

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Hon. J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2016-000424

RECEIVED
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SC Court of Appeals

C. Gordon Lovingood, Jr., C3 Invesments, Inc., and PPC12, LLC,..... Appellants

v.

Victor Apat, Anthony McAllister, J Eric Wade d/b/a CT Touring..... Defendants

Of Whom Anthony McAllister, J. Eric Wade d/b/a CT Touring and
Pearl Co., SC, LLC are Respondents.

RESPONDENTS' RETURN TO APPELLANTS' MOTION TO
ORDER TRANSCRIPT OUT OF TIME

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ATTORNEYS FOR RESPONDENTS

Respondents Anthony McAlister, J. Eric Wade d/b/a CT Touring, and Pearl Co. SC, LLC (collectively, “Respondents”) respectfully request that the Court deny the Motion to Order Transcript Out of Time (the “Motion”) of Appellants C. Gordon Lovingood, Jr., C3 Investments, Inc., and PPC12, LLC (collectively, “Appellants”) on the grounds that Appellants have failed to justify their failure to comply with Rule 207, SCACR.

Rule 207, SCACR, requires that appellants order transcripts within ten (10) days after the date of service of the notice of appeal in appeals from the court of common pleas. In this case, Appellants did not order the transcript until thirty-three (33) days after they served the notice of appeal. Appellants offer no explanation in the Motion for their failure to comply with Rule 207 beyond their attorney’s neglect. Attorney neglect, however, is attributable to the client, *Stearns Bank N.A. v. Glenwood Falls, LP*, 373 S.C. 331, 342, 644 S.E.2d 793, 798 (Ct. App. 2007), and Appellants’ Motion is completely devoid of any arguments as to why their counsel’s neglect in this instance is excusable.

Instead, Appellants base their request for relief on two arguments: (1) Appellants’ counsel’s attempted to rectify his error “in a prompt manner,” and (2) the parties will not be prejudiced by the delay resulting from Appellants’ untimely ordering of the transcript. Neither argument excuses their counsel’s neglect or provides a justifiable basis for permitting them to order the transcript outside of the mandatory deadline.

Appellants’ attempt to characterize their counsel’s attempt to rectify his error as “prompt” fails when the short timeframe for ordering a transcript established under Rule 207 is considered. Appellants did not miss the deadline by one or two days. Rather, their

delinquency was more than twice as long as the ten-day period for ordering the transcript. Accordingly, their attempt to say they “promptly” rectified their error is inaccurate.

Moreover, Appellants should not be entitled to excuse their failure to comply based on their remedial efforts when those efforts were similarly in violation of Rule 207. In addition to requiring that an appellant order the transcript within ten days of serving the notice of appeal, Rule 207 also requires appellants to contemporaneously furnish all counsel of record, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.” (Emphasis added.) Appellants did not comply with this requirement in seeking to remedy their failure to order the transcript in a timely fashion.

Upon discovering his failure to comply with Rule 207 on March 31, 2016, Appellants’ counsel did not seek leave of the Court to order the transcript outside of time or inform opposing counsel of his neglect. Instead, he corresponded with the court reporter without contemporaneously furnishing the Court or opposing counsel with copies of such correspondence. And despite numerous communications with the court reporter, Appellants’ counsel did not provide copies of his communications with the court reporter to opposing counsel until April 22, 2016, which was two days after he received notification from the Court of his error and more than three weeks after he initially realized his failure to order the transcript within the applicable period. Appellants’ failure to provide to the Court and opposing counsel copies of their counsel’s correspondence with the court reporter, as required by the Court’s rules, suggests that Appellants attempted to hide their violation of the Court’s rules and correct it before either the Court or opposing counsel would notice. Therefore, the Court should not

excuse Appellants' failure to comply with Rule 207 based on their efforts to rectify their neglect when they continued to disobey the rules after realizing their mistake.

Last, Appellants' argument regarding the lack of prejudice resulting from their failure to order the transcript within the required time period neglects the fact that repeated instances of their failure to follow court rules have delayed the resolution of this matter considerably. This case was first delayed for months because of Appellants' failure to answer Respondents' counterclaims, which led to Respondents filing a motion for entry of default. (Ex. A, Resps. Mot. Entry Default.) Thereafter, the case was again delayed for months as a result of Appellants' total failure to respond to discovery requests, which resulted in Respondents filing a motion to compel discovery responses, after Respondents granted Appellants multiple extensions to respond. (Ex. B, Resps. Mot. Compel.) The motion to compel was not completely resolved until October 2015, ten months after the discovery requests were served on Appellants. Last, Appellants failed to submit briefing and supporting deposition excerpts in response to Respondents' Motion for Summary Judgment until after the hearing on such motion, causing further delay. (Ex. C., Appel. Mem. Opp. Resps. Mot. Summ. Judgment.)¹ In other words, Appellants' failure to comply with Rule 207, SCACR, is not an isolated incident but part of a repeated pattern of neglect of the applicable rules of procedure designed for judicial economy and prompt resolution of disputes. The Court should reject Appellants' request to further delay the conclusion of this matter based on yet another instance of disregard of the applicable rules of court.

