

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Court of Common Pleas
For Charleston County
Honorable J. C. Nicholson, Jr., Circuit Judge
Civil Action Nos.: 2010-CP-10-9096
And 2011-CP-10-8840
Appellate Case Tracking No. 2014-001247

RECEIVED
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SC Court of Appeals

Frank Gordon, Jr., Individually and as Trustee
of Dorothy S. Gordon (Deceased) Trust,

Respondent,

v.

Donald W. Lancaster,

Appellant.

**Record on Appeal
(Volume I)**

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011- CP-10-8840

Frank Gordon, Jr., et al.

PLAINTIFF(S)

Donald W. Lancaster, et al.

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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.
- ☐ **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: The Defendant's Motion to Reconsider the Court's Order, filed on September 6, 2013, came before this Court on October 30, 2013, for a rehearing. After further review, the Court affirms its order of August 19, 2013, and denies the Defendant's motion to reconsider and amend.

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)
N/A		\$

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

2117
Judge Code

Date

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011- CP-10-8840

Frank Gordon, Jr., et al.
PLAINTIFF(S)

Donald W. Lancaster, et al.
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
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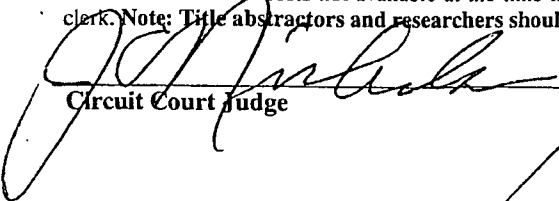
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Circuit Court Judge

2117
Judge Code

5/16/14
Date

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 10 CP-10-9096; and 11-CP-10-8840

Frank Gordon, Jr., et al.

Donald W. Lancaster

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: John J. Dodds, III

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ 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.
- ☐ **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 INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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		\$
		\$
		\$

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

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Circuit Court Judge

SCRCP Form 4C (12/2011)

7117
Judge Code8/16/13
Date

Page 1

003

FILED
2013 AUG 30 PM 4:36
JULIE J. ARMSTRONG
CLERK OF COURT

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Justin O'Toole Lucey, Esquire
415 Mill Street
Mount Pleasant, SC 29464
ATTORNEY(S) FOR THE PLAINTIFF(S)

John J. Dodds, III, Esquire
858 Lowcountry Blvd., Suite 101
Mount Pleasant, SC 29464
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-10-9096

FRANK GORDON, JR., Individually
and as Trustee of the DOROTHY S.
GORDON (DECEASED) TRUST,)

Plaintiff,)

v.)

DONALD W. LANCASTER,)

Defendant.)

SUPPLEMENTAL ORDER

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

CASE NO. 2011-CP-10-8840

FRANK GORDON, JR., Individually)
and as Trustee of the DOROTHY S.)
GORDON (DECEASED) TRUST,)

Plaintiff,)

v.)

DONALD W. LANCASTER,)

Defendant.)

FILED

AUG 30 2013

**JULIE J. ARMSTRONG
CLERK, C.P. & G.S.**

THIS MATTER came to be heard by me on June 13 and 14, 2013 for a non-jury trial.

After considering all the evidence presented including the testimony and various exhibits, the Court finds and concludes that Plaintiff has failed to prove by a preponderance of the evidence the Second Cause of Action for Constructive Trust, the Third Cause of Action for Civil Conspiracy and the Fourth Cause of Action for Negligence/Aiding and Abetting.

A constructive trust arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust. Constructive trust is resorted to by equity to vindicate right

005

and justice or frustrate fraud. A constructive trust arises whenever a party has obtained money which does not equitably belong to him and which party cannot in good conscious retain or withhold from another who is beneficially entitled to it, as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through breach of trust or violation of fiduciary duty. Fraud generally is an essential element giving rise to constructive trust, although it need not be actual fraud. In order to establish a constructive trust, the evidence must be clear and convincing. McNair v. Rainsford, 499 S.E.2d 488 (S.C. App. 1998). In Baptist Foundation for Christian Educ. v. Baptist College at Charleston, 317 S.E. 453 (S.C. App. 1984), the South Carolina Court of Appeals held that the Master erred in imposing a constructive trust on funds transferred from the seminary to the College at the bequest of the donor where there was no evidence that the college induced the transfer of funds by actual or constructive fraud or by wrongdoing of any kind. In the case at bar, Plaintiff failed to prove by clear and convincing evidence that Defendant induced the transfer of funds to him by actual or constructive fraud or by wrongdoing of any kind. Therefore, it is proper that Plaintiff's cause of action for constructive trust be dismissed.

gm
Civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the Plaintiff. Civil conspiracy consists of three elements: 1) a combination of two or more persons, 2) for the purpose of injuring the Plaintiff, 3) which causes him special damage. Vaught v. Waites, 387 S.E.2d 91 (Ct. App. 1989). The gravamen of the tort of civil conspiracy is the damage resulting to the Plaintiff from an overt act done pursuant to a common design. Cricket Cove Ventures, LLC v. Gilliland, 701 S.E.2d 39 (Ct. App. 2010). Further, civil conspiracy requires that the Plaintiff claim special damages. If a Plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of the civil conspiracy claim, the civil conspiracy claim should be dismissed. Gordon v. Busbee, 723 S.E.2d 822 (S.C. App. 2011). In the case

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at bar, Plaintiff failed to allege or prove by a preponderance of the evidence any special damages. Rather, Plaintiff merely repeats the damages from his first cause of action for fraudulent conveyance. As such, Plaintiff's Third Cause of Action for Civil Conspiracy should be dismissed.

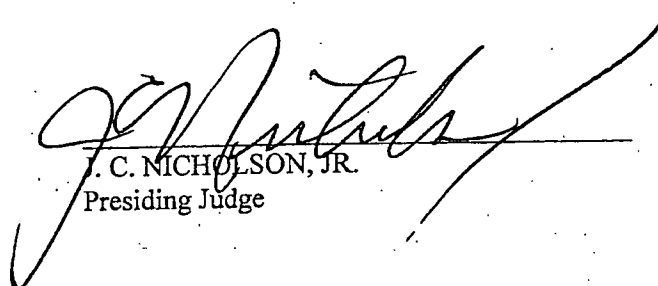
Plaintiff's Fourth Cause of Action alleges a claim for "Negligence/Aiding and Abetting" and asserts that Defendant negligently, recklessly, knowingly, and/or intentionally aided and abetted the judgment debtor in certain wrongful activities as more particularly set forth in the Second Amended Complaint. While the Court is familiar with the cause of action of aiding and abetting a breach of fiduciary duty, the Court is unaware of a cause of action for negligence/aiding and abetting, nor has Plaintiff provided the Court any authority to support such a cause of action. Plaintiff does not allege, nor did Plaintiff prove any fiduciary relationship between the judgment debtor and the Plaintiff. Had Plaintiff asserted a cause of action for aiding and abetting a breach of fiduciary duty, Plaintiff would have been required to establish three elements: 1) a breach of a fiduciary duty owed to the Plaintiff; 2) the Defendant's knowing participation in the breach; and 3) damages. Vortex Sports and Entertainment, Inc. v. Ware, 662 S.E.2d 444 (2008). The gravamen of the claim for aiding and abetting a breach of fiduciary duty is the Defendant's knowing participation in the fiduciary's breach. Future Group, II v. Nations Bank, 478 S.E.2d 45 (1996). Since Plaintiff failed to prove any fiduciary relationship between the judgment debtor and Plaintiff, and that Defendant knowingly participated in the fiduciary's breach, Plaintiff's cause of action for negligence/aiding and abetting must be dismissed.

For the foregoing reasons, it is hereby

ORDERED, ADJUDGED and DECREED that Plaintiff's Second Cause of Action for Constructive Trust, Third Cause of Action for Civil Conspiracy and Fourth Cause of Action for Negligence/Aiding and Abetting as set forth in the Second Amended Complaint shall be, and are hereby, dismissed with prejudice.

007

AND IT IS SO ORDERED this 30 day of AUG, 2013, at
Charleston, South Carolina.


J. C. NICHOLSON, JR.
Presiding Judge

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-9096; & 2011-CP-10-8840

Frank Gordon, Jr., Individually and as Trustee
of the Dorothy S. Gordon Trust
PLAINTIFF(S)Donald W. Lancaster
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Plaintiff Frank Gordon, Jr.	Defendant Donald W. Lancaster	\$211,677.30
		\$

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

2117
Judge Code8/16/2013
Date

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Frank Gordon, Jr., Individually and as
Trustee of the Dorothy S. Gordon
(Deceased) Trust,

Plaintiff,

vs.

Donald W. Lancaster,

Defendant.

Frank Gordon, Jr., Individually and as
Trustee of the Dorothy S. Gordon
(Deceased) Trust,

Plaintiff,

vs.

Donald W. Lancaster,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO: 2010-CP-10-9096

FILED
2013 AUG 19 PM 3:47
JULIE J. ARMSTRONG
CLERK OF COURT

CASE NO: 2011-CP-10-8840

ORDER & JUDGMENT

THIS MATTER came before me on June 13-14, 2013, for a non-jury trial. This action was commenced by Plaintiff to aid in executing on a Judgment he obtained against now-deceased Judgment Debtor Rudolph Robert Drews ("Drews"). Plaintiff initiated this action against Defendant Donald W. Lancaster ("Lancaster"), nephew of Judgment Debtor Drews, alleging that Defendant Lancaster received fraudulent *inter vivos* transfers from Drews that should be set aside and the property/monies received by Lancaster under those fraudulent transfers (and/or the proceeds thereof) should be awarded to Plaintiff in satisfaction of Plaintiff's Judgment and accrued interest. Plaintiff appeared and was represented by counsel, Justin Lucey and Stephanie Drawdy. Defendant appeared and was represented by counsel, John Dodds.

010

PROCEDURAL/HISTORICAL BACKGROUND

In September 1996, the underlying claim accrued for the illegal sale of stock under S.C. Code § 35-1-1490. On April 16, 1999, suit was filed in *Gordon v. Drews, et al.* In December 2001, a three-day jury trial was held in *Gordon v. Drews, et al.*, Case No. 1999-CP-1001407, that culminated in a Judgment in the amount of \$50,000.00, plus \$15,789.12 in interest. By Order dated March 14, 2002, Plaintiff was awarded attorney fees of \$42,693.50, for a total Judgment of \$108,482.62. From April 2002 until September 2005, Drews appealed the Judgment. The Court of Appeals issued an opinion affirming the Judgment; and in September 2005, Drews' Petition for Writ Certiorari was denied. On September 28, 2005, Gordon was additionally awarded \$1,467.21 in appellate fees and expenses.

In August 2006, the Circuit Court entered an order for supplemental proceedings to be opened to aid Gordon in satisfaction of the Judgment. On September 26, 2006, a hearing was held in the supplemental proceedings, which were left open due to Drews' failure to produce financial records, in contravention of the order for supplemental proceedings.

On September 25, 2007, Drews died; Drews' Estate was opened on or about October 26, 2007 under Case Number 2007-ES-10-1518. Disputes occurred regarding the opening and the administration of the estate. Shirrese Brockington was later named the Special Administrator of the estate of Rudolph Robert Drews. On February 8, 2010, an inventory and appraisal was filed in Drews' Estate, which indicated the estate had no assets.

On February 26, 2010, Drews' nephew, Defendant Lancaster, was deposed in the Supplemental Proceedings. During Lancaster's deposition, Plaintiff became aware of the fraudulent transfers between Drews and Lancaster that rendered Drews insolvent and that are the subject of this suit.

On February 27, 2010, the Judgment Debtor's wife, Effie D. Drews, also died. This occurred two days before her scheduled deposition. On March 30, 2010, Effie Drews' Estate was opened with her sister, former Defendant Jessie B. Atkinson ("Atkinson"), thereafter being named as Personal Representative. On June 29, 2010, an inventory and appraisal was filed in Effie Drews' Estate, which indicated a net worth of \$55,460.04.

On November 2, 2010, Gordon filed this action against the Drews' Estate, Effie Drews' Estate, and Donald Lancaster; an amended complaint was then filed on November 30, 2010. On December 2, 2010, Gordon filed a similar Petition in Effie Drews' Estate against former Defendant Atkinson (individually and as the Estate's Personal Representative), Drews' Estate, and Donald Lancaster.

 In November 2011, Gordon settled with Defendant Atkinson, Individually and as Personal Representative of Effie Drews' Estate, with the funds from Effie Drews' Estate paid to Plaintiff in partial satisfaction of the foregoing judgment. Also in November 2011, Gordon settled with Shirrese Brockington as Special Administrator of the Drews' Estate. Both Estates have assigned to Plaintiff all rights of recovery against Lancaster relating to the matters herein. On June 13, 2013, the Court took judicial notice of Plaintiff's Judgment and Assignments.

LEGAL DISCUSSION

To bring a Statute of Elizabeth claim, a creditor need not show that the debt was reduced to judgment by the time of the transfer. "One who is in debt cannot make a voluntary conveyance which will prevail against existing debts." *First Citizens Bank and Trust Co. of S.C. v. Scofield*, 286 S.C. 520, 522, 335 S.E. 2d 248 (Ct. App. 1985)(court held son's transfer of residence to his mother while indebted to others and while continuing to live in same was a fraudulent conveyance). Moreover, "[s]ubsequent creditors may have conveyances set aside where: (i) the conveyance was 'voluntary,' that is, for no consideration, and (ii) it was made with

a view toward future indebtedness or with an actual fraudulent intent on the part of the grantor to defraud creditors.” *Judy v. Judy*, 403 S.C. 203, 742 S.E.2d 672, 675 (Ct. App. 2013)(quoting *Mathis v. Burton*, 319 S.C. 261, 460 S.E.2d 406, 408 (Ct.App.1995)). Furthermore, where a conveyance is to a family member, under the Statute of Elizabeth, even nominal consideration will not save such a conveyance that effectively defeats creditors. *First Citizens*, 286 S.C. 520, 522.

“With a voluntary inter-family transfer, the burden shifts to the transferee to establish the transfer was valid.” *Judy*, 742 S.E.2d 672, 675 (citing *Windsor Props., Inc. v. Dolphin Head Constr. Co.*, 331 S.C. 466, 471, 498 S.E.2d 858, 860 (1998) (“Where transfers to members of the family are attacked either upon the ground of actual fraud or on account of their voluntary character, the law imposes the burden on the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing testimony.”). Moral fraud is shown by evidence that a party acted with intent to delay, hinder and/or defeat creditors. *Judy*, 742 S.E.2d 672, 675.

FINDINGS OF FACT AND CONCLUSIONS

A. \$100,000 Transfer

1. From circa 1990, Judgment Debtor Drews was in financial trouble; Lancaster testified that by early 1992, the IRS was closing in on collecting taxes from Drews.

2. In early 1992, Lancaster received \$100,000 from Drews on the alleged condition that Lancaster buy Drews a house for Drews and his wife, Effie Drews, to live in for the remainder of their lives.

3. Lancaster testified he treated the \$100,000 from Drews as a gift at the time of the gift and for eighteen or more years thereafter, including during his 2010 deposition. Lancaster testified that it was important to Lancaster that it be a gift so that Lancaster’s tax basis in the

property would be higher. He further testified that he prepared a gift tax return for Drews to report this gift to the Internal Revenue Service; and that he assisted in mailing the gift tax return, all to protect himself, while failing to keep a copy of the return.

4. Confronted with the anomaly of the failure to keep a copy of any tax return, let alone an important one that he had required to be filed, Lancaster attempted to claim that Drews' copier was broken that day. This testimony was impeached by his 2010 deposition testimony, when he testified that he had kept an eye out for the return when he inspected the Decedent's desk immediately before the deposition. Obviously, he would not have kept an eye out for the return if he knew it did not exist due to the copier allegedly being broken.

5. At trial, Lancaster deviated from his deposition testimony that the \$100,000 transfer was a gift, claiming it was a binding, bargained for consideration for the life estate. This changed testimony occurred after nineteen (19) years of contrary representations to the public and to the U.S. Government, including deposition testimony.

6. The uncontested evidence was that at the time the \$100,000 transfer was made, and for the remainder of his life, the Judgment Debtor had pending creditor claims, including IRS assessments and liens during most of the '90s, and a 1999 demand on a bank loan guarantee due to the failure of the business investment (the hardware store "Builders Station") that had given rise to Gordon's original stock fraud claim.

i. Lancaster Purchased the Bainbridge Property for Drews

7. On or about May 22, 1992, Lancaster purchased 17 Bainbridge Drive in Charleston, South Carolina (the "Bainbridge Property") for \$160,000. Pl. Ex. A.

8. In May 1992, Lancaster executed an agreement whereby he purportedly gave Judgment Debtor Drews and Effie Drews a life estate in the Bainbridge Property.

9. In contravention of typical practices, Lancaster did not create the Bainbridge

Property life estate by deed and did not record the life estate in the public record, thereby avoiding notice of the life estate's existence (and the \$100,000 transfer) to Drews' creditors.

10. As seen below, from 1992 until the Drewses' deaths, Lancaster held the Drews' residence(s) in his name while allowing the Drews full use, control, and enjoyment of the residence(s) (including use of money obtained through equity lines of credit secured by the residence) in contravention of customary business practices.

11. Shortly after the Bainbridge purchase, on or about June 12, 1992, Lancaster obtained a \$40,000 open-end mortgage (equity line) from South Carolina National Bank on the Bainbridge Property (the "\$40,000 SC National Line of Credit"), secured by the equity that had been substantially created by Judgment Debtor Drews' funds. Pl. Ex. B.

12. From 1993 to 1995, Lancaster provided Drews \$40,000 in checks drawn from South Carolina National Bank.

13. Lancaster was effectively using the equity line of credit to return to Drews part of the \$100,000 Transfer, with Drews paying the interest incurred on the South Carolina National line of credit secured with the equity that Drews had created.

ii. Nuffield Property Substitution Made By Drews and Lancaster

14. In 1995, Drews and Lancaster allegedly agreed to substitute a different, single-level house for the two-story Bainbridge house due to medical issues with Drews' knees.

15. On April 27, 1995, Drews acted as the alleged Power of Attorney for Defendant Lancaster and signed an Agreement of Purchase and Sale of Real Property for a residence located at 2 Nuffield Road in Charleston, South Carolina (the "Nuffield Property"). Pl. Ex. C.

16. No evidence exists that Lancaster ever executed a Power of Attorney for Drews to act on Lancaster's behalf. Lancaster could not produce one and could not explain the absence of any such document in the RMC office.

17. Drews' acting as a Power of Attorney when no such authority exists is a departure from typical legal and financial practices and is evidence of his continued control of the monies he had transferred to Lancaster.

18. On May 15, 1995, Lancaster increased the \$40,000 SC National Line of Credit on the Bainbridge Property to \$79,250. Pl. Ex. D.

19. One day later, on May 16, 1995, Lancaster purchased a residence located at 2 Nuffield Road in Charleston, South Carolina (the "Nuffield Property") for \$125,000. Pl. Ex. E.

20. The timing of Lancaster's purchase of the Nuffield Property in conjunction with the increase in the Bainbridge Property's equity line of credit by Drews evidences that the Nuffield Property purchase was funded with monies from the Bainbridge Property's equity line of credit secured by the equity that Judgment Debtor Drews created.

21. In May 1995, Lancaster executed a Memorandum of Lease and Subordination Agreement whereby he purportedly gave Drews and Effie a life estate in the Nuffield Property. Pl. Ex. F.

22. The purported Nuffield Property life estate Lancaster gave Drews and Effie was allegedly in substitution for the purported Bainbridge Property life estate.

23. In contravention of typical business and legal practices, Lancaster did not create the Nuffield Property life estate by deed.

24. Further, the misleading title of the Nuffield Property's Memorandum of Lease and Subordination Agreement and its initial text creates the impression that Drews had a lease (not a life estate) for his residence, thereby again avoiding notice of the existence of the life estate in the public record (showing another departure from normal business methods). The misleading document is in and of itself a further deviation from typical business or legal practices.

25. Following Drews' death in September 2007, Effie Drews continued to live at the

Nuffield Property until her death in February 2010.

26. On April 29, 2010, Lancaster sold the Nuffield Property residence for \$246,000 (receiving \$121,000 in profits from its sale). Pl. Ex. G.

27. Based on the evidence as a whole, this Court finds no legitimate reason exists for Lancaster to have purchased Drews' residence for Drews with Drews' monies and then incrementally pass those monies back to Drews with the multiple, convoluted steps demonstrated here; rather, the evidence presented shows the only reason for Lancaster to have done this was to allow Drews to distance himself from ownership of his residence, thereby giving Drews the appearance of having no assets in order to defraud his creditors.

B. The Meeting Street Mortgages

i. \$40,000 Meeting Street Mortgage (the First Mortgage)

28. In March 1995, Drews granted Lancaster a \$40,000 mortgage on Drews' property located at 1705 Meeting Street (the "\$40,000 Meeting Street Mortgage"). Pl. Ex. H.

29. Lancaster did not give Drews any contemporaneous consideration for the \$40,000 Meeting Street Mortgage.

30. Moreover, in contravention of typical business practices and Defendant Lancaster's detailed records of the transaction, no note was ever executed on the \$40,000 Meeting Street Mortgage.

31. In further contravention of typical business practices, the \$40,000 Meeting Street Mortgage was not recorded until November 1995, approximately eight months after it was executed. Pl. Ex. H.

32. Additionally, Defendant Lancaster produced amortization schedules (Pl. Exs. I and J) that include the \$40,000 Meeting Street Mortgage with the same revision date (February 3, 1997) but contradictory information regarding interest paid in 1995, resulting in a 1996

balance-forward discrepancy of \$6,081.60 (Pl. Ex. I indicates a balance forward at the end of 1996 of \$44,211.20 while Pl. Ex. J indicates a balance forward of \$50,292.80).

33. The contradictions in Defendant Lancaster's amortization schedules (Pl. Exs. I and J) impeach Defendant Lancaster's claim that his detailed, personally maintained schedules were contemporaneously made and recorded.

ii. \$100,000 Meeting Street Mortgage (the Second Mortgage)

34. On April 15, 1998, Drews granted Lancaster a \$100,000 mortgage on Drews' property located at 1705 Meeting Street (the "\$100,000 Meeting Street Mortgage"). Pl. Ex. K.

35. Lancaster did not give Drews any contemporaneous consideration for the \$100,000 Meeting Street Mortgage.

36. Moreover, in contravention of typical business practices and Defendant Lancaster's detailed records of the transaction, no note was ever executed on the \$100,000 Meeting Street Mortgage.

37. Lancaster presented contradictory testimony that he was not contemporaneously aware of the \$100,000 Meeting Street Mortgage while also testifying that the \$100,000 Meeting Street Mortgage was intended to replace the \$40,000 Meeting Street Mortgage, and that he cooperated with Drews in filing this excessive mortgage.

38. Further, Lancaster testified that no satisfaction of the \$40,000 Meeting Street Mortgage was filed contemporaneous with creation of the \$100,000 Meeting Street Mortgage. The failure to satisfy the First Mortgage when the Second Mortgage was granted was in contravention of typical business practices. The failure to satisfy the First Mortgage when the Second Mortgage was granted also impeached Lancaster's testimony that the Second Mortgage was granted to replace the First Mortgage.

39. This excessive mortgage created the impression that Drews' Meeting Street

Property was encumbered in excess of its actual debt by at least \$100,000.

40. Further, the Defendant's claim that the excess amount of the Second Mortgage was to create a line of credit for future advances is impeached by the execution of a new (Third) Mortgage on the next advance (see below).

iii. \$20,000 Meeting Street Mortgage (the Third Mortgage)

41. In July 1999, Drews granted Lancaster a \$20,000 mortgage on Drews' property located at 1705 Meeting Street (the "\$20,000 Meeting Street Mortgage"). Pl. Ex. L.

42. Lancaster did not give Drews any contemporaneous consideration for the \$20,000 Meeting Street Mortgage.

43. In contravention of typical business practices and Defendant Lancaster's detailed records of the transaction, no note was ever executed on the \$20,000 Meeting Street Mortgage.

44. Lancaster gave contradictory testimony that he was not contemporaneously aware of the \$20,000 Meeting Street Mortgage while later testifying that he did participate in its genesis and that the purpose of the Third Mortgage was to fund a settlement on a bank guarantee.

iv. Excessive Mortgages

45. These excessive mortgages created the impression that Drews' Meeting Street Property was encumbered in excess of its actual debt by at least \$100,000.

46. Based on the evidence as a whole, the Court finds Lancaster did have knowledge of the Meeting Street Mortgages at the time they were executed and actively participated with Drews in his scheme to create the impression that Drews' Meeting Street Property was encumbered in excess of any actual debt so as to avoid creditors.

47. Moreover, based on the evidence as a whole, this Court finds no legitimate business reason exists for the Meeting Street Mortgages to Lancaster; rather, the evidence presented shows the only reason for Drews to grant Lancaster the excessive Meeting Street

Mortgages was for Drews to appear as having encumbered assets in order to conceal his true assets from his creditors, and Defendant Lancaster was an active participant in Drews' scheme to defraud his creditors by this concealment.

48. Importantly, at the time the Second and Third Mortgages were granted, Gordon's cause of action had already accrued. It was in large part the satisfaction of these fraudulent mortgages that was used to justify the later Assignment that occurred a month before the *Gordon* trial (see below).

49. Further, the completely fraudulent Second Mortgage (\$100,000) occurred after the failure of Builders Station, while a bank claim on Drews' guarantee was pending, further evidencing a general fraud on creditors.

C. Judgment Debtor Drews' Assignment of the \$190,000 Meeting Street Mortgage to Defendant Lancaster

50. On November 5 and 6, 2001, Defendant Lancaster executed satisfactions for the three existing alleged Meeting Street Mortgages (\$40,000, \$100,000, \$20,000). Pl. Ex. L, M and N.

51. On November 7, 2001, Drews sold the Meeting Street Property and took back a \$190,000 note and mortgage from the buyer, Charleston's Antiques, on the Meeting Street Property (the "\$190,000 Meeting Street Note and Mortgage"). Pl. Ex. O.

52. On November 7, 2001, simultaneously, Drews allegedly assigned the \$190,000 Meeting Street Note and Mortgage to his wife, Effie. Pl. Ex. P.¹

53. On November 7, 2001, simultaneously, Effie allegedly gave Lancaster a \$50,912 note on the Meeting Street Property (the "\$50,912 Meeting Street Note"). Pl. Ex. Q.

¹ The evidence establishes that Drews and his wife acted in concert with one another to shield Drews' assets. Defendant Lancaster testified that he dealt with his uncle and aunt as a group. He further testified that he never dealt individually with his aunt, Effie Drews, despite allegedly having received an assignment of the Meeting Street Property's \$190,000 Mortgage from her as well as a \$50,912 Note on the Meeting Street Property. Rather, Lancaster admitted that monies received were for the joint benefit of the Drewses.

54. No evidence was presented that Lancaster gave any contemporaneous consideration for the \$50,912 Meeting Street Note.

55. On November 7, 2001, simultaneously, Effie purportedly assigned the \$190,000 Meeting Street Mortgage to Lancaster in full (the "\$190,000 Meeting Street Assignment") as security for the \$50,912 Meeting Street Note. Pl. Ex. R.

56. Lancaster testified he was not contemporaneously aware of the \$190,000 Meeting Street Assignment at the time it was executed on his behalf.

57. No evidence was presented that Lancaster gave any contemporaneous consideration for the \$190,000 Meeting Street Assignment.

58. Notably, Lancaster did not receive an assignment of the \$190,000 Meeting Street Note.

59. The assignment of the Meeting Street mortgage receivable from the Drewses to Lancaster occurred a month before the *Gordon* trial.

60. Drews' assignment of the \$190,000 Meeting Street Mortgage allowed Drews to give the impression in the public record that Drews did not own the debt that was encumbering the now sold Meeting Street Property.

61. From 2001 to 2005, Drews (by way of Effie Drews) received payments on the \$190,000 Meeting Street Note and Mortgage for the joint benefit of the Drewses, purportedly passing a portion of these payments on to Lancaster for the alleged \$50,912 Meeting Street Note.

62. In September 2005, Drews (by way of Effie) received the final payment of \$130,293.37 on the \$190,000 Meeting Street Note and Mortgage.

63. On September 26, 2005, Lancaster received final payment on the \$50,912 Meeting Street Note, issued a satisfaction for same and assigned back to Effie the alleged \$190,000 Meeting Street Property Mortgage. Pl. Ex. Q.

64. As the facts above show, the 2005 payoff was an event of economic significance for Lancaster and Drews due to Drews' sale of the Meeting Street Property and satisfaction of Lancaster's alleged \$50,912 Meeting Street Note. However, see the below omissions by both parties to this transaction.

65. In Lancaster's 2005 federal tax return (Pl. Ex. S), Lancaster filed an itemized return but failed to report interest income from the alleged \$50,912 Meeting Street Note on Schedule B, despite receiving more than \$40,000 in payments from the sale of the Meeting Street Property and reporting other less significant interest income in that year.

66. In Drews' 2005 federal tax return (Pl. Ex. T), Drews also filed an itemized return and failed to report a deduction for interest expense on the alleged \$50,912 Meeting Street Note on Schedule A.²

67. The failure by Lancaster and Drews to report the alleged \$50,912 Meeting Street Note's interest income and interest expense (respectively) on their itemized tax returns for 2005 evidences Lancaster and Drews did not treat the \$50,912 Meeting Street Note as a legitimate loan and continued to hide evidence of the transaction.

68. Based on the evidence as a whole, the Court finds Lancaster did have knowledge of the \$190,000 Meeting Street Assignment at the time it was executed and actively participated with Drews in his scheme to create the impression that Drews' Meeting Street Property was encumbered in excess of any actual debt so as to avoid creditors.

69. Moreover, based on the evidence as a whole, this Court finds no legitimate business reason exists for Lancaster receiving the \$50,912 Meeting Street Note from Effie Drews

² Drews also failed to report a deduction for interest expense on the alleged \$50,912 Meeting Street Note for prior years when it was available as well. For 2001, Drews filed an itemized return but failed to report an interest expense deduction on the alleged \$50,912 Meeting Street Note. For 2002 and 2003, Drews took a standard deduction but the Schedule A included with each of his returns shows Drews failed to list this interest expense in either year.

or the \$190,000 Meeting Street Assignments; rather, the evidence presented shows the only reason for Drews to grant Lancaster the \$50,912 Meeting Street Note and the \$190,000 Meeting Street Assignment was for Drews to conceal his true assets from his creditors, and Defendant Lancaster was an active participant in Drews' scheme to defraud his creditors by this concealment.

D. Judgment Debtor Drews' Transactions With Other Family and Close Friends

70. Plaintiff further alleges additional pattern evidence that Judgment Debtor Drews conspired with sister-in-law Jessie Atkinson and close friend Dorsey Biller to conceal approximately \$50,000 from Drews' creditors.³ Plaintiff offered evidence of Drews' transfer of \$50,000 to Atkinson and Biller to show Drews' pattern of concealing assets with family members and/or close friends. However, the Court does not need to reach this evidence in light of the sufficient evidence directly involving Defendant Lancaster, which shows Judgment Debtor Drews' pattern of concealment.

E. Amount of Transfers and Judgment

71. The evidence presented by Plaintiff at trial establishes that the following monies were received by Defendant Lancaster from these fraudulent transfers:

- (i) The initial \$100,000 Transfer from Judgment Debtor Drews to Defendant Lancaster for purchase of a residence for Drews and his wife, Effie, to live in the remainder of their lives;

³ On February 7, 2007, Effie (with Drews present) gave \$50,000 in checks to her sister Jessie Atkinson to hold for the Drewses. On February 13, 2007, Atkinson gave a \$50,041.69 check back to Effie (returning the \$50,000 plus interest). On February 22, 2007, Drews gave the \$50,041.69 Atkinson check to friend and former business associate Dorsey Biller to hold for Drews and Effie. From March 2007 to July 2007, Drews requested Biller give \$14,000 of the \$50,041.69 back, which Biller did. Following Drews' death in September 2007, Effie Drews began requesting payments back of the \$50,000 from Biller. From October 2007 until October 2009, Effie requested Biller give \$29,500 of the \$50,041.69 back, which Biller did. On March 25, 2010 (following Effie Drews' death on February 27, 2010), Dorsey Biller gave Atkinson (Personal Representative of Effie's Estate) a \$7,084.12 check for final payment on the return of the \$50,041.69 Drews gave Biller.

- (ii) Ninety-Six Thousand Eight Hundred Dollars (\$96,800) in profits received on the sale of the residence purchased with the proceeds of Drew's initial \$100,000 Transfer to Lancaster; and
- (iii) Eighty-Nine Thousand Three Hundred and Thirty Dollars and Seventy-Five Cents (\$89,330.75) in purported payments from Judgment Debtor Dews to Defendant Lancaster for the alleged Meeting Street Mortgages.

72. Interest is due on the judgment at the post judgment rate of 14% per annum under the then existing version of S.C. Code 34-31-20(B)(Supp.1999). After accrual of interest and a \$60,000.00 credit for the Atkinson payment, the balance owed on the Judgment is \$211,677.30.

73. Defendant Lancaster's profits from the sale of the Dews' residence and the Meeting Street Mortgage payments together total \$186,130.75, which has a present value as of commencement of trial of \$222,262.21.⁴ Adding to this total the \$100,000 Dews originally transferred to Lancaster, Lancaster has received a total of at least \$322,262.21 to date from Judgment Debtor Dews – an amount that exceeds the balance of Plaintiff's Judgment.

F. Credibility of Witnesses

74. Defendant Lancaster's testimony at trial regarding these transfers lacked credibility and evidenced that the transfers in question were indeed inter-family transfers for no consideration that were made in furtherance of Dews' scheme to conceal his assets from present and subsequent creditors. In response to questioning by Plaintiff's counsel, Defendant Lancaster gave contradictory testimony regarding his transactions with Dews and claimed to have no contemporaneous knowledge of these transactions, which was not believable. Moreover, his claimed lack of knowledge regarding these transactions as well as typical business practices was

⁴ The Present Value Calculations presented by Plaintiff and relied on by this Court are based on a conservative 2.67 per cent rate of return.

not credible in light of his forthright responses and demonstrated knowledge in answering Defense Counsel's questioning on these issues; and his detailed records and amortization schedules (and complicated, detailed, self-prepared tax returns). The foregoing is compounded when it is recognized that Defendant Lancaster is a very experienced corporate internal auditor, and, as evidenced by his tax returns, a very successful and apparently sophisticated investor.

G. Expert Testimony

75. Plaintiff presented the expert testimony of accountant Richard Livingston, who was duly qualified as an expert in forensic accounting, valuation analysis and fraud examination by the Court.

76. Mr. Livingston had reviewed extensive financial records relating to all of the above and other records.

77. Mr. Livingston aptly explained and substantiated the foregoing evidence and analysis.

78. Mr. Livingston further explained that not only were the foregoing transactions deviations from normal business and accounting principles, but they did not make family or favor sense either, as the parties had consistently chosen to accomplish the transactions in multiple convoluted steps what could have been accomplished in one or two simple steps.

79. Based upon his analysis, Mr. Livingston opined that the only reasonable explanation for the subject transactions was to hide assets from creditors.

80. The Court found Mr. Livingston to be both knowable and credible.

CONCLUSIONS

This Court finds in favor of Plaintiff Gordon and against Defendant Lancaster under Plaintiff's first cause of action for fraudulent conveyances under the Statute of Elizabeth, South

Carolina Code § 27-23-10 *et seq.*⁵ This Court finds that:

(i) Drews and Lancaster structured the life estates, mortgages, assignments, and transfers as convoluted, multi-step transactions in contravention of typical business practices in order to defraud Drews' creditors;

(ii) None of the major transactions were supported by contemporaneous consideration;

(iii) All or substantially all of the transfers were for inadequate consideration;

(iv) At the time each of the transfers was made, Judgment Debtor Drews was facing claims from other creditors;

(v) At the time each of the transfers was made, Judgment Debtor Drews failed to retain sufficient assets to pay his debts as they became due;

(vi) At the time the original transfer, the \$100,000 mortgage, and the assignment occurred, Judgment Debtor Drews was transferring all or substantially all of his assets;

(vii) The *inter vivos* transfers (including mortgages and assignments) were made by Judgment Debtor Drews to Defendant Lancaster in a concerted effort to conceal Judgment Debtor Drews' assets and defraud his current and subsequent creditors. While some of the transfers between Drews and Lancaster occurred prior to the September 1996 accrual of the underlying action resulting in Judgment, Plaintiff has presented evidence that the transfers between Drews and Lancaster involved actual moral fraud as is required to set aside transfers that occurred before Gordon became a creditor;

(viii) Not only has Plaintiff proved the fraudulent nature of these transfers, Defendant Lancaster had failed to meet his burden. Given the familial relationship between the transferor

⁵ These transfers also constituted preferential transfers in violation of the South Carolina Anti-Assignment Act, §§ 27-25-10 and 27-25-30. At the close of Plaintiff's case and at the close of evidence, both parties timely moved for directed verdict/judgment as a matter of law; and both motions were denied.

Additionally, Plaintiff's other causes of action are being denied by a separate, supplemental Order.

and transferee, and the lack of or inadequate consideration for the transfers, the burden shifted to the transferee to establish that the transfers from Drews were bona fide and for valuable consideration. Defendant Lancaster failed to meet this burden; and

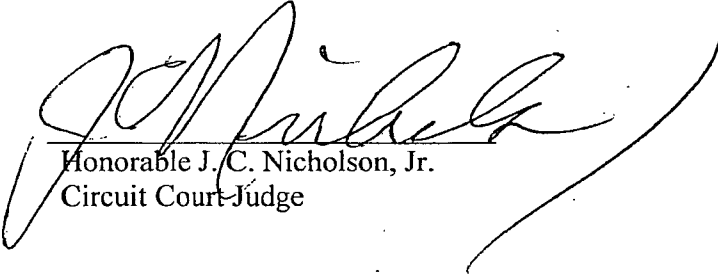
(ix) The evidence showed that Defendant Lancaster acted in concert with his uncle, Judgment Debtor Drews, to conceal Drews' assets from Drews' current and subsequent creditors with an intent to defraud those creditors.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT Plaintiff Gordon is granted judgment against Defendant Lancaster in the amount of \$211,677.30, and

~~Defendant Lancaster is ordered to tender to Plaintiff \$211,677.30 from the proceeds of the Judgment Debtor's transfers.~~

AND IT IS SO ORDERED!

Charleston, South Carolina
6/16, 2013


Honorable J. C. Nicholson, Jr.
Circuit Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
FRANK GORDON, JR. as Attorney-in-
Fact for DOROTHY GORDON,

Plaintiff,

v.

JESSIE B. ATKINSON, Individually, and
As Personal Representative of the Estate of
EFFIE D. DREWS; DONALD W.
LANCASTER; and SHIRRESE
BROCKINGTON as Special Administrator
Of the Estate of RUDOLPH ROBERT
DREWS,

Defendant(s)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2010-CP-10-9096
CASE NO: 2011-CP-10-08840

**ORDER COMPELLING DISCOVERY
AND DENYING PARTIAL SUMMARY
JUDGMENT**

FILED
2012 JUN -5 AM 10:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER came before me on May 17, 2012, on Plaintiff's Motion to Compel Discovery and Defendant Donald Lancaster's Motion for Partial Summary Judgment. Plaintiff was represented by Justin Lucey, Esquire and Stephanie D. Drawdy, Esquire; Defendant was represented by John J. Dodds, III, Esquire. Having heard arguments of counsel:

Plaintiff's Motion to Compel is granted as to Defendant Lancaster being required to produce his federal income tax returns for the period 1993 through 2005, within twenty (20) days. Defendant Lancaster has since the hearing represented to Plaintiff that he does not have copies of his tax returns for the years 1993 through 2002 but that he will sign forms for Plaintiff to procure returns for these years directly from the Internal Revenue Service, and he is ordered to do so within twenty (20) days. Plaintiff shall maintain these tax returns as confidential and shall return or destroy them upon the completion of this litigation.

Defendant's Motion for Partial Summary Judgment is denied. Defendant asserts that since Plaintiff's claim did not arise until 1996, Plaintiff is barred from attacking the debtor's asset

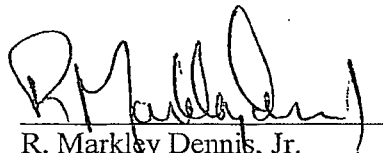
RMD/1

oos

transfers prior to 1996. However, pursuant to the legal authority cited to the Court by Plaintiff, subsequent creditors may maintain an action to assail or set aside a prior asset transfer; it is just that subsequent creditors have a higher burden of proof. Gentry v. Lanneau, 54 S.C. 514 (1899); Jackson v. Plyler, 38 S.C. 496 (1893); Mathis v. Burton, 319 S.C. 261 (1995). Unlike concurrent creditors, subsequent creditors must prove the transaction was made with an eye towards future indebtedness and/or was accompanied by moral fraud. *Id.*

Therefore, Plaintiff's Motion to Compel is granted as above described and Defendant Donald Lancaster's Motion for Partial Summary Judgment is denied.

AND IT IS SO ORDERED!


R. Markley Dennis, Jr.
Presiding Judge

May 29 2012

Charleston, SC

RMD/2

BY: _____

Justin Lucey, Esq.
Stephanie D. Drawdy, Esq.
JUSTIN O'TOOLE LUCEY, P.A.
415 Mill Street
Post Office Box 806
Mount Pleasant, S.C. 29464
Phone: (843) 849-8400

Attorneys for Plaintiff

I SO CONSENT:

By: _____

Teresa Z. Hill, Esq.
Hill & Hill, LLC
PO Box 369
Ravenel, SC 29470-5528

*settled
Hill*

Attorney for Jessie B. Atkinson

By: _____

John I. Dodds, III, Esq.
Cisa & Dodds, LLP
858 Lowcountry Boulevard 101
Mt. Pleasant, SC 29464-3080

Attorney for Donald W. Lancaster

By: _____

Shirrese B. Brockington, Esq.
764 St. Andrews Blvd.
Charleston, SC 29407

*settled
Shirrese*

Special Administrator of the Estate
of Rudolph Robert Drews

031

PK
201

BY: _____

Justin Lucey, Esq.
Stephanie D. Drawdy, Esq.
JUSTIN O'TOOLE LUCEY, P.A.
415 Mill Street
Post Office Box 806
Mount Pleasant, S.C. 29464
Phone: (843) 849-8400

Attorneys for Plaintiff

I SO CONSENT:

By: _____

Teresa Z. Hill, Esq.
Hill & Hill, LLC
PO Box 369
Ravenel, SC 29470-5528

Attorney for Jessie B. Atkinson

By: _____

John I. Dodds, III, Esq.
Cisa & Dodds, LLP
858 Lowcountry Boulevard 101
Mt. Pleasant, SC 29464-3080

Attorney for Donald W. Lancaster

By: _____

Shirrese B. Brockington, Esq.
764 St. Andrews Blvd.
Charleston, SC 29407

Special Administrator of the Estate
of Rudolph Robert Drews

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Frank Gordon Jr.

-v-

*Rudolph R. Drews
et al*

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: *1999-CP-10-1407*

SUPPLEMENTAL PROCEEDING ORDER

2006 SEP 28 AM 11:52
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

A Hearing was held in the above captioned case on *Sept. 26, 2006*

- [Signature]* 1. No assets were discovered.
2. The Defendant agreed to pay _____
3. The hearing was not held because : _____
- a. the Defendant was not served and the hearing has been rescheduled for _____
- b. the Defendant did not appear and a RTSC has been scheduled for _____
- c. the parties requested the hearing be rescheduled for _____
- d. the Plaintiff elected not to proceed.
- e. _____

✓ 4. The supplemental proceedings is held open until *Feb 2, 2007*

5. The supplemental proceedings is dismissed and canceled without prejudice. All

Restraining Orders and Injunctions are hereby lifted, canceled, voided and dismissed.

[Signature]
Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, SC

Dated: *9/26/2006*

033

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) JUDGMENT ROLL # 99-CP-10-1407

FRANK GORDON, JR., et al.

Petitioner,

vs.

RUDOLPH ROBERT DREWS, et al.
Respondent.

**ORDER FOR SUPPLEMENTAL
PROCEEDINGS**

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2006 AUG -2 AM 11:16

FILED

TO: THE RESPONDENT, RUDOLPH ROBERT DREWS:

YOU ARE HEREBY ORDERED to appear before the Honorable
_____ Master In Equity for Charleston County, South Carolina in
his offices at the Charleston County Courthouse, on the 26 day
of SEPTEMBER, 2006 at 10:00 AM or as soon thereafter as this matter
may be heard, to answer under oath concerning your assets and property, and then and there
to produce any and all books and records concerning the same, including, but not limited to:

- (1) All state and federal personal income tax returns since 1996;
- (2) All state and federal gift and inheritance tax returns since 1996;
- (3) Documents reflecting all property transfers between Respondent and Effie Drews since 1996.
- (4) Documents reflecting all property transfers, real or personal, to any relative within three degrees of consanguinity since 1996, regardless of whether a gift tax return was filed for such transfer;

10/4
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- (5) A list of all assets for which Respondent enjoys the benefit of and which are owned by Donald Lancaster or any other family member including, but not limited to, real estate and personal property.
- (6) A list of all gifts, monetary and otherwise, received by Respondent from Donald Lancaster and/or from any other relative within three degrees of consanguinity since 1996.
- (7) All records of any checking, savings, certificates of deposit or any other bank accounts in Respondent's name or on which the Respondent is a signatory since 1996, including but not limited to accounts at First Citizens Bank, Carolina First Bank, and First Union/Wachovia;
- (8) All statements of amount of all cash, personal or cashier's checks, money orders, drafts and coins owned or possessed by Respondent;
- (9) Deeds to any real property owned or possessed by Respondent since 1996 and an estimated value for each property at the time the interest was last held, including but not limited to:
 - a. 2 Nuffield Road, Charleston, South Carolina;
 - b. 623 Meeting Street (a/k/a SW Butler; a/k/a Lots 2, 3, 4 & Meeting), Charleston, South Carolina;
 - c. 1705 Meeting Street Road, Charleston, South Carolina;
 - d. 233 Huger Street, Charleston, South Carolina;
 - e. 17 Bainbridge Drive, Charleston, South Carolina; and
 - f. 92 Sheppard Street, Charleston, South Carolina; and
- (10) For the properties listed in (9) above that have been transferred out of

2014
035

Respondent's name, provide an accounting of how the monies were spent for amounts received in consideration for the transfer;

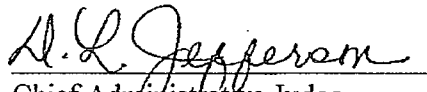
- (11) Mortgages owed by Respondent and/or Effie Drews since 1996;
- (12) An accounting which reflects how the \$100,000.00 loaned to Respondent and Effie Drews as evidenced by a mortgage in favor of Donald W. Lancaster on April 15, 1998 was spent;
- (13) Description of any personal property owned or possessed by Respondent which is worth \$200 or more, including, but not limited to vehicles, computers, electronic equipment, and furniture and furnishings;
- (14) Documents relating to any corporate, partnership, and/or limited liability company interests held by Respondent since 1996, including but not limited to, ownership percentage, value of the interest, and disposition date, if any;
- (15) Statement of any stocks, bonds or other securities owned or held by Respondent;
- (16) All distributions of any kind to Respondent or related parties or entities for any ownership interest held since 1996 and an accounting of how any such distributions were spent;
- (17) Statements of any interest Respondent has in any notes, mortgages, accounts or other claims against anyone;
- (18) Statements of current agreements or contracts for services or work, financial statements relating to such work, and any records of inventory;
- (19) Documents relating to any leases for property, real or otherwise, and an accounting of any payments received pursuant to such leases;

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3029
036

- (20) Any life insurance policies on the Respondent's life; and
- (21) Any documents evidencing a debt owed to Respondent by any other person or entity (such as judgment or mortgage note).

THE JUDGMENT DEBTOR IS HEREBY ENJOINED FROM CHANGING, ALTERING, DESTROYING OR DEFACING THE SAID INSTRUMENTS, AND FROM MAKING ANY TRANSFER OR OTHER DISPOSITION OF THE PROPERTY OF THE JUDGMENT DEBTOR, INCLUDING CASH ON HAND AND IN THE BANK AND ANY FUNDS DUE THE JUDGMENT DEBTOR. IT IS FURTHER ORDERED THAT COPIES OF THIS ORDER, AND THE ATTACHED MOTION, BE PERSONALLY SERVED AS PROMPTLY AS POSSIBLE ON THE AFORESAID Respondent.

IF YOU DO NOT APPEAR AS ORDERED, YOU MAY BE HELD IN CONTEMPT OF COURT WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.


Chief Administrative Judge
Ninth Judicial Circuit

Dated: 7/20/06



637



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1899
FAX: (803) 734-1839
www.sccourts.org

September 28, 2005

The Honorable Julie J. Armstrong
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Re: Gordon, Frank v. Drews, Rudolph

Dear Ms. Armstrong:

On September 26, 2005, the Remittitur in the above referenced case was forwarded to you.

Respondent's Motion to Award Costs has been granted with the following order endorsed thereon:

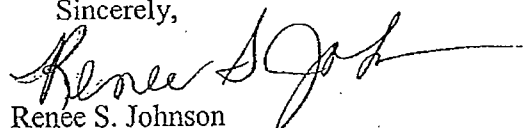
"Granted.

By: Kenneth A. Richstad
Clerk

Columbia, South Carolina
September 28, 2005."

The approved statement of costs is being forwarded to you and by copy of this letter counsel of record are being forwarded a copy of these approved costs.

Sincerely,


Renee S. Johnson
Administrative Specialist


KAR/rj

cc: Kerry W. Koon, Esquire
Justin O'Toole Lucey, Esquire

038

99-1407

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2005 OCT -3 PM 2:42

FILED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Master-In-Equity

1997
Case No. 1997-CP-10-1407

ORIGINAL

RECEIVED

JUN 04 2004

SC Court of Appeals

Frank Gordon, Jr. As Attorney-in-Fact for
Dorothy Gordon Respondent,

v.

Rudolph Robert Drews,
and Raymond Beasley Defendants,

Of whom Rudolph Robert Drews is the Appellant.

FILED
JUL 1 11 AM 2004
JUL 1 3 PM 2:43
CLERK OF COURT

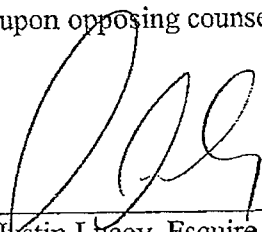
ITEMIZED STATEMENT OF COSTS

The Appellate Court is requested to tax the following costs against Appellant, Rudolf Drews:

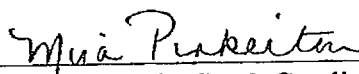
COSTS TAXABLE UNDER RULE 222, SCAR	NO. OF RATE PAGES	REQUESTED	ALLOWED (For Court Use Only)
Cost of Printing or Copying Final Brief	860 @ \$.10 + covers	\$175.96 (invoice attached)	APPROVED
Attorney's Fee Provided By Rule 222(b), SCACR		\$1,000.00	APPROVED
Court Reporter's Transcript		\$ 291.25	APPROVED
Total		\$1,467.21	APPROVED

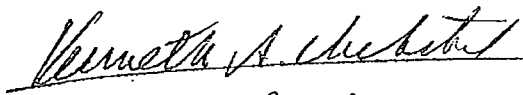
039

I, Justin Lucey, do swear or affirm that the foregoing costs are correct and were necessarily incurred in this action. A copy of this statement was served upon opposing counsel.


Justin Lucey, Esquire
JUSTIN O' TOOLE LUCEY, PA
415 Mill Street [P.O. Box 806]
Mount Pleasant, S.C. 29465-0806
Phone: (843) 849-8400
Counsel for Respondent

SWORN to and subscribed before me this
June 2, 2004


Notary Public for South Carolina
My Commission Expires: 4/28/13

Approved: 
Clerk

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.: 99-CP-10-1407

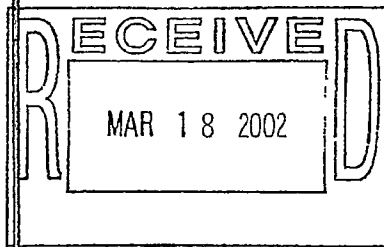
FRANK GORDON, JR., as attorney-in-fact
for DOROTHY GORDON,

Plaintiff,

vs.

RUDOLPH ROBERT DREWS and
RAYMOND BEASLEY,

Defendants.



BY

CLERK OF COURT

2002 MAR 15 AM 9:13

FILED

ORDER AWARDING PLAINTIFF ATTORNEY'S FEES

The defendant Rudolph Robert Drews filed a motion to challenge the reasonableness of the plaintiff's request for attorney's fees submitted at trial as ordered by this court's order of December 5, 2001. This court heard testimony and arguments on this issue on February 27, 2002. The plaintiff has requested an award of attorney's fees in the amount of \$42,693.50.¹ Based upon the record produced at trial and the February 27, 2002, I make the following findings in support of this court's award of attorney's fees:

The general rule is that attorney's fees are not recoverable unless authorized by contract or statute.² The plaintiff prevailed under S.C. Code § 35-1-1490(1), which provides, *inter alia*, for the recovery of reasonable attorney's fees.

When determining the reasonableness of attorney's fees under a statute mandating the award of attorney's fees, a court must consider six factors: (1) the nature, extent, and difficulty of the legal services rendered, (2) the time and labor necessarily devoted to the case, (3) the

¹The original request was for \$44,893.50. This was reduced by \$2,200 at the February 27, 2002 hearing.

² Baron Data System, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989).

13

A handwritten signature in dark ink, appearing to be "D. Gordon" or similar, written over a circular stamp.

professional standing of counsel, (4) the contingency of compensation, (5) the fee customarily charged in the locality for similar legal services, and (6) the beneficial results obtained.³

Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these six factors is controlling.⁴

This court shall now examine each factor in turn.

1. The Nature, Extent and Difficulty of the Legal Services Rendered.

The plaintiff's attorney spent considerable time and effort on the prosecution of this case. From a review of the file, this case involved securities fraud and misrepresentation, which can be relatively complex litigation. I find this case's complexity warranted the time expended by the plaintiff's attorney, despite the defendant Drews' expert's characterization that the case was "relatively simple." That expert had relatively little experience in securities litigation and his expertise in attorney's fees issues seemed to be more in the field of domestic or family court litigation. The defendant actively litigated the defense of this lawsuit.

2. The Time and Labor Necessarily Devoted to the Case.

This court has reviewed the statements and affidavit of the plaintiff's attorney, Justin Lucey. Mr. Lucey documented the time billed by him and his staff. The plaintiff has requested an award of attorney's fees in the amount of \$42,693.50. At the hearing he stated he had re-reviewed his billing records and found it necessary to reduce his request by \$2,200 to avoid double-charging certain entries. The total hours documented were in excess of 300.

3. The Professional Standing of Counsel.

This court finds Mr. Lucey is known to this court to be an experienced, highly-skilled attorney of high professional standing in the legal community. This court is aware that Mr. Lucey and his law firm have high standing and regard in the legal community. Furthermore, the

³ Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989), Blumberg v. Nealco, 310 S.C. 492, 427 S.E.2d 659 (1993).

⁴ Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974).

defendant has not objected to the quality or standing of any of the plaintiff's attorney in this matter.

4. The Contingency of Compensation.

Mr. Lucey stated his fee agreement with his client was 40% of any award or the fee awarded by the court, whichever is greater.

5. The Fee Customarily Charged in the Locality for Similar Legal Services.

Drews primary argument goes to the issue that the plaintiff should not be allowed to recover all of his attorney's fees because he was not successful on all of his causes of action. In

Hensley v. Eckerhart,⁵ the United States Supreme Court said:

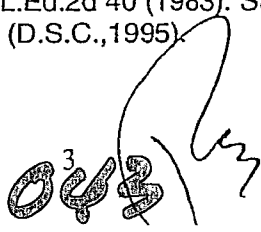
We hold that the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees under 42 U.S.C. §§ 1988. Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee. Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised. But where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained.⁶

Under this court's order, the plaintiff recovered for a violation of S.C. Code § 35-1-1490(1). This violation entitled the plaintiff to an award of his reasonable attorney's fees. This court did not allow recovery for the plaintiff's claims of violation of S.C. Code § 35-1-1490(2), common-law misrepresentation and breach of fiduciary duty.

The relief the plaintiff was awarded for violation of S.C. Code § 35-1-1490(1) was substantial: a complete refund of the sums invested plus interest, costs and attorney's fees. This court found Drews and the other defendant did offer to sell a security by means of an untrue statement; however, this court found the defendants sustained the burden of proving they did not know, and in the exercise of reasonable care could not have known, the truth or

⁵ 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). See also, Alexander S. By and Through Bowers v. Boyd, 929 F.Supp. 925 (D.S.C., 1995).

⁶ Id. at 440, 103 S.Ct. at 1943.



untruth of the omission. The finding of a misrepresentation is not an unsubstantial finding. In fact, one could argue that it was only a technicality that kept Drews from facing even further damages. Under these circumstances, the lack of distinctiveness between the successful and unsuccessful causes of action should not cause a reduction in the award of attorney's fees.

6. The Beneficial Results Obtained.

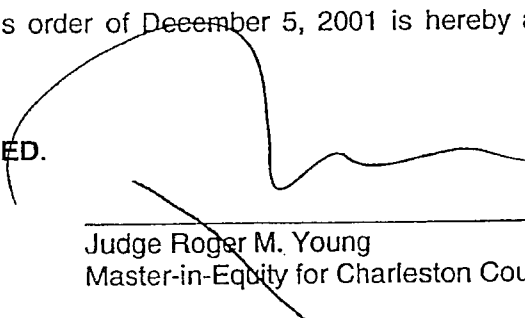
As noted above, Mr. Lucey was able to procure for his client a substantial award: a complete refund of the sums invested plus interest, costs and attorney's fees.

Under these circumstances, I find an award of \$42,693.50 in attorney's fees to be reasonable.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

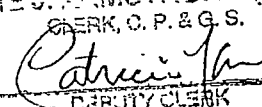
1. That the plaintiff is awarded attorney's fees in the amount of \$42,693.50 for a violation of S.C. Code § 35-1-1490(1); and
2. That this court's order of December 5, 2001 is hereby amended to reflect this award.

AND IT IS SO ORDERED.



Judge Roger M. Young
Master-in-Equity for Charleston County

Charleston, South Carolina
March 14, 2002

ATTEST: A TRUE COPY
JULIE G. ARMSTRONG (SEAL)
CLERK, C. P. & G. S.
By 
DEPUTY CLERK

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

JUDGMENT IN A CIVIL CASE
1999-CP-10-001407

GORDON, FRANK JR ETAL

VS. DREWS, RUDOLPH ROBERT ETAL

GORDON, DOROTHY ETAL

BEASLEY, RAYMOND ETAL

PLAINTIFF(S)

DEFENDANT(S)

- () 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: () RULE 12(B), SCRPC; () RULE 41(A), SCRPC (VOL.
NONSUIT); () RULE 43(K), SCRPC (SETTLED); () OTHER-
- () ACTION STRICKEN: () RULE 40(J) SCRPC; () BANKRUPTCY; () BINDING
ARBITRATION, SUBJECT TO RIGHT TO RESTORE TO CONFIRM, VACATE OR MODIFY
ARBITRATION AWARD; () OTHER

IT IS ORDERED AND ADJUDGED: () SEE ATTACHED; () JUDGMENT BY COURT
ORDER GRANTING JUDMGENT IN FAVOR OF THE PLAINTIFF.

DATED AT CHARLESTON, SOUTH CAROLINA, THIS 05TH DAY OF DECEMBER , 2001

S. Roger M. Young
PRESIDING JUDGE

THIS JUDGMENT WAS ENTERED ON THE 05TH DAY OF DECEMBER , 2001 AND A COPY
MAILED FIRST CLASS THIS 13TH DAY OF DECEMBER , 2001 TO ATTORNEYS OF

RECORD OR TO PARTIES (WHEN APPEARING PRO SE) AS FOLLOWS:
BROWN, JOHN G II KOOON, KERRY W
PRO SE

ATTORNEY(S) OR PRO SE(S)

ATTORNEY(S) OR PRO SE(S)

John G. Brown
CLERK OF COURT

SCRPC FORM 4

045

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CC 7
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.:99-CP-10-1407

FRANK GORDON, JR. as attorney-in-fact
for DOROTHY GORDON,

Plaintiff,

vs.

RUDOLPH ROBERT DREWS, and
RAYMOND BEASLEY

Defendants.

2001 DEC -5 PM 3:38
CLERK OF COURT

ORDER GRANTING JUDGMENT IN FAVOR OF PLAINTIFF

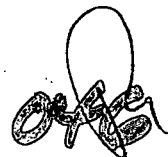
Plaintiff's Attorney: Justin Lucy
Defendant Drew's Attorney: Kerry W. Koon
Defendant Beasley: *Pro se*
Date of Hearing: December 3-4, 2001

BACKGROUND

The plaintiff's complaint alleges both defendants violated S.C. Code §§ 35-1-1490 and 1500 arising out of a sale of stock in a closely-held corporation called Builders Station, Inc. The plaintiff also alleges both defendants misrepresented material facts when he purchased the stock, and he further alleges the defendant Drews breached fiduciary duties owed to him arising out of that stock sale. Drews denied all of the allegations. Beasley, in a *pro se* answer, admitted the allegations were true, but declared it was all Drews' fault. The matter was referred to this court for final disposition by order of Judge Gregory on January 29, 2001.

