT: All right. Ms. Zimmerman, any rebuttal
17 to Mr. Dibble's arguments?

18 MS. ZIMMERMAN: Yes, sir. First of all, I want to go
19 back to the motion under 60. I understand on his
20 signature line it states that he is signing as the
21 registered agent. But the very first sentence of that
22 motion says, Lake Murray Tree, Inc., by and through Allen
23 Lee Koon and Allen Lee Koon, alleged defendants, plural.
24 And then down in the second to last paragraph he talks
25 about the judgment against defendants, Lake Murray Tree,

1 Inc., or Allen L. Koon. So it seems to me that this
2 motion makes it clear that he was aware that he was acting
3 on behalf of Lake Murray and on behalf of himself. And I
4 would agree with Mr. Dibble, that before, the paperwork
5 that was filed in 2010, he was never listed individually.
6 So I think, it is necessary to sort of conclude, that from
7 this motion, he had to have known back in 2010 that this
8 judgment had attached to him as well. Because otherwise
9 it would have been illogical for him to ask for relief
10 from a judgment against him if he didn't know that there
11 was a judgment against him. With regards to Larry Koon's
12 lack of knowledge about the judgment out there on this
13 land. I think it was incumbent upon him to do a title
14 search before he decided to take a deed in lieu of
15 foreclosure. It certainly is not my client's fault that
16 he failed to check the title in making that decision
17 because this judgment was out there. And he done a title
18 search when he made the decision to take a deed in lieu in
19 foreclosure instead of foreclosure, he would have known
20 about the judgment. The only person at fault for not
21 doing that search is Larry Koon, not my client. Your
22 Honor, also Mr. Dibble stated that nothing in Rule 37
23 allows for anyone who is not a party to be sanctioned.
24 But I think that is inaccurate because Rule 37 also allows
25 the Judge to sanction parties who have been, excuse me,

1 persons who have been designated under Rule 30 or 31 which
2 is the rules that allow for depositions. So certainly
3 there is the authority in Rule 37 to sanction individuals
4 who have been served notice of depositions and failed to
5 comply. And they are not parties to the action. I think
6 that that makes it clear that there is authority there to
7 sanction individuals other than just the parties in Rule
8 37. And I also think it is significant that we look at
9 the fact that this was sanctions. Even though Mr.
10 Jackson's attorney may have plead for piercing the
11 corporate veil, the decision of Mr. Verner was as a
12 sanction under 37. So I don't think that that requires a
13 separate action the same way that it would have if the
14 original lawsuit had been against Allen Koon. The
15 decision to sanction Allen Koon was based upon Allen
16 Koon's misconduct during the course of the action.

17 THE COURT: And the sanction was imposing the
18 judgment against him individually.

19 MS. ZIMMERMAN: Correct.

20 MR. DIBBLE: That's correct.

21 MS. ZIMMERMAN: And, Your Honor, finally I would just
22 state, Mr. Dibble said that it was controverted that Allen
23 Koon didn't know about the judgment. We certainly
24 disagree with that. Again, I point back to this motion
25 under 60(b) where he again asked for relief from the

1 judgment against himself. So I think he had knowledge of
2 it back in 2010.

3 THE COURT: What is the law concerning matters of
4 public record providing some sort of constructive notice.
5 The special referee's order that poses judgment against
6 Mr. Koon individually, I just looked at the date and I
7 can't recall it, but nonetheless, does that, matters of
8 public record provide constructive notice to where you
9 don't have to prove actual notice. Is there anything
10 there?

11 MR. DIBBLE: Judge, that Sijon case suggest otherwise
12 because those judgments were on record for five years
13 before Mr. Green learned of it.

14 THE COURT: That case is cited in your brief?

15 MR. DIBBLE: Yes. I will respond briefly.

16 THE COURT: Were you finished, Ms. Zimmerman?

17 MS. ZIMMERMAN: To respond to your question. I think
18 there is two different issues. I think with regards to
19 Larry Koon, yes, filing on public record before he takes
20 title to property. I mean it is incumbent upon him to
21 check the public record. Our argument with regards to
22 Allen Koon is that he did have actual knowledge. So I
23 think if you are talking about constructive knowledge it
24 depends which plaintiff you are discussing.

25 THE COURT: Oaky.

1 MR. DIBBLE: Mr. Koon did not do a title search
2 because his son told him the property was un-incumbent.
3 That is in the affidavit. That is un-controverted.
4 Otherwise he would have filed a judgment and we would have
5 foreclosed his mortgage and wiped out the judgment. So,
6 we relied on his son's lack of knowledge, if you want to
7 say that, taking title of the property. Second, I don't
8 see in this motion any reference to the judgment against
9 Allen Koon. It says the plaintiff's filed the above
10 captioned action in violation of S.C. Law Title 13,
11 Chapter so and so, for a statute of frauds. And then it
12 says that the record in the above captioned case does not
13 contain a signed written agreement by defendant or
14 defendant's, apostrophe S, representative to authorize the
15 action against the defendant, Lake Murray Tree and/or
16 Larry Koon. Therefore the action of violation of statute
17 of frauds and it is not signed in an individual capacity.
18 I just think that under these circumstances, Judge, that
19 the fact that he was never, the complaint was never
20 amended to include a cause of action to pierce the
21 corporate veil. That is all they had to do. They had the
22 evidence, they thought they had the evidence. The Judge
23 believed they had the evidence, all they had to do was
24 file an amended complaint, serve it on him as an
25 individual and try that case. And if they had gotten a

1 judgment I wouldn't be here today. They didn't do that.

2 THE COURT: Thank you very much. Anything else, Ms.
3 Zimmerman?

4 MS. ZIMMERMAN: No, sir.

5 THE COURT: I appreciate your hard work, both sides
6 and I am going to take this under advisement and give it
7 the consideration that it deserves and let you folks know
8 my decision as soon as I can.

9 MS. ZIMMERMAN: Thank you for the hearing.

10 MR. DIBBLE: Thank you.

11 THE COURT: Good seeing both of you.

12 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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1 CERTIFICATE OF REPORTER
2
3

4 State of South Carolina)
5 County of Newberry)
6
7

8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Newberry, South
14 Carolina on the 9th day of April, 2014.

15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17
18

19 June 17, 2014
20

21 

22 Joy E. Holston, Court Reporter

23 My Commission expires: March 13, 2016
24
25

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

Larry Koon, Allen Lee Koon by and
through his attorney in fact Larry Koon,

Plaintiffs,

vs.

Thomas Jackson Construction, Inc.

Defendants,

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
) CASE NO.: 2013-CP-

2014CP-109

) AFFIDAVIT OF ALLEN LEE KOON

JACKIE S. BOWERS
CLERK OF COURT

2014 APR 27 PM 4 30

FILED
NEWBERRY COUNTY

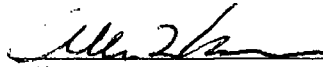
1 SCANNED

Personally appeared before me, Allen Lee Koon, who, being first duly sworn, deposed
and said:

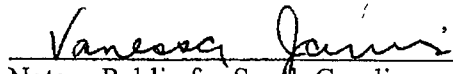
1. I am over the age of 21.
2. I am competent to give this affidavit, and the statements herein are based on my personal knowledge.
3. Lake Murray Tree, Inc. was named as a Defendant in a civil action initiated by Thomas Jackson Construction on September 21, 2006 in Newberry County under Civil Action Number 2006-CP-36-395.
4. I was not named as an individual party Defendant in that action.
5. I was not aware of the judgment entered against me personally in Civil Action Number 2006-CP-36-395 until my father told me about it sometime in August or September of 2013.
6. I was never served with a Summons or Rule to Show Cause naming me as an individual party Defendant in that action.

7. I never accepted service on either a Summons or Rule to Show Cause naming me as an individual party Defendant in that action.
8. I have waived any interest in the Estate of Cindy Koon, my late wife.

AFFIANT FURTH SAYETH NOT.


Allen Lee Koon

SWORN TO BEFORE ME THIS
27th day of March, 2014.


Notary Public for South Carolina
My Commission expires: 4/21/2016

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-36-00109

SCANNED

Larry Koon, Allen Lee Koon by and
through his attorney in fact Larry Koon,

Plaintiffs,

vs.

Thomas Jackson Construction, Inc.

Defendants,

AFFIDAVIT OF
LARRY EUGENE KOON

FILED
NEWBERRY COUNTY
2014 MAR 27 PM 4 30
JACKIE S. BOWERS
CLERK OF COURT

Personally appeared before me, Larry Eugene Koon, who, being first duly sworn,
deposed and said:

1. I am over the age of twenty-one (21) and competent to make this Affidavit which is based on my personal knowledge.
2. Allen Lee Koon was married to Cindy Koon. On November 24, 2012 my son, Allen Lee Koon, was arrested and charged with the murder of his wife, Cindy Koon. Allen Lee Koon remained incarcerated at the Newberry County Detention Center from the arrest date until he received his True Bill Indicted on February 1, 2013. Bail for Allen Lee Koon was denied on February 12, 2013. My son was initially incarcerated in the Newberry County Detention Center, but he was moved to the Alvin S. Glenn Detention Center in Richland County for his personal safety where he remains awaiting trial.
3. Allen Lee Koon and Cindy Koon had three children. In November of 2012 the ages of those children were 18, 16, and 12. On November 26, 2012, Allen Lee

Koon executed a Power of Attorney naming me as his attorney-in-fact. That Power of Attorney was recorded in the office of the Clerk of Court for Newberry County, South Carolina in Book 1659 at page 271 and it is valid as of today. Following the arrest of Allen Lee Koon, my wife, Elizabeth Ann Koon, was granted guardianship of the two minor children born during the marriage of Allen Lee Koon and Cindy Koon. The oldest child of that union, Austin Koon, was appointed as the personal representative of the Estate of Cindy Koon.

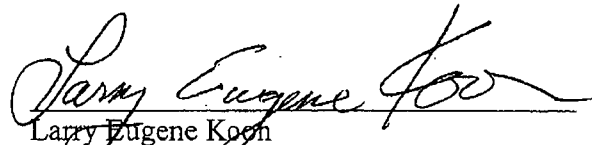
4. Allen Lee Koon and Cindy Koon owned as tenants in common a tract of land in Newberry County, South Carolina, containing 23.194 acres. I held a mortgage on that property. Allen Koon transferred his one-half (1/2) undivided interest in the 23.194 acre tract, which is the subject matter of this action, to me. This deed from Allen was executed and delivered on May 15, 2013 and is recorded in Book 1697 at page 138 in the Office of the Clerk of Court for Newberry County, South Carolina. On May 16, 2013 I received a Deed of Distribution from the Estate of Cindy Koon conveying to me the other one-half (1/2) undivided interest in the 23.194 acres. That Deed is recorded in the Office of the Clerk of Court for Newberry County, South Carolina on May 20, 2013 in Deed Book 1697 at page 141. Both deeds were given in lieu of foreclosure of my mortgage. No title search was performed in connection with either conveyance because my son told me the land was unencumbered.
5. In addition to the 23.194 acres referred to above, which is the subject matter of this action, Allen Lee Koon and Cindy Koon also owned as tenants in common a parcel of land containing 4.39 acres with improvements less 0.25 acres in a road

right-of-way and a parcel of land containing 1.65 acres. Both of those parcels are located in Newberry County, South Carolina.

6. On July 23, 2013 I, as attorney-in-fact for Allen Lee Koon, and Austin Koon as the personal representative of the Estate of Cindy Koon, entered into a Contract to sell the 4.39 acre tract and the 1.65 acre tract to Charles Linton for the sum of Two Hundred Sixty-Eight Thousand Seven Hundred 00/100 Dollars (\$268,000.00). A copy of the Contract is attached hereto as **Exhibit "A"**, and by reference, incorporated herein. Mr. Linton was represented by Henry P. Bufkin, Esquire. The closing date was set for August 25, 2013. I first became aware of the Judgment held by Thomas Jackson Construction, Inc. against my son personally on August 23, 2013, two days before the scheduled closing. The closing date was extended to October 18, 2013 by agreement. The closing date was then extended again by verbal agreement until November 7, 2013. The sale closed on November 7, 2013. A copy of the recorded deed conveying that property is attached hereto as **Exhibit "B"**, and by reference, incorporated herein.
7. The sale closed only after Thomas Jackson Construction, Inc. agreed to release the 4.39 acre tract and the 1.65 acre tract from the lien of the Judgment against Allen Lee Koon in exchange for the payment of Eleven Thousand 00/100 Dollars (\$11,000.00). When I made the payment to Mr. Jackson, I specifically told him that I was going to bring an action to set aside the Judgment against Allen Lee Koon individually.

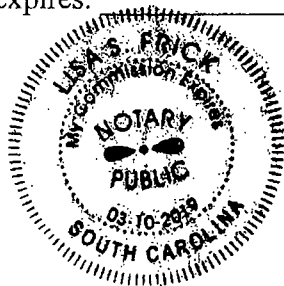
8. I informed my son about the judgment against him personally sometime after August 23, 2013, he was as surprised as I was that a judgment had been entered against his personally in Civil Action Number 2006-CP-36-395.
9. The proceeds from the sale to Mr. Linton are currently being held in a restricted account for the Estate of Cindy Koon. The assets of the Estate of Cindy Koon will be distributed to the three children born to Allen Lee Koon and Cindy Koon.
10. I am in the process of marketing the 23.194 acre tract. If that tract is sold, I intend to use to the net sale proceeds for the support and education of the children born Allen Lee Koon and Cindy Koon.

FURTHER AFFIANT SAYETH NOT.


Larry Eugene Koon

SWORN TO BEFORE ME THIS
27th day of March, 2014.


Notary Public for South Carolina
My Commission expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

) IN THE COURT OF COMMON PLEAS

) EIGHTH JUDICIAL CIRCUIT

) CASE NO.: 2014-CP-36-00109

Larry Koon, Allen Lee Koon by and
through his attorney in fact Larry Koon,

Plaintiffs,

vs.

Thomas Jackson Construction, Inc.

Defendants,

SCANNED

AFFIDAVIT OF
SAMUEL M. PRICE, JR.

JACKIE S. BOWERS
CLERK OF COURT

2014 MAR 27 PM 4 31

FILED
NEWBERRY COUNTY

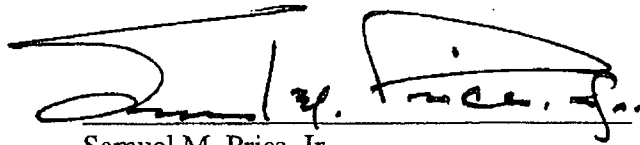
Personally appeared before me, Samuel M. Price, Jr., who, being first duly sworn,
deposed and said:

1. I am over the age of 21 and competent to make this Affidavit which is based on my personal knowledge.
2. I am and have been since November 14, 1974 an active member of the South Carolina Bar licensed to practice in the courts of South Carolina. My Bar No. is 04566.
3. I represented Lake Murray Tree, Inc. as the Defendant in Civil Action No. 2006-CP-36-395 styled as Thomas Jackson Construction, Inc. v. Lake Murray Tree, Inc. The Plaintiff in that action brought suit to recover money on an open account as a result of the Defendant's failure to pay for services rendered by the Plaintiff. The Complaint in that action did not contain a cause of action seeking to pierce the corporate veil. The Complaint in that action was never amended.

No. 1
JMP

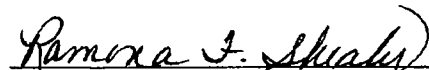
4. By Order of the Court dated October 26, 2009, I was relieved from representing Lake Murray Tree, Inc. in that action.
5. During the time I represented Lake Murray Tree, Inc., in Civil action No. 2006-CP-36-395, I never accepted service on a summons or rule to show cause naming Allen Lee Koon individually as a party to that action in any capacity. The only Defendant in that action during the time I represented Lake Murray, Inc. was Lake Murray Tree, Inc.

FURTHER AFFIANT SAYETH NOT.



Samuel M. Price, Jr.

SWORN TO BEFORE ME THIS
20th day of March, 2014.



Notary Public for South Carolina
My Commission expires: 5-21-2014

No. 2

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

PARTIAL RELEASE OF JUDGMENT

SCANNED

FOR VALUE RECEIVED, **THOMAS JACKSON CONSTRUCTION, INC. and THOMAS JACKSON, Individually** in consideration of the total sum of \$11,000.00 and the payment of \$17,000.00 towards the judgment held by Citicapital Commercial Leasing does hereby release the following described premises from the Judgment recorded on February 1, 2010 in Civil Action Number 2006-CP-36-395 under Judgment roll number 2010-TR-173 (63802)

59486

(original)

All that certain piece, parcel or lot of land, with any improvements thereon, situate, lying and being in the County of Newberry, State of South Carolina, containing approximately 4.39 gross acres, minus a 0.25 acres road right-of-way, leaving 4.18 net acres, more or less, as shown on a plat prepared for Mark E. Mills, RLS #10779 for Dennis L. Meyers and Judith H. Meyers dated June 14, 1993 and recorded June 25, 1993 in Newberry County Plat Slide 293 at plat 4.

AND ALSO:

CANCELLED 11-08-13
Jackie S. Bowers, CCCP
NEWBERRY COUNTY, SC

All that certain piece, parcel, lot of land, situate, lying and being in the County of Newberry, State of South Carolina, containing approximately 1.65 acres, more or less, and being more accurately depicted on a plat prepared for Allen L. Koon and Cindy M. Koon by Hugh F. Longshore, III, PLS, dated March 4, 2004 and recorded in the Office of the Clerk of Court for Newberry County in Plat Book C88 at page 10 on April 1, 2004.

WITNESS its hand and seal this 7th day of November, 2013.

Thomas Jackson Construction

By: Thomas Jackson
Its:

Thomas Jackson, Individually

Address: 715 Highway 261 S.

WEDDING, SC 29168 9447

Subscribed and sworn before me
this 7th day of November, 2013

Notary Public for South Carolina

My commission expires: 7/24/2018

FILED
NEWBERRY COUNTY
2013 NOV 8 PM 3:33
JACKIE S. BOWERS
CLERK OF COURT

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

THOMAS JACKSON
CONSTRUCTION, INC.,

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

IN THE COURT OF COMMON PLEAS

Case No: 2006-CP-36-395

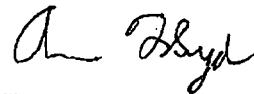
CERTIFICATE OF SERVICE

I, Adam J. Floyd, on behalf of Barbara George Barton, Attorney for the Plaintiff, hereby certify that I mailed a copy of the **Order Granting Plaintiff's Motion for Continuance**, entered on June 3, 2009, to: Mr. Allen Koon, 6163 St. Luke's Church Road, Prosperity, SC 29127, in his capacity as registered agent for the Defendant and in his personal capacity, by depositing same in the Post Office, postage prepaid, at Columbia, South Carolina, where there is regular communication by mail, and that same was mailed postage prepaid on June 4, 2010.

BARTON LAW FIRM, P.A.

June 4, 2010.

BY:



Adam J. Floyd
P. O. Box 12046
Columbia, SC 29211-2046
(803) 256-6582

FILED
NEWBERRY COUNTY
2009 JUN - 7 A 11: 22
JACQUE S. POWERS
CLERK OF COURT

BARTON LAW FIRM, P.A.

1715 Pickens Street
Columbia, SC 29201

(803) 256-6582

Fax (803) 779-0267

bbarton@bartonlawsc.com
cbrimm@bartonlawsc.com
www.bartonlawsc.com

BARBARA GEORGE BARTON

Certified Specialist in Bankruptcy and
Debtor-Creditor Law

CHRISTINE E. BRIMM

ADAM J. FLOYD

Mailing Address

P.O. Box 12046
Columbia, S.C. 29211-2046

June 4, 2010

Newberry County Clerk of Court
P. O. Drawer 10
Newberry, SC 29108-0010

RE: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.; Case No. 06-CP-36-395

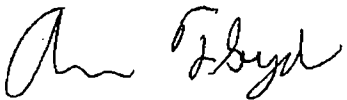
Dear Sir/Madam:

Enclosed please find a copy of Plaintiff's Certificate of Service for the Order Granting Plaintiff's Motion for Continuance in the above-captioned matter. This copy is being sent for the Court's file. If you have any questions, please contact me.

Thank you for your assistance in this matter.

Sincerely,

BARTON LAW FIRM, P.A.



Adam J. Floyd

Enclosure

FILED
NEWBERRY COUNTY
2010 JUN - 7 A 11: 22
JACQUE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA

SCANNED

COUNTY OF

Newberry

IN THE

Court of Common Pleas

Thomas Jackson Construction
Inc.

☐ Plaintiff

CASE NO.

2006 - CP - 36 - 395

v.

Lake Munay Tree, Inc.

☐ Defendant.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: <u>Barbara Barton</u> , Bar No. _____ Address: <u>PO Box 12046</u> <u>Columbia, SC 29211</u> phone: _____ fax: _____ e-mail: _____ her: _____		Defendant's Attorney: <u>PRO SE</u> , Bar No. _____ Address: _____ phone: _____ fax: _____ e-mail: _____ her: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: <u>Relief From Judgement</u> Estimated Time Needed: <u>30 mins.</u> Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☒ Defendant <u>3/3/2010</u> Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: <u>\$25.00</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: <u>Janeen</u> Date Filed: _____ ☒ MOTION FEE COLLECTED: <u>25.00</u> ☐ CONTESTED - AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

) IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.
Plaintiff,

) CASE NO. 2006-CP-36-395

v.

LAKE MURRAY TREE, INC.
Defendant,

) RELIEF FROM JUDGMENT
) S.C. CIV. P. RULE. 60 (b) (4)

FILED
NEWBERRY COUNTY
2010 MAR -3 A 10:38
JACKIE S. DOWNS
CLERK OF COURT

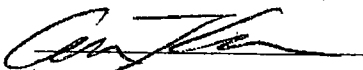
Lake Murray Tree, Inc. by and through Allen Lee Koon, and Allen Lee Koon, alleged defendants, hereby gives the court Notice that the Judgment entered against Defendant Lake Murray Tree Inc on August 6, 2007 is void for lack of jurisdiction, S.C. Code 32-3-10 (4).

Plaintiffs filed the above-captioned action in violation of S.C. law, Title 32, Chapter 3, Section 32-3-10, Statute of Frauds. This law requires that any and all agreements must be in writing and signed. Section 32-3-10 states in part "no action shall be brought whereby: (4) To charge any person upon any contract...unless the agreement upon such action shall be brought or some memorandum or note thereof **shall be in writing and signed by the party to be charged** therewith...".

The record in the above-captioned case does not contain a signed written agreement by Defendant or Defendant's representative authorizing the commencement of an action against Defendant Lake Murray Tree, Inc. or Allen Lee Koon. Therefore, the action is in violation of the S.C. Statute of Frauds.

The court must dismiss the action Sua Sponte for lack of subject matter jurisdiction and declare that the Judgment is void for violation of the Statute of Frauds.

Submitted this 25th day of FEB, 2010.



Allen Lee Koon, Registered Agent for Lake Murray Tree, Inc.

FILED
NEWBERRY COUNTY
2010 FEB 25 PM 5:21
JACKIE S. DOWNS
CLERK OF COURT

CERTIFICATE OF SERVICE

I, Allen Lee Koon, Registered Agent for Lake Murray Tree, Inc., hereby Certify that I have served a copy of the foregoing document, Relief From Judgment on Plaintiff, by mailing a copy of the same via U.S. Mail, postage prepaid, to the following address:

Barton Law Firm, PA
1715 Pickens St.
P.O. Box 12046
Columbia, S.C. 29211-2046

This 2nd ^{CMB} day of March, 2010.
3rd


Allen Lee Koon, Registered Agent for Lake Murray Tree, Inc.
6163 St. Lukes Church Rd.
Prosperity, S.C. 29127

FILED
PROSPERITY COUNTY
2010 MAR -3 A 10:39
JACQUE S. POWERS
CLERK OF COURT

CERTIFICATE OF SERVICE

I, Allen Lee Koon, Registered Agent for Lake Murray Tree, Inc., hereby Certify that I have served a copy of the foregoing document, Relief From Judgment on Plaintiff, by mailing a copy of the same via U.S. Mail, postage prepaid, to the following address:

Honorable Jay Verner
1219 Boyce Street
Newberry, SC 29108

This ~~2nd~~^{2nd MK} day of March, 2009.


Allen Lee Koon, Registered Agent for Lake Murray Tree, Inc.
6163 St. Lukes Church Rd.
Prosperity, S.C. 29127

FILED
NEWBERRY COUNTY
2009 MAR -3 A 10:39
JACKIE S. POWERS
CLERK OF COURT

Common Pleas
Clerk : Jackie S Bowers
1226 College Street
Newberry, SC 29108
(803) 321-2110

Received From: Lake Murray Tree Inc
6163 St Luke'S Church Road
Prosperity, SC 29127

Date : 3/3/2010
RECEIPT # 10012
Clerk: c36jtoby

Paying for: Lake Murray Tree Inc,

Transaction Type: Payment

Payment Type: Cash \$25.00

Reference #

Total Paid \$25.00

Comment:

<u>Case #</u>	<u>Caption</u>	<u>Previous Balance</u>	<u>Amount Paid</u>	<u>Balance Due</u>
2006CP3600395	Thomas Jackson Construction In VS Lake Murray Tree Inc	\$25.00	\$25.00	\$0.00



Total Cases:	1	\$25.00	\$25.00	\$0.00

FORM 4

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

JUDGMENT IN A CIVIL CASE

THOMAS JACKSON CONSTRUCTION INC

CASE NO. 2006-CP-36-395__

LAKE MURRAY TREE INC

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☒ See attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

ORDER GRANTING PLAINTIFF'S MOTION FOR CONTEMPT ORDER AND SANCTIONS

Dated at _____, South Carolina, this **12TH** day of **JANUARY**, 2010.

S. James S. Verner, Jr.
PRESIDING JUDGE *Special Referee*

This judgment was entered on the **17TH** day of **FEBRUARY** 2010, and a copy mailed first class this **17TH** day of **FEBRUARY**, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

BARBARA GEORGE BARTON, ESQUIRE
 PO BOX 12046
 COLUMBIA, SC 29211
 ATTORNEY(S) FOR PLAINTIFF

LAKE MURRAY TREE INC
 6163 ST LUKES CHURCH ROAD
 PROSPERITY, SC 29127
 ATTORNEY(S) FOR DEFENDANT

Jackie S. Bowers

CLERK OF COURT

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON
PLEAS

COUNTY OF NEWBERRY)

THOMAS JACKSON)
CONSTRUCTION, INC.,)

Case No: 2006-CP-36-395

Plaintiff,)

vs.)

LAKE MURRAY TREE, INC.,)

Defendant)

2010TR36 - 173
063802

**ORDER GRANTING PLAINTIFF'S MOTION FOR CONTEMPT ORDER AND
SANCTIONS**

The relief set forth on the following page, for a total of 7 pages including this page, is hereby **ORDERED**.

FILED
NEWBERRY COUNTY
2010 FEB - 1 A 11: 58
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON
PLEAS

COUNTY OF NEWBERRY)

THOMAS JACKSON
CONSTRUCTION, INC.,)

Case No: 2006-CP-36-395

Plaintiff,)

vs.)

LAKE MURRAY TREE, INC.,)

Defendant)

2010TR36 - 173
063802

JACKIE S. BOWERS
CLERK OF COURT

2010 FEB - 1 A 11:58

FILED
NEWBERRY COUNTY

**ORDER GRANTING PLAINTIFF'S MOTION FOR CONTEMPT ORDER AND
SANCTIONS**

THIS MATTER came before the Court on Motion for Sanctions Pursuant to SCRCP 37(b) and a Contempt Order, filed by Thomas Jackson Construction, Inc. ("Plaintiff"), on November 6, 2009.

Plaintiff filed its Complaint against Lake Murray Tree, Inc. ("Defendant") on September 21, 2006. The Defendant filed an Answer and Counterclaim on December 18, 2006, and Plaintiff responded to the Counterclaim on January 16, 2007. The Plaintiff served discovery requests in January 2007. However, the Plaintiff did not receive responses to that discovery until April 2007, after filing a motion to compel discovery in March 2007. A hearing on the merits was held on July 11, 2007, and the Court ruled in favor of the Plaintiff on July 31, 2007. Judgment in favor of the Plaintiff in the amount of \$25,056.00 was entered with the Newberry County Clerk of Court on August 6, 2007 (the "Judgment").

Because the Judgment was not paid, Plaintiff commenced supplemental

proceedings against Defendant in August 2008. As part of the commencement of the supplemental proceedings, Plaintiff served Defendant with a subpoena on August 18, 2008, requesting production of certain documents. The subpoena required Defendant to produce these documents by September 22, 2008. Defendant, once again, failed to produce the requested documents by the September 22, 2008 deadline. As a result of Defendant's failure to comply with the subpoena, the hearing on October 7, 2008 had to be delayed until November 10, 2008. On October 3, 2008, Plaintiff filed a Motion for Contempt for Defendant's failure to comply with the subpoena, and, on October 13, 2008, Plaintiff received a package of documents from Defendant, dated October 10, 2008. As a result, Plaintiff voluntarily withdrew its Motion for Contempt at the November 10, 2008 hearing.

At the hearing on November 10, 2008, at which the sole shareholder of the Defendant, Allen Koon, appeared, the Court ordered Defendant to produce additional documentation by January 31, 2009. Plaintiff sent Defendant a letter on November 14, 2008, which identified the documents the Court required Defendant to produce. In late January 2009, Plaintiff received a package of documents from Defendant, dated January 27, 2009. This package did not contain all of the documents the Court required Defendant to produce. Plaintiff sent Defendant a letter on February 25, 2009, requesting production of the documents that Defendant failed to produce by March 15, 2009. Plaintiff never received a response to this letter. On April 13, 2009, Plaintiff submitted a Motion to Compel the documents, which was filed with the Newberry County Clerk of Court on April 15, 2009. Defendant never responded to this Motion to Compel, and the hearing was set for October 21, 2009. Defendant failed to appear on October 21, 2009.