¹ Appellants' Memorandum in Opposition to Respondents' Motion for Summary Judgment reflects that the hearing on said motion was held on October 19, 2015 and their Memorandum in Opposition was filed on October 23, 2015.

May 3, 2016

E. B. Gaskins

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ATTORNEYS FOR RESPONDENTS

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
C. GORDON LOVINGOOD, JR., C3)
INVESTMENTS, INC., and PPC12, LLC)
Plaintiffs,)
v.)
VICTOR APAT; ANTHONY)
MCALLISTER; J. ERIC WADE d/b/a CT)
TOURING; and PEARL CO. SC, LLC,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2013-CP-10-5080

**MOTION FOR ENTRY OF DEFAULT
AND JUDGMENT BY DEFAULT**

FILED
2014 APR 11 PM 5:28 SC
JULIE J. ARMSTRONG
CLERK OF COURT

Pursuant to Rule 55(a) and 55(b)(2) and (3) of the South Carolina Rule of Civil Procedure, Defendants Anthony McAllister, J. Eric Wade d/b/a CT Touring, and Pearl Co. SC, LLC ("Defendants") move for an entry of default and judgment by default against Plaintiff C. Gordon Lovingood, Jr. ("Lovingood") and Defendant Victor Apat ("Apat").

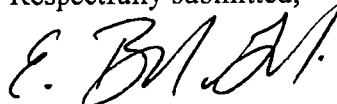
As set forth in the Affidavit of Default and Attorneys' Fees, which is attached as Exhibit A (the "Affidavit"), Plaintiffs commenced this action against Defendants and Apat on August 29, 2013. After being served the Complaint and receiving an extension from Plaintiffs to answer the Complaint, Defendants filed their Answer, Counterclaim and Cross-claim on November 15, 2013. In the Answer, Counterclaim and Cross-claim, Defendants asserted counterclaims against Plaintiff G. Gordon Lovingood and cross-claims against Apat of fraud, fraudulent concealment, constructive fraud, negligent misrepresentation, and breach of fiduciary duties.

Defendants served the Answer, Counterclaim, and Cross-claim on Lovingood and Apat on November 15, 2013 and December 31, 2013, respectively. It has been more than thirty days since both Lovingood and Apat were served with the Answer, Counterclaim and Cross-claim.

Apat has not filed an answer or other responsive pleading or motion in response to the cross-claims against him, as required by Rule 12(a) of the South Carolina Rules of Civil Procedure. Lovingood filed and served a Reply to the Defendants' counterclaims February 18, 2014, which was ninety-five (95) days after he was served with the Answer, Counterclaim and Cross-claim.

As a result Lovingood's and Apat's failure to timely respond to the counterclaims and cross-claims as required by the South Carolina Rules of Civil Procedure, Lovingood and Apat are in default, and entry of default is appropriate pursuant to Rule 55(a), SCRCF. Defendants seek judgment by default against Lovingood and Apat pursuant to Rule 55(b), including all actual damages sought in their counterclaims and cross-claims, dismissal of Plaintiffs' claims against Defendants, and Defendants' attorneys' fees incurred in this action. Pursuant to Rule 55(b)(2)-(3), Defendants request that the Court hold a hearing to enable it to enter judgment and determine the amount of damages and attorneys' fees to which Defendants are entitled.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANTS
ANTHONY MCALLISTER; J. ERIC
WADE d/b/a CT TOURING; and PEARL
CO. SC, LLC

April 11 2014

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
C. GORDON LOVINGOOD, JR., C3
INVESTMENTS, INC., and PPC12, LLC

Plaintiffs,

v.

VICTOR APAT; ANTHONY
MCALLISTER; J. ERIC WADE d/b/a CT
TOURING; and PEARL CO. SC, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
)
) CIVIL ACTION NO. 2013-CP-10-5080

CERTIFICATE OF SERVICE

FILED
2014 APR 11 PM 4:28
JULIE BRASSTRONG
CLERK OF COURT
BY

This is to certify that I have this date served a true and correct copy of **NOTICE OF JOINT MOTION AND JOINT MOTION FOR ENTRY OF DEFAULT AND JUDGMENT BY DEFAULT** on the parties identified below by U.S. Mail with proper postage affixed thereto and addressed to the following:

David B. Marvel, Esquire
Kenneth G. Goode, Jr., Esquire
PRENNER MARVEL, P.A.
636 King Street
Charleston, SC 29403
Attorneys for Plaintiffs

Victor Apat
1525 Ashley River Road
Charleston, SC 29407
Defendant, pro se

MOORE VAN ALLEN, PLLC

Wendy Stockhausen
Wendy Stockhausen

April 11, 2014

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
C. GORDON LOVINGOOD, JR., C3
INVESTMENTS, INC., and PPC12, LLC

Plaintiffs,

v.

