

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

**RECEIVED**

AUG 22 2016

SC Court of Appeals

APPEAL FROM Horry COUNTY  
Court of Common Pleas  
R. Lawton McIntosh, Circuit Court Judge 15<sup>th</sup> Judicial Circuit

---

Civil Action No. 2014-CP-26-08367  
2014-CP-26-03362 (formerly 2013-CP-02816)

---

Appellate Case No: 2016-001328

---

Gabriel Barnhill & GSB Enterprises LLC Respondents,

v.

J Floyd Swilley, J Floyd Swilley  
Investment Advisors, Laurel K Swilley,  
SMG Partners LLC, SMS Services LP,  
William C Piner, WCP Limited LLC, 809  
Holdings LP, QC Financing LLC, Heath  
Causey, and Sage Financial Group LLC, J  
Floyd Swilley, SMG Partners LLC, Alicia  
Piner, Heath Causey, Sage Advisory  
Group LP, Sage Private Equity Group  
LLC, Secured Asset Factoring Exchange,  
Inc, SAFE, Inc, Digics, LLC, 9-1-1  
Plumbing, LLC, and Sage Funding, LP  
and Christopher Pitcock,

Defendants

of whom J Floyd Swilley, Laurel K Swilley  
and Heath Wendell Causey, are the

Appellants.

---

**DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL**

---

Heath Causey,  
1705 N Oak Street Suite 2  
Myrtle Beach, SC 29577  
(843) 424-9258  
Pro Se Appellant

Appellant Heath W. Causey joins Appellants J Floyd Swilley and Laurel K Swilley proposal of the following to be included in the Records of Appeal:

Appellants propose the following be included in the Record on Appeal:

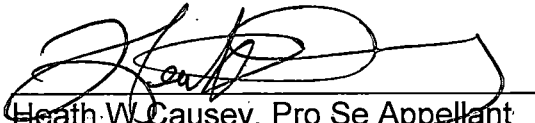
1. Order entered May 25, 2016
2. Order entered March 21, 2016
3. Form 4 (denying Motion to Set Aside Order of Mar. 21, 2016)
4. Notice of Motion and Motion to Set Aside Order of Mar. 21, 2016 (Laurel K. Swilley)
5. Notice of Motion and Motion to Set Aside Order of Mar. 21, 2016 (J. Floyd Swilley)
6. ORDER RELEIVING JOHN M LEITER AND THE LAW OFFICES OF JON M LEITHER AS COUNCEL FOR J FLOYD SWILEY etal. Order entered January 25, 2016
7. Plaintiffs' Notice of Motion and Motion for Summary Judgment and for Judgment on the Pleadings
8. Plaintiffs' Memorandum in Support of Their Motion for Summary Judgment and for Judgment on the Pleadings
9. Transcript of Proceedings from Hearing on February 16, 2016
10. Correspondence from F. Miles Adler to Judge McIntosh, dated May 3, 2016 (including attachments thereto)
11. Correspondence from Neill Law Firm to Judge McIntosh, dated May 19, 2016 (including attachments thereto)

In addition Appellant proposes the following be included in the Record on Appeal:

12. Correspondence from Nate Fata to Judge McIntosh, dated May 13, 2016  
(including attachments thereto)
13. Notice of Motion and Motion to Set Aside Summary Judgment of April 6, 2016 (Heath Causey)

This 19th day of August, 2016, I certify that this designation contains no matter which is irrelevant to this appeal.

I SO MOVE:



Heath W. Causey, Pro Se Appellant  
1705 N Oak Street Suite 2  
Myrtle Beach, SC 29577  
t. 843-424-9258  
heath.causey@mac.com  
Pro Se Appellant

Counsel of Record:  
Nate Fata, PA  
P.O. Box 16620  
Surfside Beach, SC 29587  
*Attorney for Respondents.*

F. Miles Adler  
ADLER LAW FIRM, LLC  
P.O. Box 4743  
Pawleys Island, SC 29585  
*Attorney for Appellants Swilleys*

Christopher Pitcock  
24242 Branchwood Court  
Lutz, FL 33559  
*Pro Se Defendant*

DESIGNATION OF MATTER # 1

---

"MAY ORDER" ORDER FILED MAY 25,  
2016

---

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

Gabriel Barnhill and GSB Enterprises, )  
LLC, )

Plaintiffs, )

vs. )

J. Floyd Swilley, J. Floyd Swilley )  
Investment Advisors, Laurel K. Swilley, )  
SMG Partners, LLC, SMS Services, LP, )  
William C. Piner, WCP Limited, LLC, )  
809 Holdings, LP, QC Financing, LLC, )  
Heath Causey, and Sage Financial )  
Group, LLC, )

Defendants. )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO. 2014-CP-26-08367  
(formerly 2013-CP-26-02816)

ORDER DENYING DEFENDANTS  
SWILLEY, CAUSEY AND  
809 HOLDINGS' MOTIONS TO SET  
ASIDE ORDER OF MARCH 21, 2016

Gabriel Barnhill and GSB Enterprises, )  
LLC, )

Plaintiffs, )

vs. )

J. Floyd Swilley, J. Floyd Swilley )  
SMG Partners, LLC, SMS Services, LP, )  
William C. Piner, WCP Limited, LLC, )  
Alicia A. Piner, 809 Holdings, LP, )  
Heath Causey, Sage Financial Group, )  
LLC, Sage Advisory Group, L.P., )  
Sage Private Equity Group, )  
Secured Asset Factoring Exchange, Inc., )  
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing, )  
LLC, and Sage Funding, L.P., )  
Christopher Pitcock, )

Defendants. )

CASE NO. 2014-CP-26-3362

2016 MAY 25 PM 2:15  
CLERK OF COURT

This matter has come before me pursuant to Defendants' Laurel Swilley's Notice of and Motion to Set Aside Order of March 21, 2016, J. Floyd Swilley's Notice of and Motion to Set Aside Order of March 21, 2016, Heath Causey's Notice of Motion and Motion to Set Aside

Summary Judgment and 809 Holdings, LP's Motion to Reconsider and Amended Notice of Motion To Reconsider. After reviewing the record and the materials submitted by the parties, I am denying all Motions in their entirety.

## II. LEGAL STANDARDS

Rule 59(e) of the South Carolina Rules of Civil Procedure ("SCRPC") provides a mechanism for parties to move the court to alter or amend a judgment within ten days following receipt of written notice of the entry of the order. Pursuant to Rule 59(g) a party filing a written motion under Rule 59 shall provide a copy of the motion to the judge within ten (10) days of the filing of the Motion. The purpose of a motion to alter or amend is "to request the trial judge to reconsider matters properly encompassed in a decision on the merits." *Coward Hund Constr. Co., Inc. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999); see also *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 722, 778 (2004).

A motion for reconsideration is not intended to give the moving party a "second bite of the apple." Under South Carolina law, a motion for reconsideration is governed by Rule 59(e) of the South Carolina Rules of Civil Procedure. Federal case law is also instructive as the comments to Rule 59, SCRPC state that "Rule 59 is substantially the Federal Rule." A motion for reconsideration under Rule 59(e) "should not be granted, absent highly unusual circumstances, unless the ... court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." See *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9<sup>th</sup> Cir. 1999); *McCall v. Williams*, 59 F. Supp.2d 556, 558 (D.S.C. 1999). Motions for reconsideration are not vehicles for providing litigants with the opportunity to re-litigate previously decided issues. See *National Ecological Foundation vs. Alexander*, 496 F.3d 466, 477 (6<sup>th</sup> Cir. 2007). The motion may in the discretion of the court be determined on

briefs filed by the parties without oral argument. Rule 59(f), SCRPC.

ANALYSIS

1. J. Floyd Swilley's and Laurel Swilley's Motions are denied.

Laurel Swilley and Floyd Swilley (collectively referred to as "Swilley") have filed identical Motions. They err, however, in their recitation of the facts. Contrary to their assertions, the Motions that were the subject of the February 16, 2016 hearing were served on their prior counsel, John Leiter, on December 15, 2015 and December 16, 2015. Additionally, Swilley improperly asserts that Judge Seals dated his Order on January 25, 2016. The date of Judge Seal's Order is clearly January 14, 2016. The thirty days began on January 14, 2016 and not when the Order was filed. Their argument that the thirty days begins upon the filing of the Order is contrary to the plain language in the Order. Thus, any stay expired on February 13, 2016.

At the hearing, counsel for 809 Holdings represented to the Court that he was in communication with Floyd Swilley about the hearing. "I know that Mr. Swilley and Mr. Piner are representatives of that corporation. And they are the gentlemen that we have been in touch with per 809. They were notified of this hearing, they knew everything that's going on and we are just - - we're trying to move - 809 at this point is trying to claim bankruptcy. Of course we said that months ago . . ." Trans. p. 15, lines 9-17.

Nine separate mailings of the Notice of Hearing were mailed on February 3, 2016 to the Swilley address of 629 Hemlock Avenue, Myrtle Beach, South Carolina 29577, one for each Swilley and one for each of their seven company defendants. Swilley knew of the hearing but chose to not attend. Thus, the hearing was no surprise to them.

Neither J. Floyd Swilley or Laurel Swilley assert through affidavit or otherwise that they did not know about the February 16, 2016 hearing. Instead, Swilley asserts they thought they

were under the "veil of protection", i.e., they thought they were following the order for new counsel but had the date wrong. Laurel Swilley and J. Floyd Swilley chose not to attend the hearing.

The argument by Swilley that there was an agreement to not proceed with the depositions due to Leiter's Motion To Be Relieved As Counsel is also unavailing. The Motion to Compel was filed after the filing of Leiter's Motion To Be Relieved, clearly evidencing there was no such understanding. Furthermore, Swilley never objected in writing to the Motion to Compel in the sixty days after the Motion was filed. Additionally, Swilley did not raise any such argument at the hearing. The Motion of Laurel Swilley and the Motion of J. Floyd Swilley are denied in their entirety.

**2. Defendant Heath Causey's Notice of Motion and Motion to Set Aside Summary Judgment filed April 6, 2016 is denied.**

Heath Causey's Motion is denied in its entirety. Causey has only moved to set aside the Order on the Summary Judgment Motion. In addition, Mr. Causey points to no error in the factual record or error in law. Mr. Causey was not present at the hearing, even though he was duly notified of the hearing through the Notice of Hearing that was mailed to him on February 3, 2016. Again, like Swilley, Mr. Causey has not filed an affidavit testifying that he did not know about the hearing. Causey's Motion is denied.

**3. Defendant 809 Holdings, LP's Motion to Reconsider filed April 8, 2016 and Amended Motion to Reconsider are denied.**

809 Holding's Motion states two grounds for reconsideration: (1) that the pleadings of 809 Holdings should not have been stricken, and (2) William Piner's Affidavit should not have

been stricken. 809 Holdings, LP's Amended Motion for Reconsideration is untimely as it was filed and served on April 25, 2016, beyond the time requirements of Rule 59(e), SCRCP.

At the hearing the Court asked counsel for 809 Holdings what counsel did once he received the Motion to Compel. 809 Holdings' counsel advised the Court that Mr. Swilley and Mr. Piner were notified of the hearing, Mr. Swilley is the representative of 809 Holdings, and that counsel's ability to argue for his client is as good as their cooperation with him. No dates were ever proposed because 809 Holdings was "trying to claim bankruptcy." Trans. p. 15, ln. 12-15. Counsel for 809 Holdings acknowledged to the Court the obvious: that he was constrained by his client's failure to cooperate with him. Trans., p. 14, lines 13-22.

809 Holdings erroneously argues on page 2 of its Memorandum, and Exhibit A thereto, that Plaintiffs' Motion for Entry of Default and Striking the Pleadings of Company Defendants for failure to obtain counsel dated February 23, 2016 should not be the basis of the Court's Order. That February 23, 2016 Motion was not the basis for the Court's Order. The December 15, 2015 Motion to Compel was the basis for striking 809 Holdings pleadings, and it specifically requested the relief granted.

Next, 809 Holdings attempts to introduce additional items in its Amended Motion for Reconsideration, including the Exhibits B and C. As stated above, 809 Holdings cannot get a second bite at the apple under Rule 59 when the items could have been presented and argued at the hearing. Even if the Court was to consider the Amended Motion and those items, they demonstrate that 809 Holdings did nothing in the 60 days after the December 15, 2015 Motion to try to eliminate the need for the motion hearing as to 809 Holdings.

No dates were ever provided by 809 Holdings, not even in the two months after the Motion was filed or in response to a simple request a week before the hearing. 809 Holdings'

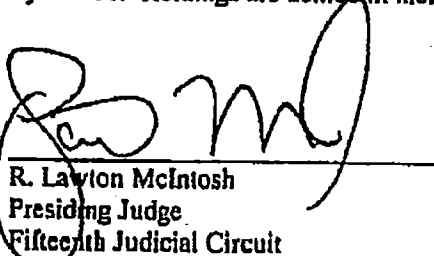
counsel had an uncooperative client. 809 Holdings representatives were asked to provide deposition dates, but 809 Holdings never provided any dates to its counsel. 809 Holdings' argument that it thought there was an agreement to not move forward with the depositions is not supported by the record. At no time prior to the hearing did 809 Holdings write to Plaintiffs' counsel stating an objection to the Motion or the hearing based on any asserted agreement. 809 Holdings' repeated failure to cooperate in discovery and delay resulted in the Court's decision.

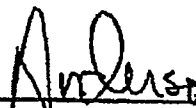
Next, 809 Holdings asserts the Affidavit of William Piner should not have been stricken. The Affidavit did not comply with Rule 56 and did not present any material issue of fact that would allow liability on the part of either Plaintiff.

Finally, 809 Holdings cites no error for the granting of summary judgment or judgment on the pleadings. No evidence was proffered on each element of its counterclaims. The Court properly held no duty was owed by Plaintiffs. 809 Holdings Motion and Amended Motion are denied in their entirety.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that all Motions for reconsideration, relief from or to set aside the Order of March 21, 2016 filed by Defendants Laurel Swilley, J. Floyd Swilley, Heath Causey and 809 Holdings are denied in their entirety.

**AND IT IS SO ORDERED.**

  
R. Lawton McIntosh  
Presiding Judge  
Fifteenth Judicial Circuit

  
Anderson South Carolina  
This 17 day of May, 2015

6

Copy of Order/  
filed 5-25-16 mailed to all  
parties not in default on 5-25-16  
Initials BW

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO. 2014-CP-26-08367  
(formerly 2013-CP-26-02816)

Gabriel Barnhill and GSB Enterprises, )  
LLC, )  
 )  
Plaintiffs, )

vs. )

J. Floyd Swilley, J. Floyd Swilley )  
Investment Advisors, Laurel K. Swilley, )  
SMG Partners, LLC, SMS Services, LP, )  
William C. Piner, WCP Limited, LLC, )  
809 Holdings, LP, QC Financing, LLC, )  
Heath Causey, and Sage Financial )  
Group, LLC, )  
 )  
Defendants. )

CERTIFICATE OF SERVICE

Gabriel Barnhill and GSB Enterprises, )  
LLC, )  
 )  
Plaintiffs, )

CASE NO. 2014-CP-26-3362

vs. )

J. Floyd Swilley, J. Floyd Swilley )  
SMG Partners, LLC, SMS Services, LP, )  
William C. Piner, WCP Limited, LLC, )  
Alicia A. Piner, 809 Holdings, LP, )  
Heath Causey, Sage Financial Group, )  
LLC, Sage Advisory Group, L.P., )  
Sage Private Equity Group, )  
Secured Asset Factoring Exchange, Inc., )  
SAFE, Inc., Digies, LLC, 9-1-1, Plumbing, )  
LLC, and Sage Funding, L.P., )  
Christopher Pitcock, )  
 )  
Defendants. )

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on June 2, 2016 I did serve a copy of the Order Denying Defendants Swilley, Causey and 809 Holdings'

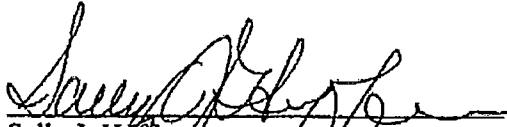
motions To Set Aside Order of March 21, 2016 upon counsel and Pro Se Defendants via email as

follows:

F. Miles Adler, Esq.  
ADLER LAW FIRM, LLC  
P.O. Box 4743  
Pawleys Island, SC 29585  
*Counsel for J. Floyd Swilley, Laurel K. Swilley,  
SMG Partners, LLC, SMS Services, LP,  
Sage Financial Group, LLC and Sage Private Equity Group, LLC*  
[miles@adlerlaw.partners](mailto:miles@adlerlaw.partners)

Heath Causey  
1035 Pinwheel Loop  
Myrtle Beach, SC 29577  
[heath@clear-acct.com](mailto:heath@clear-acct.com)

809 Holdings  
c/o Mark D. Neill, Esq.  
Neill Law Firm  
P.O. Box 2810  
Murrells Inlet, SC 29576  
[mneill@neilllawfirm.com](mailto:mneill@neilllawfirm.com)

  
Sally J. Huffman  
Legal Assistant to Nate Fata

**NATE FATA, P.A.**  
ATTORNEY AT LAW  
P.O. Box 16620  
THE COURTYARD, SUITE 215  
SURFSIDE BEACH, SOUTH CAROLINA 29587  
TELEPHONE (843) 238-2676  
TELECOPIER (843) 238-0240  
NFATA@FATALAW.COM

VIA EMAIL

June 2, 2016

F. Miles Adler, Esq.  
ADLER LAW FIRM, LLC  
P.O. Box 4743  
Pawleys Island, SC 29585  
miles@adlerlaw.partners

Heath Causey  
1035 Pinwheel Loop  
Myrtle Beach, SC 29577  
heath@clear-acct.com

809 Holdings  
c/o Mark D. Neill, Esq.  
Neill Law Firm  
P.O. Box 2810  
Murrells Inlet, SC 29576  
mneill@neilllawfirm.com


Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.  
Civil Action No. 2014-CP-26-8367

Dear Defendants:

Attached please find for service upon you the Order Denying Defendants Swilley, Causey and 809 Holdings' Motions to Set Aside Order of March 21, 2016, which Order was entered on May 26, 2016.

With best regards, I remain

Very truly yours,  
NATE FATA, P.A.