Defendant's counsel appeared and moved to be relieved as counsel. Plaintiff did not oppose this motion, and it was granted.

As a result of Defendant's failure to appear at the October 21, 2009 hearing, Plaintiff filed a Motion for Contempt Order and Sanctions on November 6, 2009. A hearing on this motion was set for December 15, 2009. Defendant once again failed to appear at the hearing on December 15, 2009. However, approximately 30 minutes before the hearing, Cindy Koon faxed an Emergency Motion for Continuance ("Emergency Motion") to the Court stating that her father passed away on December 9, 2009. Mrs. Koon's Emergency Motion did not reach the Court until after Plaintiff's counsel had already traveled from Columbia to Newberry and the hearing was in progress. In addition, the Emergency Motion does not attempt to explain the absence of Allen Koon or anyone else with the authority to represent Defendant, and it admits that no attempt was made to communicate with the Plaintiff or its attorney prior to faxing the Emergency Motion.

Part of the relief requested by the Plaintiff is entry of an order providing that the Judgment be placed against the Defendant's sole shareholder, Allen Koon, personally. The financial documents produced by the Defendant indicate that the Defendant's financial resources have been used to pay many thousands of dollars of Allen Koon's personal expenses after the Judgment was entered. At the supplemental proceedings on November 10, 2008, Plaintiff proved that many of the debits from the Defendant's bank accounts were for personal items or services, such as online poker, Harley Davidson merchandise, the mortgage on Allen Koon's personal residence, and a Carnival cruise. In addition, the Defendant transferred several pieces of equipment to Mr. Koon with no

consideration being paid, after the Judgment had been obtained and recorded. The Court ordered Allen Koon to comply with discovery and to produce the rest of Defendant's financial documents, as well as his own personal financial documents. This discovery has not been produced resulting in yet another Motion to Compel.

Rule 37(b) of the South Carolina Rules of Civil Procedure ("SCRCF") grants the Court many options in addressing a party's failure to comply with an order under subsection (a) of Rule 37. Subsection 37(b)(2)(C) allows the Court to enter "[a]n order rendering judgment by default against the disobedient party," and Subsection 37(b)(2)(D) allows the Court to enter an order for contempt in addition to any of the orders authorized by the other subsections of the Rule. Rule 37(b) also allows the Court to order the disobedient party to pay the other party's costs and attorney's fees.

Throughout this entire case, Defendant, through the actions or failures to act of its sole shareholder, Allen Koon, has repeatedly failed to comply with discovery requests and subpoenas, which has required repeated Motions to Compel. In addition to causing extreme and prejudicial delay in the resolution of this matter, the Defendant's actions have caused the Plaintiff to incur great financial expense to obtain that which should have been voluntarily provided. Defendant's repeated failure to appear at hearings, as well as its failure to timely notify the Plaintiff or Plaintiff's counsel that it would not be appearing, has caused Plaintiff's counsel to prepare for hearings and to travel unnecessarily from Columbia to Newberry. These actions by the Defendant and its sole shareholder indicate a complete disregard for legal obligations and compliance with Court orders.

It is apparent that there has been a pattern and practice of distribution of the

Defendant's assets for the benefit of Mr. Koon after the Plaintiff's judgment attached to Defendant's assets. It is further apparent that Mr. Koon has no regard for the legal obligations that he is required to meet and that his repeated actions have resulted in the Plaintiff's inability to pursue its legal remedies. The Court finds that the Judgment shall attach to Allen Koon, personally. The Judgment shall be recorded with the Newberry County Clerk of Court as being against Lake Murray Tree, Inc. and Allen Koon individually.

It appearing that the Plaintiff has shown good and sufficient cause for the issuance of sanctions pursuant to Rule 37(b) of the South Carolina Rules of Civil Procedure and a contempt order in this matter, it is hereby:

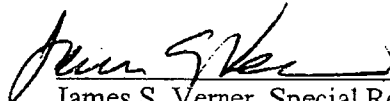
ORDERED, as follows:

1. The "Emergency Motion" is denied;
2. In addition to Plaintiff's pre-existing judgment in this case against Defendant, the Plaintiff is awarded judgment against Allen Koon, personally, in the amount of \$32,858.80, which represents the amount of the judgment against the Defendant plus interest, at the rate of 12.25% compounded annually, through December 6, 2009;
3. Defendant and Allen Koon are required to produce the following documentation, within thirty (30) days of the entry of this order, to the Plaintiff:
 - a. Allen Koon's personal bank statements and canceled checks for Personal Checking Account # 2096358
 - b. Allen Koon's personal financial statement, including but not limited to, a

list of his personal assets and personal liabilities

- c. A list of Lake Murray Tree's creditors, including contact information for these creditors, how much is owed to each creditor, the length of time the debt has been outstanding, and any interest that has accrued on that debt; and
- d. Information regarding Lake Murray Tree's accounts receivable, including contact information for each entity that owes Lake Murray Tree money, how much each debtor owes, how long each debt has been outstanding, how much interest has accrued on each debt, copies of invoices and demands for payment and responses, if any, and whether Defendant believes each debt to be collectible.

AND IT IS SO ORDERED on this the 12 ^{January 2010} of December, 2009.


James S. Verner, Special Referee

BARTON LAW FIRM, P.A.

1715 Pickens Street
Columbia, SC 29201

(803) 256-6582

Fax (803) 779-0267

bbarton@bartonlawsc.com
cbrimm@bartonlawsc.com
afloyd@bartonlawsc.com
www.bartonlawsc.com

BARBARA GEORGE BARTON

Certified Specialist in Bankruptcy and
Debtor-Creditor Law

**CHRISTINE E. BRIMM
ADAM J. FLOYD**

Mailing Address
P.O. Box 12046
Columbia, S.C. 29211-2046

January 29, 2010

Newberry County Clerk of Court
1226 College Street, Rm 7
P. O. Drawer 10
Newberry, SC 29108-0278

RE: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.; Case No. 06-CP-36-395

Dear Sir or Madame:

Enclosed please find an original and one copy of an Order executed by the Special Referee in the above captioned case. In the Order, the Special Referee attaches the Plaintiff's judgment in the above-captioned matter to the Defendant and to the Defendant's sole shareholder, Allen Koon, personally.

Please file the Order, enter it into the Judgment Roll of Newberry County against Lake Murray Tree, Inc. and Allen Koon, personally, and return a recorded copy of it to me in the enclosed self-addressed, stamped envelope.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your assistance.

Very truly yours,

BARTON LAW FIRM, P.A.

Barbara George Barton

BGB/ajf

Enclosure(s)

cc: Thomas Jackson

FILED
NEWBERRY COUNTY
2010 FEB - 1 A 11: 58
JACQUE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
2006-CP-36-395

Thomas Jackson Construction, Inc.,)
Plaintiff,)
vs.)
Lake Murray Tree, Inc.,)
Defendant.)

AFFIDAVIT OF SERVICE

FILED
NEWBERRY COUNTY
2009 NOV 13 P 4:24
JACKIE S. BOWERS
CLERK OF COURT

Kenneth W. Sanders, being duly sworn, deposes and says that he served a copy of the Order Relieving Counsel for Defendant in the above captioned matter on defendant Lake Murray Tree, Inc. by delivering to Cindy Koon, and leaving with her one (1) copy of the same at 6163 St. Luke's Church Road, Prosperity, South Carolina 29127, on the 6th day of November, 2009. That he knows the person so served to be the one mentioned and described in the above named documents as Cindy Koon, officer of Lake Murray Tree, Inc., the defendant herein. The deponent is not a party to this action.

SWORN to before me this 12th)
day of November, 2009.)
)
)
)
)
)
)
)
)

Ramona J. Shealy
Notary Public for South Carolina

My Commission expires: 5-21-2014

(LS)

Kenneth W. Sanders

BARTON LAW FIRM, P.A.

1715 Pickens Street
Columbia, SC 29201

(803) 256-6582

Fax (803) 779-0267

bbarton@bartonlawsc.com
cbrimm@bartonlawsc.com
www.bartonlawsc.com

BARBARA GEORGE BARTON

Certified Specialist in Bankruptcy and
Debtor-Creditor Law

Mailing Address

P.O. Box 12046
Columbia, S.C. 29211-2046

CHRISTINE E. BRIMM

November 4, 2009

Newberry County Clerk of Court
P. O. Drawer 10
Newberry, SC 29108-0010

FILED
NEWBERRY COUNTY
2009 NOV - 4 PM 3:37
JACKIE S. BOWERS
CLERK OF COURT

RE: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.; Case No. 06-CP-36-395

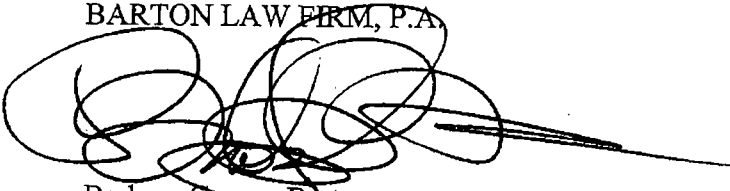
Dear Sir/Madam:

Enclosed please find an original and two (2) copies of Plaintiff's Motion for Contempt Order and Sanctions and Proposed Order in the above-captioned matter. Please file and return a clocked-in copy to me in the enclosed self-addressed, postage prepaid envelope provided for your convenience.

Thank you for your assistance in this matter.

Very truly yours,

BARTON LAW FIRM, P.A.


Barbara George Barton

BGB/ajf

Enclosure(s)

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Thomas Jackson Construction, Inc.

☒ Plaintiff

v.

Lake Murray Tree, Inc.

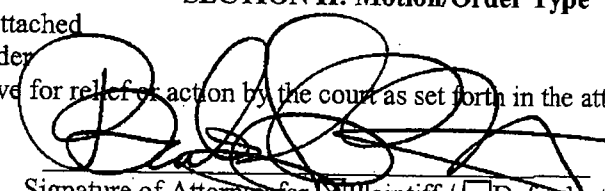
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2006-CP-36-395

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Barbara George Barton, Esq., Bar No. 561 Address: P.O. Box 12046, Columbia, SC 29211-2046 phone: (803) 256-6582 fax: (803) 799-0267 e-mail: other:		Defendant's Attorney: N/A, Bar No. Address: phone: fax: e-mail: other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion for Contempt Order and Sanctions Estimated Time Needed: Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant November 4, 2009 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCR) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION Collected by: <u>Saura</u> Date Filed: ☒ MOTION FEE COLLECTED: 25.00 Rec # 45206 ☐ CONTESTED - AMOUNT DUE:			

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

THOMAS JACKSON)
CONSTRUCTION, INC.,)

Plaintiff,)

vs.)

LAKE MURRAY TREE, INC.,)

Defendant)

IN THE COURT OF COMMON PLEAS

Case No: 2006-CP-36-395

FILED
NEWBERRY COUNTY
2009 NOV - 6 PM 3:38
JACKIE S. BOWERS
CLERK OF COURT

PLAINTIFF'S MOTION FOR CONTEMPT ORDER AND SANCTIONS

Pursuant to Rule 37(b) of the South Carolina Rules of Civil Procedure, Thomas Jackson Construction, Inc. ("Plaintiff") requests a contempt order sanctioning Lake Murray Tree ("Defendant") for failure to comply with discovery requests. In support of this motion, Plaintiff would show as follows:

FACTUAL HISTORY OF THE LITIGATION

Plaintiff obtained a judgment against Defendant that was entered with this court on August 6, 2007 in the amount of \$25,056.00 together with interest. Allen Koon is the sole owner of Defendant. Defendant has failed to satisfy that judgment.

Plaintiff filed an execution against Defendant's property with the Newberry Clerk of Court on March 27, 2008. On July 3, 2008, Plaintiff received a copy of the Execution marked "Nulla Bona" and dated June 28, 2008 by the Newberry County Office of the Sheriff. On July 9, 2008, Plaintiff submitted a Petition and Order to commence supplemental proceedings against Defendant pursuant to S.C. Code Ann. § 15-39-310, et. seq. (1976, as amended). This Order was granted on July 15, 2008 and filed with the Newberry County Clerk of Court on August 6, 2008.

The hearing on the supplemental proceedings was held before Special Referee James S.

Verner on November 10, 2008. On that date, Judge Verner ordered Defendant to produce certain documents by January 31, 2009. On November 14, 2009, Plaintiff sent Defendant and Allen Koon a letter confirming the documents that Judge Verner ordered the Defendant to produce. Defendant did not respond to this letter.

On or around January 27, 2009, Plaintiff received some, but not all, of the documentation Plaintiff sought. This documentation was necessary for many reasons, including the fact that Defendant's records appeared to indicate large transfers of cash and property to Allen Koon after entry of Plaintiff's judgment. Despite Judge Verner's order, the discovery package did not include any personal financial information regarding Allen Koon, the Defendant's sole shareholder, nor did the package include sufficient information regarding the Defendant's accounts receivable and accounts payable. In an attempt to avoid further litigation, Plaintiff sent Defendant a letter on February 25, 2009 describing the missing documentation and requesting it by March 15, 2009. Plaintiff did not receive a response to this letter.

On April 13, 2009, Plaintiff submitted a Motion to Compel ("Motion") the discovery that was not provided, and the Motion to Compel was filed by the Clerk on April 15, 2009. Defendant once again failed to respond to Plaintiff's Motion. On August 28, 2009, Plaintiff, coordinating with Judge Verner and without the cooperation of Defendant or Defendant's counsel, was able to schedule the hearing on its Motion for October 21, 2009. Defendant failed to attend the October 21, 2009, hearing. At the October 21, 2009, hearing, Defendant's counsel moved to be relieved as counsel, and the motion was granted.

Since the commencement of this lawsuit, on September 21, 2006, Defendant has refused to comply with Plaintiff's discovery requests and/or subpoenas. In each instance that the Plaintiff has requested or subpoenaed documents in this action, the Plaintiff has been forced to

move the Court to either compel the Defendant to produce, sanction the Defendant, or both, before the Defendant complies with the request, if the Defendant complies at all. The Defendant has also refused to cooperate with Plaintiff's attempts to schedule hearings and to ultimately resolve this matter.

Finally, and most recently, neither the Defendant nor Allen Koon appeared at the October 21, 2009 hearing regarding the Plaintiff's Motion to Compel. In addition, no one contacted the Plaintiff to notify Plaintiff they would not be attending the hearing. The failure to appear at the October 21, 2009 hearing, coupled with the failure to attempt to contact Plaintiff regarding this failure to attend, further delays the resolution of this matter and further prejudices the Plaintiff.

TRANSFERS BETWEEN LAKE MURRAY TREE, INC. & ALLEN KOON

As noted above, Defendant's financial records show that Allen Koon used the Defendant's financial resources as if they were his own personal financial resources, even after Plaintiff's judgment was entered against Defendant. For example, between August 2007 and July 2008, Defendant paid \$13,128.42 towards the mortgage on Mr. Koon's personal residence. In addition, in July and August 2008, Defendant paid \$3,723.51 for a Carnival cruise. Defendant frequently paid for online poker sessions with Full Tilt Poker, racking up charges of \$2,350 in the month of December 2007 alone. A monthly check for \$769.00 was written out of Defendant's checking account to Newberry Academy so Allen Koon's children could attend private school. There are numerous other debits from Defendant's checking accounts for expenses as I-Tunes purchases, DirecTV bills, Harley Davidson merchandise, merchandise from various sports websites, expensive meals, and nights out at the bar. In addition to these purchases, thousands of dollars in cash were withdrawn from Defendant's account, and numerous checks were written out of Defendant's account to "Cash," Allen Koon, or Cindy

Koon (Allen Koon's wife).

Also, on July 7, 2008, just before Plaintiff filed supplemental proceedings, Defendant transferred a Side Dumper, a Chevrolet Avalanche, and a Honda Rincon Four Wheeler to Allen Koon. It appears that there was no consideration given for these transfers.

In light of these transactions between Defendant and Allen Koon and the Defendant's refusal to comply with discovery or to provide Plaintiff with the proper or complete documentation, Defendant's corporate veil should be pierced to allow Plaintiff's judgment to attach to Allen Koon, personally.

LEGAL ANALYSIS

Rule 37(b) of the South Carolina Rules of Civil Procedure ("SCRCP") grants the Court many options in addressing a party's failure to comply with an order under subsection (a) of Rule 37. Subsection 37(b)(2)(C) allows the Court to enter "[a]n order rendering judgment by default against the disobedient party," and Subsection 37(b)(2)(D) allows the Court to enter an order for contempt in addition to any of the orders authorized by the other subsections of the Rule. Rule 37(b) also allows the Court to order the disobedient party to pay the other party's costs and attorney's fees.

Defendant's repeated noncompliance with discovery requests and subpoenas, refusal to cooperate with the Plaintiff or the Court, and failure to appear at a duly noticed hearing have caused substantial and unnecessary delays that have unfairly prejudiced the Plaintiff. In addition, Defendant and Allen Koon have prejudiced the Plaintiff by using corporate monies and assets for the personal expenses of Allen Koon while the Plaintiff's judgment is in place and supplemental proceedings are ongoing. These monies could have been used to pay the Plaintiff's judgment, but, instead, Plaintiff has been forced to continue to incur costs and expenses in the

pursuit of its judgment, which Defendant refuses to pay. Allen Koon has used the Defendant's financial resources for personal expenses to the detriment of the Plaintiff, and Allen Koon should have to assume the Defendant's responsibility to pay the Plaintiff's judgment. The Defendant's actions, as well as the actions of Allen Koon, as set forth above, constitute sanctionable behavior pursuant to Rule 37(b) of the South Carolina Rules of Civil Procedure.

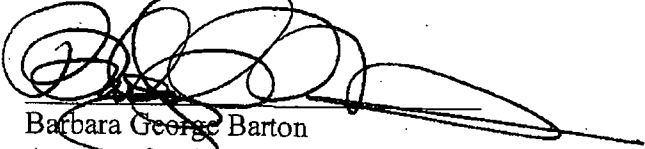
WHEREFORE, having shown good and sufficient cause for the issuance of a contempt order pursuant to Rule 37(b) of the South Carolina Rules of Civil Procedure in this matter, the Plaintiff respectfully requests that the Court enter an order providing the following relief:

1. Awarding Plaintiff all costs and attorney's fees associated with this matter;
2. Piercing the Defendant's corporate veil and entry of the Plaintiff's judgment against Allen Koon;
3. Requiring Defendant and/or Allen Koon to produce the requested documentation within thirty (30) days of the entry of this Order; and
4. Granting such other and further relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED on this the 3rd of ~~October~~ November, 2009, at Newberry, South Carolina.

BARTON LAW FIRM, P.A.

BY:


Barbara George Barton
Attorney for the Plaintiff
1715 Pickens Street (29201)
Post Office Box 12046
Columbia, South Carolina 29211-2046
(803) 256-6582

Columbia, South Carolina

October 3, 2009
Nov

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

THOMAS JACKSON)
CONSTRUCTION, INC.,)

Plaintiff,)

vs.)

LAKE MURRAY TREE, INC.,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Case No: 2006-CP-36-395

FILED
NEWBERRY COUNTY
2009 NOV - 6 P 3:38
JACKIE S. BOWERS
CLERK OF COURT

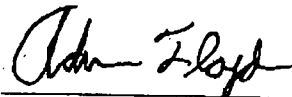
CERTIFICATE OF SERVICE

I, Adam Floyd, on behalf of Barbara George Barton, Attorney for the Plaintiff, hereby certify that I mailed a copy of **Plaintiff's Motion for Contempt Order & Sanctions and Proposed Order, dated November 3, 2009**, to: Allen L. Koon, 6163 St. Luke's Church Road, Prosperity, SC 29127 and Lake Murray Tree, Inc., c/o Allen L. Koon, 6163 St. Luke's Church Road, Prosperity, SC 29127; with courtesy copies to Samuel M. Price, Jr., Former Attorney for the Defendant, P.O. Drawer 836, Newberry, SC 29108; and James S. Verner, Special Referee, P.O. Box 484, Newberry, SC 29108 by depositing same in the Post Office, postage prepaid, at Columbia, South Carolina, where there is regular communication by mail, and that same was mailed postage prepaid on November 4, 2009.

BARTON LAW FIRM, P.A.

November 4, 2009.)

BY:



Adam Floyd
P. O. Box 12046
Columbia, SC 29211-2046
(803) 256-6582

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
 IN THE COURT OF COMMON PLEAS
 THOMAS JACKSON CONSTRUCTION

JUDGMENT IN A CIVIL CASECASE NO. **2006-CP-36-395**

LAKE MURRAY TREE, INC

PLAINTIFF(S)

DEFENDANT(S)

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. (Formal order to follow)
☐ Statement of Judgment by the Court:

ORDER RELIEVING COUNSEL FOR DEFENDANT

Dated at **NEWBERRY**, South Carolina, this **26TH** day of **OCTOBER**, 2009.

S/James S. Verner
 PRESIDING JUDGE
Special Referee

This judgment was entered on the **4TH** day of **NOVEMBER** 2009, and a copy mailed first class this **5TH** day of **NOVEMBER**, 2009 to attorneys of record or to parties (when appearing pro se) as follows:

BARBARA GEORGE BARTON, ESQUIRE
 PO BOX 12287
 COLUMBIA, SC 29211
 ATTORNEY(S) FOR PLAINTIFF

SAMUEL M. PRICE, JR, ESQUIRE
 PO DRAWER 836
 NEWBERRY, SC 29108
 ATTORNEY(S) FOR DEFENDANT

Jackie S. Bowers

CLERK OF COURT

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON
PLEAS

COUNTY OF NEWBERRY)

THOMAS JACKSON
CONSTRUCTION, INC.,)

Case No: 2006-CP-36-395

Plaintiff,)

vs.)

LAKE MURRAY TREE, INC.,)

Defendant)

**ORDER GRANTING PLAINTIFF'S MOTION FOR CONTEMPT ORDER AND
SANCTIONS**

The relief set forth on the following page, for a total of 6 pages including this page, is hereby **ORDERED**.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON
PLEAS

COUNTY OF NEWBERRY)

THOMAS JACKSON
CONSTRUCTION, INC.,)

Case No: 2006-CP-36-395

Plaintiff,)

vs.)

LAKE MURRAY TREE, INC.,)

Defendant)

**ORDER GRANTING PLAINTIFF'S MOTION FOR CONTEMPT ORDER AND
SANCTIONS**

THIS MATTER came before the Court on Motion for Sanctions Pursuant to SCRCP 37(b) and a Contempt Order, filed by Thomas Jackson Construction, Inc. ("Plaintiff"), on November __, 2009.

Plaintiff filed its Complaint against Lake Murray Tree, Inc. ("Defendant") on September 21, 2006. The Defendant filed an Answer and Counterclaim on December 18, 2006, and Plaintiff responded to the Counterclaim on January 16, 2007. The Plaintiff served discovery requests in January 2007 but did not receive responses to that discovery until April 2007 after repeated requests for compliance. A hearing on the merits was held on July 11, 2007, and the Court ruled in favor of the Plaintiff on July 31, 2007. The judgment was entered with the Newberry County Clerk of Court on August 6, 2007.

Since Defendant failed and refused to pay the judgment, Plaintiff commenced supplemental proceedings against Defendant in August 2008. As part of the commencement of the supplemental proceedings, Plaintiff served Defendant with a

subpoena on August 18, 2008, requesting production of certain documents. The subpoena required Defendant to produce these documents by September 22, 2008, so Plaintiff could inspect them before the hearing set for October 7, 2008. Defendant, once again, failed to produce the requested documents by the September 22, 2008 deadline. As a result of Defendant's failure to comply with the subpoena, the hearing on October 7, 2008 had to be delayed until November 10, 2008. On October 3, 2008, Plaintiff filed a Motion for Contempt for Defendant's failure to comply with the subpoena, and, on October 13, 2008, Plaintiff received a package of documents from Defendant, dated October 10, 2008. As a result, Plaintiff voluntarily withdrew its Motion for Contempt at the November 10, 2008 hearing.

At the hearing on November 10, 2008, at which Allen Koon appeared, the Court ordered Defendant to produce additional documentation by January 31, 2009. Plaintiff sent Defendant a letter on November 14, 2008, which identified the documents the Court required Defendant to produce. In late January 2009, Plaintiff received a package of documents from Defendant, dated January 27, 2009. This package did not contain all of the documents the Court required Defendant to produce. Plaintiff sent Defendant a letter on February 25, 2009, requesting production of the documents that Defendant failed to produce by March 15, 2009. Plaintiff never received a response to this letter. On April 13, 2009, Plaintiff submitted a Motion to Compel the documents, which was filed with the Newberry County Clerk of Court on April 15, 2009. Defendant never responded to this Motion to Compel, and the hearing was set for October 21, 2009. Defendant failed to appear on October 21, 2009. However, Defendant's counsel appeared and moved to be relieved as counsel. Plaintiff did not oppose this motion, and it was granted.

Part of the relief Plaintiff is requesting is that the Court order the Defendant's corporate veil be pierced so Plaintiff's judgment can attach to the Defendant's sole shareholder, Allen Koon, personally. Plaintiff's basis for this relief is that the financial documents the Defendant did produce suggest that the Defendant's financial resources have been used for thousands of dollars of Allen Koon's personal expenses since Plaintiff's judgment was entered. At the supplemental proceedings on November 10, 2008, Plaintiff showed that many of the debits from the Defendant's bank accounts were for personal items or services, such as online poker, Harley Davidson merchandise, the mortgage on Allen Koon's personal residence, and a Carnival cruise. The Court ordered Allen Koon to produce the rest of Defendant's financial documents, as well as his own personal financial documents, so the Plaintiff could see exactly how this money was being used.

Rule 37(b) of the South Carolina Rules of Civil Procedure ("SCRCP") grants the Court many options in addressing a party's failure to comply with an order under subsection (a) of Rule 37. Subsection 37(b)(2)(C) allows the Court to enter "[a]n order rendering judgment by default against the disobedient party," and Subsection 37(b)(2)(D) allows the Court to enter an order for contempt in addition to any of the orders authorized by the other subsections of the Rule. Rule 37(b) also allows the Court to order the disobedient party to pay the other party's costs and attorney's fees.

Throughout this entire case, Defendant has repeatedly failed to comply with discovery requests and subpoenas in a timely fashion, which has required the Plaintiff to repeatedly move the Court to force production. In addition to causing extreme and prejudicial delay in the resolution of this matter, the Defendant's actions have caused the

Plaintiff to incur great financial expense.

Allen Koon has also used Defendant's financial resources for his own personal expenses, after Plaintiff's judgment attached to Defendant's assets, to the detriment of the Plaintiff.

It appearing that the Plaintiff has shown good and sufficient cause for the issuance of sanctions pursuant to Rule 37(b) of the South Carolina Rules of Civil Procedure and a contempt order in this matter, it is hereby:

ORDERED, as follows:

1. Plaintiff is awarded all costs and attorney's fees associated with this matter;
2. The Plaintiff is awarded judgment against Allen Koon for the full amount of the judgment against the Defendant; and
3. Defendant and Allen Koon are required to produce the following documentation within thirty (30) days of the entry of this order:
 - a. Allen Koon's personal bank statements and canceled checks for Personal Checking Account # 2096358
 - b. Allen Koon's personal financial statement, including but not limited to, a list of his personal assets and personal liabilities
 - c. A list of Lake Murray Tree's creditors, including contact information for these creditors, how much is owed to each creditor, the length of time the debt has been outstanding, and any interest that has accrued on that debt; and
 - d. Information regarding Lake Murray Tree's accounts receivable, including contact information for each entity that owes Lake Murray Tree money,

how much each debtor owes, how long each debt has been outstanding, how much interest has accrued on each debt, copies of invoices and demands for payment and responses, if any, and whether Defendant believes each debt to be collectible.

AND IT IS SO ORDERED.

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
2006-CP-36-395

Thomas Jackson Construction, Inc.,)
Plaintiff,)
vs.)
Lake Murray Tree, Inc.,)
Defendant.)

ORDER RELIEVING COUNSEL
FOR DEFENDANT

This matter comes before the Court pursuant to a Motion to be Relieved as Counsel for Defendants made by Samuel M. Price, Jr. Plaintiff was notified of the motion and appeared at the hearing. Defendant made no objection to this Motion.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Samuel M. Price, Jr. shall be and is hereby released from representing defendant Lake Murray Tree, Inc.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Lake Murray Tree, Inc. shall have thirty (30) days from the date of service of this Order to obtain subsequent counsel for the supplemental proceedings.

IT IS SO ORDERED.


JAMES S. VERNER
Special Referee for Newberry County

Newberry, SC
October 26, 2009

FILED
NEWBERRY COUNTY
2009 NOV -4 P 3:55
JACKIE S. BOWERS
CLERK OF COURT

BARTON LAW FIRM, P.A.

1715 Pickens Street
Columbia, SC 29201

(803) 256-6582

Fax (803) 779-0267

bbarton@bartonlawsc.com
www.bartonlawsc.com

BARBARA GEORGE BARTON
Certified Specialist in Bankruptcy and
Debtor-Creditor Law

Mailing Address
P.O. Box 12046
Columbia, S.C. 29211-2046

April 13, 2009

Newberry County Clerk of Court
1226 College Street, Rm 7
P. O. Drawer 10
Newberry, SC 29108-0278

RE: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.; Case No. 06-CP-36-395

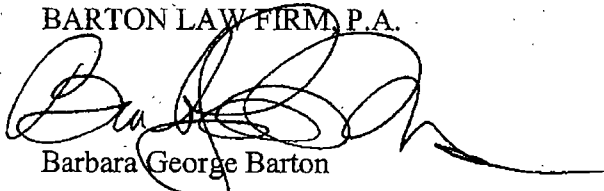
Dear Sir or Madame:

Enclosed please find an original and two (2) copies of a Motion for Order Compelling Discovery and Certificate of Service in the above-entitled matter. Please file in the records of Newberry County and return a clocked-in copy to me in the enclosed self-addressed, postage prepaid envelope provided for your convenience. A check in the amount of \$25 is also enclosed to cover recording costs.