VICTOR APAT; ANTHONY
MCALLISTER; J. ERIC WADE d/b/a CT
TOURING; and PEARL CO. SC, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CIVIL ACTION NO. 2013-CP-10-5080

) **DEFENDANTS' MOTION TO COMPEL**
) **DISCOVERY**

FILED
2015 APR -6 PM 4:25
JULIE J. ARISTRONG
CLERK OF COURT

Pursuant to Rules 26 and 37(a) of the South Carolina Rules of Civil Procedure, Defendants Anthony McAllister, J. Eric Wade d/b/a CT Touring, and Pearl Co. SC, LLC ("Defendants") move this Court for an order compelling Plaintiffs C. Gordon Lovingood, Jr., C3 Investments, Inc. and PPC12, LLC ("Plaintiffs") and Defendant Victor Apat ("Defendant Apat") to provide responses to Defendants' First Sets of Interrogatories and Requests for Production of Documents. In support of this motion, Defendants present the following:

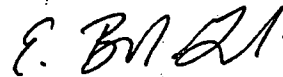
1. Defendants served Plaintiffs with individual Requests for Production and Interrogatories by electronic mail and hand delivery on January 13, 2015 (attached as Ex. A). Plaintiffs' discovery responses were initially due on February 12, 2015.
2. Defendants served Defendant Apat with Defendants' First Set of Interrogatories and Requests for production by electronic mail and hand delivery on January 22, 2015 (attached as Ex. B). Defendant Apat's discovery responses were initially due on February 23, 2015.
3. Defendants provided Plaintiffs and Defendant Apat with numerous extensions to respond to the respective discovery requests. Most recently, on March 27, 2015, counsel for

Defendants followed up by email with counsel for Plaintiffs and Defendant Apat on the status of the discovery responses. In that email, Defendants' counsel requested that the discovery responses be provided no later than April 3, 2015. Neither Defendant Apat nor Plaintiffs have produced any discovery responses.

4. Counsel certifies that pursuant to Rule 11 he has consulted with Plaintiffs' and Defendant Apat's counsel in a good faith effort to resolve the dispute raised in this Motion, but has been unable to resolve the dispute.

WHEREFORE, Defendants ask that the Court enter an order requiring Plaintiffs and Defendant Apat to respond to Defendants' discovery requests, to award costs and attorney fees to the Defendants for seeking this order, and for such other relief as the Court deems just.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANTS
ANTHONY MCALLISTER; J. ERIC
WADE d/b/a CT TOURING; and PEARL
CO. SC, LLC

April 6, 2015

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

C. GORDON LOVINGOOD, JR., C3
INVESTMENTS, INC., and PPC12, LLC

Plaintiffs,

v.

VICTOR APAT; ANTHONY
MCALLISTER; J. ERIC WADE d/b/a CT
TOURING; and PEARL CO. SC, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2013-CP-10-5080

CERTIFICATE OF SERVICE

JULIE J. ANDERSON
CLERK OF COURT

2015 APR -6 PM 4: 25

FILED

This is to certify that I have this date served a true and correct copy of **Defendants'**

Motion to Compel Discovery on the parties identified below by U.S. Mail with proper postage

affixed thereto and addressed to the following:

David B. Marvel, Esquire
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Attorneys for Plaintiffs

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Charleston, SC 29418.
Attorney for Defendant Victor Apat

MOORE VAN ALLEN, PLLC

Heather Morin
Heather Morin

April 6, 2015

EXHIBIT C

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

C. GORDON LOVINGOOD, JR.,)
C3 INVESTMENTS, INC., and)
PPC12, LLC,)

2015-CP-10-4549
Civil Action No.: 2013-CP-10-5080

Plaintiffs,)

vs.)

VICTOR APAT;)
ANTHONY MCALLISTER;)
J. ERIC WADE d/b/a CT TOURING;)
and PEARL CO. SC, LLC;)

Defendants.)

FILED
2015 OCT 23 PM 2:14
JULIE J. ARMSTRONG
CLERK OF COURT

MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

COMES NOW PLAINTIFFS, who hereby file this Memorandum in Opposition to the Motion for Summary Judgment filed by the Defendants Anthony McAllister, Eric Wade, and Pearl Co. SC, LLC, which was heard by the Court on October 19, 2015. Plaintiffs note that while Defendant's counsel provided the undersigned with a copy of their memorandum in support of their Motion for Summary Judgment by email on October 15, 2015, Defendants' counsel did not serve a copy including exhibits until one was delivered to the undersigned's office after 4:00 pm on October 19, 2015, while all counsel were in court waiting for oral argument. Accordingly, Plaintiffs' respectfully request that this Honorable Court grant leave for this memorandum offer a brief reply to Defendants' Motion.