  
Nate Fata

NF/sh

Attachment

DESIGNATION OF MATTER # 2

---

"MARCH ORDER" ORDER FILED MAR  
21, 2016

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 Gabriel Barnhill and GSB Enterprises, )  
 LLC, )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 J. Floyd Swilley, J. Floyd Swilley )  
 Investment Advisors, Laurel K. Swilley, )  
 SMG Partners, LLC, SMS Services, LP, )  
 William C. Piner, WCP Limited, LLC. )  
 809 Holdings, LP, QC Financing, LLC, )  
 Heath Causey, and Sage Financial )  
 Group, LLC, )  
 Defendants. )

---

Gabriel Barnhill and GSB Enterprises, )  
 LLC, )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 J. Floyd Swilley, J. Floyd Swilley )  
 SMG Partners, LLC, SMS Services, LP, )  
 William C. Piner, WCP Limited, LLC, )  
 Alicia A. Piner, 809 Holdings, LP, )  
 Heath Causey, Sage Financial Group, )  
 LLC, Sage Advisory Group, L.P., )  
 Sage Private Equity Group, )  
 Secured Asset Factoring Exchange, Inc., )  
 SAFE, Inc., Digics, LLC, 9-1-1, Plumbing, )  
 LLC, and Sage Funding, L.P., )  
 Christopher Pitcock, )  
 Defendants. )

---

IN THE COURT OF COMMON PLEAS  
 FIFTEENTH JUDICIAL CIRCUIT  
 CASE NO. 2014-CP-26-08367  
 (formerly 2013-CP-26-02816)

**ORDER**

HORRY COUNTY  
 2016 MAR 21 PM 2:25  
 MELBA CLERK OF COURT

CASE NO. 2014-CP-26-3362

This matter came before the Court on February 16, 2016 pursuant to Plaintiffs' Motion to Compel Depositions of Defendants and Plaintiffs' Motion for Judgment on the Pleadings and/or Summary Judgment on Defendants' Counterclaims. Present at the hearing were Nate Fata,

counsel for the plaintiffs. Stefan Fiedler was present for 809 Holdings, L.P. The other defendants were proceeding pro se as John Leiter was relieved as their counsel. Although the pro se defendants were duly notified of the hearing by plaintiffs' counsel via hearing Notice filed on February 9, 2016, they were not present at the call of the case.

### BACKGROUND

Gabriel Barnhill and GSB Enterprises, Inc. ("Barnhill") commenced this action by filing a Summons and Complaint on April 25, 2013, asserting causes of action, inter alia, for violation of the South Carolina Investment Act, breach of fiduciary duty, fraud, misrepresentation, and violation of the Unfair Trade Practices Act. Barnhill alleges that in 2011 Defendants engaged in a Ponzi scheme in which Barnhill, who was Floyd Swilley's accounting and financial advisory client, invested no less than \$115,000 in 809 Holdings, LP, and received approximately \$2,000 in return. The Swilley and Piner Defendants established 809 Holdings in 2010. 809 Holdings was a startup company that would loan money to companies in a "factoring" arrangement. The borrower company was QC Financing, L.L.C., a pawn shop entity established by Piner and Swilley. In 2014, Barnhill filed a companion case asserting derivative claims.

### PROCEDURAL HISTORY

Defendants have failed to comply with multiple Court Orders on discovery and have and continue to obstruct the discovery process. Plaintiffs have filed numerous motions to compel discovery.<sup>1</sup>

---

<sup>1</sup> Plaintiffs filed Motions to Compel on the following dates: July 3, 2013, January 8, 2014, January 10, 2014, September 5, 2014, September 5, 2014, October 15, 2014, May 15, 2015, and December 15, 2015.

A discovery Order was entered on September 20, 2013 concerning defendants' failure to respond to the April 2013 discovery requests. Thereafter, defendants failed to provide responsive information and lodged objections. Plaintiffs filed a Motion for Sanctions on November 4, 2013. The Court partially granted Plaintiffs' Motion for Sanctions and awarded attorney fees by Order filed January 16, 2014.

On September 30, 2014, the Court entered another Order for Sanctions. In that Order, Judge Hyman found, "Defendants have been sandbagging in their discovery responses... The March 2012 payment to Twigg for his 809 Holdings, LP investment and the multiple undisclosed payments to Defendants are examples of Defendants' sandbagging and obstruction in the discovery process."<sup>2</sup>

Plaintiffs' Motion for Sanctions filed May 4, 2015 and Motion for Sanctions filed June 12, 2015 were for failure to comply with Court ordered mediation and discovery, respectively. The Court entered an Order on September 10, 2015, granting Plaintiffs relief and the Court awarded attorney fees.

### ANALYSIS

Plaintiffs' counsel argued that although the case has been pending for more than two years, defendants have not presented for depositions and have not cooperated for depositions. More than four discovery Orders have been entered in this case, three of which resulted in sanctions. See Orders of Judge Hyman dated October 9, 2015, Judge Culbertson dated January 13, 2014, and Judge Seals dated September 10, 2015. Defendants agreed in an Order filed May 22, 2015 to cooperate in discovery in setting the depositions. Although depositions notices were

---

<sup>2</sup> Twigg filed a separate action Robert L. Twigg and Twigg Enterprises, LLC vs. J. Floyd Swilley; Heath Causey; Laurel Swilley; Sage Financial Group, LLC; Secured Asset Factoring Exchange, Inc. and 809 Holdings, LP, Civil Action No. 2013-CP-26-5477. The Defendants in Twigg are represented by Mark Neill, Esq.

served for the depositions of J. Floyd Swilley, Laurel K. Swilley, Heath Causey, 809 Holdings, LP and WCP Limited, LLC, those defendants did not appear for deposition. Moreover, through no fault of 809 Holdings' counsel, defendants never proposed any deposition dates even after the instant discovery motion was filed. The instant motion follows two years of discovery abuse and multiple motions to compel defendants to disclose information and provide deposition testimony.

Discovery is a critical component of the litigation process. Defendants have for more than two years obstructed the discovery process and have prejudiced plaintiffs' ability to prepare for trial. Judge Seals previously entered a Scheduling Order that this case could be called for trial on or after May 1, 2016.

If a party fails to provide or permit discovery, the trial court may impose sanctions such as striking pleadings, or rendering a default judgment. Rule 37(b)(c), SCRCP. Griffin Grading and Cleamy, Inc. v. Tire Service Equipment Manufacturing Company, Inc., 511 S.E.2d 716, 718 (S.C. App. 1999). The decision of whether or not to award sanctions is generally entrusted to the discretion of the trial court. QZO, Inc. v. Moyer, 594 S.E. 2d 541, 546 (S.C. App. 2004). Based on their failure to respond or cooperate in the depositions and discovery process, their failure to appear or present any argument to explain their lack of cooperation, and with their well-documented pattern of discovery obstruction, I hereby strike the Answers, Counterclaims and pleadings of Defendants J. Floyd Swilley, Laurel Swilley, 809 Holdings, L.P., Heath Causey and WCP Limited, LLC.

I further direct that the Plaintiffs' Affidavit for Attorney's Fees be served upon the parties and Plaintiffs' Motion for Attorney Fees be heard by another Circuit Court Judge at the next scheduled motion hearing on this matter.

In addition, the Court grants Plaintiffs' Motion for Judgment on the Pleadings and/or Summary Judgment on Defendants' counterclaims. On June 26, 2013, defendants filed their Amended Answer with Counterclaims. Defendants asserted counterclaims for:

1. South Carolina Frivolous Proceeding Act (all Defendants);
2. Quantum Meruit (809 Holdings only);
3. Usurpation of Partnership Opportunity (809 Holdings only);
4. Negligent Misrepresentation (809 Holdings only);
5. Breach of Fiduciary Duties (809 Holdings only); and
6. Breach of Loan Agreements (Floyd Swilley only).

As set forth in the Court's Order filed May 22, 2015, Defendants have stipulated the claims were asserted only by those Defendants indicated above. Defendants' first counterclaim under the Frivolous Proceedings Act is not ripe and, therefore, it is dismissed. Defendants' remaining counterclaims fail as a matter of law for two reasons. First, no legal duties are owed by plaintiffs to any of the defendants. Second, defendants have proffered no evidence to support the elements of the remaining claims, including damages.

The determination of the existence of a duty is solely the responsibility of the court. Ellis v. Niles, 324 S.C. 223, 479 S.E.2d 47 (1996). Whether the law recognizes a particular duty is an issue of law to be decided by the Court. Carson v. Adgar, 326 S.C. 212, 486 S.E.2d 3 (1997). An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstances. Id.

Barnhill owes no legal duty to any defendant. He is a limited partner in 809 Holdings, LLP. Barnhill's status as limited partner does not create any duty under any asserted cause of action. To the contrary, pursuant to statute Barnhill is expressly shielded from liability. S.C. Code Ann. § 33-42-430.

Similarly, Barnhill's status as a member of a limited liability company, QC Financing, LLC, does not create duties to any defendant. No duty is owed by Barnhill to any defendant pursuant to S.C. Code Ann. § 33-44-303. Barnhill is not obligated for any debts of QC Financing, LLC. Similarly, any claim based on Floyd Swilley's allegation that he loaned money to the pawn shop prior to Barnhill's membership status in QC Financing, LLC fails under the statutory section cited above.

The counterclaims for usurpation of corporate opportunity and quantum meruit are also barred by the above cited statutory sections. Barnhill is not liable as a member of a limited liability company or as a limited partner pursuant to S.C. Code Ann. § 33-42-430 and S.C. Code Ann. § 33-44-303.

In addition, the allegations of negligent misrepresentation fail as a matter of law. Paragraph 201 of the Counterclaim alleges Barnhill made a promise that he would comply with the terms of the partnership. A broken promise is not legally sufficient for a negligent representation claim. Allegro, Inc. v. Scully, 409 S.C. 392, 418, 762 S.E.2d 54 (Crt. App. 2014).

The claim of breach of fiduciary duty in Paragraphs 206 – 213 of the Counterclaim, to-wit, that 809 Holdings did not get paid by other entities, is legally insufficient. As a limited partner, Barnhill is not liable for 809 Holdings not getting paid.

At this late stage in the proceedings, defendants must come forward with some evidence to support each element of each cause of action. Defendants have not proffered or argued any evidence to support any counterclaim. Furthermore, defendants have offered no evidence showing plaintiffs caused any damages. Plaintiffs' Motion for Judgment on the Pleadings and for Summary Judgment is granted.

In connection with the Motion for Summary Judgment, plaintiffs' counsel moved to strike the Affidavit of William Piner. I hereby grant that Motion as the Piner Affidavit does not comply with Rule 56, SCRPC. The Affidavit contains conclusory and speculative statements and also attempts to rely on hearsay by appending to the Affidavit an email from a nonparty. Furthermore, the allegations in paragraphs five and six are made upon information and belief and are not made upon personal knowledge and, therefore, may not be used. The Affidavit is stricken in its entirety. Even if I were to consider such Affidavit, which I am not, the Affidavit does not present any material issue of fact that would allow liability on the part of any plaintiffs to defendants.

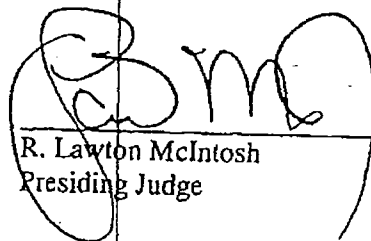
NOW, THEREFORE, IT IS HEREBY ORDERED THAT the Answer, Counterclaim and other pleadings of J. Floyd Swilley, Laurel K. Swilley, Heath Causey, 809 Holdings, LP and WCP Limited, LLC are hereby stricken;

And IT IS FURTHER ORDERED that all counterclaims are dismissed with prejudice;

And IT IS FURTHER ORDERED that the Affidavit of William Piner is stricken;

And IT IS FURTHER ORDERED that the Plaintiffs shall serve their Motion for Attorney Fees and Affidavit for Attorney Fees upon the Defendants with the Motion for Attorney Fees to be heard by the presiding judge at the next term of court;

AND IT IS SO ORDERED.

  
R. Lawton McIntosh  
Presiding Judge

Anderson, South Carolina  
This 16 day of March 2016

DESIGNATION OF MATTER # 3

---

“FORM 4” ORDER DATED 4/28/2016

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

FORM 4

JUDGMENT IN CIVIL CASE

CASE NO. 14-CP-26-8367

Gabriel Barnhill and GSB Enterprises, LLC

J. Floyd Swilley, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

DEFENDANTS SWILLEY, CAUSEY AND 809 HOLDINGS' MOTIONS TO SET ASIDE ORDER OF MARCH 21, 2016 ARE DENIED. *NOTE: Fata To prepare a formal order.*

This order  ends  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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

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

*[Signature]*  
 Circuit Court Judge

7155  
 Judge Code

4-28-16  
 Date





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

R. Lawton McIntosh  
Judge

Post Office Box 8002  
100 South Main Street  
Anderson, SC 29622-8002  
Phone: (864) 260-4059  
Fax: (864) 224-6320  
lmcintoshj@sccourts.org

April 28, 2016

The Honorable Melanie Huggins-Ward  
Horry County Clerk of Court  
P.O. Box 677  
Conway, SC 29528

2016 MAY -2 PM 3:17  
Clerk of Court

Dear Madam Clerk:

Please find enclosed an original Order which has been signed by Judge McIntosh in the following matter:

Barhill, et al v. Swilley, et al  
CA No. 2014-CP-26-8367

Please let me know if you have any questions or concerns. Thank you for your assistance in this matter.

Sincerely

Elizabeth Nicholson  
Law Clerk to R. Lawton McIntosh, Judge  
Tenth (10<sup>th</sup>) Judicial Circuit

efn

enclosure

DESIGNATION OF MATTER # 4

---

“NOTICE OF MOTION AND MOTION TO  
SET ASIDE” NOTICE OF MOTION AND  
MOTION TO SET ASIDE SUMMARY  
JUDGEMENT FILED\_ MARCH 21, 2016

STATE OF SOUTH CAROLINA )  
COUNTY OF Horry )

IN THE COURT OF COMMON PLEAS  
JUDICIAL CIRCUIT

CASE NO.: 2014-CP-26-8367

Gabriel Barnhill and GSB Ent. Inc.  
Plaintiff, )

MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET

vs. )

J. Floyd Sulley, Et. Al.  
Defendant. )

MELANIE  
CLERK OF COURT  
2016 APR -1 PM 4:19  
HORRY COUNTY

Plaintiff's Attorney: <u>Nate Fata, Esq.</u> , Bar No. <u>09866</u> Address: <u>P.O. Box 16629, Surfside Beach, Sc. 29587</u> Phone: <u>843-238-2676</u> Fax <u>843-238-0240</u> E-mail: <u>nfata@fata.com</u> Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
--	--

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information  
Nature of Motion: Defendant's Motion to set Aside Order of March 21, 2016  
Estimated Time Needed: 15 minutes Court Reporter Needed:  YES /  NO

SECTION II: Motion/Order Type  
 Written motion attached  
 Form Motion/Order  
I hereby move for relief or action by the court as set forth in the attached proposed order.  
David K. Sulley, Louck K. Sulley Apr. 1, 2016, 20\_\_\_\_  
Signature of Attorney for  Plaintiff /  Defendant ps Date submitted

SECTION III: Motion Fee  
 PAID - AMOUNT: \$ 25.00  
 EXEMPT: (check reason)  
 Rule to Show Cause in Child or Spousal Support -  
 Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRCP)  
 Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

JUDGE'S SECTION  
 Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_  
JUDGE CODE \_\_\_\_\_  
Date: \_\_\_\_\_, 20\_\_\_\_

CLERK'S VERIFICATION  
Collected by: Jarb Date Filed: 4-1, 2016  
 MOTION FEE COLLECTED: \$ 25  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

COPY

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )  
 )  
Gabriel Barnhill and GSB Enterprises, )  
LLC, )  
 )  
Plaintiffs, )  
 )  
vs. )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO. 2014-CP-08367  
(formerly 2013-CP-26-02816)

HORRY COUNTY  
2016 APR -1 PM 4:10  
MELANIE R. HARRIS, CLERK  
CLERK OF COURT

J. Floyd Swilley, J. Floyd Swilley )  
Investment Advisors, Laurel K. Swilley, )  
SMG Partners, LLC, SMS SERVICES, )  
William C. Piner, WCP Limited, LLC, )  
809 Holdings, LP, QC Financing, LLC) )  
Heath Causey, and SAGE Financial )  
Group, LLC, )  
 )  
Defendants. )

NOTICE OF MOTION AND MOTION  
TO SET ASIDE ORDER OF MARCH 21, 2016

Gabriel Barnhill and GSB Enterprises, )  
LLC, )  
 )  
Plaintiffs, )  
 )  
vs. )

CASE NO. 2014-CP-3362

J. Floyd Swilley, J. Floyd Swilley )  
SMG Partners, LLC, SMS Services, LP, )  
William C. Piner, WCP Limited, LLC )  
Alicia A. Piner, 809 Holdings, LP, )  
Heath Causey, Sage Financial Group, )  
LLC, Sage Advisory Group, LP., )  
Secured Asset Factoring Exchange, Inc. )  
SAFE, Inc. Digics, LLC, 91-1, Plumbing, )  
LLC, and Sage Funding, L.P., )  
Christopher Pitcock, )  
 )  
Defendants. )

TO: THE PLAINTIFFS ABOVE NAMED AND THEIR COUNSEL OF RECORD

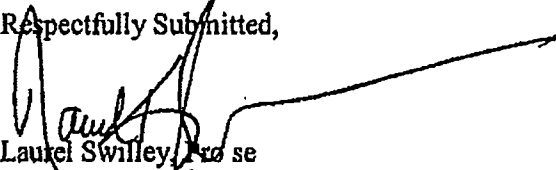
Comes now the undersigned Laurel Swilley, pro se (the "Movant"), and hereby moves this Honorable Court to set aside the Order entered on March 21, 2016 (the "Order"), and in support thereof states as follows:

copy

1. At the time and date of the purported notice and of hearing this Movant was under the veil of protection of Order of the Court signed on the 25<sup>th</sup> day of January 2016.
2. The Movant did not receive a copy of the motion or timely notice of the hearing that resulted in the Order.
3. The Movant did not receive a copy of the March 21, 2016 Order except from attorney Nate Fata's paralegal and the certificate off service is dated March 29, 2016. The mailing was received March 31, 2016.
4. The Movant contacted Horry County Clerk of Court's office and was advised that no mailings of any orders or notices have been sent to any of the pro se defendants including the Movant. The Movant advised the Clerk off Court that Movant was pro se with multiple other former clients of Attorney Leitner.
  - a. The clerk advised that there were only two attorneys (Neil and Fata) who were to receive any notices and that nothing had been sent to any of the pro se defendants. Pursuant to SCR 60 the Clerk of the c\Court erred by failing to properly notice the Movant.
5. The Order is based upon errors of facts.
6. It is submitted, the Plaintiff should not be permitted to prevail within the constraints of this Order in that same would subject the Movant to undue hardship and irreparable harm while bestowing unjust enrichment upon the Plaintiffs. Due to the timing of receipt of this Order Movant may follow with amendment or memorandum in more detail.

Wherefore it is prayed the Order of March 21, 2016 be set aside and held for naught and for any and all proper relief to which the undersigned movant may appear to be entitled.