Thank you for your assistance in this matter.

Very truly yours,

BARTON LAW FIRM, P.A.


Barbara George Barton

BGB/sab

Enclosure(s)

cc: Samuel M. Price, Jr.
The Honorable James S. Verner
Thomas Jackson

FILED
NEWBERRY COUNTY
2009 APR 15 A 11:46
JACKIE S. BOWERS
CLERK OF COURT

*copies mailed
4/16/09*

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Thomas Jackson Construction, Inc.

☒ Plaintiff

v.

Lake Murray Tree, Inc.

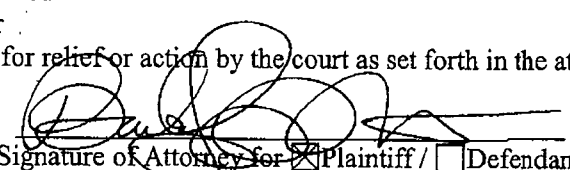
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2006-CP-36-395

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Barbara George Barton, Bar No. Address: 1715 Pickens Street, Columbia, SC 29201 phone: (803) 256-6582 fax: (803) 779-0267 e-mail: bbarton@bartonlawsc.com other:		Defendant's Attorney: Samuel Price, Bar No. Address: P. O. Drawer 836, Newberry, SC 29108 phone: fax: e-mail: other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Compel Estimated Time Needed: Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant		April 10, 2009 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: <u>Lauralane</u>		Date Filed:	
☒ MOTION FEE COLLECTED: <u>\$25.00 Rec #41448</u> ☐ CONTESTED - AMOUNT DUE: _____			

FILED
NEWBERRY COUNTY
JACKIE S. GOWERS
CLERK OF COURT
2009 APR 15 A 11:44

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

Case No: 2006-CP-36-395

JACKIE S. BOWERS
CLERK OF COURT

2009 APR 15 A 11:44

FILED
NEWBERRY COUNTY

MOTION FOR ORDER COMPELLING DISCOVERY

COMES NOW Thomas Jackson Construction, Inc. ("Plaintiff") and hereby moves the Court pursuant to Rule 37(a)(2), SCRCF for an order compelling Defendant, Lake Murray Tree, Inc., to produce discovery and respond to discovery requests ordered by this Court (the "Order"). In support of this Motion, the Plaintiff would show as follows:

At the supplemental proceeding in this matter on November 10, 2008, the Special Referee, James S. Verner, ordered the Defendant to produce certain documents by January 31, 2009. Plaintiff's counsel, on November 14, 2008, sent Defendant's counsel a letter specifying the documents to be produced.

On or around January 27, 2009, Plaintiff's counsel received a package from Defendant's counsel, purporting to contain the documents ordered to be produced by Judge Verner. While this package did contain several of the requested documents, several requested documents were not included in this package. Specifically, the Defendant failed to produce the bank records for Personal Checking Account # 2096358; Allen Koon's financial statements, personal assets, and personal liabilities; adequate information regarding Lake Murray Tree's creditors; and adequate information regarding Lake Murray Tree's debtors.

On February 25, 2009, Plaintiff's counsel sent correspondence to Judge Verner and Defendant's counsel specifying the missing documents and asking that they be produced no later than March 15, 2009. The missing documents were not produced by March 15, 2009, nor did Defendant make an attempt to work out an extension of this time period.

It has been over sixty (60) days since Defendant's responses to Judge Verner's requests for

production were originally due. Defendant has failed to comply with that due date, as well as with any extensions of this date. Therefore, Plaintiff requests an Order of this Court compelling Defendant to respond to these requests. In addition, Plaintiff requests that Defendant be required to pay Plaintiff's expenses incurred in obtaining an Order Compelling Discovery as set forth in Rule 37(a)(4) SCRPC and requests that the Order Compelling Discovery require the Defendant to respond to Judge Verner's requests within fifteen (15) days.

WHEREFORE, the Plaintiff requests that the court enter an order compelling Defendant to produce discovery responses within fifteen (15) days, and Plaintiff requests such other and further relief as the Court deems necessary and proper.

Columbia, South Carolina
April 10, 2009.

BARTON LAW FIRM, P.A.

BY:

A handwritten signature in black ink, appearing to read 'Barbara George Barton', is written over a horizontal line.

Barbara George Barton
Attorney for the Plaintiff
1715 Pickens Street
Post Office Box 12046
Columbia, SC 29211-2287
(803) 256-6582

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Case No: 2006-CP-36-395

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant.

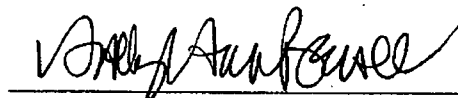
CERTIFICATE OF SERVICE

I, Sally Ann Beall, on behalf of Barbara George Barton, Attorney for the Plaintiff, hereby certify that I mailed a copy of the **Motion for Order Compelling Discovery Counterclaim and Plaintiff's Complaint**, mailed to the Court for filing on April 13, 2009, to: Samuel M. Price, Jr., Attorney for Lake Murray Tree, Inc., P.O. Drawer 836, Newberry, SC 29108 by depositing same in the Post Office, postage prepaid, at Columbia, South Carolina, where there is regular communication by mail, and that same was mailed postage prepaid on April 13, 2009.

BARTON LAW FIRM, P.A.

April 13, 2009.

BY:



Sally Ann Beall
P. O. Box 12046
Columbia, SC 29211-2046
(803) 256-6582

FILED
NEWBERRY COUNTY
2009 APR 15 A 11:44
JACKIE S. BOWERS
CLERK OF COURT

BARTON LAW FIRM, P.A.

1715 Pickens Street
Columbia, SC 29201

(803) 256-6582

Fax (803) 779-0267

bbarton@bartonlawsc.com
www.bartonlawsc.com

BARBARA GEORGE BARTON
Certified Specialist in Bankruptcy and
Debtor-Creditor Law

Mailing Address
P.O. Box 12046
Columbia, S.C. 29211-2046

October 2, 2008

Beverly J. Brehmer
Accounting Clerk
Newberry County Clerk of Court
P. O. Drawer 10
Newberry, SC 29108-0010

RE: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.; Case No. 06-CP-36-395

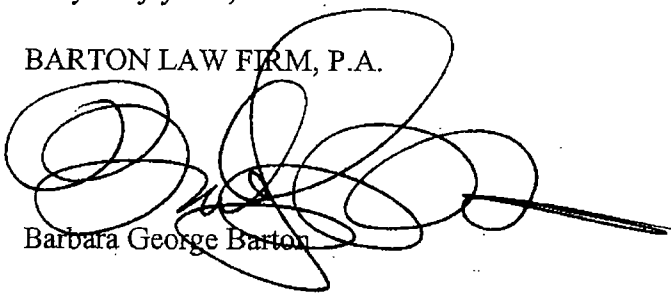
Dear Ms. Brehmer:

Pursuant to your enclosed email request, please find an original Motion and Order Coversheet, along with a check in the amount of \$25.00 to cover the recording costs for the Motion in Contempt previously forwarded to your office.

We apologize for this inconvenience and thank you for your assistance in this matter.

Very truly yours,

BARTON LAW FIRM, P.A.



Barbara George Barton

BGB/sab

Enclosure(s)

FILED
NEWBERRY COUNTY
2008 OCT -3 A 10:13

From: Beverly Brehmer [mailto:bbrehmer@newberrycounty.net]

Sent: Thursday, October 02, 2008 10:58 AM

To: Barbara Barton

Subject: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc. case #2006CP36-395

Ms. Barton:

I have received the Motion for Contempt. Please send a Motion Coversheet along with a check for \$25.00 for the Motion fee. If you have any questions, please email me or call me at (803) 321-2110.

Sincerely,

Beverly J. Brehmer
Accounting Clerk

enclosed

10/2/2008

BARTON LAW FIRM, P.A.

1715 Pickens Street
Columbia, SC 29201

(803) 256-6582

Fax (803) 779-0267

bbarton@bartonlawsc.com
www.bartonlawsc.com

BARBARA GEORGE BARTON
Certified Specialist in Bankruptcy and
Debtor-Creditor Law

Mailing Address
P.O. Box 12046
Columbia, S.C. 29211-2046

October 1, 2008

Newberry County Clerk of Court
P. O. Drawer 10
Newberry, SC 29108-0010

RE: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.; Case No. 06-CP-36-395

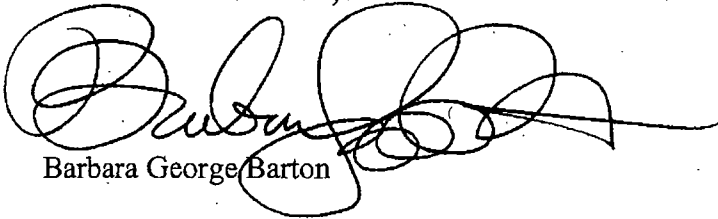
Dear Sir/Madam:

Enclosed please find an original and two (2) copies of Plaintiff's Motion for Contempt in the above-entitled matter. Please file and return a clocked-in copy to me in the enclosed self-addressed, postage prepaid envelope provided for your convenience.

Thank you for your assistance in this matter.

Very truly yours,

BARTON LAW FIRM, P.A.



Barbara George Barton

BGB/sab

Enclosure(s)

FILED
NEWBERRY COUNTY
2008 OCT -3 A 10:13

Copies mailed
10/3/08

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

THOMAS JACKSON CONSTRUCTION, INC.

☒ Plaintiff

v.

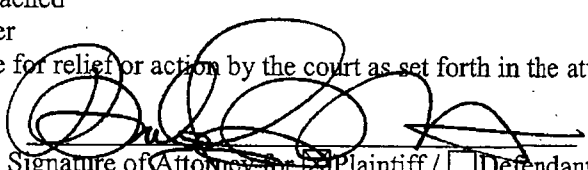
Lake Murray Tree, Inc.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2006-CP-36-395

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Barbara George Barton, Bar No. Address: P. O. Box 12046, Columbia, SC 29211 phone: 803-256-6582 fax: 803-779-0267 e-mail: bbarton@bartonlawsc.com other:		Defendant's Attorney: Samuel M. Price, Jr., Bar No. Address: P. O. Drawer 836, Newberry, SC 29108 phone: 803-276-0796 fax: e-mail: other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Contempt Estimated Time Needed: Court Reporter Needed: ☐ YES' / ☒ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant		October 2, 2008 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION			
Collected by: <u>Laura Lane</u>		Date Filed:	
☒ MOTION FEE COLLECTED: <u>\$25.00 Rec# 37770</u> ☐ CONTESTED - AMOUNT DUE:			

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

THOMAS JACKSON)
CONSTRUCTION, INC.,)

Plaintiff,)

vs.)

LAKE MURRAY TREE, INC.,)

Defendant)

IN THE COURT OF COMMON PLEAS

Case No: 2006-CP-36-395

2008 OCT -3 A 10:13

FILED
NEWBERRY COUNTY

PLAINTIFF'S MOTION FOR CONTEMPT ORDER

Pursuant to Rule 45(e) of the South Carolina Rules of Civil Procedure, Plaintiff requests a contempt order sanctioning Defendant and Defendant's attorney for failure to comply with a subpoena. In support of this motion, Plaintiff would show as follows:

Plaintiff obtained a judgment against Defendant that was entered with this court on August 6, 2007 in the amount of \$25,056.00 together with interest. Defendant has failed to satisfy that judgment.

Plaintiff filed an execution against Defendant's property with the Newberry Clerk of Court on March 27, 2008. On July 3, 2008, Plaintiff received a copy of the Execution marked "Nulla Bona" and dated June 28, 2008 by the Newberry County Office of the Sheriff. On July 9, 2008, Plaintiff submitted a Petition and Order to commence supplemental proceedings against Defendant pursuant to S.C. Code Ann. § 15-39-310, *et. seq.* (1976, as amended). This Order was granted on July 15, 2008 and filed with the Newberry County Clerk of Court on August 6, 2008.

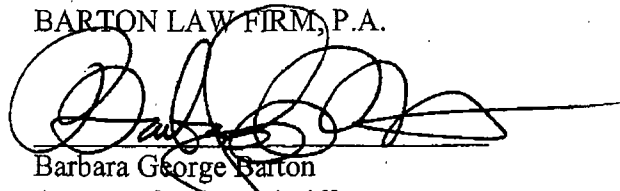
On August 18, 2008, Plaintiff properly served Defendant and Defendant's attorney with a subpoena requesting the production and inspection of certain documents. Pursuant to the subpoena, Defendant was required to produce these documents on September 22, 2008. On September 22, 2008, Defendant failed to appear at the specified time and location set forth in the subpoena. Defendant's counsel did not contact Plaintiff on or before September 22, 2008 to advise that production would not occur nor did he provide an adequate excuse for failing to produce these documents on September 22, 2008. Plaintiff's counsel has been unable to reach Defendant's counsel since September 22, 2008.

The hearing on this matter is scheduled for October 7, 2008 before Special Referee, James S. Verner. However, as a result of Defendant's failure to produce the requested documents or provide an adequate excuse for not producing the requested documents, the Plaintiff has not been able to conduct adequate discovery in this matter and has thereby been further delayed in the final resolution of this matter.

WHEREFORE, having shown good and sufficient cause for the issuance of a contempt order in this matter, the Plaintiff hereby requests that an order be entered holding Defendant and Defendant's counsel in contempt for failure to comply with a subpoena without adequate excuse.

BARTON LAW FIRM, P.A.

BY:

A handwritten signature in black ink, appearing to read 'Barbara George Barton', is written over a horizontal line.

Barbara George Barton
Attorney for the Plaintiff
1715 Pickens Street (29201)
Post Office Box 12046
Columbia, South Carolina 29211-2046
(803) 256-6582

Columbia, South Carolina
October 1, 2008

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

THOMAS JACKSON)
CONSTRUCTION, INC.,)

Plaintiff,)

vs.)

LAKE MURRAY TREE, INC.,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Case No: 2006-CP-36-395

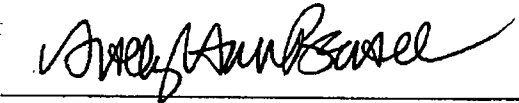
CERTIFICATE OF SERVICE

I, Sally Ann Beall, on behalf of Barbara George Barton, Attorney for the Plaintiff, hereby certify that I mailed a copy of **Plaintiff's Motion for Contempt Order, dated October 1, 2008**, to: Samuel M. Price, Jr., Attorney for the Defendant, P.O. Drawer 836, Newberry, SC 29108, by depositing same in the Post Office, postage prepaid, at Columbia, South Carolina, where there is regular communication by mail, and that same was mailed postage prepaid on October 1, 2008.

BARTON LAW FIRM, P.A.

October 1, 2008.

BY:



Sally Ann Beall
P. O. Box 12046
Columbia, SC 29211-2046
(803) 256-6582

FILED
CLERK OF COURT
2008 OCT -3 A 10:13
JACQUELINE G. GIBBS

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

THOMAS JACKSON CONSTRUCTION, INC.,

☐ Plaintiff

v.

Lake Murray Tree, Inc.

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2006-CP-36-395

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Barbara George Barton, Esq., Bar No. 561

Address:

P. O. Box 12046, Columbia, SC 29211-2046

phone: 803-256-6582 fax: 803-799-0267

e-mail: other:

Defendant's Attorney:

Samuel M. Price, Jr., Esq., Bar No.

Address:

P. O. Drawer 836, Newberry, SC 29108

phone: 803-276-0796 fax:

e-mail: other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

July 9, 2008

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: Laura Lane

Date Filed:

☒ MOTION FEE COLLECTED: \$25.00 Rec'd # 36063

☐ CONTESTED - AMOUNT DUE:

FILED
NEWBERRY COUNTY
2008 AUG - 16 A 10:01
JACKIE S. FOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

THOMAS JACKSON)
CONSTRUCTION, INC.,)

Plaintiff,)

vs.)

LAKE MURRAY TREE, INC.,)

Defendant)

IN THE COURT OF COMMON PLEAS

Case No: 2006-CP-36-395

PETITION

JACQUE S. POWERS
CLERK OF COURT

2008 AUG - 6 A 10: 01

FILED
NEWBERRY COUNTY

Plaintiff would respectfully show:

1. That heretofore Plaintiff recorded judgment against Defendant as hereinafter set forth; and that there is due and owing on said judgment the sum indicated below and Defendant has failed and refused to satisfy same:

Entered: August 6, 2007

Roll No.: 2006-CP-36-395

Amount Due: \$25,056.00 together with interest

2. That Plaintiff attempted to reach a settlement agreement with Defendant, which Defendant did not accept.

3. That, on March 27, 2008, Plaintiff filed an Execution Against Property with the Newberry County Clerk of Court.

4. That, on July 3, 2008, Plaintiff received a copy of the Execution marked "Nulla Bona" and dated June 28, 2008 by the Newberry County Office of the Sheriff

5. That upon information and belief, the Defendant has assets not exempt from levy which he unjustly refused to apply toward said judgment.

6. That Plaintiff is informed and believes that it is entitled under the law and statutes to have an examination of the Defendant in supplementary proceedings to ascertain and discover

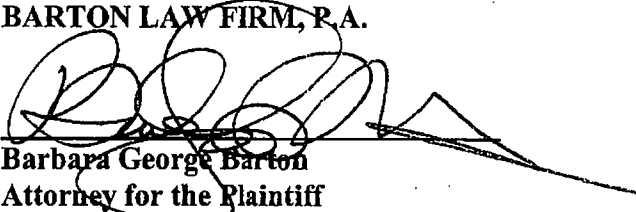
any and all property and assets, real, personal, or mixed, and wheresoever situated, belonging to Defendant in or which Defendant could claim any interest, solely or in conjunction with any person, firm, corporation, or entity, and any or all of which is or should be made applicable by the Court to the payment of said debt. In addition, Plaintiff is informed and believes that it is entitled to the appointment of a Receiver of Defendant for any and all of the aforesaid property, assets or effects which are so discovered or revealed in order to carry said judgment into effect.

WHEREFORE, Plaintiff prays that this Court inquire into the matters hereinabove alleged and that it issue such Order or Orders granting the relief which Plaintiff believes it is entitled, for all expended and statutory costs allowable and which the Court may deem proper.

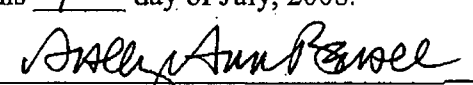
And further, Plaintiff requests that this matter be referred to James S. Verner, Special Referee for Newberry, pursuant to Rule 53 with authority to enter a final order with any appeal being made directly to the South Carolina Supreme Court.

BARTON LAW FIRM, P.A.

BY:


Barbara George Barton
Attorney for the Plaintiff
1715 Pickens Street
Post Office Box 12287
Columbia, SC 29211-2287
(803) 256-6582

SWORN to and Subscribed before me
this 9th day of July, 2008.


Notary Public for South Carolina
My Commission Expires: 1/18/10

FORM 4

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

Thomas Jackson Construction, Inc.

JUDGMENT IN A CIVIL CASE

CASE NO. 2006-CP-36-395

Lake Murray Tree, Inc.

PLAINTIFF(S)

DEFENDANT(S)

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. (Formal order to follow)
☐ Statement of Judgment by the Court:

Dated at Newberry, South Carolina, this **15th** day of **July**, 2008.

S/ J. Mark Hayes, II
PRESIDING JUDGE

This judgment was entered on the **6th** day of **August**, 2008, and a copy mailed first class this **11th** day of **August**, 2008 to attorneys of record or to parties (when appearing pro se) as follows:

**Barbara George Barton, Esquire
ATTORNEY(S) FOR THE PLAINTIFF(S)**

**Samuel M. Price, Jr., Esquire
ATTORNEY(S) FOR THE DEFENDANT(S)**

**Jackie S. Bowers
CLERK OF COURT**

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

THOMAS JACKSON
CONSTRUCTION, INC.,

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

IN THE COURT OF COMMON PLEAS

Case No: 2006-CP-36-395

ORDER OF REFERENCE AND
RULE TO SHOW CAUSE

FILED
NEWBERRY COUNTY
2008 AUG - 6 A M
JAMES S. VERNER
CLERK OF COURT

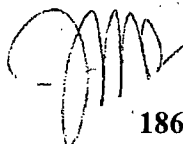
On reading the Petition of Plaintiff, it appears that Judgment has been entered against the above Defendant Lake Murray Tree, Inc. (hereinafter "Defendant"), and the judgment has not been satisfied.

It further appears that Plaintiff has properly filed an Execution Against Property with the Newberry County Clerk of Court, and Plaintiff has received a copy of said Execution marked "Nulla Bona" by the Newberry County Office of the Sheriff.

It further appears that Plaintiff has moved for a Supplemental Procedure, pursuant to the provision of S.C. Code Ann. § 15-39-310, et. seq. (1976 as amended) and it appears that Plaintiff is entitled to this Order.

IT IS ORDERED that Defendant appear before James S. Verner, Special Referee for Newberry County, at Newberry County Courthouse, Main Courtroom, College Street, Newberry, South Carolina, on the 25th day of August, 2008 at 10:00 a.m., to answer under oath concerning the below-listed assets; to show cause why said property should not be applied toward satisfaction of the judgment; and to show cause why a receiver for the property should not be appointed, pursuant to the provisions of S.C. Code Ann. § 15-39-310, et. seq. (1976 as amended).

IT IS FURTHER ORDERED that Defendant is hereby restrained and enjoined from



making any transfers or any disposition of property belonging to it which is not exempt from execution pending further Order of this Court.

IT IS THEREFORE ORDERED that the Special Referee is to take the testimony of the Defendant, and to make his findings of fact and conclusions of law, with authority to dispose of all issues and to enter a final judgment in this case.

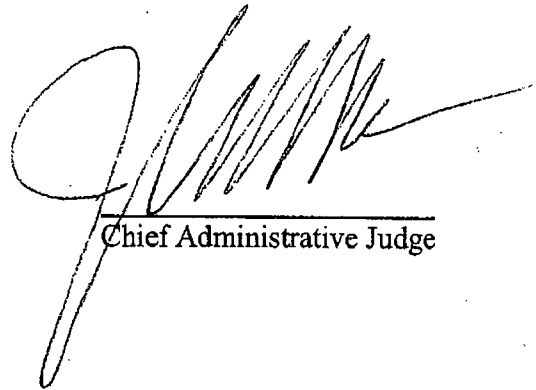
IT IS FURTHER ORDERED that the Defendant is hereby ordered and directed to bring to the hearing scheduled above, the following records and/or documents:

- a. All titles, bills of sale, deeds, mortgages, or other records in any form, concerning any and all real estate, automobiles, trucks, trailers and equipment owned, purchased, sold, or otherwise transferred by Defendant since January 1, 2006 through the date of the hearing of this matter.
- b. All records concerning bank, savings, or investment accounts owned by the Defendant, or in which Defendant has equitable or legal interest, including, but not limited to, checking account checkbooks, savings account passbooks or investment account statements for the period since January 1, 2006 through the date of the hearing on this matter.
- c. Any and all records concerning any ownership interest in any business entity from January 1, 2006 through the date of the hearing on this matter, including, but not limited to any interest in corporations, statutory close corporations, limited liability companies, limited liability partnerships, and general and/or limited partnerships.
- d. Any written financial statements of Defendant which have been prepared since January 1, 2006.
- e. Statement of current accounts receivable of Defendant.
- f. Statement of current accounts payable of Defendant.
- g. State and Federal Income Tax Returns for the years 2006 and 2007 for Defendant.
- h. Description of any real or personal property or asset owned by Defendant which is in the hands of a third party.
- i. Copies of leases of any real or personal property leased by Defendant, including the following information: name and address of landlord; amount of rental payments, and date through which rent is paid.

- j. Transfers of Defendant of any real or personal property or any other asset owned by Defendant from January 1, 2006 through the date of the hearing on this matter.
- k. Such other and further records as may disclose the assets and liabilities of the Defendant.

IT IS SO ORDERED.

July 15, 2008
Newberry, South Carolina



Chief Administrative Judge

BARTON LAW FIRM, P.A.

1715 Pickens Street
Columbia, SC 29201

(803) 256-6582

Fax (803) 779-0267

bbarton@bartonlawsc.com
www.bartonlawsc.com

BARBARA GEORGE BARTON
Certified Specialist in Bankruptcy and
Debtor-Creditor Law

Mailing Address
P.O. Box 12046
Columbia, S.C. 29211-2046

Signed

July 9, 2008

Newberry County Clerk of Court
P. O. Drawer 10
Newberry, SC 29108-0010

RE: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.; Case No. 06-CP-36-395

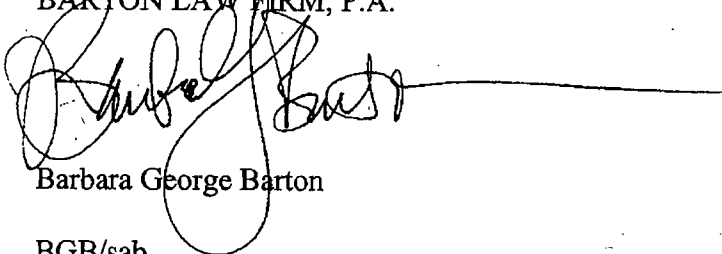
Dear Sir/Madam:

Enclosed please find an original and two (2) copies of a Petition and an Order of Reference and Rule to Show Cause in the above-entitled matter. Please present the Order to the Judge for his consideration and, once filed, return a clocked-in copy to me in the enclosed self-addressed, postage prepaid envelope provided for your convenience. A check in the amount of \$25 is also enclosed to cover recording costs.

Thank you for your assistance in this matter.

Very truly yours,

BARTON LAW FIRM, P.A.



Barbara George Barton

BGB/sab

Enclosure(s)

FILED
NEWBERRY COUNTY
JACQUE S. POWERS
CLERK OF COURT
2008 AUG -6 A 10:01

*Copy mailed
8/11/08*

Newberry County Sheriff

James Lee Foster, Sheriff

Phone (803) 321-2211

The State of South Carolina
County of Newberry

AFFIDAVIT OF EXECUTION SERVICE

CASE NO.:

[PLAINTIFF]

THOMAS JACKSON CONST., IN

ROLL NO.:59486

VS

[DEFENDANT]

LAKE MURRAY TREE, INC.

Personally appeared before me the undersigned deponent, who being duly sworn,
deposed and says that he served the EXECUTION AGAINST PROPERTY
in this action on the defendant by delivering same to:

LAKE MURRAY TREE, INC. PERSONALLY.

And the deponent is not a party to this action, and has no interest
or connection therewith.

Casey Bouknight

CASEY BOUKNIGHT, DEPUTY SHERIFF
NEWBERRY COUNTY, SOUTH CAROLINA

SWORN TO AND SUBSCRIBED BEFORE ME

on this date April 8, 2008

Rosemarie C. Coker

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES: 4/26/2009

The State of South Carolina,

County of Newberry

Thomas Jackson Construction, Inc.,

Plaintiff

against

Lake Murray Tree, Inc.,

Defendant.

Execution Against Property

Sheriff of County of Newberry

Levy and Collect \$25, 056.00

with interest from August 6, 2007

beside your fees, etc.

Attorney for Judgment Creditor.

Received _____, 2008.

Sheriff

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

EXECUTION AGAINST PROPERTY

TO THE SHERIFF OF THE COUNTY OF NEWBERRY:

WHEREAS, Judgment was rendered on the 31st day of July, 2007 in an action in the Court of Common Pleas for Newberry County, South Carolina, in the case styled as Thomas Jackson Construction, Inc. v. Lake Murray Tree, Inc., in favor of Thomas Jackson Construction, Inc., Plaintiff, against Lake Murray Tree, Inc., Defendant, for the sum of Twenty Five Thousand Fifty Six and 00/100 (\$25,056.00) Dollars, as appears to us by Order filed August 6, 2007 in the Office of the Clerk of the Court of Common Pleas, County of Newberry, State of South Carolina;

AND WHEREAS, the sum of Twenty Five Thousand Fifty Six and 00/100 (\$25,056.00) Dollars is now actually due thereon by Defendant Lake Murray Tree, Inc., together with interest and costs as allowed by law;

THEREFORE WE COMMAND YOU, that you satisfy the said judgment out of the personal property of the said judgment debtor within your County; or if sufficient personal property cannot be found, then out of the real property in your County belonging to such judgment debtor on the day when the said judgment was so docketed in your County, or at any time thereafter in whose hands soever the same may be, and duly return this Execution according to the law of the Clerk of the Court of Common Pleas for the County of Newberry.

This Execution Against Property has been duly signed on behalf of the Office of the Clerk
of Court, Newberry County Court of Common Pleas, South Carolina, this 27th day of
March, 2008.

Jackie S. Brewer
Office of the Clerk of Court
Newberry County Court of Common Pleas

BY Barton Law Firm P.A.
Barbara George Barton
Attorney for the Plaintiff
1715 Pickens Street
Post Office Box 12287
Columbia, SC 29211-2287
(803) 256-6582
Attorney for Plaintiff Thomas Jackson
Construction, Inc.

March 24, 2008
Columbia, South Carolina

STATEMENT

Amount of Judgment	\$25,056.00
Sheriff	\$25.00
TOTAL	\$25,081.00

NULLA BONA this date, 06/28/08

James Lee Foster
Sheriff James Lee Foster, Newberry County, S.C.

BARTON LAW FIRM, P.A.