The Court's familiarity with the facts is presumed. For purposes of this memorandum, the Plaintiffs seek to recover the costs and expenses related to repairing a Pilatus PC12 aircraft that was owned by PPC12, LLC. During the October 19, 2015 hearing, Defendant's counsel

asserted that the evidence conclusively established that McAllister, Wade, and Pearl Co. had dissociated from PPC12, LLC prior to the aircraft's engine failure. The court noted that there was evidence in the record tending to create a question of fact on that issue.

Defendants have asserted that they dissociated from the LLC pursuant to S.C. Code § 33-44-601(1), which states that “[a] member is dissociated from a limited liability company upon . . . (1) the company's having notice of the member's express will to withdraw upon the date of notice or on a later date specified by the member. The only evidence supporting this assertion is testimony from Plaintiff Lovingood that he received a phone call from Defendant Wade in which Wade indicated that he was “going in a different direction”, followed by an October 22, 2012 email from the aircraft manager, David Gibbons, in which Mr. Gibbons indicating that the defendants had expressed “their intention to leave PPC12 LLC Effective October 1st.”

First, no fair reading of Lovingood's testimony supports the concept that Wade's telephone call constituted “notice of [his] express will to withdraw”. Lovingood's testimony on this question was as follows:

- Q. Let's go back to that phone conversation you had with Eric. And he told you that the partners were going in a different direction, right?
- A. That's all he said.
- Q. And he told you that they were buying another airplane?
- A - I think he said that. I think he just said -- I might have just thrown that in. But I think all he said was we're moving in another direction. That's all I really remember. And I might have just thrown in, through frustration and being -- getting fired on, that. But I don't really recall other than the fact that the main thing was that we have decided to move in a different direction. That was it.
- Q. And --
- A. He never said whether they're leaving the LLC, never, never -- never mentioned anything about PPC12 at all.
- Q. Okay. He didn't have any other reason to call you about anything other than PPC12, LLC, correct?
- A. I don't know. You know, we were friends and that's why I answered the phone when I saw his number.

- Q And he was referring to a partnership. You don't have any other partnerships with him, do you?
- A I don't know. All I'm saying is what he said.
- Q Okay.
- A I don't know what his intent was.
- Q Isn't it true that you understood Eric to mean that they were disassociating or getting out of the LLC? (Objection to relevance, asked and answered)
- A I know -- no, I don't know they were going to get out of the LLC.

(Ex. 1, p. 106, line 14-p. 108, line 6).

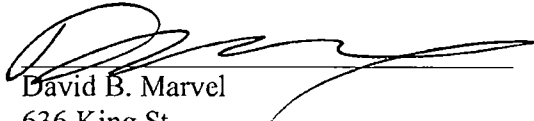
Moreover, Section 33-44-601(1) requires that a dissociating member must give notice of that express will to "the company". Although Lovingood was one of the original members of PPC12, LLC, at that point he was simply a minority membership interest. Conversely, David Gibbons is the Director of Operations of East Shore Aviation, who was contracted by PPC12, LLC, and named in the Operating Agreement to manage, operate, and maintain the aircraft. Gibbons testified that on the date the aircraft suffered a catastrophic engine failure, Victor Apat was the Managing Member of the LLC, and none of the defendants had not advised him of any change in their relationship to PPC12, LLC. (Ex. 2, p. 30, line 9-p.31, line 2; lp. 48, line 23-p. 49, line 6). As far as Gibbons knew, all of the defendants were members of the LLC on that date. (Ex. 2, p.84, line 20-p.85, line 8). In fact, as late as February, 2013, Defendant McAllister was still paying off his flight time balance with PPC12, LLC, even though the aircraft was not flying. (Ex. 2, p. 54, lines 2-9).

Finally, the October 22, 2011 email relied on by the Defendants to corroborate their claim of dissociation, attached as Exhibit 3, fails as a matter of law. Notably, Apat, who Gibbons identified as the managing member, responded to the email in a manner that clearly shows that he has no information on the issue. Moreover, the email on October 22 references an October 1 dissociation date, which is ineffective under the statute as any notice of express will to dissociate must, by definition, must apply "upon the date of notice or on a later date". Finally, the email

only references an intention to leave, not an actual withdrawal or an actual dissociation, so Gibbons, Lovingood, and Apat had no notice of any member's "express will" to do anything.

Lovingood and his company, C3 Investments, incurred over \$500,000 in expenses to preserve the LLC's asset in the ordinary course of the LLC's stated business purpose. He is entitled to be indemnified by the other members of the LLC under Articles 3.6, and 8.2(b-c) of the Operating Agreement. Further, Defendants Wade, McAllister, and Pearl Co. clearly competed with PPC12, LLC long before October 2012 by forming CP Aviation, LLC to perform exactly the same business, and that competition (including attending to the members own flying needs) led those Defendant to abandon their obligations to PPC12, LLC. The Plaintiffs have stated their case on all causes of action, and Defendants' Motion for Summary Judgment must be Denied.