FINDINGS OF FACTS

Based upon the record in this action and the evidence produced at trial, this court finds the following facts to have been established for the purposes of the record in this proceeding:

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1. In 1996, the defendants were the original incorporators of a corporation called Builders Station, Inc. ("Builders Station").
2. In order to open a store called Builders Station, they decided to capitalize the business by selling stock in the company for \$1,000 per share.
3. Under the terms of an agreement with the corporation, the defendants were to receive one-half of a share of stock each for every share of stock sold to investors.
4. The defendants did not register these securities with the Securities Commissioner of South Carolina.
5. Both defendants found investors who purchased shares of stock in Builders Station.
6. Both defendants received one-half of a share of stock for each share of stock sold to these investors.
7. On September 9, 1996, the plaintiff purchased 50 shares of stock in Builders Station in consideration of the sum of \$50,000.00.
8. A preponderance of the evidence shows the defendants represented to the plaintiff the status of the Small Business Administration ("SBA") loan when the plaintiff purchased stock in Builders Station was that it was a "done deal" or "in the bag." This finding is based upon the testimony of the plaintiff and the defendant Beasley.
9. This representation about the status of the SBA loan was a material fact upon which the plaintiff relied when he purchased stock on behalf of his mother in Builders Station.
10. A preponderance of the evidence shows the defendants did not know the SBA was going to require all or almost all of the defendant Drews' property as collateral for the loan at the time the defendants represented to the plaintiff that the SBA loan was a "done deal" or "in the bag" on or before September 9, 1996. This finding of fact is based on several pieces of evidence. First, the defendant Drews testified that he did not know he was going to be required to pledge all of the property the SBA loan commitment required until September 27, 1996, which was the date he received the SBA loan

commitment letter dated September 25, 1996 from Business Development Corporation

("BDC"). Second, there is no documentary evidence which shows the SBA would require

Drews to pledge his property at the time of the loan application, and the documentary

evidence placed in evidence does not give Drews any notice of such a requirement prior

to the September 25, 1996 letter. In fact, a BDC letter to Drews of September 9, 1996

only mentions the lender was concerned about the store's inventory when mentioning

collateral. Third, none of the corporate minutes prior to September 25, 1996 indicate the

corporation expected Drews use his property as collateral for the SBA loan. Fourth,

there was no testimony from any of the loan brokers who procured the SBA loan about

what they had made Drews aware of prior to September 25, 1996 concerning what

property was expected to be used collateral for the loan. Finally, the corporation's

attorney testified that he had no indication the SBA was seeking to have Drews use his

property as collateral prior to September 25, 1996.

CONCLUSIONS OF LAW

Under S.C. Code § 35-1-50, the defendants were required to file with the Securities Commissioner of South Carolina "any prospectus, pamphlet, circular, form letter, advertisement or other sales literature or advertising communication addressed or intended for distribution to prospective investors . . . unless the security or transaction is exempted by Section 35-1-310 or 35-1-320, or the security is a federal covered security or the transaction is with respect to a federal covered security." S.C. Code § 35-1-810 makes it unlawful "for any person to offer or sell any security in this State unless (a) it is registered under this chapter, (b) the security or transaction is exempted under Section 35-1-310 or 35-1-320, or (c) it is a federal covered security."

S.C. Code §35-1-320(9), which is known as the limited offering exception, provides that:

Any transaction pursuant to an offer directed by the offeror to not more than twenty-five persons . . . in this State during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this State, if (a) the seller reasonably

believes that all the buyers in this State are purchasing for investment and (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this State

Under S.C. Code § 35-1-340, the defendants have the burden of proving they are entitled to an exemption under either S.C. Code § 35-1-310 or 320.¹ Thus, under § 35-1-320(9), the defendants have a threshold burden of proving they did not offer to sell shares in Builders Station to more than 25 persons within a 12 month period. The defendants have not proven this by a preponderance of the evidence. Drews denial of offering to sell the stock to more than 25 people was as vague as Beasley's assertion that Drews had to have offered it to more than 25 people. Furthermore, the evidence is uncontroverted the defendants received remuneration of one-half of a share of stock in Builders Station every time an investor purchased a share of stock. The defendants maintain this issuance of stock was simply to maintain their one-quarter share each ownership in the stock of Builders Station, and thus it was not compensation. This court is not persuaded by this characterization. Black's Law Dictionary defines remuneration as "payment; compensation" and "the act of paying or compensating."² Issuing stock to the defendants when they procured an investor who purchased stock is textbook compensation, either directly or indirectly, and is even referred to as additional compensation in the defendants' employment contracts. Thus, even if the offer was not made to more than 25 in-state investors, the defendants are not entitled to exemption from registration under S.C. Code § 35-1-320(9) because they received remuneration in the form of one-half of a share of stock every time a share of Builders Station stock was sold to an investor.

Under S.C. Code § 35-1-1490(1), "Any person who offers or sells a security in violation of . . . Section 35-1-810 . . . is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest .

¹ See S.C. Code § 35-1-340 which states: "In any proceeding under this chapter the burden of proving an exemption or an exception from a definition is upon the person claiming it."

² Black's Law Dictionary, 1298 (7th ed. 1999).

at six percent per year from the date of payment, costs and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security. . . ." The plaintiff tendered the stock at trial, meeting the requirement of S.C. Code § 35-1-1510 which states: "Any tender specified in Section 35-1-1490 may be made at any time before entry of judgment." In addition, both defendants are jointly and severally liable under S.C. Code § 35-1-1500 since they both materially aided in the sale of the stock. Therefore, the plaintiff is entitled to recover from the defendants under S.C. Code § 35-1-1490(1)³ the consideration paid for the stock, which the evidence showed to be \$50,000.00, plus interest at six percent per year from September 9, 1996, plus costs and reasonable attorney's fees. The evidence is uncontroverted no income was ever received on the security.

Under S.C. Code § 35-1-1490(2), "Any person who . . . [o]ffers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission . . ."⁴ is also liable for the same damages as for a violation of S.C. Code § 35-1-1490(1).

This court has made a finding of fact that a preponderance of the evidence shows the defendants represented to the plaintiff that the status of the Small Business Administration ("SBA") loan when the plaintiff purchased stock in Builders Station was the loan was a "done deal" or "in the bag." This is based primarily on the testimony of the plaintiff, who stated that he

³At the conclusion of the trial the court allowed the plaintiff to amend his complaint to conform to the evidence to delineate that he was complaining of a violation of S.C. Code § 35-1-1490(1) and (2). His original amended complaint only stated a violation of section 35-1-1490. The defendant Drews objected; however, it is clear Drews answered the original complaint as if there were violation of both subsections, he presented evidence to controvert both subsections, and even argued against a violation of either subsection in closing. It does not appear Drews suffered any prejudice by allowing this clarifying amendment.

⁴One wonders if the author of that sentence has an aversion to the English language.

was told by the defendants that the SBA loan was a "done deal" or "in the bag," and the testimony of the defendant Beasley, who admitted to making that statement to the plaintiff. This court further made a finding of fact that this representation about the status of the SBA loan was a material fact upon which the plaintiff relied when he purchased stock in Builders Station, and that the plaintiff relied on this representation in deciding whether or not to purchase stock in Builders Station. However, this court also made a finding of fact that a preponderance of the evidence shows the defendants did not know the SBA was going to require all or almost all of the defendant Drews' property as collateral for the loan at the time the defendants represented to the plaintiff that the SBA loan was a "done deal." Therefore, under S.C. Code § 35-1-1490(2), while the defendants were persons who offered or sold a security by means of an untrue statement of a material fact, the defendants have sustained "the burden of proof that [t]he[y] did not know, and in the exercise of reasonable care could not have known, of the untruth or omission" As a result, the plaintiff cannot prevail against the defendants under S.C. Code § 35-1-1490(2).

For the same reasons as outlined above in dismissing the plaintiff's complaint of a violation of S.C. Code § 35-1-1490(2), this court finds the plaintiff is not entitled to judgment against the defendants for his cause of action for common-law misrepresentation. The defendants reasonably believed their statements made to the plaintiff on or before September 9, 1996 about the status of the SBA loan were true and had no reason to believe they were untrue at the time they were made.

N/2 1/2 in N/1 + Believes

The plaintiff's cause of action for breach of fiduciary duty was against the defendant Drews only. This complaint is essentially that Drews breached his fiduciary duties to the plaintiff when he refused to pledge his property as collateral for the SBA loan. As noted above, this court has already made a finding of fact that a preponderance of the evidence did not show Drews knew the SBA required him to pledge his property as collateral for the loan prior to September 27, 1996, the date when Drews received the loan commitment letter from BDC.

to avoid cpt

While it is true that Drews agreed to pledge some of his property for the SBA loan after he received notice of the collateral requirement, he was under no duty to do so at the time and he was not offered any additional consideration to do so. Thereafter, Drews and Beasley personally guaranteed a bridge loan from Southtrust Bank, which again Drews was not obligated to do. Later, Drews and Beasley had a falling-out over whether the Southtrust Bank loan proceeds were to be used entirely to invest in new inventory or whether some should be held in reserve for contingencies. That sort of decision is inherently a business judgment, and it is not for courts to second-guess whether it was the right business decision to make or not. What is relevant about this is that this falling-out between the defendants led to a series of events which caused Beasley to gain the other board members' support to oust Drews from his duties as comptroller of the corporation, effectively freezing Drews out of any say in how the company was run. This naturally led Drews to refuse to pledge his property and personally guarantee the SBA loan. From this court's viewpoint, the board members bet on Beasley and lost. It was completely unrealistic of the board to freeze Drews out of a closely-held corporation and still expect him to be their savior. Whatever duties Drews may have gratuitously assumed to go forward with the SBA loan were at that point extinguished by the board's actions. Therefore, as a board member who approved of Drews' ouster, the plaintiff cannot now prevail against Drews for breach of fiduciary duty, and this cause of action must therefore be dismissed as well.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. That the plaintiff is entitled to judgment against the defendants Rudolph Robert Drews and Raymond Beasley, jointly and severally, for violation of S.C. Code § 35-1-1490(1) in the amount of \$50,000.00, plus interest at the rate of six percent per year since September 9, 1996 which totals \$15,789.12 through the date of this order, plus costs and reasonable attorney's fees. The defendant shall have 15 days from the date of receipt of this order to request a hearing challenging the

reasonableness of the attorney's fee request submitted by the plaintiff at trial.

The court shall amend this order on the issue of attorney's fees at a later time.

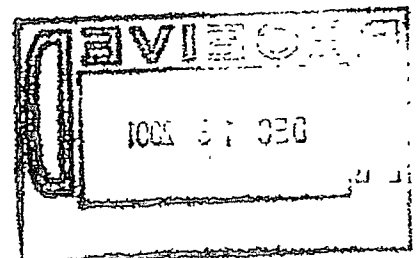
2. That the plaintiff's cause of action against both defendants for violation of S.C. Code § 35-1-1490(2) is dismissed, with prejudice.
3. That the plaintiff's cause of action against both defendants for common-law misrepresentation is dismissed, with prejudice.
4. That the plaintiff's cause of action against the defendant Rudolph Robert Drews for breach of fiduciary duty is dismissed, with prejudice.

AND IT IS SO ORDERED.

Judge Roger M. Young
Master-in-Equity for Charleston County

Charleston, South Carolina
December 5, 2001

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. & G.S.
BY 
DEPUTY CLERK



STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

FRANK GORDON, JR., as Attorney-in-
Fact for DOROTHY GORDON)

Plaintiff,)

vs.)

RUDOLPH ROBERT DREWS and
RAYMOND BEASLEY)

Defendants..)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 99-cp 10-1407

SUMMONS

Illegal Sale of Securities, Negligent
Misrepresentation, and Breach of Duty

(Jury Trial Demanded)

FILED
1999 APR 16 AM 12:53
CLERK OF COURT
BY J. A. HARRINGTON

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office at 300 Coleman Boulevard, Suite 200-A, Mount Pleasant, South Carolina within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Complaint plus interest and costs.

JUSTIN O'TOOLE LUCEY, P.A.

BY: 

John G. Brown, II
300 Coleman Blvd., Suite 200-A
Mount Pleasant, S.C. 29464
(843) 849-8400

Charleston, South Carolina
April 13, 1999

054

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

FRANK GORDON, JR., as Attorney-in-
Fact for DOROTHY GORDON)

Plaintiff,)

vs.)

RUDOLPH ROBERT DREWS and
RAYMOND BEASLEY)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 99-CP-10-1407

COMPLAINT

Illegal Sale of Securities, Negligent
Misrepresentation, and Breach of Duty

(Jury Trial Demanded)

BY

JULIE L. ARISTOTONG
CLERK OF COURT

1999 APR 16 AM 12:53

FILED

THE PLAINTIFF complains of the Defendants as follows:

1. The Plaintiff, Frank Gordon, Jr. is a citizen and resident of Charleston County, South Carolina.
2. The Defendant, Rudolph Robert Drews is, upon information and belief, a citizen and resident of Charleston County, South Carolina, and at all times relevant herein was a promoter, incorporator, and officer/director of Builders Station, Inc.
3. The Defendant, Raymond Beasley is a citizen and resident of Charleston County, South Carolina, and at all times relevant herein was a promoter and officer/director of Builders Station, Inc.
4. Plaintiff was personally advised and solicited by Defendants to purchase shares in Builders Station, Inc. at a price of \$1000.00 per share. This advise and solicitation was made both by personal meetings with Defendants and by means of an investment prospectus prepared by the Defendants.
5. The aforementioned prospectus included representations about corporate financing, earnings projections, sales projections, and the like.
6. The Plaintiff voiced concern to the Defendants that the proposed financing through

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investors did not appear to be enough to provide sufficient funds for the project.

7. Thereafter, Defendants induced the Plaintiff into purchasing the Builders Station, Inc. stock by representing that:

- a) sufficient financing had been secured in large part by means of a \$250,000 loan, guaranteed as already approved, arranged through the Small Business Administration (SBA);
- b) that the SBA loan was supported by collateral pledged by both Defendants and primarily by commercial property pledged by Defendant Drews;
- b) Builders Station would be affiliated with Hardware Wholesalers, Inc., a national hardware chain with a strong distribution network; and
- c) the projected financial outlook for Builders Station was very strong, with an expected 30 percent return on investment the first year.

8. On September 9, 1996, the Plaintiff purchased 50 shares of Builders Station, Inc. stock based on the representations made to him by the Defendants. He delivered his check to the Defendants made payable to Builders Station for the sum of \$50,000.00.

9. The offers and purchases above referenced were made in Charleston County, South Carolina.

10. Subsequent to the Plaintiff's stock purchase, the Defendants executed a \$100,000 interim loan taken out by Builders Station at SouthTrust Bank which was to be repaid out of the proceeds of the SBA loan. This interim loan was extended on the reliance of the SBA Loan being approved, assurances by the Defendants that the loan would close in a timely manner, and a personal Guaranty executed by both Defendants.

11. Defendant Drews later admitted that he sold at least part of the property pledged as collateral and refused to secure the loan as agreed unless the shareholders met a list of demands which included giving Drews sufficient shares of Builders Station stock to allow Drews control of the

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company.

12. By his refusal to execute the SBA loan closing documents, Defendant Drews caused Builders Station to default on the interim loan.

13. SouthTrust Bank then foreclosed on the interim loan, seized the assets of Builders Station, and sold the assets to offset the debt.

14. SouthTrust subsequently sued both Defendants on their personal Guaranties for the shortfall of the asset sale proceeds.

15. Defendant Drews cross-claimed against Defendant Beasley in the SouthTrust action.

16. Upon information and belief, Defendant Drews never intended to execute the SBA loan documents without the demands made of the corporation being met.

17. If not for Defendant Drews' actions, the SBA loan would have closed and Builders Station would have had the necessary operating capital to secure proper inventory and compete in the Charleston area market. Instead, the company was left bankrupt.

18. Plaintiff was informed by Defendant Beasley that Hardware Wholesalers, Inc. would not associate with Builder's Station because there was no operating history upon which to base an agreement.

19. Upon information and belief, Builders Station never had an agreement with Hardware Wholesalers to become its affiliate, contrary to what Defendants represented.

20. Without the SBA loan and the support of Hardware Wholesalers, Builders Station had no chance of returning 30 percent on Plaintiff's investment as Plaintiff was told when he made the investment.

21. The Plaintiff's shares in Builders Station now hold no value whatsoever.

22. The Defendants had a pecuniary interest in this transaction in that both Defendants were

drawing salaries from the corporation and the only funds available were those invested by the Plaintiff and others.

23. Because the Defendants had a pecuniary interest in the transaction, the Defendants had a duty to use due care in providing information to the Plaintiff.

24. The Defendants acted in concert and in combination with each other in the furtherance of the dissemination of false and/or misleading information and sale of the securities based on the misrepresentations referenced herein.

25. The information provided by the Defendants in the afore referenced paragraphs was false and/or deliberately misleading and contained material omissions with respect to Defendant Drews' intentions for the SBA loan, the affiliation with Hardware Wholesalers, and the 30 percent return on investment.

26. The information provided by the Defendants above referenced was provided with the intent that the Plaintiffs rely upon the said information.

27. The Defendants had a duty of fair dealing and a duty to act in good faith with respect to the Plaintiff as they were officers and directors of Builders Station.

28. The above referenced actions by the Defendants were not fair dealings and were not made in good faith.

FOR A FIRST CAUSE OF ACTION
ILLEGAL SALE OF SECURITIES
(Against All Defendants)

29. The preceding paragraphs are hereby incorporated by reference.

30. The Builders Station stock was not registered for sale in South Carolina.

31. The Defendants participated in the illegal sale of unregistered stock to the Plaintiff by selling the stock by means of untrue statements of material facts and omissions of material facts

necessary to make the statements not misleading.

32. Plaintiff did not know and could not reasonably have known of the misleading nature and omissions contained within the Defendants' representations.

33. The Builders Station stock was sold to the Plaintiff by use of materially misleading and fraudulent representations about the stock.

34. Under South Carolina Code §35-1-1490 and §35-1-1500 and the common law of this state, the Plaintiff is entitled to recover the investment paid for the securities and consequential damages.

FOR A SECOND CAUSE OF ACTION
MISREPRESENTATION
(Against Both Defendants)

35. The preceding paragraphs are hereby incorporated by reference.

36. As these Defendants had a pecuniary interest in these transactions, these Defendants owed to the Plaintiff the duty to utilize due and reasonable care in the providing of information to the Plaintiff.

37. The Defendants breached their duty to the Plaintiff negligently, willfully, wantonly, and with reckless disregard for the truth by one or more of the following:

- a. Misrepresenting the SBA loan as guaranteed for approval.
- b. Misrepresenting the affiliation with Hardware Wholesalers.
- c. Misrepresenting the expected return on investment.

38. Defendants knew or should have known that these representations were false when made; these representations were material to the above transactions; the Defendants intended that the Plaintiff rely upon the representations; the Plaintiff did not know the representations were false; the Plaintiff relied upon them; the Plaintiff had a right to rely upon them; said reliance was reasonable; and the Plaintiff have been proximately damaged by said misrepresentations.

39. As a direct and proximate result of the Defendants' breach of their individual and collective duties of due care to the Plaintiffs, the Plaintiffs have suffered the afore stated damages.

FOR A THIRD CAUSE OF ACTION
BREACH OF DUTY
(Against Defendant Drews)

40. The preceding paragraphs are hereby incorporated by reference.

41. As Defendant Drews was an officer and director of Builders Station, he owed duties of good faith and fair dealing to the Plaintiff as a shareholder.

42. Defendant Drews breached these duties by one or more of the following:

- a. Pledging property as collateral for the SBA loan with no intention of actually executing the final loan documents;
- b. Selling a portion of the property pledged as collateral for the SBA loan;
- c. Withdrawing the collateral pledged to secure the SBA loan;
- d. Failing to act in a timely manner which may have allowed the corporation sufficient time to secure new collateral for the SBA loan; and
- e. Acting in a manner which was contrary to the interest of the shareholders and the corporation, and which directly resulted in the corporation's demise.

43. Said actions were made negligently, willfully, wantonly, and with reckless disregard for the Plaintiff, a shareholder he solicited.

44. As a direct and proximate result of Defendant Drews' breach of his duties of good faith and fair dealing to the Plaintiff, the Plaintiff has suffered the afore stated damages.

WHEREFORE, Plaintiff seeks judgment against the Defendants, jointly and severally, for his actual and special damages, together with punitive damages and prejudgment interest, all as determined by the trier of fact, attorneys' fees, costs and such further relief this Court deems just and

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proper.

PLAINTIFF demands trial by jury.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

BY:



John G. Brown, II
320 Coleman Boulevard
Mount Pleasant, S.C. 29464
(803) 849-8400

Charleston, South Carolina
April 13, 1999

061

proceedings the Respondent and any third parties under oath concerning any assets which it may own or such parties may hold in order to ascertain, discover and locate any and all property and assets, real, personal, or mixed, and wheresoever situated, belonging to the Respondent, or in which Respondent could claim an 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 satisfy the Judgment obtained against the Respondent.

5. The Petitioner is informed and believes he is entitled to the appointment of a receiver, if necessary, to take possession of some or all of the property, assets, or effects of Respondent in order to carry said judgment into effect.

6. The Petitioner is informed and believes he is entitled to have the Respondent required by Subpoena to produce for inspection in advance of the aforesaid examination of any and all books, records and documents concerning the financial status of the Respondent.

WHEREFORE, Petitioner prays as follows:

For an Order requiring the Respondent to appear before the Circuit Judge or his Appointee or Referee, at some time and place to be designated in said Order to answer under oath questions propounded to it by Petitioner;

For a Subpoena directing the aforesaid Respondent to produce for inspection in advance of the aforesaid examination of all books, records and documents relating to the financial status of the Respondent;

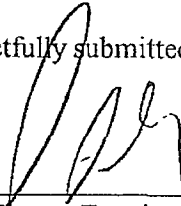
For all expended and statutory fees and costs allowable for this proceeding; and,

For such other and further relief as this Court may deem just and proper.

Further, Petitioner requests this matter be referred to the Master in Equity pursuant to Rule 53, SCRCF, with the authority to enter a Final Order with any appeal being directly to the South

Carolina Supreme Court.

Respectfully submitted,



Justin Lucey, Esquire
Justin O'Toole Lucey, P.A.
415 Mill Street
Post Office Box 806
Mount Pleasant, South Carolina 29465-0806
Phone: (843) 849-8400
Attorneys for Petitioner

Charleston, South Carolina
July 24, 2006

OK

99-1407

CERTIFICATE OF SERVICE

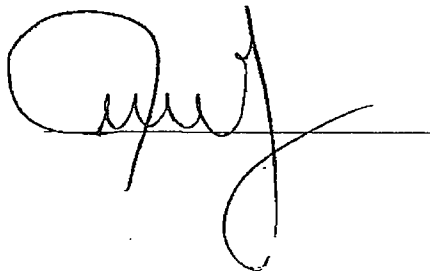
I, the undersigned, of the law offices of Justin O'Toole Lucey, P.A., attorneys for the Plaintiff, do hereby certify that I have served the below listed counsel and parties in this action with a copy of the foregoing pleading(s) by sending a copy of same to the following addresses:

Counsel/Party Served: **Hand Delivery**

Via Hand Delivery:

R. Michael Drose, Esquire
Drose Law Firm
3955 Faber Place Drive, Suite 103
Charleston, SC 29405
Attorney for Defendant Rudolph Robert Drews

Charleston, South Carolina
July 24, 2006



FILED
2006 AUG -2 AM 11:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

665

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE MATTER OF Effie D. Drews

)
)
) IN THE PROBATE COURT
)
) STATEMENT OF CREDITOR'S CLAIM
)
)
) CASE NUMBER: 2010ES0000494

Decedent's Date of Death (if known) February 27, 2010
Decedent's Last Mailing Address 2 Nuffield Road, Charleston, SC 29407

Creditor: Frank Gordon, Jr as attorney- in- fact for Dorothy Gordon
Address Justin O'Toole Lucey, PA
PO Box 806 , Mount Pleasant, SC 29465
Telephone. (843) 849-8400

Basis of claim.

Judgment against Rudolph Robert Drews and in favor of Frank Gordon, Jr., as attorney-in-fact for Dorothy Gordon in the amount of \$108,482.62 with 14% interest to date in the amount of \$136,688.00, which totals \$245,170.72, and the allegations in the attached amended complaint and the petition set forth below.

Amount of claim \$ 245,170 72

Date claim will become due (if not already due) December 9 , 2010

Nature of uncertainty as to amount of claim and due date, if any

Interest on judgment

Description of any security as to claim

See attached:

- (a) Order granting judgment in favor of Plaintiff Gordon in the amount of \$65,789 12 dated December 5, 2001,
(b) Order awarding Plaintiff attorney's fees in the amount of \$42,693 50 dated March 15, 2002;
(c) Amended Summons & Amended Complaint filed in Court of Common Pleas on November 30, 2010, CA No 2010-CP-10-9096 entitled Gordon v Atkinson, et al,
(d) Petition filed in Probate Court on December 2, 2010, Probate Case No 2010-ES-0000494 entitled Gordon v Atkinson et al

Signature [Signature]
 Title Attorney for Plaintiff Frank Gordon, Jr, as
attorney-in fact for Dorothy Gordon
 Date December 9, 2010

INSTRUCTIONS: Claims must be filed with the Probate Court of this county and delivered or mailed to the Personal Representative appointed to administer the estate (see section 62-3-803, 62-3-804, and 62-3-806 on next page)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CC 7
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.:99-CP-10-1407

FRANK GORDON, JR. as attorney-in-fact
for DOROTHY GORDON,

Plaintiff,

vs.

RUDOLPH ROBERT DREWS, and
RAYMOND BEASLEY

Defendants.

2001 DEC -5 PM 3:38

CLERK OF COURT

ORDER GRANTING JUDGMENT IN FAVOR OF PLAINTIFF

Plaintiff's Attorney: Justin Lucy
Defendant Drew's Attorney: Kerry W. Koon
Defendant Beasley: *Pro se*
Date of Hearing: December 3-4, 2001

BACKGROUND

The plaintiff's complaint alleges both defendants violated S.C. Code §§ 35-1-1490 and 1500 arising out of a sale of stock in a closely-held corporation called Builders Station, Inc. The plaintiff also alleges both defendants misrepresented material facts when he purchased the stock, and he further alleges the defendant Drews breached fiduciary duties owed to him arising out of that stock sale. Drews denied all of the allegations. Beasley, in a *pro se* answer, admitted the allegations were true, but declared it was all Drews' fault. The matter was referred to this court for final disposition by order of Judge Gregory on January 29, 2001.

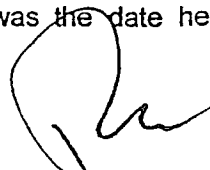
FINDINGS OF FACTS

Based upon the record in this action and the evidence produced at trial, this court finds the following facts to have been established for the purposes of the record in this proceeding:

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1. In 1996, the defendants were the original incorporators of a corporation called Builders Station, Inc. ("Builders Station").
2. In order to open a store called Builders Station, they decided to capitalize the business by selling stock in the company for \$1,000 per share.
3. Under the terms of an agreement with the corporation, the defendants were to receive one-half of a share of stock each for every share of stock sold to investors.
4. The defendants did not register these securities with the Securities Commissioner of South Carolina.
5. Both defendants found investors who purchased shares of stock in Builders Station.
6. Both defendants received one-half of a share of stock for each share of stock sold to these investors.
7. On September 9, 1996, the plaintiff purchased 50 shares of stock in Builders Station in consideration of the sum of \$50,000.00.
8. A preponderance of the evidence shows the defendants represented to the plaintiff the status of the Small Business Administration ("SBA") loan when the plaintiff purchased stock in Builders Station was that it was a "done deal" or "in the bag." This finding is based upon the testimony of the plaintiff and the defendant Beasley.
9. This representation about the status of the SBA loan was a material fact upon which the plaintiff relied when he purchased stock on behalf of his mother in Builders Station.
10. A preponderance of the evidence shows the defendants did not know the SBA was going to require all or almost all of the defendant Drews' property as collateral for the loan at the time the defendants represented to the plaintiff that the SBA loan was a "done deal" or "in the bag" on or before September 9, 1996. This finding of fact is based on several pieces of evidence. First, the defendant Drews testified that he did not know he was going to be required to pledge all of the property the SBA loan commitment required until September 27, 1996, which was the date he received the SBA loan

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commitment letter dated September 25, 1996 from Business Development Corporation

("BDC"). Second, there is no documentary evidence which shows the SBA would require

Drews to pledge his property at the time of the loan application, and the documentary

evidence placed in evidence does not give Drews any notice of such a requirement prior

to the September 25, 1996 letter. In fact, a BDC letter to Drews of September 9, 1996

only mentions the lender was concerned about the store's inventory when mentioning

collateral. Third, none of the corporate minutes prior to September 25, 1996 indicate the

corporation expected Drews use his property as collateral for the SBA loan. Fourth,

there was no testimony from any of the loan brokers who procured the SBA loan about

what they had made Drews aware of prior to September 25, 1996 concerning what

property was expected to be used collateral for the loan. Finally, the corporation's

attorney testified that he had no indication the SBA was seeking to have Drews use his

property as collateral prior to September 25, 1996.

CONCLUSIONS OF LAW

Under S.C. Code § 35-1-50, the defendants were required to file with the Securities Commissioner of South Carolina "any prospectus, pamphlet, circular, form letter, advertisement or other sales literature or advertising communication addressed or intended for distribution to prospective investors . . . unless the security or transaction is exempted by Section 35-1-310 or 35-1-320, or the security is a federal covered security or the transaction is with respect to a federal covered security." S.C. Code § 35-1-810 makes it unlawful "for any person to offer or sell any security in this State unless (a) it is registered under this chapter, (b) the security or transaction is exempted under Section 35-1-310 or 35-1-320, or (c) it is a federal covered security."

S.C. Code §35-1-320(9), which is known as the limited offering exception, provides that:

Any transaction pursuant to an offer directed by the offeror to not more than twenty-five persons . . . in this State during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this State, if (a) the seller reasonably

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believes that all the buyers in this State are purchasing for investment and (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this State

Under S.C. Code § 35-1-340, the defendants have the burden of proving they are entitled to an exemption under either S.C. Code § 35-1-310 or 320.¹ Thus, under § 35-1-320(9), the defendants have a threshold burden of proving they did not offer to sell shares in Builders Station to more than 25 persons within a 12 month period. The defendants have not proven this by a preponderance of the evidence. Drews denial of offering to sell the stock to more than 25 people was as vague as Beasley's assertion that Drews had to have offered it to more than 25 people. Furthermore, the evidence is uncontroverted the defendants received remuneration of one-half of a share of stock in Builders Station every time an investor purchased a share of stock. The defendants maintain this issuance of stock was simply to maintain their one-quarter share each ownership in the stock of Builders Station, and thus it was not compensation. This court is not persuaded by this characterization. Black's Law Dictionary defines remuneration as "payment; compensation" and "the act of paying or compensating."² Issuing stock to the defendants when they procured an investor who purchased stock is textbook compensation, either directly or indirectly, and is even referred to as additional compensation in the defendants' employment contracts. Thus, even if the offer was not made to more than 25 in-state investors, the defendants are not entitled to exemption from registration under S.C. Code § 35-1-320(9) because they received remuneration in the form of one-half of a share of stock every time a share of Builders Station stock was sold to an investor.

Under S.C. Code § 35-1-1490(1), "Any person who offers or sells a security in violation of . . . Section 35-1-810 . . . is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest

¹See S.C. Code § 35-1-340 which states: "In any proceeding under this chapter the burden of proving an exemption or an exception from a definition is upon the person claiming it."

²Black's Law Dictionary, 1298 (7th ed. 1999).

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at six percent per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security. . . ." The plaintiff tendered the stock at trial, meeting the requirement of S.C. Code § 35-1-1510 which states: "Any tender specified in Section 35-1-1490 may be made at any time before entry of judgment." In addition, both defendants are jointly and severally liable under S.C. Code § 35-1-1500 since they both materially aided in the sale of the stock. Therefore, the plaintiff is entitled to recover from the defendants under S.C. Code § 35-1-1490(1)³ the consideration paid for the stock, which the evidence showed to be \$50,000.00, plus interest at six percent per year from September 9, 1996, plus costs and reasonable attorney's fees. The evidence is uncontroverted no income was ever received on the security.

Under S.C. Code § 35-1-1490(2), "Any person who . . . [o]ffers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission . . ."⁴ is also liable for the same damages as for a violation of S.C. Code § 35-1-1490(1).

This court has made a finding of fact that a preponderance of the evidence shows the defendants represented to the plaintiff that the status of the Small Business Administration ("SBA") loan when the plaintiff purchased stock in Builders Station was the loan was a "done deal" or "in the bag." This is based primarily on the testimony of the plaintiff, who stated that he

³At the conclusion of the trial the court allowed the plaintiff to amend his complaint to conform to the evidence to delineate that he was complaining of a violation of S.C. Code § 35-1-1490(1) and (2). His original amended complaint only stated a violation of section 35-1-1490. The defendant Drews objected; however, it is clear Drews answered the original complaint as if there were violation of both subsections, he presented evidence to controvert both subsections, and even argued against a violation of either subsection in closing. It does not appear Drews suffered any prejudice by allowing this clarifying amendment.

⁴One wonders if the author of that sentence has an aversion to the English language.

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was told by the defendants that the SBA loan was a "done deal" or "in the bag," and the testimony of the defendant Beasley, who admitted to making that statement to the plaintiff. This court further made a finding of fact that this representation about the status of the SBA loan was a material fact upon which the plaintiff relied when he purchased stock in Builders Station, and that the plaintiff relied on this representation in deciding whether or not to purchase stock in Builders Station. However, this court also made a finding of fact that a preponderance of the evidence shows the defendants did not know the SBA was going to require all or almost all of the defendant Drews' property as collateral for the loan at the time the defendants represented to the plaintiff that the SBA loan was a "done deal." Therefore, under S.C. Code § 35-1-1490(2), while the defendants were persons who offered or sold a security by means of an untrue statement of a material fact, the defendants have sustained "the burden of proof that [t]he[y] did not know, and in the exercise of reasonable care could not have known, of the untruth or omission" As a result, the plaintiff cannot prevail against the defendants under S.C. Code § 35-1-1490(2).

For the same reasons as outlined above in dismissing the plaintiff's complaint of a violation of S.C. Code § 35-1-1490(2), this court finds the plaintiff is not entitled to judgment against the defendants for his cause of action for common-law misrepresentation. The defendants reasonably believed their statements made to the plaintiff on or before September 9, 1996 about the status of the SBA loan were true and had no reason to believe they were untrue at the time they were made.

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The plaintiff's cause of action for breach of fiduciary duty was against the defendant Drews only. This complaint is essentially that Drews breached his fiduciary duties to the plaintiff when he refused to pledge his property as collateral for the SBA loan. As noted above, this court has already made a finding of fact that a preponderance of the evidence did not show Drews knew the SBA required him to pledge his property as collateral for the loan prior to September 27, 1996, the date when Drews received the loan commitment letter from BDC.

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While it is true that Drews agreed to pledge some of his property for the SBA loan after he received notice of the collateral requirement, he was under no duty to do so at the time and he was not offered any additional consideration to do so. Thereafter, Drews and Beasley personally guaranteed a bridge loan from Southtrust Bank, which again Drews was not obligated to do. Later, Drews and Beasley had a falling-out over whether the Southtrust Bank loan proceeds were to be used entirely to invest in new inventory or whether some should be held in reserve for contingencies. That sort of decision is inherently a business judgment, and it is not for courts to second-guess whether it was the right business decision to make or not. What is relevant about this is that this falling-out between the defendants led to a series of events which caused Beasley to gain the other board members' support to oust Drews from his duties as comptroller of the corporation, effectively freezing Drews out of any say in how the company was run. This naturally led Drews to refuse to pledge his property and personally guarantee the SBA loan. From this court's viewpoint, the board members bet on Beasley and lost. It was completely unrealistic of the board to freeze Drews out of a closely-held corporation and still expect him to be their savior. Whatever duties Drews may have gratuitously assumed to go forward with the SBA loan were at that point extinguished by the board's actions. Therefore, as a board member who approved of Drews' ouster, the plaintiff cannot now prevail against Drews for breach of fiduciary duty, and this cause of action must therefore be dismissed as well.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. That the plaintiff is entitled to judgment against the defendants Rudolph Robert Drews and Raymond Beasley, jointly and severally, for violation of S.C. Code § 35-1-1490(1) in the amount of \$50,000.00, plus interest at the rate of six percent per year since September 9, 1996 which totals \$15,789.12 through the date of this order, plus costs and reasonable attorney's fees. The defendant shall have 15 days from the date of receipt of this order to request a hearing challenging the

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reasonableness of the attorney's fee request submitted by the plaintiff at trial.

The court shall amend this order on the issue of attorney's fees at a later time.

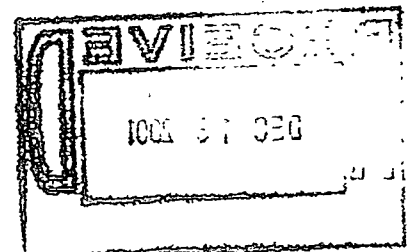
2. That the plaintiff's cause of action against both defendants for violation of S.C. Code § 35-1-1490(2) is dismissed, with prejudice.
3. That the plaintiff's cause of action against both defendants for common-law misrepresentation is dismissed, with prejudice.
4. That the plaintiff's cause of action against the defendant Rudolph Robert Drews for breach of fiduciary duty is dismissed, with prejudice.

AND IT IS SO ORDERED.

Judge Roger M. Young
Master-in-Equity for Charleston County

Charleston, South Carolina
December 5, 2001

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, S.P. & G.S.
BWA
DEPUTY CLERK



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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.: 99-CP-10-1407

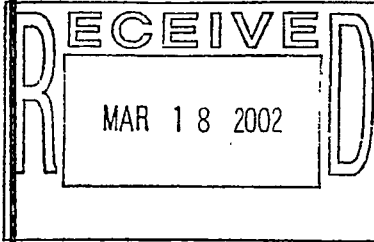
FRANK GORDON, JR., as attorney-in-fact
for DOROTHY GORDON,

Plaintiff,

vs.

RUDOLPH ROBERT DREWS and
RAYMOND BEASLEY,

Defendants.



BY

JUDGE
CLERK OF COURT

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FILED

ORDER AWARDING PLAINTIFF ATTORNEY'S FEES

The defendant Rudolph Robert Drews filed a motion to challenge the reasonableness of the plaintiff's request for attorney's fees submitted at trial as ordered by this court's order of December 5, 2001. This court heard testimony and arguments on this issue on February 27, 2002. The plaintiff has requested an award of attorney's fees in the amount of \$42,693.50.¹ Based upon the record produced at trial and the February 27, 2002, I make the following findings in support of this court's award of attorney's fees:

The general rule is that attorney's fees are not recoverable unless authorized by contract or statute.² The plaintiff prevailed under S.C. Code § 35-1-1490(1), which provides, *inter alia*, for the recovery of reasonable attorney's fees.

When determining the reasonableness of attorney's fees under a statute mandating the award of attorney's fees, a court must consider six factors: (1) the nature, extent, and difficulty of the legal services rendered, (2) the time and labor necessarily devoted to the case, (3) the

¹The original request was for \$44,893.50. This was reduced by \$2,200 at the February 27, 2002 hearing.

² Baron Data System, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989).

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professional standing of counsel, (4) the contingency of compensation, (5) the fee customarily charged in the locality for similar legal services, and (6) the beneficial results obtained.³

Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these six factors is controlling.⁴

This court shall now examine each factor in turn.

1. The Nature, Extent and Difficulty of the Legal Services Rendered.

The plaintiff's attorney spent considerable time and effort on the prosecution of this case. From a review of the file, this case involved securities fraud and misrepresentation, which can be relatively complex litigation. I find this case's complexity warranted the time expended by the plaintiff's attorney, despite the defendant Drews' expert's characterization that the case was "relatively simple." That expert had relatively little experience in securities litigation and his expertise in attorney's fees issues seemed to be more in the field of domestic or family court litigation. The defendant actively litigated the defense of this lawsuit.

2. The Time and Labor Necessarily Devoted to the Case.

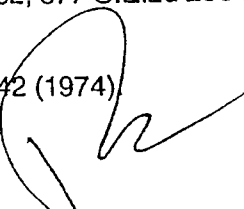
This court has reviewed the statements and affidavit of the plaintiff's attorney, Justin Lucey. Mr. Lucey documented the time billed by him and his staff. The plaintiff has requested an award of attorney's fees in the amount of \$42,693.50. At the hearing he stated he had re-reviewed his billing records and found it necessary to reduce his request by \$2,200 to avoid double-charging certain entries. The total hours documented were in excess of 300.

3. The Professional Standing of Counsel.

This court finds Mr. Lucey is known to this court to be an experienced, highly-skilled attorney of high professional standing in the legal community. This court is aware that Mr. Lucey and his law firm have high standing and regard in the legal community. Furthermore, the

³ Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989), Blumberg v. Nealco, 310 S.C. 492, 427 S.E.2d 659 (1993).

⁴ Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974).

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defendant has not objected to the quality or standing of any of the plaintiff's attorney in this matter.

4. The Contingency of Compensation.

Mr. Lucey stated his fee agreement with his client was 40% of any award or the fee awarded by the court, whichever is greater.

5. The Fee Customarily Charged in the Locality for Similar Legal Services.

Drews primary argument goes to the issue that the plaintiff should not be allowed to recover all of his attorney's fees because he was not successful on all of his causes of action. In

Hensley v. Eckerhart,⁵ the United States Supreme Court said:

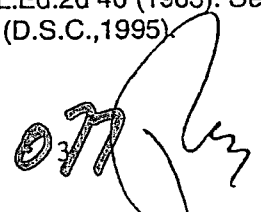
We hold that the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees under 42 U.S.C. §§ 1988. Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee. Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised. But where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained.⁶

Under this court's order, the plaintiff recovered for a violation of S.C. Code § 35-1-1490(1). This violation entitled the plaintiff to an award of his reasonable attorney's fees. This court did not allow recovery for the plaintiff's claims of violation of S.C. Code § 35-1-1490(2), common-law misrepresentation and breach of fiduciary duty.

The relief the plaintiff was awarded for violation of S.C. Code § 35-1-1490(1) was substantial: a complete refund of the sums invested plus interest, costs and attorney's fees. This court found Drews and the other defendant did offer to sell a security by means of an untrue statement; however, this court found the defendants sustained the burden of proving they did not know, and in the exercise of reasonable care could not have known, the truth or

⁵ 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). See also, Alexander S. By and Through Bowers v. Boyd, 929 F.Supp. 925 (D.S.C., 1995).

⁶ Id. at 440, 103 S.Ct. at 1943.



untruth of the omission. The finding of a misrepresentation is not an unsubstantial finding. In fact, one could argue that it was only a technicality that kept Drews from facing even further damages. Under these circumstances, the lack of distinctiveness between the successful and unsuccessful causes of action should not cause a reduction in the award of attorney's fees.

6. The Beneficial Results Obtained.

As noted above, Mr. Lucey was able to procure for his client a substantial award: a complete refund of the sums invested plus interest, costs and attorney's fees.

Under these circumstances, I find an award of \$42,693.50 in attorney's fees to be reasonable.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. That the plaintiff is awarded attorney's fees in the amount of \$42,693.50 for a violation of S.C. Code § 35-1-1490(1); and
2. That this court's order of December 5, 2001 is hereby amended to reflect this award.

AND IT IS SO ORDERED.

Judge Roger M. Young
Master-in-Equity for Charleston County

Charleston, South Carolina
March 14, 2002

ATTEST: A TRUE COPY
JULIE C. ARMSTRONG (SEAL)
CLERK, C. P. & G. S.
By Patricia M. [Signature]
DEPUTY CLERK

078

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2010-CP-10-9096

FRANK GORDON, JR. as Attorney-in-)
Fact for DOROTHY GORDON,)

AMENDED SUMMONS
(Judgment)

Plaintiff,)

v.)

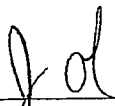
(Jury Trial Demanded)

JESSIE B. ATKINSON, Individually, and)
As Personal Representative of the Estate of)
EFFIE D. DREWS; DONALD W.)
LANCASTER; and SHIRRESE)
BROCKINGTON as Special Administrator)
Of the Estate of RUDOLPH ROBERT)
DREWS,)

Defendant(s))

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office at 415 Mill Street, Post Office Box 806, Mount Pleasant, South Carolina within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Amended Complaint plus interest and costs.

JUSTIN O'TOOLE LUCEY, P.A.


Justin Lucey, Esquire
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806

Charleston, South Carolina
November 30, 2010

075 14

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FRANK GORDON, JR. as
Attorney-in-Fact for DOROTHY
GORDON,

Plaintiff,

vs.

JESSIE B. ATKINSON, Individually, and
as Personal Representative of the Estate of
EFFIE D. DREWS; DONALD W.
LANCASTER; and SHIRRESE
BROCKINGTON as Special Administrator
Of the Estate of RUDOLPH ROBERT
DREWS,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-10-9096

AMENDED COMPLAINT

(Jury Trial Demanded)

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CLERK OF COURT

COMES NOW, Plaintiff Frank Gordon, Jr. and complains of Defendants as follows:

PARTIES AND JURISDICTION

1. Plaintiff Frank Gordon, Jr. ("Gordon") is a citizen and resident of Charleston County, South Carolina and is the attorney-in-fact for Dorothy Gordon.
2. Defendant Jessie B. Atkinson ("Defendant Atkinson") is a citizen and resident of Charleston County, South Carolina and is the Personal Representative of the estate of Effie D. Drews, Case No. 2010-ES-10000494, which is currently pending before the Probate Court of Charleston County, South Carolina.
3. Defendant Donald W. Lancaster ("Defendant Lancaster") is a citizen and resident of Charleston County, South Carolina.
4. Shirrese Brockington is the Special Administrator of the estate of Rudolph Robert

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Drews, Case Number 2007-ES-100015182, which is currently pending before the Probate Court of Charleston County, South Carolina.

5. This civil action arises out of events relating to the recovery on a judgment obtained in Charleston County, South Carolina.

6. This Honorable Court has jurisdiction over all matters herein, and venue is proper.

FACTUAL ALLEGATIONS

7. Each and every allegation set forth above is fully incorporated herein.

Prior Circuit Court Action

8. In September 1996, a claim by Gordon against Rudolph Robert Drews (the "Judgment Debtor") accrued for the illegal sale of stock under S.C. Code § 35-1-1490.

9. In December 2001, Gordon recovered a judgment under this claim against the Judgment Debtor, a citizen and resident of Charleston County, South Carolina at that time, in an action entitled *Frank Gordon, Jr. as Attorney-in-Fact for Dorothy Gordon v. Rudolph Robert Drews and Raymond Beasley*, (the "Gordon Action") Case No. 1997-CP-10-1407, which judgment to date amounts to \$108,482.62, plus accrued interest (the "Judgment"), all of which remains unpaid.

10. To date, the Judgment remains unsatisfied.

Prior Supplemental Proceedings

11. In August 2006, the Court entered an order for supplemental proceedings to be opened to aid Gordon in satisfaction of the Judgment.

12. In September 2006, a hearing in the supplemental proceedings was left open due to the Judgment Debtor's failure, in contravention of the order for supplemental proceedings, to produce documents relating to assets held in his name that would be available for satisfaction of

the Judgment.

Probate Actions

13. On September 25, 2007, the Judgment Debtor died; the Judgment Debtor's Estate was opened on or about October 26, 2007 under Case Number 2007-ES-100015182 (the "Judgment Debtor's Estate").

14. On February 8, 2010, an inventory and appraisal was filed in the Judgment Debtor's Estate, which indicated the estate had no assets.

15. On February 27, 2010, Effie D. Drews, wife of the Judgment Debtor (the "Wife"), died; the Wife's estate was opened on or about March 30, 2010 under Case No. 2010-ES-10000494 (the "Wife's Estate") with her sister, Defendant Atkinson, thereafter being named as Personal Representative.

16. On June 29, 2010, an inventory and appraisal was filed in the Wife's Estate, which indicated a net worth of \$55,460.84.

*The Judgment Debtor's Fraudulent Transfer
of Meeting Street Property Proceeds to the Wife*

17. During threat of litigation in the *Gordon* Action and in anticipation of entry of Judgment in late 2001, the Judgment Debtor caused the sale of real property held in his name.

18. In late 2001, Judgment Debtor owned property located at 1705 Meeting Street, Charleston County, South Carolina (the "Meeting Street Property").

19. In late 2001, Judgment Debtor sold the Meeting Street Property.

20. As partial payment for the Meeting Street Property, the Judgment Debtor received a \$190,000.00 note (the "Meeting Street Note") and mortgage (the "Meeting Street Mortgage") from the purchaser.

21. Following receipt of the Meeting Street Note and Mortgage, the Judgment Debtor,

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executed assignments to the Wife of both the Meeting Street Note and the Meeting Street Mortgage (the "Assignments").

22. The Judgment Debtor made the Assignments to the Wife of the Meeting Street Note and Mortgage in anticipation of an adverse judgment.

23. The Judgment Debtor made the Assignments to the Wife without receiving fair consideration.

24. From early 2002 until late 2005, the Wife received approximately \$109,045.08 on the Meeting Street Note and Mortgage.

25. The Wife deposited the \$109,045.08 in proceeds from the Meeting Street Note and Mortgage into a joint account held by the Judgment Debtor and the Wife with First Citizens Bank (the "First Citizens Account").

26. In late 2005, the Wife received \$130,293.37 as final payment for the sale of the Meeting Street Property.

27. In late 2005, the Wife deposited the final payment of \$130,293.37 into an account held solely in her name at First Federal Bank (the "First Federal Account").

28. In late 2005, the Wife then transferred \$130,000.00 from the First Federal Account into a brokerage account held solely in her name with First Southeast Investor Services, Inc. (the "First Southeast Account").

29. In 2006, the Wife transferred \$35,000.00 from the First Southeast Account to an account she held solely in her name with Wachovia Bank (the "Wachovia Account").

30. In 2006, the Wife transferred \$10,000.00 out of the Wachovia Account into a capital dividend account held solely in her name (the "Wachovia CDA").

31. The Wife received a total of approximately \$239,338.45 in payments under the

Meeting Street Note and Mortgage (the "Meeting Street Property Proceeds").

*The Wife's Fraudulent Transfers of
Meeting Street Property Proceeds to Defendant Atkinson*

32. During her lifetime, the Wife transferred \$47,942.89 of the Meeting Street Property Proceeds to her sister, Defendant Atkinson.

33. Defendant Atkinson received the \$47,942.89 from the Wife for no consideration.

34. Upon the Wife's death, the net worth of the Wife's Estate consisted of Meeting Street Property Proceeds.

35. Following the Wife's Death, Defendant Atkinson received the \$55,460.84 net worth of the Wife's Estate.

36. Defendant Atkinson received the net worth of the Wife's Estate for no consideration.

*The Judgment Debtor's and the Wife's Fraudulent Transfers of
Meeting Street Property Proceeds and Monies to Defendant Lancaster*

37. In late 2001, after receiving the Assignments of the Meeting Street Note and Mortgage from the Judgment Debtor, the Wife executed an assignment of the Meeting Street Mortgage to Defendant Lancaster (the "Lancaster Assignment").

38. At or about the same time as execution of the Lancaster Assignment, Defendant Lancaster took a \$50,912.00 note from the Wife on the Meeting Street Property (the "Lancaster Note").

39. The Lancaster Assignment and Note were given for no or inadequate consideration.

40. From 2001 to 2005, Defendant Lancaster received approximately \$51,896.12 from the Judgment Debtor and/or the Wife allegedly in full satisfaction of the Lancaster Note.

41. In late 2001, the Judgment Debtor transferred approximately \$11,089.63 to

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Defendant Lancaster.

42. Defendant Lancaster received the \$11,089.63 for no consideration.

The Judgment Debtor's \$100,000 Transfer to Defendant Lancaster

43. In early 1992, the Judgment Debtor transferred \$100,000 to Defendant Lancaster.

44. In early 1992, Defendant Lancaster received \$100,000 from the Judgment Debtor.

45. The Judgment Debtor's \$100,000 transfer to Defendant Lancaster was conditioned upon Defendant Lancaster's purchase of real property for the Judgment Debtor and the Wife.

46. In or about April 1992, Defendant Lancaster used the \$100,000 received from the Judgment Debtor to purchase real property located at 17 Bainbridge, Charleston County, South Carolina (the "Bainbridge Property").

47. From about April 1992 until about May 1995, Defendant Lancaster held legal title of the Bainbridge Property in name only while the Judgment Debtor retained the true and beneficial ownership of the Bainbridge Property and resided thereon.

48. In or about May 1995, Defendant Lancaster and the Judgment Debtor substituted a property located at 2 Nuffield Road, Charleston County, South Carolina (the "Nuffield Property") for the Bainbridge Property.

49. From about May 1995 until the death of the Judgment Debtor on September 25, 2007, Defendant Lancaster held legal title to the Nuffield Property in name only while the Judgment Debtor retained true and beneficial ownership of the Nuffield Property and resided thereon.

50. The Judgment Debtor's Estate has failed to name the Judgment Debtor's ownership of and legal interest in the Nuffield Property as an asset of the estate.

51. The Wife's Estate has failed to name the Wife's successor ownership of and interest in the Nuffield Property as an asset of the estate.

The Nuffield Property Proceeds

52. On April 29, 2010, two months following the Wife's death, Defendant Lancaster sold the Nuffield Property to a third party for \$246,000.00.

53. Defendant Lancaster continues to retain the \$246,000.00 from the sale of the Nuffield Property, all of which should have been inured to the benefit of the Judgment Debtor and the Judgment Debtor's Estate, and should have been used to pay the Judgment in full.

**FOR A FIRST CAUSE OF ACTION
FRAUDULENT CONVEYANCE
(Against All Defendants)**

54. The preceding paragraphs are hereby incorporated by reference.

55. The Judgment Debtor failed to pay to Gordon the sum due under the Judgment when it became payable and due at the time the Judgment was issued.

56. The Judgment Debtor's Estate is not able to pay its creditors, including Gordon, and has failed to pay the Judgment since the estate was opened.

57. The Wife's Estate is not able to pay its creditors, including Gordon, and has failed to pay the Judgment since the estate was opened.

Fraudulent Conveyances Involving the Wife

58. Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor assigned the Meeting Street Note and Mortgage to the Wife.

59. The Judgment Debtor's assignments to the Wife of the Meeting Street Note and Mortgage are void because they were made without fair consideration.

60. The Wife's receipt of the Meeting Street Property Proceeds, which total

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\$239,338.45, is void in that she received those monies without paying fair consideration.

61. The Wife retained the Meeting Street Property Proceeds at the time of her death.

62. Gordon currently holds the Judgment against the Judgment Debtor's Estate and, by virtue of the Judgment Debtor's fraudulent assignments of the Meeting Street Note and Mortgage to the Wife without fair consideration, Gordon should be allowed to execute on the Wife's Estate for satisfaction of the Judgment.

Fraudulent Conveyances Involving Defendant Atkinson

63. Gordon had a claim against the Judgment Debtor at the time the Wife transferred to Defendant Atkinson without receiving fair consideration \$47,942.89 of Meeting Street Property Proceeds fraudulently held by the Wife in her First Southeast Account.

64. The Wife's transfer to Defendant Atkinson of \$47,942.89 out of the First Southeast Account is void in that it was made without fair consideration.

65. Gordon had a claim against the Judgment Debtor at the time Defendant Atkinson without fair consideration received \$55,460.84 from the net worth of the Wife's Estate, which is comprised of the Meeting Street Property Proceeds.

66. Defendant Atkinson's receipt of the net worth of the Wife's Estate is void in that it was received without fair consideration.

Fraudulent Conveyances Involving Defendant Lancaster

67. Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor retained the true and beneficial ownership of the Nuffield Property.

68. Gordon had a claim against the Judgment Debtor at the time the Wife obtained and retained successor ownership of and interest in the Nuffield Property following the Judgment Debtor's death.

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69. By retaining the true and beneficial ownership of the Nuffield Property, the Judgment Debtor's \$100,000 transfer to Defendant Lancaster was never completed.

70. The Judgment Debtor's \$100,000 transfer to Defendant Lancaster is fraudulent and should be declared void.

71. Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor transferred Meeting Street Property Proceeds and Monies to Defendant Lancaster without fair consideration.

72. The Judgment Debtor's transfer of Meeting Street Property Proceeds and Monies to Defendant Lancaster should be declared void.

73. Gordon had a claim against the Judgment Debtor at the time the Wife executed the Lancaster Assignment and Note on the Meeting Street Property to Defendant Lancaster without fair consideration.

74. The Wife's execution of the Lancaster Assignment and Note should be declared void.

75. Gordon had a claim against the Judgment Debtor at the time the Wife transferred Meeting Street Property Proceeds to Defendant Lancaster without fair consideration.

76. The Wife's transfer of Meeting Street Property Proceeds to Defendant Lancaster should be declared void.

**FOR A SECOND CAUSE OF ACTION
CONSTRUCTIVE TRUST
(Against All Defendants)**

77. The preceding paragraphs are hereby incorporated by reference.

78. The matters described herein entitle Plaintiff to an order imposing a constructive trust on the property at issue and the proceeds thereof, together with an award of consequential

damages against all Defendants.

**FOR A THIRD CAUSE OF ACTION
CIVIL CONSPIRACY
(Against All Defendants)**

79. The preceding paragraphs are hereby incorporated by reference.

80. Defendants Lancaster and Atkinson conspired among themselves and with the Judgment Debtor and the Wife to enable the Judgment Debtor to have the appearance of being judgment proof to better themselves and to injure creditors, including the Plaintiff, by the Defendants' above described actions.

81. The concerted action and activities by Defendants have proximately injured the Plaintiff as above described and have caused special damages.

82. As a result of Defendants' reckless and intentional acts committed in conscious disregard of the Plaintiff's rights, Plaintiff is entitled to an award of punitive damages in an amount to be determined by the trier-of-fact.

**FOR A FOURTH CAUSE OF ACTION
NEGLIGENCE/AIDING AND ABETTING
(Against All Defendants)**

83. The preceding paragraphs are hereby incorporated by reference.

84. Defendants knew or should have known that the Judgment Debtor was transferring and/or hiding property to hinder and defraud creditors.

85. Defendants negligently, recklessly, knowingly, and/or intentionally, aided and abetted the Judgment Debtor in his above described wrongful activities.

86. As a direct and proximate result of the Defendants' conduct, Plaintiff suffered actual, consequential and incidental damages.

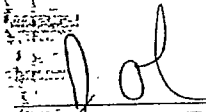
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87. As a result of Defendants' reckless and intentional acts committed in conscious disregard of the Plaintiff's rights, Plaintiff is entitled to an award of punitive damages in an amount to be determined by the trier-of-fact.

WHEREFORE, the Plaintiff, having alleged a complaint against the Defendants, would request from this Court an Order as follows:

- (a) That all transfers described herein, together with any others determined during discovery and proved at trial, be set aside and declared null and void; that the subject property, and proceeds thereof, be made subject to a constructive trust and made available to satisfy plaintiff's judgment, and that the plaintiff be granted judgment against each and every defendant for their active and passive participation in the subterfuges described herein, together with an award of consequential and punitive damages and prejudgment interest;
- (b) that the costs and disbursements of this action and reasonable attorney's fees be granted to Plaintiff; and
- (c) for such other and further relief as the Court deems just and proper.

Respectfully submitted



Justin Lucey, Esquire
Stephanie D. Drawdy, Esquire
Justin O'Toole Lucey, P.A.
415 Mill Street
Post Office Box 806
Mount Pleasant, South Carolina 29465-0806
Phone: (843) 849-8400

Attorneys for Plaintiff

Charleston, South Carolina
November 30, 2010

0821

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FRANK GORDON, JR. as
Attorney-in-Fact for DOROTHY
GORDON,

Plaintiff,

vs.

JESSIE B. ATKINSON, Individually, and
as Personal Representative of the Estate of
EFFIE D. DREWS; DONALD W.
LANCASTER; and SHIRRESE
BROCKINGTON as Special Administrator
Of the Estate of RUDOLPH ROBERT
DREWS,

Defendants.

IN THE PROBATE COURT

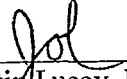
CASE NO.: 2010-ES-0000494

SUMMONS

(Jury Trial Demanded)

YOU ARE HEREBY SUMMONED and required to answer the Petition, herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office at 415 Mill Street, Post Office Box 806, Mount Pleasant, South Carolina within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Petition plus interest and costs.

JUSTIN O'TOOLE LUCEY, P.A.


Justin Lucey, Esquire
Stephanie D. Drawdy, Esquire
Justin O'Toole Lucey, P.A.
Post Office Box 806
Mount Pleasant, South Carolina 29465-0806
Phone: (843) 849-8400
Attorneys for Plaintiff

Charleston, South Carolina
December 2, 2010

092

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FRANK GORDON, JR. as
Attorney-in-Fact for DOROTHY
GORDON,

Plaintiff,

vs.

JESSIE B. ATKINSON, Individually, and
as Personal Representative of the Estate of
EFFIE D. DREWS; DONALD W.
LANCASTER; and SHIRRESE
BROCKINGTON as Special Administrator
Of the Estate of RUDOLPH ROBERT
DREWS,

Defendants.

) IN THE PROBATE COURT

) CASE NO.: 2010-ES-0000494

) PETITION

) (Jury Trial Demanded)

) COMES NOW, Plaintiff Frank Gordon, Jr. and complains of Defendants as follows:

) **PARTIES AND JURISDICTION**

-) 1. Plaintiff Frank Gordon, Jr. ("Gordon") is a citizen and resident of Charleston County, South Carolina and is the attorney-in-fact for Dorothy Gordon.
-) 2. Defendant Jessie B. Atkinson ("Defendant Atkinson") is a citizen and resident of Charleston County, South Carolina and is the Personal Representative of the estate of Effie D. Drows, Case No. 2010-ES-10000494, which is currently pending before this Court.
-) 3. Defendant Donald W. Lancaster ("Defendant Lancaster") is a citizen and resident of Charleston County, South Carolina.
-) 4. Shirrese Brockington is the Special Administrator of the estate of Rudolph Robert Drows, Case Number 2007-ES-100015182, which is currently pending before this Court.

5. This civil action arises out of events relating to the recovery on a judgment obtained in Charleston County, South Carolina.

6. This Honorable Court has jurisdiction over all matters herein, and venue is proper.

FACTUAL ALLEGATIONS

7. Each and every allegation set forth above is fully incorporated herein.

Prior Circuit Court Action

8. In September 1996, a claim by Gordon against Rudolph Robert Drews (the "Judgment Debtor") accrued for the illegal sale of stock under S.C. Code § 35-1-1490.

9. In December 2001, Gordon recovered a judgment under this claim against the Judgment Debtor, a citizen and resident of Charleston County, South Carolina at that time, in an action entitled *Frank Gordon, Jr. as Attorney-in-Fact for Dorothy Gordon v. Rudolph Robert Drews and Raymond Beasley*, (the "Gordon Action") Case No. 1997-CP-10-1407, in the amount of \$108,482.62 plus accrued interest (the "Judgment").

10. The Judgment remains unsatisfied.

Prior Supplemental Proceedings

11. In August 2006, the Court entered an order for supplemental proceedings to be opened to aid Gordon in satisfaction of the Judgment.

12. In September 2006, a hearing in the supplemental proceedings was left open due to the Judgment Debtor's failure, in contravention of the order for supplemental proceedings, to produce documents relating to assets held in his name that would be available for satisfaction of the Judgment.