1715 Pickens Street
Columbia, SC 29201

(803) 256-6582

Fax (803) 779-0267

bbarton@bartonlawsc.com
www.bartonlawsc.com

March 24, 2008

BARBARA GEORGE BARTON
Certified Specialist in Bankruptcy and
Debtor-Creditor Law

Mailing Address
P.O. Box 12046
Columbia, S.C. 29211-2046

Clerk of Court
Newberry County Courthouse
P.O. Drawer 10
Newberry, South Carolina, 29108-0278

**Re: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.,
Case No. 06-CP-36-395**

Dear Ms. Bowers:

Enclosed please find an original Execution Against Property with regard to the above-captioned matter. If this Execution Against Property meets with your approval, please attest to same and return the original signed, sealed Execution Against Property to me and please also forward a copy of the Execution to the Sheriff of Newberry County, in the enclosed self-addressed stamped envelopes provided for your convenience.

If you have any questions, please do not hesitate to contact me. Thank you for your courtesy and cooperation in this regard.

Sincerely,

BARTON LAW FIRM, P.A.

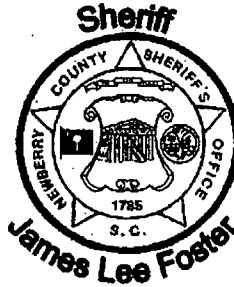
Barbara George Barton, Esq.

Enclosure

*Execution signed,
sealed, & mailed
3/27/08*

FILED
NEWBERRY COUNTY
2008 MAR 25 A 9:31
JACKIE S. POWERS
CLERK OF COURT

Office of the Sheriff
County of Newberry
State of South Carolina
3491 Main Street
PO Box 247
Newberry, SC 29108-0247
Fax 803-321-2147
www.newberrycounty.net/sheriff



Law Enforcement Division
803-321-2211
Victim's Advocate Division
803-321-2211
E911 Administration & Addressing
803-321-2182
E911 Telecommunications Division
803-321-2222
Jail Division
3239 Louis Rich Drive
Newberry, SC 29108
803-321-2141

June 30, 2008

2006 CP36 - 395

The Honorable Barbara George Barton
Post Office Box 12287
Columbia, SC 29211-2287

RE: Thomas Jackson Construction, Inc. vs Lake Murray Tree, Inc.

In connection with the above referenced Execution, please find:

- ☒ We were unable to find anything on which to levy. Copy of Execution marked "Nulla Bona".
- ☒ Receipt
- ☒ Completed Affidavit of Service
- ☐ Unable to locate defendant
- ☒ The original Execution has been filed with the Clerk of Court
- ☐ Other: _____

If we can be of further service, please let us know.


Jerry Wright, Chief Deputy

FILED
NEWBERRY COUNTY
JUL - 1 A 9 59
JACQUELINE R. WRIGHT
CLERK OF COURT

The South Carolina Court of Appeals

Thomas Jackson Construction, Inc., Respondent,

v.

Lake Murray Tree,

Appellant.

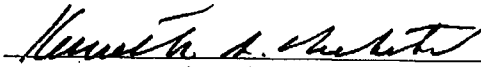
Honorable James S. Verner
Newberry County
Trial Court Case No. 2006-CP-36-00395

FILED
NEWBERRY COUNTY
2008 FEB -7 A 9:43
JACKIE S. BOWERS
CLERK OF COURT

ORDER of DISMISSAL AND REMITTITUR

The above entitled case is pending on appeal in this Court. It now appears that the Appellant wishes to withdraw the appeal and moves the Court for an Order dismissing the appeal.

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. This case is REMITTED to the Clerk of Court for Newberry County.

 CLERK
For the Court

Columbia, South Carolina
2/6/2008

Original to: The Honorable Jackie S. Bowers

cc: Samuel M. Price, Jr., Esquire
Barbara George Barton, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

James S. Verner, Special Referee

Case No. 2006-CP-36-395

Thomas Jackson Construction, Inc., ... Plaintiff/Respondent,

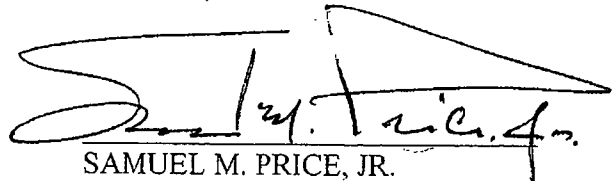
v.

Lake Murray Tree, Inc., ... Defendant/Appellant,

NOTICE OF APPEAL

Defendant Lake Murray Tree, Inc. appeals the Order of the Honorable James S. Verner dated November , 2007. Defendant received written notice of entry of this Order on or about November 10, 2007.

December 5, 2007



SAMUEL M. PRICE, JR.
Post Office Drawer 836
Newberry, South Carolina 29108
(803) 276-0796
Attorney for Defendant/Appellant

Other Counsel of Record:

Barton Law Firm, P.A.
Barbara George Barton
Post Office Box 12046
Columbia, South Carolina 29211-2046
(803) 256-6528
Attorney for Defendant/Respondent

2007 DEC -5 PM 4:22

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

James S. Verner, Special Referee

Case No. 2006-CP-36-395

Thomas Jackson Construction, Inc., ... Plaintiff/Respondent,

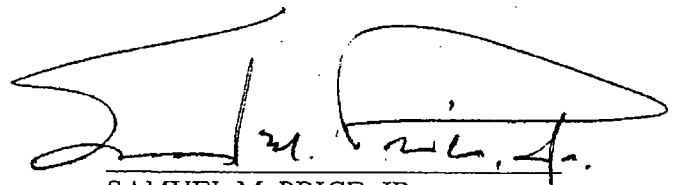
v.

Lake Murray Tree, Inc., ... Defendant/Appellant,

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Thomas Jackson Construction, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on December 5, 2007, addressed to its attorney of record Barton Law Firm, P.A., Barbara George Barton, Post Office Box 12046, Columbia, South Carolina 29211-2046.

December 5, 2007



SAMUEL M. PRICE, JR.
Post Office Drawer 836
Newberry, South Carolina 29108
(803) 276-0796
Attorney for Defendant/Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Case No: 2006-CP-36-395

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

CERTIFICATE OF SERVICE

I, Alicia C. Gibson, a law clerk with Barton Law Firm, P.A., the attorney for the Plaintiff, hereby certify that I mailed a copy of the **Order Denying Motion to Reconsider**, which was filed with the Court in Newberry County on November 9, 2007, to Samuel M. Price, Jr., Attorney for Lake Murray Tree, Inc., P.O. Drawer 836, Newberry, SC 29108, by depositing same in the post office, postage prepaid, at Columbia, South Carolina, where there is regular communication by mail, and that same was mailed postage prepaid on November 12, 2007:

BARTON LAW FIRM, P.A.

November 12, 2007.

BY:

Alicia C. Gibson

Alicia C. Gibson
P. O. Box 12046
Columbia, SC 29211-2287
(803) 256-6582

FILED
NEWBERRY COUNTY
2007 NOV 14 A 9:57
JACKIE S. BOWERS
CLERK OF COURT

BARTON LAW FIRM, P.A.

1715 Pickens Street
Columbia, SC 29201

(803) 256-6582

Fax (803) 779-0267

bbarton@bartonlawsc.com
www.bartonlawsc.com

BARBARA GEORGE BARTON
Certified Specialist in Bankruptcy and
Debtor-Creditor Law

Mailing Address
P.O. Box 12046
Columbia, S.C. 29211-2046

November 12, 2007

Clerk of Court
1226 College St Rm 7
PO Drawer 10
Newberry, SC 29108-0278

Re: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.,
Case No. 06-CP-36-395

Dear Sir/Madam:

Enclosed, please find an original and one copy of the Certificate of Service for the Order Denying Motion to Reconsider in the above captioned case. Please file the original with the Court record and return a clocked copy to me in the enclosed self-addressed, stamped envelope.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,

BARTON LAW FIRM, P.A.

Alicia C. Gibson

Alicia C. Gibson

Enclosure

Cc: Samuel M. Price, Jr., Esq.

*Copy mailed
11/14/07*

FILED
NEWBERRY COUNTY
2007 NOV 14 A 9:51
JACQUE S. JONES
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)
COURT OF Common Pleas)

JUDGEMENT ON TRIAL OR ORDER BY THE COURT

CASE NO. 2006 CP36-395

Thomas Jackson Construction,
Inc.

VS

Lake Murray Tree

PLAINTIFF(S)

DEFENDANT(S)

- () JURY VERDICT. THIS ACTION CAME BEFORE THE COURT FOR A TRIAL BY JURY. THE ISSUES HAVE BEEN TRIED AND THE JURY HAS RENDERED ITS VERDICT.
- () DECISION BY COURT. THIS ACTION CAME TO TRIAL OR HEARING BEFORE THE COURT. THE ISSUES HAVE BEEN TRIED OR HEARD AND A DECISION HAS BEEN RENDERED.
- () ACTION DISMISSED. () RULE 40 (J) OF SCRPC, () RULE 12 (B) OF SCRPC, () SETTLED. () VOL. NONSUIT. () OTHER _____

IT IS ORDERED AND ADJUDGED: (✓) SEE ATTACHED ORDER, () STATEMENT OF JUDGEMENT BY COURT

Order Denying Motion to Reconsider

DATED AT NEWBERRY, SOUTH CAROLINA, THIS 8th DAY OF November, 20 07.

s/ James L. Verner
Special Referee JUDGE/CLERK OF COURT

THIS JUDGEMENT WAS ENTERED ON THE 9th DAY OF November, 20 07
AND A COPY MAILED FIRST CLASS THIS 9th DAY OF November, 20 07
TO ATTORNEYS OF RECORD OR TO PARTIES (WHEN APPEARING PRO SE) AS FOLLOWS:

Barbara George Barton, esq.
PO Box 12287
Columbia, SC 29211

Samuel M. Price, Jr., esq.
PO Drawer 836
Newberry, SC 29108

ATTORNEY(S) FOR PLAINTIFF(S)

ATTORNEY(S) FOR DEFENDANT(S)

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
2006-CP-36-395

Thomas Jackson Construction,)
Inc.,)
Plaintiff,)
vs.)
Lake Murray Tree,)
Defendant.)

2007 NOV -9 A 9:17
JACKIE S. FOWERS
CLERK OF COURT

ORDER DENYING MOTION TO RECONSIDER

By Order dated July 31, 2007 and filed August 6, 2007 after a Special Referee hearing, Plaintiff was awarded a total of \$25,056.00 from Defendant for grinding of debris pursuant to a verbal agreement between the parties. In addition, Defendant's counterclaim for \$13,942.32 was denied. Defendant filed a Motion for Reconsideration on August 16, 2007. For the reasons which follow, Defendant's Motion for Reconsideration will be denied.

The Defendant has not specified which of the South Carolina Rules of Civil Procedure provide a basis for his Motion for Reconsideration. Hence, the Court will treat the defendant's Motion as both a Rule 59(e) and Rule 60 motion, because it was served within 10 days after receipt of written notice of the entry of the order. See S.C.R.Civ.P. 59(e); S.C.R.Civ.P. 60; Diamond Jewelers of Spartanburg, Inc. v. Naegele Outdoor Advertising Co., Div. of Major Media of Southeast, Inc., 290 SC 260, 349 SE2d 888 (1986).

Defendant does not meet any of the grounds for altering or amending a judgment under Rule 59(e). The Fourth Circuit recognizes three grounds for altering or amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.

See Pacific Ins. Co. v. American Nat. Fire Ins. Co., 148 F.3d 396, 402 (4th Cir.1998). Thus, a motion for reconsideration after the entry of judgment is an "extraordinary remedy" which should rarely be used unless a basis for reconsideration is warranted. Pacific Ins. Co., 148 F.3d at 403. The first two grounds for altering or amending a judgment do not apply to the facts of this case, nor were they argued in Defendant's Motion. The third basis— to correct a clear error of law or prevent manifest injustice— is more applicable in this case and is argued by Defendant. However, the Special Referee's findings of fact and conclusions of law were based on a review of the pleadings, the testimony of witnesses, review and analysis of exhibits, and the arguments presented by counsel, and as such comply with the evidence and are not erroneous or manifestly unjust.

Likewise, Defendant has not satisfied the requirements for relief from judgment or order under Rule 60 of the South Carolina Rules of Civil Procedure. Under the Rule, the court may relieve a party or his legal representative from a final judgment, order, or proceeding in the event of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentation, misconduct of an adverse party, or where the judgment is void or has been released, satisfied, or discharged. S.C.R.Civ.P. 60. According to case law, the movant (in this case the Defendant) in a motion for relief from judgment on the basis of mistake, inadvertence, excusable neglect, newly discovered evidence, or fraud has the burden of presenting evidence proving the facts essential to entitle him to relief. BB & T v. Taylor, 369 S.C. 548, 633 S.E.2d 501 (2006). Defendant has presented no evidence that would entitle him to relief from judgment.

1. Differences in Grinding Sites: The Court did not err in its findings that the production of the grinder was 450 cubic yards on all three grinding sites - Choctaw, 60 Rayburn, and Angie. The Court considered the testimony of witnesses and the evidence presented in

making its determination. The only evidence presented regarding the production capability of the Peterson 4700B grinder was provided by the Plaintiff. Plaintiff alleged a capacity of 900 cubic yards of debris per hour. Defendant's own witness' testimony provided that an older model of the grinder would produce 350 cubic yards per hour and that the newer model would grind more than 350 cubic yards per hour. Thus, based on the evidence presented, the Court did not err in adopting a per hour grinding rate of 450 cubic yards.

2. The Court properly found that Plaintiff was entitled to payment from Defendant at a rate of \$0.95 cents per cubic yard at all sites. Defendant admitted that he and Plaintiff reached a verbal agreement on or about October 12, 2005, regarding the grinding of debris in post-Katrina, Louisiana. Defendant admitted in his Answers to Plaintiff's First Set of Interrogatories #12 and Answers to Requests for Admission #4 that he verbally agreed to pay Plaintiff ninety-five cents (\$0.95) a cubic yard for the debris being fed into Plaintiff's grinder. Defendant agrees that Plaintiff ground debris on three sites, between October 15 and October 27. Defendant admitted that he has not made any payments to Plaintiff for the work done on these sites during that time. Thus Plaintiff is entitled to payment for work performed.

3. In addition, the Court properly excluded evidence of an unsigned written contract. That evidence was irrelevant because it was an unsigned written agreement that might or might not contain the terms of the agreement between the parties. In addition, Defendant is estopped from arguing that he wanted to proceed under a written agreement when he in fact allowed Plaintiff to commence and continue work pursuant to a verbal agreement between the parties. The Court correctly decided that only the verbal agreement should be considered.

4. Further, the Court properly disallowed any evidence as to damages caused to Defendant by Plaintiff's withdrawal without any notice to Defendant. No agreement between the

parties was ever reduced to writing, and Plaintiff was not obligated to give notice to Defendant prior to leaving his employ.

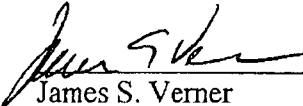
5. The Court was correct in refusing to permit Defendant to amend its Answer to comply with the proof. According to Harvey v. Strickland, 350 S.C. 303, 566 S.E.2d 529 (2002), amendments to conform to the proof should be liberally allowed when no prejudice to the opposing party will result. However, the Court found that Plaintiff would suffer prejudice if Defendant were allowed to amend its Answer. Plaintiff had already experienced severe delay when Defendant took more than 100 days to respond to Plaintiff's Request for Admission. Plaintiff incurred extra expenses and time in its attempts to compel discovery from the Defendant. Plaintiff had never received payment from Defendant even though Defendant has received some payment for the work performed on the three sites. Plaintiff had incurred expenses in performance on the job and in the litigation and had not received any payment from Defendant to deal with these expenses. Further delay to amend would have been unconscionable in light of the passage of time and expense incurred.

6. Moreover, the Court correctly dismissed Defendant's counterclaim for judgment against Plaintiff in the amount of \$13,942.32. Defendant admitted several times, including in his Answer and Counterclaim, p. 3 and his Answers to Requests for Admission, that the agreement between the parties was an oral one. Because the agreement was oral, the Plaintiff's departure on October 27, 2007 was not a breach of contract and therefore Defendant is not entitled to damages for having to sub-contract with another company at a higher rate. It is irrelevant that Defendant attempted to establish a written contract with Plaintiff because the written contract was never agreed to or signed by Plaintiff.

7. Finally, The Court did not err in finding that Plaintiff ground 450 cubic yards per hour, as this calculation was based on the evidence previously discussed.

The matters raised in Defendant's Motion for Reconsideration have already been properly considered and no basis for reconsideration is warranted. Further, the Defendant verbally requested reconsideration at the conclusion of the trial and his request has already been denied.

Accordingly, Defendant's Motion for Reconsideration is **DENIED**.


James S. Verner
Special Referee

Dated: November 14, 2007
Columbia, SC

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Thomas Jackson Construction, Inc.

☐ Plaintiff

v.

Lake Murray Tree, Inc.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2006-CP-36-395

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Barbara G. Barton, Bar No.
Address:
P. O. Box 12287, Columbia, SC 29211-2287
phone: fax:
e-mail: other:

Defendant's Attorney:
Samuel M. Price, Jr., Bar No.
Address:
P. O. Drawer 836, Newberry, SC 29108
phone: 803-276-0796 fax: 803-276-9495
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

August 16, 2007

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: Laura Lane

Date Filed:

8/16/07

- ☒ MOTION FEE COLLECTED: 25.00 Rec'd # 28627
☐ CONTESTED - AMOUNT DUE:

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
2006-CP-36-395

Thomas Jackson Construction, Inc.,)
Plaintiff,)
vs.)
Lake Murray Tree, Inc.,)
Defendant.)

MOTION FOR RECONSIDERATION

2006 OCT 16 PM 3:08

Defendant Lake Murray Tree does respectfully request that the Special Referee reconsider its Order dated July 31, 2007, and filed on August 6, 2007. Defendant would request that review the evidence and reverse its Order. The basis of this Motion is as follows:

1. Differences of grinding sites: The Court erred in its failure to consider the difference in the three (3) grinding sites, i.e. Choctaw, 60 Rayburn and Angie. The Court erred in accepting the testimony of plaintiff's witness as the number of hours that plaintiff alleged the machine worked and multiplying it by 450 cubic yards. The only evidence produced by plaintiff as to the production of the machine was the literature describing the capabilities of the machine.

(a) Choctaw site: The Debris Removal Response Project Report shows that at Choctaw from October 16th through October 21st, only 9,997 cubic yards were ground. According to plaintiff's calculations, if his machine would grind 900 cubic yards per hour, he should have ground 24,000 cubic yards. A finding that plaintiff ground 450 cubic yards times 26.666 hours for a total of 12,000 cubic yards is clearly unsupported by the evidence. There was no one else at

Choctaw. The amount that was ground is the amount that was ground, i.e. 9,997 cubic yards. 9997 cubic yards divided by 26.667 hours equals 374.88 cubic yards ground per hour (average).

(b) 60 Rayburn site: Plaintiff claims that he worked 9 hours and 10 minutes for a total of 8,250 cubic yards. There is no way to measure the debris ground by documents. The Court found that 450 cubic yards ground per hour was reasonable. This is in error. Plaintiff's witness testified that 60 Rayburn site was "a mess". The site was not as orderly and additional time was required to load the machine. The Court's decision that plaintiff ground 4,125 cubic yards in 9 hours and 10 minutes equals (4,125 divided by 9.1666) 450 cubic yards per hour. This finding is not supported by the substantial weight of the evidence.

(c) Angie site: Plaintiff claims that he worked there for 22 hours and 45 minutes on October 25th, 26th and 27th. At Angie, only 5,340 cubic yards were ground according to the Weekly Pay Sheet. If 5,340 cubic yards were ground in 22 hours and 45 minutes, plaintiff ground an average of 234.73 cubic yards per hour. The Court found that plaintiff ground 10,237.50 (22 hours and 45 minutes times 450 cubic yards per hour) cubic yards. In the three (3) day period plaintiff claims he worked, plaintiff is being paid for almost twice as much as was actually ground. This is clearly in error.

2. The Court erred in its determination that defendant owed plaintiff 95 cents per cubic yard on the Choctaw site. Defendant alleged that when plaintiff arrived on the scene at Choctaw, plaintiff was introduced to Mike Creel who was the overall supervisor/manager of the site and that any work done on Choctaw was directly between plaintiff and Mike Creel. It is true that defendant Lake Murray Tree, Inc. did offer to and did in fact assist plaintiff in billing, but on the Choctaw project, there was no 95 cents per cubic yard subcontract agreement between the

parties. The Court erred in refusing to permit any evidence on the issue of whether a subcontract existed between the parties on this Choctaw site.

3. The Court further erred in its failure to permit defendant to present evidence as to a written contract that plaintiff corporation refused to sign.

4. The Court erred in failing to permit defendant to present any evidence as to damages caused to defendant by plaintiff's withdrawal without any notice to defendant.

5. The Court erred in its failure to permit defendant to amend its answer to comply with the proof. Instead of permitting the Answer to be amended, the Court simply refused to admit evidence which would support the facts justifying the amendments to defendant's Answer. By refusing to permit defendant to fully testify and amend its Answer, defendant was denied a fair trial.

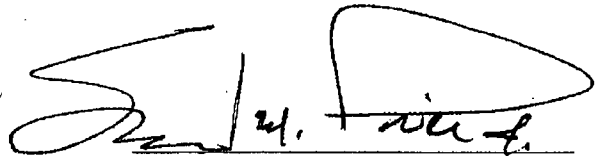
6. The Court erred in dismissing the Counterclaim by finding that there was nothing more than a day to day contract since the Court would not permit any evidence as to defendant's efforts to consummate the agreement in writing.

7. The Court erred in finding that plaintiff ground 450 cubic yards per hour without any evidentiary basis. The documented evidence as to what plaintiff had processed at Choctaw equaled 374.88 cubic yards per hour, at Angie equaled 234.73 cubic yards per hour, based upon the hours that plaintiff alleged the machine ran and document amounts ground. Plaintiff testified that Choctaw was the best site on which to grind because of the neatness of rows and stacking of the storm debris. At 60 Rayburn, the yard was a mess which would reduce the cubic yardage even more. Both David Whitesell of Whitesell Construction, Inc. and defendant testified that it had run a sample to determine how much debris could be ground in an hour. Plaintiff ran no

such sample. There is no basis to determine that plaintiff ground 450 cubic yards per hour.

Defendant would respectfully request of this Court that it reconsider its Order and to amend its Order so that the findings of this Court would comply with the evidence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Samuel M. Price, Jr.", written over a horizontal line.

SAMUEL M. PRICE, JR.
Attorney for Defendant
1413 Main Street, P. O. Drawer 836
Newberry, South Carolina 29108
(803) 276-0796

Newberry, SC
August 16th, 2007

HE 9

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
2006-CP-36-395

Thomas Jackson Construction, Inc.,)
Plaintiff,)
vs.)
Lake Murray Tree, Inc.,)
Defendant.)

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the office of Samuel M. Price, Jr., Attorney for Defendant, and is a person of such age and discretion to be competent to serve papers.

That on August 16, 2007, she served a copy of the attached Motion for Reconsideration by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Newberry, South Carolina.

ADDRESSEE: Robinson, Barton, McCarthy, Calloway & Johnson, P.A.
Attention Barbara George Burton
Attorney at Law
P. O. Box 12287
Columbia, South Carolina 29211-2287

2007 AUG 16 P 3:09


RAMONA F. SHEALY

ROBINSON, BARTON, MCCARTHY, CALLOWAY & JOHNSON, P.A.

ATTORNEYS AT LAW

1715 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29201

G. WILLIAM MCCARTHY, JR.*
BARBARA GEORGE BARTON*
W. E. CALLOWAY
NANCY E. JOHNSON, SC & NC

DANIEL J. REYNOLDS, JR.

* CERTIFIED BANKRUPTCY SPECIALISTS
IN THE STATE OF SOUTH CAROLINA

WILLIAM E.S. ROBINSON
(1942-1993)

P.O. BOX 12287
COLUMBIA, S.C. 29211-2287
803/256-6400

FAX 803/779-0267

August 3, 2007

Clerk of Court
1226 College Street, Rm 7
P. O. Drawer 10
Newberry, SC 29108-0278

FILED
NEWBERRY COUNTY
2007 AUG -6 A 11:35
JACKIE S. BOWERS
CLERK OF COURT

RE: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.,
Case No. 06-CP-36-395

Dear Sir/Madam:

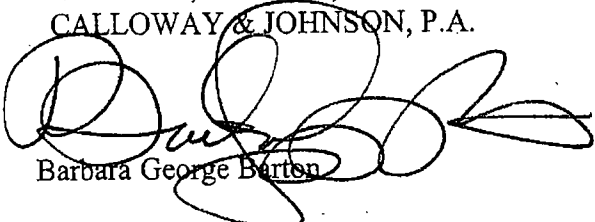
Enclosed please find an original and one copy of an Order executed by the Special Referee in the above captioned case.

Please file the Order, enter it into the Judgment Roll of Newberry County, and return a recorded copy of it to me in the enclosed self-addressed, stamped envelope.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,

ROBINSON, BARTON, McCARTHY,
CALLOWAY & JOHNSON, P.A.


Barbara George Barton

BGB/sab

Enclosure

copy mailed
8/6/07

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

Case No: 2006-CP-36-39

ORDER

059486

FILED
NEWBERRY COUNTY
2007 AUG -6 A 11:35
JACKIE S. BOWERS
CLERK OF COURT

This matter came before the Court for final hearing on Wednesday, July 11, 2007. Both parties were represented by counsel at the trial and both presented testimony and exhibits. Based upon a review of the pleadings, the testimony of witnesses, review and analysis of exhibits and the arguments presented by counsel, the Court makes the following findings of fact and conclusions of law.

This litigation was initiated by the filing of a Summons and Complaint on September 21, 2006. The Defendant filed an Answer and Counterclaim on December 18, 2006, to which the Plaintiff responded on January 16, 2007. The Plaintiff proceeded with discovery requests but was unable to obtain responses to discovery for several months. After hearing, the Court allowed late responses to discovery by the Defendant and denied a Motion for Summary Judgment filed by the Plaintiff. Pursuant to Order entered June 7, 2001, the Court set a scheduling order for discovery and trial. A Consent Order of Reference referred this matter to James S. Verner as Special Referee.

The Plaintiff alleges and the Defendant admits that they reached a verbal agreement in October, 2005 regarding the grinding of debris in Louisiana resulting from Hurricane Katrina. Both parties agree that the verbal agreement provided that the Defendant would pay the Plaintiff

Seventy Five Cents (\$.75) a cubic yard for the debris being fed into the Plaintiff's grinder. This amount was increased to Ninety Five Cents (\$.95) a cubic yard when the Plaintiff arrived in Louisiana. There was no written contract between the parties. The Court finds that the Plaintiff was employed by the Defendant pursuant to this verbal contract on a day to day basis.

Both parties admit that the Plaintiff arrived in Louisiana on October 15, 2007 and remained on three different sites in Louisiana grinding until October 27, 2007. Both parties agree that the Plaintiff never received any payment for this grinding work. The pivotal issue as to the Plaintiff's case is the amount which it is entitled to receive as payment from the Defendant as a result of the grinding between October 15, 2007 and October 27, 2007.

In its counterclaim, the Defendant asserts that the Plaintiff's departure on October 27, 2007 was a breach of contract giving rise to damages. Because the contract between the parties was a verbal day to day contract, the Plaintiff's departure on October 27, 2007 does not constitute a breach of the contract and the Court concludes that the counterclaim should be dismissed.

Both the Plaintiff and the Defendant presented testimony and exhibits regarding the amount that the Plaintiff ground and the amount that it was therefore entitled to receive pursuant to the verbal contract. The Plaintiff's primary evidence consisted of testimony regarding the amount of time spent actually grinding and the amount that the Peterson 4700B grinder could grind per hour. The Defendant's primary evidence consisted of testimony regarding the amount that the Peterson 4700B grinder and other grinders could grind per hour and the amount that the Defendant received in payment for two of the three Louisiana sites on which the grinding occurred.

The Plaintiff asserts that the Peterson 4700B grinder could grind 900 cubic yards of

debris an hour. The Defendant's witnesses assert that the Peterson 4700B grinder could grind less than that per hour, but did not provide evidence to show actual grinding capacity for actual grinding time for this particular machine. Their evidence supported an amount ground of 187.19 cubic yards using the 6710 Peterson grinder, applying a full day's work of 12 to 14 hours, rather than actual grinding time, and measuring the amount coming out of the grinder rather than going into the grinder. In addition, one of the Defendant's witnesses provided testimony regarding the amount that an older model of a Peterson 4700A grinder would grind 350 cubic yards of material an hour. This witness also testified that the newer Peterson 4700B grinder would grind more than the 4700A grinder.

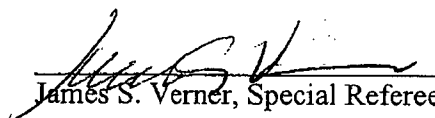
The only evidence presented regarding the capacity of the current model of the 4700B grinder was provided by the Plaintiff and the only evidence presented regarding the number of hours spent in grinding was provided by the Plaintiff.

Having had an opportunity to consider the evidence presented and the demeanor of the witnesses, the Court has determined that the Plaintiff is entitled to receive a total of \$25,056.50 from the Defendant pursuant to the verbal contract between the parties. This amount adopts the testimony of the Plaintiff regarding the number of hours which the Plaintiff ground and adopts a per hour grinding rate of 450 cubic yards, for a total compensation of \$25,056.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The counterclaim of the Defendant is hereby dismissed; and
2. The Plaintiff is awarded a total of \$25,056 from the Defendant.

DONE AND ORDERED on this the 21st day of July, 2007.


James S. Verner, Special Referee

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

Case # 2006 CP-36-395

EXHIBITS

Plaintiff(s) Thomas Jackson Construction, Inc.
vs.