RESPECTFULLY SUBMITTED:
PRENNER MARVEL, P.A.



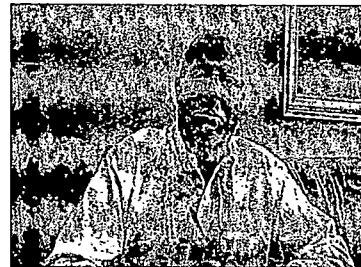
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ATTORNEYS FOR THE PLAINTIFFS

Charleston, South Carolina
October 23, 2015

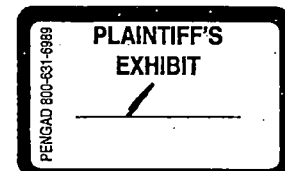
In The Matter Of:
Lovingood v.
Apat

C. Gordon Lovingood, Jr.
June 19, 2015



Janice D. Hayward, RMR
Independent Court Reporter
843.478.6756
JanHayward1@gmail.com

Original File 061915CLovingood.txt
Min-U-Script® with Word Index



Page 105

1 BY MR. GASKINS:
 2 Q You're not aware of anything in that
 3 operating agreement that governs how members
 4 disassociate?
 5 MR. MARVEL: Object to form.
 6 A I'm not aware of whether it's in that
 7 agreement or not. If your intent was to do
 8 something, and you intended to do it, that doesn't
 9 relieve your obligation for it.
 10 BY MR. GASKINS:
 11 Q Okay. Well, Mr. Worthy is no longer a
 12 member of PPC12, LLC according to you, right?
 13 A As far as I'm concerned, when I sent a
 14 bill to him and he didn't pay it, then what I did
 15 was to not take any action whatsoever and then he
 16 went to prison.
 17 Q Okay. Did you -- do you have anything in
 18 writing saying he's no longer a member?
 19 A He's probably still a member but I'm --
 20 hard to get money out of somebody who's in prison.
 21 Q Well, earlier you said he was no longer a
 22 member.
 23 A Okay.
 24 Q So is he a member?
 25 A I can't answer that.

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1 MR. MARVEL: Object to form.
 2 A I don't have all these papers in front of
 3 me, sir. If I had everything in front of me to
 4 where I could answer your questions more clearly,
 5 but this is a long time ago, and I'm running off of
 6 frustration, I'm running off of anger, and I'm
 7 running off of ludicrous questions from an attorney.
 8 Q All right.
 9 A And that's a giveaway.
 10 MR. MARVEL: Let's take a break for a
 11 second.
 12 (The deposition went off the record.)
 13 BY MR. GASKINS:
 14 Q All right. Let's go back to that phone
 15 conversation you had with Eric. And he told you
 16 that the partners were going in a different
 17 direction, right?
 18 A That's all he said.
 19 Q And he told you that they were buying
 20 another airplane?
 21 A I think he said that. I think he just
 22 said -- I might have just thrown that in. But I
 23 think all he said was we're moving in another
 24 direction. That's all I really remember. And I
 25 might have just thrown in, through frustration and

Page 107

1 being -- getting fired on, that.
 2 But I don't really recall other
 3 than the fact that the main thing was that we have
 4 decided to move in a different direction. That was
 5 it.
 6 Q And --
 7 A He never said whether they're leaving the
 8 LLC, never, never -- never mentioned anything about
 9 PPC12 at all.
 10 Q Okay. He didn't have any other reason to
 11 call you about anything other than PPC12, LLC,
 12 correct?
 13 A I don't know. You know, we were friends
 14 and that's why I answered the phone when I saw his
 15 number.
 16 Q And he was referring to a partnership.
 17 You don't have any other partnerships with him, do
 18 you?
 19 A I don't know. All I'm saying is what he
 20 said.
 21 Q Okay.
 22 A I don't know what his intent was.
 23 Q Isn't it true that you understood Eric to
 24 mean that they were disassociating or getting out of
 25 the LLC?

Page 108

1 MR. MARVEL: Object to form.
 2 A I know -- no, I don't know they were going
 3 to get out of the LLC. All I know is that I felt
 4 like they were buying another aircraft, and if they
 5 did, I was going to sue them for whatever we had on
 6 this airplane.
 7 BY MR. GASKINS:
 8 Q Okay. What if they bought another
 9 airplane and continued paying the bills, were you
 10 still going to sue them?
 11 A No.
 12 Q Okay. So why did you threaten to sue
 13 them?
 14 A 'Cause I felt threatened.
 15 Q 'Cause you felt like they were leaving the
 16 LLC, correct?
 17 MR. MARVEL: Object to form.
 18 A I don't know what their intention was
 19 other than the fact that they were moving in another
 20 direction and that doesn't sound good to me as a
 21 businessman.
 22 Q So instead of asking questions about what
 23 he meant, you threatened to sue him?
 24 A Out of frustration and anger, yes.
 25 Q Okay. All right. Well, after that phone

Ex 1p 2

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

C. GORDON LOVINGOOD, JR.,)
C3 INVESTMENTS, INC., and)
PPC12, LLC,)

Plaintiff,)

-versus-)

VICTOR APAT, ANTHONY McALISTER,)
J. ERIC WADE d/b/a CT TOURING,)
and PEARL COMPANY SC, LLC,)

Defendants.)