Probate Actions

13. On September 25, 2007, the Judgment Debtor died; the Judgment Debtor's Estate

was opened on or about October 26, 2007, under Case Number 2007-ES-100015182 (the "Judgment Debtor's Estate").

14. On February 8, 2010, an inventory and appraisal was filed in the Judgment Debtor's Estate, which indicated the estate had no assets.

15. On February 27, 2010, Effie D. Drews, wife of the Judgment Debtor (the "Wife"), died; the Wife's estate was opened on or about March 30, 2010 under Case No. 2010-ES-10000494 (the "Wife's Estate") with her sister, Defendant Atkinson, thereafter being named as Personal Representative.

16. On June 29, 2010, an inventory and appraisal was filed in the Wife's Estate, which indicated a net worth of \$55,460.84.

*The Judgment Debtor's Fraudulent Transfer
of Meeting Street Property Proceeds to the Wife*

17. During threat of litigation in the *Gordon* Action and in anticipation of entry of Judgment in late 2001, the Judgment Debtor caused the sale of real property held in his name.

18. In late 2001, Judgment Debtor owned property located at 1705 Meeting Street, Charleston County, South Carolina (the "Meeting Street Property").

19. In late 2001, the Judgment Debtor sold the Meeting Street Property.

20. As partial payment for the Meeting Street Property, the Judgment Debtor received a \$190,000.00 note (the "Meeting Street Note") and mortgage (the "Meeting Street Mortgage") from the purchaser.

21. Following receipt of the Meeting Street Note and Mortgage, the Judgment Debtor, executed assignments to the Wife of both the Meeting Street Note and the Meeting Street Mortgage (the "Assignments").

22. The Judgment Debtor made the Assignments to the Wife of the Meeting Street

Note and Mortgage in anticipation of an adverse judgment.

23. The Judgment Debtor made the Assignments to the Wife without receiving fair consideration.

24. From early 2002 until late 2005, the Wife received approximately \$109,045.08 on the Meeting Street Note and Mortgage.

25. The Wife deposited the \$109,045.08 in proceeds from the Meeting Street Note and Mortgage into a joint account held by the Judgment Debtor and the Wife with First Citizens Bank (the "First Citizens Account").

26. In late 2005, the Wife received \$130,293.37 as final payment for the sale of the Meeting Street Property.

27. In late 2005, the Wife deposited the final payment of \$130,293.37 into an account held solely in her name at First Federal Bank (the "First Federal Account").

28. In late 2005, the Wife then transferred \$130,000.00 from the First Federal Account into a brokerage account held solely in her name with First Southeast Investor Services, Inc. (the "First Southeast Account").

29. In 2006, the Wife transferred \$35,000.00 from the First Southeast Account to an account she held solely in her name with Wachovia Bank (the "Wachovia Account").

30. In 2006, the Wife transferred \$10,000.00 out of the Wachovia Account into a capital dividend account held solely in her name (the "Wachovia CDA").

31. The Wife received a total of approximately \$239,338.45 in payments under the Meeting Street Note and Mortgage (the "Meeting Street Property Proceeds").

*The Wife's Fraudulent Transfer of
Meeting Street Property Proceeds to Defendant Atkinson*

32. During her lifetime, the Wife transferred \$47,942.89 of the Meeting Street

Property Proceeds to her sister, Defendant Atkinson.

33. Defendant Atkinson received the \$47,942.89 from the Wife for no consideration.

34. Upon the wife's death, the net worth of the Wife's estate consisted of Meeting Street Property Proceeds.

35. Following the Wife's Death, Defendant Atkinson received the \$55,460.84 net worth of the Wife's Estate.

36. Defendant Atkinson received the net worth of the Wife's estate for no consideration.

*The Judgment Debtor's and the Wife's Fraudulent Transfers
of Meeting Street Property Proceeds and Monies to Defendant Lancaster*

37. In late 2001, after receiving the Assignments of the Meeting Street Note and Mortgage from the Judgment Debtor, the Wife executed an assignment of the Meeting Street Mortgage to Defendant Lancaster (the "Lancaster Assignment").

38. At or about the same time as execution of the Lancaster Assignment, Defendant Lancaster took a \$50,912.00 note from the Wife on the Meeting Street Property (the "Lancaster Note").

39. The Lancaster Assignment and Note were given for no or inadequate consideration.

40. From 2001 to 2005, Defendant Lancaster received approximately \$51,896.12 from the Judgment Debtor and/or the Wife allegedly in full satisfaction of the Lancaster Note.

41. In late 2001, the Judgment Debtor transferred approximately \$11,089.63 to Defendant Lancaster.

42. Defendant Lancaster received the \$11,089.63 for no consideration.

The Judgment Debtor's \$100,000 Transfer to Defendant Lancaster

43. In early 1992, the Judgment Debtor transferred \$100,000 to Defendant Lancaster.
44. In early 1992, Defendant Lancaster received \$100,000 from the Judgment Debtor.
45. The Judgment Debtor's \$100,000 transfer to Defendant Lancaster was conditioned upon Defendant Lancaster's purchase of real property for the Judgment Debtor and the Wife.
46. In or about April 1992, Defendant Lancaster used the \$100,000 received from the Judgment Debtor to purchase real property located at 17 Bainbridge, Charleston County, South Carolina (the "Bainbridge Property").
47. From about April 1992 until about May 1995, Defendant Lancaster held legal title of the Bainbridge Property in name only while the Judgment Debtor retained the true and beneficial ownership of the Bainbridge Property and resided thereon.
48. In or about May 1995, Defendant Lancaster and Judgment Debtor substituted a property located at 2 Nuffield Road, Charleston County, South Carolina (the "Nuffield Property") for the Bainbridge Property.
49. From about May 1995 until the death of the Judgment Debtor on September 25, 2007, Defendant Lancaster held legal title to the Nuffield Property in name only while the Judgment Debtor retained true and beneficial ownership of the Nuffield Property and resided thereon.
50. The Judgment Debtor's Estate has failed to name the Judgment Debtor's ownership of and legal interest in the Nuffield Property as an asset of the estate.
51. The Wife's Estate has failed to name the Wife's successor ownership of and interest in the Nuffield Property as an asset of the Wife's estate.

52. On April 29, 2010, two months following the Wife's death, Defendant Lancaster sold the Nuffield Property to a third party for \$246,000.00.

53. Defendant Lancaster continues to retain the \$246,000.00 he received from the sale of the Nuffield Property, all of which should have been inured to the benefit of the Judgment Debtor and the Judgment Debtor's Estate, and should have been used to pay the Judgment in full.

**FOR A FIRST CAUSE OF ACTION
EXECUTOR DE SON TORT
UNDER PROBATE CODE §§ 62-3-619, 620
(Against All Defendants)**

54. The preceding paragraphs are hereby incorporated by reference.

55. Defendants Lancaster, the Wife's estate, and Atkinson have received and retained assets belonging to the now deceased Judgment Debtor, and proceeds thereof, which, in law and equity, belong to the Judgment Debtor's Estate and should be made available to pay creditors, Plaintiff included.

56. Plaintiff is entitled to recover from Defendants Lancaster, the Wife's estate, and Atkinson, as executors de son tort, the Judgment Debtor's assets and judgment thereon.

**FOR A SECOND CAUSE OF ACTION
FRAUDULENT CONVEYANCE
(Against All Defendants)**

57. The preceding paragraphs are hereby incorporated by reference.

58. The Judgment Debtor failed to pay to Gordon the sum due under the Judgment when it became payable and due at the time the Judgment was issued.

59. The Judgment Debtor's Estate is not able to pay its creditors, including Gordon, and has failed to pay the Judgment since the estate was opened.

60. The Wife's Estate is not able to pay its creditors, including Gordon, and has failed to pay the Judgment since the estate was opened.

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Fraudulent Conveyances Involving the Wife

61. Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor assigned the Meeting Street Note and Mortgage to the Wife.

62. The Judgment Debtor's assignments to the Wife of the Meeting Street Note and Mortgage are void because they were made without fair consideration.

63. The Wife's receipt of the Meeting Street Property Proceeds, which total \$239,338.45, is void in that she received those monies without paying fair consideration.

64. The Wife retained the Meeting Street Property Proceeds at the time of her death.

65. Gordon currently holds the Judgment against the Judgment Debtor's Estate and, by virtue of the Judgment Debtor's fraudulent assignments of the Meeting Street Note and Mortgage to the Wife without fair consideration, Gordon should be allowed to execute on the Wife's Estate for satisfaction of the Judgment.

Fraudulent Conveyances Involving Defendant Atkinson

66. Gordon had a claim against the Judgment Debtor at the time the Wife transferred to Defendant Atkinson without receiving fair consideration \$47,942.89 of Meeting Street Property Proceeds fraudulently held by the Wife in her First Southeast Account.

67. The Wife's transfer to Defendant Atkinson of \$47,942.89 out of the First Southeast Account is void in that it was made without fair consideration.

68. Gordon had a claim against the Judgment Debtor at the time Defendant Atkinson without fair consideration received \$55,460.84 from the net worth of the Wife's Estate, which is comprised of the Meeting Street Property Proceeds.

69. Defendant Atkinson's receipt of the net worth of the Wife's Estate is void in that it was received without fair consideration.

Fraudulent Conveyances Involving Defendant Lancaster

70. Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor retained the true and beneficial ownership of the Nuffield Property.

71. Gordon had a claim against the Judgment Debtor at the time the Wife obtained and retained successor ownership of and interest in the Nuffield Property following the Judgment Debtor's death.

72. By retaining the true and beneficial ownership of the Nuffield Property, the Judgment Debtor's \$100,000 transfer to Defendant Lancaster was never completed.

73. The Judgment Debtor's \$100,000 transfer to Defendant Lancaster is fraudulent and should be declared void.

74. Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor transferred Meeting Street Property Proceeds and Monies to Defendant Lancaster without fair consideration.

75. The Judgment Debtor's transfer of Meeting Street Property Proceeds and Monies to Defendant Lancaster should be declared void.

76. Gordon had a claim against the Judgment Debtor at the time the Wife executed the Lancaster Assignment and Note on the Meeting Street Property to Defendant Lancaster without fair consideration.

77. The Wife's execution of the Lancaster Assignment and Note should be declared void.

78. Gordon had a claim against the Judgment Debtor at the time the Wife transferred Meeting Street Property Proceeds to Defendant Lancaster without fair consideration.

79. The Wife's transfer of Meeting Street Property Proceeds to Defendant Lancaster

should be declared void.

**FOR A THIRD CAUSE OF ACTION
CONSTRUCTIVE TRUST
(Against All Defendants)**

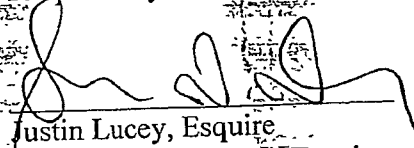
80. The preceding paragraphs are hereby incorporated by reference.

81. The matters described herein entitle Plaintiff to an order imposing a constructive trust on the property at issue and the proceeds thereof, together with an award of consequential damages against all Defendants herein.

WHEREFORE, the Plaintiff would request from this Court an Order as follows:

- (a) That all transfers described herein, together with any others determined during discovery and proved at trial, be set aside and declared null in void; that the subject property, and proceeds thereof, be made subject to a constructive trust and made available to satisfy plaintiff's judgment, and that the plaintiff be granted judgment against each and every defendant for their active and passive participation in the subterfuges described herein, together with an award of consequential and punitive damages.
- (b) that the costs and disbursements of this action and reasonable attorney's fees be granted to Plaintiff; and
- (c) for such other and further relief as the Court deems just and proper.

Respectfully submitted,



Justin Lucey, Esquire

Stephanie D. Drawdy, Esquire

Justin O'Toole Lucey, P.A.

415 Mill Street

Post Office Box 806

Mount Pleasant, South Carolina 29465-0806

Phone: (843) 849-8400

Attorneys for Plaintiff

Charleston, South Carolina
December 2, 2010

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) IN THE PROBATE COURT

1) CASE NO.: 20/085/2-00494

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) IN THE PROBATE COURT

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Note and Mortgage in anticipation of an adverse judgment.

23. The Judgment Debtor made the Assignments to the Wife without receiving fair consideration.

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53. Defendant Lancaster continues to retain the \$246,000.00 he received from the sale of the Nuffield Property, all of which should have been inured to the benefit of the Judgment Debtor and the Judgment Debtor's Estate, and should have been used to pay the Judgment in full.

**FOR A FIRST CAUSE OF ACTION
EXECUTOR DE SON TORT
UNDER PROBATE CODE §§ 62-3-619, 620
(Against All Defendants)**

54. The preceding paragraphs are hereby incorporated by reference.

55. Defendants Lancaster, the Wife's estate, and Atkinson have received and retained assets belonging to the now deceased Judgment Debtor, and proceeds thereof, which, in law and equity, belong to the Judgment Debtor's Estate and should be made available to pay creditors, Plaintiff included.

56. Plaintiff is entitled to recover from Defendants Lancaster, the Wife's estate, and Atkinson, as executors de son tort, the Judgment Debtor's assets and judgment thereon.

**FOR A SECOND CAUSE OF ACTION
FRAUDULENT CONVEYANCE
(Against All Defendants)**

57. The preceding paragraphs are hereby incorporated by reference.

58. The Judgment Debtor failed to pay to Gordon the sum due under the Judgment when it became payable and due at the time the Judgment was issued.

59. The Judgment Debtor's Estate is not able to pay its creditors, including Gordon, and has failed to pay the Judgment since the estate was opened.

60. The Wife's Estate is not able to pay its creditors, including Gordon, and has failed to pay the Judgment since the estate was opened.

Fraudulent Conveyances Involving the Wife

61. Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor assigned the Meeting Street Note and Mortgage to the Wife.

62. The Judgment Debtor's assignments to the Wife of the Meeting Street Note and Mortgage are void because they were made without fair consideration.

63. The Wife's receipt of the Meeting Street Property Proceeds, which total \$239,338.45, is void in that she received those monies without paying fair consideration.

64. The Wife retained the Meeting Street Property Proceeds at the time of her death.

65. Gordon currently holds the Judgment against the Judgment Debtor's Estate and, by virtue of the Judgment Debtor's fraudulent assignments of the Meeting Street Note and Mortgage to the Wife without fair consideration, Gordon should be allowed to execute on the Wife's Estate for satisfaction of the Judgment.

Fraudulent Conveyances Involving Defendant Atkinson

66. Gordon had a claim against the Judgment Debtor at the time the Wife transferred to Defendant Atkinson without receiving fair consideration \$47,942.89 of Meeting Street Property Proceeds fraudulently held by the Wife in her First Southeast Account.

67. The Wife's transfer to Defendant Atkinson of \$47,942.89 out of the First Southeast Account is void in that it was made without fair consideration.

68. Gordon had a claim against the Judgment Debtor at the time Defendant Atkinson without fair consideration received \$55,460.84 from the net worth of the Wife's Estate, which is comprised of the Meeting Street Property Proceeds.

69. Defendant Atkinson's receipt of the net worth of the Wife's Estate is void in that it was received without fair consideration.

Fraudulent Conveyances Involving Defendant Lancaster

70. Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor retained the true and beneficial ownership of the Nuffield Property.

71. Gordon had a claim against the Judgment Debtor at the time the Wife obtained and retained successor ownership of and interest in the Nuffield Property following the Judgment Debtor's death.

72. By retaining the true and beneficial ownership of the Nuffield Property, the Judgment Debtor's \$100,000 transfer to Defendant Lancaster was never completed.

73. The Judgment Debtor's \$100,000 transfer to Defendant Lancaster is fraudulent and should be declared void.

74. Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor transferred Meeting Street Property Proceeds and Monies to Defendant Lancaster without fair consideration.

75. The Judgment Debtor's transfer of Meeting Street Property Proceeds and Monies to Defendant Lancaster should be declared void.

76. Gordon had a claim against the Judgment Debtor at the time the Wife executed the Lancaster Assignment and Note on the Meeting Street Property to Defendant Lancaster without fair consideration.

77. The Wife's execution of the Lancaster Assignment and Note should be declared void.

78. Gordon had a claim against the Judgment Debtor at the time the Wife transferred Meeting Street Property Proceeds to Defendant Lancaster without fair consideration.

79. The Wife's transfer of Meeting Street Property Proceeds to Defendant Lancaster

should be declared void.

**FOR A THIRD CAUSE OF ACTION
CONSTRUCTIVE TRUST
(Against All Defendants)**

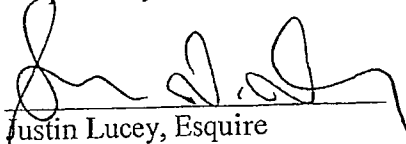
80. The preceding paragraphs are hereby incorporated by reference.

81. The matters described herein entitle Plaintiff to an order imposing a constructive trust on the property at issue and the proceeds thereof, together with an award of consequential damages against all Defendants herein.

WHEREFORE, the Plaintiff would request from this Court an Order as follows:

- (a) That all transfers described herein, together with any others determined during discovery and proved at trial, be set aside and declared null in void; that the subject property, and proceeds thereof, be made subject to a constructive trust and made available to satisfy plaintiff's judgment, and that the plaintiff be granted judgment against each and every defendant for their active and passive participation in the subterfuges described herein, together with an award of consequential and punitive damages.
- (b) that the costs and disbursements of this action and reasonable attorney's fees be granted to Plaintiff; and
- (c) for such other and further relief as the Court deems just and proper.

Respectfully submitted,



Justin Lucey, Esquire

Stephanie D. Drawdy, Esquire

Justin O'Toole Lucey, P.A.

415 Mill Street

Post Office Box 806

Mount Pleasant, South Carolina 29465-0806

Phone: (843) 849-8400

Attorneys for Plaintiff

Charleston, South Carolina
December 2, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT

CASE NO. 2010 ES-0000494

FRANK GORDON, JR. as)
Attorney-in-Fact for DOROTHY)
GORDON,)

Plaintiffs,)

v.)

JESSIE B. ATKINSON, Individually,)
and as Personal Representative of the)
Estate of EFFIE D. DREWS;)
DONALD W. LANCASTER; and)
SHIRRESE BROCKINGTON as)
Special Administrator of the Estate)
of RUDOLPH ROBERT DREWS,)

Defendants.)

**ANSWER OF
DONALD W. LANCASTER
(to Petition)**

The Defendant, Donald W. Lancaster, hereinafter "this Defendant", answering the Petition, would allege unto this honorable Court as follows:

1. Each and every allegation of the Petition which is not hereinafter specifically admitted or explained is denied and strict proof demanded thereof.

2. Answering Paragraph 1 of the Petition, this Defendant would admit so much of the allegations contained therein as says that Plaintiff Frank Gordon, Jr. is a citizen and resident of Charleston County, South Carolina, however, this Defendant is without sufficient information or belief so as to form an opinion as to the remaining allegations contained in Paragraph 1 and would deny same and demand strict proof thereof.

3. This Defendant would admit the allegations contained in Paragraphs 2, 3, 4, 13, 15, 18, 19, 20, 21, 37, 38, 40, 44, 46 and 52 of the Petition.

4. This Defendant is without sufficient information or belief so as to form an opinion as to the allegations contained in Paragraphs 5, 8, 9, 10, 11, 12, 14, 16, 17, 22, 23, 24, 25, 26,

27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 50, 51, 55, 58, 59, 60, 61, 62, 67 and 69 of the Petition and would deny same and demand strict proof thereof.

5. That the allegations contained in Paragraph 6 of the Petition constitute conclusions of law to which no response is required from this Defendant.

6. Answering Paragraph 7 of the Petition, this Defendant repeats and realleges each and every allegation set forth in Paragraphs 1 through 5 above as though fully set forth verbatim.

7. This Defendant would deny the allegations contained in Paragraphs 39, 42, 56, 62, 63, 64, 66, 68, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79 and 81 of the Petition and would demand strict proof thereof.

8. Answering Paragraph 41 of the Petition, this Defendant would admit so much of the allegations contained therein as says that in late 2001 the Judgment Debtor paid this Defendant approximately \$11,089.63, which said sum represented repayment to this Defendant for a loan made to the Judgment Debtor and his wife, however, this Defendant would deny the remaining allegations contained in Paragraph 41 and would demand strict proof thereof.

9. Answering Paragraph 43 of the Petition, this Defendant would admit so much of the allegations contained therein as says that in early 1992, the Judgment Debtor paid this Defendant the sum of \$100,000.00 in consideration of this Defendant purchasing a residence and allowing the Judgment Debtor and his wife a life estate in such residence, however, this Defendant would deny the remaining allegations contained in Paragraph 43 and would demand strict proof thereof.

10. Answering Paragraph 45 of the Petition, this Defendant would admit so much of the allegations contained therein as says that the payment of \$100,000.00 from the Judgment Debtor to this Defendant was conditioned upon this Defendant granting the Judgment Debtor and his wife a life estate in the real property to be purchased by this Defendant, however, this Defendant would deny the remaining allegations contained in Paragraph 45 and would demand strict proof thereof.

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11. Answering Paragraph 47 of the Petition, this Defendant would admit so much of the allegations contained therein as says that from about April, 1992 until about May, 1995, this Defendant held legal title of the Bainbridge Property, however, this Defendant would deny the remaining allegations contained in Paragraph 47 and would demand strict proof thereof.

12. Answering Paragraph 48 of the Petition, this Defendant would admit so much of the allegations contained therein as says that in or about May, 1995, this Defendant purchased a residence at 2 Nuffield Road, Charleston, South Carolina and granted the Judgment Debtor and his wife a life estate in such property, however, this Defendant would deny the remaining allegations contained in Paragraph 48 and would demand strict proof thereof.

13. Answering Paragraph 49 of the Petition, this Defendant would admit so much of the allegations contained therein as says that from about May, 1995 until the death of the Judgment Debtor on September 25, 2007, this Defendant held legal title to the Nuffield Property, however, this Defendant would deny the remaining allegations contained in Paragraph 49 and would demand strict proof thereof.

14. Answering Paragraph 53 of the Petition, this Defendant would admit so much of the allegations contained therein as says that this Defendant continues to retain the net sale proceeds of \$225,181.66 from the sale of the Nuffield Property, however, this Defendant would deny the remaining allegations contained in Paragraph 53 and would demand strict proof thereof.

15. Answering Paragraphs 54 and 57 of the Petition, this Defendant would repeat and reallege each and every allegation contained in Paragraph 1 through 14 above as though fully set forth verbatim.

16. Answering Paragraph 65 of the Petition, this Defendant is without sufficient information or belief as to whether Gordon currently holds the Judgment against the Judgment Debtor's estate and would therefore deny same and demand strict proof thereof. This Defendant would deny the

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[Signature]

remaining allegations contained in Paragraph 65 and would demand strict proof thereof.

17. Answering Paragraph 80 of the Petition, this Defendant would repeat and reallege each and every allegation contained in Paragraphs 1 through 16 above as though fully set forth verbatim.

**FURTHER ANSWERING THE Petition AND AS AN AFFIRMATIVE DEFENSE
THERE TO, THIS DEFENDANT WOULD ALLEGE AS FOLLOWS:**

(Failure to State Claim)

18. Each and every allegation contained in Paragraphs 1 through 17 above are incorporated herein by express reference as though fully set forth verbatim.

19. Plaintiff's claims as set forth in the Petition fail to state facts sufficient to constitute a cause of action against this Defendant pursuant to Rule 12(b)(6), SCRCF and, consequently, the Petition should be dismissed.

**FURTHER ANSWERING THE Petition AND AS AN AFFIRMATIVE DEFENSE
THERE TO, THIS DEFENDANT WOULD ALLEGE AS FOLLOWS:**

(Statute of Limitations)

20. Each and every allegation contained in Paragraphs 1 through 19 above are incorporated herein by express reference as though fully set forth verbatim.

21. Plaintiff's claims as set forth in the Petition are barred by the applicable statute of limitations and, consequently, the Petition should be dismissed.

**FURTHER ANSWERING THE Petition AND AS AN AFFIRMATIVE DEFENSE
THERE TO, THIS DEFENDANT WOULD ALLEGE AS FOLLOWS:**

(Adequate Consideration)

22. Each and every allegation contained in Paragraphs 1 through 21 above are incorporated herein by express reference as though fully set forth verbatim.

23. That all monies paid to this Defendant by the Judgment Debtor and/or the

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Judgment Debtor's wife were for adequate consideration, namely, in consideration of monies loaned to the Judgment Debtor and/or his wife or was in consideration of this Defendant granting the Judgment Debtor and his wife a life estate in certain real properties, together with improvements, owned by this Defendant and, consequently, the Petition should be dismissed.

**FURTHER ANSWERING THE Petition AND AS AN AFFIRMATIVE DEFENSE
THERE TO, THIS DEFENDANT WOULD ALLEGE AS FOLLOWS:**

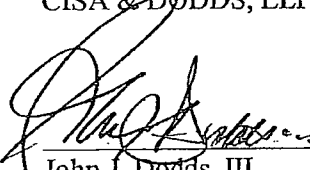
(Laches)

24. Each and every allegation contained in Paragraphs 1 through 23 above are incorporated herein by express reference as though fully set forth verbatim.

25. Plaintiff's claims as set forth in the Petition are barred by the equitable doctrine of laches and, consequently, the Petition should be dismissed.

WHEREFORE, having fully answered the Petition, the Defendant, Donald W. Lancaster, prays unto this honorable Court that the Petition be dismissed, that reasonable attorney fees and costs be assessed against Plaintiff, and for such other and further relief as to this Court is just and proper.

CISA & DODDS, LLP

BY: 

John J. Dodds, III
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, SC 29464
(843)881-6530
ATTORNEY FOR DEFENDANT
DONALD W. LANCASTER

December 20, 2010

Mt. Pleasant, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2010-CP-10- 9098

FRANK GORDON, JR. as Attorney-in-)
Fact for DOROTHY GORDON,)

Plaintiff,)

v.)

JESSIE B. ATKINSON, Individually, and)
As Personal Representative of the Estate of)
EFFIE D. DREWS; DONALD W.)
LANCASTER; and SHIRRESE)
BROCKINGTON as Special Administrator)
Of the Estate of RUDOLPH ROBERT)
DREWS,)

Defendant(s))

SUMMONS
(Judgment)

(Jury Trial Demanded)

BY

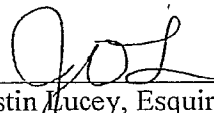
JULIE J. ARMSTRONG
CLERK OF COURT

2010 NOV -2 AM 10:18

FILED

10-1898C
YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office at 415 Mill Street, Post Office Box 806, Mount Pleasant, South Carolina within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Complaint plus interest and costs.

JUSTIN O'TOOLE LUCEY, P.A.


Justin Lucey, Esquire
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806

Charleston, South Carolina
November 1, 2010

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FRANK GORDON, JR. as
Attorney-in-Fact for DOROTHY
GORDON,

Plaintiff,

vs.

JESSIE B. ATKINSON, Individually, and
as Personal Representative of the Estate of
EFFIE D. DREWS; DONALD W.
LANCASTER; and SHIRRESE
BROCKINGTON as Special Administrator
Of the Estate of RUDOLPH ROBERT
DREWS,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-C7-16-9096

COMPLAINT

(Jury Trial Demanded)

2010 NOV -2 AM 10:18
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

COMES NOW, Plaintiff Frank Gordon, Jr. and complains of Defendants as follows:

PARTIES AND JURISDICTION

1. Plaintiff Frank Gordon, Jr. ("Gordon") is a citizen and resident of Charleston County, South Carolina and is the attorney-in-fact for Dorothy Gordon.
2. Defendant Jessie B. Atkinson ("Defendant Atkinson") is a citizen and resident of Charleston County, South Carolina and is the Personal Representative of the estate of Effie D. Drews, Case No. 2010-ES-10000494, which is currently pending before the Probate Court of Charleston County, South Carolina.
3. Defendant Donald W. Lancaster ("Defendant Lancaster") is a citizen and resident of Charleston County, South Carolina.
4. Shirrese Brockington is the Special Administrator of the estate of Rudolph Robert

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Drews, Case Number 2007-ES-100015182, which is currently pending before the Probate Court of Charleston County, South Carolina.

5. This civil action arises out of events relating to the recovery on a judgment obtained in Charleston County, South Carolina.

6. This Honorable Court has jurisdiction over all matters herein, and venue is proper.

FACTUAL ALLEGATIONS

7. Each and every allegation set forth above is fully incorporated herein.

Prior Proceedings

Circuit Court Action

8. In September 1996, a claim by Gordon against Rudolph Robert Drews (the "Judgment Debtor") accrued for the illegal sale of stock under S.C. Code § 35-1-1490.

9. In December 2001, Gordon recovered a judgment under this claim against the Judgment Debtor, a citizen and resident of Charleston County, South Carolina at that time, in an action entitled *Frank Gordon, Jr. as Attorney-in-Fact for Dorothy Gordon v. Rudolph Robert Drews and Raymond Beasley*, (the "Gordon Action") Case No. 1997-CP-10-1407, which judgment to date amounts to \$108,482.62, plus accrued interest (the "Judgment"), all of which remains unpaid.

10. To date, the Judgment remains unsatisfied.

Supplemental Proceedings

11. In August 2006, the Court entered an order for supplemental proceedings to be opened to aid Gordon in satisfaction of the Judgment.

12. In September 2006, a hearing in the supplemental proceedings was left open due to the Judgment Debtor's failure, in contravention of the order for supplemental proceedings, to

produce documents relating to assets held in his name that would be available for satisfaction of the Judgment.

Probate Actions

13. On September 25, 2007, the Judgment Debtor died; the Judgment Debtor's Estate was opened on or about October 26, 2007 under Case Number 2007-ES-100015182 (the "Judgment Debtor's Estate").

14. On February 8, 2010, an inventory and appraisal was filed in the Judgment Debtor's Estate, which indicated the estate had no assets.

15. On February 27, 2010, Effie D. Drews, wife of the Judgment Debtor (the "Wife"), died; the Wife's estate was opened on or about March 30, 2010 under Case No. 2010-ES-10000494 (the "Wife's Estate") with her sister, Defendant Atkinson, thereafter being named as Personal Representative.

16. On June 29, 2010, an inventory and appraisal was filed in the Wife's Estate, which indicated a net worth of \$55,460.84.

Fraudulent Transfers of the Meeting Street Property and Its Proceeds

*The Judgment Debtor's Fraudulent Transfer
of Meeting Street Property Proceeds to the Wife*

17. During threat of litigation in the *Gordon* Action and following entry of Judgment in late 2001, the Judgment Debtor caused the sale of real property held in his name.

18. In late 2001, Judgment Debtor sold property located at 1705 Meeting Street, Charleston County, South Carolina (the "Meeting Street Property") to a third party.

19. The Judgment Debtor had owned the Meeting Street Property in fee simple since approximately September 1996.

20. At or about the time of sale of the Meeting Street Property, the Judgment Debtor

received from the third party a \$190,000.00 note (the "Meeting Street Note") and mortgage (the "Meeting Street Mortgage").

21. Following receipt of the Meeting Street Note and Mortgage, the Judgment Debtor, executed assignments to the Wife of both the Meeting Street Note and the Meeting Street Mortgage (the "Assignments").

22. The Judgment Debtor made the Assignments to the Wife of the Meeting Street Note and Mortgage in anticipation of an adverse judgment.

23. The Judgment Debtor made the Assignments voluntarily to the Wife without receiving fair consideration.

24. From early 2002 until late 2005, the Wife received approximately \$109,045.08 on the Meeting Street Note and Mortgage.

25. The Wife deposited the \$109,045.08 in proceeds from the Meeting Street Note and Mortgage into a joint account held by the Judgment Debtor and the Wife with First Citizens Bank (the "First Citizens Account").

26. In late 2005, the Wife received \$130,293.37 as final payment for the sale of the Meeting Street Property.

27. In late 2005, the Wife deposited the final payment of \$130,293.37 into an account held solely in her name at First Federal Bank (the "First Federal Account").

28. In late 2005, the Wife then transferred \$130,000.00 from the First Federal Account into a brokerage account held solely in her name with First Southeast Investor Services, Inc. (the "First Southeast Account").

29. In 2006, the Wife transferred \$35,000.00 from the First Southeast Account to an account she held solely in her name with Wachovia Bank (the "Wachovia Account").

30. In 2006, the Wife transferred \$10,000.00 out of the Wachovia Account into a capital dividend account held solely in her name (the "Wachovia CDA").

31. The Wife received a total of approximately \$239,338.45 in payments under the Meeting Street Note and Mortgage (the "Meeting Street Property Proceeds").

*The Wife's Fraudulent Transfers of
Meeting Street Property Proceeds to Defendant Atkinson*

32. During her lifetime, the Wife transferred \$47,942.89 of the Meeting Street Property Proceeds to her sister, Defendant Atkinson.

33. Defendant Atkinson received the \$47,942.89 from the Wife voluntarily and for no consideration.

34. Following the Wife's Death, Defendant Atkinson received the \$55,460.84 net worth of the Wife's Estate.

35. Defendant Atkinson received the net worth of the Wife's estate voluntarily and for no consideration.

36. The net worth of the Wife's estate consisted of Meeting Street Property Proceeds.

*The Judgment Debtor's and the Wife's
Fraudulent Transfers to Defendant Lancaster*

37. In late 2001, after the Wife received the Assignments of the Meeting Street Note and Mortgage from the Judgment Debtor, the Judgment Debtor caused the Wife to execute an assignment of the Meeting Street Mortgage to Defendant Lancaster (the "Lancaster Assignment").

38. At or about the same time as execution of the Lancaster Assignment, Defendant Lancaster took a \$50,912.00 note from the Wife on the Meeting Street Property (the "Lancaster Note").

39. From 2001 to 2005, Defendant Lancaster received approximately \$51,896.12

from the Judgment Debtor and/or the Wife allegedly in full satisfaction of the Lancaster Note.

40. In late 2001, the Judgment Debtor transferred approximately \$11,089.63 to Defendant Lancaster in satisfaction of fraudulent mortgages previously executed on the Meeting Street Property.

Incomplete Gift for Fraudulent Purchase and Sale of the Nuffield Property

The Judgment Debtor's \$100,000 Gift to Defendant Lancaster

41. In early 1992, the Judgment Debtor voluntarily gifted \$100,000 to Defendant Lancaster, for which Defendant Lancaster gave no fair consideration.

42. From 1992 until his death in September 2007, the Judgment Debtor did not relinquish power of control over the \$100,000 gift.

43. The Judgment Debtor's \$100,000 gift to Defendant Lancaster was conditioned upon Defendant Lancaster's purchase of real property at which the Judgment Debtor and the Wife would reside.

44. In or about April 1992, Defendant Lancaster used the \$100,000 gift to purchase real property located at 17 Bainbridge, Charleston County, South Carolina (the "Bainbridge Property").

45. From about April 1992 until about May 1995, Defendant Lancaster held legal title of the Bainbridge Property in his name for the use, benefit and enjoyment of the Judgment Debtor and the Wife.

The Life Estates Held by the Judgment Debtor and the Wife

46. From about April 1992 until about May 1995, the Judgment Debtor and the Wife held life estates in the Bainbridge Property that were given to them by Defendant Lancaster.

47. In or about May 1995, Defendant Lancaster transferred the life estates held by the

Judgment Debtor and the Wife from the Bainbridge Property to a property located at 2 Nuffield Road, Charleston County, South Carolina (the "Nuffield Property").

48. From about May 1995 until the death of the Judgment Debtor on September 25, 2007, Defendant Lancaster held legal title to the Nuffield Property in his name while the Judgment Debtor retained beneficial title to the Nuffield Property for his use, benefit and enjoyment.

49. From about May 1995 until the death of the Wife on February 27, 2010, Defendant Lancaster held legal title to the Nuffield Property in his name while the Wife retained the Judgment Debtor's beneficial title to the Nuffield Property for her use, benefit and enjoyment.

50. The Judgment Debtor's Estate has failed to name the Judgment Debtor's beneficial ownership of the Nuffield Property and/or the Judgment Debtor's life estate in the Nuffield Property as an asset of the estate.

51. The Wife's Estate has failed to name the Wife's beneficial ownership of the Nuffield Property and/or the Wife's life estate in the Nuffield Property as an asset of the estate.

The Nuffield Property Proceeds

52. On April 29, 2010, two months following the Wife's death, Defendant Lancaster sold the Nuffield Property to a third party for \$246,000.00.

53. Defendant Lancaster continues to retain the \$246,000.00 from the sale of the Nuffield Property, all of which should have been inured to the benefit of the Judgment Debtor and the Judgment Debtor's Estate and should have been used to pay the Judgment in full.

**FOR A FIRST CAUSE OF ACTION
FRAUDULENT CONVEYANCE
(Against All Defendants)**

54. The preceding paragraphs are hereby incorporated by reference.

55. The Judgment Debtor failed to pay to Gordon the sum due under the Judgment when it became payable and due at the time the Judgment was issued.

56. The Judgment Debtor's Estate is not able to pay its creditors, including Gordon, and has failed to pay the Judgment since the estate was opened.

57. The Wife's Estate is not able to pay its creditors, including Gordon, and has failed to pay the Judgment since the estate was opened.

Fraudulent Conveyances Involving the Wife

58. Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor assigned the Meeting Street Note and Mortgage to the Wife.

59. The Judgment Debtor's assignments to the Wife of the Meeting Street Note and Mortgage are void because they were made voluntarily and without fair consideration.

60. The Wife's receipt of the Meeting Street Property Proceeds, which total \$239,338.45, is void in that she received those monies voluntarily and without fair consideration.

61. The Wife retained the Meeting Street Property Proceeds at the time of her death.

62. Gordon currently holds the Judgment against the Judgment Debtor's estate and, by virtue of the Judgment Debtor's fraudulent assignments of the Meeting Street Note and Mortgage to the Wife voluntarily and without fair consideration, Gordon should be allowed to execute on the Wife's estate for satisfaction of the Judgment.

Fraudulent Conveyances Involving Defendant Atkinson

63. Gordon had a claim against the Judgment Debtor at the time the Wife transferred

to Defendant Atkinson voluntarily, and for no consideration, \$47,942.89 of Meeting Street Property Proceeds fraudulently held by the Wife in her First Southeast Account.

64. The Wife's transfer to Defendant Atkinson of \$47,942.89 out of the First Southeast Account is void in that it was made voluntarily and without fair consideration.

65. Gordon had a claim against the Judgment Debtor at the time Defendant Atkinson voluntarily, and for no consideration, received \$55,460.84 from the net worth of the Wife's Estate, which is comprised of the Meeting Street Property Proceeds.

66. Defendant Atkinson's receipt of the net worth of the Wife's Estate, is void in that it was received voluntarily and without fair consideration.

Fraudulent Conveyances Involving Defendant Lancaster

67. Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor retained beneficial title to the Nuffield Property.

68. Gordon had a claim against the Judgment Debtor at the time the Wife retained the Judgment Debtor's beneficial title in the Nuffield Property following the Judgment Debtor's death.

69. By retaining beneficial title in the Nuffield Property, the Judgment Debtor's \$100,000 gift to Defendant Lancaster was never completed.

70. The Judgment Debtor's \$100,000 gift is void as a fraudulent transfer in that the gift was never completed, was made voluntarily and was given for no fair consideration.

71. Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor caused the Wife to execute the Lancaster Assignment and Lancaster Note on the Meeting Street Property.

72. The Lancaster Assignment and Lancaster Note are void in that the Judgment

Debtor caused the Wife to execute these transactions in an effort to delay, hinder and/or defraud the Judgment Debtor's creditors, including Gordon.

73. The Judgment Debtor's intent to delay, hinder and/or defraud his creditors in the Lancaster Assignment and Lancaster Note was aided and abetted by Defendant Lancaster.

74. Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor transferred monies and/or caused the Wife to transfer monies to Defendant Lancaster from 2001 to 2005.

75. All monies transferred by the Judgment Debtor and/or that the Judgment Debtor caused the Wife to transfer to Defendant Lancaster from 2001 to 2005 are void in that they were made in an effort to delay, hinder and/or defraud the Judgment Debtor's creditors, including Gordon.

76. The Judgment Debtor's intent to delay, hinder and/or defraud his creditors, including Gordon, by these transfers is imputable to Defendant Lancaster.

**FOR A SECOND CAUSE OF ACTION
CONSTRUCTIVE TRUST
(Against All Defendants)**

77. The preceding paragraphs are hereby incorporated by reference.

78. The matters described herein entitle Plaintiff to an order imposing a constructive trust on all Defendants, the property at issue and the proceeds thereof, together with an award of consequential damages.

WHEREFORE, the Plaintiff, having alleged a complaint against the Defendants, would request from this Court an Order as follows:

(a) that the Meeting Street Property assignments from the Judgment Debtor to the Wife be set aside and annulled, that a constructive trust be imposed on the Meeting Street



Property Proceeds received by the Wife, which were subsequently transferred to Defendant Atkinson, and that those proceeds be utilized to satisfy the Judgment;

(b) that the Lancaster Note and Assignment obtained by Defendant Lancaster on the Meeting Street Property be set aside, that a constructive trust be imposed on the monies received on the Lancaster Note and Assignment and those monies be utilized to satisfy the Judgment;

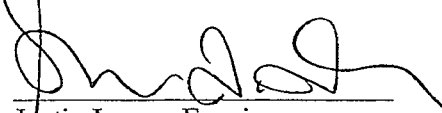
(c) that a constructive trust be imposed on the monies received by Defendant Lancaster in satisfaction of the fraudulent mortgages held on the Meeting Street Property and those monies be utilized to satisfy the Judgment;

(d) that a constructive trust be imposed on the monies received by Defendant Lancaster in the sale of the Nuffield Property and those monies be utilized to satisfy the Judgment;

(e) that the costs and disbursements of this action and reasonable attorney's fees be granted to Plaintiff; and

(f) for such other and further relief as the Court deems just and proper.

Respectfully submitted,



Justin Lucey, Esquire

Stephanie D. Drawdy, Esquire

Justin O'Toole Lucey, P.A.

415 Mill Street

Post Office Box 806

Mount Pleasant, South Carolina 29465-0806

Phone: (843) 849-8400

Attorneys for Plaintiff

Charleston, South Carolina
November 1, 2010

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2010-CP-10-9096

FRANK GORDON, JR. as Attorney-in-)
Fact for DOROTHY GORDON,)

Plaintiff,)
v.)

JESSIE B. ATKINSON, Individually, and)
As Personal Representative of the Estate of)
EFFIE D. DREWS; DONALD W.)
LANCASTER; and SHIRRESE)
BROCKINGTON as Special Administrator)
Of the Estate of RUDOLPH ROBERT)
DREWS,)

Defendant(s))

AMENDED SUMMONS
(Judgment)

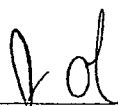
(Jury Trial Demanded)

2010 NOV 30 AM 9:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office at 415 Mill Street, Post Office Box 806, Mount Pleasant, South Carolina within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Amended Complaint plus interest and costs.

JUSTIN O'TOOLE LUCEY, P.A.


Justin Lucey, Esquire
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806

Charleston, South Carolina
November 30, 2010

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IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-10-9096

Plaintiff,

vs.

AMENDED COMPLAINT

(Jury Trial Demanded)

JESSIE B. ATKINSON, Individually, and
as Personal Representative of the Estate of
EFFIE D. DREWS; DONALD W.
LANCASTER; and SHIRRESE
BROCKINGTON as Special Administrator
Of the Estate of RUDOLPH ROBERT
DREWS,

Defendants.

2010 NOV 30 AM 9: 53
JULIE J. ARMSTRONG
CLERK OF COURT
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FILE

COMES NOW, Plaintiff Frank Gordon, Jr. and complains of Defendants as follows:

PARTIES AND JURISDICTION

1. Plaintiff Frank Gordon, Jr. ("Gordon") is a citizen and resident of Charleston County, South Carolina and is the attorney-in-fact for Dorothy Gordon.
2. Defendant Jessie B. Atkinson ("Defendant Atkinson") is a citizen and resident of Charleston County, South Carolina and is the Personal Representative of the estate of Effie D. Drews, Case No. 2010-ES-10000494, which is currently pending before the Probate Court of Charleston County, South Carolina.
3. Defendant Donald W. Lancaster ("Defendant Lancaster") is a citizen and resident of Charleston County, South Carolina.
4. Shirrese Brockington is the Special Administrator of the estate of Rudolph Robert

Drews, Case Number 2007-ES-100015182, which is currently pending before the Probate Court of Charleston County, South Carolina.

5. This civil action arises out of events relating to the recovery on a judgment obtained in Charleston County, South Carolina.

6. This Honorable Court has jurisdiction over all matters herein, and venue is proper.

FACTUAL ALLEGATIONS

7. Each and every allegation set forth above is fully incorporated herein.

Prior Circuit Court Action

8. In September 1996, a claim by Gordon against Rudolph Robert Drews (the "Judgment Debtor") accrued for the illegal sale of stock under S.C. Code § 35-1-1490.

9. In December 2001, Gordon recovered a judgment under this claim against the Judgment Debtor, a citizen and resident of Charleston County, South Carolina at that time, in an action entitled *Frank Gordon, Jr. as Attorney-in-Fact for Dorothy Gordon v. Rudolph Robert Drews and Raymond Beasley*, (the "Gordon Action") Case No. 1997-CP-10-1407, which judgment to date amounts to \$108,482.62, plus accrued interest (the "Judgment"), all of which remains unpaid.

10. To date, the Judgment remains unsatisfied.

Prior Supplemental Proceedings

11. In August 2006, the Court entered an order for supplemental proceedings to be opened to aid Gordon in satisfaction of the Judgment.

12. In September 2006, a hearing in the supplemental proceedings was left open due to the Judgment Debtor's failure, in contravention of the order for supplemental proceedings, to produce documents relating to assets held in his name that would be available for satisfaction of

the Judgment.

Probate Actions

13. On September 25, 2007, the Judgment Debtor died; the Judgment Debtor's Estate was opened on or about October 26, 2007 under Case Number 2007-ES-100015182 (the "Judgment Debtor's Estate").

14. On February 8, 2010, an inventory and appraisal was filed in the Judgment Debtor's Estate, which indicated the estate had no assets.

15. On February 27, 2010, Effie D. Drews, wife of the Judgment Debtor (the "Wife"), died; the Wife's estate was opened on or about March 30, 2010 under Case No. 2010-ES-10000494 (the "Wife's Estate") with her sister, Defendant Atkinson, thereafter being named as Personal Representative.

16. On June 29, 2010, an inventory and appraisal was filed in the Wife's Estate, which indicated a net worth of \$55,460.84.

*The Judgment Debtor's Fraudulent Transfer
of Meeting Street Property Proceeds to the Wife*

17. During threat of litigation in the *Gordon* Action and in anticipation of entry of Judgment in late 2001, the Judgment Debtor caused the sale of real property held in his name.

18. In late 2001, Judgment Debtor owned property located at 1705 Meeting Street, Charleston County, South Carolina (the "Meeting Street Property").

19. In late 2001, Judgment Debtor sold the Meeting Street Property.

20. As partial payment for the Meeting Street Property, the Judgment Debtor received a \$190,000.00 note (the "Meeting Street Note") and mortgage (the "Meeting Street Mortgage") from the purchaser.

21. Following receipt of the Meeting Street Note and Mortgage, the Judgment Debtor,

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executed assignments to the Wife of both the Meeting Street Note and the Meeting Street Mortgage (the "Assignments").

22. The Judgment Debtor made the Assignments to the Wife of the Meeting Street Note and Mortgage in anticipation of an adverse judgment.

23. The Judgment Debtor made the Assignments to the Wife without receiving fair consideration.

24. From early 2002 until late 2005, the Wife received approximately \$109,045.08 on the Meeting Street Note and Mortgage.

25. The Wife deposited the \$109,045.08 in proceeds from the Meeting Street Note and Mortgage into a joint account held by the Judgment Debtor and the Wife with First Citizens Bank (the "First Citizens Account").

26. In late 2005, the Wife received \$130,293.37 as final payment for the sale of the Meeting Street Property.

27. In late 2005, the Wife deposited the final payment of \$130,293.37 into an account held solely in her name at First Federal Bank (the "First Federal Account").

28. In late 2005, the Wife then transferred \$130,000.00 from the First Federal Account into a brokerage account held solely in her name with First Southeast Investor Services, Inc. (the "First Southeast Account").

29. In 2006, the Wife transferred \$35,000.00 from the First Southeast Account to an account she held solely in her name with Wachovia Bank (the "Wachovia Account").

30. In 2006, the Wife transferred \$10,000.00 out of the Wachovia Account into a capital dividend account held solely in her name (the "Wachovia CDA").

31. The Wife received a total of approximately \$239,338.45 in payments under the

Meeting Street Note and Mortgage (the "Meeting Street Property Proceeds").

*The Wife's Fraudulent Transfers of
Meeting Street Property Proceeds to Defendant Atkinson*

32. During her lifetime, the Wife transferred \$47,942.89 of the Meeting Street Property Proceeds to her sister, Defendant Atkinson.

33. Defendant Atkinson received the \$47,942.89 from the Wife for no consideration.

34. Upon the Wife's death, the net worth of the Wife's Estate consisted of Meeting Street Property Proceeds.

35. Following the Wife's Death, Defendant Atkinson received the \$55,460.84 net worth of the Wife's Estate.

36. Defendant Atkinson received the net worth of the Wife's Estate for no consideration.

*The Judgment Debtor's and the Wife's Fraudulent Transfers of
Meeting Street Property Proceeds and Monies to Defendant Lancaster*

37. In late 2001, after receiving the Assignments of the Meeting Street Note and Mortgage from the Judgment Debtor, the Wife executed an assignment of the Meeting Street Mortgage to Defendant Lancaster (the "Lancaster Assignment").

38. At or about the same time as execution of the Lancaster Assignment, Defendant Lancaster took a \$50,912.00 note from the Wife on the Meeting Street Property (the "Lancaster Note").

39. The Lancaster Assignment and Note were given for no or inadequate consideration.

40. From 2001 to 2005, Defendant Lancaster received approximately \$51,896.12 from the Judgment Debtor and/or the Wife allegedly in full satisfaction of the Lancaster Note.

41. In late 2001, the Judgment Debtor transferred approximately \$11,089.63 to

Defendant Lancaster.

42. Defendant Lancaster received the \$11,089.63 for no consideration.

The Judgment Debtor's \$100,000 Transfer to Defendant Lancaster

43. In early 1992, the Judgment Debtor transferred \$100,000 to Defendant Lancaster.

44. In early 1992, Defendant Lancaster received \$100,000 from the Judgment Debtor.

45. The Judgment Debtor's \$100,000 transfer to Defendant Lancaster was conditioned upon Defendant Lancaster's purchase of real property for the Judgment Debtor and the Wife.

46. In or about April 1992, Defendant Lancaster used the \$100,000 received from the Judgment Debtor to purchase real property located at 17 Bainbridge, Charleston County, South Carolina (the "Bainbridge Property").

47. From about April 1992 until about May 1995, Defendant Lancaster held legal title of the Bainbridge Property in name only while the Judgment Debtor retained the true and beneficial ownership of the Bainbridge Property and resided thereon.

48. In or about May 1995, Defendant Lancaster and the Judgment Debtor substituted a property located at 2 Nuffield Road, Charleston County, South Carolina (the "Nuffield Property") for the Bainbridge Property.

49. From about May 1995 until the death of the Judgment Debtor on September 25, 2007, Defendant Lancaster held legal title to the Nuffield Property in name only while the Judgment Debtor retained true and beneficial ownership of the Nuffield Property and resided thereon.

50. The Judgment Debtor's Estate has failed to name the Judgment Debtor's ownership of and legal interest in the Nuffield Property as an asset of the estate.

51. The Wife's Estate has failed to name the Wife's successor ownership of and interest in the Nuffield Property as an asset of the estate.

The Nuffield Property Proceeds

52. On April 29, 2010, two months following the Wife's death, Defendant Lancaster sold the Nuffield Property to a third party for \$246,000.00.

53. Defendant Lancaster continues to retain the \$246,000.00 from the sale of the Nuffield Property, all of which should have been inured to the benefit of the Judgment Debtor and the Judgment Debtor's Estate, and should have been used to pay the Judgment in full.

**FOR A FIRST CAUSE OF ACTION
FRAUDULENT CONVEYANCE
(Against All Defendants)**

54. The preceding paragraphs are hereby incorporated by reference.

55. The Judgment Debtor failed to pay to Gordon the sum due under the Judgment when it became payable and due at the time the Judgment was issued.

56. The Judgment Debtor's Estate is not able to pay its creditors, including Gordon, and has failed to pay the Judgment since the estate was opened.

57. The Wife's Estate is not able to pay its creditors, including Gordon, and has failed to pay the Judgment since the estate was opened.

Fraudulent Conveyances Involving the Wife

58. Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor assigned the Meeting Street Note and Mortgage to the Wife.

59. The Judgment Debtor's assignments to the Wife of the Meeting Street Note and Mortgage are void because they were made without fair consideration.

60. The Wife's receipt of the Meeting Street Property Proceeds, which total

\$239,338.45, is void in that she received those monies without paying fair consideration.

61. The Wife retained the Meeting Street Property Proceeds at the time of her death.

62. Gordon currently holds the Judgment against the Judgment Debtor's Estate and, by virtue of the Judgment Debtor's fraudulent assignments of the Meeting Street Note and Mortgage to the Wife without fair consideration, Gordon should be allowed to execute on the Wife's Estate for satisfaction of the Judgment.

Fraudulent Conveyances Involving Defendant Atkinson

63. Gordon had a claim against the Judgment Debtor at the time the Wife transferred to Defendant Atkinson without receiving fair consideration \$47,942.89 of Meeting Street Property Proceeds fraudulently held by the Wife in her First Southeast Account.

64. The Wife's transfer to Defendant Atkinson of \$47,942.89 out of the First Southeast Account is void in that it was made without fair consideration.

65. Gordon had a claim against the Judgment Debtor at the time Defendant Atkinson without fair consideration received \$55,460.84 from the net worth of the Wife's Estate, which is comprised of the Meeting Street Property Proceeds.

66. Defendant Atkinson's receipt of the net worth of the Wife's Estate is void in that it was received without fair consideration.

Fraudulent Conveyances Involving Defendant Lancaster

67. Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor retained the true and beneficial ownership of the Nuffield Property.

68. Gordon had a claim against the Judgment Debtor at the time the Wife obtained and retained successor ownership of and interest in the Nuffield Property following the Judgment Debtor's death.

69. By retaining the true and beneficial ownership of the Nuffield Property, the Judgment Debtor's \$100,000 transfer to Defendant Lancaster was never completed.

70. The Judgment Debtor's \$100,000 transfer to Defendant Lancaster is fraudulent and should be declared void.

71. Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor transferred Meeting Street Property Proceeds and Monies to Defendant Lancaster without fair consideration.

72. The Judgment Debtor's transfer of Meeting Street Property Proceeds and Monies to Defendant Lancaster should be declared void.

73. Gordon had a claim against the Judgment Debtor at the time the Wife executed the Lancaster Assignment and Note on the Meeting Street Property to Defendant Lancaster without fair consideration.

74. The Wife's execution of the Lancaster Assignment and Note should be declared void.

75. Gordon had a claim against the Judgment Debtor at the time the Wife transferred Meeting Street Property Proceeds to Defendant Lancaster without fair consideration.

76. The Wife's transfer of Meeting Street Property Proceeds to Defendant Lancaster should be declared void.

**FOR A SECOND CAUSE OF ACTION
CONSTRUCTIVE TRUST
(Against All Defendants)**

77. The preceding paragraphs are hereby incorporated by reference.

78. The matters described herein entitle Plaintiff to an order imposing a constructive trust on the property at issue and the proceeds thereof, together with an award of consequential

damages against all Defendants.

**FOR A THIRD CAUSE OF ACTION
CIVIL CONSPIRACY
(Against All Defendants)**

79. The preceding paragraphs are hereby incorporated by reference.

80. Defendants Lancaster and Atkinson conspired among themselves and with the Judgment Debtor and the Wife to enable the Judgment Debtor to have the appearance of being judgment proof to better themselves and to injure creditors, including the Plaintiff, by the Defendants' above described actions.

81. The concerted action and activities by Defendants have proximately injured the Plaintiff as above described and have caused special damages.

82. As a result of Defendants' reckless and intentional acts committed in conscious disregard of the Plaintiff's rights, Plaintiff is entitled to an award of punitive damages in an amount to be determined by the trier-of-fact.

**FOR A FOURTH CAUSE OF ACTION
NEGLIGENCE/AIDING AND ABETTING
(Against All Defendants)**

83. The preceding paragraphs are hereby incorporated by reference.

84. Defendants knew or should have known that the Judgment Debtor was transferring and/or hiding property to hinder and defraud creditors.

85. Defendants negligently, recklessly, knowingly, and/or intentionally, aided and abetted the Judgment Debtor in his above described wrongful activities.

86. As a direct and proximate result of the Defendants' conduct, Plaintiff suffered actual, consequential and incidental damages.

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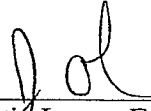
87. As a result of Defendants' reckless and intentional acts committed in conscious disregard of the Plaintiff's rights, Plaintiff is entitled to an award of punitive damages in an amount to be determined by the trier-of-fact.

WHEREFORE, the Plaintiff, having alleged a complaint against the Defendants, would request from this Court an Order as follows:

- (a) That all transfers described herein, together with any others determined during discovery and proved at trial, be set aside and declared null and void; that the subject property, and proceeds thereof, be made subject to a constructive trust and made available to satisfy plaintiff's judgment, and that the plaintiff be granted judgment against each and every defendant for their active and passive participation in the subterfuges described herein, together with an award of consequential and punitive damages and prejudgment interest;
- (b) that the costs and disbursements of this action and reasonable attorney's fees be granted to Plaintiff; and
- (c) for such other and further relief as the Court deems just and proper.

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Respectfully submitted,



Justin Lucey, Esquire
Stephanie D. Drawdy, Esquire
Justin O'Toole Lucey, P.A.
415 Mill Street
Post Office Box 806
Mount Pleasant, South Carolina 29465-0806
Phone: (843) 849-8400

Attorneys for Plaintiff

Charleston, South Carolina
November 30, 2010

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-10-9096

FRANK GORDON, JR. as)
Attorney-in-Fact for DOROTHY)
GORDON,)

Plaintiffs,)

v.)

JESSIE B. ATKINSON, Individually,)
and as Personal Representative of the)
Estate of EFFIE D. DREWS;)
DONALD W. LANCASTER; and)
SHIRRESE BROCKINGTON as)
Special Administrator of the Estate)
of RUDOLPH ROBERT DREWS,)

Defendants.)

ANSWER OF
DONALD W. LANCASTER
(to Amended Complaint)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2010 DEC 22 PM 2:32

FILED

The Defendant, Donald W. Lancaster, hereinafter "this Defendant", answering the Amended Complaint, would allege unto this honorable Court as follows:

1. Each and every allegation of the Amended Complaint which is not hereinafter specifically admitted or explained is denied and strict proof demanded thereof.

2. Answering Paragraph 1 of the Amended Complaint, this Defendant would admit so much of the allegations contained therein as says that Plaintiff Frank Gordon, Jr. is a citizen and resident of Charleston County, South Carolina, however, this Defendant is without sufficient information or belief so as to form an opinion as to the remaining allegations contained in Paragraph 1 and would deny same and demand strict proof thereof.

3. This Defendant would admit the allegations contained in Paragraphs 2, 3, 4, 13, 15, 18, 19, 20, 21, 37, 38, 40, 44, 46 and 52 of the Amended Complaint.

4. This Defendant is without sufficient information or belief so as to form an

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opinion as to the allegations contained in Paragraphs 5, 8, 9, 10, 11, 12, 14, 16, 17, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 50, 51, 55, 56, 57, 58, 61, 63 and 65 of the Amended Complaint and would deny same and demand strict proof thereof.

5. That the allegations contained in Paragraph 6 of the Amend Complaint constitute conclusions of law to which no response is required from this Defendant.

6. Answering Paragraph 7 of the Amended Complaint, this Defendant repeats and realleges each and every allegation set forth in Paragraphs 1 through 5 above as though fully set forth verbatim.

7. This Defendant would deny the allegations contained in Paragraphs 39, 42, 59, 60, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 80, 81, 82, 84, 85, 86 and 87 of the Amended Complaint and would demand strict proof thereof.

8. Answering Paragraph 41 of the Amended Complaint, this Defendant would admit so much of the allegations contained therein as says that in late 2001 the Judgment Debtor paid this Defendant approximately \$11,089.63, which said sum represented repayment to this Defendant for a loan made to the Judgment Debtor and his wife, however, this Defendant would deny the remaining allegations contained in Paragraph 41 and would demand strict proof thereof.

9. Answering Paragraph 43 of the Amended Complaint, this Defendant would admit so much of the allegations contained therein as says that in early 1992, the Judgment Debtor paid this Defendant the sum of \$100,000.00 in consideration of this Defendant purchasing a residence and allowing the Judgment Debtor and his wife a life estate in such residence, however, this Defendant would deny the remaining allegations contained in Paragraph 43 and would demand strict proof thereof.

10. Answering Paragraph 45 of the Amended Complaint, this Defendant would admit so much of the allegations contained therein as says that the payment of \$100,000.00 from the Judgment

Debtor to this Defendant was conditioned upon this Defendant granting the Judgment Debtor and his wife a life estate in the real property to be purchased by this Defendant, however, this Defendant would deny the remaining allegations contained in Paragraph 45 and would demand strict proof thereof.

11. Answering Paragraph 47 of the Amended Complaint, this Defendant would admit so much of the allegations contained therein as says that from about April, 1992 until about May, 1995, this Defendant held legal title of the Bainbridge Property, however, this Defendant would deny the remaining allegations contained in Paragraph 47 and would demand strict proof thereof.

12. Answering Paragraph 48 of the Amended Complaint, this Defendant would admit so much of the allegations contained therein as says that in or about May, 1995, this Defendant purchased a residence at 2 Nuffield Road, Charleston, South Carolina and granted the Judgment Debtor and his wife a life estate in such property, however, this Defendant would deny the remaining allegations contained in Paragraph 48 and would demand strict proof thereof.

13. Answering Paragraph 49 of the Amended Complaint, this Defendant would admit so much of the allegations contained therein as says that from about May, 1995 until the death of the Judgment Debtor on September 25, 2007, this Defendant held legal title to the Nuffield Property, however, this Defendant would deny the remaining allegations contained in Paragraph 49 and would demand strict proof thereof.

14. Answering Paragraph 53 of the Amended Complaint, this Defendant would admit so much of the allegations contained therein as says that this Defendant continues to retain the net sale proceeds of \$225,181.66 from the sale of the Nuffield Property, however, this Defendant would deny the remaining allegations contained in Paragraph 53 and would demand strict proof thereof.