Defendants(s) Lake Murray Tree Inc

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1 Brochure	1 Weekly Pay Sheet	1
2 Invoice	2 Weekly Pay Sheet	2
3 Invoice	3	3
4 Estimate	4	4
5 Bill	5	5
6 Photo	6	6
7 Photo	7	7
8 Photo	8	8
9 Photo	9	9
10	10	10
11	11	11
12	12	12
13	13	13
14	14	14
15	15	15
16	16	16
17	17	17
18	18	18
19	19	19
20	20	20

FILED
NEWBERRY COUNTY
2007 JUL 11 P 4:28
JACQUE S. BOWERS
CLERK OF COURT

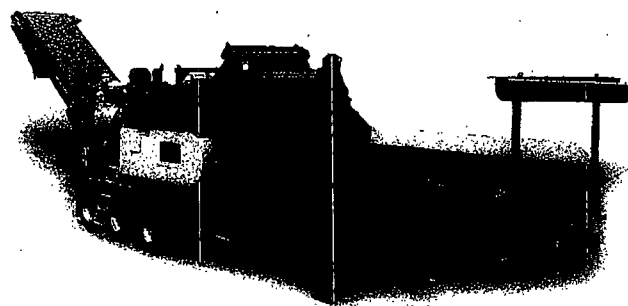
Court Reporter Rebecca A. Pangle CWR

Clerk of Court Jackie S. Bowers

Portable
Heavy-Duty
Waste Recycler

Model 4700B

The Peterson model 4700B Horizontal Recycler is our most popular model, and with good reason. Highly productive, efficient, and easy to transport, it hits the "sweet spot" in the Peterson Recycler product line. Power options include a 630 horsepower Caterpillar C16 diesel engine or the C18 with ratings from 700 to 765 horsepower. With a feed opening of 37 x 60 inches, the 4700B can easily handle the requirements of your daily grind!



EXHIBIT

P #1

7/14/07 ab

The 4700B features Peterson's Adaptive Control System, which controls all components of the feed system to optimize output. This second-generation system senses variations in the engine load and adapts the operating parameters to produce the maximum amount of material at all times.

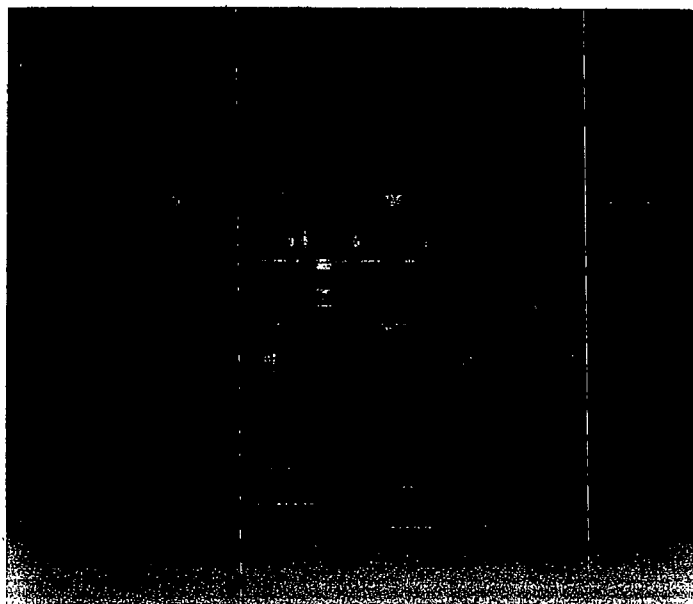
Peterson's three-stage grinding process with an up turning rotor and large grate area enables the 4700B to produce materials to exact specifications. Our quick-change multiple grate system makes it easy to customize grate configurations to produce a wide variety of finished materials. Grates are removed through an access door on the side wall of the 4700B.

Unique to Peterson Recyclers is our innovative latching Impact Release System, which minimizes damage from contaminants in the feed material. The anvil and first grate open on a severe impact, allowing the contaminant to be ejected, and then re-latch to permit continuous grinding.

Another major innovation on the 4700B is Peterson's Impact Cushion System. Urethane cushions allow movement of the compression roll/anvil housing pivot shaft, cushioning impacts due to contaminants in the feed material. Shear pins above the cushion help protect the shaft from catastrophic damage in the event of a severe impact.

Rotor options include a traditional "drum" style rotor for general applications, and a "pinned" style for high impact applications such as contaminated construction & demolition (C&D).

Peterson specializes in developing delivery and processing equipment that turns low-grade organic materials into high value products.





Lake Murray Tree, Inc.
6163 St Luke's Church Road
Prosperity, SC 29127

Phone # 803-364-1152 Fax # 803-364-1583

Invoice

Date	Invoice #
10/21/2005	134

Bill To
Creel Katrina Debris Reduction Creel Brothers, LLC 26400 Buford Creel Road Franklinton, LA 70438



P.O. No.	Terms	Project
	Net 7	

Cubic Yard	Description	Rate	Amount
3,200	CHOCTAW SITE #14 - SATURDAY, OCTOBER 15, 2005	1.00	3,200.00
3,200	CHOCTAW SITE #14 - SUNDAY, OCTOBER 16, 2005	1.00	3,200.00
3,200	CHOCTAW SITE #14 - MONDAY, OCTOBER 17, 2005	1.00	3,200.00
3,200	CHOCTAW SITE #14 - TUESDAY, OCTOBER 18, 2005	1.00	3,200.00
1,500	CHOCTAW SITE #14 - ~~SUNDAY~~ <i>Wednesday</i> , OCTOBER 19, 2005 - STOP TIME @ 11:00AM	1.00	1,500.00
Previously billed @ 17,100 cy.			
Total			\$14,300.00

<http://www.lakemurraytree.com>



Lake Murray Tree, Inc.
6163 St Luke's Church Road
Prosperity, SC 29127

Phone # 803-364-1152 Fax # 803-364-1583

Invoice

Date	Invoice #
10/27/2005	138

*Accepted
11AM*

Bill To
JACKSON, Thomas
VIA FAX
469-9558



P.O. No.	Terms	Project

Cubic Yard	Description	Rate	Amount
14,300	CHOCTAW	.95	13,585
11,500	ANGIE	.95	10,925
3,200	60 Rayburn	.95	3,040
THESE QUANTITIES ARE STILL EST. AT THIS POINT- HOWEVER, THIS IS WHAT WE HAVE <u>BILLED</u> FOR. (YOU WILL NEED TO INV. ME FOR FINAL QUANT.)			EST. \$21,550
W/ YOUR LTR HD, I-9		Total	\$0.00

+ INS. CERT) <http://www.lakemurraytree.com>

Thomas Jackson Construction



PMB #13 1089-A Alice Dr./Sumter, SC 29150/(803) 469-9525

Customer <i>Lake Murray Tree, Inc</i>	Phone	Date <i>1/10/06</i>
Street	City	
Job Name & Location <i>Louisiana Disaster Relief</i>		

Choctaw - Grinding debris: *24,000* cyd @ *\$1.95/cyd* *22,800.00*

Angie - Grinding debris: *20,500* cyd @ *\$1.95/cyd* *19,475.00*

60 Bayburn - Grinding debris: *8,250* cyd @ *\$1.95/cyd* *7,837.50*

Total *50,112.50*

Rental _____

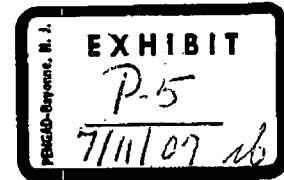
Total Materials _____

Total Labor _____

Tax _____

Total Amount _____

Signature _____



<u>Choctaw</u>	<u>Hours Worked</u>				
October 16	6 hours				
October 17	6 hours				
October 18	4 hours				
October 19	3.333 hours				
October 20	4 hours				
October 21	<u>3.333 hours</u>				
Total hours	26.666 hours	X	900 cu. yds/hr	=	24,000 cu. yds
					X \$ 0.95
					\$ 22,800.00

<u>60 Rayburn</u>					
October 23	7 hours				
October 24	<u>2.167 hours</u>				
Total hours	9.167 hours	X	900 cu. yds/hr	=	8,250 cu. yds
					X \$ 0.95
					\$ 7,837.50

<u>Angie</u>					
October 25	10.5 hours				
October 26	5 hours				
October 27	<u>7.25 hours</u>				
Total hours	22.75 hours	X	900 cu. yds/hr	=	20,500 cu. yds
					X \$ 0.95
					\$ 19,475.00

GRAND TOTAL OWED	\$ 50,112.50



Choctaw

Hours Worked

October 16

6 hours

October 17

6 hours

October 18

4 hours

October 19

3.333 hours

October 20

4 hours

October 21

3.333 hours

$$\text{Total hours } 26.666 \text{ hours} \times 900 \text{ cu. yds/hr} = 24,000 \text{ cu. yds}$$

X \$ 0.95

\$ 22,800.00

60 Rayburn

October 23

7 hours

October 24

2.167 hours

$$\text{Total hours } 9.167 \text{ hours} \quad \times \quad 900 \text{ cu. yds/hr} \quad = \quad 8,250 \text{ cu. yds}$$

X \$ 0.95

\$ 7,837.50

Angie

October 25

10.5 hours

October 26

5 hours

October 27

7.25 hours

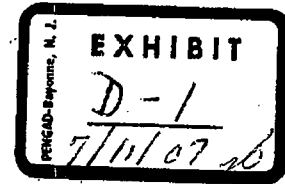
$$\text{Total hours } 22.75 \text{ hours} \times 900 \text{ cu. yds/hr} = 20,500 \text{ cu. yds}$$

X \$0.95

\$ 19,475.00

GRAND TOTAL OWED	\$ 50,112.50

**IED, INC.
WEEKLY PAY SHEET
JOB # 10-026-05
Village of Angie, LA**



**NAME: Lake Murray Tree, Inc.
Site Management & Grinding
Dump Site - Village of Angie**

	<u>CUBIC YARDS</u>	<u>RATE</u>
1st Payment for Site Management & Grinding	5340.04	

Total Cubic Yards	5340.04	\$1.50

Total Due	\$8,010.06

Retainage
10%

Retainage	\$801.01
Less advance	\$0.00
Total amount due	\$7,209.05

Paid 11-04-05

w/e 10/28/05

IED, INC.
WEEKLY PAY SHEET
JOB # 09-023-05
Washington Parish, LA



NAME: Lake Murray Tree, Inc.
Site Management & Grinding
Dump Site - Sixty Rayburn

	<u>CUBIC YARDS</u>	<u>RATE</u>
1st Payment for Site Management & Grinding	3740.91	

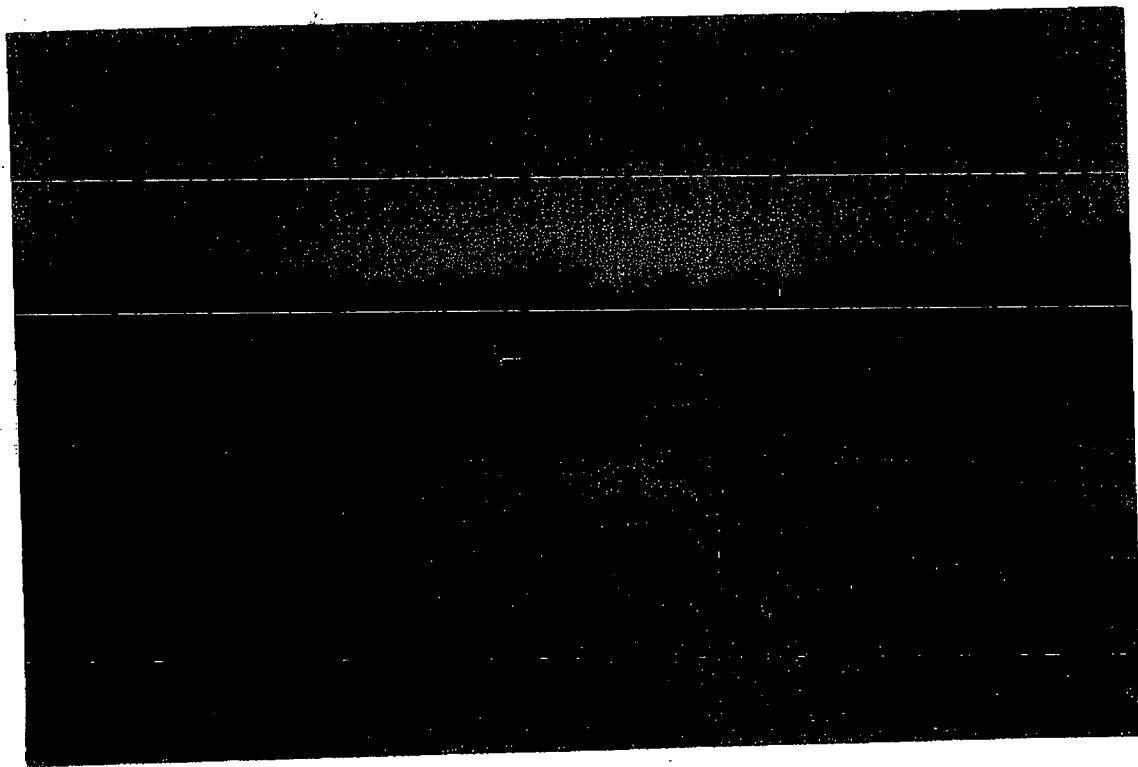
Total Cubic Yards	3740.91	\$0.50

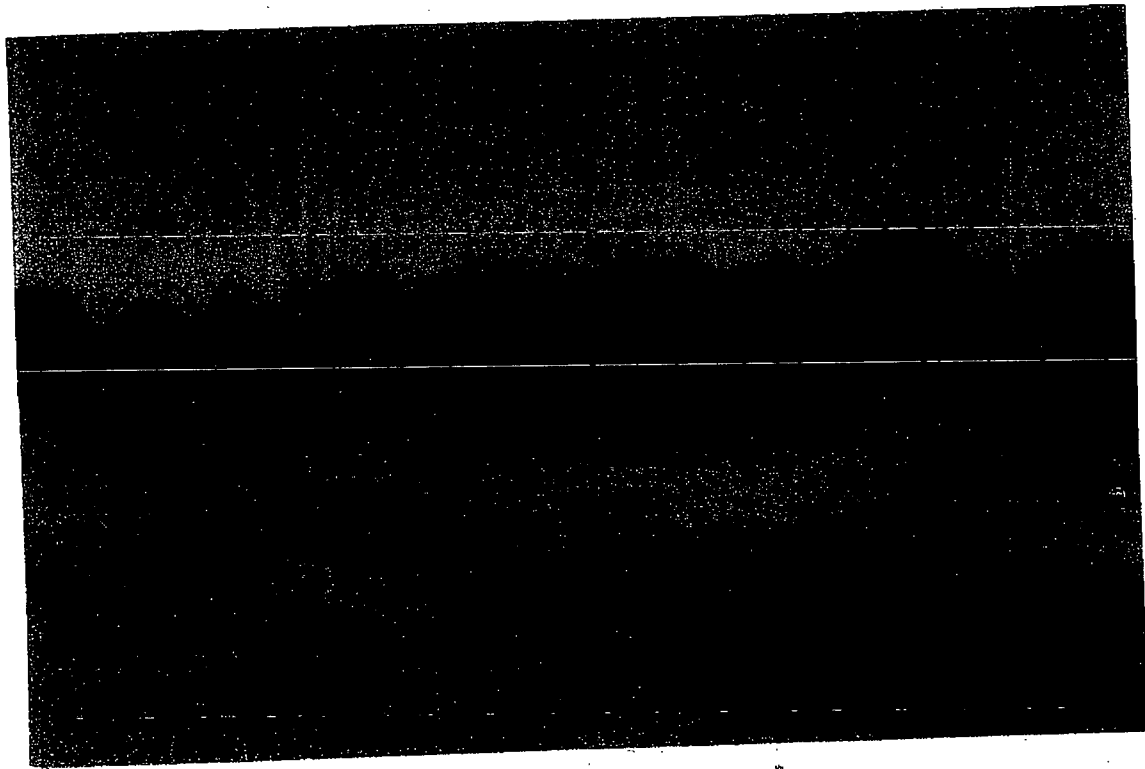
Retainage
10%

Total Due	\$1,870.46

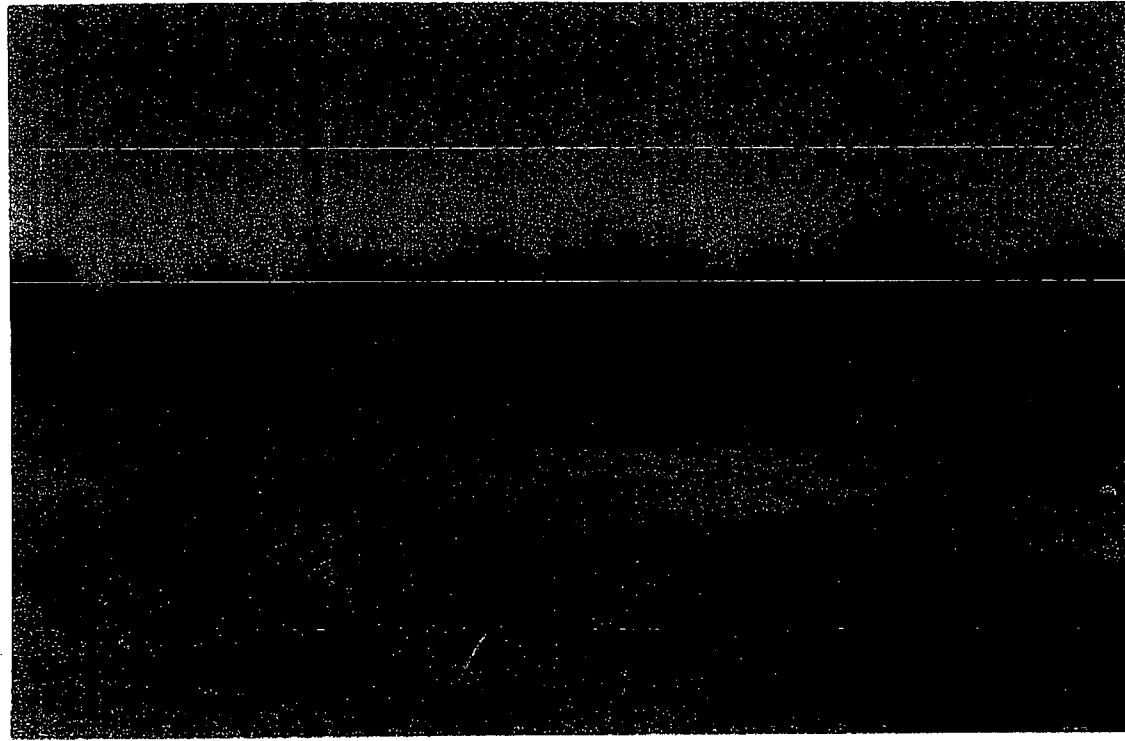
Retainage	\$187.05
Less advance	\$0.00
Total amount due	\$1,683.41

Paid 11-11-05
Correction in rate.









STATE OF SOUTH CAROLINA

JUDGEMENT ON TRIAL OR ORDER BY THE COURT

COUNTY OF NEWBERRY

COURT OF Common Pleas

CASE NO. 2006CP36-395

Thomas Jackson Construction, Inc. vs

Lake Murray Tree, Inc.

PLAINTIFF(S)

DEFENDANTS(S)

- () JURY VERDICT. THIS ACTION CAME BEFORE THE COURT FOR A TRIAL BY JURY. THE ISSUES HAVE BEEN TRIED AND THE JURY HAS RENDERED ITS VERDICT.
- () DECISION BY COURT. THIS ACTION CAME TO TRIAL OR HEARING BEFORE THE COURT. THE ISSUES HAVE BEEN TRIED OR HEARD AND A DECISION HAS BEEN RENDERED.
- () ACTION DISMISSED. () RULE 40 (J) OF SCRPC, () RULE 12 (B) OF SCRPC,
() SETTLED. () VOL. NONSUIT. () OTHER

IT IS ORDERED AND ADJUDGED: (☒) SEE ATTACHED ORDER, () STATEMENT OF JUDGEMENT BY COURT

Consent Order of Reference

DATED AT Greenville, SOUTH CAROLINA, THIS 19th DAY OF June, 20 07.

s/ Edward W. Miller

JUDGE/CLERK OF COURT

THIS JUDGEMENT WAS ENTERED ON THE 25th DAY OF June, 20 07.
AND A COPY MAILED FIRST CLASS THIS 27th DAY OF June, 20 07.
TO ATTORNEYS OF RECORD OR TO PARTIES (WHEN APPEARING PRO SE) AS FOLLOWS:

Barbara George Barton, esq.

Samuel M. Price, Jr., esq.

ATTORNEY(S) FOR PLAINTIFF(S)

ATTORNEY(S) FOR DEFENDANT(S)

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
2006-CP-36-395

Thomas Jackson Construction, Inc.,)
Plaintiff,)
vs.)
Lake Murray Tree, Inc.,)
Defendant.)

CONSENT ORDER OF REFERENCE

FILED
NEWBERRY COUNTY
2007 JUN 25 P 3:05
JACQUE S. JOYNER
CLERK OF COURT

A Scheduling Order was issued by this Court on the 7th day of June, 2007. Under such Order, it was required that a Special Referee be appointed no later than June 18, 2007. It was also ordered that the hearing/trial be had on or before July 13, 2007. The parties have agreed that this matter shall be tried on Wednesday, July 11, 2007, commencing at 10:00 a.m. This date and time is, of course, contingent upon the Special Referee's calendar.

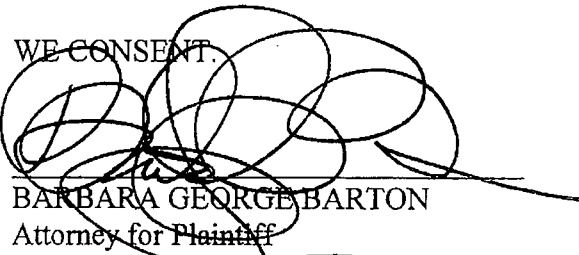
Pursuant to Rule 53 - SCRCF, the parties hereto have agreed and stipulated that the issue in this action be referred to James S. Verner as Special Referee for the above-entitled County and that the Special Referee shall have the authority to enter final judgment with appeal, if any, directly to the South Carolina Supreme Court; now, on motion of the undersigned attorney for the Plaintiff, by and with the consent of the answering defendant, if any,

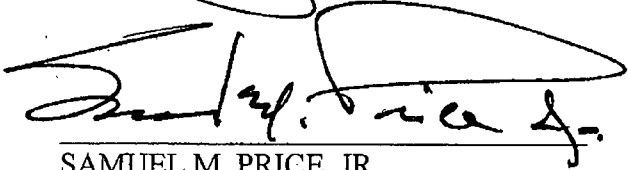
IT IS HEREBY ORDERED that this case is referred to James S. Verner as Special Referee to direct entry of final judgment in this action under Rule 53(e)(1), SCRCF. Any appeal from the final judgment entered by the Special Referee shall be directly to the Supreme Court.

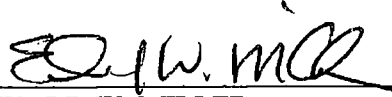
IT IS SO ORDERED.

Summerville, SC
June 19, 2007

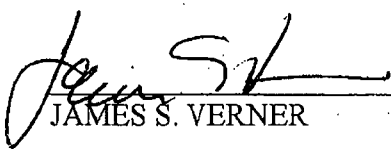
WE CONSENT.


BARBARA GEORGE BARTON
Attorney for Plaintiff


SAMUEL M. PRICE, JR
Attorney for Defendant


EDWARD W. MILLER
JUDGE OF EIGHTH JUDICIAL CIRCUIT

I CONSENT TO SERVE.


JAMES S. VERNER

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
2006-CP-36-395

Thomas Jackson Construction, Inc.,)
)
Plaintiff,)
)
vs.)
)
Lake Murray Tree, Inc.,)
)
Defendant.)

AMENDED
ANSWER AND COUNTERCLAIM

FILED
CLERK OF COURT
2007 JUL -9 P 2:23
NEWBERRY COUNTY

Defendant Lake Murray Tree, Inc. would respectfully amend the Answer and Counterclaim as follows:

1. That defendant would reallege and reaffirm each and every allegation contained in the Answer and Counterclaim as if set forth herein verbatim.

2. That plaintiff was on site and would grind all materials located at Angie-Varnado.

Based upon that information, defendant did not a contract to grind all material at Angie-Varnado.

That such contract provided for a penalty. Upon signing the contract, defendant delivered to plaintiff a sub-contractor's contract which defendant failed and refused to sign. When plaintiff left the job at Angie-Varnado, defendant was still responsible for grinding all matter therein.

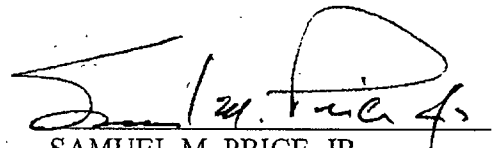
Those persons who were delivering the organic material to be ground continued to deliver such material to Angie-Varnado. Defendant was required to provide a ^{TRACK S&P} ~~back~~ hoe and operator to take all new matter and stack it on the existing matter until defendant was able to locate a sub-contractor. This was not done until March of 2006. The additional expenses to defendant were the cost of the operation of the back hoe and the operator of the back hoe which totaled Sixty-two thousand four hundred and no/100 (\$62,400.00) dollars. Additionally, defendant was required to

pay a higher rate to secure another sub-contractor. The higher rate caused a loss to defendant in the amount of Twelve thousand two hundred fifty and no/100 (\$12,250.00) dollars. Upon information and belief, defendant should be entitled to a judgment against the plaintiff in the amount of Seventy-four thousand six hundred fifty and no/100 (\$74,650.00) dollars for the total loss at the Angie-Varnado site, plus legal costs and attorneys fees.

WHEREFORE, having fully set forth its Answer and Counterclaim, defendant would respectfully request of this Honorable Court:

(A) For an Order of this Court granting a judgment to defendant against plaintiff in the \$74,650.00 plus legal costs and attorney's fees.

(B) For such other and further relief as the Court may deem necessary and proper.



SAMUEL M. PRICE, JR.
Attorney for Defendant
1413 Main Street, P. O. Drawer 836
Newberry, South Carolina 29108
(803) 276-0796

Newberry, SC
July 4th, 2007

#2

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
2006-CP-36-395

Thomas Jackson Construction, Inc.,)
Plaintiff,)

vs.)

Lake Murray Tree, Inc.,)
Defendant.)

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the office of Samuel M. Price, Jr., Attorney for Defendant, and is a person of such age and discretion to be competent to serve papers.

That on July 6, 2007, she served a copy of the attached Amended Answer and Counterclaim by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Newberry, South Carolina.

ADDRESSEE:

Robinson, Barton, McCarthy, Calloway & Johnson, P.A.
Attention Barbara George Burton
Attorney at Law
P. O. Box 12287
Columbia, South Carolina 29211-2287

FILED
NEWBERRY COUNTY
2007 JUL -9 P 2:23

Ramona F. Shealy
RAMONA F. SHEALY

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY**

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO.: 2006-CP-36-395

Thomas Jackson Construction Inc.

vs. Lake Murray Tree, Inc.

PLAINTIFF(S)

DEFENDANT(S)

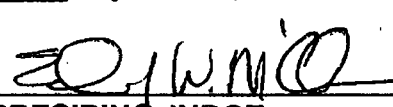
CHECK ONE:

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

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

*DEFENDANT'S MOTION TO PERMIT LATE ANSWER OF REQUEST TO ADMIT IS GRANTED. PLAINTIFF WITHDRAWS SUMMARY JUDGMENT MOTION. SCHEDULING ORDER AS FOLLOWS:
1) DISCOVERY REQUESTS SERVED BY 6/18/07; 2) SPECIAL REFeree SELECTED BY 6/18/07; 3) **

Dated at Newberry, South Carolina, this 7 day of June, 2007.


PRESIDING JUDGE

This judgment was entered on the 7th day of June, 2007, and a copy mailed first class this 8th day of June, 2007 to attorneys of record or to parties (when appearing pro se) as follows:

Barbara George Barton, Esquire

Samuel M. Price, Jr., Esquire

ATTORNEY FOR THE PLAINTIFF

ATTORNEY FOR THE DEFENDANT

* (3) PLAINTIFFS DISCOVERY RESPONSES DUE BY 6/29/07; AND HEARING HELD ON 6/13/07.

S/ Jackie S. Bowers bmg
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

Case No: 2006-CP-36-395

JACOB S. BROWN
CLERK OF COURT

2007 MAY 21 A 11:32

FILED
CLERK OF COURT

**PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO
PERMIT ANSWERS TO REQUESTS FOR ADMISSIONS**

COMES NOW, the Plaintiff, Thomas Jackson Construction, Inc., in response to the Defendant's Motion to Permit Answers to Requests for Admissions (the "Motion"), filed with the Court on April 30, 2007. The Plaintiff requests that the relief sought by the Defendant in the Motion be denied.

BACKGROUND

The Plaintiff properly served its Requests for Admission upon the attorney for the Defendant by mail in accordance with Rule 5(b)(1), SCRPC on January 12, 2007. The Requests for Admission separately set forth each matter and requested that the Defendant admit or deny each matter. The Requests for Admission clearly requested a response within thirty (30) days of service pursuant to Rule 36(a), SCRPC.