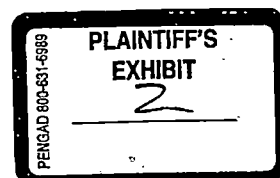
2015-CP-10-4549

Case No.:

~~2013-CP-10-5080~~

THE DEPOSITION OF DAVID GIBBONS was taken as a witness on behalf of the Plaintiff, pursuant to South Carolina Rules of Civil Procedure, at 1:00 p.m. on Thursday, the 23rd day of October 2014, at the offices of Prenner Marvel, 636 King Street, in the City of Charleston, State of South Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net



1 named Jay, I think, was who I dealt with the most.
2 And that was mainly due to -- you know, concerning
3 paperwork. All the rest of this stuff is above my
4 pay grade.

5 Q What types of paperwork did they need
6 from you?

7 A They didn't need anything from me. It
8 was basically the aircraft registration, several
9 documents that stipulated that I was going to be the
10 manager, you know, the financial manager, and that
11 was really basically all. I had to sign my name in
12 a few places. That's all.

13 Q And that's essentially the same -- You
14 performed the same services for that aircraft as you
15 did for the 217EB. Is that correct?

16 A Starting in January of 2011. Prior to
17 that, Mr. Lovingood took care of that.

18 Q Let me break that down a little bit.
19 East Shore Aviation operated and maintained and
20 managed 217EB from its inception until January of
21 2011. Correct?

22 A No. Well, East Shore Aviation managed
23 217EB from December of 2007 until October of 2012.

24 Q And prior to January of 2011, what
25 services did you provide for that aircraft?

1 ever became aware of that. I don't really know
2 that.

3 Q Did you ever have any conversations with
4 Mr. Lovingood about the fact that Mr. Wade was going
5 to or had purchased another aircraft?

6 A I can't say yes or no. I really don't
7 know. I don't remember. And I really don't
8 remember.

9 Q Do you recall the date that the aircraft
10 had the engine failure?

11 A October 28, 2012.

12 Q And Michael was flying at the time.
13 Correct?

14 A He was.

15 Q At that point was Mr. Wade in your
16 opinion still an active member of PPC12?

17 A I can't answer that question.

18 Q What would assist you in answering that
19 question?

20 A I don't really know. I know that at that
21 point he would have been involved with 561GG. I
22 don't know what Mr. Wade did or did not do in terms
23 of what his relationship with PPC12 was.

24 Q Same question as to Mr. Pearlstine?

25 A Same thing.

1 Q What about Mr. McAlister?

2 A Same thing.

3 Q Is Mr. Apat involved in any aircraft that
4 you're involved in?

5 A Yes. He was involved with 217EB.

6 Q Let me restate that question. Is he
7 currently --

8 A No.

9 Q You don't have any current business
10 relationship with Mr. Apat?

11 A No.

12 Q What was Mr. Apat's involvement in PPC12?

13 A Well, as far as I knew, he was one of the
14 two owners at the beginning.

15 Q What was your contact with Mr. Apat in
16 that context?

17 A I had some meetings with him, you know,
18 about money, about what we were going to charge
19 people to fly in the airplane. Other than that,
20 pretty well nothing. He used the airplane every
21 once in a while. I flew him a couple of times.

22 Q Did he appear to be any more or less
23 involved than Mr. Lovingood was?

24 A Well, I think he was a little bit more.
25 But I can't -- You're asking me to give an opinion

Exp 2 p 5

1 to talk to somebody, it probably would have been
2 him. But Eric, no.

3 Q In general, was there any one member of
4 PPC12 that you spoke with about administrative
5 matters more than others?

6 A Yeah, Vic.

7 (Exhibit No. 2 marked for
8 identification.)

9 BY MR. MARVEL:

10 Q Do you recognize the document that I
11 handed to you marked as Exhibit 2?

12 A Yes.

13 Q What is that document?

14 A I can't remember exactly what I called
15 it, but it's an ownership or a breakdown of how the
16 ownership on the airplane went throughout that year.

17 Q What period does that exhibit cover?

18 A Well, it covers 2010 and 2011, it looks
19 like. Oh, no. It covers 2008 and 2009, 2010 and
20 2011.

21 Q And that came to me with the Bates stamp
22 that's on the bottom that says East Shore and some
23 numbers on it. Is that something that you put on
24 there?