Respectfully Submitted,

  
Laurel Swilley, Pro se  
629 Hemlock Avenue  
Conway, SC 29577  
PH: 843-438-8413  
Defendant

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )  
  
Gabriel Barnhill and GSB Enterprises, )  
LLC, )  
Plaintiffs, )  
 )  
vs. )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO. 2014-CP-08367  
(formerly 2013-CP-26-02816)

HORRY COUNTY  
2016 APR -1 PM 4:10  
MELANIE OF COURT

J. Floyd Swilley, J. Floyd Swilley )  
Investment Advisors, Laurel K. Swilley, )  
SMG Partners, LLC, SMS SERVICES, LP,) )  
William C. Piner, WCP Limited, LLC, )  
809 Holdings, LP, QC Financing, LLC )  
Heath Causey, and SAGE Financial )  
Group, LLC, )  
Defendants. )

CERTIFICATE OF SERVICE

Gabriel Barnhill and GSB Enterprises, )  
LLC, )  
Plaintiffs, )  
 )  
vs. )

CASE NO. 2014-CP-3362

J. Floyd Swilley, J. Floyd Swilley )  
SMG Partners, LLC, SMS Services, LP, )  
William C. Piner, WCP Limited, LLC )  
Alicia A. Piner, 809 Holdings, LP, )  
Heath Causey, Sage Financial Group, )  
LLC, Sage Advisory Group, LP., )  
Secured Asset Factoring Exchange, Inc. )  
SAFE, Inc. Digics, LLC, 91-1, Plumbing,) )  
LLC, and Sage Funding, L.P., )  
Christopher Pitcock, )  
 )  
Defendants. )

I, Laurel K. Swilley, do hereby certify that I on April, 1, 2016 did serve a copy of Notice of Motion upon counsel and Pro Se Defendants via U.S. Mail postage prepaid as follows:

J. Floyd Swilley  
629 Hemlock Avenue

Myrtle Beach, SC 29577

J. Floyd Swilley' Investment Advisors  
629 Hemlock Avenue  
Myrtle Beach, SC 29577

Laurel K. Swilley  
629 Hemlock Avenue  
Myrtle Beach, SC 29577

SMG Partners, LLC  
629 Hemlock Avenue  
Myrtle Beach, SC 29577

SMS Services. LP  
629 Hemlock Avenue  
Myrtle Beach, SC 29577

WCP Limited, LLC c/o William Piner  
606 Calhoun Street  
Myrtle Beach, SC 29577

809 Holdings, LP  
c/o Mark D. Neill, Esq.  
Neill Law Firm  
P.O. Box 2810  
Murrells Inlet, SC 29576

QC Financing, LLC  
629 Hemlock Avenue  
Myrtle Beach, SC 29577

Sage Financial Group, LLC  
629 Hemlock Avenue  
Myrtle Beach, SC 29577

Sage Advisory Group, L.P.  
629 Hemlock Avenue  
Myrtle Beach. SC 29577

Sage Private Equity Group  
629 Hemlock Avenue  
Myrtle Beach. SC 29577

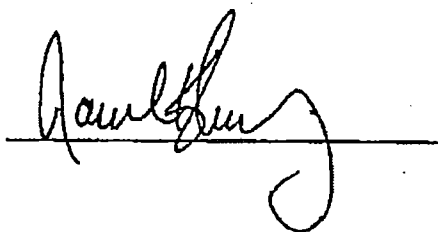
Sage Funding. L.P.  
629 Hemlock Avenue  
Myrtle Beach. SC 29577

Heath Causey  
1035 Pinwheel Loop  
Myrtle Beach, SC 29577

Digics, I.L.C  
c/o Chris Pitcock Registered Agent  
472 Mooreland Drive  
Myrtle Beach, SC 29588

Digics, LLC  
c/o Christopher Pitcock 24242 Branchwood Court  
Lutz, FL 33559

Christopher Pitcock  
24242 Branchwood Court  
Lutz, F L 33559

A handwritten signature in cursive script, appearing to read "Christopher Pitcock", is written over a horizontal line.

DESIGNATION OF MATTER # 5

---

“NOTICE OF MOTION AND MOTION TO  
SET ASIDE” NOTICE OF MOTION AND  
MOTION TO SET ASIDE SUMMARY  
JUDGEMENT FILED\_ MARCH 21, 2016

STATE OF SOUTH CAROLINA

COUNTY OF Horry

IN THE COURT OF COMMON PLEAS  
JUDICIAL CIRCUIT

CASE NO.: \_\_\_\_\_ -CP-

LA Brie Barnhill BSB Ent. et al  
Plaintiff,

MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET

vs.  
J. Floyd Sullely, Et Al  
Defendant.

Horry County  
2016 APR -1 PM 4:  
MELANIE  
CLERK OF  
COURT

Plaintiff's Attorney:  
Nate East Bar No. 09866  
Address:  
P.O. Box 16620, Surfside Beach, S.C. 29587  
Phone: 843-238-2676 Fax 843-238-0240  
E-mail: nl@nateeast.com Other:

Defendant's Attorney:  
Address:  
Phone:  
E-mail:

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and IV)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

Nature of Motion: Defendant Motion to set aside Order of March 24, 2016  
Estimated Time Needed: \_\_\_\_\_  
Court Reporter Needed:  YES  NO

Written motion attached  
 Form Motion/Order  
I hereby move for relief or action by the court as set forth in the attached proposed order.  
Signature of Attorney for  Plaintiff  Defendant Floyd Sullely Date submitted April 1, 2016  
SECTION III: Motion Fee

PAID - AMOUNT: \$ 25.00  
 EXEMPT:  
(check reason)  
 Rule to Show Cause in Child or Spousal Support  
 Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRCP)  
 Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter: \_\_\_\_\_  
 Other:

JUDGE'S SECTION  
 Motion Fee to be paid upon filing of the attached order.  
 Other:  
JUDGE CODE \_\_\_\_\_  
Date: \_\_\_\_\_, 20

CLERK'S VERIFICATION  
Collected by: [Signature]  
Date Filed: 4-1-16, 20

MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

COPY

J. Floyd Swilley  
629 Hemlock Avenue  
Myrtle Beach, SC 29577

April 1, 2016

Via Hand Delivery

Horry County Clerk of Court

P. O. Box 677

Conway, SC 29526

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et.al.

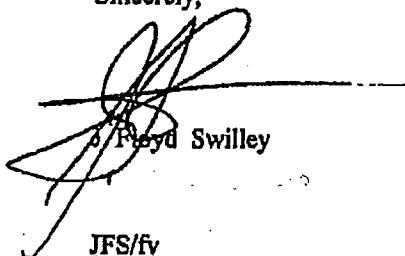
Civil Action No. 2014-CP- 26-08367

Dear Ms. Huggins:

Enclosed herein is an original and copy of the Motion to Set Aside March 21, 2016 AND Order Information Form. Also enclosed is a check in the amount of \$25.00 to cover the filing fee.

Thanking you in advance for your assistance regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Floyd Swilley', written over a horizontal line. The signature is stylized and somewhat cursive.

JFS/fv

Enclosures

Copy to :

Nate Fata, esq.

Mark Neill, esq

Laurel K. Swilley

Heath W. Causey

Chris Pitcock

Other Defendants

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )  
Gabriel Barnhill and GSB Enterprises, )  
LLC, )  
Plaintiffs, )  
vs. )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO. 2014-CP-08367  
(formerly 2013-CP-26-02816)

HORRY COUNTY  
2016 APR -1 PM 4:12  
MELANIE J. BUCKLEY  
CLERK OF COURT

J. Floyd Swilley, J. Floyd Swilley )  
Investment Advisors, Laurel K. Swilley, )  
SMG Partners, LLC, SMS SERVICES, )  
William C. Piner, WCP Limited, LLC, )  
809 Holdings, LP, QC Financing, LLC )  
Heath Causey, and SAGE Financial )  
Group, LLC, )  
Defendants. )

NOTICE OF MOTION AND MOTION  
TO SET ASIDE ORDER OF MARCH 21, 2016

Gabriel Barnhill and GSB Enterprises, )  
LLC, )  
Plaintiffs, )  
vs. )

CASE NO. 2014-CP-3362

J. Floyd Swilley, J. Floyd Swilley )  
SMG Partners, LLC, SMS Services, LP, )  
William C. Piner, WCP Limited, LLC )  
Alicia A. Piner, 809 Holdings, LP, )  
Heath Causey, Sage Financial Group, )  
LLC, Sage Advisory Group, LP., )  
Secured Asset Factoring Exchange, Inc. )  
SAFE, Inc. Digics, LLC, 91-1, Plumbing, )  
LLC, and Sage Funding, L.P., )  
Christopher Pitcock, )  
Defendants. )

TO: THE PLAINTIFFS ABOVE NAMED AND THEIR COUNSEL OF RECORD

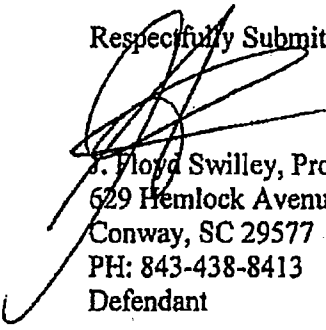
Comes now the undersigned J. Floyd Swilley, pro se (the "Movant"), and hereby moves this Honorable Court to set aside the Order entered on March 21, 2016 (the "Order"), and in support thereof states as follows:

copy

1. At the time and date of the purported notice and of hearing this Movant was under the veil of protection of Order of the Court signed on the 25<sup>th</sup> day of January 2016.
2. The Movant did not receive a copy of the motion or timely notice of the hearing that resulted in the Order.
3. The Movant did not receive a copy of the March 21, 2016 Order except from attorney Nate Fata's paralegal and the certificate of service is dated March 29, 2016. The mailing was received March 31, 2016.
4. The Movant contacted Horry County Clerk of Court's office and was advised that no mailings of any orders or notices have been sent to any of the pro se defendants including the Movant. The Movant advised the Clerk of Court that Movant was pro se with multiple other former clients of Attorney Leitner.
  - a. The clerk advised that there were only two attorneys (Neil and Fata) who were to receive any notices and that nothing had been sent to any of the pro se defendants. Pursuant to SCR 60 the Clerk of the Court erred by failing to properly notice the Movant.
5. The Order is based upon errors of facts.
6. It is submitted, the Plaintiff should not be permitted to prevail within the constraints of this Order in that same would subject the Movant to undue hardship and irreparable harm while bestowing unjust enrichment upon the Plaintiffs. Due to the timing of receipt of this Order Movant may follow with amendment or memorandum in more detail.

Wherefore it is prayed the Order of March 21, 2016 be set aside and held for naught and for any and all proper relief to which the undersigned movant may appear to be entitled.

Respectfully Submitted,



J. Floyd Swilley, Pro se  
629 Hemlock Avenue  
Conway, SC 29577  
PH: 843-438-8413  
Defendant

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )  
 )  
Gabriel Barnhill and GSB Enterprises, )  
LLC, )  
 )  
Plaintiffs, )  
 )  
vs. )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO. 2014-CP-08367  
(formerly 2013-CP-26-02816)

HORRY COUNTY  
2016 APR - 1 PM 4:13  
MELANIE HUBBARD  
CLERK OF COURT

J. Floyd Swilley, J. Floyd Swilley )  
Investment Advisors, Laurel K. Swilley, )  
SMG Partners, LLC, SMS SERVICES, LP,) )  
William C. Piner, WCP Limited, LLC, )  
809 Holdings, LP, QC Financing, LLC )  
Heath Causey, and SAGE Financial )  
Group, LLC, )  
 )  
Defendants. )

CERTIFICATE OF SERVICE

Gabriel Barnhill and GSB Enterprises, )  
LLC, )  
 )  
Plaintiffs, )  
 )  
vs. )

CASE NO. 2014-CP-3362

J. Floyd Swilley, J. Floyd Swilley )  
SMG Partners, LLC, SMS Services, LP, )  
William C. Piner, WCP Limited, LLC )  
Alicia A. Piner, 809 Holdings, LP, )  
Heath Causey, Sage Financial Group, )  
LLC, Sage Advisory Group, LP., )  
Secured Asset Factoring Exchange, Inc. )  
SAFE, Inc. Digics, LLC, 91-1, Plumbing, )  
LLC, and Sage Funding, L.P., )  
Christopher Pitcock, )  
 )  
Defendants. )

I, J. Floyd Swilley, do hereby certify that I on April, 1, 2016 did serve a copy of Notice of Motion and Motion To Set Aside Order of March 21, 2016 upon counsel and Pro Se Defendants via U.S. Mail postage prepaid as follows:

Laurel K. Swilley  
629 Hemlock Avenue

Myrtle Beach, SC 29577

J. Floyd Swilley' Investment Advisors  
629 Hemlock Avenue  
Myrtle Beach, SC 29577

Laurel K. Swilley  
629 Hemlock Avenue  
Myrtle Beach, SC 29577

SMG Partners, LLC  
629 Hemlock Avenue  
Myrtle Beach, SC 29577

SMS Services. LP  
629 Hemlock Avenue  
Myrtle Beach, SC 29577

WCP Limited, LLC c/o William Piner  
606 Calhoun Street  
Myrtle Beach, SC 29577

809 Holdings, LP  
c/o Mark D. Neill, Esq.  
Neill Law Firm  
P.O. Box 2810  
Murrells Inlet, SC 29576

QC Financing, LLC  
629 Hemlock Avenue  
Myrtle Beach, SC 29577

Sage Financial Group, LLC  
629 Hemlock Avenue  
Myrtle Beach, SC 29577

Sage Advisory Group, L.P.  
629 Hemlock Avenue  
Myrtle Beach. SC 29577

Sage Private Equity Group  
629 Hemlock Avenue  
Myrtle Beach. SC 29577

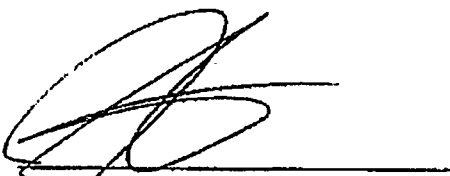
Sage Funding. L.P.  
629 Hemlock Avenue  
Myrtle Beach. SC 29577

Heath Causey  
1035 Pinwheel Loop  
Myrtle Beach, SC 29577

Digics, LLC  
c/o Chris Pitcock Registered Agent  
472 Mooreland Drive  
Myrtle Beach, SC 29588

Digics, LLC  
c/o Christopher Pitcock 24242 Branchwood Court  
Lutz, FL 33559

Christopher Pitcock  
24242 Branchwood Court  
Lutz, FL 33559



J. Floyd Swilley

**J Floyd Swilley**  
629 Hemlock Avenue  
Myrtle Beach, SC 29577  
(843) 424-4960

WELLS FARGO BANK, NA  
2110 Oak St  
Myrtle Beach, SC 29577  
803-448-2688

1057

DATE 04/01/2016

67-7761 632

PAY TO THE ORDER OF Horry County Clerk of Court

\$ **\*\*25.00**

TWENTY-FIVE AND 00/100\*\*\*\*\* DOLLARS

Horry County Clerk of Court

MEMO \_\_\_\_\_



⑆053207766⑆1856028343⑆1057

J Floyd Swilley

Copy

1057

J Floyd Swilley

1057

DESIGNATION OF MATTER # 6-B

---

"MOTION TO BE RELIEVED AS  
COUNCEL" MOTION TO BE RELIEVED  
AS COUNCEL FOR J FLOYD SWILEY, J  
FLOYD SWILLEY INVESTMETN  
ADVISORS, LAUREL K SWILLEY, SMG  
PARTNERS, LLC, SMS SERVICES, LP,  
WILLIAMS C PINER, WCP LIMITED, LLC,  
ALICIA A PINER, HEATH CAUSEY, SAGE  
FUNDING, LP, SAGE FINANCIAL GROUP  
LLC, SAGE PRIVATE EQUITY GROUP,  
SECURED ASSET FACTORING  
EXCHANGE, INC DIGICS, LLC, AND  
CHRISTOPHER PITCOCK FILED  
OCTOBER 20, 2015

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

Gabriel Barnhill and )  
GSB Enterprises, LLC )

*Plaintiff,* )

J. Floyd Swilley, J. Floyd Swilley )  
Investment Advisors, Laurel K. )  
Swilley, SMG Partners, LLC, SMS )  
Services, LP, William C. Piner, WCP )  
Limited, LLC, 809 Holdings, LP, QC )  
Financing, LLC, Heath Causey, and )  
Sage Financial Group, LLC )

*Defendants* )

---

Gabriel Barnhill and GSB Enterprises,) )  
LLC )

*Plaintiffs,* )

v. )

J. Floyd Swilley, J. Floyd Swilley )  
SMG Partners, LLC, SMS Services, LP, )  
William C. Piner, WCP Limited, LLC, )  
Alicia A. Piner, 809 Holdings, LP, )  
Heath Causey, and Sage Financial )  
Group, LLC, Sage Private Equity Group, )  
Secured Asset Factoring Exchange, Inc., )  
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing, )  
LLC, and Sage Funding, L.P., and )  
Christopher Pitcock, )

*Defendants.* )

IN THE COURT OF COMMON PLEAS )  
FOR THE 15TH JUDICIAL CIRCUIT )

Civil Action No. 2014-CP-26-3362 )  
(formerly 2013-CP-26-02816) )

MOTION TO BE RELIEVED AS COUNSEL )  
FOR J. FLOYD SWILLEY, J. FLOYD )  
SWILLEY INVESTMENT ADVISORS, )  
LAUREL K. SWILLEY, SMG PARTNERS, )  
LLC, SMS SERVICES, LP, WILLIAM C. )  
PINER, WCP LIMITED, LLC, ALICIA A. )  
PINER, 809 HOLDINGS, LP, HEATH )  
CAUSEY, SAGE FINANCIAL GROUP, )  
LLC, SAGE PRIVATE EQUITY GROUP, )  
SECURED ASSET FACTORING )  
EXCHANGE, INC., DIGICS, INC., SAGE )  
FUNDING, L.P. AND CHRISTOPHER )  
PITCOCK )

FILED  
HORRY COUNTY  
2015 OCT 27 AM 10:12  
MELANIE HUGGINS-WARD  
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before this Honorable Court ten (10) days after the service hereof or as soon thereafter as counsel may be heard, at the Horry County Courthouse in Conway, South Carolina, for an Order relieving

John M. Leiter, Esquire and the Law Offices of John M. Leiter, PA as counsel for the Defendants, J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., Digics, Inc., Sage Funding, L.P. and Christopher Pitcock, in the above-captioned matter.

This Motion is based on South Carolina Rules of Professional Conduct pursuant to Rule 1.16(b)(5), the Defendants have failed to fulfill their obligation to pay the Law Offices of John M. Leiter, PA for their professional services rendered in this matter, despite having been given reasonable warning of its intent to withdraw unless the obligation is fulfilled; and Rule 1.16(b)(6), the representation will result in an unreasonable financial burden on the lawyer.

Counsel further states that he has given these Defendants reasonable notice of Counsel's intent to withdraw.

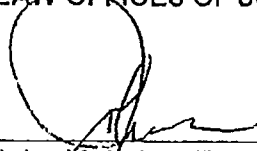
Presently before the Court are several Motions on the October 29, 2015 court roster. Counsel moves for a stay of all proceedings in this matter for thirty (30) days following the Court's order on this motion to allow Defendants to retain new counsel.