This matter first appeared on the Court's Roster for trial on the week of February 5, 2007. Because discovery had not yet been completed, counsel for the Plaintiff attempted to contact counsel for the Defendant by telephone numerous times during the week or so preceding February 5, 2007. Counsel for the Defendant failed to respond to such telephone calls, and on February 2, 2007, the Plaintiff filed by facsimile a Motion for Continuance in order that discovery could be completed prior to trial. To determine whether the Defendant would consent to the Motion for a Continuance, Judge Brooks P. Goldsmith then attempted to contact counsel for the Defendant, but his attempts were also unsuccessful. Because Judge Goldsmith was unable to reach counsel for the Defendant, Judge Goldsmith informed counsel for the Plaintiff

that he did not feel comfortable entering an order granting the continuance. However, the matter was number sixty (60) on the non-jury roster and the Court did not reach this matter during the week of February 5, 2007.

Despite further numerous telephone calls to and voicemails for counsel for the Defendant, and despite written correspondence mailed to counsel for the Defendant on February 15, 2007, which is attached hereto as Exhibit A, the Plaintiff had not received a response of any kind from counsel for the Defendant by the middle of March, 2007. More than sixty (60) days had passed and the Defendant failed to respond in any manner to the Plaintiff's Requests for Admission, the other discovery requests or the efforts to contact counsel for the Defendant. On March 16, 2007 the Plaintiff filed its Motion to Compel Discovery and its Motion for Summary Judgment with the Court.

On April 2, 2007, after filing the Motion to Compel Discovery, Plaintiff received a faxed letter (the "April 2 Letter") from counsel for the Defendant, which is attached hereto as Exhibit B. This April 2 Letter was the first communication from counsel for the Defendant since the Plaintiff's Requests for Admission were served on January 12, 2007 despite numerous attempts by the Plaintiff to communicate with counsel for the defendant. The April 2 Letter was faxed to the Plaintiff more than 75 days after service of the Requests for Admission upon the Defendant. In the April 2 Letter counsel for the defendant stated that he was in receipt of Plaintiff's Motion to Compel Discovery and that he intended to have responses to Plaintiff's discovery requests to the Plaintiff by Friday, April 6, 2007. The Plaintiff did not hear from the Defendant or receive any discovery responses until April 30, 2007, when the Plaintiff received responses to all of its discovery requests, including the Defendants Answers to the Requests for Admissions along with the Defendant's Motion. These responses to discovery and Answers to Requests for Admissions were not received by the Plaintiff until more than 100 days after they were served upon the Defendant and some 40 days after the Plaintiff Filed its Motion for Summary Judgment based upon the default admissions.

FAILURE TO DENY OR OBJECT TO A REQUEST FOR ADMISSION

Rule 36(a) SCRCF states, "Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as stipulated in writing by the parties

pursuant to Rules 29 and 6(b), the party to whom the request is directed serves upon the party requesting the admission a written answer or objection” Rule 36(a), SCRCP further states, “Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.” The Defendant never contacted Plaintiff regarding a request for an extension of time and such an extension was never granted. Indeed, the Defendant never contacted the Plaintiff about anything until the April 2 Letter. However, even if an extension had been requested and agreed to, the maximum consensual extension allowed by Rule 6(b), SCRCP would have been until March 15, 2007, which was long before any discovery responses were provided. The Plaintiff asserts that Defendant did not timely answer Plaintiff’s Requests for Admissions and each such request should be deemed admitted as set out by the Plaintiff in its Motion for Summary Judgment.

GOOD CAUSE IS REQUIRED TO ENLARGE THE TIME AFTER EXPIRATION

Rule 6(b)(2), SCRCP states, “When by these rules or by notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, . . . the court for cause shown may at any time in its discretion . . . (2) upon motion made after the expiration of the specified period, for good cause shown, permit the act to be done.”

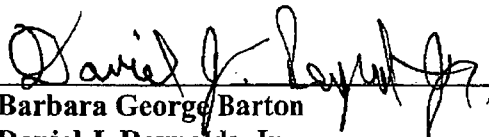
The Defendant’s Motion admits that the time period for answering the Requests for Admission expired prior to service of its discovery responses upon Plaintiff. The Defendant’s Motion blandly states that the Court has the discretion to permit Answers to be provided after the thirty (30) day period and that to deny the defendant’s requests would deny justice to the defendant and baldly claiming that there has been no prejudice to the Plaintiff in this delay. Defendant’s Motion fails to state any reason why it took Defendant in excess of the over 100 days it took to respond to Plaintiff’s Requests for Admission. Defendant’s Motion also fails to recognize the prejudice to the Plaintiff in the delay caused by the Defendant’s tardy responses as well as the extra time and expenses incurred by the Plaintiff in its attempts to compel discovery from the Defendant. The Plaintiff has never been paid anything for the work performed for the benefit of the Defendant in October, 2005, although the Defendant has been paid for the work performed on these sites. The Plaintiff has been forced to go into default with its creditors and to sell property for less than fair market value in a desperate attempt to make payments on its obligations. Plaintiff has been severely prejudiced by the unwarranted and cavalier delay of the

Defendant. The Defendant has failed to show good cause for the delay and has failed to show good cause as to why the time period should be enlarged.

WHEREFORE, Plaintiff hereby requests that the Defendant's Motion to Permit Answers to Requests for Admissions be denied, that the Requests for Admissions be deemed admitted as set forth in Rule 36(a), SCRCP, and that the Court grant such other and further relief as it deems appropriate.

**ROBINSON, BARTON, MCCARTHY
CALLOWAY & JOHNSON, P.A.**

BY:


Barbara George Barton
Daniel J. Reynolds, Jr.

Attorneys for the Plaintiff
1715 Pickens Street
Post Office Box 12287
Columbia, SC 29211-2287
(803) 256-6400

Columbia, South Carolina
May 17, 2007.

EXHIBIT A

FILED
CLERK OF COURT
2001 MAY 21 A 11:33
460 N. 1st St.
Phoenix, AZ 85004

ROBINSON, BARTON, MCCARTHY, CALLOWAY & JOHNSON, P.A.

ATTORNEYS AT LAW

1715 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29201

G. WILLIAM MCCARTHY, JR.*
BARBARA GEORGE BARTON*
W. E. CALLOWAY
NANCY E. JOHNSON, SC & NC*

DANIEL J. REYNOLDS, JR.

* CERTIFIED BANKRUPTCY SPECIALISTS
IN THE STATE OF SOUTH CAROLINA

WILLIAM E.S. ROBINSON
(1942-1993)

P.O. BOX 12287
COLUMBIA, S.C. 29211-2287
803/256-6400

FAX 803/779-0267

February 15, 2007

Samuel M. Price, Jr., Esq.
PO Drawer 836
Newberry, SC 29108

Re: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.,
Case No. 06-CP-36-395

Dear Mr. Price:

I am writing today to inquire about your client's responses to our discovery requests in the above-captioned matter. Please contact me about this matter immediately.

On January 12, 2007, I mailed to you the Plaintiff's First Set of Continuing Interrogatories to Defendant, the Plaintiff's First Set of Continuing Requests for Production to Defendant, and the Plaintiff's First Set of Requests for Admission to Defendant. Accordingly, your client's discovery responses were due in this matter on Monday, February 12, 2007.

I have also attempted to reach you by telephone numerous times over the last month to discuss various issues including the Newberry County roster date the week of February 5, 2007 for which we were required to appear, the possibility of settlement in this matter, and the discovery due in this matter. However, I have been unable to reach you and have left numerous messages on your office telephone without receiving any response.

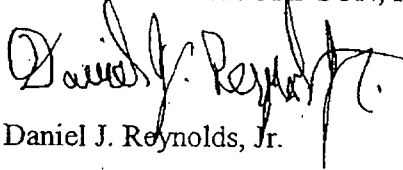
Please contact me immediately so that we may discuss the overdue discovery in this matter. My client performed services for your client in October, 2005, and has been awaiting payment since that time. Further delay in obtaining payment for its services is unacceptable to my client. Therefore, if I have not heard from you by the end of next week, February 23, 2007, we will have no choice but to pursue the proper legal remedies for your failure to comply with discovery, which remedies may include, but are not limited to, a Motion to Compel discovery and/or a Motion for Default Judgment.

Letter to Samuel M. Price, Jr., Esq.
February 15, 2007
Page Two

Thank you in advance for your cooperation in this matter.

Sincerely,

ROBINSON, BARTON, McCARTHY,
CALLOWAY & JOHNSON, P.A.

A handwritten signature in dark ink, appearing to read "Daniel J. Reynolds, Jr.", with a stylized flourish at the end.

Daniel J. Reynolds, Jr.

Cc: Barbara George Barton, Esq.

EXHIBIT B

FILED
FEDERAL BUREAU OF INVESTIGATION
2007 MAY 21 A 11:33
JACKIE S. JONES
CLERK OF COURT

Law Office
of
Samuel M. Price, Jr.
1413 Main Street
P. O. Drawer 836
Newberry, South Carolina 29108

Fax
Area Code 803
276-9495

Telephone
Area Code 803
276-0796

March 31, 2007

Robinson, Barton, McCarthy, Calloway & Johnson, P.A.
Attention Daniel J. Reynolds, Jr.
P. O. Box 12287
Columbia, South Carolina 29211-2287

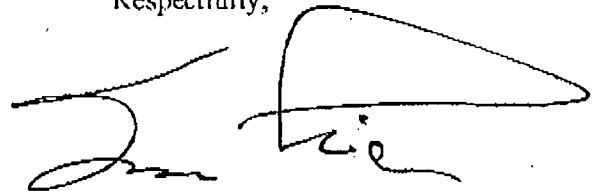
VIA FAX ONLY
(803) 779-0267

RE: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.

Dear Mr. Reynolds:

I am in receipt of your Motion to Compel Discovery in the above captioned matter. I intend to have responses to discovery pleadings to you by Friday, April 6, 2007. I sincerely apologize for my delay. It has not been in bad faith.

Respectfully,



Samuel M. Price, Jr.

rfs

FILED
CLERK OF COURT
2007 MAY 21 A 11:33
JACQUE S. JOHNSON

ROBINSON, BARTON, MCCARTHY, CALLOWAY & JOHNSON, P.A.

ATTORNEYS AT LAW
1716 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29201

G. WILLIAM MCCARTHY, JR.*
BARBARA GEORGE BARTON*
W. E. CALLOWAY
NANCY E. JOHNSON, SC & NC*

WILLIAM E.S. ROBINSON
(1942-1993)

P.O. BOX 12287
COLUMBIA, S.C. 29211-2287
803/256-6400

FAX 803/779-0267

DANIEL J. REYNOLDS, JR.

* CERTIFIED BANKRUPTCY SPECIALISTS
IN THE STATE OF SOUTH CAROLINA

May 18, 2007

Clerk of Court
1226 College St Rm 7
PO Drawer 10
Newberry, SC 29108-0278

Re: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.,
Case No. 06-CP-36-395

Dear Sir/Madam:

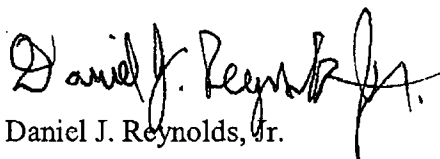
Enclosed, please find an original and one copy of the Plaintiff's Objection to Defendant's Motion to Permit Answers to Requests to Admission in the above captioned case.

Please file the original with the Court record and return a clocked copy of the objection to me in the enclosed self-addressed, stamped envelope.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,

ROBINSON, BARTON, McCARTHY,
CALLOWAY & JOHNSON, P.A.


Daniel J. Reynolds, Jr.

Cc: Samuel M. Price, Jr.

Enclosure

FILED
CLERK OF COURT
2007 MAY 21 A 11:32
JACQUELINE S. JONES
CLERK OF COURT

Copy mailed
5/21/07

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Case No: 2006-CP-36-395

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

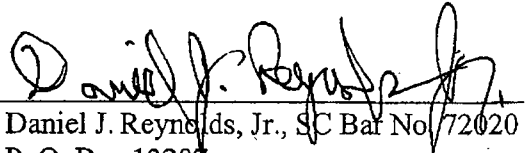
CERTIFICATE OF SERVICE

I, Daniel J. Reynolds, Jr., an associate attorney with Robinson, Barton, McCarthy, Calloway & Johnson, P.A., an attorney for the Plaintiff, hereby certify that I mailed a copy of the **Plaintiff's Objection to Defendant's Motion to Permit Answers to Requests for Admissions**, which was mailed to the Court for filing on May 18, 2007, to Samuel M. Price, Jr., Attorney for Lake Murray Tree, Inc., P.O. Drawer 836, Newberry, SC 29108 by depositing same in the Post Office, postage prepaid, at Columbia, South Carolina, where there is regular communication by mail, and that same was mailed postage prepaid on May 18, 2007:

ROBINSON, BARTON, MCCARTHY,
CALLOWAY & JOHNSON, P.A.

May 18, 2007.

BY:


Daniel J. Reynolds, Jr., SC Bar No. 72020
P. O. Box 12287
Columbia, SC 29211-2287
(803) 256-6400

FILED
2007 MAY 21 A 11:33
CLERK OF COURT
NEWBERRY COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Thomas Jackson Construction, Inc.

☐ Plaintiff

v.

Lake Murraray Tree, Inc.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2007-CP-36-395

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Daniel J. Reynolds, Jr., Bar No.

Address:

P. O. Box 12287, Columbia, SC 29211-2287

phone: fax:

e-mail: other:

Defendant's Attorney:

Samuel M. Price, Jr., Bar No.

Address:

P. O. Drawer 836, Newberry, SC 29108

phone: 803-276-0796 fax: 803-276-9495

e-mail: other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Permit answers to Requests for Admissions

Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

April 27, 2007

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by:

Brooke Gilliam

Date Filed:

☒ MOTION FEE COLLECTED: \$25.00 Rec'd #26/99

☐ CONTESTED - AMOUNT DUE:

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
2006-CP-36-395

Thomas Jackson Construction, Inc.,)
Plaintiff,)
vs.)
Lake Murray Tree, Inc.,)
Defendant.)

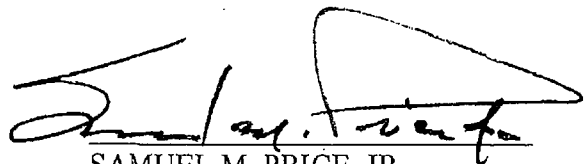
MOTION TO PERMIT ANSWERS
TO REQUESTS FOR ADMISSIONS

FILED
2007 APR 30 P 2:42
CLERK OF COURT

TO: Robinson, Barton, McCarthy Calloway & Johnson, P.A., Attorneys for Plaintiff:

PLEASE TAKE NOTICE that ten (10) days after service of this notice or as soon thereafter as can be heard, the undersigned will move before the Judge of the Eighth Judicial Circuit for an Order to be permitted to answer Requests for Admissions.

Plaintiff's attorney did serve upon the undersigned Requests for Admissions pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the admissions shall be deemed admitted if not answered within thirty (30) days after service. It is now in excess of thirty (30) days after service and the Answers have now been provided to plaintiff's attorney. This Court has the discretion to permit Answers to be provided after the thirty (30) day period. To deny defendant's requests to accept responses to Requests for Admissions would deny justice to the defendant. There has been no prejudice to the plaintiff by this delay.



SAMUEL M. PRICE, JR.
Attorney for Defendant
1413 Main Street, P. O. Drawer 836
Newberry, South Carolina 29108
(803) 276-0796

Newberry, SC
April 27, 2007

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
2006-CP-36-395

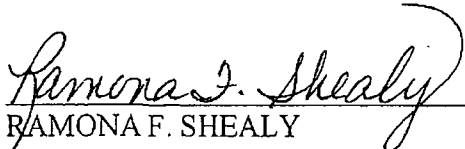
Thomas Jackson Construction, Inc.,)
Plaintiff,)
vs.)
Lake Murray Tree, Inc.,)
Defendant.)

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the office of Samuel M. Price, Jr., Attorney for Plaintiff, and is a person of such age and discretion to be competent to serve papers.

That on April 27, 2007, she served a copy of the attached Answer to Requests for Admission, Answers to Plaintiff's First Set of Interrogatories to Defendant, Response to Plaintiff's First Set of Continuing Requests for Production to Defendant, and Motion to Permit Answers to Requests for Admissions by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Newberry, South Carolina.

ADDRESSEE: Robinson, Barton, McCarthy, Calloway & Johnson, P.A.
Attention Daniel J. Reynolds, Jr.
Attorney at Law
P. O. Box 12287
Columbia, South Carolina 29211-2287


RAMONA F. SHEALY

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

THOMAS JACKSON CONSTRUCTION, INC.,

☒ Plaintiff

v.

Lake Murray Tree, Inc.,

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2006-CP-36-395

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Barbara George Barton, Bar No. 561

Address:

1715 Pickens Street

Columbia, SC 29201

phone: 803-256-6400 fax: 803-779-0267

e-mail: BBarton@rbmcc.com other:

Defendant's Attorney:

Samuel M. Price, Jr., Bar No.

Address:

1413 Main Street, PO Drawer 836

Newberry, SC 29108

phone: 803-276-0796 fax: 803-276-9495

e-mail: other:

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion For Order Compelling Discovery

Estimated Time Needed: 1 Hour Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$25.00**

☐ **EXEMPT:** ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by:

Laura Lane

Date Filed:

☒ **MOTION FEE COLLECTED:** \$25.00 Rec'd # 25240

☐ **CONTESTED - AMOUNT DUE:** _____

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,)

Case No: 2006-CP-36-395

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,)
Defendant)

MOTION FOR ORDER COMPELLING DISCOVERY

COMES NOW Thomas Jackson Construction, Inc. ("Plaintiff") and hereby moves the Court pursuant to Rule 37(a)(2), SCRPC for an order compelling Defendant, Lake Murray Tree, Inc., to produce discovery and respond to discovery requests (the "Motion"). In support of this Motion, the Plaintiff would show as follows:

On January 12, 2007, the Plaintiff served upon the Defendant the discovery requests attached hereto as **Exhibit A**, including the Plaintiff's First Set of Continuing Interrogatories to Defendant (the "Interrogatories") and Plaintiff's First Set of Continuing Requests for Production to Defendant (the "Requests for Production"). Service was made by mail upon the attorney for the Defendant pursuant to Rule 5(b)(1), SCRPC as evidenced by the Certificate of Service included in **Exhibit A**. Responses were due to the Interrogatories and Requests for Production on or before February 12, 2007. The Defendant has failed to respond to the Interrogatories and Requests for Production. Attorneys for the Plaintiff have attempted to communicate with counsel for the Defendant by telephone and correspondence regarding the status of discovery responses, but Plaintiff has received no responses. Plaintiff notes for the Court that Defendant has also failed to respond to the Plaintiff's First Set of Requests for Admission to Defendant, and the matters asserted therein are now admitted. In addition to this Motion, the Plaintiff has also filed a Motion for and Memorandum in Support of Summary Judgment on Defendant's Counterclaim and the Plaintiff's Complaint. In the event that Summary Judgment is granted prior to the hearing on this Motion, then this Motion becomes moot.

It has now been more than sixty (60) days since service of the Interrogatories and Requests for Production. Rule 33(a), SCRPC states that "[t]he party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the

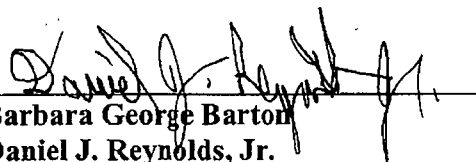
interrogatories” Rule 34(b), SCRCP states that “[t]he party upon whom the request [for production] is served shall serve a written response within 30 days after the service of the request” Additionally, the express language in the Interrogatories and in the Requests for Production specifically indicates that responses are due within thirty (30) days. Defendant has failed to comply as Plaintiff has not received any discovery responses or any response to its repeated attempts to contact counsel for the Defendant.

Plaintiff requests that Defendant be required to pay Plaintiff’s expenses incurred in obtaining an Order Compelling Discovery as set forth in Rule 37(a)(4), SCRCP and requests that the Order Compelling Discovery require the Defendant to respond to Plaintiff’s Interrogatories and Requests for Production within fifteen (15) days and, upon affidavit of Plaintiff’s counsel as to Defendant’s failure to comply with such order, have a default judgment entered in favor of the Plaintiff for the full amount claimed in this matter pursuant to the authority granted to the Court in Rule 37(b)(2)(C), SCRCP.

WHEREFORE, the Plaintiff requests that the court enter an order compelling Defendant to produce discovery responses within fifteen (15) days and, upon affidavit of Plaintiff’s counsel as to Defendant’s failure to comply with such order, have a default judgment entered in favor of the Plaintiff for the full amount claimed in this matter and Plaintiff requests such other and further relief as the Court deems necessary and proper.

**ROBINSON, BARTON, MCCARTHY
CALLOWAY & JOHNSON, P.A.**

BY:


**Barbara George Barton
Daniel J. Reynolds, Jr.
Attorneys for the Plaintiff
1715 Pickens Street
Post Office Box 12287
Columbia, SC 29211-2287
(803) 256-6400**

**Columbia, South Carolina
March 14, 2007.**

EXHIBIT A
(Plaintiff's Interrogatories and Requests for Production to Defendant)

FILED
HERSHEY COUNTY
2001 MAR 16 A 9:48
JACOB A. POWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

Case No: 2006-CP-36-395

FILED
NEWBERRY COUNTY
2007 MAR 16 A 9:44
CLERK OF COURT

PLAINTIFF'S FIRST SET OF CONTINUING INTERROGATORIES TO DEFENDANT

TO: SAMUEL M. PRICE, ESQUIRE, ATTORNEY FOR DEFENDANT, LAKE MURRAY TREE, INC.

Pursuant to Rule 33(a) of the South Carolina Rules of Civil Procedure, Your Client must, within thirty (30) days after service hereof, answer each interrogatory separately and fully in writing under oath, unless objected to, in which event Rule 33(a) requires you to state the reasons for the objection.

DEFINITIONS

As used herein:

1. The term "Document(s)" is used in its customary broad sense and includes all written, typed, printed, recorded or graphic statements, communications or other matter, however produced or reproduced, and whether or not now in existence, in the possession, custody or control of you or your client (as defined below), including without limitation: all writings; studies; analyses; tabulations; evaluations; reports; reviews; agreements; contracts; communications (including intra-company communications); letters or other correspondence; messages; telegrams; telexes; cables; memoranda; records; notes; summaries; sound recordings or transcripts of personal or telephone conversations; meetings; conferences or interviews; telephone toll records; diaries; desk calendars; appointment books; forecasts; accountants' work papers; drawings; graphs; charts; maps; diagrams; blueprints; tables; indices; pictures; photographs; films; phonograph records; tapes; CD Roms; microfilm; microfiche; charges; ledgers; accounts; cost sheets; financial statements or reports; statistical or analytical records; minutes or records of meetings or conferences; opinions or reports of consultants; appraisals; reports or summaries of negotiations; books; brochures; pamphlets; circulars; trade letters; press releases; newspaper and magazine clippings; notebooks, projections; working papers; checks (front and back); check stubs or receipts; invoice vouchers; tape data sheets or data processing cards or discs or any other written, recorded, transcribed, punched, taped, filed or graphic matter, however produced or reproduced; and any other document, writing or other data compilation of whatever description, including but not limited to any information contained in any computer although not yet printed out or the memory units containing such data from which information

can be obtained or translated into reasonably usable form, and all drafts and non-identical copies of the foregoing.

2. The word "Person(s)" means individuals and entities, including without limitation sole proprietorships, firms, associations, companies, partnerships, joint ventures, corporations, trusts, estates, committees, and all other legal, business or governmental entities.

3. The terms "Your Client" and "Lake Murray Tree" refer to Lake Murray Tree, Inc. Any reference, either collectively or individually, to "Your Client" or "Lake Murray Tree" includes agents, officers, directors, employees, representatives, subsidiaries and any other person or entity acting or purporting to act on behalf of Lake Murray Tree, Inc.

4. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The use of the word "include(s)" and "including" shall be construed to mean "without limitation."

5. The word "Identify" when used with respect to an individual means to state that individual's: (a) full name, present or last known residence and business address(es) and telephone number(s); (b) present or last known employer(s), place of employment and job title, if any; and (c) the nature (including job title, if any) and dates of any affiliation, by employment or otherwise, with any party to this litigation.

6. The word "Identify" when used with respect to a Person other than an individual means (a) to state its name; (b) to describe its nature (e.g., corporation, limited liability company, partnership, etc.); (c) to state the location of its principal place of business; and (d) to Identify the Persons employed by such entity with whom you have dealt concerning the subject matter of these interrogatories.

7. The word "Identify" when used with respect to a Document means (a) to specify the nature or type of the Document (e.g., letter, memorandum, etc.); (b) to state the date, if any, appearing on the Document, or if none, the date such Document was prepared or received; (c) to describe in general the subject matter of the Document with sufficient particularity so as to enable such Document to be precisely identified; (d) to Identify each Person who wrote, signed (or authorized the signature of), dictated, or otherwise participated in the preparation of the Document; (e) to Identify any addresses thereof, and, if known, each Person to whom the Document was distributed; (f) to state the present physical location of the Document; and (g) to Identify each Person having possession, custody or control of the Document.

8. The word "Describe" means to state with particularity, including, but not limited to, each date, fact, event, and occurrence, and to Identify each Document and each person who can testify as to such stated dates, fact, events, occurrences and documents.

9. The word "Communication" means any conversation or transmittal or exchange of information, whether oral, telephonic, telegraphic, electronic, written, printed, recorded, graphic, photographic, or otherwise.

10. The terms "Plaintiff" and "Thomas Jackson Construction" shall be interpreted to mean Thomas Jackson Construction, Inc. and any agents, officers, directors, employees, representatives, subsidiaries or other persons or entities acting or purporting to act on behalf of Thomas Jackson Construction, Inc.

11. The term "This Matter" shall be interpreted to mean any and all facts surrounding the allegations in the Complaint, Answer and Counterclaim, and Answer to Counterclaim.

CONTINUING INTERROGATORIES

These interrogatories shall be deemed to continue from the time of service until the time of trial.

PRIVILEGED MATTERS

If you contend that an answer to any interrogatory is privileged or otherwise protected from disclosure, then please Identify such information by its subject matter and state with particularity the facts and grounds constituting the nature and basis for any such claim or privilege or other ground for nondisclosure. Please answer in full any part of an Interrogatory to which you do not claim a privilege.

OTHER INSTRUCTIONS

In answering these interrogatories, please furnish all information which is available to Your Client, including information which is in possession of Your Client's attorneys, investigators for Your Client's attorneys, independent accountants, officers, employees, or agents, and not merely information from Your Client's own personal knowledge.

If Your Client cannot answer any of the interrogatories in full, please answer each interrogatory to the extent possible, specifying the reasons why Your Client is unable to answer the remainder, and please provide whatever information Your Client has concerning the unanswered portions.

INTERROGATORIES

1. Identify each person known to Your Client to be a witness concerning the facts of This Matter and state with particularity whether or not Your Client intends to call the person as a witness. For each person known to be a witness concerning This Matter, whether intended to be called as a witness at trial or not, Describe and set forth a summary sufficient to inform the other party of the important facts known to or observed by such witness and provide a copy of any written or recorded statements taken from such witness.

2. Identify each person whom Your Client expects to call as an expert witness, Identify and provide any available resume or curriculum vitae, Describe the subject matter on which the expert is expected to testify; and Describe the substance of the facts and opinions to which each expert is expected to testify and a summary of the grounds for each opinion.

3. Identify any person(s) with whom you have consulted in any field with respect to any of the matters at issue in this case. This Interrogatory is meant to include those persons who

have given written reports, as well as those who have given any oral reports or no reports, whether or not Your Client intends to call them as a witness at trial.

4. Describe Your Client's understanding of any oral contracts it had with the Plaintiff in this matter, including the parties to, date of, any and all terms contained within, the consideration for, and any and all witnesses to such oral contract.

5. Describe all relationships between Your Client and the Plaintiff, including information regarding any and all current and previous dealings and business relationships between them.

6. Describe in detail any and all projects and project sites on which Your Client employed the Plaintiff to grind storm debris materials, including the location, date, times of the Plaintiff's work at each project site, and the quantity of materials the plaintiff ground on each such date.

7. Describe the hierarchy (chain of command) from FEMA down through each contractor/subcontractor down to the Plaintiff at each project site.

8. Describe any and all payments received by Your Client for the grinding work at each site on which the Plaintiff was employed, including the date and amounts of each such payment, the name of the payor, the name of the payee, the check number, the type of service rendered by Your Client for each such payment, the dates of work for which each payment correlates, and a detailed statement of the profits Your Client realized overall and at each site.

9. Describe any and all invoices and requests for payment by Your Client for work performed at the project sites at which the Plaintiff performed work, including the date and total of each invoice or payment request, the name of the person or entity billed, the invoice number, the invoice date, and the type and dates of services which are the basis for the invoice or payment request.

10. Describe any and all distributions of monies received and expected distributions of monies to be received by Your Client with regard to the project sites where the Plaintiff worked, and Describe in detail the services provided by each distributee, including dates worked and quantity of materials ground, and the date and amount of each such distribution.

11. Identify any and all contractors or subcontractors Your Client has failed to pay for work performed at the Louisiana project sites, and Describe in detail the amounts owed to each contractor/subcontractor and the work performed by each contractor/subcontractor.

12. Describe any and all breakdowns or calculations of any type that show how Your Client allocated and/or calculated the amounts owed to each grinder it employed at the sites where the Plaintiff worked, including the total amount paid to each and every subcontractor, the amount paid per cubic yard of debris to each and every grinding subcontractor, the amounts ground by each subcontractor, and the dates of employment of each subcontractor.

13. Describe any and all calculations and methods of calculating how much material was ground by each subcontractor at each project site on which the Plaintiff worked, including any such calculations and methods of calculation for work done by the Plaintiff as well as for work done by any and all other subcontractors employed to grind storm debris at the sites where the Plaintiff worked.

14. Describe the work performed by the Plaintiff at Your Client's various project sites, including the date and location of such work as well as the amount of debris Your Client believes the Plaintiff ground and the amount Your Client believes it owes to Plaintiff for such work, specifically including an explanation of how Your Client made such a determination.