15. Answering Paragraph 54 of the Amended Complaint, this Defendant would repeat and reallege each and every allegation contained in Paragraph 1 through 14 above as though fully

set forth verbatim.

16. Answering Paragraph 62 of the Amended Complaint, this Defendant is without sufficient information or belief as to whether Gordon currently holds the Judgment against the Judgment Debtor's estate and would therefore deny same and demand strict proof thereof. This Defendant would deny the remaining allegations contained in Paragraph 62 and would demand strict proof thereof.

17. This Defendant is without sufficient information or belief so as to form an opinion as to the allegations contained in Paragraphs 64 and 66 of the Amended Complaint and would deny same and demand strict proof thereof.

18. Answering Paragraphs 77, 79 and 83 of the Amended Complaint, this Defendant would repeat and reallege each and every allegation contained in Paragraphs 1 through 17 above as though fully set forth verbatim.

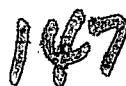
FURTHER ANSWERING THE AMENDED COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO, THIS DEFENDANT WOULD ALLEGE AS FOLLOWS:

(Failure to State Claim)

19. Each and every allegation contained in Paragraphs 1 through 18 above are incorporated herein by express reference as though fully set forth verbatim.

20. Plaintiff's claims as set forth in the Amended Complaint fail to state facts sufficient to constitute a cause of action against this Defendant pursuant to Rule 12(b)(6), SCRCP and, consequently, the Amended Complaint should be dismissed.

FURTHER ANSWERING THE AMENDED COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO, THIS DEFENDANT WOULD ALLEGE AS FOLLOWS:

A handwritten signature in black ink, appearing to be "Hobb" or similar, with a stylized flourish.A handwritten number "147" in black ink, with a stylized, slightly irregular appearance.

(Statute of Limitations)

21. Each and every allegation contained in Paragraphs 1 through 20 above are incorporated herein by express reference as though fully set forth verbatim.

22. Plaintiff's claims as set forth in the Amended Complaint are barred by the applicable statute of limitations and, consequently, the Amended Complaint should be dismissed.

FURTHER ANSWERING THE AMENDED COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO, THIS DEFENDANT WOULD ALLEGE AS FOLLOWS:

(Adequate Consideration)

23. Each and every allegation contained in Paragraphs 1 through 22 above are incorporated herein by express reference as though fully set forth verbatim.

24. That all monies paid to this Defendant by the Judgment Debtor and/or the Judgment Debtor's wife were for adequate consideration, namely, in consideration of monies loaned to the Judgment Debtor and/or his wife or in consideration of this Defendant granting the Judgment Debtor and his wife a life estate in certain real properties, together with improvements, owned by this Defendant and, consequently, the Amended Complaint should be dismissed.

FURTHER ANSWERING THE AMENDED COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO, THIS DEFENDANT WOULD ALLEGE AS FOLLOWS:

(Laches)

25. Each and every allegation contained in Paragraphs 1 through 24 above are incorporated herein by express reference as though fully set forth verbatim.

26. Plaintiff's claims as set forth in the Amended Complaint are barred by the

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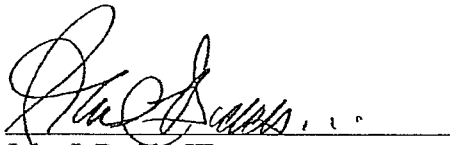
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equitable doctrine of laches and, consequently, the Amended Complaint should be dismissed.

WHEREFORE, having fully answered the Amended Complaint, the Defendant, Donald W. Lancaster, prays unto this honorable Court that the Amended Complaint be dismissed, that this Defendant be awarded reasonable attorney fees and costs of and from Plaintiff, and for such other and further relief as to this Court is just and proper.

CISA & DODDS, LLP

BY:



John J. Dodds, III
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, SC 29464
(843)881-6530
ATTORNEY FOR DEFENDANT
DONALD W. LANCASTER

December 20, 2010

Mt. Pleasant, SC



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2010-CP-10-9096
Frank Gordon, Jr., Individually and as	)	
Trustee of the Dorothy S. Gordon	)	
(Deceased) Trust,	)	
	)	<u>SECOND AMENDED COMPLAINT</u>
Plaintiff,	)	
	)	
vs.	)	
	)	
Donald W. Lancaster,	)	
	)	
Defendant.	)	
	)	

COMES NOW, Plaintiff Frank Gordon, Jr., Individually and as Trustee of the Dorothy S. Gordon (Deceased) Trust and complains of Defendant as follows:

PARTIES AND JURISDICTION

1. Plaintiff Frank Gordon, Jr. ("Gordon") is a citizen and resident of Charleston County, South Carolina and is the attorney-in-fact for Dorothy Gordon.

2. Defendant Donald W. Lancaster ("Defendant Lancaster") is a citizen and resident of Charleston County, South Carolina.

3. This civil action arises out of events relating to the recovery on a judgment obtained in Charleston County, South Carolina, in Plaintiff's favor. Additionally, Plaintiff is the assignee of the Estate of Rudolph Robert Drews, Case No. 2007-ES-00-1518 ("Drews Estate") and the Estate of Effie D. Drews, Case No. 2010-ES-00-0494 ("Mrs. Drews Estate") by way of the *Confession of Judgment, Assignment and Settlement Agreement with the Estate of Rudolph Robert Drews* (attached hereto as "Exhibit A") and *Assignment and Settlement Agreement with Jessie Atkinson, Individually and as Personal Representative of the Estate of*

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Effie Drews (attached hereto as "Exhibit B") respectively. Plaintiff is therefore entitled to have any monies owed to Drews' Estate or Mrs. Drews' Estate collected to satisfy Plaintiff's judgment. (By these assignments, Plaintiff does not seek to enlarge or change the judgment upon which he is suing; Plaintiff is still collecting on the 2001-2002 Trial Judgments, and will grant a credit or offset for the Amount paid by Jessie Atkinson, Individually and as Personal Representative of the Estate of Effie Drews.)

Prior Circuit Court Action

4. In September 1996, a claim by Gordon against Rudolph Robert Drews (the "Judgment Debtor") accrued for the illegal sale of stock under S.C. Code § 35-1-1490.

5. In December 2001, Gordon recovered a judgment under this claim against the Judgment Debtor, a citizen and resident of Charleston County, South Carolina at that time, in an action entitled *Frank Gordon, Jr. as Attorney-in-Fact for Dorothy Gordon v. Rudolph Robert Drews and Raymond Beasley*, (the "Gordon Action") Case No. 1999-CP-10-1407, which judgment to date amounts to \$108,482.62, plus accrued interest (the "Judgment"), which remains unsatisfied.

Prior Supplemental and Probate Proceedings

6. In August 2006, the Court entered an order for supplemental proceedings to be opened to aid Gordon in satisfaction of the Judgment.

7. In September 2006, a hearing in the supplemental proceedings was left open due to the Judgment Debtor's failure, in contravention of the order for supplemental proceedings, to produce documents relating to assets held in his name that would be available for satisfaction of the Judgment.

8. On September 25, 2007, the Judgment Debtor died; the Judgment Debtor's Estate

was opened on or about October 26, 2007 under Case Number 2007-ES-10-1518 (the "Judgment Debtor's Estate"). Shirrese Brockington was named the Special Administrator of the estate of Rudolph Robert Drews, Case Number 2007-ES-00-1518.

9. On February 8, 2010, an inventory and appraisal was filed in the Judgment Debtor's Estate, which indicated the estate had no assets.

10. On February 27, 2010, Effie D. Drews, wife of the Judgment Debtor (the "Wife"), died; the Wife's estate was opened on or about March 30, 2010 under Case No. 2010-ES-10-494 (the "Wife's Estate") with her sister, Defendant Atkinson, thereafter being named as Personal Representative.

11. On June 29, 2010, an inventory and appraisal was filed in the Wife's Estate, which indicated a net worth of \$55,460.84. These funds have since been paid to Plaintiff in partial satisfaction of the foregoing judgment.

12. Both estates have assigned to Plaintiff any and all rights they may have to assets which should have or could have been included in their estates.

The Judgment Debtor's prior \$100,000 Transfer to Defendant Lancaster

13. In early 1992, the Judgment Debtor undertook a course of conduct to shield and hide his assets from creditors.

14. In early 1992, the Judgment Debtor transferred \$100,000 to Defendant Lancaster.

15. In early 1992, Defendant Lancaster received \$100,000 from the Judgment Debtor.

16. The Judgment Debtor's \$100,000 transfer to Defendant Lancaster was allegedly conditioned upon Defendant Lancaster's purchase of real property for the Judgment Debtor and the Wife.

17. In or about April 1992, Defendant Lancaster purchased real property located at 17

Bainbridge, Charleston County, South Carolina (the "Bainbridge Property").

18. From about April 1992, Defendant Lancaster held legal title to the Bainbridge Property while the Judgment Debtor held the true and beneficial ownership of the Bainbridge Property and resided thereon.

19. In or about May 1995, Defendant Lancaster and the Judgment Debtor allegedly substituted a property located at 2 Nuffield Road, Charleston County, South Carolina (the "Nuffield Property") for the Bainbridge Property.

20. From about May 1995 until the death of the Judgment Debtor on September 25, 2007, Defendant Lancaster held legal title to the Nuffield Property while the Judgment Debtor held the true and beneficial ownership of the Nuffield Property and resided thereon.

21. Additionally, from 1992 through the Judgment Debtor's date of death, the Judgment Debtor and Defendant Lancaster engaged in a practice of transferring monies back and forth and recording mortgages to make the Judgment Debtor appear judgment proof, all without valid or adequate consideration, and all of which were fraudulent.

22. The Judgment Debtor's Estate has failed to name the Judgment Debtor's ownership of and legal interest in the Nuffield Property as an asset of the estate, or the \$100,000.00 transfer.

23. The Wife's Estate has failed to name the Wife's successor ownership of and interest in the Nuffield Property as an asset of the estate, or the \$100,000.00 transfer.

24. On April 29, 2010, two months following the Wife's death, Defendant Lancaster sold the Nuffield Property to a third party for \$246,000.00.

25. Defendant Lancaster continues to retain the \$100,000.00 transfer and the \$246,000.00 from the sale of the Nuffield Property, all of which should have been inured to the

benefit of the Judgment Debtor and the Judgment Debtor's Estate, and should have been used to pay the Judgment in full.

*The Judgment Debtor's Fraudulent Transfer
of Meeting Street Note to the Wife and then Lancaster*

26. During the litigation of the *Gordon* Action and in anticipation of entry of Judgment in late 2001, the Judgment Debtor sold 1705 Meeting Street, Charleston County, South Carolina (the "Meeting Street Property").

27. As partial payment for the Meeting Street Property, the Judgment Debtor received a \$190,000.00 note (the "Meeting Street Note") and mortgage (the "Meeting Street Mortgage") from the purchaser.

28. Following receipt of the Meeting Street Note and Mortgage, the Judgment Debtor, executed assignments to the Wife of both the Meeting Street Note and the Meeting Street Mortgage (the "Assignments").

29. The Judgment Debtor made the Assignments to the Wife of the Meeting Street Note and Mortgage in anticipation of an adverse judgment.

30. The Judgment Debtor made the Assignments to the Wife without receiving fair consideration.

31. Simultaneously with receiving her Assignment, the Wife executed an assignment of the Meeting Street Mortgage to Defendant Lancaster (the "Lancaster Assignment").

32. At or about the same time as execution of the Lancaster Assignment, Defendant Lancaster took a \$50,912.00 note from the Wife on the Meeting Street Property (the "Lancaster Note").

33. The Lancaster Assignment and Note were given for no or inadequate consideration.

34. From 1993 to 2005, Defendant Lancaster received approximately \$89,000 from the Judgment Debtor and/or the Wife allegedly in full satisfaction of the Lancaster Note and other mortgages received.

35. Defendant Lancaster received the \$89,000 for no or inadequate consideration.

FOR A FIRST CAUSE OF ACTION
FRAUDULENT CONVEYANCE

36. The foregoing allegations are incorporated herein by reference as if set forth verbatim.

37. All of the foregoing transfers were made for inadequate consideration, were fraudulent, were made to defraud creditors, and/or constituted uncompleted gifts, and/or preferential transfers, are and were void, and should be declared void and of no force or effect as against Plaintiff's Judgment.

38. Additionally, and/or alternatively, Gordon had a claim against the Judgment Debtor at the time the Judgment Debtor retained the true and beneficial ownership of the Nuffield Property.

39. Plaintiff's judgment should be satisfied out of the proceeds of the \$100,000.00 and the proceeds of sale of the residence(s), including interest accumulated on said proceeds (or the present value thereof).

FOR A SECOND CAUSE OF ACTION
CONSTRUCTIVE TRUST

40. The preceding paragraphs are hereby incorporated by reference.

41. The matters described herein entitle Plaintiff to an order imposing a constructive trust on the aforesaid described properties, monies and/or proceeds thereof at issue and the proceeds thereof, together with an award of consequential damages against all Defendants.

FOR A THIRD CAUSE OF ACTION
CIVIL CONSPIRACY

42. The preceding paragraphs are hereby incorporated by reference.

43. Defendant Lancaster conspired with the Judgment Debtor and the Wife to enable the Judgment Debtor to have the appearance of being judgment proof to better themselves and to injure creditors, including the Plaintiff, by the Defendant's above described actions.

44. The concerted action and activities by Defendant have proximately injured the Plaintiff as above described and have caused special damages.

45. As a result of Defendant's reckless and intentional acts committed in conscious disregard of the Plaintiff's rights, Plaintiff is entitled to an award of punitive damages in an amount to be determined by the trier-of-fact.

FOR A FOURTH CAUSE OF ACTION
NEGLIGENCE/AIDING AND ABETTING

46. The preceding paragraphs are hereby incorporated by reference.

47. Defendant knew or should have known that the Judgment Debtor was transferring and/or hiding property to hinder and defraud creditors.

48. Defendant negligently, recklessly, knowingly, and/or intentionally, aided and abetted the Judgment Debtor in his above described wrongful activities.

49. As a direct and proximate result of the Defendant's conduct, Plaintiff suffered actual, consequential and incidental damages.

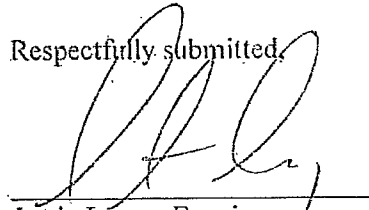
50. As a result of Defendant's reckless and intentional acts committed in conscious disregard of the Plaintiff's rights, Plaintiff is entitled to an award of punitive damages in an amount to be determined by the trier-of-fact.

WHEREFORE, the Plaintiff, having alleged a complaint against the Defendant, would

request from this Court an Order as follows:

- a) That all transfers described herein, together with any others determined during discovery and proved at trial, be set aside and declared null and void; that the subject property, and proceeds thereof, be made subject to a constructive trust and made available to satisfy plaintiff's judgment, and that the plaintiff be granted judgment against defendant for his active and passive participation in the subterfuges described herein, together with an award of consequential, special, and punitive damages and prejudgment interest;
- b) that the costs and disbursements of this action and reasonable attorney's fees be granted to Plaintiff; and
- c) for such other and further relief as the Court deems just and proper.

Respectfully submitted,

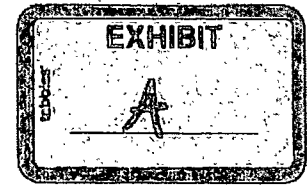


Justin Lucey, Esquire
Stephanie D. Drawdy, Esquire
Justin O'Toole Lucey, P.A.
415 Mill Street
Post Office Box 806
Mount Pleasant, South Carolina 29465-0806
Phone: (843) 849-8400

Attorneys for Plaintiff

Charleston, South Carolina
June 12, 2013

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11 NOV 16 2012 16 STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON IN THE MATTER OF: RUDOLPH ROBERT DREWS	IN THE PROBATE COURT CASE NO.: 2007-ES-10-1518
STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON IN THE MATTER OF: EFFIE D. DREWS	IN THE PROBATE COURT CASE NO.: 2010-ES-00-00494
STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON FRANK GORDON, JR., as Attorney-in-Fact for DOROTHY GORDON, Plaintiff, vs. JESSIE B. ATKINSON, Individually, and as Personal Representative of the Estate of EFFIE D. DREWS; DONALD W. LANCASTER; and SHIRRESE BROCKINGTON as Special Administrator of the Estate of Rudolph Robert Drews, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO: 2010-CP-10-9096

CONFESSION OF JUDGMENT, ASSIGNMENT, AND SETTLEMENT AGREEMENT

In conformity with S.C. Code Ann. § 15-35-350, *et. seq.*, the Estate of Rudolph Robert Drews (the "Estate"), by its Special Administrator, Shirrese Brockington, hereby agrees and

confesses judgment to and in favor of Frank Gordon, Jr. as attorney-in-fact for Dorothy Gordon ("Gordon"), a creditor of the Estate of Rudolph Robert Drews, as follows:

1. The Estate has objectively reviewed the documentation and records available in this and the related actions (Gordon v. Atkinson, et al., Case Number 10-CP-10-9096, In Re: Estate of Rudolph Robert Drews, Case No. 07-ES-10-1518, and In Re: Estate of Effie D. Drews, Case NO. 2010-ES-00-00494) and finds evidence that the Deceased Rudolph Robert Drews conveyed assets out of his name prior to death in an effort to avoid judgment creditors and further concedes that a trier of fact would likely conclude the Decedent's foregoing actions were a violation of the Statute of Elizabeth.

2. The Estate seeks to achieve judicial economy and, in fairness to the Estate's creditors, avoid additional costs that would be incurred in a jury trial.

3. As such, the Estate concedes that the \$100,000.00 gift, received on or about May 1992, from the Deceased Rudolph Robert Drews to his nephew Donald Lancaster constitutes a portion of the monies used by Lancaster to purchase the property that the Deceased Rudolph Robert Drews resided in at the time of his death, which is located at 2 Nuffield Road, Charleston, South Carolina.

4. The Estate further concedes that the Deceased Rudolph Robert Drews made to his nephew Donald Lancaster during the time that Gordon's underlying action had accrued and/or Gordon's Judgment was entered against the Deceased other transfers the amounts of which are yet to be determined.

5. The Estate hereby assigns any claim it may have against non-settling transferees, e.g., Donald Lancaster, to Frank Gordon.

6. The Estate jointly and severally confesses judgment to Gordon in the amount of \$293,703.43 (two hundred ninety three thousand, seven hundred and three dollars and 43/100), said judgment constituting settlement of the matter giving rise to this cause of action.

7. Plaintiff acknowledges that there are no assets presently in the Estate of Rudolph Robert Drews and hereby covenants not to execute on any estate asset other than that which may be recovered from non-settling transferees, e.g., Donald Lancaster.

8. Gordon agrees to immediately dismiss the Estate as to the above referenced matter and the related actions (Gordon v. Atkinson, et al., Case Number 10-CP-10-9096, In Re: Estate of Rudolph Robert Drews, Case No. 07-ES-10-1518, and In Re: Estate of Effie D. Drews, Case No. 2010-ES-00-00494), pursuant to the attached proposed order, and will enter a dismissal with prejudice following the conclusion of all litigation and collection as to Donald Lancaster.

9. The Estate consents and agrees that this Confession of Judgment may be entered against the Estate in any court of competent jurisdiction, wherever located.

10. The Estate further agrees and confirms that the aforesaid amount of this Confession of Judgment is justly owed to Gordon.

11. The Estate has read and understands this Confession of Judgment and freely and voluntarily enters into this Confession of Judgment.

12. As part of the consummation of this resolution, the Special Administrator shall close the Estate of Rudolph Robert Drews but shall retain the right to reopen the Estate by supplemental petition, should the need arise.

13. Contemporaneously herewith, Gordon is resolving its claims with the Estate of Effie D. Drews and Jessie Atkinson; as part thereof, Gordon has agreed to promptly pay the entirety of the Special Administrator's fees.

WHEREFORE, an authorized agent of the Estate, having first been duly sworn, set her hand and seal this 9th day of November, 2011, in the presence of the below named witnesses.

Witness:

Mary Odell Healy

Estate of Rudolph Robert Drews

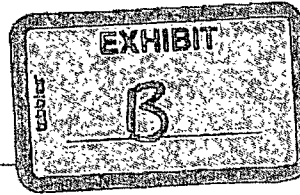
Shirrese Brockington, Special Administrator
By: Shirrese Brockington
Its: Special Administrator

Witness:

Caleb L. Pierce

Frank Gordon, Jr., as Attorney-In-Fact for
Dorothy Gordon

Justin O'Toole Lucey, PA
By: Justin O'Toole Lucey, PA
Its: Attorneys



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE MATTER OF:
RUDOLPH ROBERT DREWS

IN THE PROBATE COURT
CASE NO.: 2007-ES-10-1518

11 NOV 17 PM 3:39

CHARLESTON COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE MATTER OF:
EFFIE D. DREWS

IN THE PROBATE COURT
CASE NO.: 2010-ES-00-00494

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

FRANK GORDON, JR., as Attorney-in-
Fact for DOROTHY GORDON,

Plaintiff,

vs.

JESSIE B. ATKINSON, Individually, and
as Personal Representative of the Estate of
EFFIE D. DREWS; DONALD W.
LANCASTER; and SHIRRESE
BROCKINGTON as Special Administrator
of the Estate of Rudolph Robert Drews,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2010-CP-10-9096

SETTLEMENT AGREEMENT AND ASSIGNMENT

The Estate of Effie D. Drews, by its Personal Representative Jessie Atkinson and Jessie Atkinson, Individually, (collectively "Settling Parties") and Frank Gordon, Jr. as Attorney-in-Fact for Dorothy Gordon ("Gordon") hereby agree to the following:

1. The Estate has reviewed the allegations and records available in this and the related actions (Gordon v. Atkinson, et al., Case Number 10-CP-10-9096, In Re: Estate of Rudolph Robert Drews, Case No. 07-ES-10-1518, and In Re: Estate of Effie D. Drews, Case NO. 2010-ES-00-00494) that the Deceased Rudolph Robert Drews conveyed assets out of his name prior to death to Effie Drews in an effort to avoid judgment creditors and that the Decedent's foregoing actions were a violation of the Statute of Elizabeth; and that the Effie Drews estate assets should be available to satisfy creditors, prior to disbursement to heirs and beneficiaries, Jessie Atkinson included.

2. Settling Parties represent that, except for potential claims relating to other transferees e.g., Donald Lancaster, the attached inventory of the Estate of Effie Drews, dated June 29, 2010, is a true and accurate inventory of the decedent's assets.

3. The Estate seeks to achieve judicial economy and, in fairness to the Estate's creditors, avoid additional costs that would be incurred in a jury trial.

4. Settling Parties hereby agree to immediately pay \$60,000.00 to Gordon to settle his claim against Settling Parties.

5. Further, Settling Parties hereby assign any claim they may have relating to the foregoing actions against Donald Lancaster, Dorsey Biller and any other non-Settling Parties to Frank Gordon.

6. In exchange, Gordon agrees to immediately dismiss the Settling Parties as to the above referenced matter and the related actions (Gordon v. Atkinson, et al., Case Number 10-CP-10-9096, In Re: Estate of Rudolph Robert Drews, Case No. 07-ES-10-1518, and In Re: Estate of Effie D. Drews, Case No. 2010-ES-00-00494), pursuant to the attached proposed order, and will

enter a dismissal with prejudice following the conclusion of all litigation and collection as to non-settling parties.

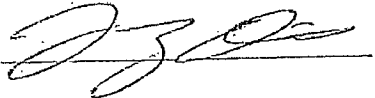
7. Further, Plaintiff hereby covenants not to execute on any settling party asset other than that which may be recovered from non-settling parties, e.g. Donald Lancaster, his privies and his transferees.

8. Settling Parties have read and understand this Agreement and Assignment and voluntarily enter into this Agreement and Assignment.

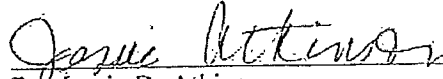
9. Contemporaneously herewith, Gordon is resolving its claims with the Estate of Rudolph Robert Drews; as part thereof, Gordon has agreed to promptly pay the entirety of the Special Administrator's fees.

WHEREFORE, an authorized agent of the Estate, having first been duly sworn, set her hand and seal this 17 day of November, 2011, in the presence of the below named witnesses

Witness:



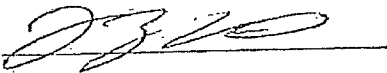
The Estate of Effie Drews



By: Jessie B. Atkinson

Its: Personal Representative

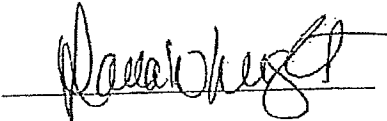
Witness:



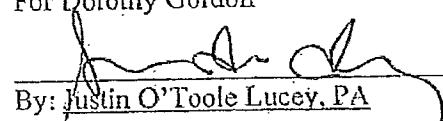
Jessie Atkinson, Individually



Witness:



Frank Gordon, Jr., as Attorney in Fact
For Dorothy Gordon



By: Justin O'Toole Lucey, PA

Its: Attorneys

STATE OF SOUTH CAROLINA
COUNTY OF: Charleston

IN THE MATTER OF: Effie D. Drew

IN THE PROBATE COURT

INVENTORY AND APPRAISEMENT

FILE

CASE NUMBER:

2010 ES10-00494

2010 JUN 29 AM 11:56

PROBATE COURT
CHARLESTON COUNTY

☐ SUPPLEMENTAL #

Personal Representative (s):

Jessie D. Atkinson

Decedent's Social Security Number:

249 60 9455

Decedent's Date of Death:

02-03-10

Was there a will? ☒ YES ☐ NO

Domicile at death:

Charleston

S.C.

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed: that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to me this

29th day of
June 20 10

My Commission Expires:

7/29/10

Signature:

Jessie D. Atkinson

Name:

15125 Old Washington Course

Address:

Hallandale S.C. 33009

E-Mail:

Telephone (O):

(H):

Signature

Name:

Address:

E-Mail:

Telephone (O):

(H):

Attorney:

Address:

E-Mail:

Telephone:

For estates of decedents, the gross fairmarket valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following appointment, a copy of the Inventory and appraisal shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

RECAPITULATION

Non-Probate

Probate

Schedule A - Real Estate

Schedule B - Stocks and Bonds

Schedule C - Notes Due Decedent and Cash

Schedule D - Insurance on Person's Life: Part 1 - Payable to Estate

Part 2 - Payable to Beneficiary

Schedule E - Jointly Owned Property

Schedule F - Other Miscellaneous

Other Assets Payable to Estate

Schedule G - Transfers during Decedent's life

Schedule H - Powers of Appointment

Schedule I - Annuities and Retirement Accounts

TOTAL GROSS VALUE

ENCUMBRANCES

TOTAL NET WORTH

\$		\$	0
			0
			47,061.25
			2508.02
	74,311.31		
	184.03		
	291,311.23		69,000.00
			0
			0
\$		\$	
(	0	)	
\$	55,460.34		

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NOTE: WHEN COMPLETING THE FOLLOWING SCHEDULES, PLEASE RE-MEMBER TO LIST ALL ASSETS, REGARDLESS OF SITUS. ALL OUT-OF-STATE ASSETS MUST BE DISCLOSED.

SCHEDULE A - Real Estate (All interest in real property except those held with right of survivorship) (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description (include county and state)	Tax Assessor's Fair Market Value for year of Decedent's Death	Appraised Value	Appraised Value of Decedent's Interest
<i>NONE</i>				

TOTAL SCHEDULE A \$ 0.00
(also enter under recapitulation, page 1)

SCHEDULE B - Stocks and Bonds (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

No.	Description	Face Value	Appraised Value
<i>NONE</i>			

TOTAL SCHEDULE B \$ 0.00
(also enter under recapitulation, page 1)

SCHEDULE C - Notes due to Decedent, and Money on hand and in banks (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

No.	Description	Value
<i>1</i>	<i>Personal check Wasey A. Beller</i>	<i>7084.12</i>
<i>2</i>	<i>Cash on hand</i>	<i>2500.00</i>
<i>3</i>	<i>Refund - knology</i>	<i>11.79</i>
<i>4</i>	<i>Refund - Blue Cross Blue Shield</i>	<i>110.34</i>

TOTAL SCHEDULE C \$ 9706.25
(also enter under recapitulation, page 1)

(If more space is required, insert tax schedules or additional sheets of same size.)

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SCHEDULE D - Insurance (If none, so state.)
Part 1 - Life Insurance Payable to the Estate

Item No.	Description	Value
1	AARP LIFE INSURANCE	2,508.02

\$ 2,508.02

TOTAL PART 1
 (also enter under recapitulation, page 1)

Part 2 - Life Insurance Payable to Beneficiaries

Item No.	Description	Beneficiary	Value
1	NEW YORK LIFE INSURANCE	Jessie D. Atkinson	7,431.31

\$ 7,431.31

TOTAL PART 2
 (also enter under recapitulation, page 1)

SCHEDULE E - Jointly owned Property (with right of survivorship) (If none, so state.)
NOTE: You must complete Schedule E if the Decedent owned any property jointly with right of survivorship at the time of death, whether or not the decedent's interest is included in the gross estate.

Percentage Includible:
 1 - Joint interest held by decedent and spouse - the amount included is one-half (50%) of the value in all cases.
 2 - Other joint interest - Generally you must include the full value of the jointly owned property in the gross estate. However, the full value should not be included if you can show that a part of the property originally belonged to the other tenant(s). The amount included is the amount of the decedent's contribution to the joint account(s).

Item No.	Description	Joint Owner(s)	Percentage Includible	Appraised Value of Decedent's Interest
1	137 Citizens Bank	Jessie D. Atkinson	100%	184.03

\$ 184.03

TOTAL SCHEDULE E
 (also enter under recapitulation, page 1)

(If more space is required, insert tax schedules or additional sheets of same size.)

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[illegible]

\$ 6,500.00

NOTE: FOR SCHEDULES G, H, AND I, LIST VALUES ONLY IF PAYABLE TO ESTATE.

Did Decedent make any transfers during lifetime as described above? ☒ YES ☐ NO

DATE	DESCRIPTION	AMOUNT	BALANCE
APRIL 26, 2007	ARRP LEE TAC	PAID	100.00
MARCH 13, 2007	N.Y. LEE TAC CO.	PAID	100.00
OCTOBER 11, 2007	WACHOVIA CHECKING ACCT.	POD	7,599.66
OCTOBER 11, 2007	CERTIFICATE OF DEPOSIT	POD WACHOVIA	11,148.44
NOVEMBER 14, 2007	CERTIFICATE OF DEPOSIT	POD	10,493.13

\$ 29.141.23

(If more space is required, insert tax schedules or additional sheets of same size.)

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

FRANK GORDON, JR. as
Attorney-in-Fact for DOROTHY
GORDON,

Plaintiff,

vs.

JESSIE B. ATKINSON, Individually, and
as Personal Representative of the Estate of
EFFIE D. DREWS; DONALD W.
LANCASTER; and SHIRRESE
BROCKINGTON as Special Administrator
Of the Estate of RUDOLPH ROBERT
DREWS,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2010-CP-10-9096

**MOTION TO TAKE JUDICAL NOTICE
OF ADJUDICATIVE FACTS**

[Signature]

JULIE J. ARMSTRONG
CLERK OF COURT

2013 JUN -7 PM 1:03

FILED

COMES NOW Plaintiff Frank Gordon, Jr. as Attorney-in-Fact for Dorothy Gordon ("Gordon") and respectfully requests that this Court take judicial notice of the following Adjudicative Facts as set forth in the documents attached hereto as Exhibits A through C:

1. Confession of Judgment, Assignment and Settlement Agreement with The Estate of Rudolph Robert Drews (attached hereto as Exhibit "A");
2. Settlement Agreement and Assignment with the Estate of Effie D. Drews, by its Personal Representative Jessie Atkinson and Jessie Atkinson, Individually (attached hereto as Exhibit "B");
3. Recovered judgment in *Frank Gordon, Jr. as Attorney-in-Fact for Dorothy Gordon v. Rudolph Robert Drews and Raymond Beasley*, (Case No. 1999-CP-10-1407), which amounts to \$108,482.62, plus accrued interest, all of which remains unpaid (attached

hereto as Exhibit "C"); and

4. Calculation of Interest on the Judgment recovered in *Frank Gordon, Jr. as Attorney-in-Fact for Dorothy Gordon v. Rudolph Robert Drews and Raymond Beasley*, (Case No. 1999-CP-10-1407) based on S.C. Code Ann. § 34-31-20 (A) (Supp. 2009), which totals \$108,370.61 (attached hereto as Exhibit "D").

This request is made pursuant to South Carolina Rules of Civil Procedure, Rule 201 ("Rule 201"). Exhibits A, B, C and D are generally known within the territorial jurisdiction of this trial court and/or are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

BASIS FOR REQUESTING JUDICIAL NOTICE

Pursuant to Rule 201, a Court may take Judicial Notice of a noticed fact that is not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Exhibits A and B have previously been filed in this matter (Case No. 2010-CP-10-9096) and are in the public domain. Further both Exhibits A & B were filed in the Probate Court for the State of South Carolina, Charleston County, in Case Nos. 2007-ES-1518 and 2010-00-494. Therefore, both Exhibits A and B satisfy the requirements under Rule 201, SCRPC.

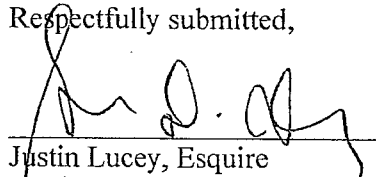
Exhibit C is the December 5, 2001 Order Granting Judgment in Favor of Plaintiff (against Rudolph Robert Drews) in the amount of \$50,000.00, plus \$15,789.12 in interest plus costs and attorney's fees, and the March 14, 2002 Order Awarding Attorney's Fees of \$42,693.50, which were entered in *Frank Gordon, Jr. as Attorney-in-Fact for Dorothy Gordon v. Rudolph Robert Drews and Raymond Beasley*, (Case No. 1999-CP-10-1407) (the "Judgment").

The judgment was filed with the Court, is in a matter of public record and can be accurately and readily determined by the Court to be accurate based on the Court's filing. Further, Exhibit C was referenced in the Amended Complaint of Case No. 2010-CP-10-9096. Therefore, Exhibit C also satisfies the requirements under Rule 201.

Exhibit D is the \$108,370.61 Calculation of Interest on the Judgment based on S.C. Code Ann. § 34-31-20 (A) (Supp. 2009). This mode of calculation is acceptable for determining the legal rate of interest for a judgment entered in 2002 and can be accurately and readily determined by the Court to be accurate. Therefore, Exhibit D also satisfies the requirements under Rule 201.

WHEREFORE, for the reasons set forth above, Plaintiff respectfully requests the Court take Judicial Notice of Exhibits A, B, C and D, and permit Plaintiff to designate the documents as exhibits at Trial.

Respectfully submitted,



Justin Lucey, Esquire

Stephanie D. Drawdy, Esquire

Justin O'Toole Lucey, P.A.

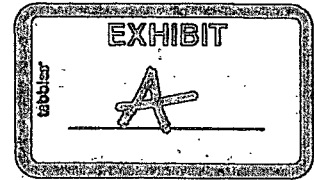
415 Mill Street

Post Office Box 806

Mount Pleasant, South Carolina 29465-0806

Phone: (843) 849-8400

June 6, 2013



11 NOV 16 PM 12:14 STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON IN THE MATTER OF: RUDOLPH ROBERT DREWS	IN THE PROBATE COURT CASE NO.: 2007-ES-10-1518
STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON IN THE MATTER OF: EFFIE D. DREWS	IN THE PROBATE COURT CASE NO.: 2010-ES-00-00494
STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON FRANK GORDON, JR., as Attorney-in- Fact for DOROTHY GORDON, Plaintiff, vs. JESSIE B. ATKINSON, Individually, and as Personal Representative of the Estate of EFFIE D. DREWS; DONALD W. LANCASTER; and SHIRRESE BROCKINGTON as Special Administrator of the Estate of Rudolph Robert Drews, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO: 2010-CP-10-9096

CONFESSION OF JUDGMENT, ASSIGNMENT, AND SETTLEMENT AGREEMENT

In conformity with S.C. Code Ann. § 15-35-350, *et. seq.*, the Estate of Rudolph Robert Drews (the "Estate"), by its Special Administrator, Shirrese Brockington, hereby agrees and

confesses judgment to and in favor of Frank Gordon, Jr. as attorney-in-fact for Dorothy Gordon ("Gordon"), a creditor of the Estate of Rudolph Robert Drews, as follows:

1. The Estate has objectively reviewed the documentation and records available in this and the related actions (Gordon v. Atkinson, et al., Case Number 10-CP-10-9096, In Re: Estate of Rudolph Robert Drews, Case No. 07-ES-10-1518, and In Re: Estate of Effie D. Drews, Case NO. 2010-ES-00-00494) and finds evidence that the Deceased Rudolph Robert Drews conveyed assets out of his name prior to death in an effort to avoid judgment creditors and further concedes that a trier of fact would likely conclude the Decedent's foregoing actions were a violation of the Statute of Elizabeth.

2. The Estate seeks to achieve judicial economy and, in fairness to the Estate's creditors, avoid additional costs that would be incurred in a jury trial.

3. As such, the Estate concedes that the \$100,000.00 gift, received on or about May 1992, from the Deceased Rudolph Robert Drews to his nephew Donald Lancaster constitutes a portion of the monies used by Lancaster to purchase the property that the Deceased Rudolph Robert Drews resided in at the time of his death, which is located at 2 Nuffield Road, Charleston, South Carolina.

4. The Estate further concedes that the Deceased Rudolph Robert Drews made to his nephew Donald Lancaster during the time that Gordon's underlying action had accrued and/or Gordon's Judgment was entered against the Deceased other transfers the amounts of which are yet to be determined.

5. The Estate hereby assigns any claim it may have against non-settling transferees, e.g., Donald Lancaster, to Frank Gordon.

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6. The Estate jointly and severally confesses judgment to Gordon in the amount of \$293,703.43 (two hundred ninety three thousand, seven hundred and three dollars and 43/100), said judgment constituting settlement of the matter giving rise to this cause of action.

7. Plaintiff acknowledges that there are no assets presently in the Estate of Rudolph Robert Drews and hereby covenants not to execute on any estate asset other than that which may be recovered from non-settling transferees, e.g., Donald Lancaster.

8. Gordon agrees to immediately dismiss the Estate as to the above referenced matter and the related actions (Gordon v. Atkinson, et al., Case Number 10-CP-10-9096, In Re: Estate of Rudolph Robert Drews, Case No. 07-ES-10-1518, and In Re: Estate of Effie D. Drews, Case No. 2010-ES-00-00494), pursuant to the attached proposed order, and will enter a dismissal with prejudice following the conclusion of all litigation and collection as to Donald Lancaster.

9. The Estate consents and agrees that this Confession of Judgment may be entered against the Estate in any court of competent jurisdiction, wherever located.

10. The Estate further agrees and confirms that the aforesaid amount of this Confession of Judgment is justly owed to Gordon.

11. The Estate has read and understands this Confession of Judgment and freely and voluntarily enters into this Confession of Judgment.

12. As part of the consummation of this resolution, the Special Administrator shall close the Estate of Rudolph Robert Drews but shall retain the right to reopen the Estate by supplemental petition, should the need arise.

13. Contemporaneously herewith, Gordon is resolving its claims with the Estate of Effie D. Drews and Jessie Atkinson; as part thereof, Gordon has agreed to promptly pay the entirety of the Special Administrator's fees.

WHEREFORE, an authorized agent of the Estate, having first been duly sworn, set her hand and seal this 9th day of November, 2011, in the presence of the below named witnesses.

Witness:

Myra Allen Skaly

Estate of Rudolph Robert Drews

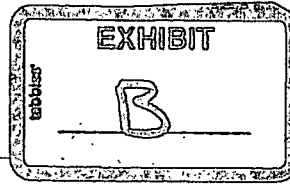
Shirrese Brockington, Spec. Admin
By: Shirrese Brockington
Its: Special Administrator

Witness:

Carol L. Pierce

Frank Gordon, Jr., as Attorney-In-Fact for
~~Dorothy Gordon~~

Justin O'Toole Lucey, PA
Its: Attorneys



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE MATTER OF:
RUDOLPH ROBERT DREWS

IN THE PROBATE COURT
CASE NO.: 2007-ES-10-1518

11 NOV 17 PM 3:39

CHARLES COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE MATTER OF:
EFFIE D. DREWS

IN THE PROBATE COURT
CASE NO.: 2010-ES-00-00494

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

FRANK GORDON, JR., as Attorney-in-
Fact for DOROTHY GORDON,

Plaintiff,

vs.

JESSIE B. ATKINSON, Individually, and
as Personal Representative of the Estate of
EFFIE D. DREWS; DONALD W.
LANCASTER; and SHIRRESE
BROCKINGTON as Special Administrator
of the Estate of Rudolph Robert Drews,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2010-CP-10-9096

SETTLEMENT AGREEMENT AND ASSIGNMENT

The Estate of Effie D. Drews, by its Personal Representative Jessie Atkinson and Jessie Atkinson, Individually, (collectively "Settling Parties") and Frank Gordon, Jr. as Attorney-in-Fact for Dorothy Gordon ("Gordon") hereby agree to the following:

1. The Estate has reviewed the allegations and records available in this and the related actions (Gordon v. Atkinson, et al., Case Number 10-CP-10-9096, In Re: Estate of Rudolph Robert Drews, Case No. 07-ES-10-1518, and In Re: Estate of Effie D. Drews, Case NO. 2010-ES-00-00494) that the Deceased Rudolph Robert Drews conveyed assets out of his name prior to death to Effie Drews in an effort to avoid judgment creditors and that the Decedent's foregoing actions were a violation of the Statute of Elizabeth; and that the Effie Drews estate assets should be available to satisfy creditors, prior to disbursement to heirs and beneficiaries, Jessie Atkinson included.

2. Settling Parties represent that, except for potential claims relating to other transferees e.g., Donald Lancaster, the attached inventory of the Estate of Effie Drews, dated June 29, 2010, is a true and accurate inventory of the decedent's assets.

3. The Estate seeks to achieve judicial economy and, in fairness to the Estate's creditors, avoid additional costs that would be incurred in a jury trial.

4. Settling Parties hereby agree to immediately pay \$60,000.00 to Gordon to settle his claim against Settling Parties.

5. Further, Settling Parties hereby assign any claim they may have relating to the foregoing actions against Donald Lancaster, Dorsey Biller and any other non-Settling Parties to Frank Gordon.

6. In exchange, Gordon agrees to immediately dismiss the Settling Parties as to the above referenced matter and the related actions (Gordon v. Atkinson, et al., Case Number 10-CP-10-9096, In Re: Estate of Rudolph Robert Drews, Case No. 07-ES-10-1518, and In Re: Estate of Effie D. Drews, Case No. 2010-ES-00-00494), pursuant to the attached proposed order, and will

enter a dismissal with prejudice following the conclusion of all litigation and collection as to non-settling parties.

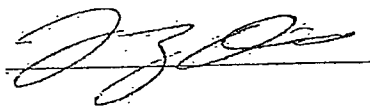
7. Further, Plaintiff hereby covenants not to execute on any settling party asset other than that which may be recovered from non-settling parties, e.g. Donald Lancaster, his privies and his transferees.

8. Settling Parties have read and understand this Agreement and Assignment and voluntarily enter into this Agreement and Assignment.

9. Contemporaneously herewith, Gordon is resolving its claims with the Estate of Rudolph Robert Drews; as part thereof, Gordon has agreed to promptly pay the entirety of the Special Administrator's fees.

WHEREFORE, an authorized agent of the Estate, having first been duly sworn, set her hand and seal this 17 day of November, 2011, in the presence of the below named witnesses

Witness:



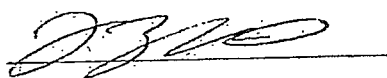
The Estate of Effie Drews



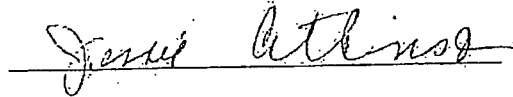
By: Jessie B. Atkinson

Its: Personal Representative

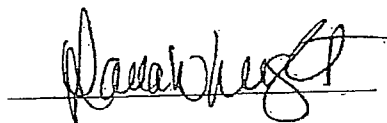
Witness:



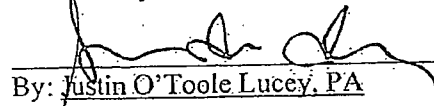
Jessie Atkinson, Individually



Witness:



Frank Gordon, Jr., as Attorney in Fact
For Dorothy Gordon



By: Justin O'Toole Lucey, PA

Its: Attorneys

STATE OF SOUTH CAROLINA

COUNTY OF: CharlestonIN THE MATTER OF: Effie D. Drews

IN THE PROBATE COURT

INVENTORY AND APPRAISEMENT

FILE

CASE NUMBER:

2010 ES10-00494

2010 JUN 29 AM 11:56

PROBATE COURT
SOUTH CAROLINA COUNTY☐ SUPPLEMENTAL #Personal Representative (s): Jessie D. AtkinsonDecedent's Social Security Number: 249 60 9455Decedent's Date of Death: 02-27-10Was there a will? ☒ YES ☐ NODomicile at death: Charleston

(county)

S.C.

(state)

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed; that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to me this 29th day of June
Mary C. Hollenbaugh
 Notary Public for South Carolina
 My Commission Expires: 7/29/10
Signature: Jessie D. AtkinsonName: 5125 Old Washington CourseAddress: Charleston S.C. 29449

E-Mail: _____

Telephone (O): _____

(H): _____

Attorney: _____

Address: _____

E-Mail: _____

Telephone: _____

Signature: _____

Name: _____

Address: _____

E-Mail: _____

Telephone (O): _____

(H): _____

For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following appointment, a copy of the inventory and appraisal shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

RECAPITULATION

	Non-Probate	Probate
Schedule A - Real Estate	\$ _____	\$ <u>0</u>
Schedule B - Stocks and Bonds	_____	<u>97,862.25</u>
Schedule C - Notes Due Decedent and Cash	_____	<u>2508.02</u>
Schedule D - Insurance on Person's Life: Part 1 - Payable to Estate	<u>7431.31</u>	_____
Part 2 - Payable to Beneficiary	<u>184.83</u>	_____
Schedule E - Jointly Owned Property	_____	<u>1,500.00</u>
Schedule F - Other Miscellaneous	_____	_____
Other Assets Payable to Estate	<u>29131.23</u>	_____
Schedule G - Transfers during Decedent's life	_____	<u>0</u>
Schedule H - Powers of Appointment	_____	<u>0</u>
Schedule I - Annuities and Retirement Accounts	_____	_____
TOTAL GROSS VALUE	\$ _____	\$ _____
ENCUMBRANCES	(<u>0</u>)	(<u>0</u>)
TOTAL NET WORTH	\$ <u>55,460.84</u>	_____

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NOTE: WHEN COMPLETING THE FOLLOWING SCHEDULES, PLEASE RE-MEMBER TO LIST ALL ASSETS, REGARDLESS OF SITUS. ALL OUT-OF-STATE ASSETS MUST BE DISCLOSED.

SCHEDULE A - Real Estate (All interest in real property except those held with right of survivorship) (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description (include county and state)	Tax Assessor's Fair Market Value for year of Decedent's Death	Appraised Value	Appraised Value of Decedent's Interest
<i>None</i>				

TOTAL SCHEDULE A

\$ 0.00

(also enter under recapitulation, page 1)

SCHEDULE B - Stocks and Bonds (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description	Face Value	Appraised Value
<i>None</i>			

TOTAL SCHEDULE B

\$ 0.00

(also enter under recapitulation, page 1)

SCHEDULE C - Notes due to Decedent, and Money on hand and in banks (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

No.	Description	Value
<i>1</i>	<i>Personal Check Dorsey A. Biller</i>	<i>7084.12</i>
<i>2</i>	<i>Cash on Hand</i>	<i>2500.00</i>
<i>3</i>	<i>Refund - Knology</i>	<i>11.79</i>
<i>11</i>	<i>Refund - Blue Cross Blue-shield</i>	<i>116.34</i>

TOTAL SCHEDULE C

\$ 9706.25

(also enter under recapitulation, page 1)

(If more space is required, insert tax schedules or additional sheets of same size.)

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SCHEDULE D - Insurance (if none, so state.)

Part 1 - Life Insurance Payable to the Estate

Item No.	Description	Value
1	AARP LIFE INSURANCE	2508.02

TOTAL PART 1

(also enter under recapitulation, page 1)

\$ 2508.02

Part 2 - Life Insurance Payable to Beneficiaries

Item No.	Description	Beneficiary	Value
1	NEW YORK LIFE INSURANCE	Jessie D. Atkinson	7431.31

TOTAL PART 2

(also enter under recapitulation, page 1)

\$ 7431.31

SCHEDULE E - Jointly owned Property (with right of survivorship) (if none, so state.)

NOTE: You must complete Schedule E if the Decedent owned any property jointly with right of survivorship at the time of death, whether or not the decedent's interest is included in the gross estate.

Percentage Includible:

1 - Joint interest held by decedent and spouse - the amount included is one-half (50%) of the value in all cases.

2 - Other joint interest - Generally you must include the full value of the jointly owned property in the gross estate. However, the full value should not be included if you can show that a part of the property originally belonged to the other tenant(s). The amount included is the amount of the decedent's contribution to the joint account(s).

Item No.	Description	Joint Owner(s)	Percentage Includible	Appraised Value of Decedent's Interest
1	1ST Citizens Bank	David McLean	100%	184.03

TOTAL SCHEDULE E

(also enter under recapitulation, page 1)

\$ 184.03

(If more space is required, insert tax schedules or additional sheets of same size.)

[illegible]

\$ 6,500.00

SCHEDULE G - Transfers During Decedent's Life - Transfers intended to take effect at death, United States Government Bonds "Payable on Death", Trust created by Decedent in which income for life was retained, power to revoke or other incidents of ownership retained, life insurance transfers, Lifetime transfers of real property in which decedent retains a life estate or other incidents of ownership.

If "yes" please give date and type of transfer and list total amount payable to estate:
(If more space is required, insert additional sheet of same size.)

~~APRIL 24, 2010~~	~~AARP Life INS.~~	~~POD~~	~~25,875.22~~
~~MARCH 13, 2010~~	~~N.Y. Life INS. Co.~~	~~POD~~	~~17,375.25~~
October 11, 2007	Wachovia Checking Acct.	POD	7,599.66
October 11, 2007	Certificate of deposit	POD Wachovia	11,148.44
November 14, 2007	Certificate of deposit	~~POD~~ POD	10,493.13

\$ 791.23

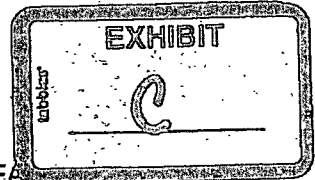
(If more space is required, insert tax schedules or additional sheets of same size.)

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CC 7
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.: 99-CP-10-1407



FRANK GORDON, JR. as attorney-in-fact
for DOROTHY GORDON,

Plaintiff,

vs.

RUDOLPH ROBERT DREWS, and
RAYMOND BEASLEY

Defendants.

ORDER GRANTING JUDGMENT IN FAVOR OF PLAINTIFF

Plaintiff's Attorney:	Justin Lucy
Defendant Drew's Attorney:	Kerry W. Koon
Defendant Beasley:	<i>Pro se</i>
Date of Hearing:	December 3-4, 2001

BACKGROUND

The plaintiff's complaint alleges both defendants violated S.C. Code §§ 35-1-1490 and 1500 arising out of a sale of stock in a closely-held corporation called Builders Station, Inc. The plaintiff also alleges both defendants misrepresented material facts when he purchased the stock, and he further alleges the defendant Drews breached fiduciary duties owed to him arising out of that stock sale. Drews denied all of the allegations. Beasley, in a *pro se* answer, admitted the allegations were true, but declared it was all Drews' fault. The matter was referred to this court for final disposition by order of Judge Gregory on January 29, 2001.

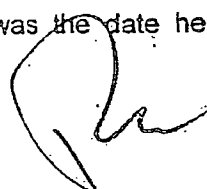
FINDINGS OF FACTS

Based upon the record in this action and the evidence produced at trial, this court finds the following facts to have been established for the purposes of the record in this proceeding:

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1. In 1996, the defendants were the original incorporators of a corporation called Builders Station, Inc. ("Builders Station").
2. In order to open a store called Builders Station, they decided to capitalize the business by selling stock in the company for \$1,000 per share.
3. Under the terms of an agreement with the corporation, the defendants were to receive one-half of a share of stock each for every share of stock sold to investors.
4. The defendants did not register these securities with the Securities Commissioner of South Carolina.
5. Both defendants found investors who purchased shares of stock in Builders Station.
6. Both defendants received one-half of a share of stock for each share of stock sold to these investors.
7. On September 9, 1996, the plaintiff purchased 50 shares of stock in Builders Station in consideration of the sum of \$50,000.00.
8. A preponderance of the evidence shows the defendants represented to the plaintiff the status of the Small Business Administration ("SBA") loan when the plaintiff purchased stock in Builders Station was that it was a "done deal" or "in the bag." This finding is based upon the testimony of the plaintiff and the defendant Beasley.
9. This representation about the status of the SBA loan was a material fact upon which the plaintiff relied when he purchased stock on behalf of his mother in Builders Station.
10. A preponderance of the evidence shows the defendants did not know the SBA was going to require all or almost all of the defendant Drews' property as collateral for the loan at the time the defendants represented to the plaintiff that the SBA loan was a "done deal" or "in the bag" on or before September 9, 1996. This finding of fact is based on several pieces of evidence. First, the defendant Drews testified that he did not know he was going to be required to pledge all of the property the SBA loan commitment required until September 27, 1996, which was the date he received the SBA loan

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commitment letter dated September 25, 1996 from Business Development Corporation ("BDC"). Second, there is no documentary evidence which shows the SBA would require Drews to pledge his property at the time of the loan application, and the documentary evidence placed in evidence does not give Drews any notice of such a requirement prior to the September 25, 1996 letter. In fact, a BDC letter to Drews of September 9, 1996 only mentions the lender was concerned about the store's inventory when mentioning collateral. Third, none of the corporate minutes prior to September 25, 1996 indicate the corporation expected Drews use his property as collateral for the SBA loan. Fourth, there was no testimony from any of the loan brokers who procured the SBA loan about what they had made Drews aware of prior to September 25, 1996 concerning what property was expected to be used collateral for the loan. Finally, the corporation's attorney testified that he had no indication the SBA was seeking to have Drews use his property as collateral prior to September 25, 1996.

CONCLUSIONS OF LAW

Under S.C. Code § 35-1-50, the defendants were required to file with the Securities Commissioner of South Carolina "any prospectus, pamphlet, circular, form letter, advertisement or other sales literature or advertising communication addressed or intended for distribution to prospective investors . . . unless the security or transaction is exempted by Section 35-1-310 or 35-1-320, or the security is a federal covered security or the transaction is with respect to a federal covered security." S.C. Code § 35-1-810 makes it unlawful "for any person to offer or sell any security in this State unless (a) it is registered under this chapter, (b) the security or transaction is exempted under Section 35-1-310 or 35-1-320, or (c) it is a federal covered security."

S.C. Code §35-1-320(9), which is known as the limited offering exception, provides that:

Any transaction pursuant to an offer directed by the offeror to not more than twenty-five persons . . . in this State during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this State, if (a) the seller reasonably

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believes that all the buyers in this State . . . are purchasing for investment and (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this State

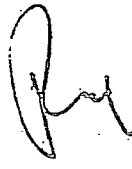
Under S.C. Code § 35-1-340, the defendants have the burden of proving they are entitled to an exemption under either S.C. Code § 35-1-310 or 320.¹ Thus, under § 35-1-320(9), the defendants have a threshold burden of proving they did not offer to sell shares in Builders Station to more than 25 persons within a 12 month period. The defendants have not proven this by a preponderance of the evidence. Drews denial of offering to sell the stock to more than 25 people was as vague as Beasley's assertion that Drews had to have offered it to more than 25 people. Furthermore, the evidence is uncontroverted the defendants received remuneration of one-half of a share of stock in Builders Station every time an investor purchased a share of stock. The defendants maintain this issuance of stock was simply to maintain their one-quarter share each ownership in the stock of Builders Station, and thus it was not compensation. This court is not persuaded by this characterization. Black's Law Dictionary defines remuneration as "payment; compensation" and "the act of paying or compensating."² Issuing stock to the defendants when they procured an investor who purchased stock is textbook compensation, either directly or indirectly, and is even referred to as additional compensation in the defendants' employment contracts. Thus, even if the offer was not made to more than 25 in-state investors, the defendants are not entitled to exemption from registration under S.C. Code § 35-1-320(9) because they received remuneration in the form of one-half of a share of stock every time a share of Builders Station stock was sold to an investor.

Under S.C. Code § 35-1-1490(1), "Any person who offers or sells a security in violation of . . . Section 35-1-810 . . . is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest

¹See S.C. Code § 35-1-340 which states: "In any proceeding under this chapter the burden of proving an exemption or an exception from a definition is upon the person claiming it."

²Black's Law Dictionary, 1298 (7th ed. 1999).

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at six percent per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security" The plaintiff tendered the stock at trial, meeting the requirement of S.C. Code § 35-1-1510 which states: "Any tender specified in Section 35-1-1490 may be made at any time before entry of judgment." In addition, both defendants are jointly and severally liable under S.C. Code § 35-1-1500 since they both materially aided in the sale of the stock. Therefore, the plaintiff is entitled to recover from the defendants under S.C. Code § 35-1-1490(1)³ the consideration paid for the stock, which the evidence showed to be \$50,000.00, plus interest at six percent per year from September 9, 1996, plus costs and reasonable attorney's fees. The evidence is uncontroverted no income was ever received on the security.

Under S.C. Code § 35-1-1490(2), "Any person who . . . [o]ffers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission . . ."⁴ is also liable for the same damages as for a violation of S.C. Code § 35-1-1490(1).

This court has made a finding of fact that a preponderance of the evidence shows the defendants represented to the plaintiff that the status of the Small Business Administration ("SBA") loan when the plaintiff purchased stock in Builders Station was the loan was a "done deal" or "in the bag." This is based primarily on the testimony of the plaintiff, who stated that he

³At the conclusion of the trial the court allowed the plaintiff to amend his complaint to conform to the evidence to delineate that he was complaining of a violation of S.C. Code § 35-1-1490(1) and (2). His original amended complaint only stated a violation of section 35-1-1490. The defendant Drews objected; however, it is clear Drews answered the original complaint as if there were violation of both subsections, he presented evidence to controvert both subsections, and even argued against a violation of either subsection in closing. It does not appear Drews suffered any prejudice by allowing this clarifying amendment.

⁴One wonders if the author of that sentence has an aversion to the English language.

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was told by the defendants that the SBA loan was a "done deal" or "in the bag," and the testimony of the defendant Beasley, who admitted to making that statement to the plaintiff. This court further made a finding of fact that this representation about the status of the SBA loan was a material fact upon which the plaintiff relied when he purchased stock in Builders Station, and that the plaintiff relied on this representation in deciding whether or not to purchase stock in Builders Station. However, this court also made a finding of fact that a preponderance of the evidence shows the defendants did not know the SBA was going to require all or almost all of the defendant Drews' property as collateral for the loan at the time the defendants represented to the plaintiff that the SBA loan was a "done deal." Therefore, under S.C. Code § 35-1-1490(2), while the defendants were persons who offered or sold a security by means of an untrue statement of a material fact, the defendants have sustained "the burden of proof that [t]he[y] did not know, and in the exercise of reasonable care could not have known, of the untruth or omission" As a result, the plaintiff cannot prevail against the defendants under S.C. Code § 35-1-1490(2).

For the same reasons as outlined above in dismissing the plaintiff's complaint of a violation of S.C. Code § 35-1-1490(2), this court finds the plaintiff is not entitled to judgment against the defendants for his cause of action for common-law misrepresentation. The defendants reasonably believed their statements made to the plaintiff on or before September 9, 1996 about the status of the SBA loan were true and had no reason to believe they were untrue at the time they were made.

The plaintiff's cause of action for breach of fiduciary duty was against the defendant Drews only. This complaint is essentially that Drews breached his fiduciary duties to the plaintiff when he refused to pledge his property as collateral for the SBA loan. As noted above, this court has already made a finding of fact that a preponderance of the evidence did not show Drews knew the SBA required him to pledge his property as collateral for the loan prior to September 27, 1996, the date when Drews received the loan commitment letter from BDC.



While it is true that Drews agreed to pledge some of his property for the SBA loan after he received notice of the collateral requirement, he was under no duty to do so at the time and he was not offered any additional consideration to do so. Thereafter, Drews and Beasley personally guaranteed a bridge loan from Southtrust Bank, which again Drews was not obligated to do. Later, Drews and Beasley had a falling-out over whether the Southtrust Bank loan proceeds were to be used entirely to invest in new inventory or whether some should be held in reserve for contingencies. That sort of decision is inherently a business judgment, and it is not for courts to second-guess whether it was the right business decision to make or not. What is relevant about this is that this falling-out between the defendants led to a series of events which caused Beasley to gain the other board members' support to oust Drews from his duties as comptroller of the corporation, effectively freezing Drews out of any say in how the company was run. This naturally led Drews to refuse to pledge his property and personally guarantee the SBA loan. From this court's viewpoint, the board members bet on Beasley and lost. It was completely unrealistic of the board to freeze Drews out of a closely-held corporation and still expect him to be their savior. Whatever duties Drews may have gratuitously assumed to go forward with the SBA loan were at that point extinguished by the board's actions. Therefore, as a board member who approved of Drews' ouster, the plaintiff cannot now prevail against Drews for breach of fiduciary duty, and this cause of action must therefore be dismissed as well.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. That the plaintiff is entitled to judgment against the defendants Rudolph Robert Drews and Raymond Beasley, jointly and severally, for violation of S.C. Code § 35-1-1490(1) in the amount of \$50,000.00, plus interest at the rate of six percent per year since September 9, 1996 which totals \$15,789.12 through the date of this order, plus costs and reasonable attorney's fees. The defendant shall have 15 days from the date of receipt of this order to request a hearing challenging the

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reasonableness of the attorney's fee request submitted by the plaintiff at trial.

The court shall amend this order on the issue of attorney's fees at a later time.