Counsel has complied with his duty to consult before filing this motion.

Respectfully submitted by

LAW OFFICES OF JOHN M. LEITER, PA

By:



---

John M. Leiter, Esquire  
1203 48<sup>th</sup> Avenue North, Suite 109  
Myrtle Beach, SC 29577  
(843) 449-1451

Myrtle Beach, South Carolina  
October 20, 2015

DESIGNATION OF MATTER # 6

---

"JANUARY ORDER" ORDER RELEIVING JOHN M LEITER AND THE LAW OFFICES OF JON M LEITHER AS COUNCEL FOR J FLOYD SWILEY, J FLOYD SWILLEY INVESTMETN ADVISORS, LAUREL K SWILLEY, SMG PARTNERS, LLC, SMS SERVICES, LP, WILLIAMS C PINER, WCP LIMITED, LLC, ALICIA A PINER, HEATH CAUSEY, SAGE FUNDING, LP, SAGE FINANCIAL GROUP LLC, SAGE PRIVATE EQUITY GROUP, SECURED ASSET FACTORING EXCHANGE, INC DIGICS, LLC, AND CHRISTOPHER PITCOCK FILED OCTOBER 27, 2015

STATE OF SOUTH CAROLINA )

COUNTY OF Horry )

Gabriel Barnhill and )  
GSB Enterprises, LLC )

*Plaintiff,* )

J. Floyd Swilley, J. Floyd Swilley )  
Investment Advisors, Laurel K. )  
Swilley, SMG Partners, LLC, SMS )  
Services, LP, William C. Piner, WCP )  
Limited, LLC, 809 Holdings, LP, QC )  
Financing, LLC, Heath Causey, and )  
Sage Financial Group, LLC )

*Defendants* )

IN THE COURT OF COMMON PLEAS )  
FOR THE 15TH JUDICIAL CIRCUIT )

Civil Action No. 2014-CP-26-3362 )  
(formerly 2013-CP-26-02816) )

ORDER RELIEVING JOHN M. LEITER )  
AND THE LAW OFFICES OF JOHN M. )  
LEITER, PA AS COUNSEL FOR J. FLOYD )  
SWILLEY, J. FLOYD SWILLEY )  
INVESTMENT ADVISORS, LAUREL K. )  
SWILLEY, SMG PARTNERS, LLC, SMS )  
SERVICES, LP, WILLIAM C. PINER, WCP )  
LIMITED, LLC, ALICIA A. PINER, HEATH )  
CAUSEY, SAGE FUNDING, L.P., SAGE )  
FINANCIAL GROUP, LLC, SAGE )  
PRIVATE EQUITY GROUP, SECURED )  
ASSET FACTORING EXCHANGE, INC., )  
DIGICS, LLC AND CHRISTOPHER )  
PITCOCK )

Gabriel Barnhill and GSB Enterprises, )  
LLC )

*Plaintiffs,* )

v. )

J. Floyd Swilley, J. Floyd Swilley )  
SMG Partners, LLC, SMS Services, LP, )  
William C. Piner, WCP Limited, LLC, )  
Alicia A. Piner, 809 Holdings, LP, )  
Heath Causey, and Sage Financial )  
Group, LLC, Sage Private Equity Group, )  
Secured Asset Factoring Exchange, Inc., )  
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing, )  
LLC, and Sage Funding, L.P., and )  
Christopher Pitcock, )

*Defendants.* )

Copy

FILED )  
Horry COUNTY )  
2016 JAN 25 PM 2:39 )  
HELANIE HUGGINS-WARD )  
CLERK OF COURT )

THIS CAUSE came before me for a hearing on the 4<sup>th</sup> day of January, 2016, upon the Motion of John M. Leiter, Esquire and the Law Offices of John M. Leiter, PA to be relieved as counsel for the Defendants, J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K.

Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., Sage Funding, L.P., Digics, LLC and Christopher Pitcock.

Defendants were duly notified of the date, time and location of the hearing. None of the Defendants appeared at the hearing. Nate Fata, Esq. appeared on behalf of the Plaintiffs and Stefan Feidler, Esq. appeared on behalf of Defendant 809 Holdings, LP.

Mr. Leiter stated that the reason for the Motion to Withdraw was nonpayment of fees, including these Defendants' failure and refusal to honor their fee agreement with him, and their failure to honor the payment plan established by the parties.

The Defendants shall obtain new legal counsel to represent them in this matter within thirty (30) days from the date of this Order. The proceedings in this case will be held in abeyance for thirty (30) days from the date of this Order. The Defendants must notify the Court within thirty (30) days of their new attorney. Based on the foregoing and without objection of counsel for any of the other parties, it is hereby

ORDERED that John M. Leiter and the Law Offices of John M. Leiter, PA shall be and the same are hereby relieved as counsel for Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., Digics, Inc., Sage Funding, L.P. and Christopher Pitcock as of the date of the entry of this Order; and, it is

FURTHER ORDERED that these Defendants shall retain substitute counsel who shall enter an appearance with the Court within thirty (30) days from the date of this Order; and it is

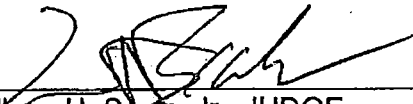
DESIGNATION OF MATTER # 7

---

“DECEMBER MOTION” PLAINTIFF  
NOTICE OF MOTION AND NOTION FOR  
SUMMARY JUDGMENT AND FOR  
JUDGMENT OF THE PLEADINGS

FURTHER ORDERED that the Clerk of Court shall note that this matter shall not be called for trial before May 1, 2016.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
William H. Seats, Jr., JUDGE  
Fifteenth Judicial Circuit

1/14, 2016  
Conway, South Carolina

DESIGNATION OF MATTER # 7

---

“BARNHILL NOTICE OF MOTION”  
PLAINTFFS’ NOTICE OF MOTION AND  
MOTION FOR SUMMARY JUDGEMENT  
AND FOR JUDGEMENT ON THE  
PLEADINGS FILED DEC 16, 2015

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO. 2014-CP-26-08367  
(formerly 2013-CP-26-02816)

Gabriel Barnhill and GSB Enterprises, )  
LLC, )  
 )  
Plaintiffs, )

vs. )

J. Floyd Swilley, J. Floyd Swilley )  
Investment Advisors, Laurel K. Swilley, )  
SMG Partners, LLC, SMS Services, LP, )  
William C. Piner, WCP Limited, LLC, )  
809 Holdings, LP, QC Financing, LLC, )  
Heath Causey, and Sage Financial )  
Group, LLC, )  
 )  
Defendants. )

PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR SUMMARY  
JUDGMENT AND FOR  
JUDGMENT ON THE PLEADINGS

Gabriel Barnhill and GSB Enterprises, )  
LLC, )  
 )  
Plaintiffs, )

CASE NO. 2014-CP-26-3362

vs. )

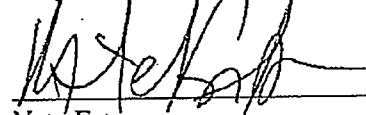
J. Floyd Swilley, J. Floyd Swilley )  
SMG Partners, LLC, SMS Services, LP, )  
William C. Piner, WCP Limited, LLC, )  
Alicia A. Piner, 809 Holdings, LP, )  
Heath Causey, Sage Financial Group, )  
LLC, Sage Advisory Group, L.P., )  
Sage Private Equity Group, )  
Secured Asset Factoring Exchange, Inc., )  
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing, )  
LLC, and Sage Funding, L.P., )  
Christopher Pitcock, )  
 )  
Defendants. )

TO: ALL DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for

summary judgment and judgment on the pleadings on all of Defendants' counterclaims. There is no issue of material fact. Defendants have failed to state a claim. Plaintiffs are statutorily shielded from liability for any alleged company debt. Moreover, Defendants have no evidence of Plaintiffs' misappropriating any sums or any damages allegedly caused by Plaintiffs. As more fully set forth in the accompanying Memorandum, Plaintiffs are entitled to judgment on all counterclaims.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 North

The Courtyard, Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, SC.  
December 16, 2015

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY )

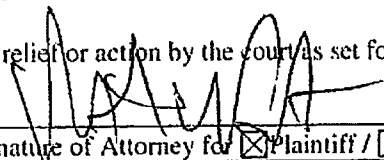
Gabriel Barnhill and GSB Enterprises, LLC )  
 Plaintiff )

CASE NO.  
2014-CP-26-8367

v. )

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

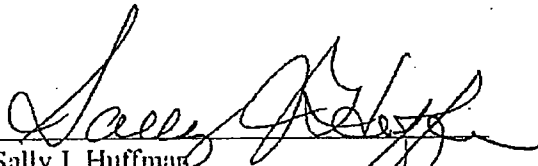
J. Floyd Swilley, Et Al. )  
 Defendant. )

Plaintiff's Attorney: Nate Fata, Esq., Bar No. 09866 Address: P.O. Box 16620 Surfside Beach, SC 29587 phone: 843-238-2676 fax: 843-238-0240 e-mail: nfata@fatalaw.com other:	Defendant's Attorney: John M. Leiter, Bar No. Address: 1203 48 <sup>th</sup> Avenue, N., Suite 109 Myrtle Beach, SC 29577 phone: 843-449-1451 fax: 843-449-4884 e-mail: jleiter@48th.com other:
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b> Nature of Motion: Plaintiff's Motion For Summary Judgment on the Pleadings Estimated Time Needed:      Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b> <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	
December 16, 2015 Date submitted	
<b>SECTION III: Motion Fee</b> <input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	_____ JUDGE  CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b> Date Filed: _____ Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

December 11 2015 I did serve a copy of Plaintiffs' Notice of Motion and Motion for Summary Judgment and For Judgment on the Pleadings upon Counsel for Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.  
Law Offices of John M. Leiter, PA  
1203 48<sup>th</sup> Avenue, North, Ste. 109  
Myrtle Beach, SC 29577  
*Counsel for J. Floyd Swilley, J. Floyd Swilley Investment Advisors,  
Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP,  
William C. Piner, WCP Limited, LLC, Alicia A. Piner,  
Heath Causey, Sage Financial Group, LLC, Sage Advisory Group, LP  
Sage Private Equity Group and Secured Asset Factoring Exchange, Inc.*

Mark D. Neill, Esq.  
P.O. Box 2810  
Murrells Inlet, SC 29576  
*Counsel for 809 Holdings, LP*

  
Sally J. Huffman  
Legal Assistant to Nate Fata, P.A.

\$100,000,000 was allegedly lost by investors. The Court should take judicial notice of Judge Waites' Order in In Re: John F. Swilley, 02-09234-W, Adv. Pro. No. 02-80347-W., United States Bankruptcy Court, (D.S.C. 2003), previously attached as Exhibit B to Plaintiff's Memorandum filed on April 20, 2015.

Defendants disclosed the following 809 Holdings investors in their Court ordered response to Interrogatory Number 9 of the Plaintiffs' Interrogatories dated April 29, 2013<sup>3</sup>:

<b>Investor</b>	<b>Amount</b>	<b>Date</b>
Raymond LaForest	\$50,000.00	9/22/10
John Teska	\$ 6,000.00	9/22/10
Tamrin Baggett	\$68,900.00	11/8/10
	\$ 6,200.00	12/1/10
Joyce Kauffman	\$48,000.00	1/11/11
Scott Mogal	\$17,000.00	3/11/11
Robert Twigg	\$25,000.00	8/12/11
Mark Sarvis	\$40,000.00	8/12/11
Gabriel Barnhill	\$49,000.00	5/26/11
	\$41,000.00	3/28/11
GSB Enterprises	\$25,000.00	4/11/11

Defendants' Responses dated October 15, 2013 to Plaintiffs' First Set of Interrogatories and Request for Production dated April 29, 2013, were previously filed with the Court.

Defendants obtained more than \$360,000 from investors in less than one year.

Thereafter, Defendants disclosed that only \$42,000 has been repaid to 809 Holdings' investors. In addition Swilley and Piner created another Ponzi vehicle, Secured Asset Factoring Exchange ("SAFE"), in late 2011. Defendants raised \$896,325 in SAFE offerings to other

---

<sup>3</sup> Floyd Swilley's purported loan is not referenced below.

investors and only \$533,659 has been repaid. See Defendants' Answers to Supplemental Interrogatories dated October 30, 2014, previously attached as Exhibit C to Plaintiffs' Memorandum filed on April 20, 2015. Thus, between 809 Holdings and SAFE, Defendants bilked investors out of more than \$650,000.

Defendants have paid themselves and their companies thousands of dollars while 809 Holdings' investors have lost more than \$300,000. In addition, 809 Holdings has transferred assets to SAFE.

On June 26, 2013 Defendants filed their Amended Answer with Counterclaim. Defendants asserted counterclaims for:

1. South Carolina Frivolous Proceeding Act (all Defendants);
2. Quantum Meruit (809 Holdings only);
3. Usurpation of Partnership Opportunity (809 Holdings only);
4. Negligent Misrepresentation (809 Holdings only);
5. Breach of Fiduciary Duties (809 Holdings only); and
6. Breach of Loan Agreements (Floyd Swilley only).

As set forth in the Court's Order filed May 22, 2015, Defendants have stipulated the claims were asserted only by the Defendants indicated above. Defendants were required to identify alleged misappropriated funds by Barnhill under Court Order filed September 10, 2015. After two years of discovery delays, Defendants were unable to identify any date or amount of a misappropriation by Barnhill. It is undisputed plaintiffs never had access to any bank accounts and that Plaintiffs never received any personal property.

## ARGUMENT

Defendants' counterclaims fail as a matter of law for two reasons. First, no legal duties are owed by Plaintiffs to any of the Defendants. Second, Defendants have no evidence of damages caused by Plaintiffs. Plaintiffs were not signatories to any bank account of QC Financing or 809 Holdings. Any alleged financial improprieties would only fall on the account signatories and not on the plaintiffs.

**A. No legal duty is owed to any Defendant.**

The determination of the existence of a duty is solely the responsibility of the court. Ellis v. Niles, 324 S.C. 223, 479 S.E.2d 47 (1996). Whether the law recognizes a particular duty is an issue of law to be decided by the Court. Carson v. Adgar, 326 S.C. 212, 486 S.E.2d 3 (1997). An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstances. Id.

Barnhill owes no legal duty to any defendant. He is a limited partner in 809 Holdings, LLP. Barnhill's status as limited partner does not create any duty under any cause of action. To the contrary, pursuant to statute Barnhill is expressly shielded from liability. S.C. Code Ann. § 33-42-430.

Similarly, Barnhill's status as a member of a limited liability company, QC Financing, LLC, does not create duties to any Defendant. According to Defendants, Quick Cash Pawn was the trade name of QC Financing, LLC, which owned the pawn shop inventory. See Defendants' Answers to Supplemental Interrogatory Number 1, previously filed with the Court. No duty is owed by Barnhill to any Defendant pursuant to S.C. Code Ann. § 33-44-303. Barnhill is not obligated for any debts of QC Financing, LLC.

Defendants have not alleged or demonstrated the basis for any duty, requiring a finding that Barnhill owed no duty to Floyd Swilley or 809 Holdings, LP. All claims should be dismissed. Similarly any claim that Floyd Swilley loaned money to QC Financing, LLC or the pawn shop prior to Barnhill's membership status in QC Financing, LLC fails under the statutory section cited above.

**B. Defendants have not pled a cause of action.**

The Counterclaims for usurpation of corporate opportunity, quantum meruit and breach of loan agreements are barred by the above cited statutory sections. Barnhill is not liable as a member of a limited liability company or as a limited partner pursuant to S.C. Code Ann. § 33-42-430 and S.C. Code Ann. § 33-44-303.

In addition, the allegations of negligent misrepresentation also fail as a matter of law. Paragraph 201 alleges Barnhill made a promise that he would comply with the terms of the partnership. A broken promise is not legally sufficient for a negligent representation claim. Allegro, Inc. v. Scully, 409 S.C. 392, 418, 762 S.E.2d 54 (Crt. App. 2014).

The claim of breach of fiduciary duty in Paragraphs 206 – 213, to-wit that 809 Holdings did not get paid by other entities, is insufficient. As a limited partner, Barnhill is not liable for 809 Holdings not getting paid. Defendants already sued the person they believe is at fault, David Wilkinson, and received a judgment against him.

**C. Defendants have no evidence to support the elements of any of their claims.**

Defendants must come forward with some evidence to support each element of each cause of action. They do not have any evidence to support any cause of action. Furthermore, Defendants have no evidence showing Plaintiffs caused any damages. Plaintiffs invested

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY )

FIFTEENTH JUDICIAL CIRCUIT

CASE NO. 2014-CP-26-08367

(formerly 2013-CP-26-02816)

Gabriel Barnhill and GSB Enterprises, LLC, )

Plaintiffs, )

vs. )

J. Floyd Swilley, J. Floyd Swilley )

Investment Advisors, Laurel K. Swilley, )

SMG Partners, LLC, SMS Services, LP, )

William C. Piner, WCP Limited, LLC, )

809 Holdings, LP, QC Financing, LLC, )

Heath Causey, and Sage Financial )

Group, LLC, )

Defendants. )

CERTIFICATE OF SERVICE

Gabriel Barnhill and GSB Enterprises, LLC, )

Plaintiffs, )

vs. )

J. Floyd Swilley, J. Floyd Swilley )

SMG Partners, LLC, SMS Services, LP, )

William C. Piner, WCP Limited, LLC, )

Alicia A. Piner, 809 Holdings, LP, )

Heath Causey, Sage Financial Group, )

LLC, Sage Advisory Group, L.P., )

Sage Private Equity Group, )

Secured Asset Factoring Exchange, Inc., )

SAFE, Inc., Digics, LLC, 9-1-1, Plumbing, )

LLC, and Sage Funding, L.P., )

Christopher Pitcock, )

Defendants. )

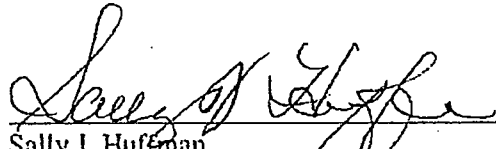
CASE NO. 2014-CP-26-3362

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on

December 16, 2015 I did serve a copy of Plaintiffs' Memorandum in Support of Motion for Judgment on the Pleadings and/or Summary Judgment upon Counsel for Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.  
Law Offices of John M. Leiter, PA  
1203 48<sup>th</sup> Avenue, North, Ste. 109  
Myrtle Beach, SC 29577  
*Counsel for J. Floyd Swilley, J. Floyd Swilley Investment Advisors,  
Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP,  
William C. Piner, WCP Limited, LLC, Alicia A. Piner,  
Heath Causey, Sage Financial Group, LLC, Sage Advisory Group, LP  
Sage Private Equity Group and Secured Asset Factoring Exchange, Inc.*

Mark D. Neill, Esq.  
P.O. Box 2810  
Murrells Inlet, SC 29576  
*Counsel for 809 Holdings, LP*

  
Sally J. Huffman  
Legal Assistant to Nate Fata, P.A.