25 A No. Nothing that I recognize, that stamp

1 the last page.

2 Q As of the date of this statement, which
3 is February 15, 2013, Mr. McAlister had a balance of
4 \$9,700 and some change. To your knowledge, has that
5 been paid?

6 A Yes.

7 Q And that would have been paid to you-all?

8 A It was paid to PPC12. It was deposited
9 in their bank account.

10 (Exhibit No. 8 marked for
11 identification.)

12 BY MR. MARVEL:

13 Q If you could, review what has been marked
14 as Exhibit 8 and tell me if you recognize that
15 document.

16 A It looks like a response -- I have to
17 look at it. It looks like a response from me about
18 the raft telling them that in order to -- We needed
19 a raft because of flying over water to the Bahamas,
20 and we had priced out a few rafts. So it was up to
21 them to make a choice.

22 Q You would have sent that e-mail out to
23 allow the members to make a choice about the rafts
24 that you had sourced?

25 A Yes. It looks like I sent it to Vic and

1 Q Would either one of those two websites
2 tell me anything about the transaction between the
3 parties?

4 A No.

5 Q Is there any sort of public database
6 where I would find that out?

7 A I don't know.

8 Q Do you know how liens on aircraft are
9 recorded?

10 A No. I searched that database out of
11 curiosity only, just to see where the airplane went.

12 Q When did you do that?

13 A Last year sometime.

14 Q You haven't checked on it since then?

15 A Well, no. I knew where it was.

16 Q Well, yeah, but it might not be there
17 now.

18 A After I found out that it went to Alaska,
19 that was enough for me.

20 Q So as I got it, once the event happened
21 in October of 2012, McAlister, Wade, Lovingood and
22 Pearlstine were members of the LLC. Is that
23 correct?

24 MR. MARVEL: Object to the form.

25 BY MR. COLLINS:

EC 2/28

1 Q They owned that aircraft?

2 MR. MARVEL: Same objection. You
3 can answer.

4 A I don't know.

5 BY MR. COLLINS:

6 Q As far as you knew?

7 A As far as I knew. But as far as I knew,
8 Mr. Apat was still involved, too.

9 Q Assume for the sake of that question that
10 my client had disassociated himself, like you said
11 you had heard. So that leaves us four guys in the
12 LLC. Right?

13 A Yeah.

14 Q That owned this aircraft?

15 A If Vic had disassociated himself, yes,
16 then there would be four.

17 Q And at that time in October of 2012, were
18 all of the members current in their financial
19 obligations?

20 A No.

21 Q Out of those four, who was not current?

22 A Mr. Lovingood, Mr. Apat and probably --

23 Q Mr. Apat has disassociated himself.

24 Assume that for the sake of my question.

25 A For the sake of your question, then it

Anna Rogers

From: David Gibbons [dmichaelgibbons@verizon.net]
Sent: Tuesday, July 31, 2012 3:34 PM
To: 'Anna Rogers'
Subject: FW: Final info needed for PPC12 tax filings: McAlister tax ssn
Attachments: image001.png

Anna,
Could you reply to Andrew Castle with Anthony's SSN.

Thanks,
Dave

From: Andrew Castle [mailto:acastle@main-sheet.com]
Sent: Tuesday, July 31, 2012 11:43 AM
To: 'David Gibbons'
Subject: Final info needed for PPC12 tax filings: McAlister tax ssn

Hi David,
We received the filing authorization. I believe we still need the SSN for Anthony McAlister. We can't file without it.
Thanks,

Andrew

C. Andrew Castle, CPA

Mainsheet Financial Solutions
498 Wando Park Blvd, Suite 1125
Mount Pleasant, SC 29464 USA
tel 843-628-0033 | fax 888-822-3184
acastle@main-sheet.com | www.main-sheet.com

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IRS CIRCULAR 230 DISCLOSURE REQUIREMENT: IRS Circular 230 requires us to notify you that any tax advice contained in this communication (including attachments) is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding tax penalties that may be imposed by law.

From: David Gibbons [mailto:dmichaelgibbons@verizon.net]
Sent: Friday, June 01, 2012 8:37 AM
To: 'Andrew Castle'
Subject: FW: Tax Id or SSN's for PPC12 2011 Taxes.

Andrew,
This is for CT Touring. I am still working on McAlister.

Thanks,
Dave

From: Eric Wade [mailto:eric@cttouring.com]
Sent: Wednesday, May 30, 2012 6:01 PM
To: David Gibbons
Subject: Re: Tax Id or SSN's for PPC12 2011 Taxes.