2. That the plaintiff's cause of action against both defendants for violation of S.C. Code § 35-1-1490(2) is dismissed, with prejudice.
3. That the plaintiff's cause of action against both defendants for common-law misrepresentation is dismissed, with prejudice.
4. That the plaintiff's cause of action against the defendant Rudolph Robert Drews for breach of fiduciary duty is dismissed, with prejudice.

AND IT IS SO ORDERED.

Judge Roger M. Young
Master-in-Equity for Charleston County

Charleston, South Carolina
December 5, 2001

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, S.C. & G.S.
BY 
DEPUTY CLERK

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.: 99-CP-10-1407

FRANK GORDON, JR., as attorney-in-fact
for DOROTHY GORDON,

Plaintiff,

vs.

RUDOLPH ROBERT DREWS and
RAYMOND BEASLEY,

Defendants.

BY

CLERK OF COURT

2002 MAR 15 AM 9:13

FILED

ORDER AWARDING PLAINTIFF ATTORNEY'S FEES

The defendant Rudolph Robert Drews filed a motion to challenge the reasonableness of the plaintiff's request for attorney's fees submitted at trial as ordered by this court's order of December 5, 2001. This court heard testimony and arguments on this issue on February 27, 2002. The plaintiff has requested an award of attorney's fees in the amount of \$42,693.50.¹ Based upon the record produced at trial and the February 27, 2002, I make the following findings in support of this court's award of attorney's fees:

The general rule is that attorney's fees are not recoverable unless authorized by contract or statute.² The plaintiff prevailed under S.C. Code § 35-1-1490(1), which provides, *inter alia*, for the recovery of reasonable attorney's fees.

When determining the reasonableness of attorney's fees under a statute mandating the award of attorney's fees, a court must consider six factors: (1) the nature, extent, and difficulty of the legal services rendered, (2) the time and labor necessarily devoted to the case, (3) the

¹The original request was for \$44,893.50. This was reduced by \$2,200 at the February 27, 2002 hearing.

² Baron Data System, Inc. v. Loter, 297 S.C. 362, 377 S.E.2d 296 (1989).

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professional standing of counsel, (4) the contingency of compensation, (5) the fee customarily charged in the locality for similar legal services, and (6) the beneficial results obtained.³ Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these six factors is controlling.⁴

This court shall now examine each factor in turn.

1. The Nature, Extent and Difficulty of the Legal Services Rendered.

The plaintiff's attorney spent considerable time and effort on the prosecution of this case. From a review of the file, this case involved securities fraud and misrepresentation, which can be relatively complex litigation. I find this case's complexity warranted the time expended by the plaintiff's attorney, despite the defendant Drews' expert's characterization that the case was "relatively simple." That expert had relatively little experience in securities litigation and his expertise in attorney's fees issues seemed to be more in the field of domestic or family court litigation. The defendant actively litigated the defense of this lawsuit.

2. The Time and Labor Necessarily Devoted to the Case.

This court has reviewed the statements and affidavit of the plaintiff's attorney, Justin Lucey. Mr. Lucey documented the time billed by him and his staff. The plaintiff has requested an award of attorney's fees in the amount of \$42,693.50. At the hearing he stated he had re-reviewed his billing records and found it necessary to reduce his request by \$2,200 to avoid double-charging certain entries. The total hours documented were in excess of 300.

3. The Professional Standing of Counsel.

This court finds Mr. Lucey is known to this court to be an experienced, highly-skilled attorney of high professional standing in the legal community. This court is aware that Mr. Lucey and his law firm have high standing and regard in the legal community. Furthermore, the

³ Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989), Blumberg v. Nealco, 310 S.C. 492, 427 S.E.2d 659 (1993).

⁴ Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974).

defendant has not objected to the quality or standing of any of the plaintiff's attorney in this matter.

4. The Contingency of Compensation.

Mr. Lucey stated his fee agreement with his client was 40% of any award or the fee awarded by the court, whichever is greater.

5. The Fee Customarily Charged in the Locality for Similar Legal Services.

Drews primary argument goes to the issue that the plaintiff should not be allowed to recover all of his attorney's fees because he was not successful on all of his causes of action. In

Hensley v. Eckerhart,⁵ the United States Supreme Court said:

We hold that the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees under 42 U.S.C. §§ 1988. Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee. Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised. But where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained.⁶

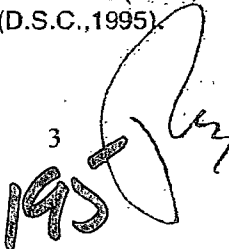
Under this court's order, the plaintiff recovered for a violation of S.C. Code § 35-1-1490(1). This violation entitled the plaintiff to an award of his reasonable attorney's fees. This court did not allow recovery for the plaintiff's claims of violation of S.C. Code § 35-1-1490(2), common-law misrepresentation and breach of fiduciary duty.

The relief the plaintiff was awarded for violation of S.C. Code § 35-1-1490(1) was substantial: a complete refund of the sums invested plus interest, costs and attorney's fees. This court found Drews and the other defendant did offer to sell a security by means of an untrue statement; however, this court found the defendants sustained the burden of proving they did not know, and in the exercise of reasonable care could not have known, the truth or

⁵ 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). See also, Alexander S. By and Through Bowers v. Boyd, 929 F.Supp. 925 (D.S.C., 1995).

⁶ Id. at 440, 103 S.Ct. at 1943.

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A handwritten signature, possibly "Lucey", is written over the date "193". The signature is in dark ink and is somewhat stylized.

untruth of the omission. The finding of a misrepresentation is not an unsubstantial finding. In fact, one could argue that it was only a technicality that kept Drews from facing even further damages. Under these circumstances, the lack of distinctiveness between the successful and unsuccessful causes of action should not cause a reduction in the award of attorney's fees.

6. The Beneficial Results Obtained.

As noted above, Mr. Lucey was able to procure for his client a substantial award: a complete refund of the sums invested plus interest, costs and attorney's fees.

Under these circumstances, I find an award of \$42,693.50 in attorney's fees to be reasonable.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. That the plaintiff is awarded attorney's fees in the amount of \$42,693.50 for a violation of S.C. Code § 35-1-1490(1); and
2. That this court's order of December 5, 2001 is hereby amended to reflect this award.

AND IT IS SO ORDERED.

Judge Roger M. Young
Master-in-Equity for Charleston County

Charleston, South Carolina
March 14, 2002

STATE OF SOUTH CAROLINA
COUNTY OF Charleston

EXECUTION AGAINST PROPERTY

Frank Gordon, Jr.
et al.

PLAINTIFF

- VS -

Rudolph Robert
Drews, et al.
DEFENDANT

DATE OF JUDGMENT	3/14/02
DATE ENROLLED	3/18/02
AMOUNT DUE	
JUDGMENT	\$65,789.12
COSTS	\$0.00
ATTORNEY FEES	\$42,693.50
LESS PAYMENTS	\$0.00
TOTAL	\$108,482.62

TO THE SHERIFF OF

COUNTY:

WHEREAS, JUDGMENT WAS RENDERED AND ENTERED IN THE REFERENCED CASE ON THE DATE SHOWN ABOVE IN FAVOR OF THE PLAINTIFF AGAINST THE DEFENDANT(S) IN THE AMOUNT SET FORTH; AND

WHEREAS, THE JUDGMENT WAS DOCKETED IN YOUR COUNTY ON THE DATE SHOWN, OR, IF YOUR COUNTY IS OTHER THAN THAT WHERE THE JUDGMENT WAS ORIGINALLY ENTERED, A TRANSCRIPT THEREOF WAS ENTERED IN YOUR COUNTY ON THE DATE INDICATED ABOVE; AND

WHEREAS, THE AMOUNT ITEMIZED IS DUE AND OWING

THEREFORE, THE UNDERSIGNED ATTORNEY FOR PLAINTIFF COMMAND YOU TO SATISFY THE JUDGMENT OUT OF PROPERTY OF DEFENDANT(S) JUDGMENT DEBTOR(S) WITHIN YOUR COUNTY; IF SUFFICIENT PERSONAL PROPERTY CAN NOT BE FOUND, THEN YOU ARE TO SATISFY THE JUDGMENT OUT OF REAL PROPERTY THEREAFTER REGARDLESS OF THE PERSON NOW CLAIMING OWNERSHIP OR POSSESSION, AND TO DULY RETURN THIS EXECUTION ACCORDING TO LAW TO THE CLERK OF COURT.

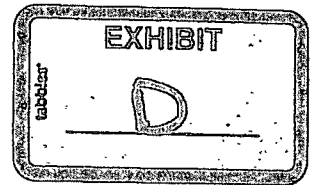
ATTORNEY FOR PLAINTIFF OR PLAINTIFF

Julie J. Armstrong
CLERK

THIS 18th DAY OF December, 2003

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Gordon v. Atkinson, et al.
Calculation of Accrued Interest on Judgments



Beginning Period	Judgment	Rate	[a]	Ending Period	Time	Interest
12/5/2001	\$ 65,789.12 [b]	8.75%		12/31/2001	7.222222222%	\$ 415.75
1/1/2002	65,789.12	8.75%		12/31/2002	100.000000000%	5,756.55
3/14/2002	42,693.50 [c]	8.75%		12/31/2002	79.722222222%	2,978.17
1/1/2003	108,482.60	8.75%		12/31/2003	100.000000000%	9,492.23
1/1/2004	108,482.60	8.75%		12/31/2004	100.000000000%	9,492.23
1/1/2005	108,482.60	8.75%		12/31/2005	100.000000000%	9,492.23
1/1/2006	108,482.60	8.75%		12/31/2006	100.000000000%	9,492.23
1/1/2007	108,482.60	8.75%		12/31/2007	100.000000000%	9,492.23
1/1/2008	108,482.60	8.75%		12/31/2008	100.000000000%	9,492.23
1/1/2009	108,482.60	8.75%		12/31/2009	100.000000000%	9,492.23
1/1/2010	108,482.60	8.75%		12/31/2010	100.000000000%	9,492.23
1/1/2011	108,482.60	8.75%		12/31/2011	100.000000000%	9,492.23
1/1/2012	108,482.60	8.75%		12/31/2012	100.000000000%	9,492.23
1/1/2013	108,482.60	8.75%		6/14/2013	45.277777778%	4,297.87
						<u>\$ 108,370.61</u>

[a] South Carolina Code of Laws Section 34-31-20(A)

[b] Initial judgment

[c] Judgment for attorney's fees

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2010-CP-10-9096

Frank Gordon, Jr., Individually and as
Trustee of the Dorothy S. Gordon
(Deceased) Trust,

Plaintiff,

vs.

Donald W. Lancaster,

Defendant.

PLAINTIFF'S RULE 16(c) PRE-TRIAL BRIEF

COMES NOW Plaintiff Frank Gordon, Jr., ("Gordon"), by and through his undersigned attorneys, pursuant to Rule 16(c) of the South Carolina Rules of Civil Procedure, and respectfully submits the following as his pre-trial brief in the above-captioned matter:

Summary

In this suit, Gordon seeks to enforce the December 5, 2001 Order Granting Judgment in Favor of Plaintiff and against Rudolph Robert Drews ("Drews") in the amount of \$50,000.00, plus \$15,789.12 in interest, and the March 14, 2002 Order Awarding Attorney's Fees of \$42,693.50, for a total judgment of \$108,482.62, which were entered in *Frank Gordon, Jr. as Attorney-in-Fact for Dorothy Gordon v. Rudolph Robert Drews and Raymond Beasley*, (Case No. 1999-CP-1 0-1407) (the "Judgment"); and the November 2011 Assignments from the Decedent's Estate and his wife Effie Drews' Estate. To date, the Judgment remains unsatisfied.¹

¹ In November 2011, Gordon received \$60,000 towards the Judgment from former Defendant Jessie Atkinson.

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Since 1992, Drews has perpetuated a scheme to avoid future and current creditors. Defendant Donald Lancaster ("Lancaster"), Drews' nephew, has actively participated in and profited from that scheme. Drews arranged with Lancaster (and others) to park his money and/or property with them with the understanding that those monies/property would be returned to him and/or his wife, Effie Drews ("Effie"), in the amounts and at the times of their choosing.

Drews parked \$100,000 with Lancaster, allegedly on the condition that Lancaster would purchase a residence that Drews (and Drews' wife, Effie) would live in and enjoy complete use of and control over during their lifetimes – all while titling the property in Lancaster's name so as to avoid Drews' creditors.

Drews also granted Lancaster a series of mortgages² on a property held by Drews at 1705 Meeting Street in Charleston, South Carolina (the "Meeting Street Property") for no consideration and then received advances on these "mortgages," which were no more than a return of the Drews' funds. Moreover, in 2001 (one month prior to the underlying Judgment being entered), Drews sold 1705 Meeting Street and simultaneously assigned a mortgage and note receivable from a third party on the Meeting Street Property to his wife, Effie, who simultaneously gave Nephew Lancaster an assignment of this note and mortgage receivable on the Meeting Street Property.

Drews continued his scheme by parking money with other relatives and friends, including Jessie Atkinson and Dorsey Biller with whom he left \$50,000, which was incrementally given back to Drews and Effie as they requested it.

By this scheme, Drews gave himself the appearance of being penniless and rendered himself judgment-proof during his lifetime and rendered his estate empty upon death in an effort to avoid paying his debts, the Gordon judgment included. Drews' transfers of money, including

² There was also a mortgage on another property, which will be addressed.

his transfers to Lancaster, lack any business or tax purpose; instead, these transfers were done solely to render Drews judgment-proof. As Drews' transfers were accompanied by moral fraud, they are void not only as to creditors that existed at the time of the transfer, but also as to future creditors, Gordon included.

I. Statement of Undisputed Facts

Drews Parked Assets With Lancaster, and Lancaster Funneled Money Back to Drews Prior to and During the Accrual of the Action On Which the Judgment Is Based

1. Drews was in financial trouble from 1990 to 1992. Per Lancaster, by early 1992, "the IRS is closing in" on collecting taxes from Drews. (Lancaster Depo., p. 25/3).
2. In early 1992, Lancaster received \$100,000 from Drews on the alleged condition that Lancaster buy Drews a house for Drews and his wife, Effie, to live in for the remainder of their lives.³
3. On or about May 22, 1992, Lancaster purchased 17 Bainbridge Drive in Charleston, South Carolina (the "Bainbridge Property") for \$160,000.
4. In May 1992, Lancaster gave Drews and Effie life estates in the Bainbridge Property.
5. On or about June 12, 1992, Lancaster obtained a \$40,000 open end mortgage (equity line) from South Carolina National Bank on the Bainbridge Property (the "\$40,000 SC National Line of Credit").
6. From 1993 to 1995, Lancaster gave Drews \$40,000 in checks drawn from South Carolina National Bank (the "SC National Checks"). (See statement of disputed facts as to

³ In February 2010, Lancaster testified this \$100,000 transfer was a gift; in December 2011, Lancaster contradicted his testimony in his Answers to Plaintiff's First Supplemental Discovery Requests by asserting the \$100,000 was *not* a gift. Drews testified in the 2006 supplemental proceedings to execute on the Judgment (discussed below) that the \$100,000 was a gift but that he did not know whether a gift tax return was ever filed for the \$100,000; if a gift tax return had been filed, Drews testified his CPA since 1986, Jerry Gambrell, would have a copy of it. On June 5, 2013, Mr. Gambrell executed an affidavit confirming he had no record or recollection of any gift tax return ever being filed by Mr. Drews or on his behalf.

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whether Lancaster was just giving back part of the first \$100,000 transfer from Drews back to Drews.)

7. In March 1995, Drews gave Lancaster a \$40,000 mortgage on the Meeting Street Property (the "\$40,000 Meeting Street Mortgage"). There was no contemporaneous consideration given for this mortgage. However, it was allegedly to secure the \$40,000 that Lancaster had already transferred to Drews (which Plaintiff claims was really just a return of Drews' funds).
8. On May 15, 1995, Lancaster increased the \$40,000 SC National Line of Credit on the Bainbridge Property to \$79,250.
9. On May 16, 1995, Lancaster purchased 2 Nuffield Road in Charleston, South Carolina for \$125,000 (the "Nuffield Property") on the request of Drews (in substitution for the Bainbridge Property).
10. In May 1995, Lancaster executed a Memorandum of Lease and Subordination Agreement for Life Estate to Drews and Effie on the Nuffield Property (in substitution for the Life Estate Lancaster gave Drews and Effie for the Bainbridge Property).
11. In September 1996, accrual began of the underlying claim that resulted in the Judgment in favor of Gordon in *Gordon v. Drews, et al.* for the illegal sale of stock under S.C. Code § 35-1-1490.
12. From 1996 to 1997, Lancaster received \$6,800 in monetary transfers from Drews, allegedly as payments on the \$40,000 Meeting Street Mortgage.
13. On April 15, 1998, Drews granted Lancaster a \$100,000 mortgage on the Meeting Street Property (the "\$100,000 Meeting Street Mortgage"). No contemporaneous consideration was given for this mortgage. Lancaster has testified that this was to replace the \$40,000 Meeting Street Mortgage, and provide for future advances to Drews; but the \$40,000

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Meeting Street Mortgage was not contemporaneously satisfied; and additional mortgages were executed for additional later transfers. At the end of the day, the \$100,000 Meeting Street Mortgage was used to secure an alleged \$40,000 debt.

14. On April 16, 1999, suit was filed in *Gordon v. Drews, et al.*
15. In July 1999, Drews granted Lancaster an additional \$20,000 mortgage on the Meeting Street property, allegedly for \$20,000 in additional advances (the "\$20,000 Meeting Street Mortgage"). At the time the \$20,000 Meeting Street Mortgage was granted, \$60,000 of the \$100,000 Meeting Street Mortgage remained unused.
16. From 1999 until 2001, Lancaster received at least \$23,689.63 in transfers, allegedly for the \$40,000 Meeting Street Mortgage and the \$100,000 Meeting Street Mortgage. (The \$23,689.63 included a final \$10,639.63 payment when the Meeting Street Property was sold.)
17. Lancaster executed satisfactions for all three mortgages (\$40,000, \$100,000, \$20,000) on or about November 5 and 6, 2001, when the Meeting Street Property was sold.
18. On November 7, 2001, Drews sold the Meeting Street Property and took back a \$190,000 note and mortgage from the buyer, Charleston's Antiques, on the Meeting Street Property (the "\$190,000 Meeting Street Note and Mortgage").
19. On November 7, 2001, simultaneously, Drews assigned the \$190,000 Meeting Street Note and Mortgage to his wife, Effie.
20. On November 7, 2001, simultaneously, Effie assigned the Buyer's \$190,000 Meeting Street Note and Mortgage to Lancaster and gave Lancaster a new \$50,912.00 note.
21. The above assignments occurred immediately before the Gordon trial.

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Gordon Received An Award and Affirmance of Judgment in *Gordon v. Drews, et al.*

22. In December 2001, a three day jury trial was held in *Gordon v. Drews, et al.*, which culminated in the Judgment.

23. From April 2002 until September 2005, Drews appealed the order awarding judgment and order awarding attorney's fees. The Court of Appeals issued an opinion affirming the order of judgment in favor of plaintiff and the award of attorney's fees; and in September 2005, Drews' Petition for Writ Certiorari was denied.

Drews (By Way of Effie) Received Satisfaction on \$190,000 Meeting Street Note and Mortgage

24. In September 2005, Effie received the final payment of \$130,293.37 on the \$190,000 Meeting Street Note and Mortgage.

25. In September 2005, simultaneously, Effie made the final alleged payment to Lancaster on the \$50,912 Meeting Street Note.

26. On September 26, 2005, Lancaster assigned back to Effie the Meeting Street Property Mortgage and satisfied the \$50,912 Meeting Street Note.

27. Simultaneously, Drews' Satisfaction of the \$190,000 Meeting Street Note and Mortgage was filed.

28. In sum, the Drews' transfer of money to Lancaster totaled \$58,841.12 from 2002 through 2005.

29. Lancaster failed to report on his 2005 income tax return the interest income on the Meeting Street Property's itemized "loan" payments.

30. Drews' tax returns from 2002 to 2005 indicate he failed to report a deduction for an interest expense on the Meeting Street Property loans.

Gordon Initiated Supplemental Proceedings To Execute on the Judgment

31. In January 2006, Drews signed an affidavit in which Drews stated he had no assets or monies with which to satisfy the Gordon Judgment.
32. In August 2006, the Court entered an order for supplemental proceedings to be opened to aid Gordon in satisfaction of the Judgment.
33. On September 26, 2006, a hearing was held in the supplemental proceedings, during which Drews testified he had owned the Nuffield Property since at least 1996; however, the supplemental proceedings were left open due to Drews' failure, *in contravention of the order for supplemental proceedings*, to produce documents relating to assets held in his name that would be available for satisfaction of the Judgment.

Drews Parked Money With Other Relatives/Friends That Was Funneled Back to Drews and Effie

34. On February 7, 2007, Effie (with Drews present) gave \$50,000 in checks to her sister Jessie Atkinson (formerly a defendant in this action) to hold for the Drews.
35. On February 13, 2007, Atkinson gave a \$50,041.69 check back to Effie (the "\$50,041.69 Check" that was for the \$50,000 plus interest).
36. On February 22, 2007, Drews gave the \$50,041.69 Atkinson check to friend and former business associate Dorsey Biller to hold for Drews and Effie.
37. On March 24, 2007, Drews requested Biller give \$10,000 of the \$50,041.69 back, which Biller did.
38. On July 5, 2007, Drews requested Biller give \$4,000 of the \$50,041.69 back, which Biller did.
39. In September 2007, Drews died; his estate was opened on or about October 26, 2007 under case number 2007-ES-100015182 (the "Drews Estate").

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40. On October 11, 2007, Effie requested Biller give \$5,000 of the \$50,041.69 back, which Biller did.
41. On November 30, 2007, Effie requested Biller give \$2,000 of the \$50,041.69 back, which Biller did.
42. On February 3, 2008, Effie requested Biller give \$3,000 of the \$50,041.69 back, which Biller did.
43. On April 3, 2008, Effie requested Biller give \$3,500 of the \$50,041.69 back, which Biller did.
44. On July 11, 2008, Effie requested Biller give \$5,000 of the \$50,041.69 back, which Biller did.
45. On November 22, 2008, Effie requested Biller give \$2,000 of the \$50,041.69 back, which Biller did.
46. On March 30, 2009, Effie requested Biller give \$2,000 of the \$50,041.69 back, which Biller did.
47. On August 22, 2009, Effie requested Biller give \$3,000 of the \$50,041.69 back, which Biller did.
48. On October 30, 2009, Effie requested Biller give \$2,000 of the \$50,041.69 back, which Biller did.
49. On February 8, 2010, an inventory and appraisalment was filed in the Drews Estate, which indicated the Drews Estate had *no assets*.
50. On February 18, 2010, Effie requested Biller give \$2,000 of the \$50,041.69 back, which Biller did.
51. On February 27, 2010, Effie died.

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52. On March 25, 2010, Dorsey Biller gave former defendant Jessie Atkinson (Effie's sister) a \$7,084.12 check for final payment on the return of the \$50,041.69 Dews gave Biller.

53. On March 30, 2010, Effie's Estate was opened with her sister, former defendant Jessie B. Atkinson ("Atkinson"), thereafter being named as Personal Representative.

54. On April 29, 2010, Lancaster sold Effie's Nuffield Property residence for \$246,000 (making a \$121,000 profit).

55. On June 29, 2010, an inventory and appraisal was filed in Effie's Estate, which indicated a net worth of \$55,460.04.

Gordon Filed Suits in 2010 Against Lancaster (and Others) To Collect on the Judgment

56. On November 2, 2010, Gordon filed this action against the Dews Estate, Effie's Estate and Nephew Donald Lancaster; an amended complaint was then filed on November 30, 2010.

57. On December 2, 2010, Gordon filed a Petition in Effie's Estate against Atkinson, individually and as the Estate's Personal Representative, Dews' Estate and against Nephew Donald Lancaster.

58. In November 2011, Gordon settled with Atkinson, Individually and as Personal Representative of Effie's Estate, and with Shirrese Brockington as Special Administrator of the Dews Estate; the Estates have assigned to Plaintiff all rights of recovery against Lancaster relating to the matters herein.

II. Statement of the Facts In Controversy

The principal facts and issues in controversy include the following:

Dews' Parking of \$100,000 With Lancaster For Purchase of Residence For Dews and Effie

1. Whether Dews' transfer of \$100,000 to Lancaster was conditioned on Lancaster's purchase of a home for Dews and Effie to live in the remainder of their lives.

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2. Whether Drews' parking of \$100,000 with Lancaster for purchase of a house for Drews and Effie was intended to hide the Drews' residence from their future creditors.
3. Whether Drews' parking of \$100,000 with Lancaster should be deemed null and void.
4. Damages resulting from Drews' hiding of the Nuffield Property as his true property during his life and at the time of his death, including whether Lancaster's profit of One Hundred Ninety-Six Thousand and Eight Hundred Dollars (\$196,800) on the sale of the Nuffield Property (with interest from the date of the sale) should be used to satisfy the Judgment.

Drews' Assignment of \$190,000 Meeting Street Note and Mortgage to Wife Effie and Effie's Simultaneous Assignment of \$50,912 Meeting Street Note to Nephew Lancaster

5. Whether Drews' assignment the \$190,000 Meeting Street Note and Mortgage to his wife, Effie, was in name only, for no consideration, and was not an arms-length transaction.
6. Whether Drews' assignment of the \$190,000 Meeting Street Note and Mortgage to his wife, Effie, should be deemed null and void.
7. Whether Effie's simultaneous assignment of the \$50,912 Meeting Street Note to Nephew Lancaster was for no consideration and was not an arms-length transaction.
8. Whether Effie's assignment of the \$50,912 Meeting Street Note to Nephew Lancaster should be deemed null and void.

\$89,330.75 Parked By Drews With Lancaster As Payments on Alleged Meeting Street Property Mortgages

9. Whether the \$40,000 Meeting Street Mortgage from Drews to Lancaster was a return of Drews' parked funds and not an arms-length transaction for consideration.
10. Whether the \$100,000 Meeting Street Mortgage from Drews to Lancaster was a return of Drews' parked funds and not an arms-length transaction for consideration.
11. Whether the \$20,000 Meeting Street Mortgage from Drews to Lancaster was a return of

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- Drews' parked funds and not an arms-length transaction for consideration.
12. Whether the issuance of \$160,000 in mortgages to secure an alleged \$60,000 debt was an effort to defraud creditors.
 13. Whether the \$50,912 Meeting Street Note and Mortgage from Effie To Lancaster was a return of Drews' parked funds and not an arms-length transaction for consideration.
 14. That Lancaster's failure to report interest income in 2005 on his income tax return for the payments received under the \$50,912 Meeting Street Note evidences that it was not a loan and not an arms-length transaction.
 15. That Drews' failure to report a deduction for interest expenses from 2002 to 2005 on his income tax returns for the \$50,912 Meeting Street Note evidences that the \$40,000-\$60,000 in transfers were a return of Drew's funds and not an arms-length loan to Drews.
 16. That Lancaster's failure in 2005 and Drews' failure from 2002 to 2005 to properly report these loans with the IRS indicates these alleged loans were not legitimate, impeaching the significance of the written promissory note and assignment on the Meeting Street Property that Lancaster received from Drews.
 17. Whether Drews' (Effie's) payments of approximately \$89,300.75 on the \$40,000 Meeting Street Mortgage, \$100,000 Meeting Street Mortgage, \$20,000 Meeting Street Mortgage, and \$50,912 Meeting Street Note and Mortgage to Lancaster were a return of Drews' parked funds and not arms-length transactions for consideration.
 18. Whether Drews (Effie) preferred Lancaster over other creditors, including Gordon, when making payments to Lancaster under the Meeting Street Mortgages.
 19. Whether all the Meeting Street Mortgages to Lancaster should be deemed null and void.
 20. Damages resulting from Lancaster's receipt of payments on the Meeting Street Property Mortgages, including whether the total payments of Eighty-Nine Thousand Three

Hundred Dollars and Seventy Five Cents (\$89,300.75) (with interest from the date of each year of the payments) should be used to satisfy the Judgment.

III. Statement of Legal Issues

This suit by Judgment Creditor Gordon against Lancaster, the nephew of Judgment Debtor Drews, sounds in fraudulent conveyance (under the Statute of Elizabeth, South Carolina Code § 27-23-10 et seq., and South Carolina's statute prohibiting preferential transfers, SC Anti-Assignment Act, Code 1976 section 27-25-10), constructive trust, civil conspiracy and negligence/aiding and abetting.

A. FRAUDULENT CONVEYANCE

Under South Carolina law, fraudulent transfers may be set aside by existing *as well as subsequent* creditors. For a subsequent creditor to set aside prior fraudulent transfers, actual moral fraud must be established. *Gentry v. Lanneau*, 54 S.C. 514, 32 S.E. 523 (1899) *accord Jackson v. Plyler*, 38 S.C. 496, 498, 17 S.E. 255 (1893). *See* S.C. Code Ann. § 27-23-10(A)(1976); *Walker v. Bollman Bros.*, 22 S.C. 512 (1885).

While it is unquestionably true that the mere fact that a deed is without consideration -a voluntary deed- will not render it fraudulent as to subsequent creditors, especially where they have notice, *yet if, in addition to its being voluntary, it was made with a view to future indebtedness, or attended with some circumstance of fraud other than what arises from its being voluntary, then it may be declared null and void for fraud*, even at the instance of subsequent creditors. While, therefore, an existing creditor may assail a voluntary deed, even though executed without any evil intent or fraudulent purpose whatsoever, and even if the motive which prompted the act should be of the most praiseworthy character, yet a subsequent creditor is not permitted to do so without showing some actual, *moral fraud*.

Jackson v. Plyler, 38 S.C. 496, 498 (1893) (emphasis added).

Mathis v. Burton, 319 S.C. 261, 265, 460 S.E.2d 406, 408 (Ct.App.1995), sets out the "certain circumstances" that would allow a subsequent creditor to invalidate a prior deed of his debtor: "[s]ubsequent creditors may have conveyances set aside when (i) the conveyance was

“voluntary,” that is, without consideration, and (ii) it was made with a view to future indebtedness or with an actual fraudulent intent on the part of the grantor to defraud creditors. *See Gentry v. Lanneau*, 54 S.C. 514 (1899); *see also In re J.R. Deans Co., Inc.*, 249 B.R. 121, 130-131 (Bkrtcy. D.S.C. 2000).

Courts have inferred fraudulent intent where one or more “badges of fraud” are found. *See U.S.A. v. Clarkson*, 1989 WL 223071, *3 (D.S.C.) (a plaintiff need not show actual intent to defraud if the grantor was indebted at the time of the transfer, the conveyance was voluntary, and the grantor failed to retain sufficient property to pay the debt both at the time of the transfer and when the creditor seeks to collect his debt).

Certain circumstances deemed to be badges of fraud include: “the insolvency or indebtedness of the transferor, lack of consideration for the conveyance, relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, departure from the usual method of business, the transfer of the debtor’s entire estate, the reservation of benefit to the transferor, and the retention by the debtor of possession of the property.” *Coleman v. Daniel*, 261 S.C. 198, 209, 199 S.E.2d 74, 78–79 (1974); *see also First State Savings and Loan Assoc. v. Nodine*, 291 S.C. 445, 354 S.E.2d 51, 54 (Ct. App. 1987) (“Where a conveyance to a family member or close relative is attacked on account of its voluntary character, the law imposes a duty on the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing evidence.”).

(i) Familial Nature of a Transfer is an Indicia of Fraud

Where a conveyance is to a family member, under the Statute of Elizabeth, even nominal consideration will not save such a conveyance that effectively defeats creditors. *See e.g. First Citizens Bank and Trust Co. of S.C. v. Scofield*, 286 S.C. 520, 522, 335 S.E. 2d 248 (Ct. App. 1985) (“A voluntary conveyance which has the effect of defeating the rights of existing creditors

is not saved from the operation of the statute by reciting a consideration of five dollars and "love and affection."").

(ii) A Transfer Made While Under Threat of Litigation Is an Indicia of Fraud

To bring a Statute of Elizabeth claim, a creditor need not show that the debt was reduced to judgment by the time of the transfer. "One who is in debt cannot make a voluntary conveyance which will prevail against existing debts." *First Citizens v. Scofield*, 286 S.C. 520, 522 (court held son's transfer of residence to his mother while indebted to others and while continuing to live in same was a fraudulent conveyance).

(iii) A Transfer Made While Indebted Is an Indicia of Fraud

In *Albertson v. Robinson*, 371 S.C. 311, 638 S.E. 2d 81-2, 87 (Ct. App. 2006), the court found the transfer of a marital home between a husband and wife to be a fraudulent conveyance where creditor's claim had accrued at the time of its transfer.

(iv) A Transfer That Departs From Usual Business Methods Is an Indicia of Fraud

Where a transaction is established to be a departure from usual business methods, the transaction has been found to be an indicia of fraud. *Coleman v. Daniel*, 261 S.C. at 209; *see also In re Haddock*, 246 B.R. 810, 815-16 (Bkrtcy.D.S.C. 2000).

(v) A Transfer That Renders a Debtor Unable to Pay His Debts Is An Indicia of Fraud

In *Gardner v. Kirven*, 184 S.C. 37, 191 S.C. 814, 816 (1937), the Court held a debtor must retain sufficient assets to satisfy their debts or such transfers rendering them unable to pay their debts shall be deemed null and void. *See also Coleman*, 261 S.C. at 209; *Matthews v. Matthews*, 207 S.C. 170, 35 S.E.2d 157, 159 (1945).

(vi) A Transfer Where a Debtor Retains Possession of the Transferred Property is an Indicia of Fraud

One of the more common badges of a fraudulent sale is the vendor's retaining possession after an alleged absolute transfer. *See Dinkins v. Robbins*, 200 S.C. 475, 21 S.E.2d 10, 16 (1942). In *Coleman v. Daniels*, previously cited above, the grantor of the property, the defendant, continued to live in the premises that was the subject of the fraudulent conveyance, and the court counted this as a badge of fraud, specifically as evidence of "the reservation of benefit to the transferor." 261 S.C. at 209.

(vii) A Transfer That Is Kept Secret is an Indicia of Fraud

In *Coleman v. Daniel*, 261 S.C. 198, 209, the Court cited to defendant's secrecy and concealment of a transfer to relatives to determine that the defendant fraudulently conveyed property in an effort to avoid satisfying judgments held by the plaintiff.

Separately, please also see the attached South Carolina Statutes on the Statute of Elizabeth and debtor transfers.

B. CONSTRUCTIVE TRUST

A constructive trust arises when the property was acquired in a way that makes it inequitable for the title-holder to retain possession, which may result from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. *See Lollis v. Lollis*, 291 S.C. 525, 529-30, 354 S.E.2d 559, 561 (1987). Further, a constructive trust "arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it." *Hale v. Finn*, 388 S.C. 79, 89, 694 S.E.2d 51, 57 (Ct. App. 2010) (quoting *SSI Med. Servs v. Cox*, 301 S.C. 493, 500, 392 S.E.2d 789, 793 (1990)). "A constructive trust arises entirely by operation of law without reference to any actual or supposed

intentions of creating a trust.” *Hale*, 388 S.C. at 89 (quoting *SSI Med. Servs. v. Cox*, 301 S.C. at 500).

A constructive trust is imposed as a remedy to prevent unjust enrichment, the enforcement of which is “subject to the equitable discretion of the trial court.” *Hale* at 90. “A constructive trust does not ... arise because of a manifestation of an intention to create it, but it is imposed as a remedy to prevent unjust enrichment.” *Hale* at 89 (quoting Restatement (First) of Restitution § 160 cmt. a (1937)).

C. CIVIL CONSPIRACY

“The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage.” *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009); *see also Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct.App.1989). “Civil conspiracy involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence.” *McMillan v. Oconee Mem’l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006); *see also Robertson v. First Union Nat’l Bank*, 350 S.C. 339, 349, 565 S.E.2d 309, 314 (Ct.App.2002); *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 292, 278 S.E.2d 607, 611 (1981) (“Conspiracy is the conspiring or combining together to do an unlawful act to the detriment of another or the doing of a lawful act in an unlawful way to the detriment of another.”); *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 324, 701 S.E.2d 39, 46 (Ct. App. 2010)(same).

D. NEGLIGENCE/AIDING AND ABETTING

A “cause of action for negligence requires: (1) the existence of a duty on the part of the defendant to protect the plaintiff; (2) the failure of the defendant to discharge the duty; (3) injury

to the plaintiff resulting from the defendant's failure to perform." *South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 375, 346 S.E.2d 324, 325 (1986); see also *Shipes v. Piggly Wiggly St. Andrews, Inc.*, 269 S.C. 479, 482-83, 238 S.E.2d 167, 168 (1977)(elements for an action in tort are a duty, breach of that duty, proximate causation, and injury). "A legal duty is that which the law requires to be done or forbore with respect to a particular individual or the public at large[.]" [*Byerly v. Connor*, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992)(Harwell, C.J.); see also *Morris v. Mooney*, 288 S.C. 447, 449, 343 S.E.2d 442, 443-44 (1986)(negligence requires a legal duty on the part of the tortfeasor to the injured party); *Sharpe v. South Carolina Department of Mental Health*, 292 SC 11, 16, 354 S.E.2d 778, 781 (Ct. App. 1987)(Bell, J., concurring)(whether a defendant is under a legal duty is a question of law). "Without a violation of . . . a legal duty, there is no negligence." *Byerly v. Connor*, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992) (Harwell, C.J.).

"Negligence is deemed to be the proximate cause of an injury when, without such negligence, the injury would not have occurred or could have been avoided." *McNair v. Rainsford*, 330 S.C. 332, 349, 499 S.E.2d 488, 497 (Ct. App. 1998); see also *Allen v. Long Mfg. NC, Inc.*, 332 S.C. 422, 432, 505 S.E.2d 354, 359 (Ct. App. 1998)("As with any claim of liability for negligence, the breach of duty of care must be the proximate cause of the resulting injury."). "Proximate cause is the efficient or direct cause of an injury . . . [but] does not mean the sole cause." *Hurd v. Williamsburg County*, 353 S.C. 596, 613, 579 S.E.2d 136, 145 (Ct. App. 2003); see also *Wills v. Floyd Brace Co., Inc.*, 279 S.C. 458, 461-62, 309 S.E.2d 295, 297-98 (Ct. App. 1983)(Sanders, C.J.)("Proximate cause is the efficient or direct cause of an injury. Negligence is deemed to be the proximate cause of an injury when, without such negligence, the injury would not have occurred or could have been avoided.").

Moreover, a party will be held liable for negligently, recklessly, knowingly, and/or

intentionally aiding and abetting a co-conspirator in injuring a plaintiff. *Pruitt v. Bowers*, 330 S.C. 483, 485, 499 S.E.2d 250, 251 (Ct. App. 1998)(cause of action for negligent aiding and abetting by plaintiff who was injured in car wreck against passenger in car driven by drunk driver).

IV. Plaintiff's Potential Trial Exhibits

Plaintiff will attach or supplement a list of trial exhibits.

V. Plaintiff's Potential Witnesses and Estimated Time of Testimony

Attached hereto is a comprehensive witness list. Plaintiff will attempt to pare down this list, depending on objections and rulings relating to the admissibility of evidence. Plaintiff reserves the rights to call any witness named by the Defendant and to introduce as evidence deposition testimony pursuant to Rule 32, SCRCP.

Depending on the pace of the trial, Plaintiff believes the trial will last approximately one and a half days.

VI. Pending or Potential Motions

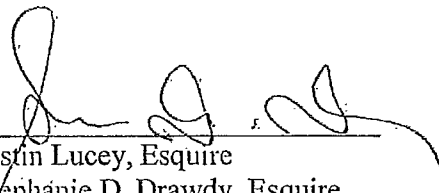
Plaintiff believes all other prior motions have been resolved. Plaintiff anticipates one Motion in Limine.

VII. Statement Regarding Settlement Negotiations

The parties have previously unsuccessfully engaged in discussions regarding a settlement of this matter. Defendant has never made an offer.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

A handwritten signature in black ink, appearing to read 'Justin Lucey', written over a horizontal line.

Justin Lucey, Esquire
Stephanie D. Drawdy, Esquire
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806

Charleston, South Carolina
June 12, 2013

Gordon v Atkinson, et al
Case No.: 2010-CP-10-9096

Plaintiff's Deposition Designation for Publication

Page/Line and Exhibits as Noted

5/14/2011 Deposition of Jessie Atkinson

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8/18-9/21

12/4-10

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Ex. 7

Ex. 8

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Deposition of Jessie Atkinson

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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF JESSIE ATKINSON.

FRANK GORDON, JR., as Attorney-in-Fact for DOROTHY
GORDON,

Plaintiff,

vs. CASE NO. 2010-CP-10-9096

JESSIE B. ATKINSON, Individually, and as Personal
Representative of the Estate of EFFIE D. DREWS;
DONALD W. LANCASTER, and SHIRRESE BROCKINGTON as
Special Administrator of the Estate of RUDOLPH
ROBERT DREWS,

Defendants.

DEPONENT: JESSIE ATKINSON

DATE: MAY 4, 2011

TIME: 9:00 AM

LOCATION: Law Offices of Justin O'Toole Lucey
217 Lucas Street
Mount Pleasant, South Carolina

REPORTED BY: Darah L. Nekola, Court Reporter

CLARK & ASSOCIATES, INC.

P.O. Box 75129

Charleston, SC 29415

843-762-0204
WWW.CLARK-ASSOCIATES.COM

DON

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APPEARANCES

ON BEHALF OF THE PLAINTIFF:

LAW OFFICES OF JUSTIN O'TOOLE LUCEY
BY: STEPHANIE DRAWDY
415 Mill Street
Mount Pleasant, SC 29464
843-849-8400

ON BEHALF OF THE DEFENDANT JESSIE ATKINSON:

HILL AND HILL, LLC
BY: TERESA Z. HILL
PO Box 369
Ravenel, SC 29470

SPECIAL ADMINISTRATOR OF THE ESTATE OF RUDOLPH
ROBERT DREWS:

SHIRRESE B. BROCKINGTON
764 St. Andrews Boulevard
Charleston, SC 29407

JESSIE ATKINSON,

having been first duly sworn, was examined and
testified as follows:

EXAMINATION

BY MS. DRAWDY:

Q. Could you state your full name for the
record?

A. Jessie Atkinson.

Q. Have you ever given your deposition before?

A. Yes.

Q. In what case have you done that?

A. It was in -- when we bought our home, there
were major deficiencies in the construction of the
house, so we sued the companies.

Q. Was that the only time?

A. Yes.

Q. How long ago was that?

A. At least three years. Maybe a little
longer.

Q. Well, as you may recall from that
deposition, the court reporter is going to take
everything down. So if your answer calls for a yes
or no, try to avoid shaking your head.

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Deposition of Jessie Atkinson

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1 A. I will try.
2 Q. And we will try to avoid speaking over each
3 other. And if you have any questions about
4 anything I have asked, just let me know, and I will
5 try to rephrase the question. Can you give me your
6 address where you live?
7 A. 1742 Sam Rittenberg Boulevard at apartment
8 23-C in Charleston, 29407.
9 Q. Who do you live there with?
10 A. Myself.
11 Q. How long have you lived at that address?
12 A. Since January the 14th.
13 Q. Do you own that property?
14 A. No.
15 Q. Do you rent?
16 A. I'm renting an apartment.
17 Q. Do you own any property?
18 A. I'm part owner of a home in Stono Ferry.
19 Q. What's the address on that?
20 A. 5125 Old Washington Course, Hollywood.
21 Q. And who do you own that property with?
22 A. With my husband.
23 Q. What's his name?
24 A. Alden A. Scott.
25 Q. And where does Alden Scott live?

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1 A. He's in the house.
2 Q. Do you have any children?
3 A. Yes. I have two.
4 Q. What are their names?
5 A. One is Harry E., Jr. -- Atkinson, Jr., and
6 my daughter's name is Drew Atkinson Putt, P-u-t-t.
7 She lives in Atlanta.
8 Q. Where does Harry Jr. live?
9 A. He lives in Charleston.
10 Q. Any other properties besides the Stono
11 Ferry?
12 A. No. Well, a car, you know.
13 Q. Tell me about your educational background.
14 A. I'm an RN, registered nurse. Three years --
15 three-and-a-half years of nursing.
16 Q. When was the last time you were practicing
17 as an RN?
18 A. I think that was in '63 was the last time.
19 At the American Red Cross.
20 Q. Are you currently retired?
21 A. Yes.
22 Q. When was the last time that you worked?
23 A. Early part of '64. My husband was ill, so I
24 stopped to take care of him. That was my first
25 husband.

Clark and Associates Inc.

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1 Q. What was his name?
2 A. Harry E. Atkinson.
3 And did Mr. Atkinson pass away?
4 A. He did. He died in '94.
5 Q. Were you married up until '94?
6 A. Yes.
7 Q. Do you own any companies?
8 A. No.
9 Q. Tell me about any financial transactions you
10 had with Rudolph Robert Drews.
11 A. I had none.
12 Q. What about Effie Drews?
13 A. None.
14 Q. What about Donald Lancaster?
15 A. None.
16 Q. Tell me about any properties that you owned
17 with Rudolph Robert Drews.
18 A. I didn't own any properties.
19 Q. Were you ever involved in any land
20 transactions with Rudolph Robert Drews?
21 A. No.
22 Q. What about Effie Drews?
23 A. No.
24 Q. What about Don Lancaster?
25 A. No.

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1 Q. What's your knowledge of the property that
2 Rudolph and Effie had at 1705 Meeting Street?
3 A. I know absolutely nothing about their
4 property or their business or anything. They never
5 discussed their business with me. They were very
6 private people. I know absolutely nothing about
7 their property.
8 Q. What do you know about the basis of this
9 lawsuit?
10 A. I didn't know anything until after he
11 died -- Mr. Drews died, and then I found out there
12 was a lawsuit going on. I knew nothing about it.
13 He died in 2009, September.
14 Q. And in around 2000, 2001, what was your
15 knowledge of the lawsuit that was going on against
16 Mr. Drews?
17 A. I didn't know anything about it.
18 Q. Did you -- what did you know about a
19 judgment being entered against Mr. Drews?
20 A. I knew nothing about all of that until after
21 he died.
22 Q. What did you learn after he died?
23 A. That he had a judgment against him.
24 Q. How did you learn that?
25 A. Through my sister.

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1 Q. How did you come to have a conversation with
2 your sister about that?

3 A. It wasn't a conversation, per se. It was --
4 when she was -- what do you call it -- when they
5 subpoena you? When she got that in the mail,
6 Donald Lancaster took her to the lawyers, and we --
7 she asked if my husband and I would go with them.
8 We went a couple of times. That's when I found out
9 about it. And there was no judgment against my
10 sister. It was him.

11 Q. And you said that you and your husband,
12 Alden Scott, went with Effie?

13 A. Several times along with Donald Lancaster to
14 see Kerry Koon, the lawyer.

15 Q. What was the purpose of those meetings?

16 A. She needed a lawyer, you know, to defend
17 her, I guess, for whatever they were trying to
18 accuse her of.

19 Q. Did you sit in on the meetings with Kerry
20 Koon and Donald Lancaster and Effie Drews?

21 A. Yes, a couple of times.

22 Q. What was your input in those meetings?

23 A. I didn't have much input at all because I
24 didn't know anything about it.

25 Q. So what was your purpose in being in those

1 meetings --

2 A. Because she asked me to come.

3 Q. Just let me finish my question before you
4 answer.

5 A. I thought you had.

6 Q. At what point did you stop going to the
7 attorney meetings with Ms. Drews?

8 A. I guess when they started subpoenaing them.
9 I only went maybe twice with her.

10 Q. What conversations did you have with Effie
11 Drews about these attorney meetings?

12 A. I said, you know, what is it all about?
13 What happened?

14 Q. What did she say?

15 A. She said that, you know, they bought a
16 business -- a bunch of people, I think, 12 or 15
17 people. I think all of them put in \$50,000, and
18 the business, you know, flopped. And everyone lost
19 the money. Mr. Drews, all of them, and Mr. Gordon,
20 but he was the only one who pursued it. The other
21 people took their losses. That's about it.

22 Q. Anything else that Effie told you about this
23 suit?

24 A. She may have, but I can't remember, you
25 know. She was very upset. I was too.

1 Q. Why was she upset?

2 A. Because all of this was going on. She --
3 her husband took care of all of the business. She
4 told me that, and she didn't know anything, you
5 know. She didn't know much about it. And I think
6 all of that stress from this lawsuit, it expedited
7 her death, but, you know, I didn't -- she didn't
8 tell me anything about the property or anything
9 else. She had no reason to.

10 Q. Before Mr. Drews' death in 2009, how often
11 would you socialize or see Mr. Drews?

12 A. We didn't socialize very much because they
13 both were not in good health, and we lived in Stono
14 Ferry, they lived in West Ashley. I would call --
15 we would talk on the phone, and I would see her
16 maybe once a month, maybe not even that often
17 sometimes because they wouldn't go anywhere.

18 Q. What was wrong with your sister's health
19 before 2009?

20 A. Well, she had high blood pressure, you know.
21 And then she went into atrial fibrillation after he
22 died, had to be hospitalized. And she was seeing
23 Dr. Miller, who's a cardiologist.

24 Q. What was his name?

25 A. Miller.

1 Q. Anything else that was wrong with Effie's
2 health?

3 A. Not that I know of.

4 Q. What about Mr. Drews' health, you said it
5 was bad?

6 A. Mr. Drews wasn't himself after he had the
7 heart surgery, and I think he was beginning to get
8 a little dementia, you know. He would forget, and
9 then he would tell things that didn't make any
10 sense.

11 Q. Were those conversations that you had where
12 you noticed that with Mr. Drews?

13 A. Well, we would be sitting in a room, you
14 know, when we did see them, and, you know, he would
15 say things, and my sister would look at him and
16 say, what are you talking about, you know. It's
17 just stuff like that. It wasn't anything about
18 property or anything like that. And then he
19 couldn't remember dates and stuff like that.

20 Q. Do you remember when he had the heart
21 surgery?

22 A. It might have been in 2007. I'm not sure.

23 Q. Besides the heart surgery and the memory
24 loss, was there anything else with his health that
25 you noticed?

Deposition of Jessie Atkinson

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1 A. Yes. He had surgery on his leg, his knee --
2 knee replacement.
3 Q. What was your perception of Mr. Drews'
4 financial status prior to his death?
5 A. I didn't know anything about his financial
6 problems. I really didn't.
7 Q. What was your perception of his financial
8 worth?
9 A. Same, you know. I just didn't know anything
10 about it. They didn't tell me anything. I didn't
11 know they were even in trouble until after he died.
12 I mean, without money. They had no money.
13 Q. And how did you learn that they had no
14 money?
15 A. After he died, from my sister.
16 Q. And tell me about that.
17 A. She just said we don't have -- you know, I
18 have got to be very careful, because, you know, I
19 don't have a lot of money.
20 Q. Did she tell you how long they hadn't had
21 any money?
22 A. No.
23 Q. Was there anything else that she told you
24 about that?
25 A. I can't remember if she did. We didn't

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1 talk -- we didn't talk that much about stuff like
2 that.
3 Q. What was the reason for her bringing it up
4 to you then after his death?
5 A. I beg your pardon?
6 Q. What was the reason for her telling you that
7 they had no money after Mr. Drews died, when she
8 mentioned that to you?
9 A. I don't know. We were just talking. She
10 was depressed and very upset that he had died
11 because they were a very close couple. I don't
12 know. We just had a conversation talking, you
13 know, and that came up.
14 Q. Did she mention to you the reason they
15 didn't have any money?
16 A. No, not to me. She didn't talk to me about
17 any finances or any money or any property. None of
18 that.
19 Q. Have you had any conversations with anyone
20 else about Mr. Drews and Ms. Drews not having any
21 money?
22 A. No.
23 Q. Have either of your children ever had any
24 financial dealings with Mr. Drews or Ms. Drews?
25 A. No.

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1 Q. What about your husband, Alden Scott?
2 A. No.
3 Q. What about your first husband, Harry
4 Atkinson?
5 A. No.
6 Q. Tell me about your reason for having joint
7 bank accounts with your sister.
8 A. After he died you mean?
9 Q. At any time.
10 A. Well, that was the only time, and she wanted
11 to buy a CD and that was from the insurance money.
12 that came from him. And we went to RBC, and I was
13 made POD, you know, pay on death. That's the only
14 account that I had with her.
15 Q. Tell me about the estate dealings that you
16 have had for your sister's estate.
17 A. Well, I was the personal representative, so
18 my husband and I took care of what you have to do
19 for probate. And all of that should be -- you
20 should have that.
21 Q. So tell me about the moneys that you
22 received, what did you do with those?
23 A. That she left to me? The money she left to
24 me? Is that what you're talking about?
25 Q. The moneys in the estate after all of the

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1 expenses were paid.
2 A. There's still 13,000 in an estate account.
3 13,900 and something. And the rest of the -- the
4 CDs and the bank accounts were left to me. So
5 they're in the bank and in my accounts. She had no
6 heirs, had no children --
7 Q. Did your sister tell you where the moneys
8 that were deposited into -- other than the
9 insurance CD that she purchased, did she tell you
10 where any of the moneys came from that were in her
11 bank account?
12 A. No.
13 Q. Did you ever have conversations with her
14 about that?
15 A. Not at all.
16 Q. So you had -- you and your attorney had
17 prepared Answers to Complaints that were filed in
18 the common pleas court and the probate court. Do
19 you recall that?
20 A. Complaints?
21 Q. Yes, ma'am. It's the document that starts
22 the lawsuits that were filed against you in probate
23 court and the common pleas court?
24 A. I didn't know about that until after, you
25 know, we had done all of that. Until November.

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1 Q. Okay. Well, that's when the Amended
2 Complaint in the common pleas court was filed was
3 in November of last year.

4 A. Okay.

5 Q. And your attorney had prepared an answer on
6 your behalf. And I had some questions about some
7 of the responses in that.

8 A. Okay.

9 MS. HILL: Could she take a look at
10 that before --

11 MS. DRAWDY: Do you have your copy? I
12 only have a marked up copy.

13 (Off-the-record discussion.)

14 MS. HILL: If you just want to look at
15 that, and then she will ask you questions.

16 Q. So Ms. Atkinson, you have in front of you
17 the Answer that your attorney prepared in the
18 common pleas action with the case number
19 2010-CP-10-9096. And I was going to ask you to
20 look at paragraph -- or the answer to paragraph 11
21 of the Complaint -- of the Amended Complaint. And
22 paragraph 11 of the Amended Complaint states in
23 August 2006, the Court entered an order for
24 supplemental proceedings to be opened to aid Gordon
25 in satisfaction of the judgment. You -- your

1 A. I don't understand what you mean by that.

2 Q. Prior to your brother-in-law's death, did
3 you have any conversations with Effie Drews or
4 anyone about the judgment against your
5 brother-in-law?

6 A. Well, I'm sure I had with Kerry Koon, and my
7 sister and Donald probably, he was there, and my
8 husband.

9 Q. When was that?

10 A. I don't remember the dates. It was when we
11 were going -- when my sister was going to him. It
12 was after he died.

13 Q. Did you ever have any involvement before Mr.
14 Drews died?

15 A. No, I didn't. No.

16 Q. If you could look at the response in your
17 answer to paragraph 33 of the Amended Complaint,
18 which reads, Defendant Atkinson received the
19 \$47,942.89 from the wife for no consideration. The
20 wife is your sister. And you have admitted that
21 you received the money, but deny that it was for no
22 consideration.

23 A. I received the money because she asked me to
24 deposit it in my bank account -- in my bank, RBC,
25 since I was the executrix of -- or alternate

1 answer was that you admitted that paragraph and
2 that --

3 A. Where is this? Which one is it?

4 Q. It's the answer to paragraph 11. And I was
5 just wanting to know what your knowledge of the
6 supplemental proceedings were that you would admit
7 that that occurred?

8 A. I don't understand this at all. It's
9 without sufficient information or belief so as to
10 form an opinion --

11 MS. DRAWDY: Teresa, can you point out
12 the answer to paragraph 11, which I believe was
13 admitted?

14 MS. HILL: This is what she's
15 questioning you from, and you just answer what you
16 know, if anything.

17 A. I don't understand it. This is without
18 information. I don't understand what it means.
19 What's it talking about? Information, allegations.
20 I'm very stupid when it comes to this type of
21 thing.

22 Q. What do you know about the supplemental
23 proceedings that were going on to get satisfaction
24 of the judgment entered against your
25 brother-in-law?

1 executrix of both of their wills. I assumed it was
2 for future livelihood, in case one of them died.
3 So I took it, and I deposited it.

4 Q. Tell me about the conversations that
5 occurred in about the time that you received this
6 40,000-some-odd dollars, that you came to take that
7 money from your sister.

8 A. She called and asked me if I would deposit
9 that for her, and I said, sure. I had no reason
10 not to. It was her money. And so I did. I
11 deposited it, and six days later -- that was on the
12 7th of February, 2009. And on the 13th of February
13 she called and said, I need the money. Would you
14 please get it for me? And I was kind of
15 embarrassed to do it, but I did. I took a
16 cashier's check back to them for 50,041-something,
17 and gave them the check, and that was the end of
18 it. I didn't hear any more from it and didn't talk
19 about it from then on. I assumed it was for money
20 that they would need if one died, and then I would
21 be a sister that would be able to --

22 Q. Do you recall how you received this \$47,000
23 approximately?

24 A. Yes. Recall when? Why?

25 Q. Do you recall when?

Deposition of Jessie Atkinson

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1 A. Yes.
2 Q. About what time was that?
3 A. It was February the 7th --
4 Q. Oh, okay.
5 A. -- in the morning sometime.
6 Q. And in what form did you receive that money?
7 A. They were checks.
8 Q. How many checks?
9 A. Well, I don't know. I didn't count them.
10 There must have been at least three or four, maybe
11 more, because she made a personal check out herself
12 to make it \$50,000. And that's what was put in the
13 bank.
14 Q. No, wait. You deposited a \$50,000 check?
15 A. No. The four of them -- or whatever the
16 amount they were, came to 50,000.
17 Q. Well, this 47,000 -- \$50,000, approximately,
18 that you received from your sister, this was two
19 years prior to your brother-in-law's death; is that
20 correct?
21 A. Right.
22 Q. So why were you receiving money in 2007 for
23 the -- from your sister?
24 A. 2009. I'm sorry. It wasn't 2007.
25 Q. What was 2009?

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1 A. That I got the money. Received the money.
2 I'm sorry.
3 Q. Why do you think it was 2009?
4 A. Because I know it was. It was February the
5 7th in 2009. They took the checks to the bank.
6 Mr. Drews died in September of 2009.
7 Q. Well, you would still be receiving the money
8 before Mr. Drews died; is that correct?
9 A. Right. I received all of it at one time,
10 took it to the bank, and six days later I withdrew
11 it from the bank. Took them a cashier's check, and
12 that was the end of it.
13 Q. What account did you deposit this money from
14 your sister into --
15 A. Into a CD.
16 Q. Why is that?
17 A. Because they asked me to.
18 Q. Who is they?
19 A. My sister asked me to put it in a CD.
20 Q. Did someone else besides your sister ask you
21 to do that?
22 A. No.
23 Q. You just said they --
24 A. Well, I meant her. It was hers.
25 Q. Let me finish my question. Why do you think

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1 it's her money?
2 A. Because her name was on the checks. His
3 wasn't on it.
4 Q. Did your sister tell you where the money in
5 her First Southeast account came from?
6 A. No.
7 Q. Did you have any conversations with
8 anyone --
9 A. I didn't ask.
10 Q. Did you have any conversations with anyone
11 about where the money that was in the First
12 Southeast account came from?
13 A. No.
14 Q. Did your sister have an independent income
15 during her life?
16 A. Social Security.
17 Q. How much Social Security did she receive?
18 A. I don't know.
19 Q. Did she have any other income besides Social
20 Security?
21 A. No.
22 Q. Did your sister ever work?
23 A. I think when they first got married and they
24 owned a business downtown she worked for a while,
25 but that's been many, many years ago.

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1 Q. Okay. Your attorney produced a set of
2 documents that in discovery we have Bates stamped
3 pages 1 through 101, and we have a copy of it for
4 you here. It has been previously marked as
5 Plaintiff's Exhibit 2, and I know it's small, but
6 the Bates number that I will be referring to is at
7 the bottom corner.
8 MS. DRAWDY: It's the same order that
9 you produced the documents to me. Shirrese, do you
10 have the documents -- a copy from Ms. Hill when she
11 produced discovery?
12 MS. HILL: I think I have it.
13 MS. BROCKINGTON: She gave me a package
14 last week.
15 MS. DRAWDY: It should be in the same
16 order as the request for production information.
17 Q. So I just want to go through these documents
18 and have you explain to me as we go through them.
19 If you want to take a minute to look through it,
20 you can. It's the documents that your attorney
21 produced to us that is in front of you right now.
22 It's Plaintiff's Exhibit 2. The first page is an
23 accounting by Dorsey Biller; is that correct?
24 A. Yes.
25 Q. What is your understanding of this

1 accounting?

2 A. Well, I called him after -- well, I called
3 the bank first when I got summons -- well, my
4 husband called RBC to get a copy of the cashier's
5 check that I -- and his name was on. We could make
6 out that the check had been taken to Mr. Dorsey.

7 So when I found that out, I called him and
8 asked him, you know, if he had the money. He
9 admitted it freely, and I said, well, I need an
10 accounting of it because since I am the personal
11 representative for my sister. And he -- this was
12 on the 12th of December, and he sent this by e-mail
13 on the 13th of December, that morning.

14 Q. He sent this accounting to you?

15 A. Uh-huh.

16 Q. How did he send it to you?

17 A. E-mail to my husband. I don't have e-mail.

18 Q. So how was it that you saw there was a
19 \$50,000 amount that Mr. Biller allegedly owed?

20 A. Because that's the cashier's check that I
21 deposited in the bank and that's what happened to
22 the cashier's check, Mr. Drews took it to Dorsey
23 Biller. That's what he told me.

24 Q. Mr. Drews took a \$50,000 check to Dorsey
25 Biller?

1 Drews?

2 A. No. He didn't say anything to me about any
3 of that.

4 Q. Did he say who he owed this money to?

5 A. You mean all of this?

6 Q. Yes. Did he say why he was paying back
7 \$50,000 to Mr. and Ms. Drews?

8 A. Because Mr. Drews gave him the check to -- I
9 guess, to dispense whenever they needed it.

10 Q. Okay. If you will turn to the second page
11 of Exhibit 2, and that's -- at the top it says,
12 condition of EDD's estate assets; is that correct?