DESIGNATION OF MATTER # 8

---

BARNHILL MEMO" PLANTIFF  
MEMORANDUM IN SUPPORT OF THEIR  
MOTION FOR JUDGEMENT ON THE  
PLEADINGS AND/OR SUMMARY  
JUDGEMENT

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY )

FIFTEENTH JUDICIAL CIRCUIT

CASE NO. 2014-CP-26-08367

(formerly 2013-CP-26-02816)

Gabriel Barnhill and GSB Enterprises, )  
LLC, )

Plaintiffs, )

vs. )

J. Floyd Swilley, J. Floyd Swilley )

Investment Advisors, Laurel K. Swilley, )

SMG Partners, LLC, SMS Services, LP, )

William C. Piner, WCP Limited, LLC, )

809 Holdings, LP, QC Financing, LLC, )

Heath Causey, and Sage Financial )

Group, LLC, )

Defendants. )

PLAINTIFFS' MEMORANDUM  
IN SUPPORT OF THEIR MOTION  
FOR JUDGMENT ON THE  
PLEADINGS AND/OR SUMMARY  
JUDGMENT

Gabriel Barnhill and GSB Enterprises, )  
LLC, )

Plaintiffs, )

vs. )

J. Floyd Swilley, J. Floyd Swilley )

SMG Partners, LLC, SMS Services, LP, )

William C. Piner, WCP Limited, LLC, )

Alicia A. Piner, 809 Holdings, LP, )

Heath Causey, Sage Financial Group, )

LLC, Sage Advisory Group, L.P., )

Sage Private Equity Group, )

Secured Asset Factoring Exchange, Inc., )

SAFE, Inc., Digics, LLC, 9-1-1, Plumbing, )

LLC, and Sage Funding, L.P., )

Christopher Pitcock, )

Defendants. )

CASE NO. 2014-CP-26-3362

Plaintiffs' submit this Memorandum in Support of Their Motion for Judgment on the

Pleadings and for Summary Judgment.

## INTRODUCTION

Gabriel Barnhill and GSB Enterprises, Inc. ("Barnhill") commenced this action by filing a Summons and Complaint on April 25, 2013, asserting causes of action, inter alia, for violation of the South Carolina Investment Act, breach of fiduciary duty, fraud, misrepresentation, and violation of the Unfair Trade Practices Act. Barnhill alleges that in 2011 Defendants engaged in a Ponzi scheme in which Barnhill, who was Floyd Swilley's accounting and financial advisory client, invested no less than \$115,000 in 809 Holdings, LP, and received approximately \$2,000 in return. Barnhill was 26-27 years of age at the time. The Swilley and Piner Defendants established 809 Holdings in 2010. 809 Holdings was a startup company that would loan money to companies in a "factoring" arrangement. The borrower company was QC Financing, LLC, a pawn shop entity established by Piner and Swilley. In essence, Swilley and Piner took investor/client retirement monies to fund their own startup businesses. In 2014, Barnhill filed a companion case asserting derivative claims.

## PROCEDURAL HISTORY

Defendants have failed to comply with mandatory mediation, multiple Court Orders, and have and continue to obstruct the discovery process. In their attempts to ferret out this complex Ponzi scheme, Plaintiffs served discovery requests upon the Defendants. From the onset, Defendants forced Plaintiffs to file motions to compel discovery.<sup>1</sup>

A discovery Order was entered on September 20, 2013 concerning defendants' failure to respond to the April 2013 discovery requests. Thereafter, defendants failed to provide responsive information and lodged objections. A subsequent Motion for Sanctions was filed on

---

<sup>1</sup> Plaintiffs filed Motions to Compel on the following dates: July 3, 2013; January 8, 2014; January 10, 2014, September 5, 2014 and September 5, 2014; and October 5, 2014.

November 4, 2013. The Court partially granted Plaintiffs' Motion for Sanctions and Judge Culbertson awarded attorney fees by Order filed January 16, 2014.

On September 30, 2014 the Court again entered an Order for Sanctions. In that Order, Judge Hyman found, "Defendants have been sandbagging in their discovery responses... . "The March 2012 payment to Twigg for his 809 Holdings, LP investment and the multiple undisclosed payments to Defendants are examples of Defendants' sandbagging and obstruction in the discovery process".<sup>2</sup>

The Motion for Sanctions filed May 4, 2015 and the Motion for Sanctions filed June 12, 2015 were for failure to comply with Court ordered mediation and discovery, respectively. The Court entered an Order on September 10, 2015 granting Plaintiffs' relief and awarded attorney fees. This Motion for Summary Judgment follows two years of discovery practice and multiple motions to compel Defendants to disclose their information and any evidence they have which support their claims.

### FACTS

In 2011 at the direction of Swilley and Piner, Barnhill's \$115,000, including retirement monies, were invested in the 809 Holdings' Notes and Barnhill became a limited partner. 809 Holdings was a partnership created and owned by the Swilley and Piner Defendants and their companies. Defendants are clever and sophisticated litigants. Laurel Swilley is an attorney. Floyd Swilley is a bookkeeper/financial advisor. William Piner and Heath Causey are businessmen. Swilley has been involved with other investment schemes. Floyd Swilley and Laurel Knuckles Swilley agreed to confess judgment in an Oklahoma federal case in which

---

<sup>2</sup> Twigg filed a separate action Robert L. Twigg and Twigg Enterprises, LLC vs. J. Floyd Swilley; Heath Causey, Laurel Swilley; Sage Financial Group, LLC; Secured Asset Factoring Exchange, Inc. and 809 Holdings, LP, Civil Action No. 2013-CP-26-5477. The Defendants in Twigg are represented by Mark Neill, Esq.

DESIGNATION OF MATTER # 9

---

"FEB TRANSCRIPTS" TRANSCRIPT OF  
RECORD OF THE COURT HELD ON  
FEBRUARY 16, 2016

1 State of South Carolina ) Court of Common Pleas  
2 County of Horry ) 2014-CP-26-08367

3

4

Gabriel Barnhill and GSB )  
5 Enterprises, LLC, )  
6 vs. ) Transcript of Record  
7 J. Floyd Swilley )

8

9

February 16, 2016  
Conway, South Carolina

10

11

BEFORE:

12

Honorable R. Lawton McIntosh, Judge.

13

14 APPEARANCES:

15

Natale Fata, Esq.  
Attorney for the Plaintiff

16

17

Stefan B. Feidler, Esq.  
Attorney for the Defendant  
809 Holdings

18

19

20

21

Teresa J. F. Bautz, RPR  
Official Court Reporter

22

23

24

25

E X H I B I T S

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

NO.	DESCRIPTION	ID	EV
3	No exhibits submitted.		

1 (The hearing commenced at approximately  
2 10:07 a.m.)

3 THE COURT: This is Barnhill?

4 MR. FATA: Yes, Your Honor.

5 MR. FEIDLER: Yes, Your Honor.

6 THE COURT: This appears to be a motion to compel;  
7 is that correct?

8 MR. FATA: Your Honor, yes, sir. Nate Fata on  
9 behalf of the Plaintiffs, the Barnhill Plaintiffs.  
10 There are actually two motions. One is a motion to  
11 compel, slash, sanctions, and the second one is a  
12 motion for summary judgment, judgment on the pleadings  
13 for the counterclaims asserted by the Defendants in the  
14 litigation.

15 THE COURT: Okay. Let's go over the motion to  
16 compel first. You have the discovery that's in  
17 dispute?

18 MR. FATA: Your Honor, I think with the motion we  
19 had filed the discovery, notices of deposition, I think  
20 I have an extra set here. If you want me to hand it  
21 up, I would be more than happy to do so.

22 THE COURT: I have it.

23 MR. FATA: Okay.

24 THE COURT: Give me one second, let me look over  
25 it, please.

1 MR. FATA: Sure.

2 THE COURT: So is WCP a party, Causey, Swilley,  
3 Swilley and 809 Holdings, all of those are Defendants  
4 in this case?

5 MR. FEIDLER: Yes, Your Honor. But I only  
6 represent 809 Holdings, LP. In fact, Mr. John Leiter,  
7 he's an attorney, he was representing the other  
8 Defendants. And admin Judge Seals signed an order  
9 relieving him on the 14th of January, giving them 13  
10 days to find new counsel. So I'm only here on 809  
11 Holdings, LP, Your Honor. As you can see, none of the  
12 other Defendants are here today.

13 THE COURT: Are you here, sir, on the case of  
14 Barnhill versus Swilley?

15 ATTORNEY: No, sir.

16 THE COURT: Okay.

17 ATTORNEY: Thank you.

18 THE COURT: Yes, sir.

19 MR. FATA: Your Honor?

20 THE COURT: Let's go to 809 first. And then as to  
21 the other ones, I don't know what in the world -- why  
22 you would not place somebody up to be a 30(b)(6)  
23 witness for your corporation.

24 MR. FEIDLER: Well, Your Honor --

25 MR. FATA: I might be able to help --

Should be  
30 Days

1 THE COURT: Okay.

2 MR. FATA: -- just to catch you up with the  
3 background.

4 THE COURT: Okay, sure.

5 MR. FATA: Because this case is odd for me. After  
6 20 years of practicing I've had a case where I've had  
7 to come repeatedly to the Court for help during  
8 discovery. There are three sanctions orders that have  
9 already been entered by Judge Culbertson, Judge Hyman  
10 and Judge Seals in September of 2015. It was Judge  
11 Seals' order. Judge Culbertson entered an order in  
12 January 2014. As you can see from the docket number,  
13 the case is kind of old.

14 So for two and a half years or so I've been trying  
15 to move the case along, get discovery. This case  
16 arises out of my 26-year-old client at the time using a  
17 bookkeeper, Floyd Swilley, who said I've got a great  
18 investment for you, let's take your retirement money  
19 and put it in this investment, it's a pawn shop, new  
20 business start-up. I call it the pawn shop Ponzi  
21 scheme.

22 There are about \$400,000 of other investors'  
23 money, retirees, 70 years old, all put in Mr. Swilley  
24 and Mr. Piner's pawn shop. They wanted to start a  
25 bunch of pawn shops on the beach. And they were using

1 all of the retiree monies or retirement monies from  
2 different people that they knew to start and basically  
3 fund their operations.

4 That all went south. 809 Holdings was the first  
5 vehicle, if you will, the investment vehicle. Mr.  
6 Barnhill put in 115,000, and I think he got one check  
7 back for 2,000, nothing else. Mr. Swilley and  
8 Mr. Piner then started another entity call SAF, Secured  
9 Asset Factory, raised about eight or 900,000. About  
10 another \$400,000 was lost.

11 So in total there's 700,000 or so dollars that  
12 have been lost by investors mostly in the Myrtle Beach  
13 area, a lot of it retiree money. We started down this  
14 case in 2013, and then in 2014 in a derivative action,  
15 Miles Adler was the first lawyer for all of the  
16 Defendants. He then asked to get out of the case.

17 John Leiter stepped in, was counsel for about 15  
18 months. Same problem with discovery, had a hard time  
19 getting information, had to come here to the Court over  
20 and over again. He then wasn't being paid, the  
21 Defendants weren't communicating with him obviously.  
22 They wouldn't show up for depositions, they wouldn't  
23 provide dates for depositions, they wouldn't do  
24 anything.

25 So I filed a motion to compel in December.

*Notes*

1 Mr. Leiter's motion to be relieved as counsel --

2 THE COURT: What was your motion to compel, what  
3 were you seeking?

4 MR. FATA: My motion to compel that was filed in  
5 December sought to strike the answer and counterclaim  
6 of these Defendants.

7 THE COURT: Were you seeking the deposition of  
8 these individuals or the 30(b)(6) depositions at that  
9 point?

10 MR. FATA: At the time I sent the notices, yes,  
11 sir, I was.

12 THE COURT: No, no, no, no. What I'm trying to  
13 get in my mind, I'm sorry I'm not being very clear, you  
14 have prior orders from three Circuit Court judges  
15 granting discovery and issuing sanctions; correct?

16 MR. FATA: Yes, sir.

17 THE COURT: Were any of those orders to take the  
18 depositions that you're requesting today?

19 MR. FATA: There was an order -- yes -- there was  
20 an order, a consent order actually entered in May 2015  
21 that said the parties, because I had moved to compel  
22 depositions and discovery then, the parties agreed, Mr.  
23 Leiter and I agreed that we would cooperate and get the  
24 depositions done. And that's in that order, that  
25 May 2015 order.

1 THE COURT: The exact same individuals you're  
2 seeking in this case?

3 MR. FATA: Yes, sir, Your Honor. I mean,  
4 Mr. Causey, Mr. Piner. And Mr. Piner's since filed  
5 bankruptcy so I can't get his deposition. I can as a  
6 witness but not as a party, he's not a party. But  
7 Mr. Swilley, yes, sir, okay.

8 And I don't know about WCP, I might have asked for  
9 that deposition before, but certainly on 809 Holdings  
10 you can see it's an amended notice. So I've been  
11 trying to get -- these are the major players, the  
12 principals, involved in the organizations that were  
13 doing all the money getting, spending. And so that's  
14 who the primary suit's against.

15 So yes, Your Honor, we had already addressed that  
16 issue with the Court. The judge asked us to figure it  
17 out. We tried to figure it out, I thought we had a  
18 plan, it didn't work. We've got a trial not before  
19 date of May 1 now. So now I am here two and a half  
20 years after beginning the suit with a counterclaim I  
21 know nothing about with no information, I have no  
22 depositions yet.

23 The case has already been postponed by Judge  
24 Seals. He understood that we needed some more time in  
25 January when Mr. Leiter was getting out. He said,

1 okay, I'll give the Defendants 30 days to get new  
2 counsel. And after that, you know, we need to take  
3 off. So I haven't been able to take off.

4 So what I'm asking the Court is to strike the  
5 answer and counterclaims at least of those Defendants  
6 who are not here today. That was in the motion. I  
7 sent each of those pro se defendants separate notice of  
8 hearing that's been filed with the Clerk of the Courts.  
9 I took care of that.

10 In addition, I'm sure Mr. Leiter notified them of  
11 the upcoming hearing. But we would like the Court to  
12 just address this issue because -- and I have an  
13 affidavit for attorney's fees -- because I haven't  
14 gotten anywhere. And I don't have any more information  
15 now than when I first got the counterclaim back in like  
16 2013.

17 And I've been here, this is the fourth or fifth  
18 time, discovery, I would call discovery abuse. And  
19 I've never had a case where I've had to ask the judge  
20 to get involved three times and been given sanctions.  
21 In fact, Judge Hyman said, and these are his words, you  
22 know, you're sandbagging Mr. Fata. And that's in his  
23 order, that wasn't my language, but he said that. And  
24 I haven't had the judge say that to another litigant  
25 while I've been practicing in Horry County for 21

1 years, sir.

2           So what I'm asking for is if I'm not going to  
3 strike the answer and counterclaims, I would like to do  
4 that and get an order for attorney's fees. If the  
5 Court doesn't want to grant that, then my second  
6 position would be make the Defendant show up at my  
7 office when I send out the notice, these pro se  
8 Defendants, because they're not here. And if they  
9 don't show up, then their answer and counterclaim is  
10 stricken, so I can just move forward and prepare for  
11 trial.

12           THE COURT: That's Causey and the two Swilleys?

13           MR. FATA: Causey and the two Swilleys, yes, sir.

14 And then 809 Holdings I --

15           THE COURT: Yeah, we going to talk about 809 in  
16 just one second. I'm inclined to grant your motion to  
17 strike the pleadings and for fees.

18           MR. FATA: Yeah.

19           THE COURT: If you have prior orders of this Court  
20 saying Heath Causey, Will Swilley -- am I pronouncing  
21 that correctly?

22           MR. FATA: Swilley.

23           THE COURT: Floyd Swilley.

24           MR. FATA: Floyd.

25           THE COURT: You are to appear for a deposition or

1 you'll face sanctions, and they still haven't done  
2 it --

3 MR. FATA: Well, the orders in the past were on  
4 discovery, interrogatories, requests for production of  
5 documents, not giving me any information. So I --

6 THE COURT: Well, that's what I was asking you  
7 earlier, you know, specifically what were the prior  
8 discovery orders concerning?

9 MR. FATA: Requests for production of documents,  
10 interrogatory responses. There is a May 2015 order  
11 that specifically addressed the depositions, because I  
12 had filed motions to compel.

13 THE COURT: And that May order, that's the consent  
14 order you entered into with the driver?

15 MR. FATA: Yes, it is, Your Honor. Yes.

16 THE COURT: Does it provide any alternatives in  
17 the event they don't cooperate?

18 MR. FATA: No, it does not, Your Honor. I don't  
19 believe it does. I believe it's Plaintiff's motion to  
20 compel depositions and Defendant's motion to quash  
21 deposition notices have been resolved. The parties  
22 shall cooperate on the setting of the depositions.

23 THE COURT: And that's dated May of last year?

24 MR. FATA: May 22, 2015 is the filed date.

25 THE COURT: All right. I'm going to grant your

1 motion to strike the pleadings as to Causey and the  
2 Swilleys.

3 MR. FATA: Yes, sir.

4 THE COURT: If they're not going to participate,  
5 they obviously don't have or retained other counsel or  
6 don't seem to want to participate in this action. I  
7 think it's appropriate. You will need to prepare an  
8 affidavit of attorney's fees as to those Defendants.  
9 Have you noticed them on that affidavit yet?

10 MR. FATA: No, Your Honor.

11 THE COURT: Under the rules, I think you have to  
12 give a ten-day notice.

13 MR. FATA: Okay.

14 THE COURT: Ten days. You can go ahead and give  
15 it to me. Have you filed that?

16 MR. FATA: Yes, sir, at this point.

17 THE COURT: Yeah. Now, as to 809?

18 MR. FEIDLER: Yes, Your Honor.

19 THE COURT: Let me ask you, going back to May, was  
20 809 addressed in that order as well?

21 MR. FATA: Your Honor, I believe it was because,  
22 like I said, this notice in December was -- or November  
23 that I said was an amended notice, and I believe this  
24 809 notice has been kicking around, I just amend it  
25 from time to time to try to get another date that might

1 work, it never worked. But I can't definitively answer  
2 that question without looking through the whole file,  
3 and I don't have the whole file here because it's  
4 voluminous.

5 THE COURT: You're shaking your head that yes, 809  
6 was in that consent order; is that correct?

7 MR. FEIDLER: I hope I was not, Your Honor. I  
8 might have just been --

9 THE COURT: Well, let me ask you.

10 MR. FEIDLER: Yes, Your Honor.

11 THE COURT: Give me one good reason, one, why 809  
12 hasn't participated in discovery like they're supposed  
13 to in any case, one.

14 MR. FEIDLER: Well, Your Honor, I'm kind of new to  
15 this. I did go over the file.

16 THE COURT: I understand that. I figured that you  
17 must be.

18 MR. FEIDLER: This is just a complicated case.  
19 There's a companion case that --

20 THE COURT: I understand it's complicated.

21 MR. FEIDLER: Yes, Your Honor.

22 THE COURT: It's probably complex. But it's not  
23 complicated to say this is the person who is going to  
24 speak for this corporation, and they appear for a  
25 deposition. That's not complicated.