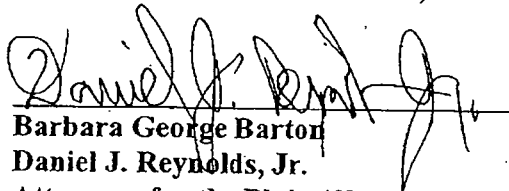
15. Describe the basis of Your Client's implication in paragraph 10 of the Defendant's Answer and Counterclaim in this matter that Plaintiff's could not have ground more than the 200 cubic yards per hour that is averaged by the Defendant, specifically including the capacity of Your Client's grinding machine with regard to storm debris as stated by the manufacturer of the machine, Your Client's understanding of the capacity of the Plaintiff's grinding machine with regard to storm debris, and a detailed description of the Defendant's grinding machine operator and his experience level.

16. Describe the basis of Defendant's statement in paragraph 10 of the Answer and Counterclaim that it is not possible for the Plaintiff to have ground 900.17 cubic yards of debris per hour, specifically identifying any evidence Your Client has to support such a statement and identifying which such evidence Your Client intends to introduce at trial.

17. Describe in detail any and all payments made by Your Client to the Defendant.

**ROBINSON, BARTON, MCCARTHY
CALLOWAY & JOHNSON, P.A.**

BY:



**Barbara George Barton
Daniel J. Reynolds, Jr.
Attorneys for the Plaintiff**

**1715 Pickens Street
Post Office Box 12287
Columbia, SC 29211-2287**

**Columbia, South Carolina
January 12, 2007.**

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

Case No: 2006-CP-36-395

FILED
NEWBERRY COUNTY
2007 MAR 16 A 9:48
JAMES S. POWERS
CLERK OF COURT

**PLAINTIFF'S FIRST SET OF CONTINUING
REQUESTS FOR PRODUCTION TO DEFENDANT**

TO: SAMUEL M. PRICE, ESQUIRE, ATTORNEY FOR DEFENDANT, LAKE MURRAY
TREE, INC.

YOU WILL HEREBY TAKE NOTICE that the Plaintiff, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, hereby requests that Your Client produce the following documents for inspection and copying within Thirty (30) days. Production is to be made at the offices of Robinson, Barton, McCarthy, Calloway & Johnson, P.A., 1715 Pickens Street (29201), P.O. Box 12287, Columbia, South Carolina 29211-2287.

GENERAL INSTRUCTIONS

Whenever a description of documents is framed in the conjunctive, it shall also be taken in the disjunctive, and vice versa. A description framed in the singular shall also be taken in the plural, and vice versa. For each document described which Your Client seeks to withhold under a claim of privilege, please provide the following information: date, sender, recipient, manner prepared, and the basis of the privilege claimed with regard to the document requested.

DEFINITIONS

1. Please reference Plaintiff's First Set of Interrogatories served simultaneously herewith for definitions in addition to those listed below.

2. The term "Document(s)" is used in its customary broad sense and includes all written, typed, printed, recorded or graphic statements, communications or other matter, however produced or reproduced, and whether or not now in existence, in the possession, custody or control of you or Your Client (as defined in the Plaintiff's First Set of Continuing Interrogatories), including without limitation: all writings; studies; analyses; tabulations; evaluations; reports; reviews; agreements; contracts; communications (including intra-company communications); letters or other correspondence; messages; telegrams; telexes; cables; memoranda; records; notes; summaries; sound recordings or transcripts of personal or telephone

conversations; meetings; conferences or interviews; telephone toll records; diaries; desk calendars; appointment books; forecasts; accountants' work papers; drawings; graphs; charts; maps; diagrams; blueprints; tables; indices; pictures; photographs; films; phonograph records; tapes; CD Roms; microfilm; microfiche; charges; ledgers; accounts; cost sheets; financial statements or reports; statistical or analytical records; minutes or records of meetings or conferences; opinions or reports of consultants; appraisals; reports or summaries of negotiations; books; brochures; pamphlets; circulars; trade letters; press releases; newspaper and magazine clippings; notebooks, projections; working papers; checks (front and back); check stubs or receipts; invoice vouchers; tape data sheets or data processing cards or discs or any other written, recorded, transcribed, punched, taped, filed or graphic matter, however produced or reproduced; and any other document, writing or other data compilation of whatever description, including but not limited to any information contained in any computer although not yet printed out or the memory units containing such data from which information can be obtained or translated into reasonably usable form, and all drafts and non-identical copies of the foregoing.

3. "Communication" means any conversation or transmittal or exchange of information, whether oral, telephonic, telegraphic, written, printed, recorded, graphic, photographic, or otherwise.

LOST OR DESTROYED DOCUMENTS

If any Document requested herein was at one time in existence but has been lost, discarded or destroyed, please identify that Document as completely as possible, providing as much of the following information as possible:

- a. the type of document;
- b. its date;
- c. the date or approximate date it was lost, discarded or destroyed;
- d. the circumstances and manner in which it was lost, discarded or destroyed;
- e. the reason or reasons for disposing of the Document (if discarded or destroyed);
- f. the identity of all Persons authorizing or having knowledge of the circumstances surrounding the disposal of the document;
- g. the identity of the Person(s) who lost, discarded or destroyed the Document; and
- h. the identity of all Persons having knowledge of the contents thereof.

PRIVILEGED MATTERS

If Your Client contends that a Document sought hereunder is privileged or otherwise protected from disclosure, then please identify such Document by its subject matter and state with particularity the facts and grounds constituting the nature and basis for any such claim or privilege or other ground for nondisclosure. Please provide any part of a Document to which Your Client does not claim a privilege.

CONTINUING REQUESTS

These Requests for Production shall be deemed continuing from the time of service until the time of trial so as to require supplemental production pursuant to South Carolina Rule of Civil Procedure 26(e).

OTHER INSTRUCTIONS

Please furnish all Documents which are available to Your Client, including Documents which are in possession of Your Client's attorneys, investigators for Your Client's attorneys, independent accountants, officers, directors, employees, or agents, and not merely Documents in Your Client's own personal possession.

If Your Client cannot provide every Document meeting the terms of these Requests, please provide all Documents possible, specifying the reasons why Your Client is unable to provide the remainder, and please provide whatever Documents Your Client has.

REQUESTS FOR PRODUCTION

Please produce copies of the following:

1. Each and every Document and Communication consulted, reviewed, identified or relied upon in any way whatsoever, in answering Plaintiff's First Set of Continuing Interrogatories.
2. Each and every Document and Communication that supports any of Your Client's defenses in this matter.
3. Each and every Document or Communication that supports any of Your Client's counterclaims in this matter.
4. A list of and copies of each and every Communication and prepared Document which support Your Client's allegations of breach of an oral contract.
5. A list of and copies of each and every Document and Communication Your Client intends to use at trial.
6. Each and every Document or Communication that purports to calculate the amount of debris ground by the Plaintiff and/or the amount owed by Your Client to the Plaintiff.

7. Each and every Document or Communication that purports to be a calculation or log of the amount of debris ground at each site for the days which the Plaintiff worked at such sites.

8. Each and every Document or Communication relating in any way to payments made to Your Client for work done at the project sites, including copies of checks as well as any reports that show the amount of debris ground at each site.

9. Each and every invoice or request for payment issued by Your Client relating to the Louisiana project sites and for which Your Client has now received payment.

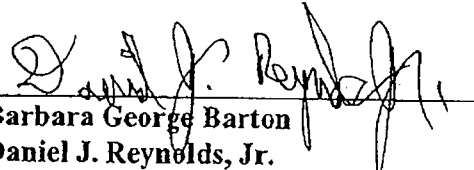
10. Each and every invoice issued or to be issued by Your Client relating to the Louisiana project sites and for which Your Client has not yet received payment.

11. Each and every Document evidencing distributions or payments by Your Client to contractors/subcontractors for work performed at the Louisiana project sites.

12. Each and every Document evidencing claims by others against Your Client for work at the Louisiana project sites.

**ROBINSON, BARTON, MCCARTHY
CALLOWAY & JOHNSON, P.A.**

BY:


Barbara George Barton
Daniel J. Reynolds, Jr.
Attorneys for the Plaintiff
1715 Pickens Street
Post Office Box 12287
Columbia, SC 29211-2287

**Columbia, South Carolina
January 12, 2007.**

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

Case No: 2006-CP-36-395

FILED
NEWBERRY COUNTY
2007 MAR 16 A 9:49
JACKIE S. BOWERS
CLERK OF COURT

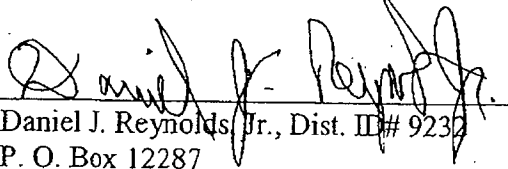
CERTIFICATE OF SERVICE

I, Daniel J. Reynolds, Jr., an associate attorney with of Robinson, Barton, McCarthy, Calloway & Johnson, P.A., an attorney for the Plaintiff, hereby certify that I mailed a copy of the Plaintiff's First Set of Continuing Interrogatories to Defendant; Plaintiff's First Set of Continuing Requests for Production to Defendant; and Plaintiff's First Set of Requests for Admission to Defendant to Samuel M. Price, Jr., attorney for the Defendant, P.O. Drawer 836, Newberry, SC 29108 by depositing same in the Post Office, postage prepaid, at Columbia, South Carolina, where there is regular communication by mail, and that same was mailed postage prepaid on January 12, 2007:

ROBINSON, BARTON, MCCARTHY,
CALLOWAY & JOHNSON, P.A.

January 12, 2007.

BY:


Daniel J. Reynolds, Jr., Dist. II # 9232
P. O. Box 12287
Columbia, SC 29211-2287
(803) 256-6400

ROBINSON, BARTON, MCCARTHY, CALLOWAY & JOHNSON, P.A.

ATTORNEYS AT LAW
1715 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29201

G. WILLIAM MCCARTHY, JR.*
BARBARA GEORGE BARTON*
W. E. CALLOWAY
NANCY E. JOHNSON, SC & NC*

DANIEL J. REYNOLDS, JR.

* CERTIFIED BANKRUPTCY SPECIALISTS
IN THE STATE OF SOUTH CAROLINA

WILLIAM E.S. ROBINSON
(1942-1993)

P.O. BOX 12287
COLUMBIA, S.C. 29211-2287
803/256-6400

FAX 803/779-0267

March 15, 2007

Clerk of Court
1226 College St Rm 7
PO Drawer 10
Newberry, SC 29108-0278

Re: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.,
Case No. 06-CP-36-395

Dear Sir/Madam:

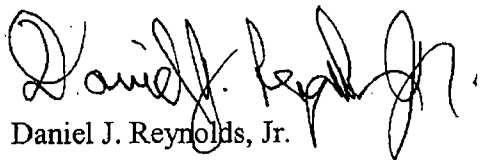
Enclosed, please find an original and one copy of a Motion to Compel Discovery and a Motion for Summary Judgment in the above captioned case accompanied by an original and one copy of an accompanying certificate of service. Additionally enclosed, please find a check for \$50.00 to cover the \$25.00 filing fee for each of these two motions.

Please file the originals with the Court record and return a clocked copy of both motions and the certificate of service to me in the enclosed self-addressed, stamped envelope.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,

ROBINSON, BARTON, MCCARTHY,
CALLOWAY & JOHNSON, P.A.


Daniel J. Reynolds, Jr.

Cc: Samuel M. Price, Jr.

Enclosure

*copies mailed
3/19/07*

FILED
FERNANDY COUNTY
2007 MAR 16 A 9:48
JACOB A. HARRIS
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

THOMAS JACKSON CONSTRUCTION, INC.,

☒ Plaintiff

v.

Lake Murray Tree, Inc.,

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2006-CP-36-395

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Barbara George Barton, Bar No. 561 Address: 1715 Pickens Street Columbia, SC 29201 phone: 803-256-6400 fax: 803-779-0267 e-mail: BBarton@rbmcc.com other:		Defendant's Attorney: Samuel M. Price, Jr., Bar No. Address: 1413 Main Street, PO Drawer 836 Newberry, SC 29108 phone: 803-276-0796 fax: 803-276-9495 e-mail: other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion For Summary Judgment on Counterclaim and Complaint Estimated Time Needed: 1 Hour Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☐ Defendant		Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION Collected by: <u>Laura Lane</u> Date Filed: ☒ MOTION FEE COLLECTED: \$25.00 Rec # 25240 ☐ CONTESTED - AMOUNT DUE:			

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NEWSPERRY COUNTY
2007 MAR 16 A 9:49
JASON S. FOWERS
CLERK OF COURT

267

primarily engaged in the business of site preparation, grinding and clearing lands for development.

2. The Defendant is a corporation duly organized under the laws of the state of South Carolina with its headquarters and principal place of business in Newberry County, South Carolina.

3. On September 21, 2006, the Plaintiff filed the Summons and Complaint in this matter requesting a judgment against Defendant for outstanding amounts due to Plaintiff for grinding work Plaintiff performed for Defendant.

4. As evidenced by the Affidavit of Personal Service filed by the Plaintiff with the Court on December 6, 2006, the Summons and Complaint in this matter were personally served on the Defendant on November 17, 2006.

5. On December 18, 2006, the Defendant filed its Answer and Counterclaim in this matter denying the validity of Plaintiff's claim and requesting a judgment against Plaintiff for an alleged breach of oral contract due to the Plaintiff's alleged "unauthorized abandonment of its job".

6. On January 16, 2007, the Plaintiff filed its Answer to Defendant's Counterclaim denying the validity of the Defendant's Counterclaim.

7. On January 12, 2007, the Plaintiff served its Requests for Admission upon Defendant. A copy of the Plaintiff's Requests for Admission requests are attached hereto as **Exhibit A**, which includes the Certificate of Service evidencing service by mail upon the attorney for the Defendant on January 12, 2007.

8. The Defendant failed to respond to the Plaintiff's Requests for Admissions, and, pursuant to South Carolina Rule of Civil Procedure Rule 36(a), those matters for which an admission was requested are deemed admitted.

FACTS ADMITTED BY THE DEFENDANT

9. By way of paragraph 4 of its Answer, the Defendant admits that Jurisdiction is proper in this court pursuant to Article V, Section 7 of the South Carolina Constitution.

10. By way of paragraph 7 of its Answer, the Defendant admits that some time after Hurricane Katrina struck the Gulf Coast in August, 2005, the Defendant was hired as part of the Louisiana Disaster Relief program to grind debris at certain project sites, which debris was being shipped in from various land clearing projects throughout the Louisiana area. Also by way of

paragraph 4 of its Answer, the Defendant further asserts that the parties entered into an oral contract on or about October 12, 2005 and under the original terms of the oral contract, plaintiff was to be paid \$0.75 per cubic yard to grind debris.

11. By way of paragraph 8 of its Answer, the Defendant admits that in October, 2005, the Defendant subcontracted the Plaintiff to grind debris at the "Choctaw" project site in Louisiana for what became an agreed upon rate of \$0.95 per cubic yard of debris ground.

12. By way of paragraph 9 of its Answer, the Defendant admits that after the Plaintiff commenced grinding at the "Choctaw" project site, the Defendant requested that the Plaintiff move to the "60 Rayburn" and "Angie" project sites, also located in Louisiana, due to a discrepancy in the quantity of debris available for grinding at the "Choctaw" project site. Defendant further admits that it agreed to compensate the Plaintiff the same stated rate of \$0.95 per cubic yard of debris ground at these additional project sites.

13. By way of paragraph 11 of its Answer, the Defendant admits that on January 10, 2006, the Plaintiff sent an invoice to the Defendant requesting payment in the amount of \$50,112.50 (52,750 cu.yds. of grinding X \$0.95 per cubic yard), and on March 27, 2006, counsel for the Plaintiff sent a letter to the Defendant demanding payment of the \$50,112.50.

14. By way of paragraph 12 of the Defendant's Answer, the Defendant admits that it has not paid the \$50,112.50 amount the Plaintiff claims it is due.

15. By its failure to timely respond to the Plaintiff's Requests for Admission, the Defendant is deemed pursuant to Rule 36(a), SCRPC to have further admitted the following:

- A. The alleged oral contract between Plaintiff and Defendant did not provide a minimum quantity of debris that the Plaintiff was required to grind.
- B. The alleged oral contract between Plaintiff and Defendant did not provide a minimum length of time for the Plaintiff to remain at the Louisiana job sites.
- C. The alleged oral contract between Plaintiff and Defendant provided that the Plaintiff would be provided with sufficient work to keep him busy at the Choctaw site.
- D. The Plaintiff performed grinding work for the Defendant at project sites in Louisiana during October, 2005.
- E. The Defendant has not made any payments to Plaintiff for grinding work

performed by the Plaintiff at the project sites in Louisiana during October, 2005.

- F. The Plaintiff and Defendant originally agreed that the Plaintiff would perform grinding work at the Choctaw site, but the Defendant then moved Plaintiff to other sites without compensation to the Plaintiff for the delay and expenses of moving.
- G. The Defendant did not provide sufficient work for the Plaintiff at the Choctaw site.
- H. The Defendant required that the Plaintiff grind at sites other than Choctaw.
- I. Plaintiff's grinding work at the project sites in Louisiana provided benefit to Defendant.
- J. The Defendant has now received compensation for some of the work performed by the Plaintiff.
- K. The invoice attached to the Requests for Admission is a true and correct copy of the statement sent by the Defendant to the Plaintiff.
- L. The Defendant prepared the statement attached to the Requests for Admission.
- M. The statement attached to the Requests for Admission indicates that the Plaintiff ground 29,000 cubic yards of material and that the Defendant had previously billed for 17,100 cubic yards of materials ground by the Plaintiff.
- N. The Defendant admits that the Plaintiff ground at least 46,100 cubic yards of material for the Defendant.
- O. The Plaintiff performed services for the Defendant, for which services the Defendant has received compensation, and the Defendant has subsequently refused or failed to compensate the Plaintiff.

STANDARD FOR SUMMARY JUDGMENT

Rule 56(c), SCRCF provides that a party may move for summary judgment and that such judgment "shall be rendered forthwith" if the evidence and pleadings "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCF. "A trial court may properly grant a motion for summary judgment

when ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” Madison ex rel. Bryan v. Babcock Center, Inc., 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006) (quoting Rule 56(c), SCRPC); Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997)). “In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.” Id. (citing to Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988)). “Further, Rule 56(e), SCRPC requires that when a motion for summary judgment is made and supported as provided by the rule, an adverse party may not rest upon the mere allegations or denials of his pleadings. The adverse party's response, including affidavits or as otherwise provided by the rule, must set forth specific facts showing there is a genuine issue for trial.” SSI Medical Services, Inc. v. Cox, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990).

FAILURE TO DENY OR OBJECT TO A REQUEST FOR ADMISSION

“Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as stipulated in writing by the parties . . . , the party to whom the request is directed serves upon the party requesting the admission a written answer or objection” Rule 36(a), SCRPC. “Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.” Rule 36(b), SCRPC.

As evidenced by the Certificate of Service included with the Plaintiff's Requests for Admission attached hereto as Exhibit A, the Plaintiff properly served its Requests for Admission upon the attorney for the Defendant by mail pursuant to Rule 5(b)(1), SCRPC on January 12, 2007. The Requests for Admission separately set forth each matter listed in paragraph 15 above, and requested that the Defendant admit or deny each matter. The Requests for Admission clearly requested a response within thirty (30) days of service pursuant to Rule 36(a), SCRPC. The Defendant failed to respond in any manner to the Plaintiff's Requests for Admission and more than sixty (60) days have passed since the Requests for Admission were served. Therefore, the matters for which an admission was requested are deemed admitted.

SUMMARY JUDGMENT ON THE DEFENDANT'S COUNTERCLAIM

By way of its Answer and Counterclaim filed with the Court on December 18, 2006, the Defendant asserted a counterclaim against the Defendant for breach of an oral contract alleging \$13,942.32 in damages from the Plaintiff's allegedly unauthorized abandonment of its job. On January 16, 2007, the Plaintiff filed its Answer to Defendant's Counterclaim denying the validity of the Defendant's Counterclaim. Pursuant to its failure to respond to the Plaintiff's Requests for Admission, the Defendant is deemed to have admitted that the oral contract between the parties included a provision that the Defendant would provide the Plaintiff with sufficient work to keep Plaintiff busy at the Choctaw grinding site and that Defendant failed to provide Plaintiff with sufficient work at the Choctaw site. Defendant is further deemed to have admitted that the oral contract between the parties did not provide a minimum quantity of debris that the Plaintiff was required to grind nor did the oral contract provide a minimum length of time for the Plaintiff to remain at the Louisiana job sites.

The Defendant has failed to show any breach by the Plaintiff and has not made any factual assertions that support its allegations of the Plaintiff's unauthorized abandonment of its job. The Defendant's admissions directly contradict the basis of its counterclaim. There is no genuine issue as to any material fact alleged in the Defendant's counterclaim and the Plaintiff is entitled to judgment in its favor.

Based upon the foregoing, the Plaintiff requests that the Court grant summary judgment against the Defendant and in favor of the Plaintiff on the Defendant's counterclaim.

SUMMARY JUDGMENT ON THE COMPLAINT

The Defendant is deemed to have admitted that the Plaintiff performed services for the Defendant in October of 2005, for which services the Defendant has received compensation. The Defendant is deemed to have admitted that the parties originally agreed that the Plaintiff would perform grinding work at the Choctaw site, but the Defendant then moved Plaintiff to other sites without compensation to the Plaintiff for the delay and expenses of moving. The Defendant is deemed to have admitted that it received benefit from the grinding work provided by Plaintiff and that the Defendant has subsequently refused or failed to compensate the Plaintiff. In its Answer, the Defendant admitted that it agreed to pay the Plaintiff \$0.95 per cubic yard of debris ground by the Plaintiff. The admitted facts firmly establish that the Plaintiff is entitled to a judgment against the Defendant.

Plaintiff alleged in its Complaint that it ground 52,750 cubic yards of debris at the

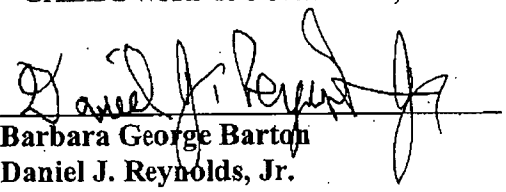
Defendant's project sites, and Defendant denied such allegation in its Answer. However, Defendant is deemed to have admitted that the Plaintiff ground at least 46,100 cubic yards of material at the Defendant's project sites. At the admitted contractual rate of \$0.95 per cubic yard of debris ground, the Defendant admits that it owes the Plaintiff \$43,795.00 for its grinding work at the Louisiana project sites.

Based upon the foregoing, the Plaintiff requests a full and final summary judgment in favor of the Plaintiff and against the Defendant in the amount of \$43,795.00

WHEREFORE, the Plaintiff, having set forth the basis for its Motion, respectfully requests that the Court grant its Motion for Summary Judgment in favor of the Plaintiff and against the Defendant on the Defendant's Counterclaim, grant its Motion for Summary Judgment on the Complaint in favor of the Plaintiff and against the Defendant, enter a full and final judgment for the Plaintiff and against the Defendant in the amount of \$43,795.00, and grant such other and further relief as is just and proper.

**ROBINSON, BARTON, MCCARTHY
CALLOWAY & JOHNSON, P.A.**

BY:


Barbara George Barton
Daniel J. Reynolds, Jr.
Attorneys for the Plaintiff
1715 Pickens Street
Post Office Box 12287
Columbia, SC 29211-2287
(803) 256-6400

Columbia, South Carolina
March 14, 2007.

EXHIBIT A
(Plaintiff's First Set of Requests for Admission to Defendant)

FILED
HERNANDY COUNTY
2007 MAR 16 A 9 49
JACKIE S. DOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

Case No: 2006-CP-36-196

FILED
NEWBERRY COUNTY
2007 MAR 16 A 9:49
JACQUE S. POWERS
CLERK OF COURT

PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION TO DEFENDANT

TO: SAMUEL M. PRICE, ESQUIRE, ATTORNEY FOR DEFENDANT, LAKE MURRAY TREE, INC.

YOU WILL HEREBY TAKE NOTICE that the Plaintiff, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, hereby requests that Your Client admit or deny the following written request for admission within thirty (30) days. Your response is to be mailed within thirty days of the date of service of this request to the offices of Robinson, Barton, McCarthy, Calloway & Johnson, P.A., 1715 Pickens Street (29201), P.O. Box 12287, Columbia, South Carolina 29211-2287.

DEFINITIONS

Please reference Plaintiff's First Set of Interrogatories served simultaneously herewith for definitions in addition to those listed below.

PRIVILEGED MATTERS

If you contend that an answer to any request for admission is privileged or otherwise protected from disclosure, then please Identify such information by its subject matter and state with particularity the facts and grounds constituting the nature and basis for any such claim or privilege or other ground for nondisclosure. Please answer in full any part of a request for admission to which you do not claim a privilege.

OTHER INSTRUCTIONS

In answering these requests to admit, please base the answers on all information which is available to Your Client, including information which is in possession of Your Client's officers, directors, employees, attorneys, investigators, independent accountants, or agents, and not merely information from a single representative of Your Client.

If Your Client cannot answer any of the requests to admit in full, please answer the request to the extent possible, specifying the reasons why Your Client is unable to answer the remainder, and please provide whatever information Your Client has concerning the unanswered portions.

Please "admit" or "deny" the following (and please provide an explanation of any denial and any documentation supporting such denial):

REQUESTS FOR ADMISSION

1. The oral contract between Plaintiff and Defendant did not provide a minimum quantity of debris that the Plaintiff was required to grind.

Response:

2. The oral contract between Plaintiff and Defendant did not provide a minimum length of time for the Plaintiff to remain at the Louisiana job sites.

Response:

3. The oral contract between Plaintiff and Defendant provided that the Plaintiff would be provided with sufficient work to keep him busy at the Choctaw site.

Response:

4. The Plaintiff performed grinding work for the Defendant at project sites in Louisiana during October, 2005.

Response:

5. The Defendant has not made any payments to Plaintiff for grinding work performed by the Plaintiff at the project sites in Louisiana during October, 2005.

Response:

6. The Plaintiff and Defendant originally agreed that the Plaintiff would perform grinding work at the Choctaw site, but the Defendant then moved Plaintiff to other sites without compensation to the Plaintiff for the delay and expenses of moving.

Response:

7. The Defendant did not provide sufficient work for the Plaintiff at the Choctaw site.

Response:

8. The Defendant required that the Plaintiff grind at sites other than Choctaw.

Response:

9. Plaintiff's grinding work at the project sites in Louisiana provided benefit to Defendant.

Response:

10. The Defendant has now received compensation for some of the work performed by the Plaintiff.

Response:

11. The invoice attached hereto is a true and correct copy of the statement sent by the Defendant to the Plaintiff.

Response:

12. Your Client prepared the attached statement.

Response:

13. This statement indicates that the Plaintiff had ground 29,000 cubic yards of material and that the Defendant had previously billed for 17,100 cubic yards of materials ground by the Plaintiff.

Response:

14. Your Client admits in this statement that the Plaintiff ground at least 46,100 cubic yards of material for the Defendant.

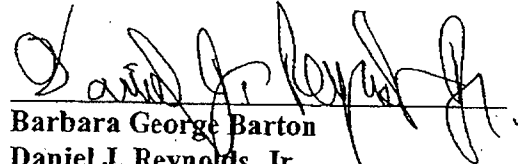
Response:

15. The Plaintiff has performed services for Your Client, for which services Your Client has received compensation and Your Client has subsequently refused or failed to compensate the Plaintiff.

Response:

ROBINSON, BARTON, MCCARTHY
CALLOWAY & JOHNSON, P.A.

BY:



Barbara George Barton
Daniel J. Reynolds, Jr.
Attorneys for the Plaintiff
1715 Pickens Street
Post Office Box 12287
Columbia, SC 29211-2287

Columbia, South Carolina
January 12, 2007.



Lake Murray Tree, Inc
6162 St Luke's Church Road
Prosperity, SC 29127

Phone # 803-364-1132 Fax # 803-364-1583

AT 10/27/2005 10:55 AM

001/00

Invoice

Date	Invoice #
10/27/2005	138

Bill To
JACKSON, Thomas
VIA FAX
469-9558

P.O. No.		Terms	Project
Cubic Yard	Description	Rate	Amount
14,300	CHOCATAW	.95	13,585
11,500	ANGIE	.95	10,925
3,200	60 Rayburn	.95	3,040
THESE QUANTITIES ARE STILL EST. AT THIS POINT- HOWEVER, THIS IS WHAT WE HAVE <u>BILLED</u> FOR. (YOU WILL NEED TO INV. ME FOR FINAL QUANT.		JACKIE S. LOWERS CLERK OF COURT	2001 MAR 16 A 9:49 EST. \$21,550
W/ YOUR LTR HD, I-9		Total	\$0.00

INS. CERT)

<http://www.lakemurraytree.com>

Exhibit A



Lake Murray Tree, Inc.

5103 St Luke's Church Road
Prosperity, SC 29127

Phone # 803-364-1151 Fax # 803-364-1583

Invoice

Date	Invoice #
10/21/2005	134

Bill To
Creel Marina Debris Reduction Creel Brothers, LLC 26400 Buford Creel Road Franklinton, LA 70438

P.O. No	Terms	Project
	Net 7	

Cubic Yard	Description	
3,200	CHOCTAW SITE #14 - SATURDAY, OCTOBER 15, 2005	FILED HEMPHRY COUNTY 2007 MAR 16 A 9:49 JACKIE S. BOWERS CLERK OF COURT
3,200	CHOCTAW SITE #14 - SUNDAY, OCTOBER 16, 2005	
3,200	CHOCTAW SITE #14 - MONDAY, OCTOBER 17, 2005	
3,200	CHOCTAW SITE #14 - TUESDAY, OCTOBER 18, 2005	
1,500	CHOCTAW SITE #14 - SUNDAY, OCTOBER 19, 2005 - STOP TIME @ 11:00AM	
Previously billed @ 17,100 cy		
		Total

<http://www.lakemurraytree.com>

24 front from tree to back bumper
19 front to back side bumper

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,)

Plaintiff,)

vs.)