13 A. Uh-huh.

14 Q. Who prepared this document?

15 A. My husband.

16 Q. And the first listing is the New York Life
17 Insurance payment; is that correct?

18 A. Yes.

19 Q. And what did you do with that money?

20 A. I put that in my account.

21 Q. Which account?

22 A. I can't remember which one. It might have
23 been in my money market at Wachovia.

24 Q. And the second one is the payout on the
25 First Citizens checking account; is that correct?

1 A. Cashier's check.

2 Q. When was that?

3 A. I don't know when he took it. I only know
4 that that's where the check went after I gave it
5 back to my sister.

6 Q. So somewhere before 2009, when Mr. Drews
7 died, he gave a \$50,000 check to Mr. Biller. Is
8 that what you're saying?

9 A. Yes. And I don't know when it was.

10 Q. What was the purpose of that \$50,000 check?
11 Why was Mr. Drews giving it to Mr. Biller?

12 A. I don't know that.

13 Q. Did you ask anyone?

14 A. No. In fact after I gave her the \$50,000
15 cashier's check, I didn't even think any more about
16 it. Of course, I didn't know what was going on
17 with anything.

18 Q. So did Mr. Biller have any other documents
19 he gave you to support this accounting when he sent
20 it to you?

21 A. After Ms. Drews died, he sent a check for
22 \$7,084.12, and I put that in Ms. Drews' estate
23 account. Well, it has the date 25th of March.

24 Q. Did Mr. Biller say why in October 2007 he
25 started making payments to Effie instead of Mr.

1 A. That went into an account for her.

2 Q. Went into where?

3 A. An account at Wachovia that we set up.

4 Q. Who is we?

5 A. My husband and I set up for Ms. Drews.

6 Q. And so at her death, what did you do with
7 that money?

8 A. Well, a lot of it was paid for her -- well,
9 that's in here, what was done with it. The
10 funeral, Magnolia Cemetery. There's a list of
11 everything here. It came to \$11,823.07.

12 Q. And the third item on Bates number 2 is
13 Wachovia checking, and it lists \$7,599 --

14 A. That went into my account, too, because it
15 was left to me.

16 MS. HILL: Make sure and let her finish
17 asking her questions because it's -- the court
18 reporter, it makes it real hard for her to get both
19 of you all when you are talking at the same time.

20 Q. How was it determined that the balance of
21 the Wachovia checking account was the \$7,599?

22 A. How was it determined?

23 Q. Yes.

24 A. We went to Wachovia after she died to check
25 all of this -- before she died to check all of this

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1 out.
2 Q. If you will turn to Bates number 33. It's
3 the number in the lower right-hand corner, that's
4 Bates number 33 of Plaintiff's Exhibit 2.
5 (Exhibit No. 2 was marked for
6 identification.)
7 Q. Now, that's a statement from February to
8 March 2010 for Effie Drews' Wachovia account ending
9 in 487; is that correct?
10 A. Yes.
11 Q. And it has a withdraw of \$8,683.73 closing
12 the account -- or making the closing balance 0; is
13 that correct?
14 A. Yes.
15 Q. So I was curious why the amount listed in
16 her assets is \$1,000 less than what was withdrawn
17 from her account?
18 A. I don't know why. I can find out, I'm sure.
19 Q. Who would you find that out from?
20 A. I can go home and look in my accounts, what
21 I have.
22 Q. You said that your husband put this document
23 together?
24 A. He did.
25 Q. So was he the one dealing with the money for

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1 the estate?
2 A. No. We both were. He just put it together,
3 you know.
4 Q. Who withdrew this money from account 487?
5 A. You're talking about the 8,000?
6 Q. \$8,683.
7 A. I probably took that out and put it in my
8 account because it was left to me. She left
9 everything to me.
10 Q. But then when you listed it on the assets
11 for the estate, it has been reduced.
12 A. Did I put it on there?
13 Q. Yes, ma'am.
14 A. Well, it might have been a mistake. I don't
15 know. It's just hard to know when this all
16 happened.
17 Q. Who has the vehicle that Effie had when she
18 died?
19 A. It was sold.
20 Q. And what was the money -- what was done with
21 that money?
22 A. It was put in her estate \$3,000.
23 Q. Which account was that put into?
24 A. We had -- we opened an account -- first we
25 opened a money market account, I think, and then we

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1 changed that to an estate account I held together
2 for whatever the -- when we went to probate,
3 whatever they said belonged to the estate. That
4 was with Wachovia that we put that in.
5 Q. Now, if you will turn to Bates number 56 in
6 Exhibit 2.
7 A. 56.
8 Q. This is an account ending in 254 with
9 Wachovia for the estate of Effie Drews; is that
10 correct?
11 A. Uh-huh. Yes.
12 Q. And it shows deposits totaling approximately
13 \$15,000.
14 A. Yes.
15 Q. And is this account holding all of the
16 assets that remain of your sister's estate?
17 A. I know it's in -- I would have to look at
18 home, but it's -- there's 13,900-some dollars left
19 in the estate --
20 Q. Well --
21 A. -- after the bills were paid.
22 Q. So then turning back to the front of
23 Exhibit 2 to Bates number 3, it lists the expenses
24 of your sister's estate. And then at the end the
25 bottom line is assets less expenses is \$43,747.77

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1 as of December 2010; is that correct?
2 A. Right.
3 Q. Where is the remaining money from the
4 \$43,000 here?
5 A. Well, it belonged to me. It went into my
6 account, and this is left, the expenditures of
7 her --
8 Q. So it's approximately a \$28,000 difference
9 between what's in her estate account and what's
10 listed on Bates number --
11 A. Well, you know, all of this adds up. A CD
12 was mine. I put in my account. The checking went
13 into my account. And that was left to me. The CD
14 from RBC, and that's why it was -- the remainder is
15 43,000-dollars-and-something. 3,000 was the
16 estate. AARP was in the estate. These refunds
17 were in the estate.
18 Q. Well, I will represent to you that the
19 Answer to the Amended Complaint that we were
20 looking at a little while ago for the common pleas
21 action filed against you lists -- or asks about the
22 net worth of your sister's estate. And your
23 response in your Answer was that you had no
24 knowledge of the assets in your sister's estate.
25 And I would like to know the basis for you not

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1 having any knowledge of it if you have received all
2 of these moneys?

3 A. I don't remember saying I didn't know
4 anything about the assets.

5 Q. I will show you, Ms. Atkinson, the Answer to
6 the Amended Complaint in the common pleas action.
7 It's paragraphs 33, 35, and 36 that relate to the
8 estate of Ms. Drews.

9 A. I had to know the assets because I had to --
10 was the -- had to go to probate court. All of that
11 had to have been on here, the net worth.

12 MS. HILL: Here's 33.

13 A. I don't understand any of this.

14 Q. Did you consult with your attorney when the
15 Answer to the Amended Complaint was being prepared
16 in this case -- in the common pleas action?

17 A. I don't remember. I'm sorry, but I don't
18 remember.

19 Q. So do you agree that you received the assets
20 of your sister's estate?

21 A. Yes, it was left to me.

22 Q. You also had in your Answer that your
23 attorney prepared, in the probate case, had -- I
24 will represent to you that you had answered

25 that you had -- you denied the judgment against Mr.

1 identification.)

2 Q. Let's just go through them then. This has
3 been marked as Plaintiff's Exhibit 3. And it is an
4 RBC account ending in 1316 that I do not believe
5 was listed in your responses to discovery. You can
6 just take a look at that, and it's a printout of
7 the activity in that account. Just let me know
8 when you're done looking through it.

9 A. What did I leave out? I have three -- two
10 CDs there, and a checking account.

11 Q. Well, okay. Just to clarify. This account
12 ending in 1316 --

13 A. Where is that?

14 Q. -- that's marked as Plaintiff's Exhibit 3 --

15 A. This is my daughter that -- I had a CD there
16 long before. That was left to her.

17 Q. Now, if you will turn to what's been Bates
18 number stamp -- Bates number 3, on the lower right
19 corner of Plaintiff's Exhibit 3, and it shows a
20 deposit in March of 2010 for \$10,493.14, which --
21 if we go back to Exhibit 2, Bates number 43 and
22 Bates number 73, shows that that is the insurance
23 CD that was deposited from your sister; is that
24 correct?

25 A. Right.

1 Drews' estate. Did you have any basis or any
2 knowledge about the judgment against Mr. Drews'
3 estate?

4 A. Not until he died -- after he died, and it
5 was against him. There was no judgment against my
6 sister.

7 Q. But you do agree that there is a judgment
8 against Mr. Drews?

9 A. Well, I understand there is, yes. After he
10 died I found all of that out.

11 Q. And do you agree that the judgment is now
12 against Mr. Drews' estate?

13 A. Right.

14 Q. And you have no knowledge of whether or not
15 the moneys that were in your sister's account were
16 Mr. Drews' moneys, do you?

17 A. No.

18 Q. We had issued a subpoena to RBC Centura a
19 while back that your attorney was copied on, and it
20 listed numerous accounts that were not listed in
21 your responses to discovery about the accounts that
22 exist. Why is that?

23 A. Numerous? I have a small checking account
24 at RBC, and as far as I know, two CDs.

25 (Exhibit No. 3 was marked for

1 Q. Okay. So that is the account holding this
2 insurance money from Mr. Drews; is that correct?

3 A. Correct.

4 Q. And I'll show you what has been marked as
5 Plaintiff's Exhibit 4.

6 (Exhibit No. 4 was marked for
7 identification.)

8 Q. Now, this is an account that was referenced
9 in your request for production on Bates number 73
10 of Plaintiff's Exhibit 2. And it's an account that
11 you held jointly with your sister, Effie Drews; is
12 that correct?

13 A. Correct.

14 Q. And it's ending in account number 8627 with
15 RBC Centura, correct?

16 A. Correct.

17 Q. Now, if you will look to the very last page
18 of Plaintiff's Exhibit 4, it shows that ending
19 balance was \$10,493.13 in March of 2010. Do you
20 see that?

21 A. Yes. That's a CD, right?

22 Q. So that is the amount that was deposited
23 into your RBC Centura account 1316?

24 A. Uh-huh.

25 Q. Okay. And account 1316 is still open; is

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1 that correct?
 2 A. Yes. It's the CD -- two CDs.
 3 Q. Now, I am going to show you what has been
 4 marked as Plaintiffs 7. And it's an RBC Centura
 5 account ending in 7085.
 6 MS. HILL: If you want to go copy it,
 7 we can stop, but I'm not going to go without.
 8 MS. DRAWDY: Are we waiting on somebody
 9 to get a copy?
 10 MS. HILL: Uh-huh.
 11 Q. Now, the last page of Plaintiff's Exhibit 7,
 12 which is Bates numbered 7 --
 13 (Exhibit No. 7 was marked for
 14 identification.)
 15 Q. -- for the RBC account 7085, and it shows
 16 that on February 13th, 2007, there was a balance of
 17 \$50,014.69; is that correct?
 18 A. Correct.
 19 Q. And then if you turn to Plaintiff's
 20 Exhibit 2, Bates number 98, this is the check paid
 21 to you for \$50,041.69 that was endorsed by you and
 22 then later by Dorsey Biller; is that correct?
 23 A. Correct.
 24 Q. So this is the money that you're saying that
 25 Dorsey Biller did the accounting for?

1 A. Yes.
 2 Q. Now, that money came out of account number
 3 7085; is that correct?
 4 A. That's what it says, yes.
 5 Q. Okay. So I am going to show you what has
 6 been marked as Plaintiff's 9.
 7 (Exhibit No. 9 was marked for
 8 identification.)
 9 Q. This is a First Southeast Bank statement for
 10 your sister's account from January 2007. Do you
 11 see that?
 12 A. Yes.
 13 Q. Okay. Then the first page of Plaintiff's 9
 14 lists four checks, three for \$9,950 and one for
 15 \$18,092.89 making a total of \$47,942.89; is that
 16 correct?
 17 A. Correct.
 18 Q. And then attached are the following pages
 19 one -- 2 through 5 of Plaintiff's 9 list those
 20 copies front and back of those checks; is that
 21 correct?
 22 A. Correct.
 23 Q. And you have endorsed, along with your
 24 sister, the back of each of those four checks; is
 25 that correct?

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1 A. Correct.
 2 Q. Now, the deposit stamp on the back of each
 3 of those checks lists an RBC Centura account number
 4 053100850; is that correct?
 5 A. Where would that be?
 6 Q. If you turn the second page of Plaintiff's 9
 7 sideways, the back side of the checks show the
 8 stamp for February 7th, 2007. And that's true of
 9 all of the remaining checks attached to Plaintiff's
 10 9. Do you see that?
 11 A. I see it.
 12 Q. Whose account is that?
 13 A. Didn't this come from RBC?
 14 Q. This is from First Southeast.
 15 A. Oh, I don't know anything about those.
 16 Q. Well, these four checks that you endorsed
 17 are from First Southeast, do you recall endorsing
 18 those checks?
 19 A. I did endorse the checks, but I didn't look
 20 at them. I knew it was her money, and I had no
 21 reason to look at them.
 22 Q. And when you endorsed them, you deposited
 23 them into an RBC account, correct?
 24 A. Correct.
 25 Q. Which account is this?

1 A. It was a money market account -- a CD
 2 account.
 3 Q. Well, the \$50,000 check that we have been
 4 discussing is from account ending 7085 from RBC,
 5 and I'm curious what account these four checks with
 6 RBC were deposited into, because it's not from the
 7 account that issued the \$50,000 check to Dorsey
 8 Biller.
 9 A. I don't know. I know I deposited them in
 10 RBC.
 11 Q. Did you retain the \$47,000 that were
 12 deposited into this unknown account with RBC?
 13 A. Did I retain it?
 14 Q. Yes, ma'am.
 15 A. No.
 16 Q. Would you agree with me that this -- the
 17 back of these four checks do not show that they
 18 were deposited into account 7085?
 19 A. I don't know what happened to them. All I
 20 know is I deposited the checks into RBC, and I
 21 withdrew them on the 13th. I took this cashier's
 22 check to my sister, and that's all I know about it.
 23 Q. You received \$47,000, approximately, in
 24 these four checks. If this is the same money that
 25 was given to Dorsey Biller --

1 A. It has to be.
 2 Q. -- why is there a difference between the
 3 \$47,000 approximately that you received on
 4 February 7th, 2007 in one account that was
 5 deposited, and then the \$50,000 check that was
 6 issued out of account 7085?
 7 A. I don't understand.
 8 MS. HILL: Can you ask that again?
 9 Q. When you received these four checks from
 10 First Southeast that are paid to your sister, who
 11 decided what bank account they would be deposited
 12 into?
 13 A. My sister asked me to open an account in my
 14 name, an RBC -- CD at RBC.
 15 Q. Why did she ask you to open an account in
 16 just your name?
 17 A. I didn't ask her that. I just assumed it
 18 was because they wanted someone to have it that
 19 they knew in case in the future if they needed
 20 money, if one of them died, that that's where it
 21 would be.
 22 Q. Why wouldn't they just keep the money
 23 themselves?
 24 A. I don't know.
 25 Q. Did you ask them?

1 Q. Why was the house given to him?
 2 A. And he was going to let them live in it
 3 until they died. That's when he was trying to help
 4 my sister get papers together or whatever they
 5 needed to do because of the subpoena she had
 6 gotten.
 7 Q. Did Donald say why the house was given to
 8 him?
 9 A. No. He didn't say anything to me. I didn't
 10 ask.
 11 Q. Did Donald say anything else about what the
 12 Drews had given to him over the years?
 13 A. No.
 14 Q. About anything --
 15 A. Not to me, no.
 16 Q. Who did he say something to?
 17 A. I don't know.
 18 Q. Is there anything else that your husband was
 19 told about Mr. Drews' money?
 20 A. No, not that I know of.
 21 Q. Do you have anything to show that this
 22 \$47,942 that was deposited into an RBC account by
 23 you, do you have anything to show that that
 24 47,000-some-odd dollars is the same money that was
 25 issued out of account number 7085?

1 A. No.
 2 Q. Have you ever had any conversations with
 3 anyone about why they would give you money to hold
 4 for them?
 5 A. No, I haven't.
 6 Q. Have they ever done that before?
 7 A. No.
 8 Q. Do you know of anyone else that they have
 9 given money to to hold for them?
 10 A. No, I don't.
 11 Q. Have you ever had any conversations with
 12 Donald Lancaster about whether he was holding money
 13 for the Drews?
 14 A. No.
 15 Q. Do you know anything about that?
 16 A. No. Hearsay I know. I know he talked to my
 17 husband about, you know, buying -- I didn't even
 18 know they didn't own their house until he died.
 19 Q. And how did you learn that?
 20 A. Because he told us.
 21 Q. Who is he?
 22 A. Donald.
 23 Q. What did he tell you?
 24 A. That he had -- he had bought the house.
 25 That the house was given him. That was it.

1 A. Well, you see where I deposited the money in
 2 RBC.
 3 Q. It's deposited into an account ending in
 4 8504 -- I'm sorry, 0850.
 5 A. Well, that's my account evidently. RBC
 6 wouldn't give you somebody else's account if it was
 7 deposited into mine.
 8 Q. Well, you have numerous accounts with RBC.
 9 A. I have two. I have two CDs and a checking
 10 account.
 11 Q. But you will agree that account ending in
 12 0850 is different than account ending 7085, will
 13 you agree with me that those are different
 14 accounts?
 15 A. Well, it must be. I have two accounts
 16 there.
 17 Q. After this \$47,942 was deposited by you --
 18 A. Along with a check Ms. Drews made.
 19 Q. What was that check for?
 20 A. I don't know. I didn't look at them, but it
 21 came to \$50,000.
 22 Q. And did you sign that check also?
 23 A. Yes. And that's what went to Dorsey. The
 24 cashier's check was given back to me for \$50,000 --
 25 \$50,041 and something, and I took that check to my

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1 sister, and we found out later the check was taken
2 to Dorsey.
3 Q. But you have nothing to show that these four
4 checks that were deposited into an RBC account by
5 you are the same moneys that were given back to
6 Dorsey Biller, do you?
7 A. Well, it seems to me like it would tell you
8 that right there. I don't understand it. I knew
9 nothing about any of the affairs with my sister or
10 brother-in-law because they never told me anything,
11 and they called and asked me to do this for them,
12 and I did it.
13 Q. When you say they called you --
14 A. She called me. I'm sorry.
15 Q. Did you ever have any conversations with Mr.
16 Drews about accepting money for them and holding it
17 for them?
18 A. No, I didn't.
19 Q. I will show you what has been marked as
20 Plaintiff's Exhibit 5.
21 (Exhibit No. 5 was marked for
22 identification.)
23 Q. This is an RBC account ending in 9486 that's
24 in your name payable on death to Drew Putt.
25 A. Right.

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1 Q. Who is your daughter, correct?
2 A. Right.
3 Q. Now, what is this account? This is a CD
4 that you're referring to, correct?
5 A. Correct.
6 Q. And how much is this CD worth?
7 A. I don't know. I would have to -- I don't
8 know until they send me something in the mail.
9 11,295 I imagine on the back.
10 Q. Was this listed in your bank accounts when
11 you were doing responses to this discovery?
12 A. I don't know.
13 (Exhibit No. 6 was marked for
14 identification.)
15 Q. And this is an account ending in 8969 that's
16 a CD held in your name payable on death to Drew
17 Putt, correct?
18 A. Correct.
19 Q. What's the value of this?
20 A. 10,429.
21 Q. Was this listed in your list of bank
22 accounts when you were answering discovery?
23 A. It should have been. I don't know whether
24 it was or not. It should have been listed.
25 Q. And Plaintiff's Exhibit 8 -- I don't know if

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1 you have looked at that already. Now, Plaintiff's
2 Exhibit 8 is account -- a checking account held in
3 your name with RBC Centura that's ending in 4663.
4 This is the sole checking account that you have
5 with RBC?
6 (Exhibit No. 8 was marked for
7 identification.)
8 A. Uh-huh.
9 Q. Have you ever had any other checking
10 accounts with RBC?
11 A. No.
12 Q. And the 47 -- approximately \$47,000 worth of
13 checks that you deposited into RBC, was that
14 deposited into a checking account?
15 A. The 47 --
16 Q. The four checks that total the 47,000 --
17 A. That was deposited into a CD.
18 Q. Which CD that we have looked at so far?
19 Which statement? Because I issued a subpoena to
20 RBC for every bank account held in your name or
21 your sister's name or jointly between you and your
22 sister, and I received statements for six accounts,
23 and none of them match the numbers on the back of
24 the checks that you deposited that total \$47,942.
25 Now, you said that your sister asked you to

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1 open an account in February of 2007 specifically to
2 deposit these checks into.
3 A. That's the only reason was to put them in
4 there and -- in the CD.
5 Q. What else did you do with this account that
6 you specifically opened for your sister and Mr.
7 Drews?
8 A. What else did I do with it?
9 Q. Had you ever deposited or done anything else
10 activitywise with that account that you opened for
11 your sister and Mr. Drews?
12 A. I got it out and gave it to my sister.
13 Q. So nothing else has ever occurred in this
14 account?
15 A. No.
16 Q. Do you have any records on this account?
17 A. Well, I will certainly go down to RBC
18 tomorrow and find out.
19 Q. Was this account that you deposited the
20 47-some-odd -- \$47,942 in for your sister and Mr.
21 Drews, that you opened specifically for Mr. Drews
22 and your sister, that was listed in your discovery
23 responses as an account held in your name?
24 A. I opened it for Ms. Drews. The four checks
25 were taken there, and I put it in a CD on the 7th

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1 of February. And on the 13th of February I
2 withdrew it because she asked me to and took it
3 back. And you have the proof of that with the
4 cashier's check.
5 Q. No. I have a cashier's check that was
6 issued from an account ended in 7085, but on the
7 back of this check I don't see any number ending in
8 7085. If you will take a look at Plaintiff's
9 Exhibit 9 --
10 A. Where is that?
11 Q. -- and show me where on the back of that
12 check it shows that it was deposited into account
13 ending 7085?
14 A. Where do I find that?
15 Q. It's right here.
16 A. This one. What number?
17 Q. The cashier's check that was given to Dorsey
18 Biller came from account number 7085 -- ending in
19 number -- the account number is 407-9007085 that
20 was issued from RBC paid to you, and then endorsed
21 on the back by Dorsey Biller for \$50,041.69.
22 I'm asking you in Plaintiff's Exhibit 9, the
23 four checks that you endorsed and deposited into
24 RBC, if you will show me where they indicate that
25 they were deposited into RBC account ending in

1 Q. So this was the first time?
2 A. I beg your pardon?
3 Q. In 2007 was the first time that you were
4 asked to hold money for Mr. Drews?
5 A. For Ms. Drews I was asked to deposit some
6 money, some checks.
7 Q. I believe you testified earlier that Ms.
8 Drews had asked you to hold money for them, she and
9 her husband; is that correct?
10 A. What do you mean hold? She asked me to
11 deposit checks in the RBC Bank, which I did.
12 Q. Did she -- you had testified before that she
13 asked you to specifically open an RBC account to
14 deposit their money; is that correct?
15 A. Yes.
16 Q. Did that not seem odd to you?
17 A. She asked me. No, it didn't seem odd to me.
18 I figured they needed the money maybe for future
19 references. I was the executrix of both of their
20 wills, and if one of them died, there would be
21 money to take care of the other, you know. I just
22 assumed that. I did it because she asked me to.
23 They didn't ask me to do much of anything in my
24 life.
25 Q. Did they -- did you owe them any money?

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1 7085?
2 A. Are the three checks in here?
3 Q. There are four checks attached to the back
4 of Plaintiff's Exhibit 9.
5 A. This is from Southwest, not from RBC.
6 Q. The checks you're looking at were issued
7 from First Southeast, which is Effie Drews'
8 account, and on the back of those First Southeast
9 checks, they are shown they are deposited into RBC
10 accounts.
11 A. Yes.
12 Q. Yes. But they do not indicate that they
13 were deposited into RBC account 7085 from which the
14 moneys to Dorsey Biller came. Do you agree with
15 me?
16 A. I don't know. I'm going to have to go to
17 RBC and find out what has happened. I don't
18 understand it. I don't understand it. I deposited
19 the money, and then a week later got it out,
20 cashier's check. That's all I know. I had no idea
21 it wasn't in there.
22 Q. Have you ever -- over the course of the time
23 that you have known Mr. Drews ever been asked to
24 hold money for him?
25 A. No.

1 A. Did I owe them money? No.
2 Q. Did they owe you any money?
3 A. No.
4 Q. So they were just giving you \$47,000 or were
5 you supposed to use that money for yourself?
6 A. No. I was supposed to use that for them.
7 This money should have gone in a separate account,
8 a CD, and, you know, I'm going to go find out why
9 it's different than the -- I know nothing about
10 their business, never did.
11 Q. When you were providing your attorney with
12 information about your bank accounts to list in the
13 discovery responses, was there a reason that you
14 did not include the accounts ending in 13169486 and
15 8969 with RBC?
16 A. What are those? CDs.
17 Q. The ones that we just looked at, which are
18 Exhibits 3, 5, and 6.
19 A. I don't know. I thought I had.
20 Q. Okay. And do you have any records at home
21 regarding this account that you opened on behalf of
22 your sister, Effie Drews, and Mr. Drews?
23 A. I just have copies like the cashier's check.
24 Q. Now, that's the cashier's check for account
25 number 7085, which is Plaintiff's Exhibit 7; is

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1 that correct?
 2 A. I'm getting so confused. I don't know these
 3 numbers, you know. I can't remember what numbers
 4 all of these accounts were in.
 5 Q. Sure.
 6 A. And I need to write down the -- what you're
 7 telling me about the checks that were deposited --
 8 or taken out of another --
 9 Q. If you will look at Plaintiff's Exhibit 7,
 10 Plaintiff's Exhibit 7 is an account held in your
 11 name that was opened with account ending 7085.
 12 A. Okay.
 13 Q. And I'm just trying to clarify whether or
 14 not that account is the same account that you
 15 deposited -- you specifically opened for your
 16 sister and Mr. Drews and deposited their money
 17 into?
 18 A. Yes. It says right here, 50,000.
 19 Q. And you're telling me that there's another
 20 check somewhere that is not -- that no one has a
 21 copy of that takes your --
 22 A. I don't know. This came to -- she wrote --
 23 you mean there's only three checks in here that
 24 you're showing.
 25 Q. I have four checks that total \$47,900, and

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1 you said that Effie wrote an additional check?
 2 A. There should be four checks only.
 3 Q. I have four checks. Three for \$9,950, one
 4 for \$18,092.89, that total \$47,942.89?
 5 A. Well, there should be another check for --
 6 Q. And that's the check I'm asking you about.
 7 A. Well, I don't know.
 8 Q. Do you have a copy of that check?
 9 A. No. I didn't look at any of that. I just
 10 signed it.
 11 Q. Do you know what check that bank account --
 12 do you know what bank account that check was issued
 13 from?
 14 A. No.
 15 Q. Do you know who signed that check?
 16 A. I did. She did and I did. I'm going by
 17 there. That should have been in here. They should
 18 have --
 19 Q. Who handed you the First Southeast checking
 20 account -- the checks that you're looking at in
 21 Plaintiff's Exhibit 9, the four checks that you
 22 endorsed the backs of, who handed those to you?
 23 A. Effie Drews.
 24 Q. Was Mr. Drews present?
 25 A. Yes, he was.

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1 Q. Where was this?
 2 A. At their home.
 3 Q. And you drove over there to pick up these
 4 checks?
 5 A. Yes, I did.
 6 Q. What did Mr. Drews say?
 7 A. He didn't say anything. This was her money.
 8 Q. How do you know that was her money?
 9 A. Because she told me.
 10 Q. Do you have any other independent basis for
 11 believing that was her money?
 12 A. No. But her name was on them.
 13 Q. Did she ever have any independent source of
 14 income besides her husband?
 15 A. No. Except I told you she had a Social
 16 Security check she got each month.
 17 Q. Did she ever represent to you that this
 18 47,000-some-odd dollars that came out of the First
 19 Southeast account was from her Social Security?
 20 A. No.
 21 Q. And you said you don't recall where the
 22 other fifth check came from?
 23 A. My husband was with me when we did this, and
 24 he said Effie wrote a check to make it 50,000.
 25 Q. Who said that?

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1 A. My husband.
 2 Q. Why was he saying that to you?
 3 A. Because he was standing there -- we both
 4 were standing there, and I know that it was
 5 \$50,000.
 6 Q. Was there anyone else present besides you
 7 and your husband and Ms. Drews and Mr. Drews?
 8 A. No. I'm going to RBC because they have to
 9 have another check that was not -- that they did
 10 not give you because the amount deposited was 50.
 11 And the cashier's check, you know, had made a
 12 little interest. I don't have that at home, but
 13 I'm going to find it.
 14 Q. So other than her Social Security, Ms. Drews
 15 had no other source of income; is that correct?
 16 A. That's correct.
 17 Q. Did Ms. Drews ever talk to you about
 18 property that was in her husband's name that was
 19 transferred into her name?
 20 A. No.
 21 Q. Did you ever talk to anyone about that?
 22 A. No.
 23 Q. Did you know anything about property being
 24 held in Ms. Drews' name?
 25 A. No, I don't know. I don't know any of that

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1 business of their property.

2 Q. Do you know anything about the business
3 transactions or real estate transactions between
4 Don Lancaster and Mr. and Ms. Drews?

5 A. I don't know any detailed information. All
6 I know is that I found out he owned the house.

7 Q. What else about that did you learn?

8 A. That he owned the house and that they could
9 live in it -- I think it was given to him. You
10 know, I'm just not sure.

11 Q. Was Mr. Lancaster telling this to you?

12 A. Well, we were sitting at the table in my
13 sister's kitchen after her husband died, and that's
14 when we found -- my husband and I were there, and
15 that's when we found it out, that the house was --
16 that's when we found out. We didn't know anything
17 about the lawsuit or anything until he died.

18 Q. Why was Alden Scott listed as a witness in
19 this case?

20 A. I guess because he's my husband.

21 Q. Is there anything specific -- specifically
22 that he is a witness about for this case?

23 A. He knows -- he's the one that helped with
24 the probate and did most of it because he's --

25 Q. And he was present when you received the

1 Q. What was that conversation about?

2 A. It was about \$2,500 that was found in the
3 house. And I told him about it because he was
4 taking my sister to the lawyer, and he said that
5 was money for the lawyer. So I gave him 2,000 and
6 about three or four days later, I found \$500 in a
7 purse. And I called him and told him I needed the
8 money because it was part of the estate, and he
9 sent me \$1,800, and said he had taken 200 out for
10 the rent -- for the electricity. So I wrote a
11 check for the 2,500 and put it in to her estate
12 account. And that's the last time I talked to him.

13 Q. Okay. You said --

14 A. No, it wasn't. I think we all went -- I
15 can't remember. I can't remember the last time. I
16 think that was -- for anything like that that
17 concerned Ms. Drews, that was the last. And then
18 we went -- we went to Kerry Koon's office after my
19 sister died, and he was there, but I can't even
20 remember if we -- I didn't talk --

21 Q. Who went to Mr. Koon's office after Effie
22 died?

23 A. When I got the summons and Donald had to go
24 for some reason. We both went.

25 Q. Anybody else present?

1 money for the Drews in 2007; is that correct?

2 A. Yes. When they gave it to me.

3 Q. Are you and Mr. Scott separated?

4 A. Yes, we are.

5 Q. When was that?

6 A. 14th of January.

7 Q. Was Hank Atkinson ever present during any
8 conversations about the Drews' money?

9 A. Not that I know of.

10 Q. What about Drew Putt?

11 A. No.

12 Q. Do you know Don Lancaster's brother, Ray
13 Lancaster?

14 A. I have met him. I don't know him.

15 Q. When was that?

16 A. I met him many years ago.

17 Q. Where did you meet him?

18 A. At the Drews' home when they lived downtown
19 is the first time I met him.

20 Q. Have you had any conversations with him in
21 the last five years?

22 A. No.

23 Q. What about Don Lancaster, when is the last
24 time you talked to him?

25 A. At my sister's funeral.

1 A. No. Kerry.

2 Q. Did your husband go?

3 A. No.

4 Q. You said that you found \$2,500 in the house,
5 and then you said you gave 2,000 of it to Donald?

6 A. Well, that's what I found first. And I told
7 him that I had found it, and he said, well, that
8 must be for the -- Dorsey must have given that for
9 the lawyer's fee. And since he had been taking
10 her, you know, I handed it to him -- to the lawyer,
11 you know.

12 Q. Did you just say Dorsey must have given that
13 for the attorney?

14 A. No. He said that Dorsey must have -- she
15 must have just gotten money from Dorsey for
16 lawyer's fees. That must be what it was.

17 Q. Why was Dorsey giving Effie money for
18 lawyer's fees?

19 A. I imagine the money that there's an account
20 of there, when she needed money. Maybe she asked
21 him, you know. Maybe she asked him and told him
22 she needed some money. I don't know. But anyhow I
23 told him I needed it back. After I found the other
24 500, I put it in the estate.

25 Q. Did you know what this accounting that Mr.

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1 Biller had done -- did anyone indicate to you when
2 he was supposed to make these payments?
3 A. No. I don't know anything about that.
4 Q. Do you know whether it was on an as-needed
5 basis?
6 A. I don't know. I know she was a very frugal
7 person. She didn't spend a lot of money. She was
8 very careful with her money, and she -- you know,
9 she lived very simply. So I don't know how often
10 he gave her money.
11 Q. Going back to the money that you found in
12 the house. You said that you initially gave the
13 \$2,000 to Donald, and then you found \$500 after
14 that.
15 A. Yes.
16 Q. What did you do with that?
17 A. I put it in her estate.
18 Q. And then --
19 A. After he sent me the 1,800, I wrote a check
20 for 2,500 and put it in the estate because he had
21 taken 200 out to make it the 25, which was found.
22 Q. Which is the check that was written off of
23 your account?
24 A. Yes.
25 Q. Ending -- it's the account ending in 315.

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1 Is that your Wachovia account?
2 A. Probably.
3 Q. Any other money that was found in the house.
4 A. No, I didn't find any.
5 Q. So what have you done with the proceeds from
6 Effie's estate?
7 A. What have I done with the proceeds? I paid
8 her bills.
9 Q. Which were \$11,823.
10 A. Right. And the other money was left to me,
11 so that was put in various accounts. I don't know
12 which ones.
13 Q. Who -- do you deposit them or did someone
14 else deposit them?
15 A. I did.
16 Q. So was there a rhyme or reason to how you
17 disbursed the money throughout your accounts?
18 A. No. Well, two were CDs, you know. One may
19 have gone into my money market or a checking at
20 Wachovia. It's all there.
21 Q. On Bates number 5 of Exhibit 2, which is the
22 second page of the petition for Effie's estate that
23 you opened, I was just curious, number 11 it lists
24 the decedent's estate at about \$12,000. Was that
25 just a guess that you made at the time?

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1 A. Well, it probably was. It says about the
2 value.
3 Q. And then going to Bates number 24 of
4 Exhibit 2, who prepared what's Bates numbered 24 of
5 Exhibit 2?
6 A. It looks like I did.
7 Q. You did that?
8 A. This?
9 Q. Listed at the top is transaction register,
10 Wachovia, temporary account.
11 A. Uh-huh.
12 Q. Ending in 652.
13 A. Well, my husband helped me with all of this,
14 but this is my writing.
15 Q. And then turning to Bates number 25, is that
16 also your writing?
17 A. Yes.
18 Q. And that's Wachovia checking account ending
19 in 254 for the estate of Effie Drews; is that
20 correct?
21 A. That's the estate account we opened for her.
22 Q. And now the one on Bates number 24, you said
23 that was just a temporary account for her estate?
24 A. Yes. Until we got it into the estate
25 account.

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1 Q. What was the reason for needing a temporary
2 account before you --
3 A. Because we didn't know anything about what
4 we were going to have to do, so we just wanted to
5 get the money in an account. And then we were told
6 that, you know, by the bank, that whatever went
7 into the estate, we would have to open an estate
8 account, which we did.
9 Q. Who purchased the Buick for \$3,000?
10 A. I have got his name at home. I can't think
11 of it.
12 Q. And then on Bates number 25 it says \$1,200
13 to Kerry Koon, attorney. What was that for?
14 A. That's what she owed him for his
15 representation.
16 Q. Now, the \$3,000 is listed under the same
17 line. You guys just listed your credits and debits
18 all on the same line there?
19 A. Yeah. I guess it looks like that.
20 Q. Bates number 52 of Exhibit 2, which is your
21 Wachovia account ending in 5652, what was the
22 material reason for including this in your document
23 production?
24 A. Well, I think this was the temporary
25 account -- or it looks like it. Or maybe I just

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1 made a mistake and put mine in there. I don't
 2 know. That's what it looks like.
 3 Q. Because Bates number 56, that we had already
 4 looked at before, this is the permanent estate
 5 account, is that correct, ending in 254?
 6 A. Yes.
 7 Q. Now, it starts with a balance of \$15,103.93
 8 as the deposit into that account opening that
 9 account; is that correct?
 10 A. I think so, and then I added to it.
 11 Q. And now these were produced a few months
 12 ago. Do you know what the balance on that account
 13 is now?
 14 A. Which one?
 15 Q. Ending in 254 for the estate of Effie Drews.
 16 A. I mean, it's 13,900-and-some dollars.
 17 Didn't get any interest.
 18 Q. What was the reduction from 15 to 13?
 19 A. The money for Kerry Koon.
 20 Q. When did you pay him?
 21 A. I don't know. I will have to --
 22 Q. When is the last time that you spoke with
 23 Kerry Koon?
 24 A. Huh?
 25 Q. When was the last time you spoke with Kerry

1 Q. Now, this is the -- the \$10,045 is the money
 2 from Mr. Drews' insurance; is that correct?
 3 A. I would think so.
 4 Q. Okay. When did your husband write that, do
 5 you know? On Bates number 73.
 6 A. No, I don't.
 7 Q. Turning to Bates number 74, this indicates
 8 an account at the top, 1316. I will just represent
 9 to you that that's the account statement we looked
 10 at that's Plaintiff's Exhibit 3. What was the
 11 reason that -- or did Effie ever talk to you about
 12 this 10,000 -- approximately \$10,000 from her
 13 husband's insurance, why she didn't want to use it
 14 herself?
 15 A. No. She wanted to buy a CD with it.
 16 Q. And who did she have help her do that?
 17 A. I went with her.
 18 Q. When did you go?
 19 A. I don't know. I will have to look at the
 20 date at home. I don't know. 2010. That can't be
 21 right.
 22 Q. I believe that was when it was deposited
 23 into your account.
 24 A. Oh, yes. That's right.
 25 Q. Is there anything else as far as exchanges

1 Koon?
 2 A. November of last year.
 3 Q. What was that about?
 4 A. Another lawyer -- getting another lawyer.
 5 He was fed up of 18 years of this going on. That's
 6 what he said. He was tired of it. It should have
 7 been over.
 8 Q. If you will look at Bates number 52 and
 9 compare it with Bates number 24. That would show
 10 that that is the temporary account that you opened;
 11 is that correct?
 12 MS. HILL: You said 24?
 13 MS. DRAWDY: Yes, ma'am.
 14 Q. So that is the temporary account?
 15 A. Yes.
 16 Q. The Bates number 74 of Plaintiff's 2 -- and
 17 actually we will start at Bates number 73. This is
 18 the insurance policy. It says issue date 2007 for
 19 \$10,035.46. And then whose handwriting is that --
 20 A. My husband's.
 21 Q. The handwriting that indicates deposit to
 22 purchase CD above?
 23 A. Yes.
 24 Q. That's your husband's handwriting?
 25 A. Yes.

1 of money or property that you have been involved in
 2 with Mr. Drews and Ms. Drews that we haven't
 3 discussed today?
 4 A. No. I have never been involved in any of
 5 their property or any of their business.
 6 Q. I will show you what has been marked
 7 Plaintiff's Exhibit 1, which is the subpoena and
 8 notice of deposition.
 9 (Exhibit No. 1 was marked for
 10 identification.)
 11 Q. It's actually just the notice of deposition
 12 to you, and it lists documents for you to either
 13 produce or bring with you today to produce. Are
 14 there any other documents that you brought with you
 15 today besides what your attorney's already produced
 16 to us?
 17 A. No. I don't know if I have any more.
 18 Q. Have you made a search of the documents?
 19 A. I have tried to go through everything and --
 20 Q. What did you do to prepare for today's
 21 deposition?
 22 A. I went over a lot of the stuff that I have
 23 at home, and I talked to my attorney. I have never
 24 had any -- I think we have brought all of this.
 25 Whatever I have here is what I have. I never had

1 any business dealings with my brother-in-law or
2 sister. I know nothing about their --

3 MS. DRAWDY: Okay. I think we are
4 just going to take a quick break.

5 (Off-the-record discussion.)

6 Q. Ms. Atkinson, are you aware that my client
7 has filed a claim against Effie Drews' estate?

8 A. Yes. Not against hers. I thought it was --
9 I thought the judgment was against Bob Drews.

10 Q. There is a judgment against Bob Drews.

11 A. But not one was against her, was it?

12 Q. But there is a claim that my client, Frank
13 Gordon, has filed against Effie Drews' estate. And
14 my question to you is we have not received any
15 notice of disallowance or denial of that claim; is
16 that correct?

17 A. No, I haven't.

18 Q. You have not filed a notice of disallowance?

19 A. No.

20 Q. And you have not filed a denial of our claim
21 against your sister's estate?

22 A. No.

23 Q. The codicil to your sister's will lists that
24 all personal property would go to your daughter,
25 Drew Putt; is that correct?

1 A. Correct.

2 Q. What personal property went to your
3 daughter?

4 A. Well, it was a lot of -- her dining room,
5 silver, flatware, you know.

6 Q. So basically was it all of her personal
7 property in the house at the time of her death?

8 A. Yes.

9 Q. Is there anything left in the house now that
10 belongs to her?

11 A. No. The house was sold. It was sold right
12 away.

13 Q. And do you know why Donald Lancaster sold
14 the house right away?

15 A. No. But he told us that he needed -- he
16 thought he had a buyer, and we needed to get the
17 things out of there, so I worked my you know what
18 off for I don't know how long to try to go through
19 her stuff.

20 Q. Are there any other creditors besides my
21 clients against --

22 A. Not that I know of.

23 Q. Let me just finish the question. Are there
24 any other creditors against your sister, Effie
25 Drews', estate other than my client's claim?

1 A. No.

2 Q. When Dorsey Biller was previously deposed in
3 this case, he was asked about the \$50,000 --
4 approximately \$50,000 cashier's check that both you
5 and he had endorsed the back of. And he indicated
6 that Mr. Drews had wanted to make a deal with you,
7 and you didn't want to do it. And that's --

8 A. A deal with me?

9 Q. Yes, ma'am. Do you know what he's referring
10 to?

11 A. I don't know what he's talking about.

12 Q. Well, I will read the transcript from Dorsey
13 Biller's deposition.

14 Question: And you never asked any questions
15 about why that \$50,000 check was originally
16 endorsed by Jessie Atkinson?

17 Answer: Basically he, being Mr. Drews, told
18 me that he wanted to make the same deal with
19 Jessie, but Jessie didn't want to do it, and I'm
20 not sure why.

21 A. I don't know what he's talking about. There
22 was no deal mentioned to me.

23 Q. Okay. Well, there's further testimony. I
24 will read it.

25 Question: So when did he, being Mr. Drews,

1 tell you that he tried to make that deal with
2 Jessie, but she didn't want to do it?

3 Answer: Well, that was actually when he was
4 giving me the check. I'm not sure why she wouldn't
5 give him back the money or whatever. I don't know
6 what the whole deal was. He was going to do
7 something with Jessie first, and then give me some
8 money and -- I don't know.

9 Do you know what he's referring to?

10 A. No.

11 Q. Do you know what he's referring to when he
12 says that you wouldn't give Mr. Drews back the
13 money?

14 A. No. I gave Ms. Drews back a cashier's check
15 for \$50,000.

16 Q. Is there any other money that you still have
17 or retained control over that was given to you by
18 Mr. or Ms. Drews?

19 A. No. I don't have any money of theirs. I
20 never have.

21 MS. DRAWDY: I think that's all the
22 questions I have. There may be some other
23 questions for you.

24 EXAMINATION

25 BY MS. BROCKINGTON:

Deposition of Jessie Atkinson

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1 Q. Ms. Atkinson, I'm Shirrese Brockington. I
2 have been court appointed as the special
3 administrator for Mr. Drews' estate. So that's
4 like occupying the role as personal representative.
5 I just have a few questions to follow up. With
6 regard to the \$50,000 that was given by you to Mr.
7 Biller on behalf of Ms. Drews, were you aware of
8 these payments being made to your sister from when
9 it was given in February of '07?

10 A. Well, I was aware after my brother-in-law
11 died that she was getting it, but I had no idea
12 when or how or how much.

13 Q. Do you know who controlled this money? Was
14 it just Mr. Biller?

15 A. I don't know. As far as I know, probably.
16 I don't know.

17 Q. And just to clarify for the record. Your
18 brother-in-law, he passed September of '07, not
19 2009. At the time of his death, were Mr. and Ms.
20 Drews living in the Nuffield Road property?

21 A. Nuffield, uh-huh.

22 Q. Do you recall if they were living there at
23 that time?

24 A. 2007?

25 Q. Yes, ma'am. When he died.

1 other I found was in an old purse -- in a little
2 change purse, you know, inside of a larger purse.

3 Q. Okay.

4 A. And that was \$500.

5 Q. Was the money like tucked into envelopes or
6 was it just loose?

7 A. No. It was just out.

8 Q. Was there any notation with any of this cash
9 money like the source of the funds?

10 A. No.

11 Q. So there was nothing to indicate where the
12 money would have come from?

13 A. No.

14 Q. And I'm sure you did a thorough search of
15 the house after that?

16 A. I did.

17 Q. Did you find any other lump sums of cash
18 anywhere?

19 A. No.

20 Q. And you stated that you initially gave
21 \$2,000 to Donald Lancaster from that cash, and he
22 returned 1,800. And you found 500, but yet you
23 paid the full 2,500 into the estate. Why did you
24 pay the full 2,500?

25 A. Because that was what was found. That's

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1 A. Yes.

2 Q. Okay. And when did you become aware that
3 they did not own that property?

4 A. After his death.

5 Q. Are you aware of any real estate that your
6 brother-in-law owned at the time that he died?

7 A. No. I don't know anything about the real
8 estate.

9 Q. Do you know what type of car Mr. Drews owned
10 when he passed away, if he owned any?

11 A. He owned a station wagon -- my sister did,
12 but I don't think -- I think Donald Lancaster
13 somehow got his station wagon. I don't know how
14 or --

15 Q. Was this a different station wagon than the
16 one you sold out of Ms. Drews' estate?

17 A. Yes, it is.

18 Q. Was that titled just in Ms. Drews' name, the
19 station wagon that you sold?

20 A. Right.

21 Q. The cash money that was found in the house,
22 where was that located physically?

23 A. Well, when I went over to start going
24 through her things and cleaning up, I found it in a
25 shoe box up in the -- up in the closet. And the

1 what I found. And he took 200. He said he was
2 going to pay the electric bill, that it didn't
3 belong to the estate anyway. And I said, well, I
4 need it, so I just added the 200 that he left out.

5 Q. Did you give any other funds to Mr.
6 Lancaster from your sister's estate?

7 A. No, I didn't have any to give him.

8 Q. When you got the check for the 7,084 from
9 Dorsey Biller, did that check bounce when you first
10 deposited it?

11 A. It did. Insufficient funds.

12 Q. Did you call Mr. Biller upon that occurrence
13 or did you just redeposit the check?

14 A. I think my husband called him, but, you
15 know, I'm not sure, but I know that it wasn't maybe
16 a couple of days until, you know, that that was
17 taken care of.

18 Q. So the check was made good and it was a
19 valid deposit the second time?

20 A. Yes. I just had to pay \$10 I think.

21 Q. Did you question Mr. Biller about the
22 balance that he gave you -- I mean, I know he
23 provided the accounting, but did you ask him, you
24 know, why he presented this check to you?

25 A. Well, I called -- I called him and asked him

Deposition of Jessie Atkinson

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1 did he have other moneys other than the 7,000 check
2 that he sent and what was that from, and he said it
3 was what was left. And that was it.
4 Q. Okay. To your knowledge, has Mr. Biller
5 ever held any other funds of the Drews in that
6 manner?
7 A. I don't know anything about it, if he did.
8 MS. BROCKINGTON: Okay. Thank you.
9 That's all the questions I have for you, Ms.
10 Atkinson.

EXAMINATION

11 BY MS. HILL:
12 Q. When you said -- when you asked Mr. Biller
13 was there any other money other than the
14 7,000-some-odd dollars he sent and what that money
15 was from, what did you mean?
16 A. You know, he said it was Bob Drews, you
17 know, that he had given him 50,000 to hold, you
18 know, whenever Effie need it -- when they needed
19 it. And this was the account of it. He would
20 send -- he would get it to me by the next morning.
21 I told him, I need it as soon as you can get it to
22 me. So we got it the next day by e-mail.
23 Q. And that accounting, do you have any
24 knowledge as to whether Effie received all of that
25

1 to deposit at RBC that you withdrew by cashier's
2 check and returned to Effie Drews, is that the only
3 \$50,000 that you had?

4 A. That is the only \$50 I had.

5 Q. You mean 50,000?

6 A. 50,000, yeah. Right.

7 Q. And even though the check coming out of
8 Effie Drews' account totaled 47,000-some-odd
9 dollars, it was actually \$50,000 that you were
10 given?

11 A. Exactly. That's what the cashier's check
12 was for.

13 Q. You took that money when your sister asked
14 because you thought you were going to take care of
15 them?

16 A. Yes, I did.

17 Q. And when she asked for it back, you
18 immediately returned it?

19 A. I did. I went down there the morning she
20 called me, and I went down and got it and took it
21 to her the same day.

22 Q. And you testified earlier that you were
23 embarrassed to go back to RBC.

24 A. I was.

25 Q. But you did that?

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1 money or not?
2 A. No, I don't. I don't have. I know she was
3 very frugal. She didn't spend a lot of money.
4 Q. And prior to receiving the 7,000 from Mr.
5 Biller, did you know that Mr. Biller had the
6 50,000?
7 A. Well, I found out that he had it after Mr.
8 Drews died. That he, well, you know, had it. But
9 I had to find out for myself and get proof of it
10 with the cashier's check, so yes. But I didn't
11 know how he distributed it or how much she had
12 asked for. I don't know anything about that.
13 Q. And the \$50,000 that Effie Drews gave you,
14 you deposited that in RBC?
15 A. Right.
16 Q. And did Effie Drews ever give you, at any
17 other time, any other funds to deposit at RBC?
18 A. No.
19 Q. Did she give you funds to deposit at any
20 other bank?
21 A. No.
22 Q. What about Bob Drews? Did he ever ask you
23 to deposit money at any other bank?
24 A. No.
25 Q. And so the \$50,000 that Effie Drews gave you

1 A. But I did it because she asked me to.

2 MS. HILL: I think that's all I have.

3 MS. DRAWDY: I just have a couple of
4 more.

EXAMINATION

6 BY MS. DRAWDY:

7 Q. Were you the only name on the RBC account
8 that was opened to deposit the Drews' money in
9 February of 2007?

10 A. Yes.

11 Q. When you were given the checks -- when you
12 were at the Drews' house when you were given the
13 five checks that totaled approximately \$50,000, did
14 anyone ask you to over time in the future disburse
15 that money back to Mr. and Ms. Drews as needed?

16 A. No.

17 Q. Were you ever told when you would be asked
18 to give that money back?

19 A. No.

20 Q. Besides being asked by Mr. and Ms. Drews to
21 deposit those moneys in an account that you would
22 open with RBC, were you asked to do anything else
23 with that money?

24 MS. HILL: I object to the form of the
25 question.

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1 A. No.
 2 Q. How long was the conversation that you had
 3 with the Drews when you were receiving those five
 4 checks?
 5 A. It wasn't much of a conversation. They
 6 asked me would I deposit -- open an account for
 7 them at RBC into a CD account, and I said I would.
 8 I had no reason not to. They asked me to do a
 9 favor, I did it. It was her money. As far as I
 10 knew it was her money.
 11 Q. How did Dorsey Biller get the cashier's
 12 check from you?
 13 A. He didn't get it from me. I took it to my
 14 sister's house and gave it to her, and I understand
 15 Mr. Drews took it to him.
 16 Q. How do you understand that?
 17 A. Huh?
 18 Q. How do you know that?
 19 A. He told me that. Dorsey told me that when I
 20 called him.
 21 Q. When did you call him?
 22 A. In December when I was asking him for the
 23 account of the moneys that he had -- that he had
 24 that belonged to Ms. Drews -- Mr. and Ms. Drews.
 25 Q. You had just testified that Bob gave Dorsey

1 whenever she needed it. I found this out after
 2 he -- Mr. Drews died.
 3 MS. DRAWDY: That's all the questions I
 4 have.
 5 (The deposition was concluded at
 6 12:28 p.m.)
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1 Biller the \$50,000 check to hold whenever they
 2 needed the money; is that correct?
 3 A. I don't know why he gave it to them. I
 4 imagine that's why he gave it to them.
 5 Q. Why do you imagine that?
 6 A. Why else would they -- he do it? I don't
 7 understand any other reason.
 8 Q. Okay.
 9 A. Unless he owed him that. I don't know. I'm
 10 just assuming.
 11 Q. And then why would they give it to you? Why
 12 would they give the \$50,000 to you to hold?
 13 A. Who?
 14 Q. Why would Bob and Effie give the \$50,000 to
 15 you to hold?
 16 MS. HILL: I would object to the form
 17 of the question again.
 18 A. Yeah. I have answered that already two or
 19 three times.
 20 Q. Well, if Dorsey Biller wasn't owed \$50,000
 21 and you just said you assumed that he was holding
 22 it for them whenever they needed it --
 23 A. Exactly. And that's what he was doing.
 24 Q. And how do you know that?
 25 A. Because my sister was getting money from him

1 STATE OF SOUTH CAROLINA.)
 2 COUNTY OF CHARLESTON)
 3
 4 I, Darah L. Nekola, Court Reporter and
 5 Notary Public for the State of South Carolina at
 6 Large, do hereby certify that the witness in the
 7 foregoing deposition was by me duly sworn to
 8 testify to the truth, the whole truth and nothing
 9 but the truth in the within-entitled cause; that
 10 said deposition was taken at the time and location
 11 therein stated; that the testimony of the witness
 12 and all objections made at the time of the
 13 examination were recorded stenographically by me
 14 and were thereafter transcribed by computer-aided
 15 transcription; that the foregoing is a full
 16 complete and true record of the testimony of the
 17 witness and of all objections made at the time of
 18 the examination; and that the witness was given an
 19 opportunity to read and correct said deposition and
 20 to subscribe the same.
 21 Should the signature of the witness not
 22 be affixed to the deposition, the witness shall not
 23 have availed himself of the opportunity to sign or
 24 the signature has been waived.
 25 I further certify that I am neither
 related to nor counsel for any party to the cause
 pending or interested in the events thereof.
 Witness my hand, I have hereunto
 affixed my official seal on May 11, 2011 at
 Charleston, Charleston County, South Carolina.

Darah L. Nekola
 My commission expires
 January 7, 2010

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Gordon v Atkinson, et al
Case No.: 2010-CP-10-9096

Plaintiff's Deposition Designation for Publication

Page/Line and Exhibits as Noted

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1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO. 99-CP-10-1407
3 FRANK GORDON, JR.,)
4 Plaintiff,)
5 vs.) TRANSCRIPT OF HEARING
6 RUDOLPH ROBERT DREWS,)
7 Defendants.) ORIGINAL
8)
9)

10 HEARING held on this the 26th day of September
11 2006, before the Honorable Mikell R. Scarborough,
12 Master in Equity for Charleston County.

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

14 AMY K. MEYER, ESQ.,
15 Attorney for the Plaintiff,

16 R. MICHAEL DROSE, ESQ.,
17 Attorney for the Defendant.

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* * * * *

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1 COURT: This is the case of Frank Gordon, Jr
2 vs. Rudolph R. Drews and others. It is a 1999 case
3 CP-10-1407. We're here today for Supplemental
4 Proceedings pursuant to the Order of Judge Deadra
5 Jefferson dated 1/5/06. Mr. Drews is here with his
6 counsel, Mr. Michael Drose. And for the Plaintiff, Amy
7 Meyer with Justin Lucey's office.

8 MS. MEYER: Yes, your Honor.

9 COURT: I've asked--let me tell you what our
10 typical procedure is on these Supplemental Proceedings.
11 And that is, of course, pursuant to the Order of Judge
12 Jefferson. Mr. Drews was ordered to produce certain
13 documents.

14 What typically we do is allow the Plaintiff's
15 counsel to review those documents on the record, with
16 counsel or without counsel. And Mr. Drews was advised
17 to seek counsel, and he did.

18 And I will swear Mr. Drews and proceed, the
19 Plaintiff will proceed, out of my presence. When it
20 gets to the point in time where I'm needed, either to
21 order something, or to review a point of contention, I
22 will just come back and do that.

23 If you desire that I be here the whole time, I
24 will be glad to do that. But typically, it's just
25 looking through a lot of documents until you get to

1 some issue that needs to be resolved.

2 Are there any matters to be taken up prior to
3 that?

4 MS. MEYER: None from the Plaintiff, your
5 Honor.

6 MR. DROSE: And your normal procedure is fine
7 with the Defendant, your Honor.

8 COURT: Mr. Drews, you just stay right there.

9 MR. RUDOLPH ROBERT DREWS, having been
10 duly sworn testifies as follows:

11 COURT: Thank you, sir.

12 Mr. Drews, I'm going to allow Ms. Meyer to ask
13 you some questions. You're here with counsel. To the
14 extent you've got documentation to provide to her, I'm
15 going to ask you to provide that.

16 If you all get to some point, if you get to
17 loggerheads over a certain matter, whether something is
18 discoverable, or needs to be produced or something like
19 that, I'd be glad to come back in here.

20 You all just come right through this door here,
21 and you can get me. I'll be in my office. I've got
22 these scheduled all day. So you all can proceed in
23 that fashion.

24 If you need me back in here to order some
25 relief, or even if it needs to be continued to another

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1 date, I'd be glad to do that, as well.

2 MS. MEYER: Thank you, your Honor.

3 (The Judge leaves the courtroom)

4 DIRECT-EXAMINATION BY MS. MEYER:

5 Q Mr. Drews, as the Judge has indicated, you are
6 under oath. Do you understand that, sir?

7 A Yes.

8 Q What is your full legal name, Mr. Drews?

9 A Rudolph Robert Drews.

10 Q And that's Rudolph--

11 A R-u-d-o-l-p-h, Rudolph.

12 Q And what's your maiden name, sir?

13 A Robert.

14 Q R-o-b-e-r-t?

15 A R-o-b-e-r-t, right.

16 Q And what's your date of birth, sir?

17 A I'm a young guy. 12/27/22.

18 Q And how old are you today, Mr. Drews?

19 A I think I'm 83.

20 Q Are you married?

21 A Yes.

22 Q What is your wife's name?

23 A Effie. E-f-f-i-e.

24 Q And what is her middle name, please?

25 A Meadows. We were married in '43.

1 Q Do you know the date in '43?
2 A I'd get shot if I forget it. Give me a moment. I
3 really don't know the date. I'm trying to think of it.
4 It will come to me.
5 Q How long have you been married?
6 A Since 1943.
7 Q Sixty three years?
8 A I guess so. Yes.
9 Q Do you have any children, Mr. Drews?
10 A Negative.
11 Q Do you have any nieces or nephews?
12 A Yes.
13 Q And who are they, please?
14 A I knew their names. I'm trying to think.
15 Q Do you have a nephew name Donald Lancaster?
16 A I'm sorry. I didn't hear that.
17 Q Do you have a nephew name Donald Lancaster?
18 A Yes, that's one of them. That's the only one
19 that's on that side.
20 Q And when you say "that side," whose side of the
21 family is that?
22 A I only had one sister.
23 Q Is he your sister's son?
24 A Yes. And there was someone else there. Raymond,
25 Jr.

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1 Q Is that Donald's brother?
2 A Yes. And there's another one, Kay Lancaster. I
3 don't know their married names.
4 Q So Donald Lancaster, Raymond Lancaster, Jr., and
5 Kay Lancaster are your sister's children?
6 A Yes.
7 Q And your sister is your only sibling?
8 A My sister is my only--
9 Q Is your only sibling? That's your only brother or
10 sister?
11 A That's right.
12 Q And your wife, does she have any nieces and
13 nephews?
14 A She came from a family of 12. Don't ask me their
15 names.
16 Q Do you know if she is related to a Christine Case?
17 A I don't recognize that name.
18 Who is Christine Case? Who is she related to?
19 MR. DROSE: The question is, are you related to
20 Christine Case?
21 WITNESS: I don't remember that.
22 Q Are you related to a Keith Meadows?
23 A I believe you are in the wrong family.
24 Q Did you once own a property at 1469 South
25 Edgewater Drive?

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1 A Yes.

2 Q And did you, in fact, own that with your wife?

3 A Yes.

4 Q Can you explain to me why you transferred that

5 property for \$5 to Keith Meadows and Christine Case?

6 A Oh, yeah, I remember now. The Meadows lived down

7 the street from us in Edgewater. And they bought our

8 house.

9 Q They bought your house for \$5?

10 A No, I don't think so.

11 Q Then why is it listed as a sales price of \$5, Mr.

12 Drews?

13 A I don't have any idea.

14 Q How much money did you receive for that property?

15 A I don't know.

16 Q Where was your bank account, at the time, you

17 received that money?

18 A That may be available. I just don't know.

19 Q What banks in the last ten years have you had

20 accounts?