Here you go

J. Eric Wade

CT Touring
864 Low Country Blvd, Suite B
Mt. Pleasant, SC 29464
Mailing:
P.O. Box 1697
Mt. Pleasant, SC 29465

office: 843.856.4336
Cell: 843.830.3444
Fax: 803.753.9969
Email: eric@cttouring.com
Web: www.cttouring.com



USA UK Germany Dubai China

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From: Michael Gibbons <dmichaelgibbons@verizon.net>
To: Eric Wade <eric@cttouring.com>, 'Edwin Pearlstine' <pearlprop@aol.com>, "anthonymcalister@aol.com" <anthonymcalister@aol.com>
Cc: 'Shelia Pace' <SheliaPace@pearlstine.net>, 'Anna Rogers' <arogers@mcalistdevelopment.com>
Subject: Tax Id or SSN's for PPC12 2011 Taxes.

Gentlemen,

The accountant has finished the PPC12 2011 Taxes. He does need the Tax ID or SSN you want on the taxes. He needs this for:

CT Touring
Pearl Co. SC
Anthony McAlister – whichever entity you want to show.

Please forward this information to me today, if possible, so we can complete the taxes.

Thanks,
Dave

David M. Gibbons
Financial Manager
PPC12 LLC
516-702-0438

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS)
FOR THE NINTH JUDICIAL CIRCUIT)

C. GORDON LOVINGOOD, JR.,)
C3 INVESTMENTS, INC., and)
PPC12, LLC,)

2015-CP-10-4549

Civil Action No.: ~~2013-CP-10-5080~~

Plaintiff,)

vs.)

CERTIFICATE OF SERVICE

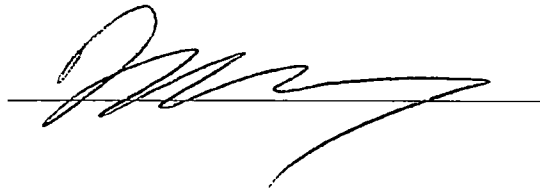
VICTOR APAT;)
ANTHONY MCALLISTER;)
J. ERIC WADE d/b/a CT TOURING;)
and PEARL CO. SC, LLC;)

Defendant.)

FILED
2015 OCT 23 PM 2:15
JULIE J. ARMSTRONG
CLERK OF COURT

I do hereby certify that I provided all parties of record a copy of Plaintiffs'

Memorandum in Opposition to Defendants' Motion for Summary Judgment this 23rd day of
October, 2015 via email, postage prepaid, to all counsel of record.



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Hon. J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2016-000424

RECEIVED

MAY 05 2016

SC Court of Appeals

C. Gordon Lovingood, Jr., C3 Invesments, Inc., and PPC12, LLC,..... Appellants

v.

Victor Apat, Anthony McAllister, J Eric Wade d/b/a CT Touring..... Defendants

Of Whom Anthony McAllister, J. Eric Wade d/b/a CT Touring and
Pearl Co., SC, LLC are Respondents.

PROOF OF SERVICE

I certify that I have served Respondents Return to Appellants' Motion to Order Transcript Out of Time by depositing a copy of it in the United States Mail, postage prepaid, on May 3, 2016, addressed to their counsel, David B. Marvel, Esquire, P.O. Box 22734, Charleston, SC 29413.

May 3, 2016



E. Brandon Gaskins
Trudy H. Robertson
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78 Wentworth Street
P.O. Box 22828
Charleston, SC 29413-2828
Telephone (843) 579-7000
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E-mail: brandongaskins@mvalaw.com
trudyrobertson@mvalaw.com

ATTORNEYS FOR RESPONDENTS

Moore & Van Allen

May 3, 2016

RECEIVED

MAY 05 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street - PO Box 11629
Columbia, SC 29201

SC Court of Appeals

E. Brandon Gaskins
Attorney at Law

T 843 579 7038
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brandongaskins@mvalaw.com

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78 Wentworth St.
Charleston, SC 29401-1428

Mailing Address:
Post Office Box 22828
Charleston, SC 29413-2828

Re: C. Gordon Lovingood, Jr., et al, et al., v. Anthony McAllister, et al.
Appellate Case No. 2016-000424
MVA File No. 038737

Dear Ms. Kitchings:

With regard to the above-referenced matter, enclosed for filing please find the original and seven (7) copies of **Respondents' Return to Appellants' Motion to Order Transcript Out of Time**, together with an original and one copy of the **Proof of Service** concerning same.

Please file the originals and return the clocked-in copies to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, I am serving a copy of the foregoing pleadings counsel for the appellant.

Thank you for your assistance in this matter and please call me with any questions.

Sincerely,

Moore & Van Allen, PLLC



E. Brandon Gaskins

EBG/ws

Enclosures- as stated

cc: David B. Marvel, Esquire

Charlotte, NC
Research Triangle Park, NC
Charleston, SC

Moore & Van Allen

Moore & Van Allen PLLC

78 Wentworth Street
Post Office Box 22828
Charleston, SC 29413-2828

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street - PO Box 11629
Columbia, SC 29201

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