LAKE MURRAY TREE, INC.,)

Defendant)

Case No: 2006-CP-36-395

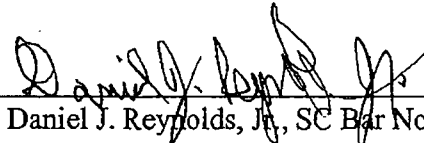
CERTIFICATE OF SERVICE

I, Daniel J. Reynolds, Jr., an associate attorney with Robinson, Barton, McCarthy, Calloway & Johnson, P.A., an attorney for the Plaintiff, hereby certify that I mailed a copy of the **Plaintiff's Motion for Order Compelling Discovery and Plaintiff's Motion for and Memorandum in Support of Summary Judgment on Defendant's Counterclaim and Plaintiff's Complaint**, both of which were mailed to the Court for filing on March 15, 2007, to Samuel M. Price, Jr., Attorney for Lake Murray Tree, Inc., P.O. Drawer 836, Newberry, SC 29108 by depositing same in the Post Office, postage prepaid, at Columbia, South Carolina, where there is regular communication by mail, and that same was mailed postage prepaid on March 15, 2007:

ROBINSON, BARTON, MCCARTHY,
CALLOWAY & JOHNSON, P.A.

March 15, 2007.

BY:


Daniel J. Reynolds, Jr., SC Bar No. 72020
P. O. Box 12287
Columbia, SC 29211-2287
(803) 256-6400

FILED
NEWBERRY COUNTY
2007 MAR 16 A 9:50
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,)

Case No: 2006-CP-26-395

Plaintiff,)

vs.)

LAKE MURRAY TREE, INC.,)

Defendant)

FILED
NEWBERRY COUNTY
JAN 16 P 12:03
JACQUE S. HOWARD
CLERK OF COURT

PLAINTIFF'S ANSWER TO DEFENDANT'S COUNTERCLAIM

COMES NOW the Plaintiff and Counter-Defendant, Thomas Jackson Construction, Inc. ("Plaintiff"), by and through counsel, and asserts this its Answer to counterclaims of Lake Murray Tree, Inc. ("Defendant") against the Plaintiff in the Defendant's Answer and Counterclaim, filed on December 18, 2006 (the "Answer and Counterclaim"), paragraph by paragraph, as follows:

1. The Plaintiff would deny each and every allegation contained in the Answer and Counterclaim not specifically admitted herein.
2. Regarding the allegations of Paragraph 14, Plaintiff hereby reiterates the allegations in the Complaint as if fully set forth verbatim herein.
3. The Plaintiff admits the allegations of paragraph 15.
4. The Plaintiff admits the allegations of paragraph 16.
5. With regard to paragraph 17, the Plaintiff admits that it arrived on the Choctaw job site on or about October 15, 2006 and that Plaintiff worked for Defendant for approximately eleven days at various project sites in Louisiana. Plaintiff denies the remaining

allegations and demands strict proof thereof.

6. The Plaintiff denies the allegations of paragraph 18 and demands strict proof thereof.

7. Paragraph 19 states a conclusion to which no response is required, but, to the extent necessary, the Plaintiff denies the allegations of paragraph 19 and demands strict proof thereof.

FOR A FIRST AFFIRMATIVE DEFENSE

8. Each and every allegation set forth in paragraphs one (1) through seven (7) above, not inconsistent herewith, is reasserted, re-alleged, and re-averred as if fully restated herein verbatim.

9. The Defendant failed to provide sufficient work for the Plaintiff at the Choctaw project site.

10. The Defendant required the Plaintiff to move to other project sites, including the "Angie" and "60 Rayburn" sites.

11. The Defendant failed to compensate the Plaintiff for the time and expense of moving between project sites.

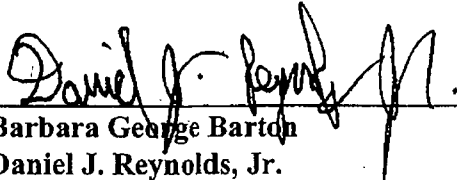
12. The Defendant's failure to provide sufficient work for the Plaintiff, requiring the Plaintiff to move to other project sites, and failure to provide compensation for such moves were each a breach of the oral agreement between the Plaintiff and Defendant.

WHEREFORE having answered the allegations of the counterclaims contained in the Defendant's Answer and Counterclaim, the Plaintiff respectfully requests that the Defendant's Counterclaim be dismissed with prejudice with all costs associated thereto being taxed to the Defendant, and Plaintiff further respectfully requests that it be granted judgment against the

Defendant in the amount of \$50,112.50 as set out in the Plaintiff's Complaint and be granted such other and further relief as this Court deems appropriate.

**ROBINSON, BARTON, MCCARTHY
CALLOWAY & JOHNSON, P.A.**

BY:


Barbara George Barton
Daniel J. Reynolds, Jr.
Attorneys for the Plaintiff
1715 Pickens Street
Post Office Box 12287
Columbia, SC 29211-2287
(803) 256-6400

**Columbia, South Carolina
January 12, 2007.**

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Case No: 2006-CP-36-395

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

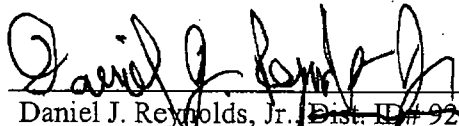
CERTIFICATE OF SERVICE

I, Daniel J. Reynolds, Jr., an associate attorney with of Robinson, Barton, McCarthy, Calloway & Johnson, P.A., an attorney for the Plaintiff, hereby certify that I mailed a copy of the **Plaintiff's Answer to Defendant's Counterclaim, mailed to the Court for filing on January 12, 2007**, to Samuel M. Price, Jr., Esq., P.O. Drawer 836, Newberry, SC 29108 by depositing same in the Post Office, postage prepaid, at Columbia, South Carolina, where there is regular communication by mail, and that same was mailed postage prepaid on January 12, 2007:

ROBINSON, BARTON, MCCARTHY,
CALLOWAY & JOHNSON, P.A.

January 12, 2007.

BY:


Daniel J. Reynolds, Jr., Dist. ID # 9232
P. O. Box 12287
Columbia, SC 29211-2287
(803) 256-6400

FILED
NEWBERRY COUNTY
2007 JAN 16 P 12:03
JACKIE S. BOWERS
CLERK OF COURT

ROBINSON, BARTON, MCCARTHY, CALLOWAY & JOHNSON, P.A.

ATTORNEYS AT LAW
1715 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29201

G. WILLIAM MCCARTHY, JR.*
BARBARA GEORGE BARTON*
W. E. CALLOWAY
NANCY E. JOHNSON, SC & NC*

DANIEL J. REYNOLDS, JR.

*CERTIFIED BANKRUPTCY SPECIALISTS
IN THE STATE OF SOUTH CAROLINA

WILLIAM E.S. ROBINSON
(1942-1993)

P.O. BOX 12287
COLUMBIA, S.C. 29211-2287
803/256-6400

FAX 803/778-0267

January 12, 2007

Clerk of Court
1226 College St Rm 7
PO Drawer 10
Newberry, SC 29108-0278

Re: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.,
Case No. 06-CP-36-395

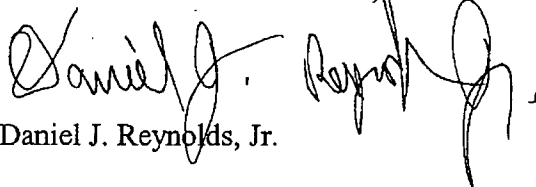
Dear Sir/Madam:

Enclosed, please find an original and one copy of the Plaintiff's Answer to Defendant's Counterclaim and an Affidavit of Service in the above captioned case. Please file the original with the Court record and return a clocked copy to me in the enclosed self-addressed, stamped envelope.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,

ROBINSON, BARTON, MCCARTHY,
CALLOWAY & JOHNSON, P.A.


Daniel J. Reynolds, Jr.

Enclosure

Cc: Samuel M. Price, Jr., Esq.

FILED
NEWBERRY COUNTY
2007 JAN 16 P 12:03
JACKIE S. DOWNEY
CLERK OF COURT

Copy Mailed 1/17/07

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
2006-CP-36-395

Thomas Jackson Construction, Inc.,)
Plaintiff,)
vs.)
Lake Murray Tree, Inc.,)
Defendant.)

ANSWER AND COUNTERCLAIM

Defendant Lake Murray Tree, Inc. would respectfully answer the Complaint of plaintiff and counterclaim as follows:

1. That defendant would deny each and every allegation contained in the Complaint not specifically admitted herein.
2. That defendant would admit those allegations contained in paragraph one (1) of the Complaint.
3. That defendant can neither affirm nor deny the allegations contained in paragraphs two (2), three (3), four (4) and five (5) of the Complaint and would demand strict proof thereof.
4. That defendant would admit the allegations contained in paragraph six (6) of the Complaint.
5. That defendant can neither affirm nor deny the allegations contained in paragraph seven (7) of the Complaint. The defendant does not object to Newberry County as being the proper venue.

IN ANSWER TO THE FIRST CAUSE OF ACTION

6. That defendant would reallege and reaffirm each and every allegation stated above as

if set forth herein verbatim.

7. That defendant would admit the allegations contained in paragraph nine (9) of the Complaint. Defendant would further state that the parties entered into an oral contract on or about October 12, 2005. Under the terms of the oral contract, plaintiff was to be paid \$0.75 per cubic yard of unground debris.

8. That defendant would admit the allegations contained in paragraph ten (10) except that the original oral contract entered into between the parties in South Carolina provided for \$0.75 per cubic yard. The contract was amended in Louisiana to increase the rate to \$0.95 per cubic yard.

9. That defendant would admit the allegations contained in paragraph eleven (11) of the Complaint.

10. That defendant would deny that portion of paragraph twelve (12) that allege plaintiff ground 52,752 yards of debris for defendant on any or all sites. Defendant has an experienced operator and a much bigger machine than plaintiff and defendant averaged less than 200 cubic yards per hour. It is a practical impossibility for plaintiff to have ground 52,752 yards of debris as claimed. According to the amount of hours claimed by plaintiff to have been worked, i.e. 58.6 hours, plaintiff is claiming they ground 900.17 cubic yards per hour. This is not possible when dealing with storm debris.

11. That defendant would admit the allegations contained in paragraphs thirteen (13) and fourteen (14) of the Complaint. However, plaintiff has no way of measuring or determining the amount of debris that was ground by plaintiff, therefore, defendant has not paid this excessive and unreasonable demand.

12. That in response to paragraph fifteen (15), defendant would admit that it has not paid the \$50,112.50 because that amount is not owed and, therefore, not overdue and not outstanding.

13. That defendant would deny the allegations contained in paragraphs sixteen (16), seventeen (17) and eighteen (18) of the Complaint.

BY WAY OF COUNTERCLAIM

14. That defendant would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

15. That defendant did enter into an oral Contract with plaintiff on or about October 12, 2005.

16. That under the terms of the original oral contract, plaintiff was to travel to Louisiana and grind storm debris from Hurricane Katrina at the rate of \$0.75 per cubic yard. This was a FEMA supervised project. Upon arrival, defendant agreed to pay plaintiff \$0.95 per cubic yard because defendant's contract had improved.

17. That plaintiff arrived on job site on or about October 15, 2006. Plaintiff worked approximately eleven days (October 16th through October 27th, 2005). Plaintiff left the job without notice. Plaintiff told defendant there was a Florida job paying \$2.25 per cubic yard. Plaintiff left. This left defendant in a awkward position. Defendant was forced to sub-contract with a company known as "A-Plus" for \$1.25 per cubic yard.

18. That defendant incurred an additional \$13,942.32 costs by plaintiff's unauthorized abandonment of its job.

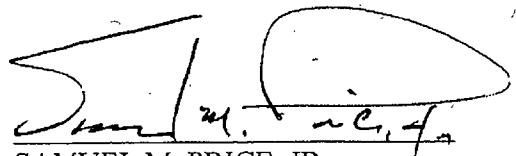
19. That upon information and believe, defendant is entitled to a judgment against plaintiff in the amount of \$13,942.32.

WHEREFORE, having fully set forth its Answer and Counterclaim, defendant would respectfully request of this Honorable Court:

(A) For an Order of this Court dismissing the action of plaintiff.

(B) For an Order of this Court granting a judgment to defendant against plaintiff in the \$13,942.32.

(C) For such other and further relief as the Court may deem necessary and proper.



SAMUEL M. PRICE, JR.
Attorney for Defendant
1413 Main Street, P. O. Drawer 836
Newberry, South Carolina 29108
(803) 276-0796

Newberry, SC *HE*
December *18*^{*P*}, 2006

#4
imp

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

PERSONALLY appeared before me Allen L. Koon, who, being duly sworn, deposes and says that he is an officer of Lake Murray Tree, Inc. who is the defendant in the foregoing action; that he has read the foregoing Answer and Counterclaim and that all the facts contained therein are true of his own personal knowledge, except as to those matters alleged upon information and belief, and that as to those, he believes them to be true.

SWORN to before me this
day of December, 2006.

Notary Public for South Carolina

My commission expires: 5-21-2014

(LS)

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

VERIFIED STATEMENT OF ACCOUNT

PERSONALLY appeared before me Allen L. Koon, who, being duly sworn, deposes and say that he is an officer of the defendant in the attached Answer and Counterclaim and that defendant is indebted to Lake Murray Tree, Inc. in the amount stated in the attached copy of statement for services rendered.

SWORN to before me this
day of December, 2006.

18th

Ramona J. Shealy
Notary Public for South Carolina
My Commission expires: 5-21-2014

Allen L. Koon

LAKE MURRAY TREE, INC.

6163 Saint Luke's Church Road, Prosperity, SC 29127
(803) 364-1152

A-PLUS

35,749.51 cubic yards X \$1.25 per cubic yard = \$44,686.89

Thomas Jackson Construction, Inc.

35,749.51 cubic yards X \$0.95 per cubic yard = \$33,962.04

Additional amount required to be paid

\$10,724.86

PLUS: 15% supervisory fee

1,608.73

PLUS: 15% profit

1,608.73

Total Costs to Lake Murray Tree, Inc.

\$13,942.32

SWORN to before me this 18th
Day of December, 2006.

LAKE M URRAY TREE, INC.

Patricia J. Shealy
Notary Public for South Carolina
My Commission Expires: 5-21-2014

[Signature]
By:

Newberry County Sheriff

James Lee Foster , Sheriff

Phone (803) 321-2211

The State of South Carolina
County of Newberry

AFFIDAVIT OF PERSONAL SERVICE

[PLAINTIFF]

THOMAS JACKSON CONSTRUCTION, INC.

VS

[DEFENDANT]

LAKE MURRAY TREE, INC./ ALLEN L. KOON

Personally appeared before me the undersigned , who being duly sworn ,
deposes and says that he served the SUMMONS & COMPLAINT
in this action on LAKE MURRAY TREE, INC./ ALLEN L. KOON , PERSONALLY
At CITGO STATION, LITTLE MOUNTAIN, SC 29075 on 11/17/2006 at 2:55 PM.
Deponent further states that he is not a party to this action and has
no interest therein or connection therewith.

Casey W. Bouknight

CASEY W. BOUKNIGHT, DEPUTY SHERIFF
NEWBERRY COUNTY , SOUTH CAROLINA

SWORN TO AND SUBSCRIBED BEFORE ME

on this date November 22, 2006

Rosemarie C. Liebert

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES : 4/26/2009

FILED
NEWBERRY COUNTY
2006 DEC -6 A 10:24
JACQUE S. HUGHES
CLERK OF COURT

ROBINSON, BARTON, MCCARTHY, CALLOWAY & JOHNSON, P.A.

ATTORNEYS AT LAW
1715 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29201

G. WILLIAM MCCARTHY, JR.*
BARBARA GEORGE BARTON*
W. E. CALLOWAY
NANCY E. JOHNSON, SC & NC*

DANIEL J. REYNOLDS, JR.

* CERTIFIED BANKRUPTCY SPECIALISTS
IN THE STATE OF SOUTH CAROLINA

WILLIAM E.S. ROBINSON
(1942-1993)

P.O. BOX 12287
COLUMBIA, S.C. 29211-2287
803/256-6400

FAX 803/779-0287

December 5, 2006

Clerk of Court
1226 College St Rm 7
PO Drawer 10
Newberry, SC 29108-0278

Re: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.,
Case No. 06-CP-36-395

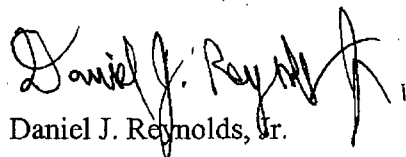
Dear Sir/Madam:

Enclosed, please find an original and one copy of an Affidavit of Service in the above captioned case. Please file the original the Court record and return a clocked copy to me in the enclosed self-addressed, stamped envelope.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,

ROBINSON, BARTON, MCCARTHY,
CALLOWAY & JOHNSON, P.A.


Daniel J. Reynolds, Jr.

Enclosure

FILED
CLERK OF COURT
2006 DEC - 6 A 10:24
JACOB E. JOHNSON
CLERK OF COURT

Copy Returned 12/6/06

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Thomas Jackson Construction, Inc.,

Plaintiff(s)

vs.

Lake Murray Tree, Inc.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

06 - CP - 36 - 395

(Please Print)

Submitted By: Barbara George Barton

Address: 1715 Pickens Street

Columbia, SC 29201

SC Bar #:

Telephone #: (803) 256-6400

Fax #: (803) 779-0267

Other:

E-mail: BBarton@rbmcc.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☒ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Sexual Predator (510) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture (840) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650)		

Submitting Party Signature:

Date: September 20, 2007

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

Case No: 06-CP- 36-395

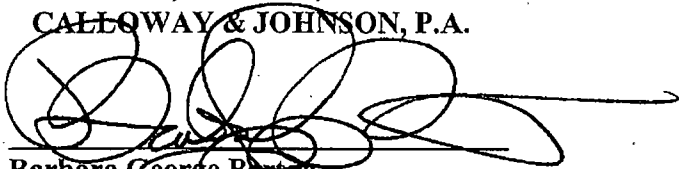
SUMMONS

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at her office, 1715 Pickens Street, Post Office Box 12287, Columbia, South Carolina 29211-2287, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time period aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

ROBINSON, BARTON, MCCARTHY
CALLOWAY & JOHNSON, P.A.

BY:


Barbara George Barton
Daniel J. Reynolds, Jr.
Attorneys for the Plaintiff
1715 Pickens Street
Post Office Box 12287
Columbia, SC 29211-2287
(803) 256-6400

Columbia, South Carolina
September 1, 2006.

FILED
NEWBERRY COUNTY
2006 SEP 21 P 12:43
JACQUE S. JONES
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

Case No: 06-CP-36-395

COMPLAINT

2006 SEP 21 P 12:43

FILED
NEWBERRY COUNTY

The Plaintiff herein, complaining of the Defendant, alleges as follows:

1. Upon information and belief, the Defendant, Lake Murray Tree, Inc., is a corporation duly organized under the laws of the state of South Carolina with its headquarters and principal place of business in Newberry County, South Carolina.
2. Thomas Jackson Construction, Inc. (the "Plaintiff"), is a corporation duly organized under the laws of the state of South Carolina with its headquarters located in Sumter County, South Carolina.
3. The Plaintiff is primarily engaged in the business of site preparation, grinding and clearing lands for development.
4. At all times pertinent hereto, the Plaintiff's headquarters and principal place of business were located in South Carolina.
5. This is an action for recovery on an open account as a result of Defendant's failure to provide payment for services performed by the Plaintiff.
6. Jurisdiction is proper in this court pursuant to Article V, Section 7 of the South Carolina Constitution.

7. Pursuant to South Carolina Code Section 15-7-30, venue is proper in that the Defendant's headquarters and principal place of business are located within the County of Newberry, State of South Carolina.

FOR A FIRST CAUSE OF ACTION

8. Each and every allegation set forth in Paragraphs One (1) through Seven (7), not inconsistent herewith, is reasserted, re-alleged, and re-averred as fully as if restated herein verbatim.

9. Upon information and belief, some time after Hurricane Katrina struck the Gulf Coast in August, 2005, the Defendant was hired as part of the Louisiana Disaster Relief program to grind debris at the "certain project sites, which debris was being shipped in from various land clearing projects throughout the Louisiana area.

10. On or before October, 2005, the Defendant sub-contracted the Plaintiff to grind debris at the "Choctaw" project site in Louisiana for a stated rate of \$0.95 per cubic yard of debris that was ground.

11. After the Plaintiff commenced grinding at the "Choctaw" project site, the Defendant requested that the Plaintiff move to the "60 Rayburn" and "Angie" project sites, also located in Louisiana, due to a discrepancy in the quantity of debris available for grinding at the "Choctaw" project site. Defendant agreed to compensate the Plaintiff the same stated rate of \$0.95 per cubic yard of debris that was ground at these additional project sites.

12. Between October 15, 2005 and October 28, 2005, the Plaintiff ground 52,750 cubic yards of debris on the three project sites combined.

13. On January 10, 2006, the Plaintiff sent an invoice to the Defendant requesting payment in the amount of \$50,112.50 (52,750 cu.yds. of grinding X \$0.95 per cubic yard).

14. On March 27, 2006, counsel for the Plaintiff sent a letter to the Defendant demanding

payment of the \$50,112.50.

15. The Defendant has failed to pay the \$50,112.50 and such amount is overdue and outstanding.

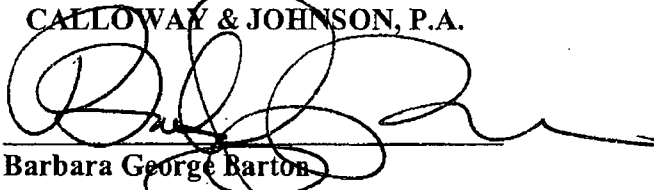
16. Any and all funds that were collected from the Defendant have been applied to the outstanding unpaid balance on the open account.

17. There is now overdue, owing and unpaid the sum of Fifty Thousand One Hundred Twelve and 50/100 Dollars (\$50,112.50) as set forth in the **Affidavit of Account** attached hereto and the invoice attached thereto as **Exhibit A**.

18. Although demand for payment has been made upon Defendant, Defendant has refused or failed to make any payments to Plaintiff.

WHEREFORE Plaintiff, Thomas Jackson Construction, Inc., demands judgment against the Defendant in the amount of \$50,112.50 and for such other relief as this Court deems appropriate.

**ROBINSON, BARTON, MCCARTHY
CALLOWAY & JOHNSON, P.A.**

BY: 

Barbara George Barton
Daniel J. Reynolds, Jr.
Attorneys for the Plaintiff
1715 Pickens Street
Post Office Box 12287
Columbia, SC 29211-2287
(803) 256-6400

Columbia, South Carolina
September 1, 2006.

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

Defendant

Case No: 06-CP-36-395

AFFIDAVIT OF STATMENT
OF ACCOUNT

PERSONALLY APPEARED before me, the undersigned, who being first duly sworn, deposed and says there is currently an amount of Fifty Thousand One Hundred Twelve and 50/100 Dollars (\$50,112.50), due and owing from Lake Murray Tree Service, Inc. ("Defendant") to Thomas Jackson Construction, Inc. ("Plaintiff") for grinding services provided by Plaintiff for Defendant at the Choctaw, 60 Rayburn, and Angie project sites in Louisiana between October 15, 2005 and October 28, 2005 as shown by the invoice attached hereto as Exhibit A and incorporated herein by reference.

Thomas Jackson Construction, Inc.

By: Richard Thomas Jackson
Richard Thomas Jackson
Its: President

SWORN to and Subscribed before me
this 19th day of September, 2006.

Alice M. Mullen
Notary Public for South Carolina
My Commission Expires: 11/27/06

FILED
NEWBERRY COUNTY
2006 SEP 21 P 12:43

Thomas Jackson Construction

PMB #13 1089-A Alice Dr./Sumter, SC 29150/(803) 469-9525

Customer	<i>Lake Murray Tree, Inc</i>	Phone	Date
Street		City	
Job Name & Location	<i>Louisiana Disaster Relief</i>		

Choctaw -

Grinding debris: 24,000 cyd @ \$.95 / cyd

22,800⁰⁰

Angie -

Grinding debris: 20,500 cyd @ \$.95 / cyd

19,475⁰⁰

Go Bayburn -

Grinding debris: 8,250 cyd @ \$.95 / cyd

7,837.50

Total

50,112⁵⁰

FILED
SHERIFF'S OFFICE
SUMTER COUNTY
SEP 21 10 12 43
CLERK

EXHIBIT A

Rental _____
Total Materials _____
Total Labor _____
Tax _____
Total Amount _____

Signature _____

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

THOMAS JACKSON
CONSTRUCTION, INC.,

Case No: 06-CP-36-395

Plaintiff,

vs.

LAKE MURRAY TREE, INC.,

VERIFICATION

Defendant

Thomas Jackson, being duly sworn, says that he is the President for the Plaintiff, herein and that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief; and to those matters he believes them to be true.

Thomas Jackson Construction, Inc.

By: Richard Thomas Jackson
Richard Thomas Jackson
Its: President

SWORN to and Subscribed before me
this 19th day of September, 2006.

Alice M. Minton
Notary Public for South Carolina
My Commission Expires: 11/27/06

FILED
NEWBERRY COUNTY
2006 SEP 21 P 12:43
JAMES S. POWERS
CLERK OF COURT

ROBINSON, BARTON, MCCARTHY, CALLOWAY & JOHNSON, P.A.

ATTORNEYS AT LAW
1715 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29201

G. WILLIAM MCCARTHY, JR.*
BARBARA GEORGE BARTON*
W. E. CALLOWAY
NANCY E. JOHNSON, SC & NC*

DANIEL J. REYNOLDS, JR.

* CERTIFIED BANKRUPTCY SPECIALISTS
IN THE STATE OF SOUTH CAROLINA

WILLIAM E.S. ROBINSON
(1942-1993)

P.O. BOX 12287
COLUMBIA, S.C. 29211-2287
803/258-8400

FAX 803/779-0267

September 20, 2006

Clerk of Court
1226 College St Rm 7
PO Drawer 10
Newberry, SC 29108-0278

Re: Thomas Jackson Construction, Inc. vs. Lake Murray Tree, Inc.

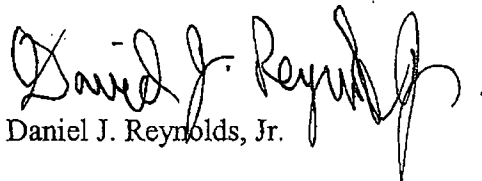
Dear Sir/Madam:

Enclosed, please find an original and one copy of a Summons and Complaint. Please file the Summons and Complaint with the Court record and return the clocked copy to me in the enclosed self-addressed, stamped envelope so that the clocked copy of the Summons and Complaint may be served on the Defendant.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,

ROBINSON, BARTON, MCCARTHY,
CALLOWAY & JOHNSON, P.A.


Daniel J. Reynolds, Jr.

Enclosure

FILED
NEWBERRY COUNTY
2006 SEP 21 P 12:44
JACQUE S. BOWERS
CLERK OF COURT

*Copies mailed
9/22/06*

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Case No.: 2014-001215

Thomas Jackson Construction,

Appellant,

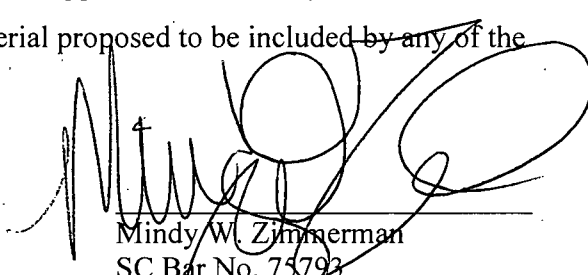
v.

Larry E. Koon and Allen Lee Koon
By and through his attorney in fact,
Larry E. Koon,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned, Mindy W. Zimmerman, hereby certifies that on the **19th day of November, 2014**, she prepared the Record on Appeal. The undersigned also certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Mindy W. Zimmerman
SC Bar No. 75793
Zimmerman and Shealy, LLC
1207 Friend Street
Mailing: P. O. Box 1207
Newberry, South Carolina 29108
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
Donald B. Hocker, Circuit Court Judge

Case No. 2014-001215

Thomas Jackson Construction,

Appellant,

v.

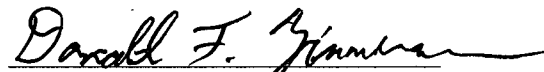
Larry E. Koon and Allen Lee Koon
by and through his attorney in fact,
Larry E. Koon,

Respondent.

CERTIFICATE OF SERVICE

The undersigned, Donald F. Zimmerman, hereby certifies that on the **2st day of December, 2014**, he has served the following upon counsel for the Respondent on copy of the Record on Appeal by mailing and depositing the same with the United States Postal Service, first class mail, postage prepaid to the address below:

Ms. Jennifer Dowd Nichols, Esq.
Mr. Robert W. Dibble, Jr., Esq.
C/O Harrell & Martin, P.A.
P.O. Box 1000
Chapin, SC 29036



Donald F. Zimmerman, Legal Assistant
Zimmerman and Shealy, LLC
1207 Friend Street
P. O. Box 1207
Newberry, South Carolina 29108
(803) 321-0000
Attorneys for Appellant

RECEIVED

DEC 04 2014

SC Court of Appeals