21 A The last ten years. First Citizens--

22 Q First Citizens?

23 A First Citizens Bank.

24 Q Anywhere else?

25 A I don't remember anybody else.

1 Q Did you have an account at First Union?
2 A First Union. Let me think a moment. I don't
3 remember First Union. Is that a local bank?
4 Q It has local branches, Mr. Drews, yes. It's now
5 known as Wachovia.
6 A Oh, yes. My wife has an account at Wachovia; I
7 don't.
8 Q Right now?
9 A Yes.
10 Q Okay. And Mr. Drews, did you bring, in response
11 to number nine of Judge Jefferson's Order dated July 28,
12 2006, any documents that you have relating to real
13 property, that you've owned since 1996?
14 A I listed my house--
15 Q I'm going to have to ask you to speak into the
16 microphone, Mr. Drews. You have a soft voice and Mr.--
17 A I had an operation on my throat.
18 Q Okay. If you want to pull the microphone closer,
19 then I need for you to do that, please.
20 A I used to be able to talk up, but I can't do it
21 now. I had my vocal chords operated on about two weeks
22 ago, and it didn't help any.
23 Q Okay. Do you have any documents in response to
24 number nine?
25 A Number nine was--

1 MR. DROSE: I'm going to point out number nine to
2 him.

3 It's deeds to any real property owned by you since
4 1996. And there are six of them listed.

5 Q Did you bring any documents today that relate to
6 Two Noffield Road, Charleston, South Carolina?

7 A I think so.

8 Q Okay. Can you give those to your attorney, so I
9 can look at them?

10 A Mr. Drose...

11 (Document tendered to counsel)

12 I'm really sorry about this. I just can't get it
13 together.

14 The question was?

15 MR. DROSE: She wants to know did you bring any
16 documents relating to Two Noffield Road.

17 WITNESS: I have one here. That's where we live
18 now.

19 MR. DROSE: She's asking you if you brought any
20 documents relating to that property. Deeds or...

21 WITNESS: I don't know where the deed is. I did
22 bring something on that. I asked my CPA to bring me
23 documents on the property, but he didn't return my call.
24 Jerry Gambrell.

25 Q Who is your CPA?

1 A Jerry Gambrell.
2 Q And spell the last name for me, please?
3 A G-a-m-b-r-e-l-l. Jerry is his first name.
4 Q Does he work for a company, or is he in business
5 for himself?
6 A He's a CPA for himself.
7 Q Okay.
8 A I asked him to give me my tax returns, but he
9 hasn't responded.
10 Q So are you finding any documents that you've
11 brought today for Two Noffield Road?
12 A I'm looking.
13 Two Noffield Road, I don't see anything here. I
14 don't know where it is.
15 Q Mr. Drews, who owns Two Noffield Road?
16 A What about it?
17 Q Who owns Two Noffield Road, Charleston, South
18 Carolina?
19 A Mr. Lancaster.
20 Q Do you pay Mr. Lancaster rent?
21 A Pay Mr. Lancaster what?
22 Q Do you pay Mr. Lancaster any rent?
23 A No. I have a life tenancy there, me and my wife.
24 Q I'm sorry, can you say that again?
25 A My wife and I have life tenancy.

1 Q And who set up your life tenancy in this property?
2 A The attorneys did it.
3 Q Who was the attorney, Mr. Drews, please?
4 A I believe it was Kerry Koon.
5 Q Kerry Koon?
6 A Yes.
7 MR. DROSE: He said he believed it was.
8 Q Okay. Would your nephew, Donald Lancaster, be
9 able to provide me with all of the documents I need for
10 Two Noffield Road?
11 A I have no idea.
12 Q Do you know if he has a mortgage on the property?
13 A When we were given life tenancy. Don came to us
14 with a note from the bank, I forget which one, and we
15 endorsed it for him. He made the note out. All we did
16 was endorse it. We did require that, because we had
17 life tenancy. The bank required it, because we had life
18 tenancy. I don't know what it's for, or how much it is.
19 I don't know the name of the bank either.
20 Q So all information that I need about Two Noffield
21 Road, your nephew or the bank would have?
22 A They should.
23 Q Do you know how Mr. Lancaster paid for that
24 property?
25 A Yes. I made him a deal. And we gave him \$100,000

1 as a gift. And he put the rest with it. How much, I
2 don't know. And that's how we got life tenancy.

3 Q So you received a life tenancy in Two Noffield by
4 giving your nephew \$100,000, so he could purchase this
5 property?

6 A Purchase it and pay the taxes and all of that.

7 Q So you were the source of the \$100,000 that he put
8 into that property?

9 A My wife and I, yes. We pay the insurance. He
10 pays the taxes.

11 Q Mr. Drews, do you know how much money you received
12 when you sold that large piece of property at 1469 South
13 Edgewater in Charleston?

14 A That was years ago.

15 Q And you have no information for me, why there was
16 only \$5 as the consideration listed in the deed?

17 A This is the first time I heard that in my life.

18 Q Do you recall receiving a good bit of money for
19 that property?

20 A I'm sure we did.

21 Q And you were in real estate for many years,
22 correct, Mr. Drews?

23 A I don't know about that either now. I don't think
24 we got that much. That's why I gave Donald the
25 \$100,000. Because we took a licking on Edgewater. It

1 was put there. When Hugo came, it knocked me out of my
2 business. I lost a lot of money there. It knocked me
3 out of my house, my dock. Everything went awash in the
4 hurricane. And I would say I lost a half million
5 dollars almost overnight.

6 Q But you would agree with me that you received
7 enough money that you gave Donald Lancaster \$100,000
8 cash?

9 A I think that's what I gave him. I know it is. I
10 gave him--well, my wife and I. And we felt that this
11 was the right thing to do. And he is the owner of the
12 property. And he would give us life tenancy for it.

13 Q And Two Noffield Road, Charleston, South Carolina,
14 that's your current address, correct?

15 A That's correct.

16 Q And how long have you lived there?

17 A Since '95, I think. I'm almost sure, '95.

18 Q Mr. Drews, do you recall owning a piece of real
19 estate at 623 Meeting Street, which was also known as
20 Southwest Butler Street in Charleston, South Carolina?

21 A That's where my office was. That got trashed too.

22 Q Did you bring any documents today?

23 A We couldn't find them. That's been a long time
24 ago. Hugo got that, too.

25 Q In the underlying suit, when the judgment was

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1 entered against you in favor of Frank Gordon; the reason
2 we're here today, do you recall that you were trying to
3 set up a hardware store known as Builders Source?

4 A Yes. Builders Station was the name of it.

5 Q I'm sorry. Builders Station. Builders Source is
6 actually a different company. You're correct, Mr.
7 Drews.

8 A Builders Station was the name of it. Raymond
9 Beasley asked me to help him with it, because he used to
10 have a hardware store across the street from where we
11 went to. And we went to a bigger store. And then we
12 obtained several people, and this one unit, and got it
13 started.

14 Frank Gordon was the last one to come on board.
15 He and Beasley cooked some kind of a deal up. And they
16 closed the corporation to anybody investing in it. And
17 they started to borrow money. And when I found out that
18 I was going to have to sign it, I refused--

19 Q Well, you will agree with me, Mr. Drews, that the
20 Circuit Court in Charleston County entered a judgment
21 against you on December 5, 2001, correct?

22 A 2001. I think so. I didn't understand this
23 judgment thing. Yes, December 5, 2001.

24 Q But you understand that there's a judgment against
25 you?

1 A There is now. And I really didn't understand it
2 then, and I still don't.

3 Q Okay. And you understand that that judgment arose
4 in a case over a dispute over Builders Station and Frank
5 Gordon's investment, correct?

6 A That's correct.

7 Q And Builders Station, you--

8 A May I elaborate on that a moment.

9 We had a meeting and agreed everybody would
10 cooperate. We'd close the place down. Frank Gordon
11 didn't approve of it, apparently, because later on he
12 went to the man listening to the talk, and he agreed
13 that he didn't--

14 Q And Mr. Drews, I understand that was your position
15 in the underlying case. And today what we're here to
16 address is what assets you've had. And I understand
17 that you still dispute the facts in that case. But you
18 do understand there's a judgment against you, correct?

19 A I don't understand it. But, yes, I know there is.

20 Q You know there's a judgment against you?

21 A Yes.

22 Q And Builders Station, you were trying to get that
23 organized in summer and fall of 1996, correct?

24 A I think that's correct.

25 Q Okay. And do you recall the fact hat you and Mr.

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1 Beasley applied for a Small Business Administration
2 Loan?

3 A Yes.

4 Q And that was approximately in 1996, am I correct?

5 A I think so.

6 Q Okay. And 623 Meeting Street, do you recall that
7 you sold that property in May of 1997 for \$135,000?

8 A I don't remember the date or the amount. But I
9 know we sold it and we took a licking on it, too.

10 Q So if there's a deed in Charleston County that
11 states that you transferred that property in May of 1997
12 for \$135,000, you have no reason to dispute that, do
13 you, sir?

14 A Who did I transfer it to?

15 Q 623 Meeting Street, LLC is listed as the entity to
16 which you transferred that property.

17 A Okay. I don't remember it, but you are probably
18 right.

19 Q But you have no reason to question that that's
20 what the Court document reflects?

21 A You're right.

22 Q What happened to that \$135,000, Mr. Drews?

23 A I don't know. I probably paid bills with it,
24 because there was a mortgage on it. After Hugo I just
25 went to hell. I lost everything in Hugo.

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1 MS. MEYER: Maybe what we should do is you can
2 give me documents, and I can look to see what he has.
3 It would help expedite this rather than him looking.

4 MR. DROSE: Yes. I asked him to bring folders for
5 each of the numbers. But we don't have that.

6 MS. MEYER: Do you want to organize them - take a
7 few minutes to organize them and look to see what he
8 has? And then I can look at them, so that we could--

9 MR. DROSE: Can we--well--

10 WITNESS: I don't know what to look for.

11 MR. DROSE: I think it is safe to say, he didn't
12 bring anything relating to number nine. Because many of
13 these transactions happened years ago. And I think--

14 You brought no deeds, no closing statements,
15 nothing relating to any of the real estate holdings that
16 you might have had in the past, right.

17 WITNESS: Right.

18 MR. DROSE: Okay. I think that's clear to me
19 looking at his records.

20 If you want to go through each 1 through 21, that
21 would help.

22 MS. MEYER: Okay. I'm going to take a couple
23 minutes break and come back in, if that's okay. If you
24 want to talk to him. I know the record is still
25 running. You may want to step outside.

1 MR. DROSE: Okay. Fair enough.

2 WITNESS: Before you go, I know you are trying to
3 listen to me. But after Hugo I was just busted, almost
4 everything.

5 MR. DROSE: I don't mean to interrupt you. But
6 she's got specific questions that we have to respond to.
7 That's her job. Her job is to ask the questions.

8 MS. MEYER: I'd be right back.

9 (Ms. Meyer leaves the courtroom)

10 MR. DROSE: We're not here to tell our story.
11 We're here to answer her questions.

12 WITNESS: I want to be heard.

13 MR. DROSE: No. That's not the purpose of this
14 meeting, though.

15 WITNESS: I don't care.

16 MR. DROSE: I know. But it's not the purpose.
17 The purpose of the meeting is to respond to their
18 questions.

19 What they want you to do, and we're on the record
20 here. We're still being recorded, okay?

21 WITNESS: Okay.

22 MR. DROSE: They want us to go through 1 through
23 21 and say, like for example, No. 1...

24 WITNESS: Let me get it out.

25 MR. DROSE: No. 1, right there by your left-hand.

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1 WITNESS: Okay.

2 MR. DROSE: I think it's fair to say that you
3 brought none of that, right?

4 WITNESS: No, I didn't.

5 MR. DROSE: All State and Federal Gifts and
6 Inheritance tax returns. You brought none of that?

7 WITNESS: No, I have none of that.

8 MR. DROSE: You don't think you even had any of
9 those returns?

10 WITNESS: I don't.

11 MR. DROSE: No. 3, documents relating to all
12 property transfers between you and Effie. You brought
13 nothing there?

14 WITNESS: No.

15 MR. DROSE: No. 4, documents reflecting all
16 property transfers. You brought no document relating to
17 that?

18 WITNESS: None.

19 MR. DROSE: Turn the page.

20 No. 5, list of all assets for which Respondent
21 enjoys the benefit of, and which are owned by Donald
22 Lancaster. That would be Two Noffield Road.

23 So we have responded to that.

24 WITNESS: Yes.

25 MR. DROSE: A list of all gifts, monetary and

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1 otherwise, received by you from Lancaster. I think
2 you're saying that there were none.
3 "He's given me no gifts."
4 WITNESS: Correct.
5 MR. DROSE: So we've got No. 7. You brought no
6 banking records, correct?
7 WITNESS: No.
8 MR. DROSE: Okay. Item 8, you've answered.
9 That's when you said you had a few dollars in cash and a
10 little bit in the checking account.
11 WITNESS: Yes.
12 MR. DROSE: No. 9 you didn't bring.
13 No. 10...
14 WITNESS: I'm doing good to remember my name.
15 (Ms. Meyer returns to courtroom)
16 MR. DROSE: Could I go through them, maybe? Bob
17 and I have a good way of communicating. And you could
18 step in. Can I try to identify which items he brought
19 and didn't bring?
20 MS. MEYER: Sure. If that will help expedite,
21 that's fine.
22 MR. DROSE: You can stop and interject if you--
23 MS. MEYER: I do have two--I have a couple of
24 questions before you do that.
25 MR. DROSE: Sure.

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1 Q (By Ms. Meyer) Mr. Drews, we're continuing on
2 the record. This piece of property at 1469 Edgewater,
3 that property is right on Wappoo Creek, isn't it, sir?
4 A It was on Stono River.
5 Q Stono River, okay.
6 And how many years were you in real estate, Mr.
7 Drews?
8 A How many years was I in real estate?
9 Q Did you buy and sell real estate?
10 A I don't remember doing it.
11 Q Were you a member of a company called B&D Realty?
12 A Yes.
13 Q And what did that company do?
14 A We bought low income properties and leased them
15 out and sold them.
16 Q So you did deal in real estate, correct?
17 A If you'd call it that, yes. Trashy properties.
18 Q But you would agree with me, 1469 South Edgewater
19 was a prime piece of real estate?
20 A Oh, yes.
21 Q And it was worth a lot of money when you
22 transferred it, correct?
23 A I don't know. I don't think we gave it away. But
24 I don't think we made any money on it.
25 Q Do you think you received more than \$500,000 on

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1 that piece of property when you sold it?

2 A I really don't know.

3 You made a statement a little while ago, that I
4 got \$5 for it.

5 Q Yes, sir. That's what the deed reflects,
6 according to the Charleston County Auditor property
7 cards.

8 A I know I got more than that for it.

9 Q Okay. And would the new owners of that property,
10 Mr. Meadows and Ms. Case be the best source?

11 A I would think so. If they still live there.
12 Shouldn't that be in the courthouse?

13 Q The deed, sir, it is filed with the County.

14 My request on No. 9 relates to a number of real
15 estate properties that you've been involved with in the
16 last ten years...

17 A Okay.

18 Q And I wanted you to bring to court today any
19 documents you had in your possession--

20 A I don't have them.

21 Q And you have no documents in response to No. 9,
22 correct?

23 A I don't keep all of that stuff.

24 Q Okay. And I want to go back just briefly to Two
25 Noffield Road where you currently live. And you said

1 that after you sold 1469 South Edgewater, you gave you
2 nephew, Donald Lancaster, \$100,000. And he purchased
3 Two Noffield Road for you and your wife, correct?
4 A He purchased it for himself. We gave him the
5 money.
6 Q Okay. And you live there now?
7 A We live there now.
8 Q And he granted you a life tenancy?
9 A That's correct. I believe I brought that with me.
10 Do you want to see it?
11 Q Yes, if you have a copy of that, I would like to
12 see that.
13 A (Goes over documents)
14 MR. DROSE: Let the record reflect that we've
15 looked through all of the documents that he brought.
16 And he thought he had that with him, but he does not.
17 Q Okay.
18 Mr. Drews, did you--
19 A I'm still looking.
20 MR. DROSE: I've already looked, but...
21 I'll look through those for you.
22 A I give up.
23 Q Okay. So your attorney has indicated, and you
24 can't find anything that relates to that today?
25 A I know I brought it with me, but I can't find it.

1 Q Okay. Mr. Drews, when you gave the \$100,000 to
2 your nephew, so that he could purchase Two Nofffield Road
3 for you, did you file a Federal Gift Tax Return on that
4 \$100,000 gift?

5 A I don't know.

6 Q Who would have that information?

7 A Jerry Gambrell. He's the CPA we have.

8 Q Okay. And how many years have you used Mr.
9 Gambrell?

10 A We had one that started with me about in '55 or
11 '60. And then when they died, Jerry took over the
12 business.

13 Q So more than 20 years he has been your--

14 A I would say approximately 20 years.

15 Q Approximately 20 years. Okay.

16 A He's a good guy, too. I just can't understand why
17 he's not answering the phone calls.

18 Q And, Mr. Drews, I know we've spoken about Two
19 Nofffield Road and 623 Meeting Street. Nofffield Road is
20 where you live today. And 623 Meeting Street you agree
21 with me, if the deed reflects that you sold that in 1997
22 for \$135,000, you have no reason to question that, do
23 you?

24 A No.

25 Q Let's talk about 1705 Meeting Street Road. Are

1 you familiar with that property?

2 A Yes.

3 Q And what was that property, Mr. Drews?

4 A Commercial real estate.

5 Q Okay. And it indicates on November 6, 2001 you
6 and your wife sold that property for \$205,000 to
7 Charleston's Antiques District, LLC.

8 A I think that's right.

9 Q And the deed--

10 A What did you say?

11 Q In November of 2001?

12 MR. DROSE: What was the question that he and his
13 wife sold it to--

14 MS. MEYER: To Charleston's Antiques District,
15 LLC.

16 MR. DROSE: I think Mr. Drews conveyed it to her,
17 prior to her selling it.

18 Are you looking at the records there?

19 Q Mr. Drews, at some point, did you and your wife
20 jointly owned 1705 Meeting Street Road?

21 A Over a period of time. I think I owned it for a
22 while, and she owned it for a while.

23 MR. DROSE: I did a little check on that. I think
24 while we're on the record, I think they each owned it
25 separately from--they've transferred it back and forth

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1 to one another through the years. But I don't think
2 they ever owned it jointly.

3 MR. MEYER: Can you just list out for me those
4 dates that you found?

5 MR. GROSE: I think in '83 Bob believes he
6 purchased the property. And in October '86 that he
7 deeded it to his wife, Effie. Then in 1992, Effie
8 deeded it back to Drews - to Bob. And then in November
9 6, '01, Bob deeded it to Effie. And then the next day
10 after he sold it, is what we think the record reflects.
11 But this is simply notes that I'm reading from that may
12 or may not be correct.

13 MS. MEYER: Okay.

14 Q And, Mr. Drews, you would agree with me that you
15 and/or your wife sold that property after Builders
16 Station closed, and gave rise to the claim in the
17 underlying case, correct?

18 A That's right.

19 Q Okay. And if the records reflect that you and/or
20 your wife received \$205,000 in consideration for the
21 transfer of 1705 Meeting Street to Charleston's Antiques
22 District, LLC, you have no reason to question that,
23 correct?

24 A I don't think that's right.

25 MR. DROSE: If the records reflect that, though, I

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1 mean...

2 Q Do you have some information for me on 1705

3 Meeting Street?

4 A I might.

5 Q Okay.

6 A I got \$130,000--

7 MR. DROSE: Your wife, Effie did.

8 Q Mr. Drews, was there a mortgage on 1905 Meeting

9 Street when it was sold?

10 A I don't know.

11 Q Do you know how much net cash you believe you

12 received from that transaction?

13 A I didn't get any, my wife did.

14 Q Okay. But you gave her the property the day

15 before she sold it, correct?

16 A I think so. That was all in the family, you know.

17 Q Right. But you gave her the property. You deeded

18 the property to her, and then the next day she sold it,

19 correct?

20 A I think so.

21 Q Do you have an idea of what you estimate your wife

22 received, as a part of that transaction? Do you have

23 any numbers for me?

24 A It's not what you said.

25 Q Well, what do you have, then, sir?

1 A I have \$130,000.
2 Q Okay.
3 A Out of that came a lot of taxes.
4 I got a bill from the Federal Government and South
5 Carolina State Tax.
6 Q Okay. So I could look to your income tax returns
7 for that year to get an idea of how that money flowed?
8 A Did you say in '05?
9 MR. DROSE: She's asking about '01 when the
10 transaction took place. If she looks at the tax return,
11 would that help her understand how the money flowed?
12 WITNESS: I don't know.
13 I thought she was talking about '05.
14 Q You said you paid a good bit of money on that
15 transaction. Was that income tax?
16 A No. That was Federal Tax.
17 MR. DROSE: That would be income tax.
18 Q Okay. And that was tax because you sold the
19 property. That's what you were taxed on?
20 A I think so.
21 Q Okay.
22 A It was about \$40,000.
23 Q Mr. Drews, have you always filed joint tax returns
24 with the Federal and State with your wife?
25 A I think so. We are married.

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1 Q For a number of years, isn't that correct, sir?
2 A July 3, 1993. I just got it.
3 MR. DROSE: We were telling her that it took you a
4 little while to remember.
5 Q Mr. Drews, do you recall having an ownership
6 interest at 233 Huger Street in Charleston?
7 A That was a piece of trash.
8 Q Okay. And do you recall that in 2002 you signed a
9 quitclaim deed for \$5 on this property?
10 A If you say so.
11 Q If you ever need to take a break, you can let your
12 attorney know. And we can take a break.
13 A I need a break.
14 Q We'll go off the record, then.
15 (Court breaks for short recess)
16 (Hearing convenes)
17 Q Do you think you're ready to proceed, Mr. Drews?
18 A Yes.
19 Q Now, 233 Huger Street, Charleston, you referred to
20 that as piece of trash?
21 A That's right.
22 Q Okay--
23 A It looks like it right now. They just haven't
24 bulldozed it yet.
25 Q And if the County records indicate that that

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1 property was sold on July 10, 2005 for about \$50,500, do
2 you have any reason to question that?

3 A I don't believe it. \$50,000?

4 Q Yes, sir.

5 A It sure surprises me.

6 Q Okay. But if it sold on July 10, and you had an
7 interest up to July 9, 2002--

8 A 2002?

9 Q Yes. Do you recall owning a portion of 233 Huger
10 Street?

11 A 233 Huger Street?

12 Q Yes.

13 A I don't remember.

14 MR. DROSE: He responded by saying he didn't
15 remember.

16 MS. MEYER: Okay.

17 Q Do you recall if you held that piece of property
18 in D&B Realty, at any time?

19 A I don't recall, but I probably did.

20 Q Okay. And do you recall why you signed the
21 quitclaim deed in July of 2002?

22 A No.

23 Q So if you quitclaimed it to Dorsey and Cynthia
24 Billar--

25 A They use to work for me.

1 Q They used to work for you?
2 A Yes.
3 Q Would they be the best source of what took place,
4 or what has transpired in that transaction?
5 A I would think so.
6 Q Okay. And Dorsey is a first name?
7 A Yes.
8 Q And Cynthia, is that his wife?
9 A Yes.
10 Q Okay. And you indicated that you knew Mr. Billar?
11 A Yes.
12 Q And he worked for you?
13 A Yes.
14 Q At which company, sir, that you owned?
15 A The Drews Company.
16 Q Okay. And what did the Drews Company do?
17 A We did most of the restorations Downtown. We'd
18 still be there had it not been for that damn Hugo.
19 Q Mr. Drews, do you recall owning, at any time, the
20 property at 92 Sheppard Street in Charleston?
21 A 92 Sheppard?
22 Q Yes, sir.
23 A I think so.
24 Q And at some point did you transfer that property
25 to your wife?

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1 A Maybe. I don't have any idea. I don't remember.
2 Q Okay. Do you recall that your wife ultimately
3 sold that property?
4 A No, I don't.
5 Q You don't recall that in November of 2000 she sold
6 that property for \$470,000?
7 A Oh, Jesus! If she sold it for that, I don't know
8 about it.
9 \$400,000 and how much?
10 Q \$470,450, sir.
11 A Jesus Christ! That was a piece of trash in
12 property.
13 Q Sir, if the County records reflect that you held
14 that in B&D Realty Company, is that consistent with your
15 memory.
16 A Yes.
17 Q Was your wife a member of B&D Realty Company?
18 A Not that I recall.
19 Q Who were the partners in B&D Company?
20 A Brown and Drews.
21 Q And who is Brown?
22 A Johnny Brown.
23 Q Okay. Do you recall how this property was
24 transferred to you from B&D Realty?
25 MR. DROSE: When you say "you," do you mean--was

1 it actually transferred into Bob's name? I don't want
2 him to get confused.

3 MS. MEYER: It's not really all that clear from
4 what I have, that's why I ask for any deeds that he has.

5 A Say that again.

6 Q Do you recall how the B&D Realty Company came to
7 be in your wife's name?

8 A I don't think she was ever a part of it.

9 Q Was it always your property?

10 A (No response)

11 MR. DROSE: Her question was how did this property
12 get out of B&D into Effie's name?

13 Is that what you are trying to find out?

14 MS. MEYER: Yes.

15 MR. DROSE: So she's not asking if she was a
16 partner. But it was held by B&D and apparently,
17 according to the records, it went into her name. And
18 she is just asking if you recall how that happened.

19 A No, I don't.

20 Q Do you know what happened to the \$470,000?

21 A I wish I had it.

22 Q Which your wife received?

23 A I don't think she's keeping any secrets from me
24 either.

25 MR. DROSE: What's the date of that transaction?

1 MS. MEYER: That was November 22, 2000.

2 Q Do you recall still holding that property when the
3 suit was filed by Mr. Gordon against you and Mr.
4 Beasley?

5 A That was 2000?

6 Q Yes, sir. The suit was filed in '99.

7 A Oh.

8 Q Is that what you recalled?

9 A I don't remember, no.

10 Q But if the underlying lawsuit for this judgment
11 was filed in 1999, and this property was sold by your
12 wife in 2000, you have no reason to question those
13 dates?

14 A No.

15 MS. MEYER: All right. It does appear that we
16 should go through the items listed on the July 28 Order
17 by Judge Jefferson to see what other documents and
18 information we need. And we can ask the Judge to
19 adjourn.

20 WITNESS: Can we take a break?

21 MR. DROSE: This is the last thing we need to do.
22 And I'm going to be doing it, and you can listen to me.
23 And then if you--

24 MS. MEYER: Mr. Drews, if you hear your attorney,
25 and I know he has had conversations with you about the

1 documents. If there's anything that you want to add to
2 what he is saying, or you need to stop us to interject,
3 please do.

4 We're just trying to set forth where we are with
5 the documents and information.

6 Thank you.

7 MR. DROSE: And I want the record to reflect that
8 I'm going to go through the items ordered by Judge
9 Jefferson, to be brought to this hearing. And to the
10 extent that I respond and provide information, I'm not
11 intending to testify, or not holding out that
12 information as being true and accurate. I'm just
13 attempting to respond--to let the record reflect what we
14 have responded to, and what we have not.

15 It appears that No. 1 asks for State and Federal
16 Tax Returns since 1996. And none of those items were
17 brought today.

18 MS. MEYER: Just to let the record reflect, is it
19 Mr Drews' position that Plaintiff can obtain those
20 records from his CPA, Mr. Gambrell, if we have to go
21 that route?

22 MR. DROSE: I don't know whether you are giving--

23 WITNESS: I don't know whether Jerry is going to
24 give them up.

25 MR. DROSE: I mean he's saying that's where they

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1 are. I'd like to leave it at that.

2 MS. MEYER: Okay.

3 MR. DROSE: He's saying on number 2: All State
4 and Federal Gift and Inheritance Tax Returns since 1996.
5 He doesn't think there were any such returns filed. But
6 if they were, he doesn't have them with him today.

7 Number 3: Documents reflecting all property
8 transfers between Respondent and Effie Drews. He has no
9 documentation on that.

10 Number 4: Documents reflecting transfers to other
11 relatives. He has no documents relating to that today.

12 Number 5 asked for a list of all assets for which
13 Respondent enjoys the benefit of, and which are owned by
14 Donald Lancaster.

15 His list is Two Noffield Road. So he did respond
16 to that. In essence, if he had a list, it would be one
17 item on the list, and that would be Two Noffield Road.

18 A list of all gifts monetary and otherwise
19 received by Respondent from Donald Lancaster. His
20 response is that there's none. So he could not provide
21 that.

22 Number 7--

23 MS. MEYER: And Dusty, before you go on from
24 number 6, is it his position that the life tenancy is
25 not a gift from Donald Lancaster in the Two Noffield

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1 Road address?

2 MR. DROSE: That's a fair question. I've heard
3 him call it a gift. And then I've heard him describe it
4 as having purchased this life estate with the money. So
5 I don't know, legally, which it is, and what he
6 considers it to be. But you're right, that should be on
7 the list, if it is a gift. So we have some confusion
8 there to iron out.

9 Number 7: He brought no bank records with him,
10 despite being ordered to bring them.

11 MS. MEYER: Would he agree that he has had
12 accounts at First Citizens Bank, Carolina First Bank,
13 and First Union/Wachovia?

14 MR. DROSE: That's what he told me, that he had a
15 bank account at First Citizens. He didn't know about
16 Carolina First, there's a question mark. And First
17 Union/Wachovia, his wife has an account there, but not
18 he.

19 WITNESS: Also, the business, Builders Station,
20 they might have had an account there.

21 MR. DROSE: But you have no personal account at
22 First Union/Wachovia?

23 WITNESS: No.

24 MS. MEYER: And how long has Effie Drews held an
25 account at First Union/Wachovia?

1 MR. DROSE: Do you know the answer to that, Bob?
2 WITNESS: No.
3 MS. MEYER: More than ten years?
4 WITNESS: I think so. She keeps her social
5 security separate from mine.
6 MR. DROSE: Number 8: He says that all statements
7 of amount of all cash, personal or cashier's checks,
8 money orders, drafts, and coins owned or possessed by
9 Respondent. His response is that he has cash of about
10 \$30. And there's about \$350 in his checking account, at
11 this time. And he owns no money orders, cashiers
12 checks, drafts, or coins of any value.
13 MS. MEYER: And where is his current checking
14 account?
15 WITNESS: First Citizens Bank.
16 MS. MEYER: And how long has that account existed,
17 Mr. Drews?
18 WITNESS: A long time: Since they've been there.
19 MS. MEYER: More than 20 years, maybe?
20 WITNESS: I think so.
21 MS. MEYER: More that 10 years definitely?
22 WITNESS: Yes.
23 MS. MEYER: I think you.
24 MR. DROSE: Okay. Number 9, we've discussed. He
25 has not responded to that today. Those are the real

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1 estate properties.

2 Number 10 is a companion provision to number 9.

3 And he brought no responses to number 10.

4 Number 11 asked for mortgages owed by Respondent
5 and/or Effie Drews since 1996. He brought no responses
6 to that.

7 Number 12: An accounting which reflects how the
8 \$100,000, described here as a loan, accrued to
9 Respondent and Effie Drews as evidenced by a mortgage in
10 favor of Donald Lancaster on April 15, 1998, was spent.
11 He brought no accounting, and he further say that he
12 does not have those records.

13 Number 13: Description of any personal property
14 owned or possessed by Respondent, which is worth \$200 or
15 more. He says he has minimal household goods and a 1995
16 Buick SENTRY vehicle.

17 That's the only vehicle you have an interest in,
18 Bob?

19 WITNESS: That's right.

20 MR. DROSE: Okay--

21 MS. MEYER: And Mr. Drews, did you drive that
22 vehicle today?

23 MR. DROSE: He took a cab today.

24 MS. MEYER: Does your wife have a car?

25 WITNESS: Yes.

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1 MS. MEYER: What does she own, sir?
2 WITNESS: She owns a '96 Buick.
3 MS. MEYER: Thank you.
4 MR. DROSE: Document number 14: Documents
5 relating to any corporate partnership, or a limited
6 liability company, any interest held by Respondents
7 since 1996. And he says he has no such records in his
8 possession.
9 Number 15: Statement of any stocks, bonds, or
10 other securities. His statement would say that he has
11 none of those items. He responds to that by saying he
12 does not own any stocks or bonds or securities.
13 MS. MEYER: And I would just like to expand that
14 question, if I might, while we're on the record.
15 MR. DROSE: Okay.
16 MS. MEYER: Mr. Drews, does your wife own any
17 stocks, bonds, or other securities in an investment
18 account?
19 WITNESS: She might have her own savings. I don't
20 know.
21 MS. MEYER: And do you know--
22 WITNESS: Let me put down, I don't know.
23 MS. MEYER: I'm sorry?
24 WITNESS: I'd rather you put down, I don't know.
25 MS. MEYER: Well, do you know if she has like an

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1 investment broker for that?

2 WITNESS: No, she has like a little savings
3 account, like you would have. And it won't amount to
4 much.

5 MS. MEYER: Do you know which bank it's at?

6 WITNESS: Well, she deals with Wachovia.

7 MS. MEYER: Okay. So you think she has a checking
8 and a savings there, is that correct?

9 WITNESS: I wonder...

10 MR. DROSE: The question was, do you think she has
11 a checking and a savings account there?

12 WITNESS: If she had one, yes, sir.

13 MR. DROSE: Number 16 asks for a listing of all
14 distributions of any kind to Respondent, or elated
15 parties, or entities, or any ownership interest held
16 since 1996, an accounting of such. He brought no
17 response to that question.

18 Number 17: Statements of any interest Respondent
19 has in any notes, mortgages, accounts, or other claims
20 against anyone. He has no notes, no mortgages, no
21 accounts. But he does think he has legal claims against
22 his prior attorneys, though he has not been able to
23 secure counsel for--

24 WITNESS: What was that question?

25 MR. DROSE: The question was: Do you own any

1 notes, or mortgages, or accounts owed to you, or do you
2 think you have any claims against anybody?

3 I responded by saying I think you believe you have
4 claims against two attorneys. But you haven't been able
5 to secure--you haven't followed through, or secured
6 counsel to get those.

7 But I think he's got the legal opinions that those
8 claims are barred by the Statute of Limitations.

9 MS. MEYER: Okay.

10 MR. DROSE: Number 18: We think we responded to
11 today by answering: None. That would be request of
12 statements of current agreements or contracts for
13 services or work, and financial statements relating to
14 such work, and any records of inventory. He has no
15 activity in that area going on, at this time. So he
16 says, none.

17 Number 19: Documents relating to any leases for
18 property, rural or otherwise, and an accounting for the
19 payments received, pursuant to such leases. He's not
20 the lessor on any property. And has no monies paid to
21 him in that capacity.

22 Number 20: Any life insurance policies on your
23 life.

24 Bob, I'm not clear. Do you have any life
25 insurance policies--

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1 WITNESS: I have two \$10,000 policies.
2 MR. DROSE: Two \$10,000 policies.
3 MS. MEYER: And are those whole life or term life?
4 WITNESS: I don't know the difference.
5 MR. DROSE: Whole life would build up a cash value
6 where you could borrow against that--
7 WITNESS: Oh, no.
8 MS. MEYER: Do you have copies of those policies
9 with you today?
10 WITNESS: No.
11 MR. DROSE: He did not bring copies with him
12 today.
13 And number 21: Any documents evidencing a debt
14 owed to Respondent by any other person or entity. He
15 responds by saying there are none.
16 MS. MEYER: Mr. Drews, what's your social security
17 number?
18 WITNESS: I don't believe... Social Security is
19 under investigation now.
20 MR. DROSE: We could provide that number to you.
21 MS. MEYER: Okay.
22 And would you also agree to provide his wife's
23 social security number?
24 WITNESS: I don't know it. But I can tell you
25 mine. It's 250-14-1850.

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1 MS. MEYER: And you agree to provide your wife's
2 social security number?

3 WITNESS: Do I agree to provide it?

4 MS. MEYER: You don't have to provide it on the
5 record today. But would you agree that your attorney
6 will provide that number?

7 WITNESS: I will give it to Michael.

8 MS. MEYER: I think we can step back and ask the
9 Judge to come out.

10 MR. DROSE: Okay.

11 (Judge addresses the court)

12 WITNESS: What is she going to do now?

13 MR. DROSE: She is going to ask the Judge to come
14 back in. And what he's going to do, Bob, is he is going
15 to instruct us to comply with the Order and give us
16 another date.

17 (Colloquy off the record)

18 COURT: Ms. Meyer, do you have a Motion?

19 MS. MEYER: At this time, the Plaintiff would make
20 a Motion for a Continuance. We've been going for just
21 about an hour and a half this morning. And just by way
22 of background for your HOnor, we've gone through Judge
23 Jefferson's Order for documents to be produced. There
24 are a number of items on this list that have not been
25 produced.

1 In fact, Mr. Drews has not produced any documents
2 today. What we have gone through extensively are
3 property transfers in number 9. I have questioned Mr.
4 Drews about that. And just for your Honor's
5 information, there's a property at Two Noffield Road
6 that he gave his nephew \$10,000 for, that was purchased
7 in 1995. That's his current residence.

8 There was a property at 623 Meeting Street that he
9 gave to his wife, or that they transferred back and
10 forth. And that property was sold for \$135,000 in 1997.

11 There was a property at 1705 Meeting Street Road
12 that was sold for \$205,000 in 2001. That was November
13 2001 just prior to the trial of this case.

14 And there was also a property at 92 Sheppard
15 Street that he and his wife had transferred back and
16 forth. And his company B&D Realty was also involved
17 with. And that was sold in 2000 for \$470,450, your
18 Honor.

19 Those four properties grossed receipts, according
20 to the property cards is \$910,000. Mr. Drews is unable
21 to account for any of these monies. We do understand
22 that there may be mortgages that were satisfied when
23 those properties were transferred out of his wife's
24 name.

25 What I think is clear today, Mr. Drews and his

1 wife often transferred properties back and forth to each
2 other with no consideration whatsoever. Our judgment in
3 this case was ordered in December 2001. The value of it
4 is now approaching \$200,000.

5 What I'm asking the Court to order today is Mr.
6 Drews to pay for title work on these four listed
7 properties that I've just listed for your Honor. So
8 that we can understand the chain of title. We have no
9 way of knowing, because his memory does not allow him to
10 tell us what the substance of those transactions were.

11 Our continuance is also based, and our
12 continuation of this hearing is based upon the fact that
13 he has no income tax returns. He's filed joint income
14 tax returns with his wife. He has requested those from
15 his CPA. And the CPA has not responded to Mr. Drews.
16 We would like the opportunity to get those returns. If
17 we don't, we'd like the opportunity to subpoena the CPA
18 to this court.

19 Additionally, we would like to subpoena his wife,
20 Mrs. Effie Drews, to explain these transfers. We would
21 like to subpoena his nephew, Donald Lancaster, and any
22 of the new property owners that we deem necessary, to
23 fully give us a picture of what happened with these
24 properties.

25 Also, Mr. Drews has bank accounts. We've not been

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1 provided any statements. He has given me those banks.
2 And also his wife has bank accounts. She is intertwined
3 in this, and we believe the nephew is, too, by these
4 gifts. And we don't believe that the Plaintiff has had
5 sufficient opportunity to fully investigate the assets.

6 So we would ask that your Honor orders a
7 continuance of this matter. And either set a date by
8 which Mr. Drews must produce the documents, or grant
9 Plaintiff an award of costs and fees, so that we can
10 fully investigate the matter.

11 Thank you.

12 MR. DROSE: Your Honor, we cannot oppose a
13 continuance. Mr. Drews has attempted to respond and be
14 helpful today. But I would concede he has not provide
15 sufficient information to allow the Plaintiff to make an
16 assessment of the likelihood of recovery of its
17 judgment.

18 I don't know what the Court's position is.
19 However, on the issue of cost on the four real estate
20 properties, the cost of a title examination, Mr. Drews
21 says he does not have any records. I don't know what
22 duty the Court feels like he has to maintain those
23 records and bring them in.

24 It seems to me that a judgment creditor has, you
25 know, should bear the cost of investigating the real

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1 estate transactions. But I'd leave that up to the
2 Court. Mr. Drews has no records on those real estate
3 transactions. And there are four properties involved.

4 COURT: Let me ask this question. Mr. Drews is a
5 real estate agent?

6 WITNESS: Am I a real estate agent?

7 COURT: Yes, sir.

8 WITNESS: No, sir.

9 COURT: You're not. All right.

10 The conveyance to the nephew was in 1997?

11 MS. MEYER: Your Honor, it was in 1995. And what
12 the record will reflect today, and I'd ask Mr. Drew's
13 attorney, and Mr. Drews to step in, if I misstate what's
14 happened today.

15 The family owned a property at 1469 Edgewater in
16 Charleston, on the Stono River. Mr. Drews has testified
17 today that that property was transferred--he and his
18 wife sold that property to Keith Meadows and Christine
19 Case. The deed reflects a \$5 consideration. Mr. Drews
20 said it was much more than that. He can't tell us how
21 much was received.

22 But he does say he took \$100,000 from that
23 property sale, gave \$100,000 to his nephew, Donald
24 Lancaster, who bought Two Noffield Road, which is his
25 residence today. And he has admitted that he was the

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1 source of the \$100,000 that was invested in the home
2 that he lives in today.

3 That home is currently held in Donald Lancaster's
4 name. And he granted Mr. Drews and his wife, Effie, a
5 life tenancy.

6 MR. DROSE: Just so the record is clear, all that
7 happened before this lawsuit was even brought, and
8 before there was even any relationship between these
9 parties. This was back in 1995, I believe. And so
10 although that's interesting, it's not--it certainly
11 predated any of the litigation between the parties.

12 COURT: Right. That's what I was trying to
13 verify.

14 The 623 Meeting Street sale was since the judgment
15 or not?

16 MS. MEYER: 623 Meeting was sold by he and his
17 wife on May 2, 1995. And that occurred after the
18 Builders Station, which is the subject of this lawsuit,
19 the investment for Mr. Gordon, went defunct.

20 And Plaintiff would assert that even though there
21 wasn't a judgment, Mr. Drews was transferring assets to
22 his wife back and forth, in an attempt--he was aware, at
23 that point, that there was a dispute with Builders
24 Station.

25 COURT: With regard to this older, back in '95,

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1 I'm not going to require him to produce those. I will
2 require him to produce the subsequent ones, the 2000,
3 2001 ones, the 1705 Meeting and 92 Sheppard.

4 Now, to the extent that Mr. Drews doesn't have
5 that, he should have the information to allow you to get
6 that information. And so, I'm sure any real estate
7 lawyer in Charleston who ever closed that, would have
8 that documentation. And that's going to be, frankly,
9 better information for you than the title search that
10 you can do.

11 So you need to get a copy of the HUD-1, is what
12 you need. So you need to find out from Mr. Drews, who
13 closed those loans, and retained those records there.

14 To the extent you can determine who the closing
15 attorneys were, then you should probably go to the CPA.

16 And Ms. Meyer, I will allow you, to the extent
17 that the CPA doesn't voluntarily provide that
18 information to Mr. Drews so that he can produce it to
19 you, I'll certainly allow you to subpoena the CPA,
20 whoever that is.

21 Have you all determined who the CPA is?

22 MR. DROSE: We have.

23 MS. MEYER: Yes, your Honor. It's Jerry Gambrell.

24 And just so I'm clear, on the Two Noffield Road,
25 you're not requiring a title by Mr. Drews on that

1 property?

2 COURT: If you all can find out about it, that's
3 fine. But I'm not going to require him to go back...

4 MS. MEYER: And you're requiring him to provide
5 information to us on 623 Meeting--

6 COURT: No.

7 MS. MEYER: No. Okay.

8 1705 Meeting and 92 Sheppard?

9 COURT: Right.

10 MS. MEYER: Okay.

11 COURT: To the extent that you all can find out
12 the rest of it, that's fine.

13 Now, the HUD statements would be what would give
14 you what information you need. But those ones that are
15 over ten years old, I'm not going to require him to
16 produce those.

17 To the extent that he's got bank accounts and bank
18 records, I'm going to require him to produce those,
19 whatever they are.

20 Again, I'll allow subpoena of the CPA, if you need
21 him to come and bring the stuff, you can do that. What
22 I find more productive; however, is doing this outside
23 the presence of the Court. If you need to subpoena him
24 and go through the records, and if you need to depose
25 him for any reason, you can do that.

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1 MS. MEYER: Your Honor, if I can ask. If Mr.
2 Gambrell is not voluntarily responsive to Mr. Drews,
3 just to keep the proceeding moving forward, if he does
4 not respond within ten days, then it's my understanding
5 that I can go ahead and issue a subpoena, to keep the
6 process moving?

7 COURT: I'd say 15.

8 MS. MEYER: 15? Okay.

9 Thank you.

10 COURT: And then as to the advances, is 1705 and
11 92 Sheppard both of those were back and forth with Mrs.
12 Drews?

13 MS. MEYER: Yes, your Honor. And it also involved
14 an entity that he held with Chuck Brown called B&D
15 Realty.

16 And just so your Honor knows, the sum total of
17 those two properties is \$675,450. That's gross not net.

18 COURT: Okay.

19 Well, I'm going to allow you to pursue that,
20 however you can. I'm not, at this time, inclined to
21 award the Plaintiff's costs and fees. I'm going to have
22 you do that as a part of your own expense, at this point
23 in time. But to the extent that this stuff is not
24 forthcoming, and we have to address it again, I'd be
25 inclined to entertain that Motion again.

1 MS. MEYER: Thank you, your Honor.
2 COURT: Anything further?
3 MR. DROSE: Nothing from us, your Honor.
4 MS. MEYER: Would your Honor--
5 COURT: Why don't we do this. I will continue it.
6 I will leave it open. Typically, we'd leave them open
7 for about six months before you contact and say you want
8 to get rid of it.
9 What I'd ask you to do is say within 60 days or
10 so, just contact our office to see if you need to
11 reschedule again. But again, you would only need to
12 reschedule it if you think there are some assets there
13 that you think you can obtain to satisfy your judgment.
14 MS. MEYER: And it's my understanding that if we
15 do reschedule, and the documents themselves don't
16 provide enough information, that the Court will allow us
17 to bring in witnesses?
18 COURT: If you need to issue subpoenas, you may.
19 MS. MEYER: Thank you, your Honor.
20 COURT: Mr. Drose, I'm well familiar with you.
21 And I'm glad to see you. I don't see you very often.
22 MR. DROSE: I'm glad to be here, your Honor.
23 WITNESS: I think I know you, but I'm not sure.
24 COURT: You look familiar to me, too, Mr. Drews.
25 I'm not sure where we might have met.

1 WITNESS: Will Scarborough, he's related to you?

2 COURT: He's a cousin. He's one of my wealthy
3 cousins. I'm one of the ones that have to work.

4 WITNESS: He's doing all right. We were in the
5 Boy Scouts together. A long time ago.

6 COURT: Amy, nice to see you.

7 MS. MEYERS: Nice to see you, too.

8 Thank you so much.

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11 HEARING ENDED.

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) CERTIFICATE

3
4 I, Rhoda A. Green, Reporter and Notary Public
5 for the State of South Carolina, do hereby certify that
6 the within named Hearing in the matter of FRANK GORDON,
7 JR vs RUDOPH ROBERT DREWS did occur at the time and
8 place as set forth in the caption.

9 I certify that the proceedings were recorded
10 stenographically by me, and that the foregoing 54
11 pages, plus Table of Contents (none) a true and
12 accurate record of these proceedings.

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Rhoda A. Green
NOTARY PUBLIC FOR SOUTH CAROLINA.
My commission expires October 12, 2011

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

FRANK GORDON, JR.,)
Individually and as Trustee of)
the Dorothy S. Gordon)
(Deceased) Trust,)

Plaintiff,)

vs.)

DONALD W. LANCASTER)

Defendant.)

~~CASE NO.: 2010-CP-10-9096~~

**DEFENDANT'S MOTION
FOR RECONSIDERATION
TO AMEND THE COURT'S
FINDINGS, AND TO
ALTER OR AMEND THE
COURT'S JUDGMENT**

FRANK GORDON, JR.,)
Individually and as Trustee of)
the Dorothy S. Gordon)
(Deceased) Trust,)

Plaintiff,)

vs.)

DONALD W. LANCASTER)

Defendant.)

CASE NO.: 2011-CP-10-8840

**DEFENDANT'S MOTION
FOR RECONSIDERATION
TO AMEND THE COURT'S
FINDINGS, AND TO
ALTER OR AMEND THE
COURT'S JUDGMENT**

BY

2013 SEP -6 PM 6:54
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

COMES NOW the Defendant, Donald W. Lancaster ("Mr. Lancaster"), pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure, and respectfully requests this Circuit Court to reconsider its Order and Judgment (the "Order") dated 16 August 2013, and filed with the Office of the Charleston County Clerk of Court on 19 August 2013.¹ Mr. Lancaster states the Order, which should and must be reversed, is based upon improper legal grounds and is not factually supported by the record before this Circuit Court. Moreover, this Circuit Court should have granted Mr.

¹ A copy of this Circuit Court's Order is attached hereto as Exhibit "A" and incorporated herein by reference. Mr. Lancaster's counsel received the filed and executed order on 29 August 2013.

WLC

Lancaster judgment against the Plaintiff, Frank Gordon, Jr., Individually and as Trustee of the Dorothy S. Gordon (Deceased) Trust ("Mr. Gordon"), on all or substantially all of the of the claims he asserted against Mr. Lancaster.

Mr. Lancaster bases his Rules 52(b) and 59(e), SCRCivP, motions on the following grounds:

- (A) This Circuit Court improperly concluded that Mr. Gordon was entitled to judgment against Mr. Lancaster for any sums in partial and/or full satisfaction of the 5 December 2001, monetary judgment (the "2001 Judgment") obtained by Mr. Gordon against the deceased Judgment Debtor, Rudolph Robert Drews ("Debtor Drews") in that the undisputed evidence demonstrated that the 2001 Judgment has, by operation of law, expired and is unenforceable given the fact it was obtained and entered on 5 December 2001, and therefore has been in existence for more than 10 years prior to the date judgment was entered herein. Mr. Lancaster is entitled to judgment against Mr. Gordon as Mr. Gordon's claims have expired.
- (B) This Circuit Court improperly concluded that Mr. Gordon was entitled to judgment against Mr. Lancaster for any sums in partial and/or full satisfaction of the 15 March 2002, award of attorneys' fees (the "2002 Attorneys' Fees Award") obtained by Mr. Gordon against Debtor Drews in that the undisputed evidence demonstrated that the 2002 Attorneys' Fees Award has, by

operation of law, expired and is unenforceable given the fact it was obtained and entered on 15 March 2002, and therefore has been in existence for more than 10 years prior to the date judgment was entered herein. Mr. Lancaster is entitled to judgment against Mr. Gordon as Mr. Gordon's claims have expired.

- (C) This Circuit Court improperly concluded that the \$100,000.00 Debtor Drews paid over to Mr. Lancaster in 1992 constituted a fraudulent conveyance given the fact that there was no evidence that it involved any manner of moral fraud and, moreover, the evidence demonstrated that the transaction was based upon both valid and valuable consideration, namely that Debtor Drews and his wife resided in the real estate which Mr. Lancaster purchased – initially at 17 Bainbridge Drive, Charleston, South Carolina (the “Bainbridge Property”) and then later at 2 Nuffield Road, Charleston, South Carolina (the “Nuffield Property”) – for more than 18 years paying their personal living expenses with Mr. Lancaster paying the real property taxes. The evidence demonstrated that in 1992 Mr. Lancaster used the \$100,000.00 from Debtor Drews, together with an additional \$65,000.00 of his own funds to purchase and improve the Bainbridge Property. The evidence further showed that in 1995, Mr. Lancaster purchased the Nuffield Property for \$125,000.00 and made \$15,000.00 in improvements using \$79,000.00 from a Line of Credit (“LOC”) on the Bainbridge

Property and the remainder from his personal funds. Furthermore, the Bainbridge Property, while on the market after purchase of the Nuffield Property, did not finally sell until January 1999.

- (D) This Circuit Court improperly concluded that Debtor Drews made fraudulent conveyances to Mr. Lancaster in payment of the \$40,000.00 in loans made by Mr. Lancaster to Debtor Drews during the 1993-1995 time period given the fact that there was no evidence that the transactions involved any manner of moral fraud and, moreover, the evidence demonstrated that the transactions were based upon both valid and valuable consideration, namely that Debtor Drews and his wife resided in the real estate which Mr. Lancaster purchased. Moreover, the evidence demonstrated the valid and valuable consideration for the \$40,000.00 mortgage was the \$40,000.00 in loans made by Mr. Lancaster to Debtor Drews and his wife between 1993 and 1995 (by them Debtor Drews had paid the \$100,000.00 and Mr. Lawrence had already granted the life estate already Debtor Drews and his wife) and Mr. Lancaster rightly and prudently insisted upon the \$40,000.00 mortgage as protection for the prior loans. Finally, the evidence showed that when Debtor Drews sold 623 Meeting Street in 1996, Mr. Lancaster received only \$6,000.00, of which only \$1,896.32 represented a reduction in the principal amount.

(E) This Circuit Court improperly concluded that Debtor Drews had provided Mr. Lancaster with a \$20,000.00 mortgage on certain real property Debtor Drews owned at 1705 Meeting Street, Charleston, South Carolina ("1705 Meeting Street") without any valuable consideration. The evidence showed the mortgage (of which Mr. Lancaster had neither prior nor contemporaneous knowledge) was based upon valid and valuable consideration in that it was obtained in order to secure indebtedness to Mr. Lancaster as Mr. Lancaster had himself in 1999 personally paid \$20,000.00 directly to some of Debtor Drews' then-creditors, namely \$15,000.00 to South Trust Bank and \$5,000.00 to First Citizens Bank.

(F) This Circuit Court made numerous unsupported Findings of Fact and Conclusions of Law, including, but not limited to, the information as set forth herein below:

(1) This Circuit Court incorrectly and improperly determined Debtor Drews was "In financial trouble in 1992" when the evidence demonstrated that Debtor Drews had sold his home in order to pay off all of the debts (governmental or otherwise) he had incurred to date and the \$100,000.00 he provided to Mr. Lancaster to assist in the purchase of the Bainbridge Property was the sum total of his remaining assets in 1992. Moreover, practically speaking, when Debtor Drews sold his residence any outstanding liens,

judgments, and/or debts of record (whether governmental or otherwise) would have had to be satisfied from the sales proceeds. When Debtor Drews sold his residence he still owned the real properties at 623 Meeting Street and 1705 Meeting Street, however the remaining \$100,000.00 for the sale of the residence which was paid to Mr. Lancaster represented the remaining net proceeds after all the IRS liens and other debts had been paid from the sale proceeds.

- (2) This Circuit Court incorrectly and improperly determined Debtor Drews gave Mr. Lancaster the \$100,000.00 "on the alleged condition" that Mr. Lancaster was to use the money to purchase a residence in which Debtor Drews and his wife could live. The evidence demonstrated that was precisely what occurred considering Debtor Drews had sold his residence to satisfy then-existing debts and did not have a residence in which to live. Moreover, the evidence shows Mr. Lancaster purchased the Bainbridge Property and Debtor Drews and his wife did live there and, later, in the Nuffield Property.

- (3) The Circuit Court incorrectly and improperly determined that the "uncontroverted evidence" Debtor Drews had "pending creditor claims, including IRS assessments and liens during most of the 90's" when the evidence demonstrated that Debtor Drews had satisfied his outstanding debts in 1992 when he sold his home and still had \$100,000.00 remaining and that any alleged IRS liens did not become evident until 2000 at the earliest.
- (4) The Circuit Court incorrectly and improperly determined that Mr. Lancaster only purportedly provided Debtor Drews a life estate in the Bainbridge Property and later in the Nuffield Property when the evidence demonstrated that there was a valid and true life estate provided to Debtor Drews and, in fact, Debtor Drews and his wife executed the life estate by residing in the two properties for some 18 years.
- (5) The Circuit Court incorrectly and improperly determined, on several separate occasions, that the Mr. Lancaster had contravened typical practices (whether business, real estate, and/or otherwise) by having certain documents prepared between himself and Debtor Drews and, in turn, failing to record those same certain documents between Debtor Drews and himself with the applicable governmental authorities all being part of some allegedly nefarious scheme

to hide Debtor Drews' (actually non-existent) assets when the evidence clearly demonstrated that each of the transactions (whether a Power of Attorney, mortgage, deed, life estate notification, and/or etc.) were handled by several different attorneys authorized and licensed to practice law in this State and that Mr. Lancaster relied and, indeed, was entitled to rely upon the expertise and knowledge of the attorneys which handled the transactions concerning whether such document needed to be recorded for disclosure to the public. Any recordation failure was not intentional by Mr. Lancaster and was done and/or not done without his knowledge.

- (6) The Circuit Court incorrectly and improperly determined that Debtor Drews was the beneficial owner and/or de facto owner of both the Bainbridge Property and the Nuffield Property and, therefore, those properties were Debtor Drews' assets when the evidence demonstrated that Mr. Lancaster himself purchased the Bainbridge Property for \$165,000.00 (using Debtor Drews' last \$100,000.00 and \$65,000.00 of his own funds) and the Nuffield Property for \$140,000.00 (using \$79,000.00 from the Bainbridge Property LOC and his personal funds for the remaining balance).

- (7) The Circuit Court incorrectly and improperly determined that Mr. Lancaster allegedly substituted the Nuffield Property for the Bainbridge Property due to medical issues with Debtor Drews and his wife when the evidence demonstrated that was the precise reason for the property substitution and there was no evidence to the contrary.
- (8) The Circuit Court incorrectly and improperly determined that Mr. Lancaster realized a profit of \$121,000.00 when he sold the Nuffield Property when the evidence demonstrated that, after considering the settlement expenses. Additionally, the uncontroverted testimony showed that Mr. Lancaster spent \$14,500.00 of his own funds for air conditioning, appliances, and repairs on the Nuffield Property over and above the purchase price of \$125,000.00 and, therefore, the "profit" was certainly less than \$121,000.00 and merely represented Mr. Lancaster's return on his investment in allowing Debtor Drews and his wife a life estate (to reside in the Bainbridge Property and the Nuffield Property) in consideration of a contribution payment of \$100,000.00 effectively representing Debtor Drews' and his wife's rental payments for some 18 years.
- (9) The Circuit Court incorrectly and improperly determined that Mr. Lancaster knew about and/or participated in Debtor

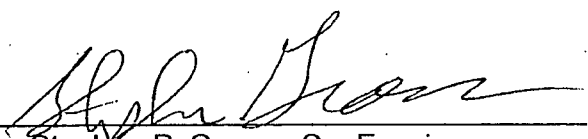


Drews procuring various mortgages on 1705 Meeting Street when the evidence clearly demonstrated that Mr. Lancaster was only aware of the original \$40,000.00 mortgage which he had requested to be obtained as security for the \$40,000.00 in loans he had previously made to Debtor Drews during the 1993-1995 time period (all for valid and valuable consideration) and, in fact, was completely unaware of and had no participation in the other several mortgages Debtor Drews had placed on 1705 Meeting Street.

In conclusion, Mr. Lancaster respectfully requests, at a minimum, this Circuit Court to reverse its prior order granting Mr. Gordon judgment. Moreover, Mr. Lancaster respectfully requests this Circuit Court to grant him judgment on all or substantially all of claims asserted against him by Mr. Gordon.

Respectfully submitted:

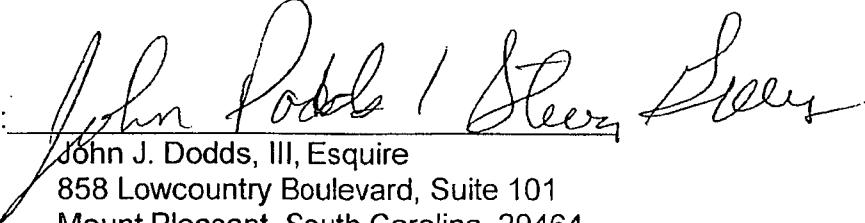
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Charleston, South Carolina

6 September 2013



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FRANK GORDON, JR.

Plaintiff

vs.

DONALD LANCASTER

Defendant

COURT OF COMMON PLEAS

DOCKET NO. 2010-CP-10-9096

TRANSCRIPT OF RECORD

June 13, 2013

Charleston, South Carolina

Volume 1 (of 2)

B E F O R E:

THE HONORABLE J.C. NICHOLSON, JR., JUDGE

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

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Court Reporter

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<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>	
1	Omitted		
2	Satisfaction - mortgage	10	11
3	\$40,000 mortgage	10	11
4	(withdrawn)		
5	Satisfaction - mortgage	10	11
6	\$100,000 mortgage	10	11
7	\$20,000 mortgage	10	11
8	Omitted		
9	Charleston Antique mortgage	10	11
10	Assignment of \$190,000 note	10	11
11	Assignment of \$190,000 mortgage	10	11
12	Assignment-Chas. Antique mortgage	10	11
13	Satisfaction of mortgage	10	11
14	Promissory Note \$50,912	10	11
15	Omitted		
16	Omitted		
17	Omitted		
18	Omitted		
19	NBSC \$50,000 mortgage	10	11
20	Omitted		
21	Title to 17 Bainbridge	10	11
22	Life Estate agreement	10	11
23	Title to Nuffield Rd.	10	11
24	Nuffield Agreement to purchase	10	11
25	Nuffield Memo of Lease	10	11
26	Bainbridge, Nuffield Clos. Stmt.	10	11

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<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>	
27	Promissory note	10	11
28	Amortization schedule	10	11
29	Omitted		
30	Omitted		
31	Omitted		
32	Omitted		
33	Omitted		
34	Omitted		
35	Omitted		
36	Omitted		
37	Omitted		
38	Omitted		
39	Omitted		
40	Omitted		
41	SCN \$40,000 mortgage	10	11
42	Notice of Fed. Tax lien	10	11
43	SCN \$79,520 mortgage	10	11
44	Wachovia \$100,000 mortgage	10	11
45	Title to Bainbridge	10	11
46	Drews fax to Gambrell	10	11
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50	Affidavit of R.R. Drews	10	11
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<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>	
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54	Omitted		
55	Title to Nuffield	10	11
56	EDD estate inventory	10	11
57	Omitted		
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59	EDD estate settlement agree.	10	11
60	Affidavit of Donald Lancaster	10	11
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62	Lancaster Amortization schedule	10	11
63	Drews tax return	10	11
64	Drews tax return	10	11
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66	Drews tax return	10	11
67	Drews tax return	10	11
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72	I-R-S collection letters	10	11
73	Richard Livingston invoices	10	211
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76	Deposition of Ms. Atkinson	123	124
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<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>	
79	Summary of present value	173	(I.D. ONLY)
80	Summary of present value	173	(I.D. ONLY)
81	'96 stock subscription agree	217	217
82	Chart	(I.D. ONLY)	

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2	Agreement	9	10
3	Title to real estate	9	10
4	Memorandum	9	10
5	List of loans	9	10
6	Schedule of loans	9	10
7	Schedule of monies	9	10
8	Copies of checks	9	10
9	Note - \$50,912	9	10
10	Letter from Kerry Koon	9	10
11	Execution and judgment	9	10
12	Check stub	9	10

PROCEEDINGS

1
2 THE COURT: Let's put on the record who is here and
3 who represents who. Mr. Lucey, do you have a copy of
4 your complaint that you filed yesterday? I'm not sure it
5 made the file yet. I've got a copy of Mr. Dodd's answer.