1 MR. FEIDLER: Yes, Your Honor.

2 THE COURT: That's very straightforward.

3 MR. FEIDLER: Yes, Your Honor.

4 THE COURT: So at this juncture, how long you been  
5 in this case?

6 MR. FEIDLER: I've been with the firm since  
7 August 17th. And I believe this is one of the first  
8 files I dealt with off and on until this date.  
9 Mr. Neill obviously has been here before that on the  
10 companion case.

11 THE COURT: So going back --

12 MR. FEIDLER: Yes, Your Honor.

13 THE COURT: -- tell me why. I mean, even once you  
14 received the motion to compel at this juncture, what  
15 have you done to say, hey, hang on, let me get my folks  
16 to name and let's get them participating instead of  
17 waiting until today and I guess saying mea culpa, I'm  
18 not sure.

19 MR. FEIDLER: Your Honor, I don't know how to  
20 phrase it, but I guess my ability to argue for my  
21 clients is as good as whether they cooperate with me,  
22 Your Honor.

23 THE COURT: Well, and I know that you're limited  
24 to what you can or cannot say. Have you attempted to  
25 have them name and designate somebody as a spokesperson

1 for the corporation?

2 MR. FEIDLER: I know the two members of the  
3 corporation, I cannot clearly --

4 THE COURT: The question is you or your firm --  
5 let me clarify that. Has any legal representative of  
6 the corporation sought to have whoever name the  
7 spokesperson for the corporation?

8 MR. FEIDLER: Your Honor, I cannot tell you yes or  
9 no, I do not know that answer. I know that Mr. Swilley  
10 and Mr. Piner are representatives of that corporation.  
11 And they are the gentlemen that we have been in touch  
12 with per 809. They were notified of this hearing, they  
13 knew everything that's going on, and we are just --  
14 we're trying to move -- 809 at this point is trying to  
15 claim bankruptcy. Of course we've said that months ago  
16 and that's just something we're waiting on them to do  
17 is to get them out of here.

18 It's my understanding as to just 809 and the  
19 depositions that they did not attend, that there was a  
20 supposed gentleman's agreement between Mr. Fata and  
21 Mr. Neill over the phone. Maybe that should have been  
22 followed up by an e-mail or a letter that they would  
23 continue those depositions until a later date.

24 THE COURT: Is that true?

25 MR. FATA: No, Your Honor. What the conversation

1 was, I need some dates, how about this date, that  
2 doesn't work, give me some dates. And then I don't  
3 hear anything. Mr. Neill is trying to work with  
4 Mr. Piner and Mr. Swilley.

5 Mrs. Swilley is a lawyer, Your Honor. So she  
6 practices disability law in Conway. So this is not  
7 foreign to them. They've been in other, I call them  
8 Ponzi scheme lawsuits before in federal court in  
9 Oklahoma. There's a US Bankruptcy Court judge ruling  
10 on Mrs. Swilley trying to discharge a confession in  
11 judgment from the Oklahoma case.

12 And the judge, Judge Wade, said, you can't do  
13 that, you agreed in front of that federal judge.  
14 You're not going to try to discharge the securities  
15 fraud related debt six months after you were in federal  
16 court saying, okay, I'm not going to discharge the  
17 debt.

18 So what I'm trying to tell the Court is there's a  
19 history with the Swilleys for sure, it's in this brief  
20 that was filed on April 22nd. I have an extra copy if  
21 Your Honor would like to read it with the Swilleys.  
22 Mr. Piner is kind of -- he went into bankruptcy, so  
23 he's not going to talk to his counsel, this is not on  
24 the front burner.

25 But there has been wave after wave after delay.

1 The Swilleys are very used to doing this, they've done  
2 it before. And I'm at the ouch point where I've got  
3 two months left to get ready for a trial and I've got,  
4 you know --

5 THE COURT: Nothing.

6 MR. FATA: -- nothing. And I've been trying to  
7 get something. And so there wasn't a gentleman's  
8 agreement, it's -- there's radial silence, like what's  
9 going on. I've been hearing 809 is filing bankruptcy  
10 for three months. Well, that's another delay tactic.

11 So, you know, at this point if they have money to  
12 pay the lawyer, then I guess we got to go to trial. If  
13 they're going to file bankruptcy, great, then I don't  
14 have to come bother the Court, get you to waste your  
15 time. I apologize for that, but I don't have any other  
16 choice. Judge Seals --

17 THE COURT: This is what I get paid for.

18 MR. FATA: I understand, Your Honor, but --

19 THE COURT: It's not a waste of your time.

20 MR. FATA: -- it's very frustrating.

21 THE COURT: Sure.

22 MR. FATA: Two and a half years. My client's out  
23 \$113,000 he said he made. I'm getting sued for what.  
24 I put 115 in, I got a \$2,000 check and I'm getting  
25 sued. And I'm paying you, and I don't even know what I

1 did. I didn't have access to the checkbook, I didn't  
2 receive anything other than a \$2,000 check they sent to  
3 me.

4 So, you know, and the case is complicated, but my  
5 client didn't have access to any of the money. And  
6 he's getting sued and I don't know no, so we can't move  
7 forward, so --

8 THE COURT: Let me ask you, the representative of  
9 the 809 --

10 MR. FEIDLER: Yes, sir.

11 THE COURT: -- is Mr. Swilley?

12 MR. FEIDLER: Yes, sir.

13 THE COURT: And what I think I'm hearing you say  
14 is we've tried to get him to give us some names and  
15 whatever, and we're just not getting anything back from  
16 him; is that a fair statement?

17 MR. FEIDLER: Your Honor, we've asked him to give  
18 us some dates on depositions. We signed a scheduling  
19 order that gives us, I believe it's either March 2nd or  
20 3rd to get those depositions done.

21 THE COURT: Right.

22 MR. FEIDLER: And, Your Honor, we've tried, we've  
23 attempted, and it's just a --

24 THE COURT: I'm going to strike 809's pleadings as  
25 well.

1 MR. FEIDLER: Yes, Your Honor.

2 THE COURT: I'm going to do the same as to  
3 attorney fees, and you just need to send a copy over to  
4 counsel. I want you to make sure that your order  
5 provides -- from what I'm hearing, the attorney's for  
6 809 have attempted to cooperate.

7 MR. FATA: Will do, Your Honor.

8 THE COURT: Also, I want to hear you on the  
9 judgment for the pleadings because I might want to make  
10 an alternative finding in this case as well. So go  
11 ahead and ask or argue your motion for judgement on the  
12 pleadings.

13 MR. FATA: Thank you. Will do, sir. Your Honor,  
14 in the motion for judgment on the pleadings there are,  
15 in essence, and I have a memorandum that was filed  
16 December 21 with the Court.

17 THE COURT: I saw that in there. I have not read  
18 it so...

19 MR. FATA: There are several causes of action in  
20 the counterclaim. The first lawyer for the Defendants  
21 raised frivolous proceeding act, quantum meruit,  
22 usurpation of partnership opportunity, negligent  
23 misrepresentation, breach of fiduciary duty and breach  
24 of loan agreement.

25 THE COURT: Go over those again.

1 MR. FATA: Sorry, Your Honor, I was a little fast.

2 THE COURT: Frivolous lawsuit?

3 MR. FATA: For all Defendants. And then quantum  
4 meruit for 809 Holdings, usurpation of partnership  
5 opportunity for 809 Holdings, negligent  
6 misrepresentation as to 809 Holdings, breach of  
7 fiduciary duty as to 809 Holdings, and breach of loan  
8 agreements by Floyd Swilley.

9 THE COURT: Okay, sir. Well, the frivolous claim  
10 is something that's just not right. I mean --

11 MR. FATA: Correct.

12 THE COURT: -- and it seems to me the cases say  
13 you bring that up at the end of the day. I'll grant  
14 your motion as to that. Go ahead and tell me about  
15 quantum meruit.

16 MR. FATA: Quantum meruit, Your Honor, as to 809  
17 Holdings, any claim 809 Holdings has as to Gabriel  
18 Barnhill would be as to his status as a limited partner  
19 in that investment, because that's what he was given, a  
20 limited partnership interest.

21 Mr. Swilley and Mr. Piner, through their entities,  
22 retained a general partnership interest, okay. So  
23 under the limited partnership statute that I've cited  
24 in the brief, limited partners aren't liable for  
25 anything else other than whatever they contribute; in

1 other words, you can't sue a limited partner as if he  
2 was a general partner. He's not obligated for any  
3 partnership debt unless he signs off on a guarantee or  
4 some type of written acknowledgement that, yes, I'm  
5 going to be liable.

6 Similar to a member in an LLC, the statute's very  
7 clear, members in LLC's, unless they --

8 THE COURT: Well, let me ask you this. Under the  
9 Limited Partnership Act, doesn't that just cap your  
10 liability but it doesn't cap your method of getting to  
11 it?

12 MR. FATA: I think it's -- I don't think the  
13 Limited Liability Act allows the partnership to sue you  
14 for quantum meruit, to sue the limited partner. Maybe  
15 you lose your membership interest or your limited  
16 partnership --

17 THE COURT: But if they sued you for -- and I'm  
18 asking, I'm going to read your brief -- if they sued  
19 you for quantum meruit, equitable claim, and they seek  
20 damages up to the amount of your investment in the  
21 limited partnership based on that cause of action, you  
22 say that's inappropriate?

23 MR. FATA: I say that's inappropriate. I don't  
24 see how they get --

25 THE COURT: You have no equitable claim back

1 against the limited partners is what you're saying?

2 MR. FATA: No. You've got their -- the money is  
3 there, that's the -- the limited partner doesn't get  
4 paid back on his investment, that's what's lost. But  
5 in this case 809 Holdings hasn't stated a claim or come  
6 forth with any evidence as to what kind of quantum  
7 merit it deserves.

8 THE COURT: Well, judgement pleadings are just  
9 that.

10 MR. FATA: Yes.

11 THE COURT: I mean, I'm looking at the pleadings  
12 themselves for the facts; right?

13 MR. FATA: Yes, sir. And it's also -- it's a  
14 summary judgment motion as well.

15 THE COURT: Oh, it is?

16 MR. FATA: It's judgment on the pleadings and  
17 summary judgment, because we're this far into the  
18 two-and-a-half-year litigation. I don't have any  
19 facts, there are no facts to support any of these  
20 claims. And even if there were, statutorily under the  
21 Limited Partnership Act, I think my client's shielded  
22 from liability unless you signed off on something  
23 saying I'm going to be liable as a partner for these  
24 type of quasi partnership allegations, which they're  
25 not. He's a limited partner.

1           So it's two motions in one, judgment on the  
2 pleadings and/or summary judgement because there are  
3 some issues of fact this late in the day.

4           THE COURT: I'm sorry, I didn't know, sir.

5           MR. FATA: Well, I didn't explain it well, Your  
6 Honor. So the same would be true for any type of  
7 claims with QC Financing, LLC. In the summer of 2011,  
8 Mr. Swilley was getting investigated by the Attorney  
9 General's office for a lot of this, and he had to get  
10 out of the that limited liability company.

11           He gave his -- he gave like an interest, like a  
12 25 percent membership interest to Barnhill. And QC  
13 Financing, LLC is the entity that had the pawn shop,  
14 that ran the pawn shop and that borrowed the money from  
15 809 Holdings.

16           THE COURT: So your motions are directed to all of  
17 the named original Defendants and I'm looking at not  
18 the third party Defendants.

19           MR. FATA: That's correct, Your Honor. Only the  
20 original Defendants filed counterclaims. And after the  
21 counterclaims were filed, Mr. Leiter stipulated on  
22 behalf of all of the Defendants that it was just 809  
23 Holdings that was asserting the claims. It's not clear  
24 from its counterclaim that it was the only one  
25 asserting a counterclaim, with the exception of Floyd

1 Swilley's counterclaim for breach of loan agreement.

2 THE COURT: Got you. Okay.

3 MR. FATA: So there is no duty owed as a member of  
4 the limited liability company, QC Financing, that Mr.  
5 Barnhill could allegedly have, or as a limited partner  
6 of 809 Holdings he doesn't owe any duty. And even if  
7 he did, there are no facts to support any of these  
8 causes of action. There is no evidence. There is an  
9 affidavit that was filed, I think, by Mr. Piner last  
10 Friday I got it, Thursday or Friday.

11 THE COURT: And he's the gentleman that filed  
12 bankruptcy?

13 MR. FATA: Yes, sir.

14 THE COURT: Got it.

15 MR. FATA: So I had filed the motion to strike  
16 that affidavit because it doesn't comply with Rule 56.  
17 The last two out of his six paragraphs talk about on  
18 information and belief. That doesn't comply with Rule  
19 56. I can hand up my motion that's already been filed  
20 in, Your Honor.

21 And the other two or three paragraphs in his  
22 affidavit, it's really only one page and -- I'm sorry.  
23 Paragraphs two, three and the first four and the second  
24 four just allege some conclusory statements stating  
25 without any basis that Mr. Barnhill was involved in the

1 day-to-day operations of the pawn shop. He was not, he  
2 has a full-time job. He's always had a full-time job.  
3 He was just an investor, and he got stuck with the  
4 wrong crowd, and this is where he is three years later.

5 THE COURT: And Mr. Piner is one that you've also  
6 sought to have his deposition taken?

7 MR. FATA: Yes.

8 THE COURT: But he doesn't participate in it?

9 MR. FATA: Correct.

10 THE COURT: He gives an affidavit?

11 MR. FATA: That's right, that's right, Your Honor.  
12 So as to the negligent -- I'm trying to move forward --  
13 the negligent misrepresentation claim fails under the  
14 pleading because it talks about a misrepresentation or  
15 alleges a misrepresentation of what would happen in the  
16 future. You have to misrepresent something, a current  
17 fact that you know to be untrue today, not what you are  
18 going to do in the future. It's kind of like a broken  
19 promise is not enough to bring a fraud claim. So we  
20 have a case cite of Allegro v. Scully, 762 S.E.2d 54, a  
21 2014 case that supports that to strike that.

22 The breach of fiduciary duty claim, again, my  
23 client's a limited partner. If anyone has a fiduciary  
24 duty, it would be Piner and Swilley who are the general  
25 partners. They set up QC Financing, they were the

1 original partners involved in that, And they sued their  
2 former partner, Dave Wilkinson, who apparently took off  
3 with some stuff, they sued him.

4 And so if there is any breach of fiduciary duty  
5 claim, it would be as to those general partners, not a  
6 limited partner or a member in an LLC that had no  
7 signatory right to any checkbook, never got any money.  
8 We asked in discovery, the judge did order this, Your  
9 Honor, if you're going to allege misappropriation of  
10 funds, you got to identify the funds.

11 So the response I get is, well, we don't really  
12 know any specific dates, we just want you liable for  
13 all the damages from our suit that we had against Dave  
14 Wilkinson, a former partner. And that's simply not  
15 compliant with discovery. So there is no evidence to  
16 meet any of the elements for any of these claims.  
17 That's why in the second suit they were never raised.  
18 I think the second lawyer realized they weren't going  
19 to go anywhere, they were a waste of time.

20 But at this point two years into the litigation,  
21 we're asking for the Court to either by summary  
22 judgment or a judgment on the pleadings or under the  
23 motion for sanctions, depositions, just to strike them  
24 or get rid of them so we don't have to deal with them,  
25 Your Honor.

1 THE COURT: All right, sir.

2 MR. FEIDLER: Yes, Your Honor. It is our  
3 understanding that Mr. Barnhill was in fact in that  
4 pawn shop with Mr. Wilkinson, who he did find a  
5 judgment against for \$785,000.

6 THE COURT: Say that again, please.

7 MR. FEIDLER: Mr. Wilkinson in the companion case  
8 before this case, it is our impression that Mr.  
9 Wilkinson and Mr. Barnhill were in that pawn shop  
10 dealing with the assets --

11 THE COURT: Well, what do you base that impression  
12 upon?

13 MR. FEIDLER: Well, Your Honor, we have an e-mail  
14 where Mr. Wilkinson e-mails my clients and says, as far  
15 as I'm concerned, Mr. Barnhill and I are partners in  
16 this pawn shop. From what I've heard, they were in  
17 this pawn shop, they were accepting assets.

18 The reason we can't pin this down with evidence is  
19 because we don't know what was in that pawn shop.  
20 Mr. Wilkinson in the companion case, and we have  
21 pictures of this and I have affidavits, he actually  
22 backed up a horse trailer and packed everything into  
23 that horse trailer from the pawn shop and left for  
24 Tennessee.

25 THE COURT: Who did?

1 MR. FEIDLER: Mr. Wilkinson, in a companion case.

2 It is our --

3 THE COURT: Did Barnhill and Wilkinson file K-1's  
4 on the pawn shop?

5 MR. FEIDLER: I'm sorry, Your Honor, I honestly do  
6 not --

7 THE COURT: That's a partnership return. Did they  
8 ever file partnership returns or anything of that  
9 nature indicating there was existence of a partnership?

10 MR. FEIDLER: Your Honor, I don't believe so.

11 MR. FATA: Your Honor, because Mr. Swilley handled  
12 all the bookkeeping for QC Financing, the pawn shop, I  
13 think the answer is no.

14 THE COURT: And how long was this pawn shop in  
15 existence?

16 MR. FATA: Approximately end of 2010, early 2011,  
17 till about August, I think, 2012. So 18, 20 months.

18 THE COURT: Okay. All right, go ahead. I don't  
19 mean to interrupt you.

20 MR. FEIDLER: No, Your Honor, you're fine. I  
21 think Mr. Fata's stuck on the limited partnership and  
22 find a fiduciary duty there. I think this goes beyond  
23 that. I know the Court may be able to find that there  
24 was a legal duty, whether that's based on statute, the  
25 limited partnership --

1 THE COURT: What statute?

2 MR. FEIDLER: Statute, yes, Your Honor, I'm sorry,  
3 mispronounced that. Based on a relationship or  
4 property interest or some special circumstances. And  
5 we are under the impression --

6 THE COURT: Well, let me -- I'm going to give you  
7 an opportunity.

8 MR. FEIDLER: Yes, Your Honor.

9 THE COURT: I want you to educate me. Give me  
10 specifically factually the special circumstances that  
11 have been proven to exist based on the discovery that's  
12 taken place at this juncture.

13 MR. FEIDLER: To this juncture, none, Your Honor.  
14 We were waiting to take Mr. Barnhill's deposition to  
15 find that evidence, to find those facts, to find out if  
16 he was in fact in that pawn shop dealing with the  
17 day-to-day transactions, dealing with the assets.

18 They're taking in assets in this pawn shop, and  
19 there's no bookkeeping of this, and also they're gone.  
20 And that's where -- this is where the gap -- this is  
21 where the gap is. This is what we're going to probably  
22 be leaning on is whether or not we can prove how much  
23 assets were in there, how much assets were taken out,  
24 whether Mr. Wilkinson and Mr. Barnhill were together,  
25 whether that's a limited partner or whether they are

1 just conducting business on a day-to-day basis. That's  
2 where everything's kind of relying on.