6 MR. LUCEY: I have an un-clocked copy, Your Honor.

7 THE COURT: That's fine.

8 [Whereupon, Mr. Lucey provides documents to the
9 court]

10 THE COURT: All right. Mr. Lucey, you are here for
11 Gordon is that correct?

12 MR. LUCEY: Yes, sir.

13 THE COURT: And I believe that's the individual and
14 as trustee of Dorothy Gordon deceased correct?

15 MR. LUCEY: Yes, sir.

16 THE COURT: Mr. Dodds, you're here for the
17 defendant?

18 MR. DODDS: Donald Lancaster.

19 THE COURT: Jessie Atkinson?

20 MR. DODDS: No, Your Honor, Donald Lancaster.

21 THE COURT: Donald Lancaster?

22 MR. DODDS: Yes, sir. He's the sole remaining
23 defendant in the case.

24 THE COURT: Okay. Who else is here?

25 MS. DRAWDY: Your Honor, I'm Stephanie Drawdy with

1 Justin Lucey's office.

2 THE COURT: Yes, ma'am.

3 MR. LUCEY: And I have Frank Gordon in the
4 courtroom, Your Honor.

5 MR. GORDON: I'm Frank Gordon, Jr.

6 THE COURT: Have y'all agreed to any exhibits?

7 MR. DODDS: We have, Your Honor.

8 THE COURT: Have you?

9 MR. DODDS: Yes, sir.

10 THE COURT: Mr. Lucey could you and Mr. Dodds if
11 you don't mind just come up -- have you had them marked?

12 MR. DODDS: We haven't, Your Honor. I've got these
13 to give to the court reporter.

14 THE COURT: Go ahead and get the exhibits marked by
15 the court reporter that y'all have agreed on. Do y'all
16 have an exhibit list by any chance?

17 MR. LUCEY: We do, Your Honor. And we have checked
18 for the court reporter the plaintiff's exhibits that are
19 agreed to. Mr. Dodds and I are jointly presenting this
20 list.

21 MR. DODDS: A lot of what is on his list is also
22 for me, Your Honor. I don't have a list; I apologize.

23 [Whereupon, exhibits are provided to the court
24 reporter]

25 MR. LUCEY: We have pre-marked most of the

1 exhibits. Out of about 80 numbers there is actually only
2 about 70 exhibits. We've agreed to about 60 of them and
3 they are all pre-marked. And the first 40 actually we
4 maintained the numbers that were used in the depositions
5 so there wouldn't be any confusion in the courtroom. So
6 it actually runs from approximately 1 to 80.

7 THE COURT: Get with her however she wants to mark
8 them. We'll just take the time for her to get them
9 marked because she's got to get her records straight.

10 MR. LUCEY: Yes, sir.

11 THE COURT: We'll take a short break while y'all
12 get this done.

13 MR. DODDS: And I'll do a list; Your Honor. It
14 will take me ---

15 THE COURT: --- get me a short list and also for
16 the court reporter. It sure is helpful to have a list.

17 MR. DODDS: I understand, Judge.

18 THE COURT: We'll take a break. Let me know when
19 y'all are ready.

20 MR. LUCEY: Thank you, sir.

21 THE COURT: When you get this done -- because this
22 will take her a while.

23 [Off the record momentarily while exhibits are
24 marked by the court reporter]

25 [Whereupon, defendant's exhibit numbers 1 through 12

1 are marked by the court reporter]

2 [Whereupon, plaintiff's exhibit numbers 1 through 74
3 are marked by the court reporter]

4 THE COURT: Y'all got everything marked I
5 understand.

6 MR. LUCEY: Yes sir, we do.

7 [Whereupon, the court reviews exhibit list]

8 THE COURT: All right. This will be easier with
9 the defendant's -- defendant's trial exhibits 1 through
10 12 are admitted without objection is that correct?

11 MR. LUCEY: Yes, sir.

12 [Whereupon, defendant's exhibit numbers 1 through 12
13 are entered into evidence by the court]

14 THE COURT: The plaintiff exhibit list is 1 through
15 74. The majority of those have been agreed to be
16 admitted without objection. I'm going to go through and
17 list the ones that have not been agreed to if y'all will
18 follow and make sure I'm correct.

19 Plaintiff's exhibit 15, 16, 17, 18 was unused. 20
20 was unused, 18 was omitted -- I mean 8 was omitted, 4 is
21 omitted, 51 has not been agreed to, 52 has not been
22 agreed to, 54 has not been agreed to, 57 has not been
23 agreed to, 69, 70, and 71 have not been agreed to and 73
24 is that correct?

25 MR. DODDS: Right.

1 THE COURT: The rest of them have been agreed to.

2 MR. DODDS: Well, with regard to 74, Your Honor,
3 it's a demonstrative drawing that the plaintiff has put
4 together. I don't have any objection to it coming into
5 evidence. I don't agree with the specific information
6 contained in it but don't have any objection to it coming
7 into evidence.

8 THE COURT: All right.

9 MR. DODDS: Yes, Your Honor.

10 THE COURT: You just don't agree with the specifics
11 correct?

12 MR. DODDS: Yes, Your Honor.

13 THE COURT: Mr. Lucey, did I get all of them
14 correct as far as the ones that have not been agreed to?

15 MR. LUCEY: Yes, Your Honor.

16 [Whereupon, plaintiff's exhibit numbers 2, 3, 5, 6,
17 7, 9 through 14, 19, 21 through 28, 41 through 50, 53,
18 55, 56, 58 through 70 and 72, 73, and 74 are entered into
19 evidence by the court]

20 THE COURT: Okay. Is there anything else before we
21 get started?

22 MR. LUCEY: No, sir ---

23 MR. DODDS: --- no, Your Honor.

24 THE COURT: If you don't mind I would appreciate it
25 if the plaintiff and defendant will make a very brief

1 opening statement just to inform the court what the case
2 is about and what you're planning on proving during the
3 course of the trial.

4 OPENING STATEMENT

5 BY MR. LUCEY:

6 Yes, Your Honor, Justin Lucey for the plaintiff.
7 Your Honor, the court actually heard an earful when it
8 heard five motions two days ago. And I believe the court
9 has heard most of what I would have to say so I will keep
10 it brief.

11 THE COURT: Okay.

12 MR. LUCEY: My client, Frank Gordon recovered a
13 judgment in 2001 against Mr. Drews, Rudolph Drews --
14 Rudolph Robert Drews. The judgment went up on appeal for
15 a number of years, cert was denied by the Supreme Court
16 after the appeal was affirmed in 2004, denied in late
17 2005 and the judgment came back down for enforcement.

18 Supplemental proceedings were started in 2006 and at
19 the supplemental proceeding hearing the now decedent
20 judgment debtor -- excuse me now deceased not then,
21 showed up with no paperwork and so the supplemental
22 proceedings were continued for the defendant to produce
23 that paperwork.

24 Before anything further happened in the supplemental
25 proceedings, Your Honor, Mr. Drews died. He died in the

1 Honor, our position is that all the monies that were paid
2 to Mr. Lancaster were in consideration of valuable
3 contributions that Mr. Lancaster made initially in the
4 form of granting life estates to his aunt and uncle. And
5 then secondarily, with regard to the loans that were made
6 initially between 1993 and 1995 40,000 dollars worth and
7 then the additional 20,000 dollars that was paid in 1999.

8 THE COURT: Okay. Thank you very much. If you'll
9 call your first witness please?

10 MR. LUCEY: Thank you, sir. The plaintiff calls
11 Donald Lancaster.

12 [Whereupon, Mr. Lancaster comes forward]

13 [Whereupon, the witness is duly sworn by the Clerk
14 of Court]

15 CLERK OF COURT: Thank you sir, please be seated.
16 Sir, for the record if you'll please state your name
17 spelling your last name.

18 THE WITNESS: Donald Lancaster, L-A-N-C-A-S-T-E-R.

19 - - - - -

20 Donald Lancaster,

21 Having been first duly sworn,

22 Was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. LUCEY:

25 Q. Good morning, Mr. Lancaster. You're a certified

1 internal accountant, correct?

2 A. No, I'm a certified internal auditor.

3 Q. Internal auditor, thank you, sir. You check other
4 people's financial transactions for a living, correct?

5 A. No, an internal auditor is an auditor of business. A
6 company has its own staff of auditors who are really the
7 eyes and ears of management. I don't deal with
8 individuals.

9 Q. You audit other activities within the companies,
10 correct?

11 A. When I was doing that, yes.

12 Q. And you did that for several decades, correct?

13 A. Yes.

14 Q. You did that for 3 or 4 decades, correct?

15 A. 2 and a half.

16 Q. You're good with numbers, correct?

17 A. I believe so.

18 Q. You understand financial investments, correct?

19 A. Yes.

20 Q. You've handled them all your life, correct?

21 A. Yes.

22 Q. I want you to help me -- help the court understand
23 your financial transactions. I'm placing in front of you
24 and the court a blow up of plaintiff's exhibit 74.

25 [Whereupon, the witness reviews documents]

1 Q. And I'll grant you ahead of time sir, it's an over
2 simplification, but I want to stay simple in the
3 beginning so we get an outline before we get into more
4 detail. Are you with me?

5 A. Okay.

6 Q. The financial transactions at issue in this
7 litigation started in 1992, correct sir?

8 A. Yes.

9 Q. But that was not your first financial transaction
10 with Mr. Drews was it?

11 A. I worked for him.

12 Q. You worked for him in summers during college,
13 correct?

14 A. Yes.

15 Q. And you had one or more real estate investments
16 previously with Mr. Drews, correct?

17 A. One, yes.

18 Q. The Mulberry street building and property, correct?

19 A. Yes.

20 Q. And not only that, but you used to perform
21 accounting services for one of Mr. Drews' entities,
22 correct?

23 A. B & D Realty.

24 Q. He had a real estate partnership called B & D,
25 correct?

- 1 A. Yes.
- 2 Q. And you did the annual financial accounting for Mr.
3 Drews' partnership, this B & D entity, correct?
- 4 A. Right.
- 5 Q. And one of the limited partners in that entity was
6 your mother, correct?
- 7 A. Not in B & D.
- 8 Q. The other limited partner in that entity was a
9 relative of yours, correct?
- 10 A. Mr. Drews -- Mr. and Mrs. Drews.
- 11 Q. And there was not a Lancaster in that partnership?
- 12 A. Not in B & D, no.
- 13 Q. All right, we'll come back to that. At any rate, so
14 you and Mr. Drews had had financial transactions for a
15 number of years prior to 1992, correct?
- 16 A. Yes.
- 17 Q. In '92 he transferred to you 100,000 dollars,
18 correct?
- 19 A. Right.
- 20 Q. That's where the chart that we've labeled
21 plaintiff's exhibit 74 starts, correct?
- 22 A. Yes.
- 23 Q. The purpose of the 100,000 dollars was for you to
24 buy your residence for him, correct?
- 25 A. Yes.

1 Q. You heard your attorney say to the court a few
2 minutes ago that you were going to provide Mr. Drews with
3 valuable consideration, correct?

4 A. Yes.

5 Q. And the valuable consideration was providing Mr. and
6 Mrs. Drews a house to live in for the rest of their
7 years, correct?

8 A. Right.

9 Q. In other words, this was a transaction, correct? He
10 gave you one thing, you gave him something else, correct?

11 A. Exactly.

12 Q. It was clearly not a gift, correct.

13 A. Correct.

14 Q. And that's your belief, correct?

15 A. Right.

16 Q. Can I hear you say to the court this was not a gift?

17 A. This was not a gift.

18 Q. Okay, we are going to come back to that statement,
19 sir, please remember it.

20 A. Okay.

21 Q. Now, so the first line here on exhibit 74 is
22 correct. There was a 100,000 dollar transfer for the
23 purpose of a house, correct?

24 A. Part of it, yes.

25 Q. Okay, and you provided -- you bought the house and

1 provided the use of the house back to the Drews, correct?
2 A. Yes. And what is lacking here is that there's no
3 Donald in the house, either. There's only 100,000 in the
4 house -- and there's really 160,000 in the house.
5 Q. Right, I'm just doing transactions between you and
6 him, correct?
7 A. Okay.
8 Q. So, the second line on this chart in 74 is correct.
9 You provided use of the house to the Drews, correct?
10 A. Okay, yes.
11 Q. And then we heard your attorney tell the court a few
12 minutes ago about the 60,000 dollars that you provided to
13 Mr. Drews over the course of the next 2 or 3 years,
14 correct?
15 A. It was really 7 years, but yes.
16 Q. And the 60,000 dollars was essentially provided in 2
17 increments even though I've listed it as 1 number,
18 correct?
19 A. Correct.
20 Q. There is a trickling of money for the first 2 or 3
21 years after the house, after the 100,000 dollar transfer
22 that totaled 40,000 dollars, correct?
23 A. Correct.
24 Q. And then in '99 there was 20,000 more related to
25 this failed business Builder Station, correct?

1 A. Right.

2 Q. And that's where we get the total 60,000 dollars,
3 correct?

4 A. Okay.

5 Q. And you did not have Mr. Drews sign notes for any of
6 these financial transfers, did you?

7 A. No.

8 Q. Okay. You didn't bring any notes today to show us
9 these 60,000 in transfers, did you; I-O-U's, notes,
10 indebtedness, anything like that, correct?

11 A. No. That was just done on my own word.

12 Q. And then, the next 3 lines of the chart show a
13 series of mortgages that Mr. Drews granted to you, that
14 in fact occurred, correct?

15 A. I wasn't involved in securing loans other than
16 asking for some security after the length of time went on
17 and I wasn't being paid for the first 40,000 and then the
18 20.

19 Q. Now, we'll get back to the details of who generated
20 it, whose idea it was, and everything else. I'm trying
21 to do a simple review for the court. Mr. Drews gave you
22 3 mortgages, correct?

23 A. Yes.

24 Q. In other words, 3 documents where he granted you a
25 security interest in other real estate he owned, correct?

1 A. Yes.

2 Q. And the first mortgage was for 40,000 dollars,
3 correct?

4 A. I don't remember the order.

5 Q. Okay, there was a 40,000 dollar mortgage, correct?

6 A. Yes.

7 Q. And then, there was also a 100,000 dollar mortgage,
8 correct?

9 A. Yes.

10 Q. And the 100,000 mortgage was to replace the 40,000
11 dollar mortgage, correct?

12 A. I believe so.

13 Q. And then there was a mortgage for 20,000 dollars for
14 the last 20,000 that was purportedly not related to the
15 failed investment called Builder's Station, correct?

16 A. Yes.

17 Q. So that was a total of 160,000 in mortgages,
18 correct?

19 A. Yes, but I never collected on them.

20 Q. Now, this total 160,000 in mortgages, just so the
21 court is clear, you are only owed 60,000 plus interest,
22 correct?

23 A. Yes.

24 Q. But you possess 3 mortgages from Mr. Drews totaling
25 160,000, correct?

1 A. Correct. As long as the total was more than 60,000
2 it didn't matter to me.

3 Q. I'm going to come back to that in just a moment, but
4 as time went on, Mr. Drews was eventually successful in
5 selling a piece of real estate called 17 -- excuse me,
6 1705 Meeting Street, is that correct?

7 A. Yes.

8 Q. And that's the piece of real estate that you have
9 the mortgages on, correct?

10 A. Yes.

11 Q. And, at the time he sold that 1705 Meeting Street he
12 gave you 11,000 dollars of his proceeds, correct?

13 A. Between 10 and 11.

14 Q. And I'm going to use rounded numbers today, if
15 that's okay with you all, and you sir, is that okay?

16 A. Okay. I thought the total was closer to 10 -- or
17 whether it was closer to 11.

18 Q. 10 to 11 thousand, can we agree on that?

19 A. Good. Good.

20 Q. And, at that time, you satisfied those 3 prior
21 mortgages, correct?

22 A. Yes.

23 Q. And, at that time Mrs. Drews gave you a 59,000
24 dollar note, correct?

25 A. 50,912.

1 Q. 50,912 note, correct?

2 A. Correct.

3 Q. But she didn't owe you any money, did she?

4 A. The Drews' owed me money.

5 Q. The Drews' as a group owed you money?

6 A. Yes.

7 Q. Okay, so you were dealing with the Drews' as a
8 group, is that correct?

9 A. For the -- for particularly the 40,000 was for
10 living expenses.

11 Q. Which you had lent money to Mr. Drews, correct?

12 A. It went in their joint checking account.

13 Q. Had Mrs. Drews personally ever borrowed money from
14 you prior to September of 2001 when she gave you a 50,900
15 note?

16 A. Individually, no. But the money I loaned them went
17 into their joint account for their joint benefit.

18 Q. So you consider your transactions as having been
19 with both of them because it came and went out of their
20 joint account and was for their joint benefit. Is that
21 correct?

22 A. The 40,000 and 20,000 was specifically for settling
23 on Builder's Station. And she wasn't involved in that
24 directly.

25 Q. Now, when you got the 50,900 dollar note, you got

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1 the Drews to secure that note, did you not?

2 A. Yes.

3 Q. The Drews when they sold 1705 Meeting Street, they
4 received back from the buyers a 190,000 dollar mortgage,
5 correct?

6 A. I believe that is correct.

7 Q. You were only owed 51,000, correct?

8 A. Yes.

9 Q. But, you and Drews arranged for the entire 190,000
10 dollar mortgage to be assigned to you, correct?

11 A. No.

12 Q. You deny being assigned the 190,000 dollar mortgage?

13 A. I deny that.

14 Q. You deny that there's an assignment for the 190,000
15 dollar mortgage?

16 A. To me.

17 Q. To you?

18 A. Yes.

19 Q. From one of the Drews?

20 A. Yes, the assignment was for 50,912.

21 Q. You didn't get assigned the mortgage?

22 A. No.

23 Q. Sir, would you please take a look at what's in
24 evidence as plaintiff's exhibit number 11?

25 [Whereupon, witness is shown exhibit]

1 Q. That is an assignment, correct?

2 A. Yes.

3 Q. It's an assignment by one of the Drews to you,
4 correct?

5 A. Yes.

6 Q. It's an assignment of the mortgage by Charleston
7 Antiques, correct?

8 A. I'm not entirely familiar with the way assignments
9 work, but this was supposed to be an assignment of the
10 50,912 portion of that note to me.

11 Q. Do you see anything in that document sir regarding
12 59 -- 51,000 dollar ---

13 A. --- I see a reference to notes owed, dated November
14 6, 2001.

15 Q. So today, you deny being assigned the entire
16 Charleston Antiques mortgage in September 2001, is that
17 correct?

18 A. That's correct.

19 Q. And you don't see any notation in that assignment,
20 do you?

21 A. No. I don't see any dollar amount in this
22 assignment.

23 Q. Just an assignment of the mortgage, correct?

24 A. Yes.

25 Q. And the mortgage was 190,000 dollars, correct?

1 A. [No response]

2 Q. You can turn to exhibit number 9, I have that sir
3 and you can confirm that the mortgage was in fact 190,000
4 dollars.

5 A. It was 190,000. But that wasn't to me. My interest
6 was only the 50,912 note.

7 Q. And on the 190,000 dollar mortgage, sir, you see
8 that the recording information is book 387, page 431,
9 correct?

10 A. Correct.

11 Q. And if we go back to plaintiff's exhibit number 11,
12 we see that that mortgage at that same book and page has
13 been assigned to you, correct?

14 A. Yes.

15 Q. Okay. So before September of 2001 you were owed
16 60,000 dollars and you had 3 mortgages total of 160,000
17 dollars to protect you, correct?

18 A. Yes.

19 Q. And after September of 2001, you were allegedly owed
20 51,000 dollars and you had a 190,000 dollar mortgage
21 assigned to you to protect you, correct?

22 A. I will still have to disagree with that because the
23 intent of this -- and I didn't draw it up, I'm no
24 attorney -- the intent was Mrs. Drews, I believe had the
25 -- or on the note for the 190,000 with a 10 year pay off

1 and I had an assignment against -- of 50,912 against that
2 190,000 so that whenever Mrs. Drews received a payment
3 from Charleston Antiques district ---

4 THE COURT: --- I hate to interrupt you, but how
5 much was the note -- assigned that you're talking about
6 on November 6, 2011, your exhibit number 11. How much
7 was the note?

8 MR. LUCEY: The note, sir, was in number 9 and its
9 190,000 dollars.

10 THE COURT: The note is number 9?

11 MR. LUCEY: Yes, sir.

12 MR. DODDS: Judge, are you referring to the note
13 from Effie Drews to Mr. Lancaster?

14 THE COURT: I'm referring to the note this
15 assignment is made to secure the payment of the note to
16 Donald Lancaster dated November, 6 ---

17 MR. DODDS: --- yes, that's 50,912 dollars, Your
18 Honor.

19 THE COURT: That's what I was asking.

20 MR. DODDS: That is exhibit 14, Your Honor.

21 THE COURT: Number 14?

22 MR. DODDS: Yes, sir.

23 THE COURT: 50,912 dollars. Is that correct?

24 MR. LUCEY: Yes, sir.

25 THE COURT: Mr. Lucey?

1 MR. LUCEY: Yes, sir.

2 THE COURT: I understand what you're saying, the
3 mortgage may say one thing, but the note is what is owed
4 -- it was owed not the mortgage. This is just security
5 to pay the 59,000.

6 MR. DODDS: Yes, sir. And I would submit to you,
7 sir, it is part of a pattern between these 2 individuals
8 ---

9 THE COURT: --- I understand the pattern you
10 establishing, but you insinuating he owed much more than
11 that okay. I just want to make sure I understand what's
12 going on.

13 I understand he was assigned all the mortgages to
14 him the 190,000 dollar mortgage to secure 50,000, which
15 apparently was an asset to him. They never assigned any
16 notes to him, did he? Did he ever assign any of the
17 notes that he received when he sold the Meeting Street
18 property?

19 MR. DODDS: He did not assign the note, no, sir.
20 He signed the mortgage.

21 THE COURT: There's no assignment of any note?

22 MR. DODDS: No, sir.

23 THE COURT: Okay, because all the mortgages are
24 just collateral to secure the 59,000?

25 MR. DODDS: Right and it is similar to the first 3

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1 mortgages that they've got for the public to see, they
2 have 160,000 dollars of mortgages encumbering the real
3 estate -- Drews' real estate, but privately it was only
4 60,000 dollars owed.

5 THE COURT: I understand and you wouldn't know that
6 looking at the mortgages in the record book, I understand
7 that.

8 MR. LUCEY: Yes, sir.

9 THE COURT: I understand the pattern you are trying
10 to establish, but I just wanted to make sure -- wanted to
11 know how much he owed on the note. Go ahead. I didn't
12 mean to interrupt you.

13 Q. [Mr. Lucey] Yes, sir. In finishing out exhibit 34,
14 Mr. Lancaster, in 2005 the Charleston Antiques note
15 receivable was in fact paid off, correct?

16 A. Yes, they sold to another buyer.

17 Q. And the 34 is erroneous apparently because it says a
18 59,000 dollar pay off. But the Drews, the Effie Drews
19 note for 50,900 was paid off out of that sale, correct?

20 A. The balance on it was paid off at that time.

21 Q. And they had been making payments to you in the
22 interim that had reduced the balance, correct?

23 A. Correct, yes. Every time Charleston Antiques made a
24 payment of 2400 or whatever it was to Mrs. Drews, then I
25 got 540.

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1 THE COURT: Which exhibit were you referring to
2 then?

3 MR. LUCEY: 74, Your Honor.

4 THE COURT: 74?

5 MR. LUCEY: It's not in the book, it was handed out
6 by...

7 THE COURT: I understand all that. Which note were
8 you referring to in the book?

9 MR. LUCEY: Sir, the note and the satisfaction is
10 at plaintiff's exhibit 27.

11 THE COURT: 27?

12 MR. LUCEY: That's the 50,912 dollar note.

13 THE COURT: Okay.

14 MR. DODDS: But Your Honor, I think you're
15 referring to the other one, aren't you? Aren't you
16 referring to ---

17 THE COURT: --- I wanted the one he was just
18 talking about --

19 Q. [Mr. Lucey] And sir, at the time of the resale of
20 Charleston Antiques the note was liquidated, 130,000 was
21 distributed to the Drews, correct?

22 A. I don't know that for a fact, but I think that was
23 about the right number.

24 Q. Did you not previously tell me in your deposition
25 that they received 130,000 dollars out of that?

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1 A. No, it seems right. That would be about right.

2 Q. Let's go back to the original 100,000 transfer, sir.
3 You've already told the court that was not a gift,
4 correct?

5 A. Correct.

6 Q. So, you would not have prepared an estate tax return
7 to be filed showing the gift when it was in fact not a
8 gift, correct?

9 A. Would you repeat the question exactly?

10 Q. Yes sir. Since the original 100,000 dollar transfer
11 was not a gift, per your own words, you would not have
12 prepared a Federal Estate and Gift tax return relating to
13 the 100,000 dollars for Mr. Drews because there was no
14 gift to report to the I-R-S, correct?

15 A. It was probably none required, but on the advice of
16 Mr. Drews' accountant -- advice or opinion if you want to
17 call it.

18 When Mr. Drews and I went to Mr. Gambrell
19 [phonetic], who was Mr. Drews' accountant, after Mr.
20 Drews proposed this scenario to me; I was concerned about
21 the basis of the house. I was stunned with all this
22 happening and we stopped off to see Mr. Gambrell.

23 Mr. Gambrell was the one who said just treat the
24 100,000 as a gift and then anything that I pay for the
25 house would be the basis. Okay, that sounds reasonable.

1 So, at the end of '92 April '93, yes I did prepare
2 thinking a gift tax return was required. I prepared the
3 form for Mr. Drews, who signed it, stamped, mailed it to
4 file a gift tax return. So, yes, one was filed and it
5 probably wasn't even necessary.

6 Q. So just so we are clear, you're telling the court,
7 1) 100,000 dollars was not a gift; 2) Donald Lancaster
8 prepared a gift tax return that 3) was filed with the
9 Internal Revenue Service?

10 A. Yeah.

11 Q. And you didn't sign it as the preparer, did you?

12 A. I believe every form I've seen says paid preparer
13 sign here. I was not a paid preparer.

14 Q. So you did not sign the gift tax return as the
15 preparer, did you?

16 A. I was not a paid preparer; I was not required to
17 sign, no.

18 Q. Now you just told the court that this return was
19 filed by Donald -- excuse me, by Mr. Drews, correct?

20 A. Yes.

21 Q. And that he mailed it, correct?

22 A. Yes.

23 Q. Did you see him mail it?

24 A. We walked out to the mailbox, put it in there, and
25 put the little flag up.

1 Q. You mailed it with him?

2 A. Yes.

3 Q. You participated in Mr. Drews reporting this 100,000
4 transfer to the United States government as a gift, is
5 that correct?

6 A. Yes.

7 Q. You prepared the return and you mailed it with Mr.
8 Drews?

9 A. Yes.

10 Q. But you're still telling the court that it's not a
11 gift.

12 A. The transaction we had was not a gift.

13 Q. You prepared a return that you knew was going to
14 filed under penalties of perjury with the United States
15 government and you knew it was false, is that correct?

16 A. No, at the time I thought it was a gift.

17 Q. You thought it was a gift at the time?

18 A. Because that's the terminology that Mr. Drews'
19 accountant had used.

20 Q. When you signed it wasn't a gift?

21 A. Really after I saw Mr. Dodds after you made this
22 lawsuit against me.

23 Q. After 2010 you decided it was not a gift?

24 A. Yes.

25 Q. Okay. So from 1992 through 2010 -- September of

1 2010, fall of 2010 when Mr. Gordon's attorney filed this
2 suit on your behalf -- his behalf, you considered the
3 100,000 transfer to be a gift?

4 A. In that term yes, I did not see it as a contract.

5 Q. Just so we're clear, that's 18 years. For 18 years
6 you -- my math is wrong, its 6 -- no it's 18 years. For
7 18 years, you considered the 100,000 transfer to be a
8 gift, is that correct?

9 A. Yes.

10 Q. And in 2010, late 2010, during the pendency of this
11 lawsuit, you decided it was not a gift, is that correct?

12 A. Along with Mr. Dodds' interpretation, yes.

13 Q. No, he's not testifying. You yourself have reached
14 the conclusion 18 years later, that it was never a gift
15 ---

16 A. --- it was never a gift.

17 Q. Now sir, let's go back to these transactions in a
18 little more detail.

19 Now, these 3 mortgages, the 40,000 mortgage, the
20 100,000 mortgage, and the 20,000 mortgage; not one of
21 those mortgages was given to you simultaneously with the
22 exchange of money with the decedent judgment debtor,
23 correct?

24 A. What do you mean at the same time?

25 Q. Yes sir.

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1 A. I don't know exactly when they were filed, no. The
2 money was given first; these came later after I asked for
3 some security for the 40,000.

4 Q. So from 2000, excuse me from 1992 to 1995 when the
5 40,000 dollar mortgage was executed you were an unsecured
6 creditor, correct?

7 A. Yes.

8 Q. And you didn't give any additional cash at the time
9 the 40,000 mortgage was executed, correct? You were
10 already owed the 40,000 dollars.

11 A. Yes.

12 Q. There was no, to use your attorney's words this
13 morning in opening, there was no consideration, there was
14 no valuable consideration given at the time the 40,000
15 dollar mortgage was executed in your favor, correct?

16 A. Consideration was given beforehand.

17 Q. It was prior consideration, correct?

18 A. Yes.

19 Q. Okay, no exchange or consideration at the time you
20 signed the 40,000 dollar mortgage?

21 A. At the time, correct.

22 Q. Now, before we go forward, let's talk about that
23 first 40,000 dollars. You got that 40,000 dollars --
24 excuse me, you bought the Bainbridge property first in
25 1992, correct?

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1 A. Correct.

2 Q. And since your down payment was less than the
3 100,000 dollars that you'd been given by Mr. Drews, you
4 weren't out-of-pocket a penny when you bought that
5 property, were you?

6 A. I was out-of-pocket 60,000 and then 5,000 for
7 repairs. I was out 65,000.

8 Q. Money was borrowed for the 60,000, correct? Yeah
9 when people go buy a house a lot of times they get a
10 mortgage for the bulk of it.

11 And then whether it's an equity line on that
12 property or some other property, whatever it is there's
13 borrowing for the bulk of it and then there's a certain
14 amount of down payment, correct?

15 A. I'm not saying the term down payment because there
16 was just one payment.

17 Q. You used some financing to buy Bainbridge, did you
18 not?

19 A. I don't remember how I did that. I believe I took
20 some money on an equity line on my home. I think later
21 on I got an equity line on Bainbridge. I don't remember.

22 Q. You can't tell us you were actually out-of-pocket in
23 excess of 100,000 dollars personal money out-of-pocket-
24 when you bought the 165,000 dollar Bainbridge residence,
25 correct?

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1 A. I want to make sure I answer this correctly. Would
2 you repeat it please?

3 Q. You used some financing in the purchase of
4 Bainbridge ---

5 A. --- yeah ---

6 Q. --- such that you can't tell us that you were out-
7 of-pocket in excess of the 100,000 that Mr. Drews had
8 given you when you purchased Bainbridge, correct?

9 A. Out-of-pocket; I don't remember how I secured the
10 60,000 that I put in. I really don't.

11 Q. And then, after you bought Bainbridge, you put an
12 equity line on it, correct?

13 A. Yes.

14 Q. You put an equity line on it with a bank called SCN,
15 correct?

16 A. I believe that was the first one, yeah.

17 Q. Would you turn to plaintiff's exhibit 41 in evidence
18 please?

19 [Whereupon, the witness complies]

20 Q. And would you confirm for the court that this a
21 June 12, 1992 ---

22 THE COURT: --- what number are you looking at?

23 MR. LUCEY: 41 sir.

24 THE COURT: Thank you sir.

25 Q. [Mr. Lucey] On June 12, 1992 South Carolina

1 National 40K open ended mortgage, or I would call it
2 equity line, is that correct sir?

3 A. Equity line is what I call it too.

4 Q. Good. So, this house that had been bought with at
5 least, in part the 100,000 dollars that Mr. Drews gave
6 you, you put an equity line on it immediately, correct,
7 on June 12?

8 A. It was an asset. I wanted to have money available.
9 I didn't draw on this.

10 Q. And it was SCN, correct?

11 A. Yes.

12 Q. And the monies that you started allegedly lending to
13 Mr. Drews from 2002 through 2005 came from SCN, did it
14 not?

15 A. Some small part of it. Other came from mutual
16 funds.

17 Q. Sir, turn to plaintiff's exhibit 28, please.

18 [Whereupon, the witness complies]

19 A. Mutual funds was another thing...

20 Q. You're telling the court it wasn't mutual funds,
21 you're correcting your answer, were you not?

22 A. I'm going to correct my answer and say yes, that is
23 right.

24 Q. Let's help the court catch up with us on this
25 exhibit, they're new to the case.

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- 1 A. Okay.
- 2 Q. This exhibit is a record prepared by you, correct?
- 3 A. Yes.
- 4 Q. It's a record of monies allegedly loaned to Mr.
- 5 Drews, correct?
- 6 A. Yes.
- 7 Q. And these first 5 payments -- 6 payments, 1 through
- 8 6 are from SCN, correct?
- 9 A. Yeah, yes.
- 10 Q. SCN is the equity line that we just saw from June
- 11 12, 1992, correct?
- 12 A. Yes.
- 13 Q. So you're transferring 40,000 dollars back to Mr.
- 14 Drews drawn on the equity line on the house that you
- 15 bought with his 100,000 dollars, correct?
- 16 A. I was responsible for the 60,000, yes. That was the
- 17 security for the ---
- 18 Q. --- the source of the alleged 40,000 that you
- 19 allegedly lent back to Mr. Drews, was drawn on the equity
- 20 of the house he had just paid 100,000 for, correct?
- 21 A. Yes.
- 22 Q. And that equity line did charge -- that equity line
- 23 did charge some interest, correct?
- 24 A. Yes.
- 25 Q. And you passed the exact amount of the SCN equity

1 line interest on to Mr. Drews to pay since he was the one
2 borrowing the money, correct?

3 A. It's the same rate I was paying SCN, yeah.

4 Q. So, he's paying the interest on the equity line that
5 you took out on the house bought with his 100,000 dollars
6 so that you can transfer 40,000 dollars back to him,
7 correct?

8 A. The 40,000 was a loan. I was responsible to SCN to
9 repay it.

10 Q. It was a loan borrowed off the real estate purchase
11 with his money, correct?

12 A. It wasn't his money. It was the money that he gave
13 me for life estate in the house.

14 Q. The 40,000 came from the real estate purchase with
15 the money that he provided you, correct?

16 A. Yes, provided, yes.

17 Q. And, just to confirm what we said earlier about
18 there being no contemporaneous consideration given at the
19 time of the 40,000 dollar mortgage, let's turn to
20 plaintiff's exhibit number 3 in evidence please.

21 [Whereupon, the witness reviews document]

22 MR. LUCEY: Your Honor, your number 3 is incomplete.
23 May I hand the court a more complete number 3? We
24 remarked it after we made your notebook. Number 3 is in
25 the inside front cover, sir.

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1 THE COURT: Number 3 in the book is sort of hard to
2 read.

3 MR. LUCEY: Yes sir and it's missing the second
4 page too, which you'll see is important.

5 MR. DODDS: Mr. Lucey, do you have an extra copy?

6 [Whereupon, Mr. Lucey provides documents to Mr.
7 Dodds]

8 Q. [Mr. Lucey] Number 3 is a 40,000 dollar mortgage,
9 correct sir?

10 A. Mortgage?

11 Q. When you turn to page 6 of number 3, sir, you'll see
12 that Mr. Drews signed it, correct?

13 A. Yes.

14 Q. And we already saw on page 1 that the mortgage is in
15 your favor, correct? You saw your name on page one?

16 A. Yes.

17 Q. And you recognize Mr. Drews' signature, correct?

18 A. Yes.

19 Q. You recognize this as the 40,000 dollar mortgage
20 that I have listed up here on plaintiff's exhibit 74,
21 correct?

22 A. [No response]

23 Q. Correct?

24 A. Date wise seems correct, yes.

25 Q. And if we look at this mortgage we see that it was

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1 executed on the first day of March 1995, correct?

2 A. Yes.

3 Q. And if we go to the last page of the mortgage, we'll
4 see that it actually wasn't reported until November 7,
5 1995, correct? Is that correct, sir?

6 A. Right.

7 Q. Now let's go to the 100,000 dollar mortgage, sir.

8 Q. [Mr. Lucey] So, that would be plaintiff's exhibit 44
9 in the notebook in evidence. I'm sorry it's actually
10 plaintiff's exhibit 6 in your notebook evidence, sir.

11 [Whereupon, the witness reviews document]

12 A. What was the page?

13 Q. Plaintiff's exhibit 6, tab 6 in your notebook.
14 Exhibit 6 Your Honor -- excuse me sir is in your favor.
15 You see your name on page 1, correct?

16 A. [No response]

17 THE COURT: --- Mr. Lancaster, do you see it?
18 Answer the question.

19 A. Yes, yes, I was looking for it. I'm sorry.

20 THE COURT: Thank you, go ahead.

21 Q. [Mr. Lucey] And you see next to your name that's a
22 100,000 dollar mortgage, correct, sir?

23 A. Yes.

24 Q. And again you see Mr. Drews' signature on the third
25 page, correct?

1 A. Yes.

2 Q. And this mortgage is dated April 15, 1998, correct?

3 A. Where is the date, on the last page?

4 Q. Above Mr. Drews' signature.

5 THE COURT: Why don't you come up and stand beside
6 him and show him and maybe we can speed the process up; I
7 don't know. He's fumbling around with the papers; you
8 need to show him. He may not be familiar with mortgages;
9 I don't know.

10 Q. [Mr. Lucey] Here is Mr. Drews' signature, correct?

11 A. Oh yes.

12 Q. And then April 15, 1998, correct?

13 A. Right.

14 Q. And this mortgage was ---

15 THE COURT: --- if you would Mr. Lucey any time
16 you're showing him that, feel free to go up there and
17 point it out to him, so he's not fumbling through his
18 notebook please sir.

19 MR. LUCEY: Thank you sir. Will do, sir.

20 Q. [Mr. Lucey] And this 40,000 -- excuse me this
21 100,000 dollar mortgage, I want to ask you about it. It
22 was purely to secure the 40,000 already owed, correct?

23 A. I remember very little about this because there
24 wasn't any separate transaction. We had talked about --
25 I don't remember much about this at all. If he wanted to

1 record another 100,000 in retirement, if they needed more
2 money, that I would make open type loans, I think that's
3 what it was. I wasn't involved in securing this.

4 Q. If Mr. Drews ---

5 THE COURT: --- I assume this is on the Bainbridge
6 property? I can't tell from that limited description. Is
7 this the Bainbridge?

8 MR. LUCEY: No this is on the 1705 Meeting Street
9 ---

10 THE COURT: --- Bainbridge property ---

11 MR. LUCEY: --- 1705 Meeting Street, sir.

12 THE COURT: 1705 ---

13 MR. LUCEY: --- these 3 mortgages, 40, 100, and 20
14 are all on 1705.

15 THE COURT: 1705 Meeting Street ---

16 MR. LUCEY: --- Meeting Street, which is the
17 property that eventually gets sold in 2001 and paid off
18 in 2005.

19 Q. [Mr. Lucey] Now sir, you just told the court that,
20 if I understood you if Mr. Drews wanted to report another
21 100,000 dollar mortgage lien on his property, that that
22 was fine with you?

23 A. As long as it was more than -- as long as I was
24 secured for the balance on the loans.

25 Q. Let's go back to my first question. My first

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1 question was this. You didn't lend him any money at the
2 time he gave you 100,000 dollar mortgage, did you?

3 A. April of '98, no. The other 20,000 wasn't until
4 '99.

5 Q. Okay. So, stated differently, no consideration, no
6 valuable consideration was given by you to Mr. Drews at
7 the time he executed the 1998 100,000 mortgage, correct?

8 A. Correct, but I never collected on this.

9 Q. Thank you. And the purpose of the 100,000 dollar
10 mortgage was to replace the 40,000 mortgage that already
11 existed, correct?

12 A. I believe so.

13 Q. That's a yes, correct?

14 A. Yes.

15 Q. Okay, but you ---

16 THE COURT: --- was the 40,000 dollar mortgage
17 satisfied at that time or was it to remain open?

18 MR. LUCEY: No sir, it remains open.

19 THE COURT: So it's showing -- on public records it
20 would be showing 140,000?

21 MR. LUCEY: Yes, sir.

22 THE COURT: 40 on the house, 100 on the property...

23 MR. LUCEY: Correct.

24 THE COURT: Okay.

25 Q. [Mr. Lucey] You didn't satisfy the 40,000 dollar

1 mortgage that the 100,000 mortgage was supposed to
2 replace until 2001 when 1705 Meeting Street was sold,
3 correct?

4 A. Correct. I wasn't asked to.

5 Q. You did eventually satisfy it in 2001, correct?

6 A. Yes.

7 Q. You weren't asked to satisfy it, but it was your
8 understanding that it was to replace the 40,000 dollar
9 mortgage, but you still didn't satisfy it?

10 A. I don't deal with satisfactions. I don't know what
11 was required when this was taken out. From what I know
12 now, yes it needed a satisfaction, but I didn't go asking
13 hey, let me satisfy the 40,000.

14 Q. An internal certified auditor of 35 years doesn't
15 know how note satisfaction works ---

16 A. --- I don't deal in real estate.

17 Q. Now sir, let's go to the 20,000 dollar mortgage.
18 First, before we get there, let me ask you to repeat for
19 the court. You did say that the additional purpose of
20 the 100,000 mortgage was in case Mr. Drews needed more
21 money, correct?

22 A. Yes.

23 Q. But that's false, isn't it? Because the next time
24 you gave him money, you did it on a mortgage.

25 A. I didn't do it, he did.

1 Q. He gave you a mortgage?

2 A. For the 20,000.

3 Q. You acquired a mortgage for that 20,000, didn't you?

4 A. No.

5 Q. You did not acquire it.

6 A. He did it without my knowledge.

7 Q. It was gratuitous. It was not done at the time you
8 lent him the 20,000, was it?

9 A. I don't know the dates.

10 Q. Let's check exhibit 28 which is your record of
11 disbursements and then I'll show you the mortgage.

12 [Whereupon, the witness reviews document]

13 A. Okay the 20,000 was in '99 and...

14 Q. What date, please?

15 A. [No response]

16 Q. June 7, 1999, correct?

17 A. For the 20,000?

18 Q. Yes, sir.

19 A. Sounds about right.

20 Q. According to your schedule, your detailed schedule,
21 that checks interest by the date of the disbursement it
22 occurred on June 7, 1999, correct?

23 A. I haven't found that page but...

24 Q. June 7, 1999, correct; because you charged 7 days of
25 interest on the prior amount.

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1 A. Yeah, yes, yes.

2 Q. Okay. So let's go to the mortgage which is
3 plaintiff's exhibit number 7.

4 [Whereupon, the witness reviews document]

5 Q. Page 1 of the mortgage shows that it's in your
6 favor, correct?

7 THE COURT: What mortgage, what number document?

8 MR. LUCEY: Plaintiff's exhibit 7, Your Honor, in
9 evidence.

10 A. Yes.

11 Q. [Mr. Lucey] So, it's a 20,000 dollar mortgage on
12 page 1, correct?

13 A. Yes.

14 Q. In your favor, correct?

15 A. Yes.

16 Q. By Mr. Drews, correct?

17 A. Yes.

18 Q. Let me turn the page for you. We're going to go
19 back to the signature page, towards the back and it's
20 signed by Mr. Drews, correct?

21 A. Yes.

22 Q. On first of July, 1999, correct?

23 A. Yes.

24 Q. 3 weeks later, correct?

25 A. Yes.

- 1 Q. It's not a contemporaneous document, is it?
- 2 A. Seems pretty contemporaneous between June ---
- 3 Q. --- it didn't occur on the same day you extended the
- 4 credit to Mr. Drews did it?
- 5 A. No, because there were some circumstances of getting
- 6 those -- that 20,000 the banks demanded that money within
- 7 24 hours and that's when I gave him the 20,000 loans.
- 8 This has to be done by a lawyer, I doubt if he could get
- 9 this done in 24 hours. I don't know...
- 10 Q. And just so we're clear, you did not give Mr. Drews
- 11 20,000 dollars on the day he executed this mortgage, on
- 12 July 1, 1999, correct?
- 13 A. Correct. I gave it to him 3 weeks earlier.
- 14 Q. And you see this mortgage is witnessed to the left
- 15 of Mr. Drews' name by Kerry Koons correct?
- 16 A. Okay. I guess that's his signature, yes.
- 17 Q. He's prepared a number of these documents, correct?
- 18 A. Yes.
- 19 Q. In fact, you met with Mr. Koons the day before your
- 20 deposition in 2010, did you not?
- 21 A. If not the one day before, then at least 1 or 2 or 3
- 22 days before.
- 23 Q. You met with him and Effie Drews, correct?
- 24 A. Yes.
- 25 Q. And the 3 of you all, Mr. Koons, Effie Drews, and

1 you, before your deposition, before Mrs. Drews
2 deposition, you all discussed all the facts of the case
3 together, correct?

4 A. Pretty much the intent was to secure the documents
5 for Mrs. Drews' upcoming deposition.

6 Q. You all discussed that Mr. Drews had been on hard
7 times when he did the original 100,000 dollar transfer to
8 you, correct? In fact, the I-R-S was after him, correct?

9 A. Yeah, in '92, yes.

10 Q. Okay. And he was having creditor problems from some
11 failed construction projects, correct?

12 A. Yes, that's why he sold the house at Edgewater.

13 Q. And he'd taken on a partner in his construction
14 business who had spent the money and not finished some of
15 the construction projects, correct?

16 A. Yes.

17 Q. He was in dire financial straits correct?

18 A. Yes.

19 Q. And you later documented that he lived most of his
20 nineties on his credit cards, correct?

21 A. Yes.

22 Q. In fact, you presented a list of credit card debt at
23 your deposition, of his credit card debt from 2005
24 totaling 35,000 dollars, correct?

25 A. Yes.

35

1 Q. So during all these transfers with Mr. Drews, in
2 your mind, he was in financial straits, correct?

3 A. Yes.

4 Q. Now, the assignment of the -- I'm moving forward in
5 time. Let me so slowly so everybody stays with me. I'm
6 moving forward to 2001.

7 THE COURT: Was the 100,000 satisfied when he took
8 out the new 20,000?

9 MR. LUCEY: No, sir.

10 THE COURT: Okay.

11 MR. LUCEY: All 3 were satisfied when the property
12 was sold in 2001 to Charleston Antiques.

13 THE COURT: Okay, thank you.

14 MR. LUCEY: And we're going to 2001 Charleston
15 Antiques.

16 Q. [Mr. Lucey] And I lost my train of thought for a
17 second. Okay, now in 2001 when 1705 Meeting Street was
18 sold to Charleston Antiques that mortgage was assigned to
19 you as security for this 50,900 dollar note that I've
20 miswritten as 59,000 on exhibit 74, correct?

21 A. The mortgage on 1705?

22 Q. The mortgage.

23 A. No.

24 Q. You didn't get security when that got sold?

25 A. The security I got was the assignment. The note,

1 when it was sold was Mr. and Mrs. Drews got the note from
2 Charleston Antiques. They weren't paying me, I didn't own
3 it ---

4 Q. --- and we already looked at exhibits 9 & 11 where
5 you were assigned the mortgage, correct?

6 A. Yes.

7 Q. That was for security, correct?

8 A. Yes.

9 Q. That was to replace the security which had
10 previously existed in these 3 mortgages that you were
11 satisfying so that Mr. Drews could sell the property,
12 correct?

13 A. Yes, I had to satisfy -- those mortgages had to be
14 satisfied before the property could be sold, naturally,
15 yes.

16 Q. So, pre-September 2001 you were secured by 3
17 mortgages on the Meeting Street property, correct?

18 A. Yes.

19 Q. Post-September 2001, you're secured by an assignment
20 of their mortgage, the new buyer's mortgage on the same
21 property, correct?

22 A. Yes.

23 Q. You gave up your security in the first 3 mortgages
24 so they could sell and you took back a new security in
25 lieu of the 3 satisfied mortgages, correct?



1 A. Yes.

2 Q. So just so we're absolutely clear ---

3 THE COURT: --- you satisfied the one on Bainbridge
4 and the 2 on the Meeting Street or just the 2 on Meeting
5 Street?

6 MR. LUCEY: The 3 on Meeting Street.

7 THE COURT: There were 3 on Meeting Street.

8 MR. LUCEY: 3 on Meeting Street.

9 THE COURT: First -- the first 40 were on Meeting
10 Street, not on Bainbridge?

11 MR. LUCEY: There was a 40 on Bainbridge, also,
12 which was the source of the 40,000 in loans to ---

13 THE COURT: --- okay so there were two 40's?

14 MR. LUCEY: There's two 40's.

15 THE COURT: Okay, all right.

16 Q. [Mr. Lucey] So, the substitute collateral for your
17 3 Meeting Street mortgages is now your assignment on the
18 Charleston Antiques mortgage, correct?

19 A. The assignment on that for the 50,912 dollar note.

20 Q. Okay. So at least 2 of the mortgages that you traded
21 for that assignment were mortgages that were not given
22 for contemporaneous valuable consideration; the 40,000
23 mortgage and the 100,000 mortgage that you and I
24 discussed 20 minutes ago, correct?

25 A. Yes, which I never collected on.

1 Q. So, if in fact the court were to determine that the
2 lack of concurrent consideration makes those first 2
3 mortgages invalid, you traded 2 invalid mortgages for
4 your new security interest in Charleston Antiques,
5 correct?

6 A. I satisfied 3 mortgages that were on a piece of
7 property that was sold. The total of the mortgages was
8 more than I was owed.

9 Q. Sir, going back to plaintiff's exhibit 74 I'm going
10 to stand again just for a moment, I want to move over to
11 the right-hand column. Are you with me?

12 [Whereupon, the witness reviews document]

13 A. Okay.

14 Q. [Mr. Lucey] Now, we already established that the
15 house was bought in 1992 with that 100,000 dollars,
16 correct?

17 A. And other funds, yes.

18 Q. And then your attorney told the court earlier about
19 the Nuffield property being substituted in 1995, correct?

20 A. Yes.

21 Q. And then, you eventually sold Nuffield as soon as
22 the Drews died for 246,000 dollars, correct?

23 A. Gross, yes.

24 Q. Okay. And so this Donald column is accurate,
25 correct?

1 A. There's no Donald going into the house.

2 Q. Under Donald, there's a house, there's a
3 substitution ---

4 A. --- yeah, but you've got 100,000 from Drews going to
5 house, you don't have 65,000 from Donald going to the
6 house.

7 Q. That you borrowed from a bank?

8 A. I was responsible for it, okay. That's where I got
9 the funds, yeah. I still put that money into it and I
10 paid the bank off too.

11 Q. Now, you substituted the Nuffield house, didn't you?

12 A. Yes.

13 Q. Not exactly how it worked is it? The Drews'
14 substituted the Nuffield house, didn't they?

15 A. I agreed to buy a one-story house of their choice.

16 Q. You never saw the house before it went under
17 contract, did you?

18 A. I am not -- I believe we saw it. I don't know when
19 the contract was, but I had given Mr. Drews power of
20 attorney to find a house because I traveled 2 weeks at a
21 time and wasn't there. They needed to buy the house, so I
22 gave them the power of attorney to do it.

23 Q. And you've never produced that power of attorney,
24 have you?

25 A. No, I never found it. He signed the buyers,

40

1 whatever you call it when you buy a piece of property.
2 Q. You never found the power of attorney, did you?
3 A. No.
4 Q. I asked for it and you never found it, right?
5 A. Yes.
6 Q. And you're also aware that no power of attorney
7 exists in the Charleston County R-M-C records from you to
8 Mr. Drews, correct?
9 A. I don't know that.
10 Q. You've never seen one, have you?
11 A. I don't recall.
12 Q. If you would turn to plaintiff's exhibit 24, please
13 and confirm for the court that this is the purchase
14 contract for Nuffield property, correct?
15 [Whereupon, the witness reviews document]
16 A. Yes.
17 Q. And if we turn to the last page, we'll see that in
18 fact it was signed by Mr. Drews, not by you, correct?
19 A. Yes.
20 Q. He signed as a P-O-A, correct?
21 A. P-O-A?
22 Q. P-O-A ---
23 A. --- oh, power of attorney, okay.
24 Q. He signed as a P-O-A, correct?
25 A. Okay, yes.



- 1 Q. For a power of attorney that doesn't exist.
- 2 A. I can't say whether it exists or not.
- 3 Q. And, they put the down payment on the house, too
- 4 correct? Effie put the 1 ---
- 5 A. Oh, come on; 1,000 dollars...
- 6 Q. She put it on the house, right?
- 7 A. Because I wasn't available. I was in San Francisco
- 8 at the time.
- 9 Q. So they found the house, they signed the contract
- 10 and they put a down payment on the house, correct?
- 11 A. Yes. To which I paid them back.
- 12 Q. Sir, you're aware that Bob Drews, Mr. Drews, handled
- 13 all the finances for the couple correct?
- 14 A. Yes.
- 15 Q. Mrs. Drews didn't work, did she?
- 16 A. Mrs. Drews?
- 17 Q. Yes, sir?
- 18 A. Not since the mid-sixties.
- 19 Q. So her only source of income was social security,
- 20 correct?
- 21 A. Other than minor interests and so forth, yes.
- 22 Q. Bob managed all the stock accounts, correct?
- 23 A. No, he never was into stocks. Effie had a stock
- 24 account that...
- 25 Q. He managed it, correct?

1 A. She and he, I think some broker did. They never --
2 he was never into stocks.

3 Q. She -- he handled it for her, correct?

4 A. I don't know who dealt with the broker.

5 Q. Now 1705 Meeting Street was owned by Bob Drews the
6 day before it was sold, correct?

7 A. I believe so.

8 Q. He, Bob Drews, was entitled to the proceeds,
9 correct?

10 A. Yes.

11 Q. Bob Drews was entitled to that 130,000 dollars, was
12 he not?

13 A. Yes.

14 Q. But they put it in that stock account, correct?

15 A. Yes, it went into a brokerage account.

16 Q. And you saw that Bob Drews assigned this receivable
17 to Effie Drews the moment before she assigned it to you,
18 correct?

19 A. Yes, because they were getting the note from
20 Charleston Antiques, it was a 10-year note listed in 2001
21 and Mr. Drews was certain he would outlive Mrs. Drews, so
22 he wanted it -- his preference was to put it into her
23 name.

24 Q. It was a gratuitous transfer, was it not?

25 A. I don't know the definition of that.

1 Q. You don't know the definition of gratuitous?

2 A. Of a gratuitous transfer, I'm not sure what's
3 involved.

4 Q It was essentially a gift, this assignment. She
5 didn't pay him anything for it that you know of, correct?

6 A. Not that I know of. I wasn't -- it didn't involve
7 me.

8 Q. And you're aware, of course, that this gratuitous
9 assignment of the note receivable on this property in
10 September of 2001 happened 2 months before our November
11 trial in the Gordon matter regarding the stock fraud at
12 Builder's Station, correct?

13 A. I mean when that happened in November I didn't know
14 -- I couldn't see into the future and see what was going
15 to happen in December.

16 Q. You're aware of the timing, correct?

17 A. Yes.

18 Q. And speaking of timing, let's go back to the 100,000
19 dollar mortgage for a moment, sir, are you with me; the
20 100,000 dollar mortgage from 1998?

21 A. Yes.

22 Q. Now, you're aware that Mr. Drews did some
23 renovations on Nuffield after it was purchased in 2005,
24 the second house; the substitute house, correct?

25 A. Yes, yes.

1 Q. About 15,000 dollars worth of renovations, correct?

2 A. Yes.

3 Q. And you're aware that it was during these
4 renovations that he met and buying supplies for the
5 renovations, or what have you, he met this guy named
6 Beasley, right, the hardware man.

7 A. Yes.

8 Q. And, Beasley and Drews decided to -- and this
9 occurred in 2000, excuse me '95 while they were doing
10 these renovations, correct?

11 A. I think it was '96 when he met Beasley, but it could
12 have been late '95.

13 Q. Late '95. And that's when they got into business
14 together to open this hardware store called Builder's
15 Station, correct?

16 A. Correct.

17 Q. And that is -- shortly thereafter is where, when he
18 sold you some stock in Builder's Station, correct?

19 A. Yes.

20 Q. Among other people, correct?

21 A. Yes.

22 Q. And that's the stock sale that resulted in Mr.
23 Gordon's suit when he sold Mr. Gordon and his Mom 50,000
24 dollars, correct?

25 A. Yes.

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1 Q. In '96, correct?

2 A. Yes.

3 Q. And you were a member, you were a shareholder in
4 that company, correct?

5 A. Yes.

6 Q. And at a certain point when the company was having
7 internal problems, internal squabbles, all the share
8 holders were elected to the board of directors, correct?

9 A. I remember almost nothing about Builder's Station.

10 I don't remember that, but ...

11 Q. You remember attending ---

12 A. --- meetings.

13 Q. Meetings correct?

14 A. Yes.

15 Q. Of all the shareholders in Builder's Station,
16 correct?

17 A. Yes.

18 Q. You were present when Robert Drews gave a demand to
19 all the shareholders that they either give him more of
20 the company or he would not sign the loan that the
21 company needed to open, correct?

22 A. I really don't remember.

23 Q. You were there when Robert Drews was fired from
24 Builder's Station, correct?

25 A. I know he was. At the exact time, I don't know

1 when -- I don't know when the firing occurred.

2 Q. You were in the meetings when Builder's Station
3 imploded in the winter of '96 and very early '97,
4 correct?

5 A. I was in some meetings; I was not in town for
6 others.

7 Q. It never opened, essentially, correct? Or, if it
8 opened it wasn't much of anything?

9 A. Builder's Station, I forgot how long it was open but
10 it was open.

11 Q. And as an investor and as a member of these meetings
12 you were aware that Drews had already personally
13 guaranteed a bank note to help Builder's Station open,
14 correct?

15 A. Yes.

16 Q. You saw Builder's Station default on that bank note,
17 correct?

18 A. I would agree to that, yes.

19 Q. You funded Mr. Drews' eventual settlement of the
20 bank claims with the 20,000 dollar advance in mortgage in
21 July -- June and July of 1999, correct?

22 A. Yes.

23 Q. You knew, Drews knew and you knew, when the 1998
24 mortgage for 100,000 dollars was executed with no loan
25 being extended, that the bank, South Trust Bank was after

1 Mr. Drews on his guarantee for the Builder's Station
2 loan, correct?"

3 A. Yes.

4 Q. And you accepted this new lien which would encumber
5 his property so that no creditors could ever hope to get
6 any equity out of a forced sale, correct?

7 A. I loaned him the 15,000 to pay off South Trust.

8 Q. You accepted the 100,000 dollar lien without giving
9 him an additional penny, knowing that that 100,000 dollar
10 lien would be used to shelter his real estate from the
11 South Trust claims, didn't you?

12 A. No. If he wanted to make the 100,000 dollar
13 mortgage, I wasn't going to object. As I have said all
14 along, as long as the mortgages were more than what I had
15 due me, it was okay with me. I never collected on those
16 mortgages.

17 Q. It was okay with you if he told the world he owed
18 you 100,000 dollars that he didn't owe you, correct?

19 A. It's all right with me.

20 Q. You facilitated it by accepting the mortgage,
21 correct?

22 A. How did I accept it? I don't...

23 Q. You knew the mortgage existed, correct?

24 A. Mr. Drews and Kerry Koon put that together.

25 Q. You knew it existed, correct?

1 A. I knew it existed maybe -- not before hand, but
2 afterward, yes.

3 Q. You never told him, hey I didn't give you any money,
4 that's fraudulent, void it, did you?

5 A. It's fraudulent to have a mortgage for more than an
6 amount owed?

7 Q. To record a lien that doesn't exist, to prevent a
8 federally chartered bank from collecting on a personal
9 guarantee.

10 You don't consider that fraudulent with your 35
11 years of internal auditor experience you don't consider
12 that fraudulent?

13 A. Never given it any thought. All I gave was thought
14 was Mr. Drews was offered these settlements and he asked
15 me for the money to pay them off.

16 Q. So at the end of the day, sir, just so the court can
17 be clear on the financial transfers back and forth, Drews
18 gave you 100,000 on the front end, correct?

19 A. Yes.

20 Q. Between '92 and the date of his death, Mr. Drews
21 transferred to you 89,300 dollars, correct?

22 A. Yes, in repayment for the loans, yes.

23 Q. Okay, let's go back and add that in. Let me start
24 over. This started with the 100,000 dollar transfer by
25 Mr. Drews in '92, correct?

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Court of Common Pleas
For Charleston County
Honorable J. C. Nicholson, Jr., Circuit Judge
Civil Action Nos.: 2010-CP-10-9096
And 2011-CP-10-8840
Appellate Case Tracking No. 2014-001247

Frank Gordon, Jr., Individually and as Trustee
of Dorothy S. Gordon (Deceased) Trust,

Respondent,

v.

Donald W. Lancaster,

Appellant.

Rule 210(g), SCACR, Certificate of Counsel
(Volume I)

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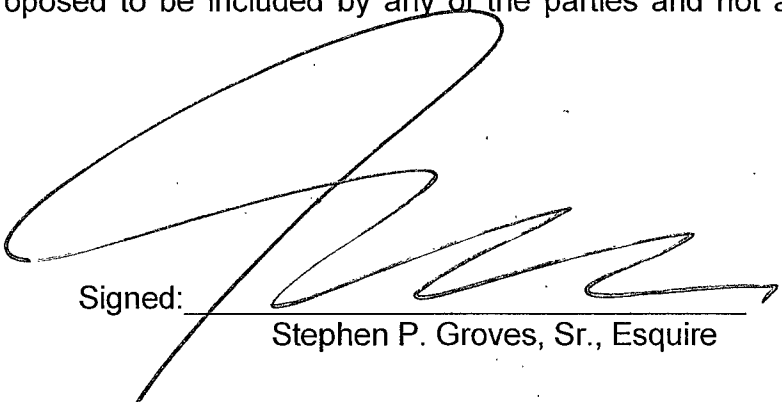
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I, Stephen P. Groves, Sr., Esquire, hereby certify, pursuant to Rule 210(g), SCACR, that this **Record on Appeal (Volumes I, II, and III)** contains all of the material and documentation proposed to be included by any of the parties and not any other material.

Signed: 

Stephen P. Groves, Sr., Esquire

Charleston, South Carolina

22 October 2015

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