3 And we've asked Mr. Fata, of course he's asked us  
4 for -- to schedule these depositions, we asked him, we  
5 would like to schedule Mr. Barnhill's deposition, we're  
6 waiting on that. And as soon as we can depose  
7 Mr. Barnhill, I believe that will open up a little bit  
8 more for us to pin down exactly what was in that pawn  
9 shop and what he had to do with that.

10 THE COURT: Has Mr. Fata not allowed you to take  
11 Mr. Barnhill's deposition?

12 MR. FEIDLER: Your Honor, with all due respect to  
13 Mr. Fata, I believe you asked him Thursday or Friday  
14 for those dates.

15 THE COURT: So essentially what I'm hearing is  
16 that the Defendants won't cooperate in any form or  
17 fashion, although they've been ordered to. And at this  
18 juncture because they haven't cooperated, we're  
19 entitled not to have summary judgment issued against  
20 us; is that a fair statement in some sense of the word?

21 MR. FEIDLER: Yes, Your Honor.

22 THE COURT: You're being the sacrificial lamb here  
23 today; aren't you?

24 MR. FEIDLER: I am, Your Honor.

25 THE COURT: All right, go ahead. I told you I

1 would let you argue, go ahead.

2 MR. FEIDLER: Your Honor, I really don't have  
3 anything else to say other than we're just waiting to  
4 take depositions.

5 THE COURT: I got you, okay.

6 MR. FEIDLER: We're just waiting to proceed on  
7 this.

8 THE COURT: Mr. Fata, I'm going to read your  
9 memorandum before I issue my order on that.

10 MR. FATA: Yes, sir.

11 THE COURT: My prior order striking the pleadings  
12 on the Defendants that you asked for is granted. You  
13 need to provide them and 809 your affidavit of  
14 attorney's fees.

15 MR. FATA: Yes, sir.

16 THE COURT: Give them ten days to object. Now, as  
17 far as the attorney's fees goes, if there is an  
18 objection raised by your client, 809 or the other pro  
19 se individual Defendants --

20 MR. FEIDLER: Yes, Your Honor.

21 THE COURT: -- it would seem to me more expedient  
22 for you guys to consent at this juncture for another  
23 circuit court judge to be able to hear it. Because I'm  
24 from Anderson, and I can see the logistics of that  
25 being a problem.

1 MR. FEIDLER: Yes, Your Honor.

2 MR. FATA: Your Honor, I consent to that. And by  
3 the way, the affidavit of attorney's fees that I  
4 submitted is about \$1,050, so it's not big.

5 THE COURT: It's not big.

6 MR. FATA: Yes, just for the Court's --

7 THE COURT: Do you have a problem consenting to  
8 that?

9 MR. FEIDLER: No, Your Honor, not at all.

10 THE COURT: Just the fact just the amount of it.  
11 In other words, attorney's fees is going to be  
12 awarded -- are going to be awarded, excuse me. Just  
13 the amount may be determined by another circuit court  
14 judge just for logistical.

15 MR. FEIDLER: Absolutely.

16 THE COURT: Is that okay with you?

17 MR. FEIDLER: Yes, Your Honor.

18 THE COURT: Okay, all right. Anything further?

19 MR. FATA: No, Your Honor. Would you like the  
20 proposed order in seven days or?

21 THE COURT: Just, yeah, if you would. Does that  
22 give you enough time? Make sure you give me a copy of  
23 the proposed order.

24 MR. FATA: Yes, sir.

25 THE COURT: Wait until I issue my order on the

1 summary judgment. I'm inclined to grant it, I'll tell  
2 you, I'm sure you can tell.

3 MR. FATA: Yes, Your Honor.

4 THE COURT: But I want to read first to make sure  
5 I'm not just missing the mark totally; okay?

6 MR. FEIDLER: Thank you, Your Honor.

7 MR. FATA: Thank you, Your Honor.

8 THE COURT: Thank you, guys. I appreciate it.

9 (The hearing concluded at approximately  
10 10:41 a.m.)

11 (End of Transcript of Record.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25



DESIGNATION OF MATTER # 10

---

“ADLER LETTER” LETTER FROM F.  
MILES ADLER TO JUDGE MCINTOSH  
DATED MAY 3, 2016

F. MILES ADLER

ATTORNEY AT LAW

May 3, 2016

VIA EMAIL LMCINTOSHJ@SCCOURTS.ORG  
AND U.S. MAIL

The Honorable R. Lawton McIntosh  
P.O. Box 8002  
Anderson, SC 29622

Re: Gabriel Barnhill et al. v. J. Floyd Swilley et al.  
C/A No.: 2014-CP-26-3362

Dear Judge McIntosh:

I represent defendants J. Floyd Swilley and Laurel K. Swilley (the "Swilleys") in the matter referenced above and am writing to call attention to certain filings in the record that (based on my review of the transcript of hearing) were not brought your attention at the February 16, 2016 hearing.

Enclosed please find a copy of the letter prepared by Attorney Nate Fata and addressed to Judge Seals wherein Mr. Fata advised the Court that no depositions would take place until the Swilleys' former attorney John Leiter had his motion to be relieved heard by the Court. The letter did not mention that the burden to schedule future depositions was on the Swilleys. Shortly after writing the letter, Mr. Fata then filed a Motion to Compel Depositions and a Motion for Judgment on the Pleadings and/or Summary Judgment. In addition to the letter from Mr. Fata please also find a filed copy of Mr. Leiter's Motion to Withdraw and the Order Relieving Mr. Leiter which was filed January 25, 2016. Please note that Mr. Fata did not subsequently notice depositions after Mr. Leiter was relieved, instead Mr. Fata sought an order on his Motion to Compel Depositions and his Motion for Judgment on the Pleadings and/or Summary Judgment on Defendants' Counterclaims, which were both heard and ruled upon on February 16, 2016.

With respect to Mr. Leiter's withdrawal, the Order Relieving Attorney Leiter (the "Order") stated the proceedings in this case would be held in abeyance for thirty (30) days from the date of the Order relieving him as counsel. Pursuant to South Carolina Rule of Civil Procedure 58(a) the Order became effective when entered which, according to the Horry County Clerk of Court's records, was January 25, 2016. The Order granted the Swilleys and the other defendants a thirty day reprieve from the proceedings from the date the Order was entered. Thirty days from January 25, 2016 was February 24, 2016. As the hearing currently at issue was held on February 16, 2016, it is my clients' position that the hearing on Plaintiff's Motion to Compel Depositions and Motion for Judgment on the Pleadings and/or Summary Judgment on Defendants' Counterclaims was held during the period the case was ordered to be held in abeyance.

ADLER LAW FIRM, LLC  
P.O. Box 4743  
Pawleys Island South Carolina 29585  
T 843.314.3204  
F 843.314.3205  
adlerlaw.partners

p. 2

Letter to Judge McIntosh


May 3, 2016

2014-CP-26-3362

The fact that the February 16, 2016 hearing was held while the proceedings were subject to the thirty day abeyance period forms the basis for the Swilleys' pending Motions to Set Aside Order.

We would ask that the Court grant us a hearing on these motions to afford the Swilleys the opportunity to present the full record to the Court and make arguments thereon.

Respectfully submitted,



F. Miles Adler

cc: Nate Fata  
Mark D. Neill  
J. Floyd Swilley (*via email*)  
Laurel K. Swilley (*via email*)  
Heath Causey

Enc.: as stated

ADLER LAW FIRM, LLC  
P.O. Box 4743  
Pawleys Island South Carolina 29585  
T 843.314.3204  
F 843.314.3205  
adlerlaw.partners

**NATE FATA, P.A.**  
ATTORNEY AT LAW

P.O. Box 16620  
THE COURTYARD, SUITE 215  
SURFSIDE BEACH, SOUTH CAROLINA 29587  
TELEPHONE (843) 238-2676  
FACSIMILE (843) 238-0240  
www.fatalaw.com

VIA EMAIL

December 3, 2015

The Honorable William Henry Seals, Jr.  
Chief Administrative Judge  
103 N. Main Street  
Marion, SC 29571  
Attn.: Paul Lawson

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.  
Civil Action No. 2014-CP-26-8367


Dear Judge Seals:

As you might recall I represent the Plaintiffs in this investor/Ponzi scheme pawn shop case against the Defendants who are represented by John Leiter and Mark Neill. Mr. Leiter filed a Motion to be Relieved as Counsel on October 22, 2015 and I am concerned that this case will be placed on the trial roster in the next month or two. For that reason, I would like to see if the Court has any time to schedule a short status conference to enter a scheduling order that would have a trial not before April 2016 date so that Mr. Leiter's Motion to be Relieved as Counsel could be heard in due course and/or have a hearing on Mr. Leiter's Motion. From my conversation with Mr. Leiter, no depositions will take place until Mr. Leiter's motion is heard. Because I need to take a half dozen or more depositions, the Motion to be Relieved has presented a challenge with scheduling and getting things done in preparation for trial.

We appreciate the Court's consideration and look forward to hearing from you.

With best regards, I remain

Very truly yours,  
NATE FATA, P.A.

  
Nate Fata  
NF/sh

cc: John M. Leiter, Esq.  
Mark D. Neill, Esq.

---

DESIGNATION OF MATTER # 11

---

“NEIL LETTER” LETTER FROM MARK  
NEIL ATTORNEY FOR 809 HOLDINGS LP  
TO JUDGE MCINTOSH MAY 19, 2016

# NEILL LAW FIRM

MARK D. NEILL  
MNEILL@NEILLLAWFIRM.COM

671 JAMESTOWNE DRIVE, SUITE 207  
POST OFFICE BOX 2810  
MURRELLS INLET, SC 29576  
PHONE: (843) 651-8580 FACSIMILE: (843) 651-8586  
WWW.NEILLLAWFIRM.COM

MARY ANNA NEILL  
MANEILL@NEILLLAWFIRM.COM

May 19, 2016

**Sent Via Email: [lmcintoshj@sccourts.org](mailto:lmcintoshj@sccourts.org)**  
**and Regular Mail**

The Honorable R. Lawton McIntosh  
P.O. Box 8002  
Anderson, SC 29622

*Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley*  
*Case No(s): 2014-CP-26-3362*

Dear Judge McIntosh:

I represent Defendant 809 Holdings, LP. I object to the proposed final order drafted by Plaintiff's attorney. The proposed order relies in part on mis-statements that were unfortunately made by my former associate, Mr. Fiedler, who is no longer with my firm. In hindsight, I certainly regret not being at the February 16<sup>th</sup> hearing, but I thought Mr. Fiedler was well prepared. Mr. Fiedler spent close to forty hours working on the file prior to the February 16<sup>th</sup> hearing and he also attended the January 4, 2016 hearing in this matter. I never imagined it possible for him to make mis-statements, or fail to make clarifying statements, to the Court which had the effect of impugning our client.

I want to make clear that 809 Holdings, LP never failed to attend a deposition. To my knowledge, the Plaintiff only scheduled and noticed the deposition of my client one time, to take place on December 9, 2015. See attached correspondence from Mr. Fata dated November 23, 2015. That deposition was canceled in advance by agreement of Plaintiff's attorney as a result of attorney John Leiter's motion to be relieved. The parties agreed that depositions would be rescheduled after the motion to be relieved was heard on January 4, 2016. Attached hereto is a letter from Mr. Fata dated December 3, 2015 to Judge Seals in which he states "[f]rom my conversation with Mr. Leiter, no depositions will take place until Mr. Leiter's motion is heard." Mr. Fata never re-noticed the depositions, as it was my belief that he was waiting to see if the Pro Se Defendants would obtain new counsel as provided in the order relieving Mr. Leiter filed January 25, 2016.

Prior to the February 16<sup>th</sup> hearing, Mr. Fiedler and Mr. Fata communicated about when to schedule the depositions of Plaintiff and 809 Holdings, LP. See attached emails. At the February 16<sup>th</sup> hearing, Plaintiff did not present any evidence showing 809 Holdings, LP failed to show up for its deposition – that is because the deposition previously scheduled for December 9<sup>th</sup> had been canceled by consent and no subsequent deposition was ever noticed. Had Plaintiff's attorney re-noticed a deposition for 809 Holdings, LP, representatives of the company would

have attended because they adamantly deny the claims asserted by the Plaintiff. I respectfully request in lieu of striking 809 Holdings, LP's pleading, that the deposition of 809 Holding, LP be ordered to occur no later than May 31, 2016. If 809 Holdings, LP fails to appear, it would be sanctioned by having its pleading stricken.

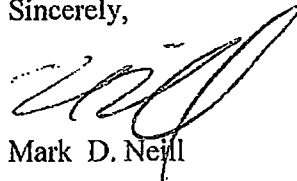
Finally, during the February 16<sup>th</sup> hearing, I believe the Court was given the wrong impression that 809 Holdings, LP had not cooperated in the discovery process. 809 Holdings, LP has produced hundreds of pages of documents and answered numerous Requests to Admit, Requests to Produce, and Interrogatories. As recently as January 8, 2016, 809 Holdings, LP provided discovery responses. I am not aware of any unanswered discovery requests, nor have I received any notice from Plaintiff's attorney indicating 809 Holdings, LP failed to respond to a discovery request. During the hearing, Plaintiff did not provide any evidence showing 809 Holdings, LP failed to cooperate.

I respectfully once again request a hearing on Defendant 809 Holdings, LP's Motion to Reconsider. I believe striking the Defendant's pleading is not supported by the record. Plaintiff did not submit any evidence showing 809 Holdings, LP failed to attend a deposition or failed to cooperate in the discovery process. In the alternative, I request the Court's order provide the deposition of 809 Holdings, LP be scheduled to occur no later than May 31, 2016 and its pleading will be stricken if it's representative fails to appear.

Thank you for your consideration in this matter. If you have any questions, please do not hesitate to contact me.

With kindest regards, I am

Sincerely,



Mark D. Neill

MDN/lah

Cc: Nate Fata, Esq.

Miles Adler

Pro Se Defendants ✓

**NATE FATA, P.A.**  
**ATTORNEY AT LAW**  
P.O. Box 16620  
THE COURTYARD, SUITE 215  
SURFSIDE BEACH, SOUTH CAROLINA 29587  
TELEPHONE (843) 238-2676  
TELECOPIER (843) 238-0240  
NFATA@FATALAW.COM

VIA U.S. MAIL

November 23, 2015

John M. Leiter, Esq.  
Law Offices of John M. Leiter, PA  
1203 48<sup>th</sup> Avenue, North, Ste. 109  
Myrtle Beach, SC 29577

Mark D. Neill, Esq.  
Neill Law Firm  
P.O. Box 2810  
Murrells Inlet, SC 29576

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.  
Civil Action No. 2014-CP-26-8367

Dear John and Mark:

Please see enclosed a copy of the following:

1. Plaintiffs' Amended Notice of 30(b)(6) Deposition of 809 Holdings, LP for Wednesday, December 9, 2015 beginning at 10:00 a.m.;
2. Plaintiffs' Amended Notice Deposition of Laurel Swilley for Thursday, December 10, 2015 beginning at 10:00 a.m.; and
3. Plaintiffs' Amended Notice Deposition of Floyd Swilley for Thursday, December 10, beginning at 1:00 p.m.;
4. Plaintiffs' Amended Notice Deposition of Heath Causey for Wednesday, December 16, 2015 beginning at 10:00 a.m.

Also enclosed is the Certificate of Service verifying service of the same upon you.

John M. Leiter, Esq.  
Mark D. Neill, Esq.  
November 23, 2015  
Page 2

With best regards, I remain

Very truly yours,  
NATE FATA, P.A.



Nate Fata

NF/sh

Enclosures

**NATE FATA, P.A.**  
ATTORNEY AT LAW

P.O. Box 16620  
THE COURTYARD, SUITE 215  
SURFSIDE BEACH, SOUTH CAROLINA 29587  
TELEPHONE (843) 238-2676  
FACSIMILE (843) 238-0240  
www.fatalaw.com

VIA EMAIL

December 3, 2015

The Honorable William Henry Seals, Jr.  
Chief Administrative Judge  
103 N. Main Street  
Marion, SC 29571  
Attn.: Paul Lawson

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.  
Civil Action No. 2014-CP-26-8367


Dear Judge Seals:

As you might recall I represent the Plaintiffs in this investor/Ponzi scheme pawn shop case against the Defendants who are represented by John Leiter and Mark Neill. Mr. Leiter filed a Motion to be Relieved as Counsel on October 22, 2015 and I am concerned that this case will be placed on the trial roster in the next month or two. For that reason, I would like to see if the Court has any time to schedule a short status conference to enter a scheduling order that would have a trial not before April 2016 date so that Mr. Leiter's Motion to be Relieved as Counsel could be heard in due course and/or have a hearing on Mr. Leiter's Motion. From my conversation with Mr. Leiter, no depositions will take place until Mr. Leiter's motion is heard. Because I need to take a half dozen or more depositions, the Motion to be Relieved has presented a challenge with scheduling and getting things done in preparation for trial.

We appreciate the Court's consideration and look forward to hearing from you.

With best regards, I remain

Very truly yours,  
NATE FATA, P.A.

  
Nate Fata  
NF/sh

cc: John M. Leiter, Esq.  
Mark D. Neill, Esq.

**Lisa Hnizdil**

---

**From:** Stefan Feidler [sfeidler@neilllawfirm.com]  
**Sent:** Thursday, February 11, 2016 8:54 AM  
**To:** 'Nate Fata'  
**Cc:** 'Lisa Hnizdil'  
**Subject:** RE: Barnhill v. 809 et al - Motion to Compel and MSJ

Nate,

Could you please provide the same for Mr. Barnhill and GSG Enterprises? I am waiting to hear back from 809, but will get back to you as soon as I do.

Best,

Stefan

---

**From:** Nate Fata [mailto:nfata@fatalaw.com]  
**Sent:** Tuesday, February 09, 2016 2:14 PM  
**To:** 'Stefan Feidler'  
**Subject:** FW: Barnhill v. 809 et al - Motion to Compel and MSJ

Stefan,

Please send some 809 dep dates to me in which your client is available.

Thanks,

Nate

Nate Fata, P.A.  
P.O. Box 16620  
Surfside Beach, SC 29587  
(843) 238-2676

**AV Preeminent, Martindale-Hubbell**

*CONFIDENTIALITY NOTICE: This e-mail and the transmitted documents contain private, privileged and confidential information belonging to the sender. The information herein is solely for the use of the addressee. If your receipt of this transmission has occurred as the result of an error, please immediately notify us so we can arrange for the return of the documents. In such circumstances, you are advised that you may not disclose, copy, distribute or take any other action in reliance on the information transmitted.*

---

**From:** Stefan Feidler [mailto:sfeidler@neilllawfirm.com]  
**Sent:** Monday, February 08, 2016 2:42 PM  
**To:** 'Nate Fata'  
**Cc:** shuffman@fatalaw.com  
**Subject:** Re: Barnhill v. 809 et al - Motion to Compel and MSJ

Nate,

**Lisa Hnizdil**

---

**From:** Stefan Feidler [sfeidler@neilllawfirm.com]  
**Sent:** Tuesday, February 09, 2016 2:15 PM  
**To:** 'Lisa Hnizdil'  
**Cc:** 'Mark Neill'  
**Subject:** FW: Barnhill v. 809 et al - Motion to Compel and MSJ

Lisa,

Please see below.

---

**From:** Nate Fata [mailto:nfata@fatalaw.com]  
**Sent:** Tuesday, February 09, 2016 2:14 PM  
**To:** 'Stefan Feidler'  
**Subject:** FW: Barnhill v. 809 et al - Motion to Compel and MSJ

Stefan,

Please send some 809 dep dates to me in which your client is available.

Thanks,

Nate

Nate Fata, P.A.  
P.O. Box 16620  
Surfside Beach, SC 29587  
(843) 238-2676

**AV Preeminent, Martindale-Hubbell**

*CONFIDENTIALITY NOTICE: This e-mail and the transmitted documents contain private, privileged and confidential information belonging to the sender. The information herein is solely for the use of the addressee. If your receipt of this transmission has occurred as the result of an error, please immediately notify us so we can arrange for the return of the documents. In such circumstances, you are advised that you may not disclose, copy, distribute or take any other action in reliance on the information transmitted.*

---

**From:** Stefan Feidler [mailto:sfeidler@neilllawfirm.com]  
**Sent:** Monday, February 08, 2016 2:42 PM  
**To:** 'Nate Fata'  
**Cc:** shuffman@fatalaw.com  
**Subject:** Re: Barnhill v. 809 et al - Motion to Compel and MSJ

Nate,

I know we have a motion to compel and MSJ set for next week. As to the motion to compel, Mark mentioned you both verbally agreed to cancel the previously set depositions. However, if you would like to re-schedule those depositions, we

are more than happy to accommodate you and your client's request. Please let me know you and your clients availability and I have Lisa contact our clients to re-schedule those depositions.

Sincerely,

Stefan



**STEFAN B. FEIDLER**

**Attorney at Law**

Neill Law Firm, PA

Post Office Box 2810

Murrells Inlet, SC 29576

Phone: 843.651.8580

Fax: 843.651.8586

[sfeidler@NeillLawFirm.com](mailto:sfeidler@NeillLawFirm.com)

[www.NeillLawFirm.com](http://www.NeillLawFirm.com)

**Confidentiality Note:** This email message is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521. This e-mail is also intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential or otherwise protected from disclosure. Dissemination, distribution or copying of this e-mail or the information herein by anyone other than the intended recipient, or an employee or agent responsible for delivering the message to the intended recipient, is prohibited. If you have received this e-mail in error, please notify us immediately by telephone at (843) 651-8580

---

DESIGNATION OF MATTER # 12

---

"FATA LETTER" LETTER FROM NATE  
FATA TO JUDGE MCINTOSH WITH  
ATTACHMENTS THEREAFTER DATED  
MAY 13, 2016

**NATE FATA, P.A.**  
ATTORNEY AT LAW

P.O. Box 16620  
THE COURTYARD, SUITE 215  
SURFSIDE BEACH, SOUTH CAROLINA 29587  
TELEPHONE (843) 238-2676  
TELECOPIER (843) 238-0240  
NFATA@FATALAW.COM

**U.S. Mail**

May 13, 2016

The Honorable Melanie Huggins  
Horry County Clerk of Court  
Post Office Box 677  
Conway, South Carolina 29526

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.  
Civil Action No. 2014-CP-26-08367

Dear Ms. Huggins:

Enclosed for filing is an original and one copy of the following:


1. "Certificate of Service" verifying service of the Affidavit of Sally J. Huffman upon Counsel and Pro Se Defendant; and
2. "Certificate of Service" verifying service of the Notice of Bankruptcy Filings upon Counsel and Pro Se Defendant.

Please clock the enclosed, file the originals and return the clocked copies to me in the envelope enclosed for your convenience.

Thank you for your assistance in this matter.

With best regards, I remain

Very truly yours,  
NATE FATA, P.A.

  
Nate Fata  
NF/sh

Enclosures

cc: Heath Causey, Pro Se  
809 Holdings, LP / Mark Neill, Esq.  
J. Miles Adler, Esq.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO. 2014-CP-26-08367  
(formerly 2013-CP-26-02816)

Gabriel Barnhill and GSB Enterprises, )  
LLC, )  
Plaintiffs, )

vs. )

J. Floyd Swilley, J. Floyd Swilley )  
Investment Advisors, Laurel K. Swilley, )  
SMG Partners, LLC, SMS Services, LP, )  
William C. Piner, WCP Limited, LLC, )  
809 Holdings, LP, QC Financing, LLC, )  
Heath Causey, and Sage Financial )  
Group, LLC, )  
Defendants. )

CERTIFICATE OF SERVICE

Gabriel Barnhill and GSB Enterprises, )  
LLC, )  
Plaintiffs, )

CASE NO. 2014-CP-26-3362

vs. )

J. Floyd Swilley, J. Floyd Swilley, )  
SMG Partners, LLC, SMS Services, LP, )  
William C. Piner, WCP Limited, LLC, )  
Alicia A. Piner, 809 Holdings, LP, )  
Heath Causey, Sage Financial Group, )  
LLC, Sage Advisory Group, L.P., )  
Sage Private Equity Group, )  
Secured Asset Factoring Exchange, Inc., )  
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing, )  
LLC, and Sage Funding, L.P., )  
Christopher Pitcock, )  
Defendants. )

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on May 13, 2016 did serve a copy of the Affidavit of Sally J. Huffman via U.S. Mail as follows:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO. 2014-CP-26-08367  
(formerly 2013-CP-26-02816)

Gabriel Barnhill and GSB Enterprises, )  
LLC, )  
 )  
Plaintiffs, )

vs. )

J. Floyd Swilley, J. Floyd Swilley )  
Investment Advisors, Laurel K. Swilley, )  
SMG Partners, LLC, SMS Services, LP, )  
William C. Piner, WCP Limited, LLC, )  
809 Holdings, LP, QC Financing, LLC, )  
Heath Causey, and Sage Financial )  
Group, LLC, )  
 )  
Defendants. )

AFFIDAVIT OF SALLY J. HUFFMAN

Gabriel Barnhill and GSB Enterprises, )  
LLC, )  
 )  
Plaintiffs, )

CASE NO. 2014-CP-26-3362

vs. )

J. Floyd Swilley, J. Floyd Swilley )  
SMG Partners, LLC, SMS Services, LP, )  
William C. Piner, WCP Limited, LLC, )  
Alicia A. Piner, 809 Holdings, LP, )  
Heath Causey, Sage Financial Group, )  
LLC, Sage Advisory Group, L.P., )  
Sage Private Equity Group, )  
Secured Asset Factoring Exchange, Inc., )  
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing, )  
LLC, and Sage Funding, L.P., )  
Christopher Pitcock, )  
 )  
Defendants. )

FILED  
HURRY COURT  
2016 APR 13 AM 9:11  
CLERK OF COURT  
CLERK OF COURT

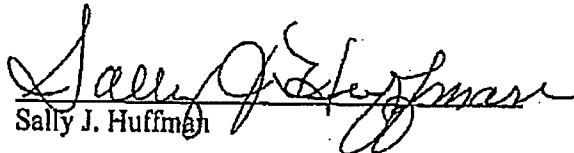
Sally J. Huffman, being duly sworn, deposes and says:

- 1. I am over the age of eighteen years and am competent to make this Affidavit.

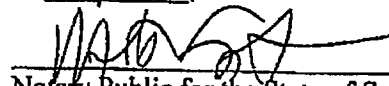
copy

2. I am the legal assistant to Nate Fata, P.A.
3. That I served via U.S. Mail on February 3, 2016 the Notice of Hearing upon the Pro Se Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, Sage Financial Group, LLC, Sage Advisory Group L.P., Sage Private Equity Group, Sage Funding, L.P. at their last known address of 629 Hemlock Avenue, Myrtle Beach, South Carolina 29577.
4. That on February 18, 2016 I served via U.S. Mail Plaintiffs' Affidavit for Attorney Fees and Motion for Attorney Fees above to the Pro Se Defendants at the above address.
5. That on February 24, 2016 a copy of the proposed Order sent to The Honorable R. Lawson McIntosh was mailed to the above Pro Se Defendants at the above address.
6. That on February 24, 2016 I mailed to Pro Se Defendants a copy of the Notice of Motion and Motion for entry of Default and Striking the Pleadings of All company Defendants to the above Pro Se Defendants at the above address.
7. That on March 29, 2016, I mailed to Pro Se Defendants a copy of the Order entered on March 21, 2016 to the above Pro Se Defendants at the above address.
8. That no mail sent by me to the 629 Hemlock Avenue, Myrtle Beach, South Carolina for the above mentioned Pro Se Defendants has been returned by the U.S. Post Office as being undeliverable.
9. Based on the fact the U.S. Post Office has delivered multiple Notices to the 629 Hemlock Avenue, Myrtle Beach address and the Swilleys' confirmation that they reside at such address, I continue to mail notices and pleadings to that address.

FURTHER AFFIANT SAYETH NAUGHT.

  
Sally J. Huffman

SWORN to before me this 13 day  
of April, 2016.

  
Notary Public for the State of South Carolina  
My Commission Expires: 12/16/2020

---

DESIGNATION OF MATTER # 13

---

“CAUSEYS MOTION TO SET ASIDE”  
DEFENDANTS HEATH CAUSEY’S  
NOTICE OF MOTION TO SET ASIDE  
SUMMARY JUDGEMENT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH CIRCUIT COURT  
CASE NO: 2014-CP-26-3362  
(formerly 2013-CP-26-02816)

Gabriel Barnhill and GSB )  
Enterprises, LLC, )  
 )  
Plaintiffs )

vs. )

809 Holdings, LP, 9-1-1 Plumbing, )  
LLC, Heath Causey, Digics, LLC, J. )  
Floyd Swilley Investment Advisors, )  
J Floyd Swilley SMG Partners LLC, )  
Alicia A Piner, William C. Piner, )  
Christopher Pitcock, QC Financing, )  
LLC, SAFE, Inc., Sage Advisory )  
Group, LP, Sage Financial Group, )  
LLC, Sage Funding, LP, Sage )  
Private Equity Group, Secured )  
Asset Factoring Exchange, Inc., )  
SMG Partners, LLC, SMS Services, )  
LP, J. Floyd Swilley, Laurel K. )  
Swilley, and WCP Limited, LLC, )  
 )  
Defendants, )

DEFENDANT, HEATH CAUSEY'S,  
NOTICE OF MOTION AND  
MOTION TO SET ASIDE  
SUMMARY JUDGMENT

HORRY COUNTY  
2016 APR -6 PM 4:52  
MELANIE HARRIS-WARD  
CLERK OF COURT

NATE FATA

TO: THE DEFENDANTS NAMED ABOVE AND IT'S ATTORNEY ~~HEATH CAUSEY~~  
~~HEATH CAUSEY~~, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof,  
or as soon thereafter as may be heard, the Defendant, Heath Causey, Pro Se, will move  
before this Honorable Court:

For an order setting aside summary judgment that was entered against Defendant  
Heath Causey, on February 16, 2016 pursuant to Rule 55(c) and 60(b) of the South  
Carolina Code of Civil Procedure.

FACTS

COPY

1. The Defendant, Heath Causey was represented by John M. Leiter, Esquire but on or about January 4, 2016 Mr. Leiter went before the Honorable William H. Seals, Jr. for a Motion to be Relieved as Counsel where his Motion was granted.


2. On or about January 14, 2016 a Motion Hearing was scheduled for February 16, 2016. Notice of this hearing was sent to Frederick Miles Adler, Esquire, former counsel of the Defendant, Heath Causey. Defendant, Heath Causey was never notified of this hearing.

3. On or about February 9, 2016 the Plaintiff, Gabriel Barnhill, by and through his attorney filed a Notice of Hearing with the Horry County Clerk of Court. Defendant, Heath Causey received said notice the day of the hearing after the hearing had been heard.

4. On or around March 31, 2016, Defendant, Heath Causey received a copy of the Order for the February 16, 2016 hearing where the Honorable R. Lawton McIntosh Ordered that the Answer, Counterclaim and other pleadings of the Defendant, Heath Causey, be stricken. It was also Ordered that all Counterclaims be dismissed with prejudice; the Affidavit of William Piner be stricken.

WHEREFORE, PREMISES CONSIDERED, Defendant, Heath Causey, prays that upon hearing of this matter, that this Court will issue an order setting aside summary judgment under Rule 55(c) and 60(b) of the South Carolina Code of Civil Procedure.

April 6, 2016  
Myrtle Beach, South Carolina

  
Heath Causey  
1035 Pinwheel Loop  
Myrtle Beach, SC 29577  
Phone: (843) 424-9258  
Email: heath.causey@mac.com

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

Gabriel Barnhill and GSB Enterprises, LLC )  
Plaintiff, )

vs. )

809 Holdings, LP, 9-1-1 Plumbing, LLC,  
Heath Causey, Digics, LLC, J. Floyd Swilley  
Investment Advisors, J. Floyd Swilley SMG  
Partners LLC, Alicia A Piner, William C.  
Piner, Christopher Pitcock, QC  
Financing, LLC, SAFE, Inc., Sage Advisory,  
Group, LP, Sage Financial Group, LLC, Sage  
Funding, LP, Sage Private Equity Group,  
Secured Asset Factoring Exchange, Inc., SMG  
Partners, LLC, SMS Services, LP, J. Floyd  
Swilley, Laurel K. Swilley, and WCP  
Limited, LLC, )

Defendant. )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-26-08367

MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET

HORRY COUNTY  
2016 APR -6 PM 4:52  
HEATH CAUSEY  
CLERK OF COURT

Plaintiff's Attorney: Nate Fata, Bar No. 9866 Address: P.O. Box 16620, Surfside Beach, SC 29587 Phone: 843-238-2676 Fax 843-238-0240 E-mail: nfata@fatalaw.com Other:	Defendant's Attorney: Heath Causey, Bar No. Pro Se Address: 1035 Pinwheel Loop, Myrtle Beach, SC 29577 Phone: 843-424-9258 Fax E-mail: heath.causey@mac.com Other:
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion to Set Aside Estimated Time Needed: 30 minutes Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	Date submitted: 4/6/16
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ 25.00 <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	

COPY

<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
<input type="checkbox"/> Other:	Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: \$ _____	
<input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

AUG 22 2016

SC Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
R. Lawton McIntosh, Circuit Court Judge 15<sup>th</sup> Judicial Circuit

Civil Action No. 2014-CP-26-08367  
2014-CP-26-03362 (formerly 2013-CP-02816)

Appellate Case No. 2016-001328

Gabriel Barnhill & GSB Enterprises LLC Respondents,

v.

J Floyd Swilley, J Floyd Swilley  
Investment Advisors, Laurel K Swilley,  
SMG Partners LLC, SMS Services LP,  
William C Piner, WCP Limited LLC, 809  
Holdings LP, QC Financing LLC, Heath  
Causey, and Sage Financial Group LLC, J  
Floyd Swilley, SMG Partners LLC, Alicia  
Piner, Heath Causey, Sage Advisory  
Group LP, Sage Private Equity Group  
LLC, Secured Asset Factoring Exchange,  
Inc, SAFE, Inc, Digics, LLC, 9-1-1  
Plumbing, LLC, and Sage Funding, LP  
and Christopher Pitcock,

Defendants

of whom J Floyd Swilley, Laurel K Swilley  
and Heath Wendell Causey, are the

Appellants.

PROOF OF SERVICE

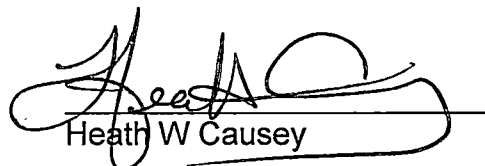
I certify that I have served the Initial Brief and Designation of Matter by Appellant Heath W Causey by depositing a copy of it in the United States mail, postage prepaid, on August 19, 2016 addressed to the following:

Counsel of Record:

Nate Fata, PA  
P.O. Box 16620  
Surfside Beach, SC 29587  
*Attorney for Respondents*

F. Miles Adler  
ADLER LAW FIRM, LLC  
P.O. Box 4743  
Pawley's Island, SC 29585  
*Attorney for Appellants "Swilleys"*

Christopher Pitcock  
24242 Branchwood Court  
Lutz, FL 33559  
*Pro Se Defendants*

  
Heath W Causey

**Heath W. Causey**  
1705 N Oak Street Suite 2  
Myrtle Beach, SC 29577

August 19, 2016

VIA USPS PRIORITY MAIL

Jenny Abbot Kitchings, Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

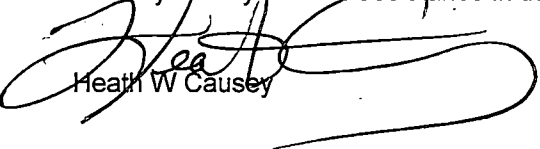
Re: Gabriel Barnhill and GSB Enterprises, LLC v J. Floyd Swilley at al.  
Case No.: 2014-CP-26-08367 Appellate Case No.: 2016 -001328

Dear Ms. Kitchings,

Enclosed for filing the original Initial Brief and Designation of Matter in the above referenced matter. I have also attached a proof of service. Also per our phone conversation there is the no filing fee.

Please return a filed copy to me in the enclosed self-addressed stamped envelope.

Thank you for your kind assistance in this matter

  
Heath W Causey

CC: Nate Fata  
F. Miles Adler, Esq  
Christopher Pitcock, Pro Se

**RECEIVED**  
AUG 22 2016  
SC Court of Appeals

RECEIVED  
AUG 22 2016  
SC Court of Appeals

IED\*  
IED\*

**P**

**\$5.75**

US POSTAGE PRIORITY MAIL  
COMMERCIAL BASE PRICING

062S0008715281  
FROM 29577



stamps.com

08/19/2016

**PRIORITY MAIL 1-DAY™**

HEATH CAUSEY  
1705 N OAK STREET SUITE 2  
MYRTLE BEACH SC 29577

**0024**

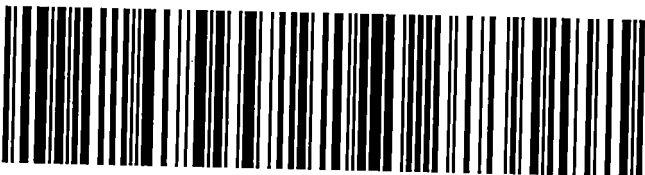
**B012**

SHIP TO:

Jenny Abbot Kitchings, Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia SC 29211-1629



**USPS TRACKING #**



**9405 5118 9956 3033 7249 12**